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 12, 2023
9:38 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 284

TRANSCRIPT OF TRIAL DAY 9
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
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ALSO PRESENT: Special Agent Sarah Halleran

I N D E X

W I T N E S S

E X H I B I T S

(Call to order of the Court, 9:38 a.m.)

THE COURT: Good morning to everyone.

Let me acknowledge the presence of Mr. Sheppard.

I believe that Liz sent to each of you an email, as she sent to me, advising of the status of Mr. Rosell. She spoke with him this morning. He is actually here to answer any questions, but he told her that tomorrow he needs to bring his wife to the doctor as well.

MS. JIMENEZ: Your Honor, I don't know if Mr. Rosell thinks he can continue. I think it is clear that he is distracted by a very serious health condition of his wife, who now needs emergency surgery. If he wants to continue, frankly, I think it's very concerning what's going on with this juror.

I would say also that the Government is entitled to present its evidence in a reasonable schedule that is not interrupted with large gaps of time. The jury needs to hear the evidence with some regularity so they can start piecing it together, and it's extremely unfair to the Government that this continues to happen.

THE COURT: So what is it that you're -- let's focus on Mr. Rosell.

MS. JIMENEZ: Mr. Rosell needs -- we would ask that he be excused and that the alternate juror be put in his place. I mean, that is what alternate jurors --

THE COURT: All right. On behalf of the Defendant?

MR. ETRA: Your Honor, we strongly object. We think that there's no basis for it. We have a situation here, Your Honor, where, even in the current schedule, there's no guarantee that we finish by -- I think we're scheduled through the 19th, Your Honor. I could be wrong. There's no guarantee we finish by the 19th. I don't know what happens after that. We can't look at the possibility of a long break without an alternate.

You know, the Government has an interest, but the Defendant has rights to be tried -- to be heard, to have his case resolved by this jury. We've put a lot of time and effort into this case. It would be very prejudicial to excuse him. And frankly, Your Honor, the case that was cited -- the Fifth Circuit case that was cited yesterday -- and I looked at other cases -- they're really -- they're already at deliberations and there's a prejudice issue, where there was no real need for the juror and there was a prejudice concern.

We don't have -- we don't have that here. We don't have any prejudicial concern. He's not impaired. And frankly, Your Honor, he is probably one of the most focused jurors we've seen. And we --

THE COURT: I'm sorry, Mr. Etra. He is impaired. He is impaired because he's not able to be here today, he's not able to be here tomorrow, and he's not able to be here on Thursday, and he was the reason why we cut short Friday.

So when you say that he's not impaired, he has significantly impacted the schedule of this trial. So for that reason, it is clear to the Court that his inability to continue to serve with the schedule that we have impacts our ability to move forward. And that certainly is reason -- putting aside, I mean, he was very candid with the Court yesterday that he was hopeful that the circumstances were not going to be such. We can certainly spend now another 10 minutes and ask him more about the circumstances with his wife, but the facts are what the facts are. His wife broke her vertebra, and is in need of emergency surgery at some point in the future, and is seeing doctors in order to get to that point.

MS. WEINTRAUB: Judge, he's -- I think that we are projecting how he feels. And he himself was questioned by the Court yesterday and said: "I am not that distracted." He's been living with this for a long time. And he said: "And when and if I am, I will let you know."

I object to the Court calling him out and questioning him again. I think it looks like we're encouraging him to get off this jury. My client specifically wants this juror --

THE COURT: Quite the opposite. What we are doing is ensuring that we can continue with our schedule, given his personal circumstances related to his wife's emergency care and treatment.

MS. WEINTRAUB: Judge, our schedule and the rush that the Court and Government are in, quite frankly, is not the primary concern. My client's Sixth Amendment rights certainly should trump a scheduling issue, all due respect.

THE COURT: Understood. Understood.

Let's bring out Mr. Rosell, so we can have on the record --

MS. WEINTRAUB: Judge, we would ask the Court not to do this and not to question him again.

THE COURT: Well, then -- I'm bringing out Mr. Rosell, so that the record can be clear based on the email. Right now, all we have is a conversation from Mr. Rosell to the courtroom deputy that was then relayed to each of you. I'd like to hear it from him himself, so that the record is very clear.

(Juror Number 3 enters the courtroom.)

THE COURT: Mr. Rosell, good morning, sir.

And I am sorry to hear about the circumstances related to your wife. And thank you for being here this morning.

Can you advise the Court of your schedule moving forward -- obviously, today is Tuesday -- with regard to your wife and her treatment and care.

JUROR NUMBER 3: Tomorrow, at nine a.m., we have an appointment with a surgeon for her back, a neurosurgeon. I think tomorrow we start at ten. I don't think I'll be here at ten, but it's just to see her and probably set an appointment before Christmas to have -- she's going to have back surgery on her back because she has a fractured vertebrae.

THE COURT: All right.

JUROR NUMBER 3: And then Thursday she has to see her oncologist. I believe it was 10:15. And we have another doctor we're trying to see in the morning, but I haven't been given that time. So for me, I would say tomorrow maybe at eleven, but I can't confirm that until I -- by noon I should be done. I think by eleven I'll be done, but by noon I should be done.

THE COURT: And what about Friday?

JUROR NUMBER 3: Friday she has an MRI in the afternoon, so I can come in the morning.

THE COURT: What time would you need to leave on Friday?

JUROR NUMBER 3: I think it's at two, so 12:30. I mean, I can confirm it tomorrow, but I think it's 12:30.

THE COURT: All right. And then, moving forward, next week, what would be the care of your wife?

JUROR NUMBER 3: On Monday she has an appointment at -- I think it's two o'clock. Beyond that, I don't have anything because I have to see these doctors that we're seeing.

THE COURT: All right. Thank you, sir.

JUROR NUMBER 3: Okay.

THE COURT: Appreciate it.

JUROR NUMBER 3: Thank you.

(Juror Number 3 exits the courtroom.)

THE COURT: The Defendant's objection is noted. The Court certainly recognizes and is of the opinion that this juror's personal schedule significantly impacts the trial schedule that we have laid out, and I am striking Mr. Rosell, and we will bring forward the alternate, John Dunlop, who will be a member of the panel.

Is there a form for Mr. Rosell?

MS. WEINTRAUB: Judge, I just want the record to be clear that we strenuously object, and my client specifically has been talking about this juror. And I will also state that it's obvious that he's the CEO of a construction company. Surely, he has the knowledge that we are looking for as a defense juror, and he has been the most engaged juror on this entire panel, and we object to the Court striking him.

THE COURT: All right. With regard to the schedule moving forward, I would like to see if perhaps we can alter it, given Mr. Rosell not being a member. And I would ask the courtroom deputy, after Mr. Rosell has left, to find out the jurors' schedule for Friday and to see if the parties would be available for a -- let's see what the --

MS. JIMENEZ: Yes, Your Honor. We certainly are available to proceed on Friday at the Court's pleasure.

THE COURT: On behalf of the Defendant for the availability of December 15th?

And you can go ahead and have a seat.

MS. JIMENEZ: Your Honor, I don't know if the Court wants to take up the exhibits now. I know that there were --

THE COURT: I'm sorry. I was asking whether the Defendant would be available on Friday.

MS. JIMENEZ: Well, he's supposed to be at the trial. I mean, why would he not be available?

THE COURT: I'm asking about the availability of counsel, and I'm not sure where we will be with the witnesses. We had previously stated we were not going to be in session, given Mr. Rosell's wife's appointment.

MS. WEINTRAUB: My problem is, Judge, that I've already told our potential witnesses that there wouldn't be court.

THE COURT: All right. Well, let's see if we can -- let's see where we are. And perhaps that's where we should start, and then we'll know where we are in terms of any case the Defendant is presenting.

