

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,

December 11, 2023
8:59 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant.

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TRANSCRIPT OF TRIAL DAY 8
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

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ON BEHALF OF THE GOVERNMENT: PAGE

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M-71	142	143
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1 (Call to order of the Court, 8:59 a.m.)

2 THE COURT: Go ahead and have a seat.

3 Let me acknowledge the presence of Mr. Sheppard.

4 I am waiting for the courtroom deputy, because we do
5 have an issue with Juror Number 3. And I believe that -- is
6 Liz back there speaking -- all right.

7 And do we have our witness outside?

8 MS. MARTINEZ: Yes. The witness is here, Your Honor.
9 Would you like the witness to come in?

10 THE COURT: No. Let's discuss this issue.
11 Thank you.

12 (Pause in proceedings.)

13 THE COURT: All right. Continuing. Back on the
14 record. Addressing the issue with Juror Number 3.

15 COURTROOM DEPUTY: I did speak to Mr. Rosell. He says
16 that today he must leave the latest at one because he needs to
17 take his wife to the doctor regarding her condition. He says
18 he does not know what they will tell him today as far as the
19 rest of the week. So far he does have another appointment with
20 her on Thursday, but depending on what they tell him today is
21 what will happen for the rest of the week. He's happy to speak
22 to you about that, obviously, out here without the other
23 jurors, if you'd like. But that's what he said, today he has
24 to leave no later than one o'clock.

25 THE COURT: All right. Given the issue with

1 Mr. Rosell, Juror Number 3 -- recall this is the individual
2 that had an issue with his wife. I understand the courtroom
3 deputy did email the attorneys to advise them of the
4 conversation she had this weekend. We can do one of two
5 things. We can stop at one o'clock and respect his schedule
6 with his wife, with the uncertainty for Thursday, or we can
7 excuse Mr. Rosell. But that would mean that we would be left
8 with 12 jurors and no alternate.

9 MS. WEINTRAUB: Judge, as -- for the Defense, Your
10 Honor, we feel very strongly that we want to accommodate
11 Mr. Rosell. We've felt that way all along. We've made a
12 record of that and we've told the Court why. That's how we
13 feel.

14 MS. JIMENEZ: Your Honor, obviously, we've had a lot
15 of downtime during this trial. We do not believe that we would
16 finish in December if we accommodate this juror's schedule.
17 And it is extremely prejudicial to the Government's case as it
18 is with all the downtime between witnesses. The Court has full
19 authority to excuse a witness who is -- I'm sorry -- a juror
20 who is unable to continue under Rule of Criminal Procedure
21 24(c).

22 THE COURT: But this juror is willing to continue. He
23 just needs his schedule accommodated due to an unanticipated
24 issue with his wife, who broke her vertebrae.

25 MS. JIMENEZ: Well, Your Honor, his wife -- we don't

1 know what's going to happen. And we would have essentially a
2 month-long break if we're unable to finish this trial in the
3 early part of next week, which is extremely prejudicial to both
4 parties, but particularly the Government.

5 Also, this juror, understandably, is -- you know, to
6 be sure, very distracted by the situation that is occurring
7 with his wife. That is unfair both to the Government and the
8 Defense, but especially the Government because the Government
9 has the burden of proof.

10 I would cite for the Court United States v. Dumas,
11 658 F.2d 411, 1981, the former Fifth Circuit, which tells the
12 Court the Court has sound discretion --

13 (Court reporter interruption.)

14 MS. JIMENEZ: -- yes -- the Court has sound discretion
15 to remove a juror and replace him with an alternate whenever
16 such juror's ability to perform his duties becomes impaired.
17 And they are certainly impaired with this very serious health
18 condition of his wife that is extremely understandable, but
19 it's very prejudicial here. And the juror should be
20 accommodated by, yes, being excused. We have an alternate
21 juror that both parties agreed to, who is available. That's
22 what the alternate jurors are for.

23 MS. WEINTRAUB: Judge, he's not asking to be excused,
24 and that has to be very clear on the record.

25 MS. JIMENEZ: It doesn't matter.

1 MS. WEINTRAUB: Excuse me. I didn't interrupt you.

2 MS. JIMENEZ: I haven't finished.

3 MS. WEINTRAUB: Judge, most respectfully, I was
4 speaking. He's not asking to be excused. He's merely asking
5 to be accommodated, and there's a big difference. The other
6 juror asked to be excused, and we agreed.

7 The Defense -- and in particular, I will tell the
8 Court Mr. Sheppard feels very strongly about keeping this juror
9 for many reasons, which we've already advised the Court of, and
10 we're not willing to go forward. We're just looking at a
11 mistrial happening. And that's not what the Court wants
12 either, and neither do we because there'll be no alternates
13 left.

14 THE COURT: All right. I am not willing to excuse
15 this juror, who has not asked to be excused. He's asked to be
16 accommodated.

17 And with regard to the Government's bare claim that
18 this juror is overwhelmed and distracted by his wife's medical
19 condition, I am certainly willing to bring this juror out and
20 to ensure that that is not an issue in this case with regard to
21 his attention and focus on the trial.

22 MS. JIMENEZ: I would ask that he come out and do
23 that. But the rule does not require that he ask to be excused,
24 simply that his ability to perform his duties are impaired.

25 THE COURT: But they're not impaired to the extent

1 that it would warrant excusing our final alternate.

2 So let's bring out Juror Number 3.

3 MS. WEINTRAUB: Judge, I would -- respectfully --

4 THE COURT: I'm going to bring out Juror Number 3 with
5 regard to the issue of distraction. I'm going to ask the
6 question. And if he states that he's not distracted, he can
7 continue his service, then that ends the inquiry. So let's
8 bring him out.

9 COURT SECURITY OFFICER: All rise, please.

10 (Juror Number 3 enters the courtroom.)

11 THE COURT: Mr. Rosell, just have a seat for just a
12 moment. And let me first say -- go ahead and have a seat,
13 everyone.

14 Let me first say that my -- certainly my thoughts are
15 with you and your wife on the unexpected circumstances that
16 occurred this weekend. Both sides would certainly like you to
17 continue severing as a juror, and I want to ensure that if we
18 accommodate your schedule, are you able to continue your
19 service?

20 JUROR NUMBER 3: So far, yes.

21 THE COURT: All right. Do you believe that the
22 circumstances regarding your wife are so significant that it
23 would distract you from continuing serving as a juror and
24 listening to the evidence?

25 JUROR NUMBER 3: At this point in time, I don't

1 believe so. If I feel like it becomes a distraction, I will
2 let you-all know. That's the best I can do right now.

3 THE COURT: All right, sir. All right.

4 JUROR NUMBER 3: For me, it's day by day or hour by
5 hour, unfortunately.

6 THE COURT: Of course. And so, at this point, I
7 understand that you have an appointment with your wife and you
8 need to leave at one o'clock today; is that correct?

9 JUROR NUMBER 3: The appointment is at two. So I need
10 to leave here by one to pick her up and make it to the
11 appointment. And we have an appointment on Thursday. We're
12 trying to make it this afternoon, so that I don't -- I could be
13 here all day Thursday. But honestly, I don't know what they're
14 going to tell us today. So all I told Liz is I can call her
15 probably around four or five, when I'm done, let her know
16 what's going on, and she can tell you and everybody else what's
17 going on.

18 THE COURT: All right. Thank you, Mr. Rosell. I
19 appreciate that.

20 JUROR NUMBER 3: Okay.

21 COURT SECURITY OFFICER: All rise.

22 JUROR NUMBER 3: Thank you.

23 THE COURT: Yes. Of course.

24 (Juror Number 3 exits the courtroom.)

25 THE COURT: At this point, the juror has expressed

1 that he can continue. He is not overcome to the extent that
2 he's not able to focus on the evidence, and our last alternate
3 will remain on the panel.

4 All right. Let's bring in the witness.

5 MS. JIMENEZ: One other thing, Your Honor.

6 THE COURT: Yes?

7 MS. JIMENEZ: The Court, last time we were here, asked
8 the parties to try to resolve some issues regarding the
9 admissibility of exhibits.

10 I sent a list of business records to the Defense.
11 They have said over and over again that they'll accept business
12 record certifications. I'm asking -- I did not receive any
13 sort of response. I'm asking so that we can move this trial
14 along and not have these interruptions in the middle of
15 testimony to allow the exhibits to be moved in or --

16 THE COURT: Yes. Which ones?

17 MS. JIMENEZ: -- indicate which --

18 THE COURT: Which ones?

19 MS. JIMENEZ: Yes, Your Honor.

20 We have Yahoo subscriber information 9-1, 9-2, 9-3.

21 THE COURT: All right. Any objection?

22 Mr. Etra?

23 MR. ETRA: No objection.

24 THE COURT: All right.

25 MR. ETRA: No objection to 9-1 to 9-3 or to 11.

1 THE COURT: All right. Hold on. 9-1, 9-3 -- to 9-3
2 are received in evidence.

3 Next one?

4 MS. JIMENEZ: 9-2?

5 THE COURT: 9-2, 9-3.

6 MR. ETRA: Correct. No objection.

7 (Government's Exhibits 9-1 through 9-3 received into
8 evidence.)

9 MS. JIMENEZ: All right. The next ones are the
10 Breezeline Internet protocol records, 11.

11 MR. ETRA: No objection.

12 THE COURT: In evidence.

13 (Government's Exhibit 11 received into evidence.)

14 MS. JIMENEZ: The next ones are the Mercedes-Benz
15 records, 24.

16 MR. ETRA: No objection.

17 THE COURT: 24, which would include all the -- 1
18 through 8?

19 MS. JIMENEZ: Your Honor, this is Docket Entry -- what
20 is our docket entry?

21 THE COURT: All right. Exhibit 24 in evidence.

22 (Government's Exhibit 24 received into evidence.)

23 MS. JIMENEZ: Yes. 24 is Mercedes-Benz records.

24 Then 28, and then 29 through 37, which are records
25 provided from Neal Cupersmith's accounting office, which they

1 have provided a business record certification for.

2 MR. ETRA: We have no objection except for 33, because
3 it relates to a company not at issue, and 34 and 35 because
4 they're personal returns.

5 MS. JIMENEZ: Thirty-three -- HM Six is a company that
6 submitted an EIDL loan application, which will be discussed --
7 two -- I'm sorry -- two EIDL applications.

8 MR. ETRA: That's never come up in this case.

9 THE COURT: So 33, HM Six, is not agreed to, but the
10 others are.

11 (Government's Exhibits 28 through 32 and 36 through 37
12 received into evidence.)

13 THE COURT: All right. And what was the other one?

14 MR. ETRA: 34 and 35 also we don't agree to. But
15 otherwise, we agree to 28 through 37.

16 THE COURT: All right.

17 MS. JIMENEZ: I'm sorry. 38 is also part of Neal
18 Cupersmith's records.

19 MR. ETRA: I don't remember you sending that
20 yesterday. I looked at everything you sent me. I had 28
21 through 37. I don't think you --

22 MS. JIMENEZ: Well -- okay. So I mistyped.

23 MR. ETRA: I'm not blaming you. I'm just saying I
24 haven't had a chance to look at it yet.

25 MS. JIMENEZ: They're emails from his office.

1 MR. ETRA: We're okay with 38.

2 THE COURT: All right. 38 in evidence.

3 (Government's Exhibit 38 received into evidence.)

4 MS. JIMENEZ: All right. Then SunTrust record,
5 account 5452, which was supposed to be in when we were here
6 last; however, the Court -- when the Court announced what was
7 admitted, did not mention Exhibit 40. So that's part of the
8 SunTrust records.

9 THE COURT: All right. Any objection?

10 MR. ETRA: No objection to 40.

11 (Government's Exhibit 40 received into evidence.)

12 THE COURT: Next one.

13 MS. JIMENEZ: Then we have Discover Credit Card
14 records, 42.

15 MR. ETRA: No objection to 42.

16 (Government's Exhibit 42 received into evidence.)

17 MS. JIMENEZ: Intuition Solutions records 43.

18 MR. ETRA: We have an objection to part of 43. They
19 don't need to have the name of the student for whom -- this is
20 Florida College Prepaid. It's got personal information on the
21 name of the student. It's got the name.

22 MS. JIMENEZ: It's his son.

23 MR. ETRA: We would like that redacted. It's on
24 almost every page, so it's not like a one-page thing.

25 THE COURT: Is there harm in redacting that portion?

1 MS. JIMENEZ: We could redact the first name. I mean,
2 it indicates Sheppard.

3 THE COURT: All right.

4 MR. ETRA: There's also -- I had to turn the page on
5 my notes. There's reference to a subpoena on it, and Page 16
6 and Page 35 has other information that we would object to.
7 Hopefully, we could work that out.

8 MS. JIMENEZ: We can address that later.

9 First Horizon records are Exhibit 44.

10 THE COURT: Any objection?

11 MR. ETRA: Your Honor, we don't object to the fact
12 that it's the mortgage and it's a payment to the mortgage.
13 It's a giant file full of -- it's one thousand pages. It's got
14 pictures of the house. It's got appraisals. It's got a lot of
15 financial -- personal financial information. All they need is
16 to show that it's a personal mortgage, which we agree to. We
17 don't think we need all thousand pages. We asked them to cut
18 it down to the simple fact that it's the mortgage.

19 THE COURT: Would the Government accept a stipulation
20 in lieu of the exhibit?

21 MS. MARTINEZ: Your Honor, I have some selected
22 documents that I could give to the Defense. I do believe that,
23 in addition to identifying the mortgage account which is being
24 paid with money that came from PPP and EIDL loans -- I think it
25 is also relevant, the size of the house.

1 Well, let me explain. The house is over 5,000 feet,
2 and he is going to be arguing that part of it is related to,
3 you know, business expense. So the size of the house is
4 something that will become relevant.

5 MR. ETRA: We're not arguing business expenses on tax
6 returns.

7 THE COURT: Okay. So the First Horizon records, you
8 have a business certification?

9 MS. MARTINEZ: Yes, Your Honor.

10 THE COURT: All right. Is there -- and the objection
11 is the volume and because there are photos of the house?

12 MR. ETRA: And photos, and financial information, and
13 a lot of background. I don't have a problem with the fact that
14 it's a mortgage or the payment history, because they want to
15 show the payment history. I don't have a problem with the
16 payment history. It's everything else.

17 MS. MARTINEZ: Your Honor?

18 THE COURT: Unless the Government agrees to a
19 redaction, I don't see that there's any prejudice in
20 introducing the photographs of the house and the payment
21 history. So to that extent, if there's a business record
22 certification, would there be any other objection?

23 MR. ETRA: Well, there's other financial information
24 about -- in terms of the loan application for a mortgage, and
25 we don't think they need to get into all of that in the one

1 thousand pages.

2 MS. MARTINEZ: I don't know what prejudice there could
3 be, especially when they have an expert that thinks that we
4 need to take a global view of all his assets.

5 THE COURT: I don't see a basis to order redaction.
6 This is different than with regard to the son. So the First
7 Horizon records will be admitted into evidence.

8 (Government's Exhibit 44 received into evidence.)

9 THE COURT: What other issues?

10 MS. JIMENEZ: Exhibit 45 are bank records for Bank of
11 America, and 45-1 is a signature card -- well, it's all
12 together, 45 and 45-1.

13 THE COURT: Any objection?

14 MR. ETRA: On 44, Your Honor ruled over our objection.
15 And 45, no objection.

16 (Government's Exhibit 45 received into evidence.)

17 THE COURT: All right. What other ones?

18 It's already 9:15. Let's continue.

19 MS. JIMENEZ: Amerasia records is 46 and 46-1.

20 MR. ETRA: We think it should just be -- we have an
21 objection beyond the bank statements, as referenced to grand
22 jury materials, and back-and-forth with the --

23 THE COURT: There's reference to grand jury materials?

24 MR. ETRA: I apologize. I'm not saying it right. The
25 subpoena and response to subpoena. They just dumped all that

1 stuff --

2 MS. JIMENEZ: Well, the subpoena -- we'll remove the
3 subpoena. We need to remove the --

4 THE COURT: All right. So the removal of the
5 subpoena. Is there any objection?

6 MR. ETRA: And there's emails about the subpoenas. We
7 want all that --

8 THE COURT: All right. Let's -- is there any
9 objection to removing that, any reference to the grand jury?

10 MS. JIMENEZ: No. No.

11 THE COURT: All right. With that stipulation, 46 and
12 46-1.

13 (Government's Exhibit 46 and 46-1 received into
14 evidence.)

15 THE COURT: What else?

16 MS. JIMENEZ: One Florida Bank records, 47 and 47-1,
17 47-2.

18 MR. ETRA: We object only to Bates 34037 to 34072.
19 These are emails about the paying off of the loan and about the
20 actual loan documents. You don't need information about the
21 loan documents, which is part of the package, which is 34073 to
22 34124.

23 MS. MARTINEZ: Your Honor, the loan is absolutely
24 relevant in this case. It is completely contemporaneous and he
25 uses the PPP EIDL money to pay back that loan.

1 THE COURT: What would be the basis to exclude those
2 documents?

3 MR. ETRA: I'm not even sure why they're in there --

4 THE COURT: What would be the basis to exclude them?

5 MR. ETRA: The basis to exclude that is because
6 they're talking about collecting payments, and it's more
7 evidence that they are putting in there to suggest that
8 Mr. Sheppard doesn't pay his bills, and it's prejudicial.

9 MS. JIMENEZ: The loan --

10 THE COURT: And it goes directly to the payment of the
11 loan?

12 MS. MARTINEZ: Your Honor, the proceeds of the fraud
13 are used to pay that loan.

14 THE COURT: The objection is noted. It's overruled.
15 That will be admitted into evidence.

16 (Government's Exhibit 47, 47-1, and 47-2 received into
17 evidence.)

18 THE COURT: What other documents?

19 MS. JIMENEZ: Wells Fargo bank records are 48.

20 THE COURT: Any objection?

21 MR. ETRA: No objection to 48.

22 (Government's Exhibit 48 received into evidence.)

23 MS. JIMENEZ: American Express records are 49.

24 MR. ETRA: No objection to 49.

25 (Government's Exhibit 49 received into evidence.)

1 MS. JIMENEZ: We have SBA EIDL records, which are 51
2 through -- I'm sorry -- through 60.

3 MR. ETRA: Your Honor, I have about five or six
4 objections to the numerous pages. It includes the fact that
5 it's got his credit history in there. It includes the fact
6 that it deals with information that's way beyond the scope of
7 the Indictment. And it's something that I don't think we
8 should be doing in a rush basis right before the jury comes in
9 when we're holding them back.

10 THE COURT: Well, is there a reason why the credit
11 history needs to be part of the documents?

12 MS. MARTINEZ: Your Honor, there really -- if counsel
13 would actually look at it, there really is hardly no pages at
14 all of the credit report within the SBA documents. I looked at
15 it. It's just like two pages. So the only objection I have is
16 the Defendant has asked witnesses about credit reports, is
17 saying that he's going to have an expert with a global view.
18 So I don't understand the reasoning or even any argument that
19 there's anything prejudicial. I don't know if he's looked at
20 it. There's only like two pages. It says nothing.

21 THE COURT: Where is the prejudice if it's -- if
22 there's a business record certification, what's the prejudice
23 of introducing those documents?

24 MR. ETRA: Well, a few of them. One is I don't see
25 why -- the fact they run a credit report, it has all this

1 information -- they don't really look at any of this. It's not
2 relevant, and we shouldn't have all this information --

3 THE COURT: But it is relevant. So how is -- the
4 Court's already found that it's relevant. The question is:
5 Where's the undue prejudice that would allow this Court to
6 exclude it under Rule 403?

7 MR. ETRA: Respectfully, in our view, it's not
8 relevant, but I understand what Your Honor is saying. It
9 simply is a way of making Mr. Sheppard look like someone who
10 doesn't pay his bills and is financially irresponsible, and
11 it's part of the overall character attack on Mr. Sheppard that
12 we view this case to be. That's the credit report.

13 On the rest of this, Your Honor, this exhibit is a
14 backhand 404(b) non-notice. There is information about all
15 kinds of issues and loans that have never been brought up in
16 404(b), that are not part of the Indictment. And this is not
17 the way to introduce other act evidence, is trying to get --
18 just because we have been good about offering to not object to
19 business records certifications doesn't mean they get to jam in
20 all this information about uncharged conduct. It's really
21 concerning to us that they're going to use this process as a
22 way of getting it.

23 As an example, Your Honor, the Indictment is May 2020
24 to March 2021. There are large volumes of documents that are
25 beyond March 2021. So even --

1 THE COURT: All right. Ms. -- let me just stop you,
2 Mr. Etra, with regard to this last exhibit.

3 Do you need this for this witness?

4 MS. MARTINEZ: For the witness that is being
5 cross-examined, no, Your Honor.

6 THE COURT: All right. Then let's bring in this
7 witness and we'll deal with it at the next break. I'd like to
8 get this jury inside this courtroom.

9 Let's get the witness into the courtroom. And any
10 other exhibits with regard to this witness?

11 MS. JIMENEZ: No, Your Honor.

12 THE COURT: All right. We will conclude at one
13 o'clock. We will not take a lunch break. And then obviously
14 we'll see where we are with regard to Thursday with regard to
15 Juror Number 3. But today will be nine to one p.m.

16 Tomorrow, recall that it will be -- will be at 9:30.

17 All right. Good morning, Mr. Graff.

18 If we can bring in the jurors, please.

19 COURT SECURITY OFFICER: All rise for the jury.

20 (Before the Jury, 9:22 a.m.)

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

22 Please be seated, everyone.

23 It's good to see each of you. Thank you for being
24 prompt.

25 And let me advise you that we will proceed today until

1 one o'clock p.m. We will not take a lunch recess. We'll
2 proceed till one o'clock, just to accommodate a schedule.

3 Recall we were in the middle of the cross-examination
4 of Mr. Graff.

5 Mr. Graff, let me remind you, you were previously
6 placed under oath.

7 And let us proceed.

8 MS. WEINTRAUB: May I, Your Honor?

9 THE COURT: Yes. Of course.

10 CROSS-EXAMINATION [CONTINUED]

11 BY MS. WEINTRAUB:

12 Q. Mr. Graff, your testimony about Mr. Sheppard's companies
13 only go through March 2020, correct?

14 A. Correct.

15 Q. And there's a cutoff at March 31st when you stopped working
16 there, right?

17 A. Yes.

18 Q. And you understand that all of the government loans at
19 issue in this case were applied for after March 2020, right?

20 A. Yes.

21 Q. Now, you said that you have known Eric Sheppard for over 20
22 years, right?

23 A. Yes.

24 Q. You've grown up with him since he was seven years old?

25 A. Correct.

1 Q. Eric was not born with a spoon in his mouth, to say the
2 least, right?

3 A. Correct.

4 Q. He was adopted, right?

5 MS. JIMENEZ: Objection. Relevance.

6 THE COURT: To adoption, sustained.

7 BY MS. WEINTRAUB:

8 Q. Well, you were testifying on direct about how you know him
9 so well, right?

10 A. Yes.

11 MS. JIMENEZ: Objection. That was not his testimony.

12 THE COURT: Overruled.

13 MS. WEINTRAUB: And Judge, I'm going to ask for
14 non-speaking objections, because it was his testimony --

15 THE COURT: Both sides, objection, legal basis, and
16 the Court can rule.

17 Please continue.

18 MS. WEINTRAUB: Thank you.

19 BY MR. WEINTRAUB:

20 Q. Mr. Graff, as I was saying, you went to high school with
21 Eric Sheppard, didn't you?

22 A. Yes.

23 Q. And senior night of high school prom, his mom was the
24 victim of a hit-and-run driver --

25 MS. JIMENEZ: Objection. Relevance.

1 THE COURT: Sustained.

2 BY MS. WEINTRAUB:

3 Q. Eric was pretty much on his own when he went to college?

4 MS. JIMENEZ: Objection. Relevance.

5 THE COURT: Sustained.

6 MS. WEINTRAUB: Judge, may we have a sidebar?

7 THE COURT: There's no need for a sidebar. You may
8 continue.

9 MS. WEINTRAUB: Judge, I believe there are on Sixth
10 Amendment grounds.

11 THE COURT: You may continue.

12 BY MS. WEINTRAUB:

13 Q. Did you go to college with Eric?

14 A. Yes.

15 Q. Were you roommates?

16 A. Part of the time, yes.

17 Q. Eric was working in the food court during college to
18 support himself?

19 MS. JIMENEZ: Objection. Relevance.

20 THE COURT: I'll allow that. Overruled.

21 THE WITNESS: Yes, he was.

22 BY MS. WEINTRAUB:

23 Q. You were -- there came a time when you were working at the
24 Braman car dealership; is that right?

25 A. Yes.

1 Q. You worked with Ron Harte?

2 MS. JIMENEZ: Objection. Relevance.

3 THE COURT: Overruled.

4 THE WITNESS: Ken Harte.

5 BY MS. WEINTRAUB:

6 Q. You came to Eric and told him that there was no future at
7 Braman?

8 MS. JIMENEZ: Objection. Hearsay.

9 THE COURT: Overruled.

10 MS. JIMENEZ: And relevance.

11 THE COURT: Overruled.

12 BY MS. WEINTRAUB:

13 Q. You went to Eric, didn't you, and told him that you didn't
14 think you had a future at Braman and you asked him if you could
15 work with him, right?