As far as the Government's concerned, who is left?

MS. JIMENEZ: We have Mr. Cupersmith coming up next, Your Honor. And I know that there were three exhibits with his records that they had objected to. So we have Mr. Cupersmith. We have Mr. Brent Motes. We have Ms. Nelia Palancar. We have Maged Salem, Heimdal Barrios. We have Ladi Hysa.

MS. MARTINEZ: H-Y-S-A.

MS. JIMENEZ: Hysa. John Rodenhuis, who is the Breezeline witness who is now back to being available.

And those are the expected witnesses, Your Honor.

THE COURT: All right. So you have seven witnesses remaining?

MS. JIMENEZ: Yes.

THE COURT: All right. And what do you anticipate to be the schedule for the remainder of this week?

MS. JIMENEZ: We would like to be done in the next -- you know, Wednesday -- I mean, we wanted to be done by Wednesday. I don't know if that's possible now, given the half a day yesterday and the lengthy examination. But Wednesday or Thursday. It just depends. We don't know. We --

THE COURT: All right. Then, Ms. Weintraub, if you'll let the Court know once you speak with your witnesses with regard to their availability on Friday.

MS. JIMENEZ: Potentially even Thursday. I mean...

THE COURT: Well, our schedule right now is we're going to proceed today till five. We -- on Wednesday from ten to five. And then Thursday from ten to 4:30. That might be -- we're going to see if we can reshuffle the 9:30 to nine so we could start a little earlier.

MS. JIMENEZ: Your Honor, we would ask to have half a day on Friday, assuming there's a juror who is unavailable for half the day.

MS. MARTINEZ: As much of a day on Friday as possible.

THE COURT: Well, I'm waiting for -- there's no reason to ask the jurors if the Defense attorneys are not available on Friday.

All right. So at this point, let us proceed with the trial. At the appropriate --

MS. WEINTRAUB: I think it was a different juror, not Mr. Rosell, not Number 3, that had a problem for Friday.

THE COURT: I think it was Mr. Rosell.

MS. JIMENEZ: It was him and another juror.

THE COURT: It might have been two of the --

COURTROOM DEPUTY: Oh. Somebody needs -- yes. There is another juror that needed to leave by 12 because she had a flight.

MS. WEINTRAUB: Is there a doctor's appointment or something that she couldn't --

COURTROOM DEPUTY: She has a flight that she needs to be on. That is -- I believe it's Juror Number 5. So she can work until midday.

THE COURT: Okay. So we could work from nine to 12?

COURTROOM DEPUTY: Yes.

THE COURT: All right. So let's see about nine to 12, if that's a possibility.

MS. JIMENEZ: And just so the record is clear, I believe Mr. Rosell is Juror Number 13. I think he's being referred to as Juror Number 3.

THE COURT: Well, he's Juror Number 3 in terms of his selection.

MS. JIMENEZ: Ah. I see.

THE COURT: He's officially Juror Number 13.

All right. Both --

MS. JIMENEZ: Just because we have Mr. Cupersmith following Mr. Graff, and there were three exhibits that were objected to, 33, 34, and 35, I would say with 34 and 35, which are the Defendant's tax returns, the Court has already allowed his tax returns in with respect to the IRS witness. And then 33 is a tax return for a business that applied for an EIDL loan during the same period. It's one of the Defendant's companies.

MS. MARTINEZ: Applied for two EIDL loans.

MS. JIMENEZ: Two EIDL loans. So it's brief, just about that company.

MR. ETRA: Your Honor, we have the same objection on the personal tax returns. I know we were overruled, but we still have that objection on the personal tax returns. And on HM Six --

THE COURT: All right.

MR. ETRA: -- I mean, they have never been a part of this case. It's just now more unnoticed 404(b) to try to argue another, I guess, allegedly fraudulent loan application.

It's never been in the original Indictment. It wasn't in the briefing in the Bill of Particulars. It's not in the Superseding Indictment. It's just: Why don't we just try to prove some more -- why don't we just widen -- you know, divert the jury with more accusations.

MS. MARTINEZ: Your Honor, may I respond to that?

THE COURT: Yes. If we can -- how does it relate to the crimes charged in the Indictment?

MS. MARTINEZ: Yes, Your Honor.

Mr. Etra keeps misstating the law with respect to wire fraud. Wire fraud is a type of offense that includes several elements. One of the elements is a scheme to defraud. Another element is a specific wire. He keeps misstating that just because there's not a specific wire with respect to some of the details of the scheme that somehow that is uncharged. That is incorrect.

A wire fraud indictment charges first a scheme. It charges an approximate time period for the scheme, it charges the manner and means of the scheme, and then it charges some specific wires. So he is incorrect. It is charged conduct.

MR. ETRA: And that's why we did the Bill of Particulars, because we were concerned there was something in the Indictment that's not in the Indictment that we need to know about. And it was denied, as is the practice, based on in part the Government's response that laid out what their case was in their papers.

It didn't mention HM Six. Didn't mention -- we've always been talking about these six loans. And now what they are basically saying is as long as they call it a scheme to defraud they could come in the last day of their case and prove five new frauds that we didn't know was going to be any issue right before they close. That's not notice. That's why we did the Bill of Particulars.

MS. MARTINEZ: Your Honor, it is almost -- it is almost difficult to believe that Mr. Etra would make that argument to the Court. Number one, the Court knows the law with respect to bill of particulars. Number two, in this case, there have been motions filed and denied because the discovery has been incredibly extensive. These -- the Defendant is incredibly well resourced by incredibly talented lawyers, who have looked copiously at every detail of the discovery, which has included this.

Number two, these have been part of the trial exhibits, which they have had not marked by the first time that we were set for trial, not even the second time. And second, we have been in trial for over three weeks. And I mentioned the whole range of this in my opening statement. So it is unbelievable that he would make any argument that he is in any way surprised or that there is any attempt to bring this up at the last minute. He is simply wrong.

MR. ETRA: Paragraph 8 of the Indictment talks about -- basically says -- refers to the: "Fraudulent PPP and EIDL applications are part of the scheme," and they were talking about companies Alafaya Trails, which is HM-UP, HM Management, and HM Four. Those are the only companies that are within the scope of the Indictment.

MS. WEINTRAUB: Judge, it's also a variance of the Indictment that they are trying to prove at this point, and we would object.

THE COURT: All right. The record is preserved. The exhibits will be admitted into evidence. I was advised that Number 11, Mirna Ochoa, cannot be here Friday by the courtroom deputy.

MS. WEINTRAUB: I'm sorry, Judge. I didn't hear the last thing.

THE COURT: She cannot be here Friday; is that correct?

COURTROOM DEPUTY: Correct. I walked in to ask them to confirm on Friday, for that one juror, if she can be here, that she had to leave at twelve o'clock -- for Number 5. She said yes. And then Ms. Ochoa, who is Number 11, said that she cannot be here on Friday at all.

THE COURT: All right. So that leaves us with today, tomorrow, and Thursday, and then Monday and Tuesday.

Okay. All right. The exhibits are admitted into evidence.

(Government's Exhibits 33 through 35 received into evidence.)

MS. WEINTRAUB: Judge, what happens after that?

THE COURT: After that, then we're looking at January. I've advised you. I have arranged my schedule so that we could give you the 13th, 14th, and 15th. We could give that to you, but it's the jurors' schedule. And I've given you the 18th and 19th by resetting a trial. I don't -- I'm out of the district, so that's it. After the 19th, we'll be looking at the first or second week in January.

MS. WEINTRAUB: And Judge, so it's clear, when you said you advised us of that plan, that was in the middle of trial. And of course it's -- you know, it's out of the Defense's control completely.

THE COURT: Well, actually, it's not. It's both parties. It's both parties.

MS. WEINTRAUB: Wow.

THE COURT: Both parties have had a significant opportunity to examine and cross-examine the witnesses, and I gave you the days that you asked for right at the beginning of the trial. And you know, we started this trial on November 27th.

So at this point, I have given you the days that we have, and let's see where we are on the 19th. We -- well, actually on -- probably on Thursday we'll look to see where we are and then look to see what dates we have in January.

Are both sides ready to proceed?

MS. WEINTRAUB: Judge, is the Court out of the district on Wednesday because --

THE COURT: Yes.

MS. WEINTRAUB: So then the jury couldn't even deliberate, even if we close on Tuesday?

THE COURT: That's right.

MS. WEINTRAUB: So we can't close without -- right? We don't want to close -- I mean, I'm just trying to get an idea of the Court's --

THE COURT: I can see if my colleague can accept the verdict, but let's see where we are.

MS. WEINTRAUB: Is the Court reachable?

THE COURT: Yes. Of course.

MS. WEINTRAUB: I'm just asking.

THE COURT: Yes. Of course.

All right, then. Let's bring in the jury.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 9:58 a.m.)

THE COURT: All right. Good morning, Ladies and Gentlemen.

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

The delay was my fault, and we are ready to get to work, and we will continue with the redirect of Mr. Graff.

Mr. Graff, if you'll have a seat. Let me remind you, you were previously placed under oath.

Please have a seat, everyone.

REDIRECT EXAMINATION [CONTINUED]

BY MS. JIMENEZ:

Q. Good morning, Mr. Graff.

A. Good morning.

Q. I was asking you about what you reported to the Florida Department of Revenue yesterday. Is Graffco -- are you considered self-employed with Graffco?

A. I'm employed by Graffco. I was employed by Graffco.

Q. And when you were employed by Graffco, did you pay yourself a salary?

A. Yes.

Q. Is that salary something that you're supposed to report to the Florida Department of Revenue?

MS. WEINTRAUB: Objection. Leading.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. What do you report to the Florida Department of Revenue?

A. Wages -- my wages.

Q. What are your wages?

A. Salary.

Q. Now, you received -- did you receive additional compensation from HM Management aside from what you decided to pay yourself?

MS. WEINTRAUB: Objection. Leading.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Did you have any other compensation from HM Management besides the salary?

MS. WEINTRAUB: Objection.

THE COURT: And the basis?

MS. WEINTRAUB: Same. It's the same question. It's leading. The Court just sustained it.

THE COURT: I'll allow that. Overruled.

THE WITNESS: I'm sorry. Can you repeat the question?

BY MS. JIMENEZ:

Q. Yes. Did you have any other compensation from HM Management aside from the salary that you paid yourself?

MS. WEINTRAUB: Objection. Leading.

THE COURT: I'll allow it. Overruled.

THE WITNESS: I received the consulting fee from HM Management to Graffco, and from there is where I paid myself.

BY MS. JIMENEZ:

Q. Did you report the consulting fee to the Florida Department of Revenue?

A. No.

Q. Why not?

A. Because I paid myself the salary in other ways and it got reported to the various entities that way.
Q. Did you have any profit from the money you received?
A. Yes.
Q. What -- did you report that profit to the Florida Department of Revenue?
A. Not to the Florida Department of Revenue, no.
Q. Why not?
A. I don't know if I was supposed to. I reported it to the Internal Revenue Service.
Q. All right. So -- and you were asked a question about reporting your compensation to the federal agencies. Is the Florida Department of Revenue the federal agency in charge of taxes?
A. No.
Q. Who is?
A. Internal Revenue Service.
Q. Did you report your salary and any profits to the Internal Revenue Service as income?
A. Yes.
Q. Did you pay any taxes that were owed in relation to -- did you report any taxes -- I'm sorry. Did you pay any taxes that you were owed -- that you owed the IRS?
A. Yes.
Q. You were asked if you saved any money converting to a 1099.

Who decided that you would be a 1099?
A. Eric Sheppard.
Q. Did you have to pay taxes as a 1099?
A. Ultimately, yes.
Q. When you were converted from a W-2 to a 1099, did your employer save any money?
A. Yes.
Q. What was that?
A. The employer's portion of payroll taxes.
Q. You were asked whether the Defendant himself would hand Vanessa Gonzalez a W-3 Form to fill out when she was hired. Do you remember those questions?
A. Yes.
Q. Who decided whether Vanessa Gonzalez was a W-2 or not?
A. Either Eric or Jeanette.
Q. Who decided whether Jeanette Gonzalez was a W-2?
A. Eric.
MS. JIMENEZ: Can we show 12-5 and 12-6, please. They are in evidence.
BY MS. JIMENEZ:
Q. This is an IRS record for HM Management, 12-5 and 12-6. Regarding 941s for 2019 and 940s for 2019 and beyond, indicating that they were not filed.
MS. WEINTRAUB: Just -- excuse me, Ms. Jimenez.
I'm going to object. Beyond the scope, and so is this

document.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Did you decide --

MS. WEINTRAUB: Could you take it down.

THE COURT: Yeah. Let's take it down. The objection is sustained.

BY MS. JIMENEZ:

Q. Did you decide -- was it part of your responsibility at HM Management to decide whether or not Jeanette Gonzalez or Vanessa Gonzalez would be a W-2 employee or a 1099ed contractor?

A. No. That was not in my scope of work.

Q. Whose was it? Whose responsibility was it?

A. Eric's.

Q. Did you testify that the Defendant would hire general contractors for the developments of his properties?

A. For the construction of the properties, yes.

Q. In your experience working for HM Management, did the general contractors themselves have people that they hired?

MS. WEINTRAUB: Objection. Speculation. Beyond the scope. And if we could have any specifics of a time frame. This is within 20 years.

THE COURT: Yeah. Let's -- hold on. Let's narrow the scope in terms of the time frame.

BY MS. JIMENEZ:
Q. During the time when you worked for HM Management -- when did you start working -- when did WSG Development become HM Management?
A. 2013, '14, '11. Somewhere in there.
Q. Was there an Alafaya Trails -- or the Shoppes at Alafaya, had they been constructed at that point?
A. Probably pretty much.
Q. What about the CJUF property, the Fontainebleau Shops in Miami?
A. No. That hadn't been constructed yet.
Q. So for the Fontainebleau Shops in Miami, under HM Management, did the Defendant hire a general contractor or multiple general contractors?
A. Yes.
Q. Did those general contractors have employees or did they hire people to work for them?
MS. WEINTRAUB: Objection as to knowledge.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. If you know.
A. Yes. They hired people.
Q. Were the people who the general contractors hired for those jobs -- were they listed as W-2 employees for HM Management, if you know?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Sustained.

MS. WEINTRAUB: Objection.

BY MS. JIMENEZ:

Q. Did HM Management have as W-2 employees the workers or the general contractors?

MS. WEINTRAUB: Objection, Your Honor. Beyond the scope and beyond the scope of his knowledge.

MS. JIMENEZ: He was asked about the --

THE COURT: Hold on. Just lay a basis for his knowledge with regard to the listing of these individuals.

BY MS. JIMENEZ:

Q. Did you have familiarity with the QuickBooks at HM Management?

A. Yes.

Q. Did you have familiarity with the expenses of the business at HM Management?

A. Yes.

Q. The people who were hired under general contractors for the job sites, were they listed or paid by HM Management as W-2 employees --

MS. WEINTRAUB: Objection, Your Honor.

BY MS. JIMENEZ:

Q. -- of HM Management?

MS. WEINTRAUB: Objection, Your Honor. He clearly testified how he wasn't doing the accounting --

THE COURT: Hold on. If the witness knows based on his experience. Overruled.

THE WITNESS: They were not.

BY MS. JIMENEZ:

Q. You were asked some questions about an accounting department. When you worked for WSG Development, what was the time frame of that?