16 A. I don't think I said that, no.

17 Q. Do you think that you asked him for a job?

18 A. I think we spoke about a job. And I probably did ask, but
19 I don't believe I said there was no future in the car business.

20 Q. Mr. Graff, what's the difference between -- you didn't
21 believe you had a future at Braman --

22 MS. JIMENEZ: Objection. Argumentative.

23 THE COURT: I'm sorry. What's the basis of the
24 objection?

25 MS. JIMENEZ: Argumentative.

1 THE COURT: Overruled.

2 BY MS. WEINTRAUB:

3 Q. Eric gave you the opportunity to work for him, didn't he?

4 A. Yes.

5 Q. And you said you wanted to learn the business?

6 A. Yes.

7 Q. By that time, Eric was pretty successful?

8 A. Yes, he was.

9 Q. At that time, Eric had two other guys, Jim Leach and Eric
10 Gordon, that were working in development; is that right?

11 A. Yes.

12 Q. And he was training them to work in development?

13 MS. JIMENEZ: Objection. Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: They were developers in the company,
16 correct.

17 BY MS. WEINTRAUB:

18 Q. Now, when you started out in the company, you started out
19 as the CFO, the chief financial officer?

20 A. Yes.

21 Q. And you really wanted to learn the business on the
22 developing side, though, didn't you?

23 A. Yes.

24 Q. And Leach and Gordon were already on the development side,
25 and Eric said he'll get you there, right?

1 A. Sounds about right. Yeah.

2 Q. Now, you started working with WSG in about 2000. Is that
3 your testimony?

4 A. Yes.

5 Q. And WSG was Wolman Sheppard Group, right? That's what it
6 stood for?

7 A. There was a third partner.

8 Q. I'm sorry?

9 A. There was a third partner with a G.

10 Q. And who was that?

11 A. Phil Wolman's cousin.

12 Q. And Phil Wolman, he was the owner of the For Eyes
13 franchise?

14 A. Correct.

15 Q. And previously Eric had worked for him and learned the
16 business for a few years, right, before they were partners?

17 MS. JIMENEZ: Objection. Relevance.

18 THE COURT: Overruled. If the witness knows.

19 THE WITNESS: I don't think so.

20 BY MS. WEINTRAUB:

21 Q. You don't think that he ever worked for Phil Wolman?

22 A. I don't recall that, no.

23 Q. And at WSG the business was developing retail centers; is
24 that right?

25 A. Yes.

1 Q. And Eric's partners stayed with him -- Phil Wolman stayed
2 with him until 2009; is that right? About then?

3 A. Sounds about right, yes.

4 Q. Because Phil Wolman had a stroke?

5 A. Yes.

6 MS. JIMENEZ: Objection. Relevance.

7 THE COURT: Sustained.

8 MS. WEINTRAUB: Could I have grounds?

9 THE COURT: I'm sorry?

10 MS. WEINTRAUB: Can I have grounds for her objection?

11 MS. JIMENEZ: Relevance.

12 THE COURT: It was relevance.

13 MS. WEINTRAUB: I'm sorry. I didn't hear.

14 THE COURT: Not a problem.

15 BY MS. WEINTRAUB:

16 Q. Mr. Graff, let's talk about the heart of Eric's work and
17 your work with him. Generally, you testified that you worked
18 side by side with him for 20 years, right?

19 A. Yes.

20 Q. Eric would travel around the country looking for locations
21 of where to develop property?

22 A. Yes.

23 Q. And at that time you were in the office and you were
24 communicating together, right?

25 A. Yes.

1 Q. He would find -- and he would find locations to develop and
2 he would envision what could be built on that land, right?

3 A. Yes.

4 Q. And when you first identify a parcel of land of interest,
5 then the lawyers get involved, they start negotiating and doing
6 contracts, right? That's how it works?

7 A. Loosely, yes.

8 Q. An architect, an engineer, they're hired. Eric paid for
9 it, right?

10 A. Yes.

11 MS. JIMENEZ: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 BY MS. WEINTRAUB:

15 Q. Then the property is purchased with other cash or
16 financing, yes?

17 A. Yes.

18 Q. And at WSG, and then at HM Management, Eric Sheppard was
19 the one that was guaranteeing the loans whenever financing was
20 involved, right?

21 A. The construction loans, yes.

22 Q. And if the construction goes sideways or, you know,
23 something major occurs, then it was Mr. Sheppard who was on the
24 hook for that construction loan, right, for the shortfall?

25 A. Yes.

1 Q. And that's what happened when Eric Sheppard found the land
2 for Alafaya Trails, right -- what became Alafaya Trails
3 shopping center, right?

4 A. No.

5 Q. Do you know?

6 A. The original land was brought to Eric by a former partner.

7 Q. Originally, the land was basically undeveloped swampland,
8 wasn't it?

9 A. No.

10 Q. It was built?

11 A. No. It was 10 or 20 single-family homes.

12 Q. Okay. It certainly wasn't a shopping center?

13 A. Absolutely not.

14 Q. Did Robert Kallman become a partner in the Alafaya Trails
15 property?

16 A. I believe so.

17 Q. You believe so or you know so?

18 A. I believe he did.

19 Q. And speaking of Robert Kallman, you do know him, right?

20 A. I do.

21 Q. And he's the owner of Bookazine?

22 MS. JIMENEZ: Objection. What is -- relevance.

23 THE COURT: Overruled. I'll allow it at this point.

24 THE WITNESS: I think that's the name of the company.

25

1 BY MS. WEINTRAUB:

2 Q. And Bookazine is the largest independent book wholesaler in
3 the country, isn't it?

4 A. I don't know that.

5 Q. Do you know if he's successful or not?

6 A. I believe he's successful. Yes, I do.

7 Q. Do you agree that it was a grind to get each project
8 developed done?

9 A. Each real estate project, yes.

10 Q. And do you agree that Eric often had more than one project
11 going at the same time?

12 A. Yes.

13 Q. They would be in different stages to complete at the same
14 time?

15 A. I'm sorry. Different what?

16 Q. Stages.

17 A. Yes.

18 Q. And you testified that Eric built over a million square
19 feet of projects, right?

20 MS. JIMENEZ: Objection. Time frame. Relevance.

21 THE COURT: Overruled.

22 THE WITNESS: I believe that was in my bio, yes.

23 BY MS. WEINTRAUB:

24 Q. And that's true?

25 A. Yes.

1 Q. Isn't it also true that in all your time with the company,
2 whenever land was bought, Eric then did the construction and
3 built out the property?

4 A. No.

5 Q. When didn't that happen?

6 A. We hired general contractors to do the construction of all
7 the properties.

8 Q. But Eric was still involved with that, was he not?

9 A. Eric was involved in a lot of them, yes.

10 Q. Who -- before the general contractors get involved, Eric is
11 involved with the engineers and the architects and the
12 planning, correct?

13 A. He's partially involved, yes.

14 Q. And he's also involved with the zoning and everything else
15 that's -- the permitting, and inspecting, and everything else
16 that's going on, right?

17 A. Yes. Eric is hands-on.

18 Q. Eric and his partner investors are not passive. They are
19 very hands-on, correct?

20 A. I think Eric was more hands-on than his partners.

21 Q. Okay. And Eric had projects in New Mexico, right?

22 A. Yes.

23 Q. Texas?

24 A. Yes.

25 Q. Oklahoma?

1 A. Yes.

2 Q. Colorado?

3 A. Yep.

4 Q. Virginia?

5 A. Yes.

6 Q. Maryland?

7 A. Yes. Yes.

8 Q. Georgia?

9 A. Yes.

10 Q. Louisiana?

11 A. Yes.

12 Q. And that's not counting the 12 developments in Florida,
13 right?

14 A. It's not counting the developments in Florida.

15 Q. They were virtually all ground-up construction projects,
16 were they not, sir?

17 A. Yes.

18 Q. Now, going back to what Alafaya Trails looked like in
19 2018 --

20 MS. WEINTRAUB: I'd like to show the witness only
21 M-51.

22 BY MS. WEINTRAUB:

23 Q. Do you see that picture, M-51?

24 A. Yes.

25 Q. That's a picture of the Alafaya Trails shopping center from

1 2018, right?

2 MS. JIMENEZ: Objection. She's testifying for the
3 witness about what it is.

4 THE COURT: Sustained. Rephrase.

5 BY MS. WEINTRAUB:

6 Q. Do you recognize what this is a picture of?

7 A. Yes.

8 Q. What is it?

9 A. It looks to be an aerial view of the Alafaya shopping
10 center and surrounding area.

11 Q. Do you recognize it --

12 A. I'm sorry. Yes. Yes, I do.

13 MS. WEINTRAUB: I'd seek to move it into evidence.

14 MS. JIMENEZ: Objection. Relevance.

15 THE COURT: Overruled. I'll allow it. Admitted into
16 evidence.

17 (Defendant's Exhibit M-51 received into evidence.)

18 BY MS. WEINTRAUB:

19 Q. And you see the parking lots and the undeveloped land
20 there?

21 A. Yes.

22 Q. That's all what was used in the common areas, right?

23 A. I don't know if I understand your question.

24 (Pause in proceedings.)

25

1 BY MS. WEINTRAUB:

2 Q. Do you see the area now in red?

3 A. Yes.

4 Q. That all became the common -- common area, right?

5 A. No.

6 Q. How much of it became the common area?

7 A. None of that area was considered the common area for the
8 shopping center.

9 Q. Now, in 2000 -- in 2000, when you first started working, I
10 mean, Eric was not working on major projects like Alafaya, was
11 he?

12 A. No.

13 Q. He started out by doing a free-standing building, small,
14 right?

15 A. Yes.

16 Q. He then started building relationships with national
17 tenants, such as Starbucks, Men's Wearhouse, right?

18 A. Correct.

19 Q. To name a few. He also developed relationships with
20 Kinko's and --

21 MS. JIMENEZ: Objection. Relevance.

22 THE COURT: I'll allow it. Overruled.

23 BY MS. WEINTRAUB:

24 Q. Right?

25 A. Yes.

1 Q. And at the beginning it was like going city to city, buying
2 and putting up smaller freestanding places of business, right?

3 A. Yes.

4 Q. Then he had to put the tenants in, right? He would make a
5 deal, get the tenants in, and then he moves on?

6 A. Yes.

7 Q. And before he moves on, he would hand it off to Mr. Gordon
8 and Mr. Leach, right? They would deal with the tenants and go
9 forward -- and property management?

10 A. Sometimes. And sometimes they were involved up front.

11 Q. Now, by this time, you started working with Mr. Leach and
12 Mr. Gordon, in addition to your responsibilities as CFO, right?

13 A. Minimally. I worked primarily with Eric.

14 Q. Well, didn't you take over for Leach and Gordon?

15 A. When they left, they wound up doing their own deal, so I
16 took over projects, yes.

17 Q. They left to form their own company, after they learned
18 enough, and they formed Frontier, right?

19 MS. JIMENEZ: Objection. Relevance.

20 THE COURT: Overruled.

21 THE WITNESS: Yes.

22 BY MS. WEINTRAUB:

23 Q. And Eric was fine when they were leaving. He was kind of
24 proud of them, right?

25 MS. JIMENEZ: Objection.

1 THE COURT: Sustained.

2 BY MS. WEINTRAUB:

3 Q. Now, it's fair to say that each project was owned by a
4 different LLC. And you know that, right?

5 A. Yes.

6 Q. And it's commonplace to set up the corporations like that,
7 right?

8 A. To set up separate LLCs?

9 Q. Yes.

10 A. Yes.

11 Q. And in fact, many banks require it to be set up that way,
12 correct, for liability?

13 A. Yes.

14 Q. And each LLC is responsible for all the operations and the
15 management of each individual project? Yes?

16 A. Yes.

17 Q. Obviously, having you by his side, Eric trusted you, right?

18 A. Yes.

19 Q. He relied on you?

20 A. Yes.

21 Q. Now, when Leach -- Mr. Leach and Mr. Gordon left, they each
22 had 10 percent interest in WSG Arundel, which was the property
23 in Maryland, right?

24 MS. JIMENEZ: Objection. Relevance.

25 THE COURT: Overruled.

1 BY MS. WEINTRAUB:

2 Q. They did not have 10 percent interest in that?

3 A. No.

4 Q. Didn't that 10 percent interest go to you?

5 A. WSG Arundel was a property that I worked on from the
6 beginning and got 10 percent ownership in. I brought that
7 deal.

8 Q. And there was WSG Hanover in Maryland also, right? You got
9 10 percent on that?

10 A. Yes.

11 Q. And you got 10 percent of the WSG in Kansas City, right?

12 A. Yes.

13 Q. And by the way, those three properties also had -- in
14 addition to Men's Wearhouses and Chipotle and others, they had
15 Mattress Firm stores there, right?

16 A. Kansas City had Mattress Firm.

17 Q. Didn't Arundel?

18 A. No.

19 Q. No? Now, also around this time Eric branched out and
20 started doing some residential work, right?

21 A. Yes.

22 Q. And do you remember when he built out Vista Point in
23 Breckenridge, Colorado?

24 A. I don't remember the specific days, but yes, I remember the
25 project.

1 Q. It was 200 individual homes there?

2 A. Sounds about right.

3 Q. And it was -- well, you've been there with him, right?

4 A. Yeah.

5 Q. And it was a major residential development that he did?

6 A. Yes.

7 MS. JIMENEZ: Objection. Where is this?

8 THE COURT: In Colorado. That's the testimony.

9 MS. JIMENEZ: Relevance objection.

10 THE COURT: Sustained.

11 BY MS. WEINTRAUB:

12 Q. Now, you have been to that community with Mr. Sheppard?

13 MS. JIMENEZ: Objection.

14 BY MS. WEINTRAUB:

15 Q. The development?

16 THE COURT: Sustained.

17 BY MS. WEINTRAUB:

18 Q. Do you know who the project executive was of that building
19 development?

20 MS. JIMENEZ: Objection. Relevance.

21 THE COURT: Sustained.

22 MS. WEINTRAUB: Can we have a sidebar?

23 THE COURT: You may continue. There's no need for a
24 sidebar.

25

1 BY MS. WEINTRAUB:

2 Q. By 2006, 2007, Eric started focusing on another project in
3 Miami Beach, right, called Canyon Ranch?

4 A. I don't remember the date, but yes, he focused on the
5 Canyon Ranch project.

6 Q. Now, Canyon Ranch was a residential building and spa
7 development on the beach, right, 71st Street or something?

8 A. Yes.

9 Q. And you know what financial institution he worked with to
10 put that deal together, right?

11 MS. JIMENEZ: Objection. Relevance.

12 THE COURT: Overruled. I'll allow it.

13 THE WITNESS: Yes.

14 BY MS. WEINTRAUB:

15 Q. Lehman Brothers was the partner and investor?

16 A. Yes.

17 Q. Now, before it went under, Lehman Brothers was one of the
18 top lenders in the business in the world at the time, wasn't
19 it?

20 MS. JIMENEZ: Objection. Relevance.

21 THE COURT: Sustained.

22 BY MS. WEINTRAUB:

23 Q. Do you agree that William Lehman was a large investing
24 financial institution which brought down this country in --

25 MS. JIMENEZ: Objection. Relevance.

1 THE COURT: Sustained.

2 MS. WEINTRAUB: Judge, I'd like to proffer relevance.

3 THE COURT: There's no need to proffer right now. You
4 can proffer outside the presence of the jury.

5 BY MS. WEINTRAUB:

6 Q. That property was over a million square feet alone, wasn't
7 it?

8 MS. JIMENEZ: Objection. Relevance.

9 THE COURT: Sustained.

10 BY MS. WEINTRAUB:

11 Q. At that time, your offices were on 41st Street?

12 A. Yes.

13 Q. At the Sheridan Center office building?

14 A. Yes.

15 Q. And you worked with Steve Filosa there?

16 MS. JIMENEZ: Objection. Relevance.

17 THE COURT: Overruled. I'll allow it at this point.

18 THE WITNESS: That's a name from the past. Yes. I
19 remember the name.

20 BY MS. WEINTRAUB:

21 Q. Steve Filosa took over as CFO after you, right?

22 A. Correct.

23 Q. And Denise Soriano and Addy Sosa worked under Steve Filosa,
24 right?

25 A. For a period, yes.

1 Q. Denise Soriano even called herself the comptroller, right?

2 A. I don't know what she called herself.

3 Q. Denise and Addy handled all the draws, the construction
4 payments, right, at Canyon Ranch, what was going on?

5 A. I believe they were both involved, yes.

6 Q. And Jessica Hernandez?

7 A. Yes.

8 Q. Who is that?

9 A. She was in the accounting department also, more filing and
10 things like that.

11 Q. And Joanne Puckett, you worked closely with her, didn't
12 you?

13 A. I did not work closely with her, but she worked there as
14 well.

15 Q. And Bernie Warner, at the time, was the project executive
16 on Canyon Ranch?

17 A. I don't think so, no.

18 Q. Who was?

19 A. Eric was the project executive for Canyon Ranch.

20 Q. And who was the project manager on site?

21 A. I don't remember. I mean, there were several.

22 Q. Every project needs a project executive on site to manage
23 it, right? Don't you agree?

24 A. Ones that size, yes. But we were local, so they weren't
25 necessarily there every day.

1 Q. Usually, the project executive is the one who handles all
2 the accounting, hires and fires, right?

3 A. Not necessarily, no.

4 Q. Usually, doesn't the project executive handle the
5 accounting for the project, the budget, the invoices that come
6 in that he or she are responsible for?

7 A. They may approve those invoices.

8 Q. Do you remember in your direct testimony you suggested that
9 there were only three people at HM Management, right, Jeanette
10 Gonzalez, Vanessa Gonzalez, yourself, and Mari, who was Mary
11 Ataca?

12 A. There every day, yes.

13 Q. But you were not including all the people that were working
14 in the field, right?

15 A. I don't remember if we mentioned them or not.

16 Q. But there were a lot of people working at Canyon Ranch in
17 the field, were there not?

18 A. Different time periods.

19 Q. Were there time periods when there were several hundred
20 people working on that project?

21 A. Canyon Ranch?

22 Q. Yeah.

23 A. Yes.

24 Q. And HM Management was paying them? Yes?

25 A. We were WSG Development at that time.

1 Q. I'm sorry?

2 A. We were WSG Development at that time.

3 Q. And Eric's company was paying them. Yes?

4 A. People that worked for WSG, yes. Other people were paid
5 via draws as contractors with architects, engineers, or
6 construction.

7 Q. Do you agree that other than the three or four people that
8 we just named there were a lot of people working for the
9 company? Yes or no?

10 A. Specific -- I need to understand the specifics. Over time,
11 yes.

12 Q. Excuse me?

13 A. Over the course of time, yes.

14 Q. Well, when people are working under the different projects,
15 they are getting paid by the company WSG or HM Management, were
16 they not?

17 A. Yes.

18 Q. And there were always developments being -- there were
19 always projects being developed, right?

20 A. Correct.

21 Q. So there were always a lot of other people working and
22 getting paid by the company that weren't the few that you
23 mentioned from the office, right?

24 A. Yes.

25 Q. There was another project that was in Miami, the Shops of

1 Flagler, right?

2 A. Yes.

3 Q. There was a Walmart there, right?

4 A. Correct.

5 Q. And when you're talking about all the people that are
6 working, like at Canyon Ranch, didn't the company even buy a
7 Denny's across the street to make it an office for the
8 executives to be working?

9 A. Across the street from?

10 Q. From Canyon Ranch. They bought a Denny's, did they not?

11 A. Yes.

12 Q. And that Denny's was bought to house the project executive,
13 the records, the project manager, right? That's what it's for?

14 A. Yes.

15 Q. Okay. And there was always that going on on a project
16 site, was there not?

17 A. Projects that size, but not every project, no.

18 Q. Well, for example, with the Shops at Flagler, there were
19 trailers there for that project for the project manager and
20 other workers that were necessary, right?

21 A. Yes.

22 Q. And so, again, you didn't count those workers that are
23 working in the -- in Denny's or in these trailers when you said
24 that there are only three or four people working, right?

25 A. I didn't count them, no.

1 Q. Because what you really meant to say was there were only
2 three or four people full-time in the office at that time,
3 correct?

4 A. At that time, yes.

5 Q. You didn't mean to say that there weren't other people
6 working, right?

7 A. I did not mean to say other people were not working, no.

8 Q. And in Orlando at Alafaya Trails, there were two trailers,
9 and there was even a temporary office that was built inside
10 Toys "R" Us or what became Burlington, right, for the executive
11 staff?

12 A. I did not see that, no.

13 Q. You know that there was a house that was rented in Orlando,
14 right, for the staff?

15 A. I know there was a person who lived in Orlando that worked
16 for us, yes.

17 Q. Is that Joe Beirne that you're talking about?

18 A. Yes.

19 Q. And there were also hotel rooms that were rented for
20 workers during the Alafaya Trails, right?

21 A. Correct.

22 Q. And that was also to house the workers because of COVID,
23 right?

24 A. I don't know.

25 Q. And you're not saying that Eric Sheppard is directing every

1 person or directing the work that had to be done at these
2 projects, like at Canyon Ranch or Flagler, right? The project
3 manager's telling them what to do.

4 A. Yes.

5 (Pause in proceedings.)

6 BY MS. WEINTRAUB:

7 Q. And so, while these projects are going on, I mean, Eric
8 Sheppard's job was he's the developer, right?

9 A. (No verbal response.)

10 Q. He was the developer, was he not?

11 A. He was the owner.

12 Q. Was he not the developer?

13 A. I think on certain projects, the larger projects, but he
14 would rely on --

15 Q. You?

16 A. -- people like me to develop projects.

17 Q. Okay. He would rely on you for a lot of things, didn't he?

18 A. Sometimes.

19 Q. He relied on you always for financial advice, didn't he?

20 A. Not necessarily, no.

21 Q. Well, you said that you were CFO till when, 2006?

22 A. I believe 2004-ish.

23 Q. But the truth is, is that, as of 2011, you're being sent
24 emails about financial information that was necessary that you
25 were going back and forth with that says: "Attention: Jeff

1 Graff CFO" --

2 MS. JIMENEZ: Objection.

3 BY MS. WEINTRAUB:

4 Q. -- on --

5 THE COURT: In terms of reading, sustained.

6 BY MS. WEINTRAUB:

7 Q. I'm going to show you an Exhibit 73.

8 MS. WEINTRAUB: Just for the witness.

9 BY MS. WEINTRAUB:

10 Q. Do you recognize this?

11 MS. WEINTRAUB: Go up.

12 BY MS. WEINTRAUB:

13 Q. Do you see where it says: "Attention" it has your name?

14 A. Yeah.

15 Q. Do you recognize it?

16 A. I do.

17 MS. WEINTRAUB: Seek to move 73 into evidence, Your
18 Honor.

19 MS. JIMENEZ: Objection. Is this impeachment? The
20 witness hasn't been asked a question --

21 THE COURT: Hold on. It's been identified. What's
22 the objection to --

23 MS. JIMENEZ: Impeachment, hearsay, relevance.

24 THE COURT: Overruled. Exhibit 73 will be admitted
25 into evidence.

1 (Defendant's Exhibit M-73 received into evidence.)