A. 2000 until it switched to HM Management.

Q. I'm sorry. Until...

A. Until we changed entities to HM Management.

Q. Did WSG Development have a staff?

A. Yes.

Q. What was the size of that staff before the economic downturn of --

MS. WEINTRAUB: Objection. Relevance.

THE COURT: The relevance is -- the objection is relevance? Overruled.

THE WITNESS: Probably 20 or so people.

BY MS. JIMENEZ:

Q. What was the size of the staff at HM Management in 2018, 2019, and 2020 before you left?

A. About five people.

Q. Who were those five people?

A. Eric, myself, Jeanette, Vanessa, Glenn.

Q. What about Mari?
A. She was part-time.
Q. Now, when WSG Development had a staff of approximately 20 people, did it have an accounting department?
A. Yes.
Q. How many people were in that department?
A. Probably five or six.
Q. In 2018, 2019, 2020, before you left, did HM Management have an accounting department?
A. Not a full department, no.
Q. What did it have?
A. A bookkeeper.
Q. You were asked about Neal Cupersmith and his firm having a fiduciary duty regarding the accuracy of something. Do you -- do you know whether Neal Cupersmith's firm ever conducted an audit of the Defendant's books and records?
MS. WEINTRAUB: Objection, Your Honor.
That is beyond the scope. Irrelevant.
THE COURT: Overruled. I'll allow it.
THE WITNESS: I don't believe they ever conducted an audit.
BY MS. JIMENEZ:
Q. What is an audit?
A. It's a full investigation of books and records.
Q. You were asked whether the accounting firm, Neal

Cupersmith's firm, remained the Defendant's accountant until the Defendant's arrest. When was the Defendant's arrest?
A. July of 2022.
Q. Regarding QuickBooks, do you know whether Jeanette Gonzalez kept track of payments to independent contractors on QuickBooks?
MS. WEINTRAUB: Objection, Your Honor. Beyond the scope.
THE COURT: Overruled. If the witness knows.
MS. WEINTRAUB: And beyond his personal knowledge, what Jeanette did.
THE COURT: If the witness knows.
THE WITNESS: I received a 1099 from Jeanette. So she probably did keep records.
MS. WEINTRAUB: Objection. Move to strike as to probably.
THE COURT: Sustained. And the motion is granted.
BY MS. JIMENEZ:
Q. Did Jeanette Gonzalez keep track of payments to independent contractors?
A. Yes.
Q. You were asked about an email between yourself and Jeanette Gonzalez stating something like you hated them. I don't think you were given the opportunity to explain. Can you explain what that was about.

A. So, around 2019 -- no. I'm sorry -- yeah, 2019, 2020, I was a partner with Eric in a development in Maryland, around Maryland. And Eric had sold his interest to Robert Kallman. And when I knew -- when I found out that Eric -- or when Eric had told me he was selling it, I asked him to sell my interest as well because I'm not friends with Robert. I didn't feel comfortable being Robert's partner. But Eric sold his interest and I was left with being partners with Robert.

So I asked Robert to buy me out as well, and we negotiated a buyout. And he paid me -- he didn't want to pay me all of it up front. He wanted to pay me half of it up front or at the time of signing and the other half six months later --

MS. WEINTRAUB: Objection, Your Honor. This is all hearsay of what Robert Kallman told him.

THE COURT: Overruled.

THE WITNESS: And then, after the six months, Robert didn't pay me. So I had to keep asking Eric to help me. And when I made the comment, I really hated the situation I was in and them for being put in the situation, not them as individuals.

BY MS. JIMENEZ:

Q. You were asked at one point whether you had referred to Jeff Vasilas as being sleazy. Do you remember that?

A. I think that was one of the words. I don't remember all the words that they said.

Q. Is it sleazy to blame fraud on a dead person?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. You were asked whether the Defendant relied on you for financial advice. Did you advise the Defendant who should be W-2 employees or who should be 1099 contractors?

A. No.

Q. Did you ever advise the Defendant to generate fraudulent tax returns?

MS. WEINTRAUB: Objection, Your Honor.

THE WITNESS: No.

THE COURT: The basis?

MS. WEINTRAUB: There's no foundation. It's an improper question.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. JIMENEZ:

Q. Did you ever advise the Defendant to submit false information to lenders for loans?

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

THE COURT: Overruled.

THE WITNESS: No.

BY MS. JIMENEZ:
Q. You were asked about whether the Defendant relied on you and relied on Jeanette Gonzalez to put stuff together. Do you remember that?
A. Yes.
Q. Did you put stuff together for the Defendant?
A. Yes.
Q. What stuff?
A. Annual CAM reconciliations for tenants. If we were working on a loan, we would put together rent rolls, and things like that, for submission.
Q. Did you slip in false documents when you put stuff together for the Defendant?
MS. WEINTRAUB: Objection, Your Honor.
THE COURT: Overruled.
MS. WEINTRAUB: There's no basis for this.
THE COURT: If the witness knows. Overruled.
THE WITNESS: No.
BY MS. JIMENEZ:
Q. Did you ever see Jeanette Gonzalez put false documents in any stuff she might have put together for the Defendant?
A. No.
Q. You were asked if the Defendant signed stacks of documents that he didn't review carefully because he trusted you and Jeanette. Do you remember those questions?

A. Yes.
Q. During COVID, in 2020 or 2021, did you go to the Defendant's house?
A. No.
Q. Do you know whether the Defendant was handed stacks of paper to sign when he was home alone with Mari and --
MS. WEINTRAUB: Objection. That wasn't the testimony. It's beyond the scope.
MS. JIMENEZ: Does he know? Does he know?
THE COURT: The predicate question -- sustained. Rephrase, please.
BY MS. JIMENEZ:
Q. Do you know whether the Defendant was home during COVID for a period of time?
A. I don't know.
Q. Did you ever provide the Defendant stacks of documents to sign when you were in the office?
A. Loan documents. We provided loan documents to sign, and they were normally stacks of documents.
Q. Did you ever slip in false documents in the stacks that you provided him to sign?
MS. WEINTRAUB: Objection, Your Honor.
THE COURT: And the basis of the objection?
MS. WEINTRAUB: A, it's been asked and answered.
THE COURT: Sustained.

MS. WEINTRAUB: B, there's no foundation.

MS. JIMENEZ: It's a different question.

THE COURT: On the first ground, sustained.

BY MS. JIMENEZ:

Q. I think you testified that Neal Cupersmith's firm and other -- and accountants at his firm prepared the Defendant's business tax returns. Is that accurate?

A. Yes.

Q. Do you know whether Neal Cupersmith's firm mailed the final signed tax returns to the Defendant's office while you were still in the office?

MS. WEINTRAUB: Objection, Your Honor. How could he possibly know if Neal Cupersmith in another state mailed something?

THE COURT: All right. Hold on. Hold on. If the witness knows, the objection is overruled.

Do you know, sir?

THE WITNESS: If Neal Cupersmith mailed tax returns to our office?

BY MS. JIMENEZ:

Q. Let me ask you this question: Did the office receive final signed tax returns from Neal Cupersmith's office while you were there?

A. We received the tax returns from Neal's office.

Q. Was it Jeanette Gonzalez's responsibility to prepare income tax returns for the Defendant's businesses while you were there?

A. No.

Q. Was it Jeanette Gonzalez's responsibility to prepare personal income tax returns for the Defendant while you were there?

MS. WEINTRAUB: Objection.

THE COURT: The basis?

MS. WEINTRAUB: Asked and answered, and it's beyond the scope of his knowledge --

THE COURT: Overruled. You may answer the question.

THE WITNESS: No.