2 BY MS. WEINTRAUB:

3 Q. And so you were still being referenced by other people as
4 the CFO, and they're still asking you for documents, and you're
5 sending them to them, right?

6 A. According to this, yes.

7 Q. And that was the financial resources loan officer that's
8 asking you for this information that you're responding to,
9 right?

10 A. I don't remember the name.

11 Q. Now, you said Eric was --

12 MS. WEINTRAUB: You can take that down.

13 BY MS. WEINTRAUB:

14 Q. You said that Eric was -- when I asked you: "Eric was the
15 developer," you had some pushback a minute ago and you said
16 that he's the owner, right?

17 A. Correct.

18 Q. But isn't the truth that he works on the plans with the
19 architect. Right?

20 A. Sometimes, yes.

21 Q. And you have seen him work with engineers with the
22 blueprints, right?

23 A. Yes.

24 Q. And you've seen him working with the banks and getting
25 financing?

1 A. Yes.

2 Q. And you've helped with all of that, right?

3 A. Yes.

4 Q. And Eric relies on a staff to put stuff together, doesn't
5 he?

6 A. Yes.

7 Q. He relied on you, he relied on Jeanette? Yes?

8 A. Yes.

9 Q. He relies on the project executive who is working on the
10 project to coordinate with the office, correct?

11 A. Yes.

12 Q. Now, we're still in 2008, and on direct you talked about
13 foreclosures and shedding employees after the economy crashed.
14 Do you remember that?

15 A. Yes.

16 Q. But let's talk about what really happened. What really
17 happened is Eric's company was partners with Lehman Brothers at
18 Canyon Ranch, right?

19 A. I don't know if they were partners. Lehman Brothers was
20 the financing company, the lender.

21 Q. Lehman Brothers is the financial investor?

22 A. Yes.

23 MS. JIMENEZ: Objection. Relevance.

24 THE COURT: Overruled.

25

1 BY MS. WEINTRAUB:

2 Q. And in 2008 there's a financial meltdown in the country; do
3 you agree?

4 A. Yes.

5 Q. Lehman Brothers files for bankruptcy, you agree?

6 A. Yes.

7 Q. Now, Eric did not declare bankruptcy, did he?

8 A. Not in that project, no.

9 Q. Eric didn't declare bankruptcy in any company -- of any
10 company, did he?

11 A. No.

12 Q. So Lehman Brothers shuts down and stops funding the
13 construction, right?

14 A. Yes.

15 Q. And instead of throwing up his hands and saying: "Okay. I
16 guess we're out of here," Eric Sheppard kept that project going
17 until it was finished, didn't he?

18 A. I'm not sure how far they went. But Eric kept working on
19 the project, yes.

20 Q. It completed. It was completed and finished, wasn't it?

21 A. Again, I don't remember if it was completed or not.

22 Q. Did you ever know Eric Sheppard to walk away in the middle?

23 A. No.

24 Q. As a matter of fact, Eric Sheppard finished every project
25 he started, unlike most developers; isn't that true?

1 A. Eric finished every project he started.

2 Q. And Canyon Ranch was one of them, right?

3 A. Yes.

4 Q. Now, the Government asked you about foreclosures so let's
5 go back to that. You talked about how some of the properties
6 were foreclosed, right?

7 A. Yes.

8 Q. But let's simplify and clarify what really happened. When
9 Lehman Brothers came in as the financiers and lent money for
10 the construction, they wanted collateral, just like any other
11 bank, right?

12 A. Yes.

13 Q. And Lehman Brothers took some of the company's shopping
14 center properties as collateral for the loan, correct?

15 A. Not to my knowledge, no.

16 Q. Do you know?

17 A. I don't believe the properties that were ultimately
18 foreclosed on were part of the Canyon Ranch loan.

19 Q. Isn't it true that people went after Lehman Brothers in the
20 bankruptcy, and then Lehman Brothers went to collect assets
21 that they had as collateral, and that's the property that you
22 were talking about?

23 A. I don't know the answer to that question.

24 Q. Well, isn't it true that Lehman was just seizing assets in
25 a panic to pay creditors?

1 A. Again, I don't know what Lehman Brothers did.

2 Q. Eric was not at fault in any of that, was he?

3 MS. JIMENEZ: Objection. Relevance.

4 THE COURT: Sustained.

5 MS. JIMENEZ: Vague.

6 BY MS. WEINTRAUB:

7 Q. Do you agree it was a consequence of being in business with
8 Lehman Brothers that some of those properties had to get sold?

9 A. No.

10 Q. Now, the company changed from WSG to HM Management after
11 the Lehman collapse, right?

12 A. Yes.

13 Q. And you were kind of implying that Eric had to open a new
14 company to avoid legal problems. Is that what you were trying
15 to imply the other day?

16 MS. JIMENEZ: Objection.

17 THE COURT: The basis?

18 MS. JIMENEZ: Misstates the testimony.

19 THE COURT: Overruled.

20 MS. WEINTRAUB: Judge, I'm going to object that that's
21 not a legal objection.

22 MS. JIMENEZ: It is. It is.

23 THE COURT: The objection is overruled.

24 Let's continue.

25 MS. WEINTRAUB: Thank you, Your Honor.

1 BY MS. WEINTRAUB:

2 Q. You can answer.

3 A. I'm sorry. Can you repeat that, please? Sorry.

4 Q. Sure. You kind of suggested that Eric had to open a new
5 company after WSG to avoid some legal problems.

6 A. No.

7 Q. Okay. Because what really happened was Phil Wolman -- who
8 we talked about suffered two strokes and his kids took over,
9 right?

10 A. Those are -- that was a true event, but I don't know that
11 was what I was referencing in my testimony.

12 Q. Well, do you know when WSG transitioned to HM Management
13 that's what was happening?

14 A. I don't think the two are related.

15 Q. Do you think it was a coincidence that both happened at the
16 same time?

17 MS. JIMENEZ: Objection. Asked and answered.

18 THE COURT: Sustained.

19 BY MS. WEINTRAUB:

20 Q. You testified that during the transition to HM Management,
21 that a lot of people were let go and you were basically lucky
22 to stay on, right?

23 A. It was prior to transition. But yes, that is correct.

24 Q. But the truth is, is that a lot of people weren't let go,
25 the project was finished, and the construction was done. There

1 was nothing else to do at that point at Canyon Ranch; isn't
2 that right?

3 A. The project was concluding, yes.

4 Q. So you agree it wasn't like that all these people were let
5 go. There was nothing left for them to do when it was done,
6 right?

7 A. The people working on the project, correct.

8 Q. Now, let's talk about you switching from W-2 to 1099. When
9 you were a W-2 employee, what was your salary -- with HM
10 Management. Sorry.

11 A. I was never a W-2 employee with HM Management.

12 Q. Never. What about with WSG?

13 A. I believe it was around the same 150,000 at the time of the
14 switch.

15 Q. You're an accountant by training? Yeah?

16 A. Yes.

17 Q. You are a certified public accountant and have your
18 master's as well, right?

19 A. Yes.

20 Q. And you don't know what your salary was, that it was
21 \$150,000?

22 A. I said I believe it was \$150,000.

23 Q. Well, when you say you believe it was, I just want the
24 record to be clear. Does that mean that it was?

25 A. Yes.

1 Q. Now, you agree that after the collapse with Lehman
2 Brothers, and right after HM Management is formed -- you agree
3 that was a pretty tough time for everybody, right, in the real
4 estate business?

5 A. Yeah.

6 Q. And you agree that it was a tough time for Eric Sheppard,
7 obviously?

8 MS. JIMENEZ: Objection. Relevance.

9 THE COURT: Sustained.

10 BY MS. WEINTRAUB:

11 Q. Do you agree that you felt lucky to have the job and you
12 were glad not to be laid off because it was a very tough time
13 for Eric Sheppard financially then?

14 MS. JIMENEZ: Objection. Asked and answered,
15 relevance.

16 THE COURT: Sustained.

17 BY MS. WEINTRAUB:

18 Q. Eric did not reduce your salary, did he?

19 A. No.

20 Q. And he didn't take away your BMW, did he?

21 A. No.

22 Q. And he didn't take away your family insurance, did he?

23 A. No.

24 Q. Isn't it true that you saw tax benefits in becoming a 1099?

25 A. There could be benefits to being an independent contractor.

1 Q. In fact, as a 1099, you were still paid \$150,000 gross,
2 right?

3 A. Yes.

4 Q. And you still kept your benefits, as we just said, right?

5 A. Yes.

6 Q. Your job didn't change, right?

7 A. No.

8 Q. Your hours didn't change?

9 A. No.

10 Q. You even kept your email for HM Management?

11 A. Yes.

12 Q. And you formed this company Graffco that we talked about
13 the other day, right?

14 A. Yes.

15 Q. And you never even used the Graffco email, right? You kept
16 HM Management?

17 A. Yes.

18 Q. Eric didn't care that you wanted to be 1099 and get the tax
19 benefits, did he?

20 A. It was Eric's idea that I became a 1099.

21 Q. You don't know who told Eric to suggest that, do you?

22 A. I don't.

23 Q. Now, Eric didn't fill out the forms for you to change from
24 W-2 to 1099, did he?

25 A. No.

1 Q. You went to Jeanette and had Jeanette do it, right --
2 Jeanette Gonzalez?

3 A. I don't know what forms you would be referencing.

4 Q. Well, who changed your status with the company?

5 A. I mean, I had to go out and hire an attorney to draft an
6 operating agreement and register with the State. I did that on
7 my own. No one helped me with that.

8 Q. So you're saying that Eric had you become 1099?

9 A. Yes.

10 Q. And you're saying it wasn't that you wanted to be 1099?

11 A. Correct.

12 Q. Do you have any reason why everyone else -- Jeanette
13 Gonzalez, Vanessa Gonzalez -- do you know why all of the other
14 people stayed W-2 and only you became 1099, if you didn't want
15 it?

16 A. No. I don't know why.

17 Q. So let's look at some of these tax benefits that you got.

18 MS. WEINTRAUB: Can we bring up M-52. It's
19 Government's 16-3.

20 It's in evidence. It could be shown to the jury.

21 BY MS. WEINTRAUB:

22 Q. Now, we know from this chart that you're getting \$150,000 a
23 year to Graffco -- that you were paid \$150,000, right? Yes?

24 A. Yes.

25 Q. And this chart shows that, according to State of Florida,

1 you only paid yourself \$15,000, right?

2 A. Yes.

3 Q. And starting in 2013. Yeah?

4 A. Yes.

5 Q. So you change your salary from 150 a year to \$15,000 a
6 year, and you did that to avoid paying more taxes, didn't you?

7 A. Yes.

8 Q. You were paying taxes on \$15,000 instead of \$150,000,
9 right?

10 A. Payroll taxes.

11 Q. Federal taxes. And obviously that was a tax benefit,
12 right?

13 A. Yes.

14 Q. You paid less to Social Security and Medicare, right?

15 A. Correct.

16 Q. You know that's against the law, what you did, right?

17 MS. JIMENEZ: Objection.

18 THE COURT: Sustained.

19 BY MS. WEINTRAUB:

20 Q. Did you think that was lawful?

21 A. I paid taxes on the profit as well.

22 Q. But year after year, after year, after year, it's almost a
23 million dollars in tax revenue that the federal government
24 didn't get.

25 MS. JIMENEZ: Objection.

1 BY MS. WEINTRAUB:

2 Q. 150 --

3 THE COURT: Sustained.

4 BY MS. WEINTRAUB:

5 Q. -- minus 15 for all those years. Do you agree?

6 MS. JIMENEZ: Objection.

7 THE COURT: The objection is sustained.

8 BY MS. WEINTRAUB:

9 Q. Certainly you're not telling this jury that your services
10 were only 15,000 -- deserve \$15,000 a year, right?

11 A. My services were to HM Management.

12 Q. Well, did you think that you were getting more than 15,000
13 you reported?

14 A. From HM Management?

15 Q. Yeah.

16 A. I was getting more than 15,000 from HM Management.

17 Q. I think we have covered it, but while we're talking
18 Graffco, Graffco is a -- it's an LLC, right?

19 A. Yes.

20 Q. That means you have to have two members?

21 A. Correct.

22 Q. And so having two members -- that's why you put your wife
23 on the company?

24 A. So it would be a separate entity for tax purposes, yes.

25 Q. And there was nothing wrong with that for the LLC, right?

1 A. Right.

2 MS. WEINTRAUB: If I can have a minute.

3 (Pause in proceedings.)

4 BY MS. WEINTRAUB:

5 Q. Now, initially, you said last week --

6 MS. WEINTRAUB: You could take that down --

7 BY MS. WEINTRAUB:

8 Q. Initially, you said that you were running the accounting
9 department. Do you remember that -- for Eric's company.

10 Remember that?

11 A. When I first started, correct.

12 Q. And when you first started, there was an accounting
13 company -- accounting department there, right?

14 A. There were two of us.

15 Q. You referenced it as the accounting department, did you
16 not?

17 A. Correct. Yeah.

18 Q. So let's go through the responsibilities of the accounting
19 department. There's bookkeeping, right?

20 A. Yes.

21 Q. There's paying invoices, right?

22 A. Yes.

23 Q. Tracking invoices. Yes?

24 A. Yeah.

25 Q. Preparing checks?

1 A. Yes.

2 Q. Running QuickBooks?

3 A. Yep.

4 Q. Reconciling bank statements?

5 A. Uh-huh. Yes. Sorry. Sorry. Sorry.

6 Q. Preparing employment filings, right?

7 A. We did not prepare the employment filings. If you're
8 talking about tax -- the outside accountants.

9 Q. I'm sorry?

10 A. The outside accountants.

11 Q. Got it. And you also worked with the accountants on the
12 tax filings, right?

13 A. On the year-end filings, the partnership filings, yes.

14 Q. So those are all functions of the accounting department.
15 Yes?

16 A. Yes.

17 Q. And from 2000 to 2020, those functions were always
18 performed by somebody at HM Management, right?

19 A. Yes.

20 Q. And so whether you call it an accounting department or
21 reference a bookkeeper, those tasks were being completed, were
22 they not?

23 A. Yes. They were being completed.

24 Q. And isn't that the essence of what was important? Is that
25 the -- whether it's done by a bookkeeper or a CPA without a

1 license anymore doesn't matter. The tasks were done, right?

2 A. They were.

3 Q. And I'm sure it was no disrespect to Jeanette, because you
4 thought that she was doing all these tasks, right?

5 A. Yeah. There's no disrespect to Jeanette.

6 Q. Okay. Now, you also testified earlier that when you got
7 hired you were also there to help the property management side
8 of business, right?

9 A. Yes.

10 Q. And property management is -- once a project is completed,
11 there's a lot to do with the tenants, collecting rent,
12 listening to them moan, right, whatever it is?

13 A. Correct.

14 Q. And property management is not about finding new locations
15 or working with architects. It is dealing with tenant issues.
16 Yes?

17 A. Correct.

18 Q. And also, when you were doing that, it's kind of like
19 running human resources, wouldn't you agree? You're managing
20 the employees there. You're dealing with the tenants.

21 A. Yeah.

22 Q. And I mean, there's no sign that says "Human Resources"
23 over your desk, but surely as property management you're doing
24 that?

25 A. Yes.

1 Q. And people like Jeanette and Vanessa were doing that as
2 well, right?

3 A. Correct.

4 Q. And Eric's not doing that, correct?

5 A. Very little, if at all.

6 Q. Because he's leaving that to you-all to do that. "You-all"
7 meaning you, Jeanette, Vanessa, Mary, people that are working
8 in the office that he's relying on and trusting, right?

9 A. Yes.

10 Q. When someone's hired as a W-2, like when Vanessa came on,
11 Eric wasn't standing there giving her a clipboard with a W-3 to
12 fill out, was he?

13 A. No.

14 Q. Because other people did that, right?

15 A. Correct.

16 Q. Now, you testified that -- we kind of talked about it a
17 little, but after you switched out of the accounting side and
18 went to the development side, you really still were always
19 involved in the financials, weren't you?

20 A. Tangentially, if that's the right word, if that's even a
21 word.

22 Q. Sorry?

23 A. If that's even a word.

24 Q. Tangentially. Sure. It means you had your foot still in
25 the door.

1 A. I would help if there were questions, yes.

2 Q. Okay. And you also know that Eric continued -- he didn't
3 stop relying on you to be looking out for the financial stuff
4 once you were doing developing, right -- that was a terrible
5 question. I'm going to move to strike it and start again.

6 Eric always looked and relied on you to make sure that
7 things were right in the office. Is that a fair question?

8 A. I think Eric relied on me to be there with questions, but
9 he was working with Jeanette a lot on the accounting.

10 Q. Eric was working with Jeanette?

11 A. In 2018 through 2020, yeah.

12 Q. When you say: "Working a lot on the accounting in 2018,"
13 was he there doing QuickBooks?

14 A. Oh, no. Not at all.

15 Q. So let's not give the jury the wrong impression. He's not
16 sitting there going over the books, is he?

17 A. No.

18 Q. Okay. So when you say: "He's working with her," he just
19 wants to make sure she's doing her job?

20 A. Correct. Making sure rent was being collected and bills
21 were being paid, correct.

22 Q. He's not sitting there making sure that this bill is paid
23 or that particular invoice is sent. He just wants to know in
24 general that the tasks are being done that she's taking over,
25 right?

1 A. Right. He would do his review with her.

2 Q. Okay. Now, do you agree that it was more than just making
3 sure the bills were paid and that he was sitting with Jeanette.
4 He wanted you to be looking over what Jeanette was doing,
5 didn't he?

6 A. No.

7 Q. Because he knew you weren't doing that anymore?

8 A. I don't know why he didn't want me -- he didn't
9 specifically tell me not to, but he didn't rely on me to do
10 that.

11 Q. He did not rely on you and did not specifically tell you.
12 Is that your testimony?

13 A. Yes.

14 MS. WEINTRAUB: Can we bring up M-43 for the witness
15 only.

16 BY MS. WEINTRAUB:

17 Q. By the way, before we do that, the Government -- the
18 Government meaning the FBI agent who is sitting there, right?
19 You recognize her, Ms. Halleran? Yes?

20 A. Yes, I do.

21 Q. You've met her, right? And the prosecutors, both of them,
22 right? You've met them?

23 A. Yes.

24 Q. So they asked you to provide them with whatever emails, or
25 texts, or whatever you could, right?

1 A. Yes.

2 Q. And you gladly provided them with whatever you thought was
3 relevant, right?

4 A. Yes.

5 Q. And you would also agree with me that they were all
6 negative, whatever you provided them, right?

7 A. Yes.

8 MS. WEINTRAUB: So let's bring up M-43 to the witness
9 only and ask if he recognizes this.

10 BY MS. WEINTRAUB:

11 Q. Do you recognize this email from March 22nd, 2020? Do you
12 recognize who it's from?

13 A. Do I recognize who it's from?

14 Q. Yes.

15 A. Yes. It's from Eric.

16 Q. And do you recognize who it's to?

17 A. It's to myself and Jeanette.

18 Q. Okay. And do you remember getting this?

19 A. I don't remember getting this specifically, no.

20 Q. But this is your email, right?

21 A. I'm assuming so. It says: "To Jeff Graff."

22 MS. WEINTRAUB: At this time, Your Honor, I'd move
23 M-43 into evidence.

24 MS. JIMENEZ: He doesn't remember. It's improper
25 impeachment. He hasn't been asked anything to impeach him on.

1 THE COURT: All right. At this point, the objection
2 is sustained.

3 BY MS. WEINTRAUB:

4 Q. Mr. Graff, do you remember Eric telling you that he
5 discussed with you over the past year that he was responsible
6 to provide income and expense statements pursuant to the loan
7 documents that were outstanding?

8 A. Yes.

9 Q. He was concerned about that and wanted to make sure that
10 the loan documents were all -- his ducks were in a row, so to
11 say, yeah?

12 A. Yes.

13 Q. He wanted to make sure that he was in compliance and things
14 are being done properly to make sure those loans are fine so
15 that he didn't risk any default, right?

16 A. I'm assuming that's why he wanted this.

17 Q. Well, he says it to you, doesn't he? He wanted you to make
18 sure that it was done, right? Yes?

19 A. Yes.

20 Q. And so Eric tells you that: "We have to follow the leases,
21 the loan documents, and any REA to manage the assets properly,"
22 right?

23 A. Yes.

24 Q. Is there anything -- after you see this email, is there
25 anything in this email that is not what we were just talking

1 about?

2 MS. JIMENEZ: Objection. The email's not in evidence.
3 The witness --

4 THE COURT: Sustained.

5 MS. WEINTRAUB: Judge, this is a business record.

6 THE COURT: It hasn't been introduced at this point as
7 that. The objection is sustained. Let's continue.

8 BY MS. WEINTRAUB:

9 Q. Do you recognize Jeanette's email address?

10 A. Yeah. Yes.

11 Q. And your email and Eric Sheppard's email address. Yes?

12 A. I don't see my email address on there, but it says: "To
13 Jeff Graff."

14 Q. And do you have any reason to believe that this wasn't kept
15 in the ordinary course of business as a business record?

16 A. No.

17 MS. WEINTRAUB: At this time, I'd move it into
18 evidence, Your Honor.

19 THE COURT: Any objection?

20 MS. JIMENEZ: Objection. Relevance.

21 THE COURT: On grounds of relevance?

22 MS. JIMENEZ: Objection. It's not a business record.
23 This witness can't testify that it's a business record.

24 THE COURT: The objection would be sustained.

25

1 BY MS. WEINTRAUB:

2 Q. As part of your job with HM Management, did you work with
3 Jeanette Gonzalez at HM Management to fulfill the tasks or to
4 keep -- strike that.

5 As part of your job, did you receive and send emails
6 at work?

7 A. Yes. Excuse me.

8 Q. I'm sorry?

9 A. I was in the middle of -- sorry. Yes. Yes.

10 Q. And did you also receive and send emails to
11 jeanette@hmmanagementdevelopment.com as part of your regular
12 business?

13 A. Yes.

14 Q. And did you also receive and send messages with
15 eric.sheppard10@gmail.com as part of your regular business?

16 A. Yes.

17 MS. WEINTRAUB: At this time, I would move it in.

18 THE COURT: Any objection?

19 MS. JIMENEZ: Same objection. And it's hearsay.

20 THE COURT: The objection is sustained.

21 BY MS. WEINTRAUB:

22 Q. On March 22nd, 2020 -- does this refresh your recollection
23 of what happened on March 22nd, 2020, what Eric was asking you
24 and Jeanette to do?

25 A. It looks like a normal email to me.

1 Q. I'm sorry?

2 A. It looks like a normal email to me.

3 Q. An oral email?

4 A. Normal. Normal.

5 Q. Normal email that was kept in the normal course of
6 business?

7 A. Yes.

8 MS. JIMENEZ: It's -- to refresh, he shouldn't be
9 looking at it.

10 THE COURT: Hold on. Hold on. The -- what are you
11 seeking to do at this time, Ms. Weintraub?

12 MS. WEINTRAUB: Introduce this exhibit into evidence.

13 THE COURT: Is there any objection?

14 MS. JIMENEZ: Yes.

15 THE COURT: And the basis?

16 MS. JIMENEZ: It's business record and relevance and
17 hearsay.

18 THE COURT: Is the Government conceding that it is a
19 business record?

20 MS. JIMENEZ: No.

21 THE COURT: All right. Then the objection is
22 sustained.

23 MS. WEINTRAUB: Judge, it's also strict impeachment.

24 THE COURT: And for purposes of impeachment, you may
25 continue to ask questions, but not for introducing it into

1 evidence. So let's continue.

2 BY MS. WEINTRAUB:

3 Q. Do you agree that as of March 22nd, 2020, that Eric was
4 still relying on you to review financial issues or issues that
5 he considered to be of a financial nature?

6 A. Not to review them.

7 Q. To review them?

8 A. Not to review them. I don't agree with that.

9 Q. Do you remember Eric asking you to sit with Jeanette with
10 the material on her computer and review it?

11 A. Yes.

12 Q. Doesn't that show you that Eric was asking you -- when he's
13 asking you to review it with Jeanette Gonzalez and oversee it,
14 he's relying on you? Yes?

15 A. I think he's asking me to assist Jeanette.

16 MS. JIMENEZ: Objection. Asked and answered.

17 THE COURT: Overruled.

18 THE WITNESS: I believe he's asking me to assist
19 Jeanette.

20 BY MS. WEINTRAUB:

21 Q. And that's because he's relying on you to make sure that it
22 was done properly, and it's very important about the loan
23 documents, right?

24 MS. JIMENEZ: Objection. Asked and answered.

25 THE COURT: Sustained.

1 BY MS. WEINTRAUB:

2 Q. Do you agree that the lenders demanded -- on loans, they
3 demand financial reporting as a condition of the loan?

4 A. I believe it's a condition -- financial reporting is a
5 condition of the loan, correct.

6 Q. And it always has to be done timely, right?

7 A. Yes.

8 Q. And this is very complicated and has to be done accurately,
9 right?

10 A. Yes.

11 Q. Is it fair to say that when the lenders need this
12 information, that Eric Sheppard relied on you to help Jeanette
13 and provide it properly?

14 A. Yes.

15 Q. And this was not a new expectation, was it?

16 A. No.

17 Q. I mean, you didn't write back and say: "Hey, Mr. Sheppard.
18 I'm just the development guy. I don't do this anymore," right?

19 MS. JIMENEZ: Objection. The item is not in evidence.

20 THE COURT: Let's take this down. And the objection
21 is overruled to the question. You may answer the question.

22 THE WITNESS: I don't remember what I responded, but I
23 would not respond that way. I would help.

24 BY MS. WEINTRAUB:

25

1 Q. Because it was part of your job, right?

2 A. Okay. Yes.

3 Q. And that was seven days before you left, right?

4 A. A little -- a little more than that. But yeah, it was
5 close to the end right before I left.

6 Q. And you didn't, by the way, produce that email for the
7 Government, did you?

8 MS. JIMENEZ: Objection. It's not received in
9 evidence.

10 THE COURT: The objection is sustained.

11 MS. WEINTRAUB: Judge, I expect to tie it up with
12 another witness, and I would like to have his answer.

13 THE COURT: All right. Then, to that extent, you may
14 continue to ask questions.

15 BY MS. WEINTRAUB:

16 Q. What's an REA?

17 A. I forget what it stands for, but it's basically a document
18 that governs a common area when there's multiple owners or
19 multiple tenants in one shopping center.

20 Q. And the REA is like a real estate agreement, right?

21 A. Yeah.

22 Q. It's kind of like the rules of a condo association?

23 A. Similar, correct.

24 MS. WEINTRAUB: Let's bring up M-50 for the witness
25 only.

1 BY MS. WEINTRAUB:

2 Q. This is -- do you recognize this?

3 A. Yes.

4 Q. What is it?

5 A. It's a Declaration of Reciprocal Easement Rights and
6 Maintenance Covenants for the Shoppes at Alafaya Trails.

7 Q. This is the REA for the Alafaya shopping center?

8 A. Yes.

9 Q. You're familiar with it?

10 A. Yes.

11 Q. As a matter of fact, you sent it to Eric Sheppard, right?

12 A. Yes.

13 MS. WEINTRAUB: I'd move M-50 into evidence, Your
14 Honor.

15 THE COURT: Is there any objection?

16 MS. JIMENEZ: Objection. Relevance and --

17 THE COURT: Is that -- on grounds of relevance,
18 overruled. I'll allow it.

19 MS. JIMENEZ: We've never seen this -- all of these
20 records.

21 THE COURT: Were these records shown to the Government
22 ahead of time?

23 MS. WEINTRAUB: Sorry, Judge. I didn't hear you.

24 THE COURT: Yes. Was this shown to the Government
25 ahead of time?

1 MS. WEINTRAUB: No, it was not.

2 MS. JIMENEZ: None of the exhibits have been shown to
3 the Government.

4 THE COURT: All right. Well, why don't you review it.
5 The witness has identified that he sent it. And let the Court
6 know if there's any further objection.

7 MS. MARTINEZ: We don't have a copy, Your Honor.

8 THE COURT: Does the exhibit consist of the one page
9 that's before the Court?

10 MS. WEINTRAUB: No.

11 THE COURT: All right. Then let's continue until the
12 Government has an opportunity to review it. Then let's move to
13 another area.

14 BY MS. WEINTRAUB:

15 Q. And the REA is -- it's a legal document that covers or
16 governs the shopping center, right?

17 MS. JIMENEZ: Objection. Relevance.

18 THE COURT: Overruled.

19 BY MS. WEINTRAUB:

20 Q. Right?

21 A. Yes.

22 Q. For example, one of the things that an REA typically is you
23 can't have a Men's Wearhouse next to Burlington, right? That
24 wouldn't work.

25 A. I don't know if it would get like that. But it would have

1 different tenant restrictions, yes.

2 Q. It also requires certain common area features, right?

3 A. I don't know all the specifics of the REA. But yes, that
4 sounds right.

5 Q. Tenants and lenders, they want to know what the shopping
6 center's going to look like so they look to this document,
7 right, for the rules?

8 A. For the rules, yes.

9 Q. They refer to the REA to know what the common areas all
10 over the shopping center are going to be, right?

11 A. I think so. I'm not a hundred percent sure, honestly.

12 Q. The REA talks about and sets out that there will be ample
13 parking and parking lots, right?

14 MS. JIMENEZ: Objection. Relevance.

15 THE COURT: The objection is sustained.

16 BY MS. WEINTRAUB:

17 Q. What's CAM?

18 A. Common area maintenance.

19 Q. And does the REA cover that?

20 MS. JIMENEZ: Objection. Relevance.

21 THE COURT: If an REA covers it? Is that what you're
22 asking in general?

23 MS. WEINTRAUB: Well, in general, sure. But this
24 document --

25 THE COURT: If the witness knows that answer -- all

1 right. Well, with regard to this exhibit, does the witness --
2 can you identify this exhibit?

3 THE WITNESS: I can identify the exhibit.

4 THE COURT: Have you seen this before, sir?

5 THE WITNESS: Yes.

6 THE COURT: All right. And do you understand its
7 contents?

8 THE WITNESS: Some of it, yes.

9 THE COURT: All right. Then, Ladies and Gentlemen,
10 let's go ahead and take a 10-minute stretch break. We'll give
11 the Government an opportunity to review this exhibit.

12 COURT SECURITY OFFICER: All rise.

13 (Jury not present, 10:33 a.m.)

14 THE COURT: All right. We'll take a 10-minute recess,
15 give you an opportunity to review it, since that was the first
16 objection.

17 MS. MARTINEZ: Your Honor?

18 THE COURT: I'm giving you an opportunity to review
19 it.

20 (Recess from 10:34 a.m. to 10:43 a.m.)

21 THE COURT: All right. Let's bring them in here,
22 since it's been 10 minutes.

23 COURT SECURITY OFFICER: Please remain standing for
24 the jury.

25 THE COURT: Wait. No. No. No. Hold on.

1 COURT SECURITY OFFICER: My apologies, Your Honor.

2 THE COURT: All right. Where is Mr. Sheppard?

3 MR. ETRA: Your Honor, he's in the bathroom. We heard
4 he's not feeling that great and we're trying to get him back.

5 MS. WEINTRAUB: Judge, while we're waiting for
6 Mr. Sheppard -- I'll waive his appearance for purposes of this
7 argument -- may I take advantage of the break and speak with
8 the Court about the business record objection?

9 THE COURT: Well, we're first going to address the
10 exhibit that's on the screen. So is there any objection to the
11 introduction of this Alafaya lease?

12 MS. JIMENEZ: Yes, Your Honor. I don't have any idea
13 what the relevance of this document is. It is some sort of
14 easement between HM Eight and WSG.

15 THE COURT: All right. What's the relevance?

16 MS. WEINTRAUB: Judge, she puts into evidence this
17 chart that talked about everything that's in this REA. The
18 Government put into evidence its own spin of what this REA
19 is --

20 THE COURT: I'm sorry. Which chart are you referring
21 to?

22 MS. WEINTRAUB: -- over our objection. So we're
23 introducing the document --

24 THE COURT: Which chart are you referring to that the
25 Government put into evidence?

1 MS. WEINTRAUB: The organizational chart.

2 MS. JIMENEZ: I put in a chart regarding ownership --
3 ultimate ownership of the Alafaya Trails shopping center and
4 the shops -- the Fontainebleau Shops.

5 THE COURT: All right. So what does this exhibit have
6 to do with the ownership interest in Alafaya Trails?

7 MR. ETRA: Your Honor, may I?

8 MS. WEINTRAUB: Please.

9 THE COURT: Ms. Weintraub?

10 MS. WEINTRAUB: Well, Judge, the Government's position
11 is that it's passive and it doesn't have any obligations or
12 financial responsibilities. And the REA sets forth the
13 responsibilities and the obligations that it does have. And I
14 think -- excuse me. And I think that I can walk through it
15 with the witness. And if nothing else, it will refresh his
16 recollection, he will remember it, and then he'll be able to
17 testify to it, instead of taking these glib conclusory
18 statements by the Government with a chart that we objected to
19 that didn't --

20 THE COURT: So this calls into question the ownership
21 interest?

22 MS. WEINTRAUB: No. It directly contradicts the
23 argument of the Government that it's just a passive company.
24 And they even asked the lenders about it.

25 MS. JIMENEZ: The company here -- first of all, the

1 Government has made no claim that Alafaya Trails is a passive
2 company. There's an entity called HM Four that applied for an
3 EIDL loan, which simply exists to own the Alafaya Trails
4 business. But this is not even between HM Four or Alafaya
5 Trails, or CJUF, or any of the companies that applied for any
6 loan or that the Government has discussed. It's WSG and HM
7 Eight and some easement agreement.

8 MS. WEINTRAUB: Judge, are they agreeing that they are
9 not going to argue that HM Four was a passive company?

10 MS. JIMENEZ: HM Four is not in this document.

11 THE COURT: All right. Then to the extent that HM
12 Four is not in this document, it's not relevant.

13 MS. WEINTRAUB: Judge, can Mr. Etra finish this
14 argument for me, please? Because he dealt with it.

15 MR. ETRA: Your Honor, HM Eight has these obligations.
16 That's the first step. The second step is the obligations are
17 then passed to HM Four. We can't get to the second step if we
18 can't get to the first step. This is the first step of a
19 two-step process that shows that HM Four is a company with
20 actual obligations, contrary to everything the Government has
21 said in this case.

22 THE COURT: All right. Listen, I don't know what's
23 past this first page so it's hard for the Court to say whether,
24 in fact, what Mr. Etra is representing is part of this
25 document. So to that extent, you can continue to question the

1 witness. But I got to tell you, if it's not relevant and if
2 it's not related to the companies that are at issue in this
3 lawsuit, then it's --

4 MS. WEINTRAUB: It's the predecessor company.

5 THE COURT: Well, then we're wasting a lot of time,
6 and I've already told you what the schedule is with this Court
7 that's already been curtailed. So to that extent, as it may,
8 if it's relevant, then the Court will allow it.

9 Let's bring in the jury. The objection is noted.
10 It's overruled. Let's bring in the jury.

11 MS. WEINTRAUB: Judge, before the jury --

12 THE COURT: I'm not going to allow you to reargue what
13 the Court has already ruled.

14 MS. WEINTRAUB: Judge, I was going to address
15 something else. And I know you're in a hurry, and I understand
16 that --

17 THE COURT: I'm not in a hurry. I just want to --

18 MS. WEINTRAUB: -- but I want the record to be clear,
19 Your Honor, that --

20 THE COURT: I told you you can make a proffer outside
21 the presence of the jury, and we're bringing the jury back in.

22 MS. WEINTRAUB: And I'd rather make a proffer so that
23 the Court can understand where I was going because the business
24 record has been identified as such.

25 THE COURT: This is not a sufficient witness for

1 purposes of that business record, not based on that testimony.

2 (Before the Jury, 10:49 a.m.)

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

5 Please be seated, everyone.

6 We'll continue with the cross-examination.

7 BY MS. WEINTRAUB:

8 Q. Mr. Graff, did HM Eight assign its rights and
9 responsibilities to HM Four?

10 A. I don't know.

11 Q. Did HM Eight own HM Four?

12 A. Not to my knowledge.

13 Q. Do you agree that HM Eight owns HM-UP?

14 A. No.

15 Q. Now, we were talking about -- before the break, we were
16 talking about Jeanette and you being there to help her. Do you
17 remember those questions?

18 A. Yes.

19 Q. And you aren't saying that because she wasn't a licensed
20 CPA that -- I mean, strike that.

21 You were saying she was fine doing her job, right?

22 A. Yes.

23 Q. And the Cupersmith firm was also there to help Jeanette do
24 her job, were they not?

25 A. Yes.

1 Q. And that would be Neal Cupersmith's accounting firm?

2 A. Correct.

3 Q. And Neal Cupersmith started out, I guess when he was
4 younger, actually being the accountant to handle all the
5 business accounts, right?

6 A. He was the outside accounting firm from the time I started.

7 Q. But in the past five or six years, Alex Zaslow is the one
8 who's been doing the tax preparing and accounting work, right,
9 not Neal Cupersmith?

10 A. The last couple years Alex was our contact.

11 Q. And Alex Zaslow is the accountant that actually prepared
12 the returns in the past several years, right?

13 A. I don't know who actually prepared them.

14 Q. You do know that Jeanette would often email with Alex
15 Zaslow, not Neal Cupersmith, right, because you would be
16 copied?

17 A. I don't know if I was copied. But yes, I do know she
18 communicated more with Alex.

19 Q. Now, you were asked on direct about how the tax process
20 works. Do you remember those questions?

21 A. I was asked a lot of questions on direct. I don't remember
22 the specifics.

23 Q. Fair enough. Fair enough.

24 Now, your testimony on direct was that basically
25 Jeanette would send the QuickBooks to the accounting firm and

1 essentially that's how it was done. Do you remember that?

2 A. Yes.

3 Q. But the truth is, is that it was a process. It wasn't just
4 sending the QuickBooks, was it?

5 A. There was a process to get the tax returns done, correct.

6 Q. And oftentimes Jeanette looked to the accountants basically
7 as a safety net. Like she looked to you, she looked to them,
8 right?

9 A. For things she didn't understand, yes.

10 Q. Correct. And that's how Eric set it up, so that she would
11 get help, she would know what to send and they would get what
12 they needed, right?

13 A. I don't know if that's why he set it up. But yes, they
14 were there for her.

15 Q. It wasn't like Jeanette would just provide financial
16 records to the accountants. It went back and forth, right?

17 A. She would provide the raw records, and they would tell us
18 what to do with them or tell her what to do with them.

19 Q. And the accountants obviously review lots of documents and
20 they make whatever adjustments were necessary or appropriate,
21 right?

22 A. Yes.

23 Q. Because you know as a CPA that you had -- you have a
24 duty -- a fiduciary duty to review the documents that you're
25 given by a client, right?

1 A. Correct.

2 Q. And your fiduciary duty is to review them for accuracy,
3 correct, to determine if they're accurate?

4 A. Yes.

5 Q. And as an accountant, if there are issues or questions, you
6 bring it to the client and you say: "I have a question about
7 this," right?

8 A. Yeah. Yes.

9 Q. And then whatever adjustments, if any, needed to be made
10 were made, right?

11 A. Yes.

12 Q. And Jeanette would often have this note that she would use
13 that said: "Ask accountant," right? And you have seen them?

14 A. Yeah. I believe it was an account we used.

15 MS. WEINTRAUB: Can you bring up M-53 just for the
16 witness.

17 MS. JIMENEZ: Objection. Is this from the
18 Government's records?

19 MR. CAVALLO: It's from --

20 THE COURT: M-53, is this --

21 MR. CAVALLO: It's from the Defendant's production a
22 few months ago, as well as from Neal Cupersmith. It's been
23 produced multiple times by both sides.

24 MS. MARTINEZ: Is it a composite of multiple different
25 types of documents?

1 MR. CAVALLO: It's one page for the witness of a
2 QuickBooks record that both sides have had for months.

3 THE COURT: All right. But what exhibit does it -- is
4 it part of the Government's exhibit, sir?

5 MR. CAVALLO: Yes. It's part of Government 28,
6 Composite 28.

7 MS. JIMENEZ: No, it's not.

8 This is in Government 28?

9 THE COURT: This is part of the tax records?

10 MR. CAVALLO: Yes, Your Honor.

11 THE COURT: All right. Then with that
12 representation...

13 MS. MARTINEZ: Your Honor, I have no idea what this
14 document is or --

15 THE COURT: Is there a Bates stamp on here that would
16 be helpful?

17 MS. MARTINEZ: Can I just inquire: How many pages is
18 this document, so we can even -- or could we see it, please?

19 MS. JIMENEZ: If they were part of the Government's
20 production, they would have a different Bates stamp number.

21 THE COURT: Where's the Bates stamp, if it's part of
22 28?

23 That's not the Bates stamp.

24 (Pause in proceedings.)

25 THE COURT: How we doing on that Bates stamp?

1 MR. CAVALLO: The Government emailed these documents
2 to us on November 22 and said that these will be part of
3 Composite Exhibit 28. And I'm going to get the Bates stamp
4 right now. It's just my computer is slow.

5 MS. MARTINEZ: Your Honor, I just request to see what
6 the exhibit is, how many pages. What is it?

7 THE COURT: Is it this one page?

8 MR. CAVALLO: This is one page from a QuickBooks
9 record, just to show the witness something.

10 THE COURT: All right. Then with the representation
11 that it's part of Exhibit 28, let's continue with regard to
12 this one page.

13 BY MS. WEINTRAUB:

14 Q. I mean, you knew by Jeanette asking -- making notations of
15 "Ask Accountant" that she had her own system, right, to refer
16 issues that were specific to the accountants? Right?

17 A. Yeah. I think it was to -- if she didn't know how to code
18 a check or what account it would relate to, the expenses would
19 relate to, she would --

20 (Court reporter interruption.)

21 THE WITNESS: I believe she would put things in this
22 "Ask Accountant" account to -- for expenses she didn't know how
23 to categorize to get guidance from them.

24 MS. WEINTRAUB: Okay. Pull up M-54.

25

1 BY MS. WEINTRAUB:

2 Q. Do you recognize this document from the QuickBooks?

3 A. No.

4 Q. It's in evidence.

5 A. No, I don't.

6 (Pause in proceedings.)

7 BY MS. WEINTRAUB:

8 Q. Jeanette would often write -- or make a notation in the

9 QuickBooks that you worked with that said: "Payroll

10 Adjustments," right?

11 A. I don't know, honestly. I don't know.

12 Q. Did you ever correct that?

13 A. I don't remember. No.

14 Q. I mean, it was obvious to you that Jeanette always used the
15 word "payroll" to refer to workers, right?

16 A. I don't know how she referred to people in QuickBooks.

17 MS. WEINTRAUB: Okay. You can take it down.

18 BY MS. WEINTRAUB:

19 Q. Let's talk about Phase 3. The Alafaya project was done in
20 different phases, right?

21 A. Correct.

22 Q. And Phase 3 had been applied for years earlier. It took
23 several years to get approved, right?

24 A. Yes.

25 Q. And there would be a binder created that had a package to

1 be given to potential lenders or investors, right, with
2 information about the potential project to be developed? Yes?

3 A. Yes.

4 Q. And you helped put that together, did you not?

5 A. Yes.

6 (Pause in proceedings.)

7 MS. WEINTRAUB: I'm going to ask you to pull up M-55
8 for the witness only. And a copy has been provided to the
9 Government, Your Honor.

10 BY MS. WEINTRAUB:

11 Q. This is from you, is it not?

12 A. Yes.

13 Q. And the bio was -- this document was created as part of the
14 package that was going to be presented to lenders and potential
15 investors, right?

16 A. I would assume so. I prepared the bio and sent it to Eric.

17 MS. WEINTRAUB: Judge, at this time, since the witness
18 has already identified it, and helped prepare it, I would seek
19 to move M-56 into evidence.

20 MS. JIMENEZ: Objection.

21 THE COURT: And the basis of the objection?

22 MS. JIMENEZ: There's no basis that it's a business
23 record. I think the witness didn't identify it. I'm not sure
24 what the witness said.

25 THE COURT: Sustained.

1 MS. JIMENEZ: The witness is being shown a single page
2 of, I don't know, a hundred, 200 pages.

3 THE COURT: All right. At this point, the objection
4 has been sustained. Let's continue.

5 MS. WEINTRAUB: Yes, Your Honor.

6 BY MS. WEINTRAUB:

7 Q. Mr. Graff, do you recognize the Joint Venture Partner
8 Memorandum that you helped prepare?

9 A. I'm looking at a title -- a cover page --

10 Q. Want to see the index?

11 MS. WEINTRAUB: Go to the index.

12 BY MS. WEINTRAUB:

13 Q. Didn't you just testify that you helped prepare this and
14 put these documents together?

15 A. This document does not look familiar to me.

16 Q. So is it your testimony that you did not help prepare this
17 document to show to potential investors or lenders of the
18 Alafaya Phase 3 property?

19 MS. JIMENEZ: Objection. Asked and answered.

20 THE COURT: Sustained.

21 (Pause in proceedings.)

22 BY MS. WEINTRAUB:

23 Q. Your bio is in here as well, which we talked about last
24 week. Do you remember?

25 A. Yes.

1 MS. WEINTRAUB: Could we pull the bio up.

2 BY MS. WEINTRAUB:

3 Q. And do you remember -- this was done in 2017, right?

4 A. I believe that was the email, yes.

5 Q. And so in your bio you wrote that you are also responsible
6 for --

7 MS. JIMENEZ: Objection. Is the bio in evidence?

8 THE COURT: It's not in evidence. Sustained.

9 MS. WEINTRAUB: Your Honor, most respectfully, can we
10 move this into evidence?

11 What number --

12 MS. JIMENEZ: Improper impeachment.

13 MR. CAVALLO: (Inaudible.)

14 THE COURT: I'm sorry. I didn't hear the gentleman.
15 It's in evidence as what?

16 MS. MARTINEZ: Your Honor, he referred to --

17 THE COURT: Hold on. What was the statement that you
18 made?

19 MR. CAVALLO: The bio is in evidence. I'm trying to
20 find the number. I believe it's 49.

21 M-49, the bio, is in evidence.

22 THE COURT: Well, this is not M-49.

23 (Pause in proceedings.)

24 THE COURT: All right. Let's continue using the
25 exhibit in evidence.

1 BY MS. WEINTRAUB:

2 Q. Mr. Graff, you've stated last week and somewhat this
3 morning that you really weren't doing accounting anymore after
4 2006, right?

5 A. Yes.

6 Q. But in 2017 you authored the bio, and it says: "Mr. Graff
7 is also responsible for coordinating and accounting for the
8 projects in the acquisition development and construction
9 phases."

10 MS. JIMENEZ: Objection. Asked and answered last
11 week.

12 BY MS. WEINTRAUB:

13 Q. Correct?

14 MS. WEINTRAUB: It was sustained, Your Honor.

15 THE COURT: Overruled.

16 BY MS. WEINTRAUB:

17 Q. Correct?

18 A. Yes.

19 Q. The reality is, as we said before, you worked on both sides
20 of the company all the way through, didn't you?

21 A. I don't -- I did not work in accounting. This bio was put
22 together for the purpose of a lender at that specific time.

23 Q. You wouldn't let something untrue be in there, would you?

24 A. It's not untrue. I coordinated. I worked with Jeanette.

25 I had no physical responsibility for the accounting for any of

1 the entities after 2004, 2006.

2 Q. Well, you just said that you didn't have any responsibility
3 for the accounting. But isn't -- we went over this already.
4 Isn't the truth that Eric did rely on you to go over any
5 accounting issues? Right?

6 MS. JIMENEZ: Objection.

7 BY MS. WEINTRAUB:

8 Q. And you helped Jeanette with whatever she needed, right?

9 MS. JIMENEZ: Objection. Asked and answered.

10 THE COURT: Sustained.

11 BY MS. WEINTRAUB:

12 Q. Were you the project manager in Miami on Alafaya Trails in
13 Phase 3?

14 A. Yes.

15 Q. You do know that in 2016 that Eric Sheppard took out a \$21
16 million loan, right?

17 MS. JIMENEZ: Objection. Relevance.

18 THE COURT: Overruled.

19 BY MS. WEINTRAUB:

20 Q. Right?

21 A. On Phase 3?

22 Q. No. On Alafaya.

23 A. I don't remember the amount. I know there were loans.

24 There were loans in '15 or '16 -- 2015, 2016.

25 Q. Are you saying you don't remember the \$21 million loan? Is

1 that your testimony -- or you do?