BY MS. JIMENEZ:

Q. Was it Jeanette Gonzalez's responsibility to prepare any income tax returns while you worked at HM Management?

A. No.

Q. The tax returns that were received in the office, or that were in the office -- the income tax returns, did you ever see Jeanette Gonzalez mark them up?

A. No.

Q. Did you ever see Jeanette Gonzalez make entries on those income tax returns that were in the office?

A. No.

Q. Let me ask you about the visa application that you spoke about earlier. Did HM Management hire a law firm to help

obtain a visa for Ms. Ahumada?
A. Yes.
Q. When did you find out that that had happened?
A. March of 2019.
MS. JIMENEZ: Can we show 50-1, please.
BY MS. JIMENEZ:
Q. You found out in March of 2019. This letter is in evidence, 50-1. What is the date of this letter?
A. May 2nd, 2018.
Q. What is this letter?
A. This is the engagement letter hiring the firm.
Q. Hiring what?
A. The firm.
Q. Hiring the law firm?
A. Yes.
Q. And who was hiring the law firm?
A. It says me, but it's on behalf of HM Management.
Q. It was you on behalf of HM Management? Yes?
A. Yes.
Q. Did you hire that law firm in 2018?
A. No.
Q. At any point?
A. No.
MS. JIMENEZ: Let's go to the signature.

BY MS. JIMENEZ:
Q. When did you get a copy of this letter?
A. March of 2019.
Q. From whom did you get a copy of this letter?
A. Someone in the accounting office, the accounting department of the law firm.
Q. Was -- were you provided emails relating to the work that the law firm did?
MS. WEINTRAUB: Objection. Hearsay -- calls for hearsay.
THE COURT: Overruled.
THE WITNESS: Yes.
BY MS. JIMENEZ:
Q. That email traffic -- were you included in that email traffic about the work that was done regarding that visa application?
A. No.
Q. Now, that email traffic was shown to you. It was not shown to the jury.
MS. JIMENEZ: Before we come -- before we come back to this, can we show the witness 50-4, please.
Number one, I would ask that the emails be allowed into evidence to -- the witness had been asked questions on cross-examination about the emails, and they were not introduced. I think for sake of completeness they should be

in.

THE COURT: Is there any objection to 50-4?

MS. WEINTRAUB: Judge, I would object. We just used it to refresh his recollection. It's beyond the scope to seek to introduce it. They could have done it on direct.

THE COURT: These were emails that Mr. Sheppard and Mr. Graff both received?

MS. JIMENEZ: Yes.

THE COURT: All right. Is there any other basis for an objection?

MS. WEINTRAUB: Yes, Judge. They have not established business records for this witness to introduce them.

MS. JIMENEZ: These are not business records.

MS. WEINTRAUB: It's hearsay. It's an email from a lawyer that's not here.

THE COURT: All right. These -- the emails that were referenced in 50-4, the objection is noted, it would be admitted into evidence.

(Government's Exhibit 50-4 received into evidence.)

MS. WEINTRAUB: Could we have recross so we can at least discuss it?

THE COURT: And they were shown to the witness and the witness was questioned. Let's continue with the redirect, please.

MS. JIMENEZ: Yes. Can you back out for a second.
Can we go down to the last -- the bottom.
All right. Go up, please.
Go up.
Go up.
All right. Okay. I'm sorry. Go down for a moment.
All right. Here.
BY MS. JIMENEZ:
Q. The -- after the engagement letter was signed, the engagement letter that we looked at before -- by the way, did you see it on your screen before?
A. Yes.
Q. And that was the signature you were asked about; is that right?
A. Yes.
Q. Now, were you present when anyone signed that letter, the engagement letter?
A. No.
Q. Are you familiar with the Defendant's signature and handwriting?
A. Yes.
Q. Whose handwriting did that letter look like?
MS. WEINTRAUB: Judge, I object to the question. That isn't the standard, and it's not --
THE COURT: Sustained.

MS. WEINTRAUB: It's a signature of Jeffrey Graff.
THE COURT: The objection is sustained.
BY MS. JIMENEZ:
Q. The signature purported to be -- whose signature was it purported to be?
A. Mine.
Q. Did you sign it?
A. No.
Q. Are you familiar with the Defendant's handwriting?
A. Yes.
Q. Whose handwriting did it look like?
MS. WEINTRAUB: Objection, Your Honor.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Well, whose handwriting was it?
MS. WEINTRAUB: Objection.
THE COURT: The objection is sustained.
MS. WEINTRAUB: Call a handwriting expert.
BY MS. JIMENEZ:
Q. All right. This email -- do you recall that in addition to the engagement letter there were other documents that the law firm provided to you?
A. Yes.
Q. What were those other documents?
A. I got time sheets from the attorney, as well as letter --

you know, the visa application, as well as a letter to the Mexican Consulate, I think.
Q. Now, the letter to the Mexican Consulate, did that have your purported signature?
A. Yes.
Q. The visa document to the Department of Homeland Security, did that have your purported signature?
A. Yes.
Q. Did you sign those documents?
A. No.
Q. All right. Now, in the email traffic, were there emails between the law firm and others about that letter to the Mexican Consulate?
A. Yes.
Q. And the June 29th, 2018 email that we see here references a scanned letter. Is that the letter provided to the Mexican Consulate?
A. I'm not a hundred percent sure what --
Q. Well, the document that you received, was it -- it was a visa application --
MS. WEINTRAUB: Objection. She's testifying.
THE COURT: Rephrase.
BY MS. JIMENEZ:
Q. -- and a letter. Did you receive other documents besides the visa application and the letter to the Mexican -- letters.

What letters did you receive from the law firm?

A. The application and the letter to the counsel, consulate.

Q. All right. Now, the letter, was it provided -- the letter to the Mexican Consulate office, was it provided in the email chains?

A. Yes.

Q. Were you included in the emails?

A. Not originally.

Q. Was the Defendant included in the emails?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: And the basis?

MS. WEINTRAUB: He's now testifying about an email that he's not on, and now she's asking him if the Defendant is on that and participated. First of all --

THE COURT: Hold on. Hold on. I don't need a speaking objection. Are you referring to any of the emails in 50-4?

MS. JIMENEZ: I am.

THE COURT: The objection is overruled. The witness can look at the exhibit that's in evidence and answer the question.

MS. WEINTRAUB: Judge, does the Court realize that the witness was not on the email?

THE COURT: The objection is overruled, and the witness can answer the question.

BY MS. JIMENEZ:
Q. Was the Defendant copied on the email?
A. Yes.
MS. JIMENEZ: All right. Can we go up, please.
Go up, please.
Go to the very top.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. All right. Now, the last email in this email chain, what is the date?
A. March 7th, 2019.
Q. And who's it from?
A. The attorney Ray [sic] Barquet.
Q. Is the Defendant copied on this email?
A. Yes.
Q. Was this -- who was this email sent to?
A. Myself, people at the law firm, and Eric.
Q. All right. Now, what does it say -- what does the lawyer say about -- can you read the second sentence, please.
MS. WEINTRAUB: Objection, Your Honor. It's hearsay.
THE COURT: It's in evidence. Overruled.
THE WITNESS: "As seen from the provided 2018 email correspondence between us, Mr. Sheppard, and Ms. Ahumada, and Ms. Jeanette Gonzalez of HM Management, you were always portrayed as the authorized representative of the petitioning

employer for representations made under penalty of perjury and the authorized representative of the company for engagement of legal services purposes."

Q. All right.

MS. JIMENEZ: Can we show Exhibit 50-5, please.

BY MS. JIMENEZ:

Q. 50-5, what is this letter?

A. This was the letter that Eric sent to the law firm explaining the mix-up.

Q. Was this letter sent before or after you spoke with the Defendant?

A. After.

Q. All right.

MS. JIMENEZ: Now can we go to Paragraph 3, Page 2.

No. I'm sorry. Paragraph 5.