2 A. I don't remember the specifics of the loan, but I know
3 there were loans on the property.

4 Q. At the time in -- you said by 2019 you were president of
5 your temple, right?

6 A. Yes.

7 Q. And that required a lot of work, didn't it?

8 A. Yes.

9 Q. And you did that work while you were on the job I guess
10 working for Eric, right?

11 A. Yes.

12 Q. And he was fine with that?

13 A. Yes.

14 Q. You used the office supplies, you spent hours on the phone,
15 right?

16 A. Yes.

17 Q. And Eric is paying you, and you're working for the temple,
18 right?

19 A. Yes.

20 Q. Now, Toys "R" Us was a major tenant at Alafaya, was it not?

21 A. Yes.

22 Q. It was a million dollars in rent a year, about?

23 A. Sounds about right.

24 Q. And obviously there were loans and mortgages on the
25 property that need to be paid, right?

1 A. Correct.

2 Q. And Toys "R" Us goes bankrupt, right?

3 A. Yes.

4 Q. And they stayed for a little bit, and then by the middle or
5 end of 2019 they're out, right? That store's empty?

6 A. I don't remember the dates, but yes, they left.

7 Q. No more rent was coming in?

8 A. Oh, no.

9 Q. So a-hundred-thousand-dollars-or-some-odd-a-month rent?

10 A. Correct.

11 Q. Caused a huge financial stress?

12 A. Yes.

13 Q. I mean, someone had to find a solution, right?

14 A. Yeah.

15 Q. And Eric did find that solution when he negotiated with
16 Burlington, right?

17 A. Yes.

18 Q. And Burlington was just down the block at the time, wasn't
19 it?

20 A. I don't remember if it was a relocation or not, but I know
21 they were in Orlando.

22 Q. You knew they were close by?

23 A. I don't remember, honestly.

24 Q. You know that they had a crunch time and deadline that they
25 wanted to be in by May? That, you knew, right?

1 A. Yes.

2 Q. And without COVID, that was going to be a crunch and
3 difficult to get done, correct, in such a short period of time?

4 A. Correct.

5 Q. Now, you said on direct that you were familiar with leases,
6 right, and deadlines?

7 A. Yes.

8 Q. You also said that Eric's company had a form lease that
9 they used, right?

10 A. For smaller tenants, yes.

11 Q. Right. But these national tenants, they have their own
12 lease, and their own lawyers, and their own everything, right?

13 A. Yes.

14 Q. And so oftentimes with these national firms they are the
15 ones who come in with the forms and the leases and you use
16 theirs?

17 A. Correct.

18 Q. Now, you were shown a lease with Mattress10ne. Do you
19 remember that?

20 A. Yes.

21 Q. Do you agree that, if the lease had expired, they would
22 want -- both parties would want a new lease in place, right?

23 MS. JIMENEZ: Objection. Calls for speculation.

24 THE COURT: Sustained.

25

1 BY MS. WEINTRAUB:

2 Q. Do you agree that if a lease with a national tenant
3 expired, such as Mattress1One, that there were negotiations
4 going on for a new lease? Yes or no?

5 MS. JIMENEZ: Objection. Asked and answered.

6 THE COURT: Sustained.

7 BY MS. WEINTRAUB:

8 Q. Did you know that Mattress1One had not been paying the
9 rent?

10 A. I think there were months that they didn't pay rent while I
11 was there.

12 Q. Months -- months, right?

13 A. Not consecutive months, periodic months.

14 Q. And there were months when -- and they wouldn't leave. And
15 you know that, right?

16 A. I don't know that we ever asked them to leave.

17 Q. Wouldn't it be kind of a red flag if Mattress1One is
18 negotiating this lease with you, with the company, and they
19 wanted to change the name that they were doing business as?

20 MS. JIMENEZ: Objection. Calls for speculation.

21 THE COURT: Sustained.

22 BY MS. WEINTRAUB:

23 Q. Didn't you negotiate that lease?

24 A. No.

25 Q. No?

1 (Pause in proceedings.)

2 BY MS. WEINTRAUB:

3 Q. Did you negotiate a different lease with Mattress1One when
4 it wanted to be the stand-alone property?

5 A. I think we offered them to move their space into the --
6 into an outparcel building --

7 Q. The question was: Did you negotiate it?

8 A. I think I spoke to them, yes.

9 Q. And you redlined it?

10 A. Okay. I believe that.

11 Q. Yes?

12 A. Sure.

13 Q. If a national lease expires, like with any of these
14 national tenants, wasn't it standard that they would require or
15 you would require as a landlord a new document to memorialize
16 new terms?

17 A. We would --

18 MS. JIMENEZ: Objection. Calls for speculation.

19 THE COURT: Sustained. Rephrase, please.

20 BY MS. WEINTRAUB:

21 Q. You were project manager? Yes? Right?

22 A. Yes.

23 Q. Was it the policy and the practice of the company to
24 require or memorialize new terms of a lease in writing?

25 A. Yes.

1 Q. And when we were talking about the Burlington lease,
2 actually, you knew that there were significant penalties if the
3 occupancy was not ready for May 2020, right?

4 A. Yes.

5 Q. And serious penalties worth more than a million dollars out
6 of pocket to Eric Sheppard potentially?

7 A. I don't know the exact amount.

8 Q. As the project manager, you're familiar with the specs
9 manual, right?

10 A. With a specs manual?

11 Q. Yes.

12 A. Yes.

13 (Pause in proceedings.)

14 MS. WEINTRAUB: Do you have an objection to that?

15 It's what he just testified to. It's the specs manual for the
16 project. Do you have an objection?

17 MS. JIMENEZ: Yes.

18 BY MS. WEINTRAUB:

19 Q. I'm going to show you the front page of M-59 and ask if you
20 recognize it. Do you recognize that?

21 A. Yes.

22 Q. Is that the cover page for the specs model that was
23 required by Burlington for the build-out?

24 A. Yes.

25 MS. WEINTRAUB: At this time, I would move Defense

1 M-59 into evidence.

2 THE COURT: Is there any objection?

3 MS. JIMENEZ: Yes.

4 THE COURT: How many pages are part of this exhibit?

5 MS. MARTINEZ: Let me look at the last page.

6 MS. WEINTRAUB: I do not know, Your Honor.

7 MS. MARTINEZ: A couple hundred.

8 MS. JIMENEZ: Objection. Something the Government is
9 seeing for the first time. I don't think the witness has
10 identified 200 pages.

11 THE COURT: All right. The objection is sustained.

12 Let's satisfy that the witness is aware of each of
13 these pages of this exhibit.

14 MS. WEINTRAUB: You're not letting it into evidence,
15 Your Honor?

16 THE COURT: Let's establish the proper predicate here.

17 BY MS. WEINTRAUB:

18 Q. Let's look at the first page. Do you recognize that?

19 A. The Table of Contents?

20 Q. Uh-huh.

21 A. Looks like a table of contents for their spec manual.

22 MS. WEINTRAUB: Go to the next page.

23 BY MS. WEINTRAUB:

24 Q. Recognize that?

25 A. Looks like the second page of the Table of Contents.

1 MS. WEINTRAUB: Go to the next page.

2 BY MS. WEINTRAUB:

3 Q. Do you see what that is?

4 A. Starts with the General Conditions for Burlington.

5 MS. JIMENEZ: Your Honor, I object on relevance
6 grounds too.

7 THE COURT: Overruled.

8 If the witness can sufficiently identify the document,
9 it will be admitted into evidence. M-59 admitted into
10 evidence. It does appear that the witness has knowledge of the
11 contents.

12 (Defendant's Exhibit M-59 received into evidence.)

13 THE COURT: All right. Let's continue.

14 BY MS. WEINTRAUB:

15 Q. Now, M-59, the specs document --

16 MS. WEINTRAUB: It's been admitted?

17 THE COURT: Yes. It's in evidence.

18 MS. WEINTRAUB: You can put it up.

19 BY MS. WEINTRAUB:

20 Q. -- these were all the speculations -- all the specs that
21 were required by Burlington to be done by your company, right?

22 A. Yes. To the extent they were relevant to our project.

23 Q. And you had to start -- obviously, when you did the project
24 you had to start with the full demolition of the inside of what
25 was Toys "R" Us, right?

1 A. I wasn't there when it happened.

2 Q. Were you aware of it?

3 A. Yes.

4 Q. Did you communicate every day with Joe Beirne who was in
5 Orlando as the project manager?

6 A. Not every day, but we spoke.

7 Q. Often?

8 A. Couple times a week, maybe.

9 Q. Did he send -- did Joe Beirne send you progress notes every
10 day on what he was doing on the project?

11 A. Again, I don't know if he sent them every day. I think he
12 spoke to all of us what was going on. He used to come down
13 once every other week too, into the office.

14 Q. But he also emailed you progress notes saying: "I had six
15 electricians. I had three plumbers," right?

16 A. Yeah.

17 Q. So that you knew what was going on at the project in
18 Orlando. Yes?

19 A. It wasn't for my knowledge, but yes, I was involved in the
20 emails.

21 Q. Do you know how many dollars per square foot Burlington --
22 the Burlington store was?

23 MS. JIMENEZ: Objection. Relevance.

24 THE COURT: Sustained.

25 MS. WEINTRAUB: Judge, it is relevant and I can tie it

1 up.

2 THE COURT: The objection is sustained.

3 BY MS. WEINTRAUB:

4 Q. Do you know how much money was needed to get the project
5 built?

6 MS. JIMENEZ: Objection. Same objection.

7 THE COURT: I'll allow that. Overruled.

8 THE WITNESS: I don't know what the cost of the
9 build-out was, no.

10 BY MS. WEINTRAUB:

11 Q. You do agree it was 60,000 square feet?

12 A. I'm sorry?

13 Q. You agree it was a 60,000-square-foot building? Yeah?

14 A. Yes.

15 Q. And you do agree that it was about \$50 a square foot, give
16 or take?

17 MS. JIMENEZ: Objection. Relevance.

18 THE COURT: If the witness knows. Overruled.

19 BY MS. WEINTRAUB:

20 Q. Yes?

21 A. Yes.

22 Q. You agree it's about a \$3 million build-out?

23 A. Based on the math, yes.

24 Q. Now, you left -- you know that the project was completed,
25 right? Burlington moved in?

1 A. I know Burlington moved in, yes.

2 Q. You left at the end of March 2020?

3 A. Yes.

4 Q. Yes?

5 A. Correct.

6 Q. And you testified on direct that HM-UP was not a
7 construction company. Do you remember that?

8 A. Yes.

9 Q. But the truth is you have no idea if Mr. Sheppard's company
10 started self-performing construction because of the impacts of
11 COVID, correct?

12 A. Correct.

13 Q. You left before that, right?

14 A. Correct.

15 Q. And none of the government loans that are charged in this
16 case had even been applied for, right, when you left?

17 A. Correct.

18 Q. So you have no idea if HM-UP is doing construction at that
19 time, do you?

20 A. No.

21 Q. And HM-UP is listed as the contractor, isn't it?

22 A. (No verbal response.)

23 MS. WEINTRAUB: Pull up 60 just for the witness.

24 BY MS. WEINTRAUB:

25 Q. And do you recognize this document?

1 A. No.

2 Q. No? You don't know what this is?

3 A. No.

4 MS. WEINTRAUB: Take it down.

5 Take it down.

6 BY MS. WEINTRAUB:

7 Q. You know that Jeff Vasilas was the project manager in
8 Orlando, right?

9 A. For Burlington.

10 Q. For Burlington?

11 A. Yes.

12 Q. And --

13 MS. WEINTRAUB: M-11.

14 BY MS. WEINTRAUB:

15 Q. And he moved up there with his family, right?

16 A. I have no idea.

17 Q. Because you were gone?

18 A. Yes.

19 (Pause in proceedings.)

20 BY MS. WEINTRAUB:

21 Q. Is that Jeff Vasilas in the picture, what would be on your
22 left?

23 A. It's very blurry. I can't make it out.

24 Q. You can't tell if that's him?

25 A. No.

1 Q. Do you recognize what's going on there?

2 A. Construction.

3 Q. And even when you were with WSG, I mean, sometimes HM
4 became like a construction arm for Eric's projects, right?

5 A. Construction management.

6 Q. And that occurred at the shopping center for the
7 Fontainebleau project also, didn't it?

8 A. Yes.

9 Q. For -- for that project at Fontainebleau, you had to step
10 in and become the project executive, right?

11 A. Yes.

12 Q. Because Bernie Warner messed up, right, went over budget?

13 A. Correct.

14 Q. And HM Management still was obliged to build La-Z-Boy, and
15 Smoothie King, and all those other stores, right?

16 A. Yes.

17 Q. So because of all those problems, you went in and managed
18 it, yes?

19 A. Correct.

20 Q. So -- and you actually did some of the work, you kind of
21 traded your three-piece suit for a construction outfit and got
22 in there, right?

23 A. I don't do any construction, but I was out there every day
24 walking the site and making sure things were getting done.

25 Q. Okay. So let's talk about Jeff Vasilas. Now, in November,

1 December, 2019, you were working closely with Eric at that
2 time, right, on Burlington? Yeah?

3 A. I don't remember if we were working on Burlington at that
4 point.

5 Q. How about in November 2019 -- does that refresh your
6 recollection -- after the lease was signed?

7 A. It's possible. I mean, we were -- it was a long
8 negotiation.

9 Q. And didn't there come a time when you were having meetings
10 with Eric about the budget for Burlington?

11 A. Yeah. I think Eric was really the driving force on getting
12 Burlington in that space.

13 Q. And weren't you sitting in on these meetings with him?

14 A. Some of them, yes.

15 Q. And then Jeff Vasilas comes along, right?

16 A. He had been there, but he did wind up getting involved in
17 the Burlington build-out.

18 Q. And is it fair to say that you did not like Jeff Vasilas?

19 A. I didn't know him. I just didn't like that he was taking
20 focus away from real estate.

21 Q. Well, you always thought that he was sleazy. Weren't those
22 your words?

23 MS. JIMENEZ: Objection.

24 THE COURT: Sustained.

25

1 MS. WEINTRAUB: To the pending question?

2 THE COURT: That's correct.

3 BY MS. WEINTRAUB:

4 Q. Did you call -- did you used to describe him as sleazy?

5 MS. JIMENEZ: Objection.

6 MS. WEINTRAUB: Judge, I don't understand.

7 THE COURT: And the basis of the objection?

8 MS. JIMENEZ: It's argumentative.

9 THE COURT: Overruled.

10 MS. JIMENEZ: It's hearsay.

11 THE COURT: Whether the witness recalls referring to
12 him by that description.

13 THE WITNESS: I don't remember if I called him sleazy
14 or not.

15 BY MS. WEINTRAUB:

16 Q. Eric -- and you voiced your dislike to Eric, didn't you?

17 A. Probably.

18 Q. And Eric reminded you that Jeff Vasilas had built out the
19 King of Diamonds from the ground up and he knew what he was
20 doing with construction, right?

21 A. I don't remember that detail of conversation.

22 Q. Do you remember the -- feeling like Jeff Vasilas pushed you
23 out?

24 A. Absolutely not.

25 Q. You didn't want to be the project executive in Orlando?

1 A. At the time Jeff was working on buying out the project.
2 And since he had negotiated a lot of buyouts, Eric put him up
3 there to oversee the construction. Eric liked that Jeff was a
4 hustler.

5 Q. Can you answer the question? Did you want to be the
6 project manager or executive in Orlando? Yes or no?

7 A. It didn't affect me one way or the other.

8 Q. Didn't you tell other people that you wanted that job?

9 A. Not to my recollection.

10 Q. Are you denying that you said that?

11 MS. JIMENEZ: Objection. Asked and answered.

12 THE COURT: Sustained.

13 BY MS. WEINTRAUB:

14 Q. Jeff Vasilas certainly didn't have a master's in
15 accounting, did he?

16 A. No.

17 Q. He wasn't a CPA, was he?

18 A. Not to my knowledge.

19 Q. Didn't exactly come from a white-collar background, right?

20 MS. JIMENEZ: Objection. Relevance.

21 THE COURT: Sustained.

22 BY MS. WEINTRAUB:

23 Q. Do you remember a conversation in which you said that Jeff
24 Vasilas wormed his way in?

25 MS. JIMENEZ: Conversation?

1 THE WITNESS: I don't remember that conversation.

2 BY MS. WEINTRAUB:

3 Q. Do you remember speaking with the Defense team with your
4 lawyer on the phone?

5 A. I remember speaking to the Defense team with -- I remember
6 speaking to the Defense team with my lawyer on the phone.

7 Q. Do you remember telling us --

8 MS. JIMENEZ: Objection. That's hearsay.

9 THE COURT: Sustained.

10 MS. WEINTRAUB: What he, Jeff Graff, said is not
11 hearsay, Your Honor, most respectfully.

12 THE COURT: Let's continue.

13 MS. WEINTRAUB: Judge, I'd ask for a sidebar.

14 THE COURT: There's no need for a sidebar. Let's
15 continue.

16 BY MS. WEINTRAUB:

17 Q. Isn't it true that you felt that you should have the job
18 as -- that you deserved to have that job as project
19 executive --

20 MS. JIMENEZ: Objection. Asked and answered.

21 BY MS. WEINTRAUB:

22 Q. -- for Alafaya?

23 THE COURT: Overruled.

24 THE WITNESS: I don't think I deserve anything. I
25 mean, I worked hard. But if Eric wanted to work with Jeff, I

1 didn't have a problem with it.

2 BY MS. WEINTRAUB:

3 Q. Well, you worked from nine to five, right?

4 A. Yes.

5 Q. With an hour for lunch?

6 A. Yes.

7 Q. In the office every day?

8 A. Yeah.

9 Q. A lot of time was spent on what you were doing for the
10 temple by then as president, right?

11 A. Yes.

12 Q. Now -- and you were paid a lot of money to do that. I
13 mean, you said you were working very hard. But you were paid
14 for that, right?

15 A. Yes.

16 Q. Now, you testified last week that you didn't know who the
17 owners of King of Diamonds was, right?

18 A. Correct.

19 Q. But then you said that Mr. Sheppard was associated with the
20 King of Diamonds, right?

21 A. Yes.

22 Q. And what does that mean, "associated with," that he spoke
23 with the owner Jeff Vasilas?

24 A. No. I think Eric was working with Jeff to take ownership
25 of the real estate and the building.

1 Q. Exactly. So you do know that Eric Sheppard and Robert
2 Kallman were negotiating to buy the land that King of Diamonds
3 was on?

4 A. I don't know Robert's involvement. But I know Eric was
5 involved in that aspect of it, yes.

6 Q. Okay. He isn't going to buy the King of Diamonds and keep
7 it going. He was going to buy the land and redevelop it,
8 right?

9 A. Ultimately, yes.

10 Q. Okay. And in between -- in that transition between when
11 they're negotiating and taking over -- do you remember what
12 Mala was?

13 A. No.

14 Q. Do you remember that Vanessa Gonzalez was working to try
15 and make a Latin nightclub once a week happen or once a month
16 happen at that venue?

17 A. I don't know who was working on it, but I knew that there
18 were those types of parties.

19 Q. And at those types of parties, in fact, I mean, they had
20 entertainers like Bad Bunny and J Alvarez actually come and
21 perform there?

22 MS. JIMENEZ: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MS. WEINTRAUB:

25 Q. The purchase deal eventually fell apart, right, with buying

1 that property, or don't you know?

2 A. I know the property was sold to somebody else, so I would
3 assume it fell apart.

4 Q. Okay. Let's talk about the 941s and the handwriting
5 analysis you've done. The Government showed you these
6 documents --

7 MS. WEINTRAUB: Can we put up -- it's Bates 11454, for
8 this witness. It's in evidence, though, right?

9 COURTROOM DEPUTY: Is it in evidence?

10 MS. MARTINEZ: Yes.

11 THE COURT: It's in evidence.

12 MS. WEINTRAUB: So you can put it up.

13 THE COURT: Yes. You can show the jury, please.

14 MS. WEINTRAUB: Can you go to the signature. It's on
15 Page 8.

16 BY MS. WEINTRAUB:

17 Q. You told the Government that this is Eric Sheppard's
18 signature. Do you remember?

19 A. Yes.

20 Q. Sitting here today -- and you didn't see him sign this
21 obviously, right?

22 A. I did not. Excuse me. I did not.

23 Q. And sitting here today, are you swearing under oath that
24 you know for a fact that Eric Sheppard signed this document, as
25 opposed to someone else signing it on his behalf?

1 A. I did not see him sign the document. I believe that's his
2 signature.

3 Q. Can you answer the question? Are you swearing under oath
4 for a fact that it's Eric Sheppard signing his own name?

5 MS. JIMENEZ: Objection. Argumentative. Asked and
6 answered.

7 THE COURT: Overruled.

8 THE WITNESS: That's Eric's signature.

9 BY MS. WEINTRAUB:

10 Q. On the next form, on Page 10, is that Eric's signature?

11 A. (No verbal response.)

12 Q. I'll give you a hint. You said last week --

13 MS. JIMENEZ: Objection.

14 BY MS. WEINTRAUB:

15 Q. Okay.

16 A. I was waiting for the document to switch. It switched.

17 (Pause in proceedings.)

18 BY MS. WEINTRAUB:

19 Q. Do you remember having a conversation with the FBI agent
20 when you were first interviewed for this case?

21 A. I remember having a conversation with the FBI.

22 Q. Well, when the Government asked you about something, and
23 they wanted you to say it's what you told them, you had no
24 problems remembering; isn't that right?

25 MS. JIMENEZ: Objection. Argumentative.

1 THE COURT: Sustained.

2 MS. WEINTRAUB: Judge, this is cross.

3 THE COURT: And it's sustained as argumentative.

4 Let's continue.

5 MS. WEINTRAUB: I'd ask for a sidebar.

6 THE COURT: There's no need for a sidebar. Your next
7 question, please.

8 MS. WEINTRAUB: I disagree with the Court,
9 respectfully.

10 THE COURT: All right. Understood.

11 BY MS. WEINTRAUB:

12 Q. Do you remember telling the Government, the FBI agent that
13 you didn't, quote: "Overly think it looks like Eric's
14 signature"? Those were your words in quotes.

15 A. I don't remember I was specific. But if that's what I
16 said, that's what I said.

17 Q. So you told the Government that it didn't overly look like
18 his signature, and then you come in here and testify that it is
19 his signature. Can you account for the difference other
20 than --

21 MS. JIMENEZ: Which document, which time --

22 MS. WEINTRAUB: Can I finish my sentence?

23 THE COURT: Hold on. Hold on. Let me hear the full
24 question.

25

1 BY MS. WEINTRAUB:

2 Q. You told the Government that this did not overly look like
3 Eric's signature, and you couldn't swear that it was. And you
4 come into court today, and now you're swearing that it's Eric's
5 signature. You see the difference, don't you?

6 MS. JIMENEZ: Objection. It misstates what he said.

7 THE COURT: Hold on. Hold on.

8 The objection on grounds of misstating the testimony
9 is overruled. The witness may answer the question.

10 THE WITNESS: Are we talking about this document or
11 the previous document?

12 BY MS. WEINTRAUB:

13 Q. Yes, sir.

14 A. This document looks like Eric's signature.

15 Q. Okay. Do you notice that you go from: "It looks like,"
16 "maybe," "I believe so," "not overly," to "Yes, it is"?

17 MS. JIMENEZ: Objection. Argumentative.

18 THE COURT: Sustained.

19 MS. WEINTRAUB: Judge, I'd ask for a sidebar.

20 THE COURT: The request is denied. Let's continue.

21 BY MS. WEINTRAUB:

22 Q. There's another signature on a form that the Government
23 didn't show you.

24 MS. WEINTRAUB: Can we bring up 11449, just for the
25 witness -- unless it's in evidence -- and go to Page 3.

1 THE COURT: Is this part of the exhibit? It is in
2 evidence.

3 MS. JIMENEZ: The exhibit is in evidence.

4 MS. WEINTRAUB: And go to Page 3.

5 BY MS. WEINTRAUB:

6 Q. You're not saying that's Eric's signature, are you?

7 A. No.

8 Q. And the Government didn't show you that one, did they?

9 A. They showed me a lot of documents. I don't know if this
10 was one or not.

11 Q. But let's look at this for a second. This is not signed by
12 Eric Sheppard. And you don't know who did sign it for Eric, do
13 you?