BY MS. JIMENEZ:

Q. Can you read: "I personally."

MS. WEINTRAUB: Judge, I'm going to object. It's beyond the scope. The document speaks for itself. And on 404, it's becoming a feature.

THE COURT: It's in evidence. The witness can certainly read from the document. Overruled.

THE WITNESS: "I personally was not in town, as I was on vacation and instructed people by telephone while hiking on a mountain, so obviously a misunderstanding occurred."

BY MS. JIMENEZ:
Q. And then the next sentence, please.
A. "There in no shape or form was any intention or bad faith with the signature mistake, just misunderstanding and careless by office staff."
Q. During your time working at HM Management, was the Defendant's staff careless?
MS. WEINTRAUB: Objection, Your Honor.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Did you see -- well, yourself and other members of the staff making careless mistakes such as --
MS. WEINTRAUB: Objection, Your Honor.
BY MS. JIMENEZ:
Q. -- such as writing somebody else's name on a law firm retention document?
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Did HM Management hire law firms during the time when you were there?
A. Yes.
Q. Who hired them?
A. Eric usually.
Q. You were asked about the Defendant doing a lot of traveling. Did he do some traveling?

A. Yes.
Q. Flying around the country?
A. Yes.
Q. After COVID, in 2020, did you do a lot of flying around the country?
A. No.
Q. In 2021, the first part, did you do a lot of flying around the country?
MS. WEINTRAUB: Objection, Your Honor. This is irrelevant.
THE COURT: Sustained.
MS. WEINTRAUB: Beyond the scope.
MS. JIMENEZ: All right. We can take this down.
BY MS. JIMENEZ:
Q. You were asked about a lease where you had seen the Defendant write out his -- or sign -- well, where the Defendant's signature was his full name written out. Do you remember that?
A. Yes.
Q. And I think you said you had not seen him sign his full name since you were in junior high or something?
A. Correct.
Q. Is it fair to say that you have not seen the Defendant write his full name in a signature?
MS. WEINTRAUB: Objection, Your Honor -- I'll withdraw

it.

THE COURT: All right.

THE WITNESS: Not recently, no.

BY MS. JIMENEZ:

Q. If you saw the Defendant's full signature, would you -- full name in a signature, would you necessarily recognize it?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Sustained.

MS. JIMENEZ: Can we show Exhibit 19-16.

BY MS. JIMENEZ:

Q. This is a document submitted with a loan application to PayPal --

MS. WEINTRAUB: Again, Your Honor, I would object. It's beyond the scope. It wasn't touched or asked about.

MS. JIMENEZ: He was asked about this document.

THE COURT: All right. At this point, the objection is overruled.

BY MS. JIMENEZ:

Q. You see the signature on the first page?

A. Yes.

Q. Whose signature does that look like?

MS. WEINTRAUB: Objection to the form of the question.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Whose signature is that, based on your familiarity --

MS. WEINTRAUB: Judge, it's the same objection.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Do you recognize the handwriting on this signature?
MS. WEINTRAUB: Judge, I object to this.
THE COURT: The objection is sustained.
MS. JIMENEZ: He was asked about this document on cross-examination.
THE COURT: Yes. And you can certainly ask about the document.
BY MS. JIMENEZ:
Q. Do you see a signature on this document?
A. Yes.
Q. Do you recognize the handwriting?
MS. WEINTRAUB: Objection.
THE COURT: To the handwriting, the objection is overruled.
THE WITNESS: Yes.
BY MS. JIMENEZ:
Q. Whose handwriting?
A. Eric Sheppard's.
Q. All right.
MS. JIMENEZ: Let's go to the next page.
Can we go to the page with handwriting.

BY MS. JIMENEZ:

Q. All right. Here, you were asked about the handwriting on this page...

MS. WEINTRAUB: Objection, Your Honor. Judge, this was covered on direct and not touched on cross. It's beyond the scope.

MS. JIMENEZ: It's absolutely discussed --

THE COURT: Overruled.

THE WITNESS: You may continue.

BY MS. JIMENEZ:

Q. The "HM-UP Development Alafaya Trails" and the numbers on this document, do you recognize the handwriting?

A. Yes.

Q. Whose handwriting?

A. Eric's.

MS. JIMENEZ: Can you just back out, please.

BY MS. JIMENEZ:

Q. As to the names, I think you testified that they weren't like Eric's unless he tried to print neatly; is that right?

A. Correct.

MS. WEINTRAUB: Objection, Judge. Is she now trying to impeach or walk him back from what he just testified?

THE COURT: Overruled at this point. Let's continue.

MS. JIMENEZ: All right. Can we move this to the side, please, and show Exhibit 39-9, Page 2.

BY MS. JIMENEZ:

Q. You were previously shown this document. Do you recognize the handwriting on this check?

MS. WEINTRAUB: Objection.

THE COURT: Basis?

MS. WEINTRAUB: He's not qualified as a handwriting expert --

THE COURT: It goes to the weight. Overruled. Overruled.

THE WITNESS: Looks like Jeanette's handwriting.

BY MS. JIMENEZ:

Q. Is that -- in the Florida Department of Revenue form on the left, was that Jeanette's handwriting?

MS. WEINTRAUB: Objection.

THE COURT: The basis?

MS. WEINTRAUB: He's not a handwriting expert --

THE COURT: And I don't believe that he's been qualified as such. The objection is overruled. Based on his personal knowledge.

THE WITNESS: No.

BY MS. JIMENEZ:

Q. Did you say that you were familiar with the way that Jeanette Gonzalez signed --

MS. WEINTRAUB: Objection. Leading.

BY MS. JIMENEZ:
Q. -- for the Defendant?
THE COURT: Sustained. Rephrase.
BY MS. JIMENEZ:
Q. Are you familiar with the way that Jeanette Gonzalez signed for the Defendant?
A. Yes.
Q. And the check on the right, whose handwriting was that?
MS. WEINTRAUB: Objection. Asked and answered.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. For the signature?
MS. WEINTRAUB: Objection. Asked and answered.
THE COURT: Sustained.
(Pause in proceedings.)
MS. JIMENEZ: Can we show Exhibit 19-8, please.
BY MS. JIMENEZ:
Q. I think you were asked about this exhibit. Was the Defendant's signature always exactly the same?
MS. WEINTRAUB: Objection, Your Honor. I object to the form of the question. He wasn't asked about it on redirect --
THE COURT: Hold on. Hold on. The objection is sustained. Rephrase, please.

MS. JIMENEZ: Yes. Could we go to the signature page.
BY MS. JIMENEZ:
Q. Were you asked about this document on cross-examination?
A. Yes.
Q. Were you asked about the signature?
A. Yes.
Q. Does the Defendant -- was the Defendant's signature always the same?
A. No.
Q. The handwriting to the right of the signature, do you recognize the handwriting?
A. Yes.
Q. Whose handwriting?
A. Eric's.
MS. JIMENEZ: Can you go back, please.
Go to the next one.
BY MS. JIMENEZ:
Q. Do you recognize the handwriting?
A. Yes.
Q. Whose handwriting?
A. Eric's.
MS. JIMENEZ: Go to the next one, please.
MS. WEINTRAUB: Judge, I object to this whole line of questioning. This is what direct was. This is not what cross was. It's beyond the scope and it's --

THE COURT: It's not beyond the scope of the cross-examination. Overruled.

BY MS. JIMENEZ:

Q. Do you recognize the handwriting?

A. Yes.

Q. Whose handwriting?

A. Eric's.

MS. JIMENEZ: Could we go to the last page, please. Page 12.