14 A. No.

15 Q. Now, we started talking about M-35. Do you recognize this?

16 A. Looks like a lease.

17 MS. WEINTRAUB: Is this in evidence, Chris?

18 MR. CAVALLO: No. It should be for the witness only.

19 MS. WEINTRAUB: Go to the signature page.

20 BY MS. WEINTRAUB:

21 Q. Do you remember being shown this document on direct?

22 A. Yes.

23 Q. And do you remember saying --

24 MS. JIMENEZ: Objection.
25

1 BY MS. WEINTRAUB:

2 Q. -- that you did not believe that Eric Sheppard signed that?

3 MS. JIMENEZ: Objection. This document was not in
4 evidence.

5 THE COURT: M-35 is not in evidence.

6 MS. WEINTRAUB: I would move it in evidence, Your
7 Honor.

8 THE COURT: Is there an objection?

9 MS. JIMENEZ: The Government has no objection to the
10 SBA records being in evidence, of which this is one. So we
11 would ask that the SBA records be moved in.

12 THE COURT: All right. Which exhibit number is it?

13 MS. MARTINEZ: I think it's 58.1.

14 MS. WEINTRAUB: Judge, I'm not agreeing to every SBA
15 record coming in.

16 THE COURT: Well, is there any objection to the
17 document that's on the screen being admitted into evidence?

18 MS. JIMENEZ: No objection, Your Honor.

19 THE COURT: All right. Then admitted as M-35.

20 (Defendant's Exhibit M-35 received into evidence.)

21 THE COURT: All right. You may continue.

22 BY MS. WEINTRAUB:

23 Q. Now, this is a lease, and you don't know who signed Eric's
24 name, right?

25 A. Correct.

1 Q. You don't know anything else about the document, do you?

2 A. No.

3 Q. You weren't even in the company when it was signed, on
4 5/18/2020, were you?

5 A. No.

6 Q. And isn't it true, Mr. Graff, that you told the Government
7 you have not seen Eric sign his full name in cursive since
8 junior high or high school?

9 A. Yes. That was a facetious comment.

10 Q. That was facetious?

11 A. Yes.

12 Q. That was a joke?

13 A. Well, Eric signs thousands of documents. So he would -- it
14 would take a long time for him to sign his full name. So yes,
15 I did say that I hadn't seen him sign his full name in cursive
16 since junior high school.

17 (Pause in proceedings.)

18 MS. WEINTRAUB: Go to M-64.

19 MR. CAVALLLO: Just for the witness.

20 BY MS. WEINTRAUB:

21 Q. Mr. Graff, do you recognize this on the bottom?

22 A. Yes.

23 Q. Is that your signature?

24 A. Yes.

25 Q. Did you sign that?

1 A. Yes.

2 MS. WEINTRAUB: Your Honor, I'd move M-64 into
3 evidence.

4 MS. JIMENEZ: Objection. Relevance, and the
5 Government has never seen this.

6 THE COURT: And the relevance of this document is?

7 MS. WEINTRAUB: There's an allegation based on the
8 admission of the 404 about somebody signing Jeffrey Graff's
9 name, so I'd like to show what his real signature is.

10 THE COURT: With regard to Mr. Graff's signature -- is
11 there any objection?

12 MS. JIMENEZ: Yes.

13 THE COURT: Other than on grounds of relevance?

14 MS. JIMENEZ: (No verbal response.)

15 THE COURT: All right. Hearing none, the exhibit will
16 be admitted into evidence, M-64.

17 (Defendant's Exhibit M-64 received into evidence.)

18 MS. MARTINEZ: Your Honor, could we have a copy of it?

19 THE COURT: It's a one-page document.

20 All right. Let's continue.

21 BY MS. WEINTRAUB:

22 Q. You testified that in the 20 years of working for Eric that
23 you could even -- and observing him at work, that you could
24 even recognize Jeanette Gonzalez signing Eric's name, right?

25 A. I knew when Jeanette signed his name.

1 Q. In fact, it wasn't unusual if he was out of town or
2 unavailable that he had Jeanette sign his name, right?

3 A. Correct.

4 Q. I mean, obviously with his authority, right?

5 A. Correct.

6 Q. Okay. And oftentimes, Jeanette would bring him a stack of
7 documents to sign, right?

8 A. Yes.

9 Q. And he would just sit there signing them, right?

10 A. Yes.

11 Q. And he never stopped and carefully -- typically, he would
12 not stop and carefully review every document before he signed
13 it, did he?

14 A. Not every document, no.

15 Q. And he trusted you and Jeanette. If you gave him something
16 to sign, he signed it. Yes?

17 A. Yeah. Usually, yes.

18 Q. Isn't it true that even on occasion you'd notarize
19 Jeanette's signature, swearing it was his?

20 A. Yes.

21 Q. And when you notarize something, you're certifying that
22 it's absolutely true and correct and swearing, right, under
23 penalty of perjury?

24 A. Yes.

25 Q. And you did it anyway?

1 A. It was with Eric's direction, yes.

2 Q. Now, in 2018, you got a call from a law firm about certain
3 INS documents that you knew nothing about, right?

4 A. I think it was 2019, but yes.

5 Q. Yes. I'm sorry. Apologize.

6 It turned out that it was a reference to a visa
7 application for Nidia Ahumada, right?

8 A. Yes.

9 Q. And the application was made in the name of HM Management,
10 wasn't it?

11 A. Yes.

12 Q. Now, the company HM Management was the one that was the
13 entity that was sponsoring to -- sponsoring Nidia to get the
14 work visa, right?

15 A. That was the company. I was purported to be the
16 representative sponsor.

17 Q. And at the time you were the manager of HM Management?

18 A. I was a manager, yes.

19 Q. And you were listing -- listed as the managing member, like
20 on Sunbiz or any other documents that you could just Google and
21 find your name there, right?

22 A. A manager, not the managing member.

23 Q. You were the manager?

24 A. A manager.

25 Q. The law firm could have just had HM Management and looked

1 up who's the manager and put your name there. You don't know
2 whether that happened or not, right?

3 A. The lawyers told me that --

4 MS. WEINTRAUB: Judge, I didn't ask him for hearsay
5 response. I merely asked him if the law firm could have put
6 his --

7 THE COURT: It calls for a yes-or-no response.

8 THE WITNESS: No.

9 BY MS. WEINTRAUB:

10 Q. Now, you never -- by the way, you never told the Government
11 that Eric Sheppard forged your name on the visa application,
12 did you?

13 A. Correct. I did not say that.

14 Q. Nor did you ever have any evidence or tell the Government
15 that you know Eric told somebody to forge your name on that
16 application, correct?

17 A. Correct.

18 MS. WEINTRAUB: Can we pull up Government 50-2, M-38.

19 BY MS. WEINTRAUB:

20 Q. Now, you see the signature?

21 A. Yes.

22 MS. WEINTRAUB: Can you highlight that, please.

23 BY MS. WEINTRAUB:

24 Q. Now, I hate to sound so sexist, but it does look pretty
25 feminine, doesn't it?

1 A. Yes.

2 Q. And actually, you and I have talked about that, right?
3 Remember? Or you don't remember?

4 A. Not officially. Not really. Sorry.

5 Q. Isn't it true that you speculated that it was probably
6 Nidia, the girl, signing your name -- the applicant?

7 A. I don't remember saying that, no.

8 Q. Do you think that, looking at it?

9 A. It looks like a woman's signature.

10 Q. Now, you do know that the law firm and Nidia were emailing
11 back and forth. You produced those emails for the Government,
12 right?

13 A. Yes.

14 Q. And you do know that Nidia is the one who asked the law
15 firm to send her the document in Word, right?

16 A. I don't remember.

17 Q. Well, let's show it to you.

18 MS. WEINTRAUB: It's 50-4, Page 11.

19 MS. JIMENEZ: So the email chains were not in
20 evidence, although the Government is happy to put them in.

21 THE COURT: Are you seeking to introduce these
22 documents at this time?

23 MS. WEINTRAUB: I'm just asking him if that refreshes
24 his recollection.

25 THE COURT: All right. Then just for the witness

1 only.

2 BY MS. WEINTRAUB:

3 Q. I'm just asking him right now: Does that refresh your
4 recollection that Nidia asked for it to be sent in Word to her,
5 a Word document?

6 A. Can I just see the document without the -- making it bigger
7 so I can see the continuation. But yes, that's what it looks
8 like.

9 Oh, yes. Okay.

10 Q. Right. Nidia asked the lawyers to send it to her in Word,
11 right?

12 A. Yes.

13 Q. She also changed the letterhead and put a logo on it that
14 you didn't have for HM Management, right?

15 A. I don't know who did it, but the logo was changed.

16 Q. And it was changed after it was sent to Nidia, right?

17 A. I don't know the timing.

18 Q. You don't know from the emails that Nidia is the one who
19 had these documents delivered, right, to the law firm?

20 A. I don't remember.

21 Q. Do you know that Eric was out of town at the time?

22 A. Yes.

23 Q. So he was gone for two weeks, actually, with his family
24 skiing, right?

25 A. I don't know where he was. I don't remember.

1 Q. But you remember he was out of town and this was all going
2 on, right?

3 A. I didn't find out about this till way after the incident
4 happened.

5 Q. Okay. And you do know that Nidia was working with Vanessa
6 on the reggaeton nights at the Mala to bring in this
7 entertainment, right?

8 A. Yes.

9 Q. And then you were contacted by the law firm to pay the
10 bill, right?

11 A. Correct.

12 Q. And when you found out about it, you went to Eric and said:
13 "What the heck is this," right, or words to that effect?

14 A. It was a little stronger. But yes, that's what I said.

15 Q. And immediately, doesn't Eric Sheppard say to you: "Oh, my
16 God," you know, "the retainer wasn't supposed to have your name
17 on it," it should have had his name on it? Doesn't he say that
18 to you?

19 A. No.

20 Q. Doesn't he write a letter to the attorney explaining that
21 it should have had his name on it?

22 A. Yes.

23 Q. And you were obviously the -- the Government talked to you
24 about it earlier. You were obviously very upset about that
25 whole situation, right?

1 A. I was.

2 Q. And Eric sends a letter to the lawyer, and there were
3 certain things that are in the letter that you specifically
4 asked him to include. For example, you wanted him to include
5 that Graffco is a consultant, not an employee, right?

6 A. Absolutely not.

7 Q. You didn't tell Eric to put that in there?

8 A. No. I didn't see the letter till after it was written.

9 Q. Now, you -- even though the Government said to you -- the
10 Government said to you when they were asking you: "So this was
11 in March, and you didn't" -- "and then you left
12 March 31st, 2020," right? But that's not what happened. You
13 didn't leave for over a year, right? This whole thing with the
14 immigration forms happened in 2019? Yes?

15 A. Yes.

16 Q. In March 2019? Yes?

17 A. Yes.

18 Q. And you didn't leave or stop working for Eric until after
19 COVID in March 2020?

20 A. Correct.

21 Q. Let's talk about what you have said about the engagement
22 letter signing.

23 Do you agree that you have gone back and forth about
24 whether or not it's your testimony that Eric signed the
25 engagement letter?

1 A. Yes.

2 Q. And the reason that you have gone back and forth is
3 because, honestly, you've never seen Eric sign your name,
4 right?

5 A. Correct.

6 Q. And so you couldn't say that for sure he signed your name,
7 right?

8 A. I didn't see him sign the document.

9 Q. And you couldn't for sure swear that he did, like you did
10 with others?

11 A. Correct.

12 MS. WEINTRAUB: Judge, I'm going to reserve a motion
13 at this time.

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

15 MS. WEINTRAUB: I'm sorry?

16 THE COURT: Any further cross-examination?

17 MS. WEINTRAUB: Oh, yes.

18 THE COURT: All right, then.

19 (Pause in proceedings.)

20 BY MS. WEINTRAUB:

21 Q. Now let's talk about the application. You testified on
22 direct that you helped Eric prepare an EIDL application in
23 March 2020 before you left, right?

24 A. Yes.

25 Q. Now, do you also agree the reason that you're filling it

1 out, and uploading, and doing all that technical stuff, is Eric
2 isn't very proficient on the computer? Is he? Do you agree?

3 A. At that point, he was having -- I know he was having email
4 difficulties, so -- and I was able to make my way through the
5 documents.

6 Q. Do you agree that Eric is not very proficient on the
7 computer?

8 A. He is not the most savvy technical person.

9 Q. Do you remember -- by the way, this application was done --
10 the EIDL loan is done before the CARES Act was even signed on
11 March 27th, right?

12 A. Correct. I think it was -- it was a disaster relief loan.

13 Q. Correct. That's what the EIDL is. Yes?

14 A. So I don't know. Yes.

15 Q. Okay. So because this -- and that's a good point -- it was
16 not a PPP loan, was it?

17 A. No.

18 Q. And PPP didn't actually exist yet because the CARES Act is
19 passed on March 27th, right?

20 A. Yes.

21 Q. And the Government showed you an application, right, for
22 the EIDL loan?

23 A. The one that we applied for?

24 Q. Yeah.

25 A. Yes.

1 Q. And they showed you partial emails, I guess, between you
2 and Eric about applying for the loan, right?

3 A. Yes.

4 Q. Did you provide those to the Government?

5 A. Yes.

6 Q. But there's nothing in any of those emails that talks about
7 how many employees should be listed there, right?

8 A. Not in the emails, no.

9 Q. There's nothing -- well, didn't you mostly communicate with
10 Eric on emails and texts, it seems?

11 A. We spoke a lot on the phone.

12 Q. Okay. But you were emailing him about the details of this
13 loan? Yes?

14 A. Certain -- certain aspects of the details, yes.

15 Q. And there's nothing in these emails, when you're discussing
16 the terms of the loan, about a hundred employees are having an
17 issue, right?

18 A. Correct.

19 Q. And earlier we talked about Canyon Ranch. That project had
20 three to 400 people there easily, didn't it?

21 A. There were three to 400 people on site.

22 Q. Right. And it's not too unreasonable to think that
23 Burlington would take a hundred people to get the work done and
24 turn it around in three months on the 60,000 square feet,
25 correct?

1 A. That's not unreasonable.

2 Q. And another thing. Where in the emails does it say that
3 they're not W-2 employees so you can't apply?

4 A. It doesn't say that.

5 Q. Right. You didn't talk to him about that either, did you?

6 A. I don't think so.

7 Q. Because it didn't apply. It wasn't a PPP loan.

8 A. Right.

9 Q. So it wasn't even an issue if it was W-2 or 1099ed workers,
10 right, from your knowledge?

11 A. Right.

12 Q. Okay. The only issue that you raised is that you wanted to
13 make sure that you properly explain the loan -- the -- excuse
14 me -- the loss amount, right?

15 A. Eric had told me the description of the loss amount, and I
16 wanted to make sure that I captured what he had told me.

17 Q. And the truth was it was the very beginning of COVID, and
18 you knew there was more than a good chance that the rent would
19 stop coming from those stores as they shut down, right?

20 A. Yes.

21 Q. And on direct you testified that you believed that the
22 applicant should be HM-UP and not HM Four.

23 A. Correct.

24 Q. But isn't HM Four the 99 percent owner of HM-UP?

25 A. I don't remember the ownership percentages, but I know

1 HM Four is an owner of HM-UP.

2 Q. And you do agree that HM Four was obviously impacted by the
3 loss of all the rents, since it's the primary owner, right?

4 A. Yes.

5 Q. So do you agree now that it really didn't matter if it was
6 HM-UP or HM Four? They were both impacted and they were both
7 owners, right?

8 A. There was a few questions in there. You asked me a few
9 questions. Can we do them one at a time?

10 MS. JIMENEZ: Objection. Compound.

11 THE COURT: Rephrase, please.

12 BY MS. WEINTRAUB:

13 Q. Do you agree -- you just stated that HM Four -- you agree
14 HM Four was also impacted by the loss of rent, right?

15 A. Ultimately, yes.

16 Q. And you do agree that HM Four is an owner? Yes?

17 A. Yes.

18 Q. And so you do agree it did not matter which owner you put
19 down on the application, right?

20 A. No. I don't agree.

21 Q. Why?

22 A. Because I think the economic loss is at the property level,
23 and that loss would flow through to the owners, as it should.

24 Q. Okay. But that wasn't on the application. That didn't
25 give you that guidance, did it?

1 A. No.

2 Q. And you also agree that Eric signed the 4506, the T's for
3 authorizing HM-UP -- authorizing the SBA to get all the tax
4 returns from the IRS, right?

5 A. Correct.

6 Q. And Eric obviously had nothing to hide and signed that and
7 sent it to you, right?

8 A. Correct.

9 Q. And you worked for Barnett Bank in the department, right --
10 in the credit department?

11 A. Way back when, yes.

12 Q. On the lending side?

13 A. Yes.

14 Q. And you know how these 4506-T's work, right?

15 A. No, not really.

16 Q. You worked on the lending side in the credit department and
17 you don't know how an authorization from a client worked?

18 A. I don't remember ever seeing one when I was at Barnett.

19 Q. Well, isn't it true that you're basically telling the SBA
20 that they have permission to look at HM-UP, HM Four, his
21 personal returns, everything?

22 A. To request his tax returns, yes.

23 Q. And by the way, when you were initially interviewed by the
24 Government, you told them that you never discussed any of the
25 government loans with Eric Sheppard, right?

1 A. Correct -- no. I said we never applied for a loan.

2 Q. And the truth is -- and you also told the Government very
3 specifically you had only spoken to Eric one time in the three
4 years since you left?

5 A. Correct.

6 Q. In fact, it was only after speaking with the Defense team,
7 specifically me, reminding you --

8 MS. JIMENEZ: Objection.

9 BY MS. WEINTRAUB:

10 Q. -- that you filled out this application that you agreed,
11 correct, that you did fill it out?

12 MS. JIMENEZ: Objection. Hearsay.

13 THE COURT: Overruled.

14 BY MS. WEINTRAUB:

15 Q. Did you tell me in a conversation, after I reminded you,
16 that, yes, you did fill it out?

17 A. I don't know if I told you. But yes, our conversation
18 spurred my memory.

19 Q. And now -- first of all, you didn't even remember it. And
20 then now you remember detailed conversations, except you told
21 the Government you hadn't talked to him but once, right?

22 A. I was still working there at the time.

23 (Pause in proceedings.)

24 BY MS. WEINTRAUB:

25 Q. Now, you talked to the Government about Eric Sheppard sent

1 you an email after the application was finished with some
2 attachments, right?

3 A. Yes.

4 Q. And the attachments were like stuff from the SBA, and it
5 looked like he's sending you a bunch of research, right?

6 A. Correct.

7 Q. But in truth and in fact, when you looked at the content of
8 the email, what he's really saying is: "Hey, I got this email
9 blast. Are we okay? Is everything okay with what I did,"
10 right?

11 A. He asked me if we needed to change anything with the
12 application we made.

13 Q. Right.

14 MS. WEINTRAUB: Could we put up...

15 (Pause in proceedings.)

16 BY MS. WEINTRAUB:

17 Q. And what he writes to you -- do you recognize this email?
18 Because this is what -- it's in evidence that you did recognize
19 it. Yes?

20 A. Yes.

21 Q. So he says: "Hi, Jeff. I received this from Watts," who
22 was a lawyer sending an email blast, right?

23 A. Yes.

24 Q. And it says: "Please let me know if any of this may make
25 sense or if we need to modify anything we filed thus far.

1 Hopefully what we filed has not changed"; is that correct?

2 A. Correct.

3 Q. So Eric wanted to make sure he was doing everything right.

4 Yeah?

5 A. Yes.

6 Q. The office had already shut down, right? You're not
7 working next to him. You're working remotely, right?

8 A. Yes.

9 Q. And all he did was forward you the information -- the
10 attachments were information that Watts had sent to him, right?
11 He just forwards it to you?

12 A. Correct.

13 Q. I mean, I don't want the jury to think that he did all this
14 research and sent it to you. That's not what happened, right?

15 A. Correct.

16 Q. What happened was he forwarded you the email with the
17 attachments for you to review?

18 A. Yes.

19 Q. And you did?

20 A. I did not.

21 Q. You did not review it?

22 A. No.

23 MS. WEINTRAUB: Your Honor, if the email -- if this
24 email itself -- I know the attachments are in evidence. If the
25 email is not in evidence, at this time we would move it in

1 evidence.

2 MR. CAVALLLO: The email is in evidence.

3 THE COURT: What's the exhibit number, please?

4 MS. JIMENEZ: The emails are in evidence, Your Honor.

5 THE COURT: All right. What's the exhibit number,
6 please?

7 MS. JIMENEZ: It is --

8 MR. CAVALLLO: It's the Government's 50-7.

9 THE COURT: Thank you.

10 BY MS. WEINTRAUB:

11 Q. On March 23rd, 2020, you emailed Eric and you asked him to
12 complete the HM Four economic injury form in connection with
13 applying for the loan, right?

14 A. Yes.

15 Q. Now, the Government showed you a document --

16 MS. WEINTRAUB: 50-7. Chris, can you help with this?
17 And put Defense M-66.

18 BY MS. WEINTRAUB:

19 Q. Do you --

20 MS. WEINTRAUB: Just for the witness, M-66.

21 BY MS. WEINTRAUB:

22 Q. You agree it's the same email?

23 A. Yes.

24 MS. WEINTRAUB: Your Honor, at this time I'd move M-66
25 into evidence.

1 MS. JIMENEZ: Objection, Your Honor. It's not the
2 same email. It doesn't have the attachments --

3 MS. WEINTRAUB: Judge, I object to the speaking
4 objection.

5 THE COURT: The witness stated it's the same email.
6 BY MS. WEINTRAUB:

7 Q. Scrolling down to the attachment -- it's blank, right, on
8 Page 1?

9 A. Yes.

10 Q. Yes?

11 A. Yes.

12 Q. The second email, which is 34471, there's another email on
13 March 24th, 2020, right? And again --

14 COURTROOM DEPUTY: Is this only for the witness?
15 Counsel, is this only for the witness?

16 MS. WEINTRAUB: No, Your Honor.

17 THE COURT: All right. Let's continue, then. Only
18 for the witness.

19 BY MS. WEINTRAUB:

20 Q. Do you recognize this document?

21 A. I recognize the one I sent.

22 Q. Did you not send both of them?

23 A. I know I sent the one on the right that I'm looking at.

24 Q. Are you saying that somebody else sent this as you on
25 March 23rd, 2020: "Here's the SBA PFS form"?

1 A. No. But the one that I'm looking at on the right has the
2 attachment.

3 Q. Do you agree this is the same email with the attachment?

4 A. They look to be the same email.

5 Q. Okay.

6 MS. WEINTRAUB: So let's scroll down on the second
7 email.

8 BY MS. WEINTRAUB:

9 Q. It's just a blank financial statement, isn't it?

10 A. What I sent, yes.

11 Q. This is blank, right?

12 A. Yes.

13 MS. WEINTRAUB: Judge, we'd seek to move it in.

14 THE COURT: As the attachment to the exhibit?

15 Any objection?

16 MS. WEINTRAUB: Yes.

17 MS. JIMENEZ: No objection.

18 THE COURT: Admitted into evidence.

19 (Defendant's Exhibit M-66 received into evidence.)

20 MS. WEINTRAUB: Let's go to the next email.

21 BY MS. WEINTRAUB:

22 Q. You testified on direct that this was the email with the
23 attachment -- sorry.

24 MS. WEINTRAUB: When it was moved into evidence, can
25 the jury see it?

1 THE COURT: Yes. You can show it to the jury now.

2 BY MS. WEINTRAUB:

3 Q. While that's coming up, you testified on direct that you
4 sent this email with this attachment and the application for
5 Eric to review. And yet, when we look at the email and we open
6 it, you agree it's a blank form. There's nothing to review,
7 correct?

8 A. So I told him to complete the personal financial statement
9 and the request for transcripts, tax transcripts.

10 Q. You testified on direct that you sent him the completed
11 application. This is blank. Do you agree?

12 A. The application -- I'm not looking at an application.

13 Q. On March --

14 MS. WEINTRAUB: Your Honor, we would move that into
15 evidence.

16 THE COURT: This was the one that was already in
17 evidence, correct?

18 MR. CAVALLO: Correct, Your Honor.

19 THE COURT: Yes. It's in evidence.

20 BY MS. WEINTRAUB:

21 Q. Okay. On March 25th, 2020, you asked Eric in an email for
22 more information, right?

23 A. Yes.

24 Q. And do you agree --

25 MS. WEINTRAUB: Bring up M-69 --

1 BY MS. WEINTRAUB:

2 Q. -- that this is the same email? Right?

3 A. Yes.

4 MS. WEINTRAUB: Judge, we would move M-69 into
5 evidence.

6 THE COURT: Any objection?

7 MS. JIMENEZ: No objection.

8 THE COURT: All right. In evidence.

9 (Defendant's Exhibit M-69 received into evidence.)

10 BY MS. WEINTRAUB:

11 Q. Do you agree that this is just a document with
12 instructions? It's not an email with the application that you
13 testified about, right?

14 A. Yes.

15 MS. WEINTRAUB: 15-L is March 26th, 2020. Can you
16 bring that up.

17 BY MS. WEINTRAUB:

18 Q. Eric sends you the HM Four tax return. Yes?

19 A. Jeanette sent it.

20 Q. And the attachment indicates it's a scan -- scanned
21 document?

22 A. Oh, yes. Yes.

23 Q. And the email with that attachment on M-70 is the same
24 email as the Government's exhibit on the other side of the
25 screen, right?

1 A. Yes.

2 MS. WEINTRAUB: Your Honor, I'd move this into
3 evidence.

4 THE COURT: Is there any objection?

5 MS. JIMENEZ: No objection.

6 THE COURT: All right.

7 BY MS. WEINTRAUB:

8 Q. Do you agree with me that that's just the tax return?

9 THE COURT: M-70 in evidence.

10 (Defendant's Exhibit M-70 received into evidence.)

11 THE WITNESS: Yes.

12 BY MS. WEINTRAUB:

13 Q. So this is not the email that you testified about that
14 references a hundred employees, is it?

15 A. Not that document, no.

16 Q. The next email, which is March 26th, 2020, Eric is thanking
17 you, and there's no attachment. Do you agree?

18 A. Yes.

19 Q. And do you agree that this is also not an email with the
20 application that you testified about referencing a hundred
21 employees?

22 A. Yes.

23 MS. WEINTRAUB: I'd move this into evidence, Your
24 Honor.

25 THE COURT: Is there any objection?

1 MS. JIMENEZ: What is she referring to, M-71?

2 No objection.

3 THE COURT: Admitted into evidence.

4 (Defendant's Exhibit M-71 received into evidence.)

5 BY MS. WEINTRAUB:

6 Q. March 26th, 2020, you wish Eric good luck at the end,
7 right?

8 A. Yes.

9 Q. And isn't it true this is not the application that you
10 testified about either?

11 A. Correct.

12 Q. Now, let me ask you something. You testified on direct
13 that you were very uncomfortable, right? You didn't want to do
14 this?

15 A. I didn't believe HM Four -- I'm sorry. I didn't believe HM
16 Four was the proper applicant.

17 Q. Did you say that you were uncomfortable or not?

18 A. I believe I was uncomfortable, yes.

19 Q. If you didn't think it was appropriate to do, and you'd
20 already left the company, why did you do it?

21 A. Technically I was still there for a few more days.

22 Q. If he told you to jump off the bridge, would you?

23 A. Not necessarily.

24 Q. But maybe?

25 A. Maybe. Eric's very influential. You know, he was paying

1 me my salary. He was justifying applying in the HM Four name.
2 He said he had his partners' approval. So I applied for the
3 loan on his behalf.

4 MS. WEINTRAUB: I'd strike that as non-responsive.

5 BY MS. WEINTRAUB:

6 Q. Mr. Graff --

7 THE COURT: The motion is denied.

8 MS. WEINTRAUB: Let me go back. I'm sorry. I got
9 ahead of myself.

10 BY MS. WEINTRAUB:

11 Q. Going through all those applications with the blank pages,
12 where did you get the application that he sent out that you
13 submitted?

14 A. It was downloaded from an SBA website.

15 Q. But there is no email that attaches the so-called
16 application with the hundred employees that you testified
17 about?

18 A. The documents were uploaded directly to the SBA.

19 Q. So you just misrepresented that fact on the evidence when
20 you were testifying?

21 MS. JIMENEZ: Objection. Argumentative.

22 THE COURT: Sustained.

23 BY MS. WEINTRAUB:

24 Q. Or you misspoke?

25 MS. WEINTRAUB: Excuse me.

1 THE COURT: Let's rephrase, please.

2 BY MS. WEINTRAUB:

3 Q. Do you agree that you misspoke when you said that the email
4 attaches the application about the hundred employees?

5 A. I don't know if we've seen every email in the chain.

6 Q. Isn't that what we just went through, every single email?
7 There was seven emails we just went through.

8 A. Okay. I don't believe I misrepresented.

9 (Pause in proceedings.)

10 BY MS. WEINTRAUB:

11 Q. Well, let's go back to the application that you say that
12 you sent. Looking at Pages 1 and 2, there's nothing filled in,
13 right, until Page 7?

14 MS. WEINTRAUB: Just scroll down to Page 7.

15 BY MS. WEINTRAUB:

16 Q. Would you agree? Unless you see anything on it.

17 A. There is some stuff filled in.

18 Q. Do you see anything filled in or is it blank?

19 A. This one you're showing me now is blank.

20 Q. Well, that's the one that was attached to your email that's
21 in evidence. Okay?

22 A. Okay.

23 Q. So my question is: Do you agree it's blank? Doesn't say a
24 hundred employees either.

25 MS. JIMENEZ: Objection. Asked and answered.

1 THE COURT: Overruled. I'll allow -- if the witness
2 will answer the question.

3 THE WITNESS: Can you restate it, please?

4 BY MS. WEINTRAUB:

5 Q. Sure. It's not filled in. The number of employees isn't
6 filled in. It's blank, right?

7 A. This is blank, yes.

8 Q. And there's nothing again until Page 13. This is a blank
9 form, right?

10 A. That's a blank form.

11 Q. Okay. Then we go to Page 24. It's still blank. Page 29,
12 it's an unsigned financial statement. And that's the end of
13 the document, right?

14 A. I don't know if that's the end, but it's an unsigned
15 financial statement.

16 Q. It doesn't even look complete, does it?

17 A. It looks pretty complete.

18 Q. Okay. Are you sure this application was submitted?

19 A. We received -- one of the attachments had a submitted thank
20 you with a green checkmark, and that's when I sent it to Eric
21 saying it was uploaded.

22 Q. You don't know if that was automated and it got all the
23 blank pages, do you?

24 A. I don't.

25 (Pause in proceedings.)

1 BY MS. WEINTRAUB:

2 Q. Typically, you memorialize things in writing. That's your
3 training as a CPA, I guess, right?

4 A. Some things, yes.

5 Q. And when you had issues, you usually -- or you didn't want
6 to do something, or you wanted Eric to do something, you
7 usually memorialized it by something, a text or an email,
8 right?

9 A. A lot of times, yes.

10 Q. And you agree that there's nothing in writing about your
11 claim that this should have been HM-UP and not HM Four, right?

12 A. Nothing in writing me stating that, correct.

13 Q. Well, you're not saying that it was a fraud to do it that
14 way, were you?

15 A. No.

16 Q. Because you wouldn't have done that, right?

17 A. Right.

18 Q. So the bottom line is: If they're both owners, it wasn't
19 wrong to do it, was it?

20 A. Again, I didn't believe it was the right entity. I don't
21 know whether it was wrong or not.

22 Q. But you didn't think it was fraudulent?

23 A. No.

24 Q. Now, you testified that you didn't get a last check, right,
25 a final payment -- final paycheck? Right?

1 A. I was owed one month's pay, whether it was the last month,
2 a month in between, somewhere in there.

3 Q. Mr. Graff, I'm sorry. Can you answer the question yes or
4 no?

5 A. I'm sorry. I'm sorry.

6 Q. You testified you didn't get a final paycheck, right?
7 Correct?

8 A. Yes. Yes.

9 Q. And you left March 31st, and you started working for the
10 temple on April 1st, right?

11 A. Correct.

12 Q. And isn't it true that you did receive a final paycheck,
13 and you just didn't know when you could cash it?

14 A. Yes.

15 Q. On April 6th, you confirmed that Jeanette told you you
16 could cash your final paycheck, right?

17 A. Correct.

18 Q. You also testified that people only do what Eric authorizes
19 them to do, that nobody would, you know, defy Eric, right?

20 A. I didn't say they only do what Eric tells them to do. I
21 said they normally don't go rogue.

22 Q. Well, you also said you know how influential he could be.
23 You talked about maybe you would jump off a bridge.

24 A. Correct.

25 Q. You didn't really mean that, right?

1 A. I was very loyal to Eric for 20 years.

2 Q. And do you remember Scott Fish?

3 A. Yes.

4 Q. Now, he was a project executive at Orlando from 2010 to
5 2014, right?

6 A. He was a part owner of the project, I believe.

7 MS. JIMENEZ: Objection. Outside the scope.
8 Irrelevant.

9 THE COURT: Sustained.

10 BY MS. WEINTRAUB:

11 Q. Scott Fish was the project executive and was finally caught
12 after he stole a million dollars, right --

13 MS. JIMENEZ: Objection. Relevance.

14 BY MS. WEINTRAUB:

15 Q. -- right under Eric's nose?

16 THE COURT: Sustained.

17 MS. WEINTRAUB: Judge, he just testified that nobody
18 does anything without Eric knowing --

19 THE COURT: I understand what -- the objection is
20 sustained, Ms. Weintraub. Let's continue with the cross.

21 BY MS. WEINTRAUB:

22 Q. Did Scott Fish steal money under Eric's nose without him
23 knowing it?

24 MS. JIMENEZ: Objection. Relevance.

25 THE COURT: The objection is sustained.

1 BY MS. WEINTRAUB:

2 Q. Are you aware of the fact that Scott Fish had multiple tax
3 rebates sent to his house in Tennessee?

4 MS. JIMENEZ: Objection. Relevance.

5 THE COURT: Sustained.

6 MS. WEINTRAUB: May we have a sidebar?

7 THE COURT: There's no need for a sidebar. You may
8 continue.

9 BY MS. WEINTRAUB:

10 Q. COVID hit the second week of March, right?

11 A. Yes.

12 Q. It was very different from today sitting here. Yes?

13 A. Yes.

14 Q. It was a very scary time. Yes?

15 A. Yes.

16 Q. You have kids. Their school was closed?

17 A. My kids were grown.

18 Q. Were schools closed in your area?

19 A. Yes.

20 Q. There was lots of uncertainty about what life was looking
21 like in the future?

22 A. Yes.

23 Q. You had a family to support?

24 A. I did.

25 Q. And the temple offered you an executive director position,

1 which you had turned down twice before, right?

2 A. Correct.

3 Q. And with all the uncertainty that was going on, and you had
4 the opportunity for something safe and gratifying, you chose
5 that?

6 A. Yes.

7 Q. And you do think it's -- you like working at the temple,
8 right?

9 A. I do.

10 Q. And you find it gratifying?

11 MS. JIMENEZ: Objection. Relevance.

12 THE COURT: Sustained.

13 BY MS. WEINTRAUB:

14 Q. You feel appreciated at the temple, whereas you did not
15 feel appreciated by Eric, right?

16 MS. JIMENEZ: Objection. Relevance.

17 THE COURT: Sustained. Rephrase, please.

18 MS. WEINTRAUB: I'd ask for a sidebar.

19 THE COURT: There's no need for a sidebar. Please
20 rephrase.

21 (Pause in proceedings.)

22 BY MS. WEINTRAUB:

23 Q. You did not feel appreciated at Eric's company anymore, did
24 you?

25 A. I don't think that's totally true.

1 Q. Eric wasn't mad at you when you left, was he?

2 A. I don't think so.

3 Q. Now, you spoke with the Government on multiple occasions,
4 right?

5 A. Yes.

6 Q. You met in person, right?

7 A. Yes.

8 Q. You met on Zoom?

9 A. Yes.

10 Q. You emailed with them?

11 A. Yes.

12 Q. And they repeatedly asked why you left, right?

13 A. Yes.

14 Q. Because it was almost as if they just wouldn't accept that
15 you left really to go forward and the opportunity was good at
16 the time, right?

17 MS. JIMENEZ: Objection. Relevance.

18 THE COURT: Overruled. I'll allow it.

19 THE WITNESS: I don't know why they kept asking, but
20 they kept asking.

21 BY MS. WEINTRAUB:

22 Q. It's also true that you know if you told them back then how
23 much you really hated Eric that it would show your bias.

24 MS. JIMENEZ: Objection.

25 THE COURT: And the basis?

1 MS. JIMENEZ: Argumentative.

2 THE COURT: Sustained.

3 MS. WEINTRAUB: Judge, can I be heard? This is cross.

4 THE COURT: I understand it's cross, and the objection
5 is sustained. Let's continue.

6 BY MS. WEINTRAUB:

7 Q. You did hate Eric, didn't you?

8 A. Absolutely not.

9 MS. JIMENEZ: Objection.

10 BY MS. WEINTRAUB:

11 Q. Absolutely not. Weren't you angry that Jeff pushed you out
12 and took over?

13 A. No.

14 Q. And didn't you write a text message to Jeanette telling her
15 how much you hated Eric?

16 A. That's not the way the text message was, no.

17 Q. Did you write her a text message that you hate him?

18 MS. JIMENEZ: Objection.

19 BY MS. WEINTRAUB:

20 Q. Yes or no?

21 THE COURT: Overruled.

22 THE WITNESS: I wrote the words: "I hate them both."

23 BY MS. WEINTRAUB:

24 Q. And is that also facetious or did you mean it?

25 A. No. That was facetious, and Jeanette knew it was

1 facetious.

2 Q. You agree Eric was always there for you?

3 A. Yes.

4 Q. When there was a hurricane, you stayed with him and his
5 family, right?

6 A. Absolutely. Yeah. Hurricane Andrew.

7 Q. You know his wife Jennifer and his daughter and son?

8 A. I do.

9 Q. You even tutored Jordan, right?

10 A. She probably tutored me. But yes, we worked together.

11 Q. And you know she's a student at the University of Michigan?
12 She was here the other day?

13 A. I do.

14 Q. And you looked at her and you didn't even say hello to her,
15 did you?

16 MS. JIMENEZ: Objection. Relevance.

17 THE COURT: Sustained.

18 BY MS. WEINTRAUB:

19 Q. You've known her since she's born.

20 MS. JIMENEZ: Objection. Relevance.

21 THE COURT: Sustained.

22 BY MS. WEINTRAUB:

23 Q. And even after you left, you had a blowup with Kallman, you
24 went to Eric for help, right?

25 A. I did, because Eric put me in the situation.

1 Q. No. You went to Eric for help to get you out of the
2 situation --

3 MS. JIMENEZ: Objection. Argumentative.

4 THE COURT: Overruled. I'll allow it.

5 MS. WEINTRAUB: Excuse me. May I finish my --

6 THE COURT: Did you understand the question, sir?

7 THE WITNESS: No.

8 BY MS. WEINTRAUB:

9 Q. He left you to deal with Kallman, who was the partner
10 dealing with it. He helped you by getting you money at the
11 end, didn't he?

12 A. Correct.

13 Q. And that was after you left?

14 A. Correct.

15 Q. You agree with me that for over 20 years you had a pretty
16 good deal with Eric?

17 A. I believe we mutually benefited.

18 Q. Isn't it true that, despite Eric's tough beginnings, you
19 watched him make it on his own and become very successful,
20 didn't you?

21 A. Yes.

22 Q. And for some reason, you just thought that you're entitled
23 to some of that too?

24 MS. JIMENEZ: I can't hear the question. I'm sorry.
25

1 BY MS. WEINTRAUB:

2 Q. For some reason, you thought that you were entitled to get
3 more from Eric too, right?

4 A. No.

5 MS. WEINTRAUB: Could I have a minute, Judge?

6 THE COURT: All right. Certainly.

7 How we doing, Ladies and Gentlemen. Do we need to
8 take a break or can we continue?

9 We need to take a break?

10 All right. Let's go ahead and take a five-minute
11 stretch break, please.

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

14 (Jury not present, 12:29 p.m.)

15 THE COURT: All right. Are we able to finish with
16 this witness today?

17 MS. WEINTRAUB: Yes.

18 THE COURT: Have we completed the cross-examination?

19 MS. WEINTRAUB: I don't know. Close.

20 THE COURT: How much more do you have on your
21 cross-examination?

22 MS. WEINTRAUB: Not much. But that depends because
23 the Court keeps limiting my cross-examination. And most
24 respectfully, I think that we're entitled to a full and fair
25 cross. I think this is the most important and critical witness

1 to the Defense.

2 THE COURT: And how much time do you believe you need
3 for this witness?

4 MS. WEINTRAUB: Another five minutes, 10 minutes.

5 THE COURT: All right. Where did the attorneys go?
6 Did I have just two attorneys that left the courtroom?

7 MS. WEINTRAUB: I'm sorry, Judge.

8 THE COURT: No. I -- and where is Mr. Sheppard?

9 MS. WEINTRAUB: I apologize. I didn't realize they
10 weren't here. I'm sorry.

11 (Pause in proceedings.)

12 MS. WEINTRAUB: Mr. Sheppard is present.

13 (Pause in proceedings.)

14 MS. WEINTRAUB: Do you know where they are, Sarah?

15 AGENT HALLERAN: Adriana is getting them. They left
16 their stuff here, so they're probably going to the restroom.

17 (Pause in proceedings.)

18 COURTROOM DEPUTY: Are you going to take a break or do
19 you know?

20 THE COURT: I wanted to determine during this break
21 how much time we needed for this witness. I'm waiting for the
22 Government.

23 THE DEFENDANT: I saw them go to the bathroom.

24 THE COURT: Let's take a five-minute recess so I can
25 give some time to my staff.

1 I'll see you back here in five minutes.

2 COURT SECURITY OFFICER: All rise.

3 (Recess from 12:32 p.m. to 12:38 p.m.)

4 THE COURT: All right. How much longer do you have on
5 the cross-examination?

6 MS. WEINTRAUB: Two questions. Two things to admit
7 and then I'm done.

8 THE COURT: And the redirect?

9 MS. JIMENEZ: I don't know, Your Honor.

10 THE COURT: Well, I'm trying to find out if we need to
11 bring in Mr. Graff in now for a third day.

12 MS. JIMENEZ: I don't know if I'll finish. I would
13 like to finish. I don't know if I'll finish.

14 THE COURT: All right. Reminding -- no. At one
15 o'clock, unfortunately, we'll end for the day.

16 All right. Let's bring in the jury.

17 (Before the Jury, 12:38 p.m.)

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

20 Please be seated.

21 We will continue with the cross-examination.

22 MS. WEINTRAUB: Thank you, Judge.

23 May I proceed, Your Honor?

24 THE COURT: Yes.

25

1 BY MS. WEINTRAUB:

2 Q. Two quick areas, Mr. Graff, that I just want to go back to.
3 I want to make sure that it's clear. You testified on direct
4 that a lease that you were shown did not have --

5 MS. WEINTRAUB: Let's bring up Government 35.

6 BY MS. WEINTRAUB:

7 Q. -- that there were terms that stuck out that were not
8 standard in this lease, right?

9 MS. JIMENEZ: Objection. That was not his testimony.

10 THE COURT: Overruled.

11 THE WITNESS: I don't remember that. No.

12 BY MS. WEINTRAUB:

13 Q. You said that this exhibit -- I apologize. This exhibit is
14 the standard lease that had terms that you used, your company,
15 right?

16 A. This is the form of lease that we would use. If they were
17 using the landlord's form, this is the form of lease that we
18 would use.

19 Q. Okay. And you yourself negotiated the most recent lease at
20 M-58.

21 COURTROOM DEPUTY: Are these in evidence, counsel?

22 MS. MARTINEZ: That one is not.

23 THE COURT: M-58 is not in evidence. Only to the
24 witness.

25

1 BY MS. WEINTRAUB:

2 Q. And looking at M-58, a lease from 2018, this was the form
3 that was used, right?

4 MS. JIMENEZ: Objection.

5 BY MS. WEINTRAUB:

6 Q. Yes?

7 MS. JIMENEZ: The document's not in evidence.

8 THE COURT: If the witness can identify it.

9 BY MS. WEINTRAUB:

10 Q. Can you?

11 A. Yes. This looks to be our lease document.

12 Q. Actually, it's a lease document that was sent to you,
13 right?

14 A. Yes.

15 Q. And you redlined it, right?

16 A. I don't remember if I redlined it or not, but this looks
17 like our lease.

18 Q. And you recognize it?

19 A. Yes.

20 MS. WEINTRAUB: Your Honor, I'd move this into
21 evidence.

22 THE COURT: Is there any objection?

23 MS. JIMENEZ: No objection.

24 THE COURT: M-58 in evidence.

25 (Defendant's Exhibit M-58 received into evidence.)

1 BY MS. WEINTRAUB:

2 Q. And that lease was sent to you by the tenant, right?

3 A. Correct.

4 Q. Now, one more thing, and that is -- looking at the REA,
5 now, you sent, that has your -- "Jeff Graff," "On behalf of
6 Jeff Graff at HM Management," right?

7 A. Yes.

8 Q. Okay. This is February 3rd, 2020, right?

9 A. Yes.

10 Q. You sent this REA that you described to Eric Sheppard, did
11 you not?

12 A. Yes.

13 Q. And you sent it to him as part of your job, right?

14 A. At his request, yes.

15 MS. WEINTRAUB: Your Honor, at this time, I'd move
16 M-50 into evidence.

17 MS. JIMENEZ: Objection. Same objection. Relevance.
18 It's other companies.

19 THE COURT: Sustained.

20 MS. WEINTRAUB: Judge, it goes to the ownership of HM
21 Four, again. And I would submit to the Court that it is
22 relevant.

23 THE COURT: I'm sorry. Can you establish how it's
24 related to the ownership of HM Four?

25 MS. WEINTRAUB: Yes, because --

1 MS. JIMENEZ: It's been asked and answered.

2 THE COURT: I'm sorry?

3 MS. JIMENEZ: Those questions were asked and answered
4 before. The witness said he does not know.

5 THE COURT: At this point, the objection is sustained.
6 Let's continue.

7 MS. WEINTRAUB: Your Honor, the responsibilities from
8 HM Eight are transferred --

9 THE COURT: Okay. Hold on. Let's establish through
10 the testimony of the witness with regard to this document. The
11 witness has already stated that -- let's continue.

12 BY MS. WEINTRAUB:

13 Q. Mr. Graff, does this document reflect the responsibilities
14 of HM Eight?

15 A. I haven't seen the whole document. But it would appear to,
16 yes.

17 Q. And those -- as the developer, it talks about the
18 requirements -- basically, the rules, like we said before, of
19 the condo association. It's the rule book. The REA is the
20 rule book for Alafaya Trails, right, for the complex?

21 A. Yes.

22 Q. And it tells about the responsibilities of maintaining the
23 property?

24 A. Yes.

25 Q. It talks about the responsibility of the developer to

1 maintain the common areas, yes?

2 A. Yes.

3 MS. JIMENEZ: Objection. Testifying about a document
4 that's not in evidence.

5 THE COURT: Overruled.

6 MS. JIMENEZ: It's irrelevant.

7 THE COURT: You may continue. Overruled.

8 MS. WEINTRAUB: I'd offer to admit it, Your Honor.

9 MS. JIMENEZ: Same objection.

10 THE COURT: The objection is sustained.

11 MS. WEINTRAUB: Go to Page 24.

12 BY MS. WEINTRAUB:

13 Q. Under this REA, the developer had the responsibility to be
14 responsible for carrying out repair, replacement, and
15 improvement of the common areas, correct?

16 MS. JIMENEZ: Objection. Relevance.

17 THE COURT: Sustained.

18 BY MS. WEINTRAUB:

19 Q. If HM Four had these responsibilities, would you agree that
20 they're real duties and responsibilities that have to be
21 carried out?