BY MS. JIMENEZ:

Q. Do you recognize the handwriting?

A. Yes.

Q. Whose handwriting is it?

A. Eric's.

Q. Did the Defendant have a computer in his office?

A. Yes.

Q. Did he use the computer in his office?

A. Yes.

Q. Did he know how to use the computer in his office?

A. Yes.

Q. You were shown some -- well, you were asked questions about an SBA application that you assisted the Defendant with. Do you remember that?

A. Yes.

Q. All right. Now, you were shown some emails by the Defense that were like the Government's emails, but they didn't have the attachment on the bottom. Do you remember -- the reference to the attachment on the bottom. Do you remember that?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: And the basis?

MS. WEINTRAUB: Mischaracterizes what the exhibit was.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MS. JIMENEZ:

Q. They did not have reference to the attachment on the bottom; is that right?

A. That's right.

MS. JIMENEZ: Let me pull up -- hold on a second.

(Pause in proceedings.)

MS. JIMENEZ: Can we pull up 50-9, please, Page 7.

BY MS. JIMENEZ:

Q. And this was -- was this part of the SBA documents that you exchanged with the Defendant?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Basis?

MS. WEINTRAUB: It's beyond the scope.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MS. JIMENEZ:

Q. Did you fill out the figures that are on this page of the

document dated March 26th, 2020?
A. Yes.
Q. Who provided the information for the figures that you input on this document?
A. Eric Sheppard.
MS. JIMENEZ: Can we go to the next page, please.
BY MS. JIMENEZ:
Q. Do you see Line 12, Number of Employees?
A. Yes.
Q. Who provided -- well, who typed in the numbers, the figures?
A. I did.
Q. Who provided the information for the number of employees for HM Four, the applicant of this loan?
A. Eric Sheppard.
Q. When you worked at HM Management, did you have a clear understanding of what "employees" meant?
MS. WEINTRAUB: Objection to the form of the question.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Did you know what the term "employees" meant?
A. Yes.
Q. What did it mean?
A. A person who worked for the company that was paid wages, salary.

MS. JIMENEZ: Can we put this document to the side, please.

Can we show Exhibit 50-5, Page -- 50-5.

Could we go to Page 2 -- no. I'm sorry.

50-5 -- no.

That's not 50-5.

BY MS. JIMENEZ:

Q. Do you recognize the letter?

MS. JIMENEZ: Could you go to the first page, please.

BY MS. JIMENEZ:

Q. Do you recognize the letter?

A. Yes.

Q. What is the letter?

A. That was the letter that Eric wrote to the attorney about the visa application.

Q. All right.

MS. JIMENEZ: Let's go to Page 2, please, Paragraph 3.

BY MS. JIMENEZ:

Q. Can you read the second sentence of the letter -- no. The first sentence. I'm sorry.

A. "Mr. Jeffrey Graff," quote/unquote, "Jeff, to my knowledge, owns a company named Graffco, LLC. Jeff's company is a paid consultant each month for HM Management and Development, LLC. Graffco and Mr. Graff individually was not and is not an employee of the company."

Q. All right.

MS. JIMENEZ: Can you go back to the loan document, please.

BY MS. JIMENEZ:

Q. Did you work with the Defendant for many years?

A. Yes.

Q. Did he have an understanding or did he know what the term "employee" meant?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Based on your dealings with the Defendant over 20 years at the companies, did he have an understanding --

MS. WEINTRAUB: Same objection.

BY MS. JIMENEZ:

Q. Did --

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Did he come to you and ask you for advice as to what the term "employee" meant?

MS. WEINTRAUB: Objection.

THE COURT: Overruled.

THE WITNESS: No, he did not.

MS. JIMENEZ: Can we go to 50-8, please.

All right. Go to the next page.

BY MS. JIMENEZ:

Q. Was the 4506-T documents -- were they filled out in connection with that loan application to the SBA you helped the Defendant with?

A. Yes.

Q. Okay.

MS. JIMENEZ: Can we go to the signed page.

BY MS. JIMENEZ:

Q. Who requested that this document be filled out?

A. I requested that it be filled out.

Q. Why did you request it?

A. That was a requirement of the loan.

MS. WEINTRAUB: Judge -- objection. Beyond the scope.

THE COURT: Sustained.

MS. JIMENEZ: He was asked --

BY MS. JIMENEZ:

Q. Did -- who filled out the 4506-T that we're looking at for HM Four?

MS. WEINTRAUB: Objection. Beyond the scope.

THE COURT: Sustained.

MS. JIMENEZ: Your Honor, he was asked about this document on cross-examination.

MS. WEINTRAUB: No, he was not, Your Honor. And I object to counsel testifying like that repeatedly during the course of this case.

THE COURT: The objection is sustained.

BY MS. JIMENEZ:

Q. Do you remember being asked about the 4506-T on cross-examination?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Overruled. If the witness recalls.

THE WITNESS: I don't remember specifically.

BY MS. JIMENEZ:

Q. Did the document require that the applicant specify the tax form and the tax years that are being provided to the IRS?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Sustained.

MS. JIMENEZ: Your Honor, he was asked about this document on cross-examination.

THE COURT: The objection is sustained.

BY MS. JIMENEZ:

Q. Do you know whether the IRS keeps tax information private --

MS. WEINTRAUB: Objection, Your Honor.

BY MS. JIMENEZ:

Q. -- unless you authorize them to release it?

MS. WEINTRAUB: Objection.

THE COURT: The objection is sustained.

BY MS. JIMENEZ:

Q. All right. You were asked whether you got a final paycheck

from HM Management when you left. Yes?
A. Yes.
Q. Were you owed money apart from receiving a final paycheck when you left the company?
MS. WEINTRAUB: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I'm sorry. Can you just repeat it one more time?
BY MS. JIMENEZ:
Q. Were you owed money aside from being paid a final check when you left?
A. Yes.
Q. Were you paid that money?
MS. WEINTRAUB: Objection.
THE COURT: Overruled.
THE WITNESS: No.
BY MS. JIMENEZ:
Q. You were asked questions -- or you were asked whether the Defendant had anything to hide. Do you remember that?
MS. WEINTRAUB: Objection, Your Honor.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. Were you asked whether the Defendant had anything to hide?
MS. WEINTRAUB: Objection, Your Honor.
THE COURT: Sustained.

MS. WEINTRAUB: It's also --
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. During COVID, did the Defendant ask you for -- well, let me ask you this: You're an accountant? Yes?
A. Yes.
Q. And you have a master's in accounting? Yes?
A. Yes.
Q. During COVID, did the Defendant ask you for advice regarding any PPP loan?
MS. WEINTRAUB: Objection, Your Honor. He wasn't working for him at that time, as counsel knows.
THE COURT: The objection is overruled. The witness can answer accordingly.
THE WITNESS: No, he did not.
BY MS. JIMENEZ:
Q. Did the -- during COVID, did the Defendant ask you for advice regarding any Economic Injury Disaster Loan?
MS. WEINTRAUB: Judge, I'd object on the Fifth Amendment grounds and the Sixth Amendment grounds.
THE COURT: Overruled.
THE WITNESS: No, he did not.
MS. WEINTRAUB: It's also quite beyond the scope.
BY MS. JIMENEZ:
Q. You can answer.

A. No, he did not.

Q. Did the Defendant ask you for help in filling out any COVID relief loan application during COVID?

MS. WEINTRAUB: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. JIMENEZ:

Q. Did the Defendant tell you that he had gotten PPP loan money or EIDL loan money during COVID?

A. No.

MS. JIMENEZ: Your Honor, if I could just have a moment, please.

THE COURT: All right.

(Pause in proceedings.)

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

THE COURT: Is Mr. Graff excused?

MS. JIMENEZ: Yes, Your Honor.

THE COURT: Is Mr. Graff excused?

MS. WEINTRAUB: Your Honor, may I have recross?

THE COURT: There's no opportunity for a recross.

Thank you, Mr. Graff. You are excused.

(Witness excused.)