22 MS. JIMENEZ: Objection. Calls for speculation.

23 THE COURT: Sustained.

24 BY MS. WEINTRAUB:

25 Q. Did HM Eight, under this REA, have the duties and

1 responsibilities to maintain the common areas?

2 MS. JIMENEZ: Objection. Relevance.

3 THE COURT: Sustained.

4 (Pause in proceedings.)

5 BY MS. WEINTRAUB:

6 Q. Mr. Graff, sitting here, having gone to the Government so
7 many times, every time that they asked you for an email, did
8 you ever give them anything positive about Eric Sheppard?

9 MS. JIMENEZ: Objection. Argumentative.

10 THE COURT: Sustained.

11 BY MS. WEINTRAUB:

12 Q. It's true that you finally feel like the bigshot you never
13 were, right?

14 MS. JIMENEZ: Objection.

15 THE COURT: Sustained.

16 Have you concluded your cross-examination?

17 MS. WEINTRAUB: I have no further questions.

18 MS. JIMENEZ: Can we move to strike that last
19 question, please, from the record?

20 THE COURT: Let's continue with the redirect, please.

21 MS. WEINTRAUB: And Judge, I would still like a
22 sidebar.

23 THE COURT: All right. We can do it outside the
24 presence of the jury at the appropriate time. Let's begin the
25 redirect.

REDIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Mr. Graff, you were asked some questions about a biography that was in some document. Do you remember that?

A. Yes.

Q. And that biography referenced your work going back to 2000; is that right?

A. Okay. Yes.

Q. And it referenced you being a chief financial officer at that time?

A. Yes.

Q. Were you a chief financial officer when you first joined the previous company WSG Development?

A. Yes.

Q. And at that time, when you first joined WSG Development, did you have accounting responsibilities?

A. Yes.

Q. Did you have accounting responsibilities later when you were at HM Management and Development?

A. No.

Q. You were asked last week about your salary. Do you remember?

A. Yes.

Q. And you were asked a question that you had not told the Government about a car lease. Do you remember being asked

1 that?

2 A. Yes.

3 Q. Did you tell the Government about a car lease, or do you
4 not remember that you told the Government about a car lease?

5 MS. WEINTRAUB: Objection. Leading.

6 THE COURT: Sustained.

7 BY MS. JIMENEZ:

8 Q. Did you tell the Government about a car lease?

9 A. Yes.

10 Q. Did you tell the Government at some point that you had
11 received health insurance from HM Management?

12 A. Yes.

13 Q. And there were questions about whether you made money on
14 some other deals. Do you remember that?

15 A. Yes.

16 Q. Do you remember testifying on direct that you actually had
17 an ownership interest in other --

18 MS. WEINTRAUB: Objection, Your Honor. Leading and
19 it's improper redirect.

20 THE COURT: Sustained. It's sustained. Rephrase.

21 BY MS. JIMENEZ:

22 Q. Did you have an ownership interest in some of the
23 Defendant's companies?

24 A. Yes.

25 Q. Did you try to hide that at some point?

1 A. No.

2 Q. When the Government interviewed you, did the Government ask
3 you about each and every business deal that you were ever
4 involved in?

5 MS. WEINTRAUB: Objection, Your Honor.

6 THE COURT: The basis?

7 MS. WEINTRAUB: Attempted bolstering and prior
8 consistent statements are not admissible.

9 THE COURT: It calls for a yes-or-no response.
10 Overruled.

11 THE WITNESS: I'm sorry. Can you ask it again?

12 BY MS. JIMENEZ:

13 Q. Did the Government ask you about every single deal that you
14 were ever involved in?

15 MS. WEINTRAUB: Objection. Leading.

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 BY MS. JIMENEZ:

19 Q. Did the Defendant file for bankruptcy with respect to any
20 of the deals that he was involved in?

21 MS. WEINTRAUB: Objection, Your Honor, and I'd like a
22 motion to be heard.

23 MS. JIMENEZ: He was asked specifically about that.

24 THE COURT: The objection is overruled.

25 MS. WEINTRAUB: And I'll reserve a motion.

1 THE COURT: All right. It's noted.

2 You may continue.

3 THE WITNESS: I think we did file for bankruptcy.

4 (Pause in proceedings.)

5 BY MS. JIMENEZ:

6 Q. About these projects -- Canyon Ranch. When was Canyon
7 Ranch completed, that project?

8 A. Probably around 2008, 2009.

9 Q. The Alafaya Trails property in Orlando, was that -- at some
10 point, did it become a shopping center?

11 A. Yes.

12 Q. At what point was that shopping center completed?

13 A. Probably 2016 -- '15, '16.

14 Q. What about the Shops at Fontainebleau that's owned by CJUF?
15 When was that shopping center completed?

16 A. Probably --

17 MS. WEINTRAUB: Objection, Your Honor.

18 THE COURT: And the basis?

19 MS. WEINTRAUB: He said: "Probably." If he's not
20 sure, and he doesn't know, he can't speculate.

21 THE COURT: Well, that's true, yes, the response. But
22 there's no basis to object.

23 All right. Let's continue.

24 THE WITNESS: I don't remember the exact date.

25

1 BY MS. JIMENEZ:

2 Q. Approximately?

3 A. '15, '16 as well.

4 Q. In 2019 and 2000 -- well, 2019, was there anything that was
5 being built at the land that the Defendant owned?

6 A. Not actively being built, no.

7 Q. In 2020, before you left, aside from converting Toys "R" Us
8 to Burlington, was there anything being built on the properties
9 the Defendant owned?

10 A. No.

11 Q. The -- approximately when did the Burlington -- or the Toys
12 "R" Us conversion to Burlington begin?

13 A. The construction of it?

14 Q. Yes.

15 A. Probably the end of 2019, beginning 2020.

16 Q. Did that project require contractors, such as electricians,
17 painters, engineers?

18 A. Yes.

19 Q. Were those folks folded in as W-2 employees of HM
20 Management at any point?

21 A. Not to my knowledge.

22 Q. Would they be? I mean --

23 A. No.

24 Q. -- did they or were they not?

25 MS. WEINTRAUB: Objection, Your Honor.

1 THE COURT: Sustained.

2 BY MS. JIMENEZ:

3 Q. Well, my question is: Were they or were they not?

4 MS. WEINTRAUB: If he knows. Was he doing that then?

5 THE COURT: He's already answered he doesn't. Let's
6 continue.

7 (Pause in proceedings.)

8 BY MS. JIMENEZ:

9 Q. You were asked questions about whether the Defendant relied
10 on you for financial advice. Did you advise him on who should
11 be a W-2 employee versus a contractor at the business?

12 A. No.

13 Q. If you know, did Jeanette Gonzalez tell him who should be a
14 W-2 employee or a contractor at the business?

15 A. I don't think she did.

16 MS. WEINTRAUB: Objection. Move to strike.

17 THE COURT: The motion is granted, and the objection
18 is sustained.

19 BY MS. JIMENEZ:

20 Q. Do you know whether Jeanette Gonzalez told him who should
21 be a W-2 or a contractor?

22 A. I don't know.

23 Q. You were asked about an accounting department. Which
24 company had an accounting department, if any?

25 A. WSG Development.

1 Q. After it became HM Management, was there an accounting
2 department?

3 A. There was a bookkeeper, not a department.

4 Q. At the office -- you were asked about there being filing
5 cabinets with paper. Were there filing cabinets with lots of
6 paper?

7 A. Yes.

8 Q. Were copies of income tax returns kept at the office?

9 A. Yes.

10 Q. In March of 2020, did you stop physically going to the
11 office before the end of the month before you formally left the
12 company?

13 A. Yes.

14 Q. Was that in the middle of March?

15 A. Yes.

16 Q. Did Jeanette Gonzalez go work from her home?

17 A. Yes.

18 Q. Did she go work at the Defendant's home?

19 A. I don't know.

20 Q. You don't know if she was working at the Defendant's home?

21 MS. WEINTRAUB: Objection. Asked and answered.

22 THE COURT: Sustained.

23 BY MS. JIMENEZ:

24 Q. Do you know whether Jeanette Gonzalez went to work at her
25 house?

1 MS. WEINTRAUB: Objection. It's the third time.

2 THE COURT: At her house. Different question.

3 Overruled.

4 THE WITNESS: Yes.

5 BY MS. JIMENEZ:

6 Q. QuickBooks. You were asked about QuickBooks. Do you know
7 if QuickBooks entries are fixed when they are entered or can
8 they be changed?

9 MS. WEINTRAUB: Objection. Leading.

10 THE COURT: Overruled. I'll allow it.

11 THE WITNESS: I believe they can be changed.

12 (Pause in proceedings.)

13 MS. JIMENEZ: Can we pull up the Florida Department of
14 Revenue --

15 BY MS. JIMENEZ:

16 Q. Actually, let me just ask you, Mr. Graff. You were shown a
17 Florida Department of Revenue form --

18 MS. WEINTRAUB: We didn't use this document.

19 BY MS. JIMENEZ:

20 Q. -- indicating payments by Graffco; is that right?

21 MS. WEINTRAUB: Judge, I'm going to object to this.
22 It's not proper redirect, and we didn't ask about this.

23 THE COURT: I believe it was --

24 MS. WEINTRAUB: I'll withdraw. Sorry. I apologize.

25 THE COURT: All right. Let's continue.

1 And I do want to remind you it's 12:58.

2 MS. JIMENEZ: It's -- thank you.

3 BY MS. JIMENEZ:

4 Q. Mr. Graff, as owner of your own business at this point,
5 Graffco, Corp., explain how it is that you make contributions
6 to the Florida Department of Revenue.

7 MS. WEINTRAUB: Objection. Leading.

8 THE COURT: I'm sorry. You're asking him to explain?

9 MS. JIMENEZ: Yes.

10 THE COURT: Overruled.

11 THE WITNESS: Through the payroll process, there would
12 be withholding, and they would be submitted quarterly to the
13 government.

14 BY MS. JIMENEZ:

15 Q. And being incorporated, do you decide what portion of the
16 payments you receive are -- are wages to yourself?

17 A. Can you say that one more time?

18 Q. Yes. When you incorporate with Graffco, do you decide what
19 portions of the payments you receive are a salary to yourself?

20 A. Yes.

21 Q. Do you decide what portion that you receive are
22 distributions, like profits?

23 A. Yes.

24 Q. And this report to the Florida Department of Revenue, does
25 it report -- does it report all of that, or -- I'm sorry -- all

1 of the salary you pay yourself -- let me see if I can ask the
2 question.

3 Does it -- which aspect of those payments does this
4 record reflect?

5 A. Only the salary.

6 THE COURT: Ms. Jimenez, I apologize, but it is one
7 o'clock, and I do want to be respectful for the time.

8 Ladies and Gentlemen, as I stated, we are adjourning
9 for the day. I will see you tomorrow morning. It will be a
10 full day; however, we will start at 9:30 and we will proceed
11 till five p.m.

12 Please remember, as you leave the courthouse, you're
13 not to discuss this case with anyone, nor permit anyone to
14 speak with you. Everything learned about the case is learned
15 within this courtroom.

16 If you'll place your juror notebooks in the jury room.

17 I'll see you tomorrow morning at 9:30, please.

18 Have a nice afternoon.

19 COURT SECURITY OFFICER: Please rise for the jury.

20 (Jury not present, 1:01 p.m.)

21 THE COURT: Mr. Graff, we will see you tomorrow
22 morning at 9:30, sir, for the continuation of your testimony.
23 Please remember that you are on the witness stand so you're not
24 to discuss your anticipated testimony, the testimony of any
25 other individual, or any aspect of the case.

1 Thank you, sir.

2 (Pause in proceedings.)

3 THE COURT: All right. Go ahead and have a seat.

4 And Ms. Weintraub, what is it that you'd like to place
5 on the record?

6 MS. WEINTRAUB: Thank you, Your Honor.

7 Yes, Your Honor.

8 I respectfully submit to the Court that -- this is not
9 the first time -- but this is probably the most critical
10 witness of the case, and I was severely hampered and shut down
11 in my cross-examination.

12 I have -- first of all -- and I'll give the Court
13 specific examples, but I will also state to the Court that I
14 have never seen or heard of an example -- and I will look very
15 hard this evening -- of an argumentative objection being
16 sustained on cross-examination of a critical witness. It's --
17 first of all, it's not even a valid objection. And the Court
18 sustained it over and over and again. That's what
19 cross-examination is. It's argumentative. It is to debate
20 him. It is to show and be able to draw out his bias, which I
21 was not allowed to do.

22 For example, he testified earlier, last week, that he
23 didn't know why -- he implied that WSG transitioned into HM
24 Management for nefarious reasons. I was trying to demonstrate
25 no, no, no, no, WSG went out because Phil Wolman had a stroke.

1 His kids came into the business. Eric didn't want to deal with
2 his kids. He was involved in that -- the witness -- and that's
3 why it transitioned. It was not nefarious. It had nothing to
4 do with anything, except the common fact based on his kids that
5 Phil Wolman -- after the stroke. You wouldn't let me get into
6 that.

7 So the impression with the jury is, yeah, it was for
8 nefarious reasons. After he got shut down in Canyon Ranch with
9 Lehman Brothers he was screwing around with something and not
10 making it look kosher, and that's what the jury is going to
11 think because I was not allowed to explore that.

12 Then I wanted to bring out that he was the project
13 manager and about what the -- what the duties and
14 responsibilities of the project manager are and what happened
15 in Colorado. And it was important, again, because it was a
16 transitioning basis. And the Court shut me down again. And
17 yet, this is the basis where Jeff Graff is traveling with my
18 client and he's present in Colorado, and he is there when they
19 hire the project manager and tell him what has to be done and
20 what his duties and responsibilities are that include, I will
21 proffer -- include taking care of the accounting, include
22 taking care of the bills for the project that are going on.
23 That is now not in evidence.

24 And this was the only witness that could have brought
25 any of this in, by the way, Judge. And I kept trying to get to

1 the Court that this was a critical witness, and I'm being shut
2 down and denied my right of full and fair cross.

3 The business record objection being sustained I'll
4 never understand. I don't have to. But all I can say to the
5 Court is the March 2020 email about the grand jury having to do
6 accounting, is that it -- about having to do -- about the grand
7 jury having to do accounting, that's in evidence before the
8 jury. And yet, the REA, which he participated in, which
9 explains the basis -- one of the theories of defense in this
10 case, the Court denied. And we said over and over again
11 that -- we proffered to the Court this REA, these duties and
12 responsibilities get transferred to HM Four and I will tie it
13 up. And despite that representation, the Court accepted the
14 representation from the Government saying it's irrelevant
15 without more.

16 And I proffered to the Court very specifically what
17 the relevance is, because he's charged with applying for this
18 HM Four loan, and the Government maintains in their theory that
19 it's a passive company, it didn't have any duties and
20 responsibilities. And the Court has now denied me the
21 opportunity to demonstrate very clearly to the jury
22 specifically what the duties and responsibilities were that it
23 did have.

24 And then, to show the biggest bias -- my fifth reason
25 is -- and I will proffer this again and again -- Jeff Graff had

1 conversations with the Defense team with Barry Wax, with his
2 lawyer, who I really don't want to have to call, but I will if
3 I have to. And one of those conversations, he couldn't have
4 been more clear -- and I think there's email from Barry about
5 it as well confirming -- that he referred to Vasilas -- Graff
6 refers to Vasilas as sleazy and worming his way into Eric's
7 world -- worming his way in. And that's what he said to all of
8 us, and you wouldn't even let me ask him. And that clearly
9 shows his bias and what's going on. And it isn't a big
10 surprise that Jeff Vasilas is important in this matter.

11 The fact that -- you know, the Government makes a big
12 deal -- when we started out the day, the Court is allowing him
13 to talk about and show he has a 5,000-square-foot house. Wow.
14 He's got all this stuff. He's rich. And they even said in
15 opening he doesn't need it, he's got money, which, of course,
16 is not part and parcel of this case and is not relevant to
17 anything, except that they try and dirty him up every chance
18 they can with whatever they can. And to show that he wasn't
19 born of privilege, that he was adopted, that his parents, you
20 know, split up -- Jeff Graff knows that. I will also tell
21 you...

22 Judge, the reason that the Court, at least on the
23 record, said that it was allowing all this evidence in making
24 him the handwriting expert that they don't have, is because
25 it's based on -- and I could find the quotes for you -- the

1 Government's misrepresentation that he worked side by side with
2 him for his whole life and that he knows handwriting, he knows
3 this, he knows that about Eric Sheppard.

4 Well, if he knows this and he knows that, and he can
5 testify and nail him and convict him on an AIT, which isn't
6 true, certainly they should have been entitled to know that he
7 does not come from any means, and he is a self-made person, and
8 I think that part of that and the success goes to Graff's bias.

9 And again, being -- you know, bias is never
10 irrelevant. And for the Defense to be able to prove bias is
11 never something that should be overlooked. And I would cite to
12 the Court, in addition to the Sixth Amendment and the
13 confrontation clause of the Sixth Amendment guaranteeing
14 criminal defendants an opportunity to impeach through
15 cross-examination and the testimony of adverse witnesses, and I
16 would cite to the Court US v. Baptista-Rodriguez, 17 F.3d 1354,
17 which is an Eleventh Circuit case.

18 I would also cite to the Court that confrontation
19 doesn't just mean being able to cross-examine him.
20 Cross-examination is -- the whole thrust of all the cases with
21 cross-examination, as the Court well knows, is to give the
22 Defendant a full and fair opportunity to show the jury lack of
23 credibility of a witness, bias of a witness. And to deny
24 Defense counsel the opportunity to establish that on the
25 record, where I can properly make that argument and rely on

1 documents that the Court has excluded now, I believe are in
2 error.

3 Plus, the Court allowed -- again, not only -- we're on
4 Day 8. Not only have I heard about 19 tax violations of my
5 client that were never charged, I've heard about how he was in
6 bankruptcy when he wasn't. And they know that. And the fact
7 that they elicited that is outrageous. And the only reason --
8 the only reason I brought it up is because they brought it up
9 on direct, and I thought maybe he would tell the truth after I
10 went through it with him.

11 The fact that the Government, on redirect, got up here
12 and asked about bankruptcy, and he lied, is outrageous. And I
13 will state that to the Court. I am going to find a way to
14 bring that into this evidence -- into court, because there is
15 no bankruptcy. He's lying, and they know it, and they brought
16 it out. But today, we heard about more 404(b).

17 I mean, it's just total -- you know, Judge, on the
18 404(b), I told this Court just last week, as I did in the
19 pleadings -- I wrote: "Upon information and belief." Hint,
20 hint. He told me he never said that to the Government. Okay.
21 The Court signed its order. We respected the Court's order.
22 Then it comes up last week, and I bluntly told this Court he
23 never said what they say he said. He never said that Eric
24 Sheppard forged the document, and what he said was he learned
25 that the document was forged. And Ms. Jimenez, getting real

1 cute, wrote: "He learned that he forged it." And that's not
2 true.

3 And his testimony today was that he did not swear that
4 the visa application is signed by Eric Sheppard, and he wasn't
5 sure and he went back and forth about signing the engagement
6 letter. This Court said the other day you are admitting this
7 evidence because he signed the engagement letter. And I told
8 the Court that's not true. And I begged the Court can we --
9 before you admit it, when he's on the witness stand, please can
10 we have a sidebar. Can I make a proffer right at that time,
11 before you admit it, to show you what was coming. And the
12 Court denied me that right, and now it's out. And I would at
13 this time move to strike the 404(b) evidence that's before this
14 jury. It's wrong.

15 THE COURT: All right. Response by the Government?

16 MS. JIMENEZ: Well, on the 404(b), the witness said
17 multiple times when he was asked that was the Defendant's
18 handwriting. And he kept saying, but the -- counsel was
19 dissatisfied -- he kept saying that he did not see him sign the
20 document. That's what he said in his testimony, and he stood
21 by his response that this was his handwriting.

22 With respect to the other two documents, I brought out
23 on direct that he did not recognize the handwriting on those
24 signatures but that -- but that, based on his experience,
25 people who work for Eric Sheppard would not have signed that

1 document without his express direction and authorization.

2 That's what the testimony was. I mean, that's what the
3 testimony was. He did not observe anybody sign a document.
4 And I don't believe that that's required for 404(b) evidence.

5 The issue of bankruptcy, I don't know that -- he never
6 suggested anything nefarious on direct examination. When we
7 walked through WSG, I asked him if that company went bankrupt.
8 He said no. He said it ceased to exist. He did not suggest
9 that anything nefarious happened, but then from it HM
10 Management sprung up.

11 And then on cross-examination he was asked about
12 bankruptcies. And so I followed up that there were deals that
13 the Defendant has been involved in that went bankrupt, and
14 that's what he testified to.

15 Let me just say that what they have clearly planned
16 for cross-examination are to bring in substantive evidence
17 having nothing to do with impeaching a witness about anything.
18 There are documents he's shown that he doesn't remember, that
19 he might have worked on, nothing that he's asked about that he
20 denies that he's then confronted with for cross-examination.
21 They have a plan to bring in binders of documents so they can
22 argue whatever they want to argue to the jury later on. And
23 the Government has asked in writing, on 12 occasions in its
24 discovery, plus additional times in emails, plus in front of
25 this Court various times, for reciprocal discovery, which they

1 have not complied with. And they are simply putting in
2 document after document after document that has nothing to do
3 with impeaching the witness, the documents that should have
4 been turned over to the Government long ago.

5 THE COURT: All right. Both sides have properly set
6 forth their positions.

7 With regard to the -- there isn't a motion. There's a
8 claim that the Court limited the cross-examination. I do
9 believe that the Defendant had a full and fair opportunity to
10 expose the witness's bias as to Eric Sheppard.

11 Moreover, with regard to the claim, I know that the
12 claim was that the objections are -- with regard to
13 argumentative are improper. I would cite the parties to the
14 case of United States v. Williams with regard to this Court's
15 ability -- 181 Fed. Appx. 805, an Eleventh Circuit 2006, that
16 allows this Court to limit cross-examination when it is
17 bordering on argumentative. In this case, it certainly was.

18 And with regard to the argument regarding
19 Baptista-Rodriguez, the Defendant's right to cross-examine
20 witnesses is not without limitation, is entitled only to an
21 opportunity for effective cross-examination, not
22 cross-examination that is effective in whatever way and to
23 whatever extent the Defense might wish.

24 So at this point, I think the Court has ruled
25 properly, but the objections are preserved.

1 MS. WEINTRAUB: Judge, may I just mention one other
2 matter? And this was most concerning, because, as the
3 Government just said, you know, they keep going by -- they want
4 Graff to testify about the standard of care of Eric Sheppard,
5 and how he normally acted, and what he normally would do. And
6 literally -- literally -- there's an example where Scott Fish
7 was the project examiner. He signed documents. He stole over
8 a million dollars right under his nose.

9 Graff replaces him, knows about it, and it goes
10 against what Graff was saying. It is direct impeachment that
11 Eric knew everything that's going on. Oh, nobody would have --
12 he said today nobody would have signed a document without Eric
13 telling them to, and "I would jump off a bridge maybe." And I
14 was trying to impeach him with this, and the Court stopped me
15 and denied me that right, and I believe that my impeachment was
16 very ineffective.

17 THE COURT: All right. And the objection is
18 preserved.

19 At this point in time, we will adjourn for the day.
20 And I will see the parties here -- recall we have a matter at
21 nine o'clock tomorrow morning. So if you'd be kind enough to
22 move your items, so we can have use of counsel table. And I'll
23 see the parties tomorrow morning at 9:30.

24 You may certainly use the conference rooms.

25 MS. WEINTRAUB: Judge, do you want to finish the

1 exhibits?

2 THE COURT: If you can just move the items, so that we
3 have use of counsel tables.

4 MR. ETRA: Can we get the witnesses for tomorrow?

5 THE COURT: I believe that we're going to continue
6 with Mr. Graff. And after that, is it the intention of the
7 Government to call the same -- Neal Cupersmith, Brent Motes,
8 and Nelia Palancar?

9 MS. JIMENEZ: Yes, Your Honor.

10 THE COURT: All right, then. Have a nice afternoon.

11 COURT SECURITY OFFICER: All rise.

12 (Proceedings adjourned at 1:18 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 11th
9 day of December, 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 - 186.

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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