THE COURT: And the Government's next witness, please.

MS. JIMENEZ: Yes, Your Honor.

The Government calls Neal Cupersmith.

THE COURT: Ladies and Gentlemen, are you in need of a short break?

Yes. Of course.

All right. Let's go ahead and take a 10-minute recess.

COURT SECURITY OFFICER: All rise.

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

(Recess from 10:55 a.m. to 11:00 a.m.)

THE COURT: All right. Welcome back.

Let me acknowledge the presence of the Defendant.

Are both sides ready to proceed?

MS. WEINTRAUB: No, Your Honor.

Your Honor, I'd like to bring something to the Court's attention.

THE COURT: All right. Go ahead and have a seat.

MS. WEINTRAUB: May I proceed?

THE COURT: Yes, of course.

MS. WEINTRAUB: Two matters, Your Honor.

One is the idea on these redirects of the prosecution bringing up all new matters and referring to documents that weren't introduced, and et cetera. That's one issue that I know is preserved and my objections and the Court's rulings are on the record. However, when it comes to a closing argument and redirect and questions such as: "You think it's sleazy for the Defendant to be blaming a dead guy for his fraud" --

THE COURT: And there was an objection, and it was sustained. So Ms. Weintraub, the record is preserved. I would like to use the time to bring the jury in the courtroom and proceed with the witnesses.

MS. WEINTRAUB: Your Honor, I want to make sure it doesn't happen again. And Your Honor, I still have the motion for a mistrial, and I don't -- every time we take a break, I just don't want the record to not be clear that I've been asking for time to discuss this with the Court since Jeff Graff's testimony regarding the 404.

THE COURT: All right. And the record is preserved. We can take your motion for a mistrial at the lunch break. All right?

MS. WEINTRAUB: Thank you.

THE COURT: Let's bring in the jury.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 11:10 a.m.)

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

Please be seated, everyone.

And the Government's next witness.

MS. JIMENEZ: Thank you, Your Honor.

The Government calls Neal Cupersmith.

THE COURT: All right. Good morning, Mr. Cupersmith.

If you'll step forward, please.

NEAL CUPERSMITH, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

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

THE WITNESS: Neal A. Cupersmith.

COURTROOM DEPUTY: Please spell it for the record.

THE WITNESS: Oh, sure. N-E-A-L C-U-P-E-R-S-M-I-T-H.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good morning, Mr. Cupersmith. Were you served with a subpoena to appear at this trial?

A. Yes.

Q. Can you briefly tell the Members of the Jury your educational background.

A. I graduated from Temple University in 1967. I became a CPA in Pennsylvania in 1969, and in New Jersey a CPA in 1973. I take continual courses required by the AICPA, 40 hours a year.

Q. And your degree from college, was that in accounting?

A. A bachelor of science and a major in accounting.

Q. How long have you been practicing as an accountant, Mr. Cupersmith?

A. Over 50 years.

Q. Do you have your own accounting firm?

A. As of -- yes. But as of November 1st, we merged with another firm. Verna & Associates, V-E-R-N-A.
Q. And before you merged with Verna & Associates last month -- was that last month?
A. November 1st.
Q. What was the name of your firm?
A. Cupersmith, Wilensky, Stempler & Company, LLC -- LLP. Excuse me.
Q. Where is your accounting firm located?
A. Pennsauken, New Jersey.
Q. And where is your office located?
A. Pennsauken, New Jersey.
Q. Were you previously in Philadelphia?
A. Long time ago.
Q. When were you in Philadelphia?
A. Probably 30 years ago.
Q. Okay. Were you in New Jersey close enough to fly out of Philadelphia?
A. My office is 20 minutes from Philadelphia.
Q. All right. Your work at your accounting firm, what does it consist of primarily?
A. It's a general practice firm. We have different kinds of clients. We have construction, doctors, consultants. It's a varied type of a practice.
Q. What type of tax-related documents do you prepare?

A. We prepare for individuals, corporations, partnerships, non-profit companies.
Q. Tax returns?
A. Tax returns and financial statements.
Q. Do you also conduct audits?
A. We do audits, reviews, and compilations.
Q. What are audits, reviews, and compilations generally?
A. An audit is when you seek outside information with a client; in other words, the client would prepare a financial statement for you and you would seek outside information to verify the balance of the various loans, banks, proof of -- if they owned buildings, you would try to prove that they had deeds to own that building, and all liabilities would be approved. And then there's various other audit procedures to verify the expenses as well.

A review is less intensive. A review does not require outside verification, but it's testing of the information on the client's financial statement to make sure it's true and correct to be able to at least offer an opinion on the review. The same as an audit. That's -- part of the audit is to issue an opinion that the statement prevents -- presents fairly the financial condition of the company.

A compilation is just accumulating the information from the client and putting them on a piece of paper, a financial statement, and issuing it, probably no footnotes.

Q. All right. Now, is -- generating an income tax return for a client, does that involve conducting an audit?
A. No.
Q. Why not?
A. Because we're accepting the information from the client as presented to us and putting them on a tax return. There's no verification. We do ask for verification of certain items, balance sheet items and certain expenses. But if it's not presented, we prepare the tax return.
Q. And --
A. And we would take an exception if we didn't have all information --
Q. When you prepare the income tax return, what is -- the information on the return, what is it based on?
A. We would ask for a trial balance -- QuickBooks, which is a form of creating a trial balance --
MR. ETRA: Objection. Could we have a clarification if this is in general or if they are talking about the companies here.
THE COURT: I believe it's in general.
BY MS. JIMENEZ:
Q. In general.
A. We would ask for bank reconciliations. We'd ask for copies of payroll taxes, loan documents to verify what -- the accuracy for the tax return.

Q. And so my question is: The information that ultimately makes it onto an income tax return, where does it come from?
A. The client or the client's bookkeeper.
Q. Do you know Eric Sheppard?
A. Yes, I do.
Q. How long have you known Eric Sheppard?
A. Approximately 25 years.
Q. Do you see him here in the courtroom?
A. Yes, I do.
Q. Can you identify him by an article of clothing and his location in the courtroom.
MR. ETRA: Stipulate, Your Honor.
THE COURT: All right. You want to accept the stipulation, Ms. Jimenez?
MS. JIMENEZ: That's fine.
THE COURT: All right, then.
BY MS. JIMENEZ:
Q. Have you done any accounting work for Eric Sheppard, the Defendant, or his businesses?
A. Yes.
Q. Since when, approximately?
A. Probably the entire time that I have known him.
Q. Twenty to 25 years?
A. Yes.
Q. What accounting work have you done for Eric Sheppard?

A. I prepared his personal return for he and his wife and I prepared the tax returns for various entities that he owns.
Q. Is that something you did each of the years that you've known him?
A. Yes.
Q. How many entities or corporations belonging to the Defendant have you prepared tax returns --
A. Well, there's a lot of -- that have gone out of business. So right now, I would say about 10 or 12. I don't have a list in front of me, but there's probably 10 or 12 now, but there were a lot of companies that did go out of business. They completed their construction, the property sold, and that's years ago.
Q. So was it a lot of companies over the years?
A. Yes.
Q. Have you performed any audits for the Defendant or his businesses --
A. No.
Q. -- in any of the years --
A. No.
Q. -- conducted -- I'm sorry. Let me finish the question, please.
A. I'm sorry.
Q. For any of the years when you prepared tax returns?
A. No.

Q. Are you still the Defendant's accountant today?
A. No.
Q. Approximately when did you stop doing accounting work for the Defendant?
A. In July of '22.
Q. July of 2022?
A. Yes.
Q. Now, over the years, what has been your role in the preparation of the Defendant's tax returns?
A. We would accumulate the data from the bookkeeper, Jeanette Gonzalez, and prepare the return.
Q. Who at your firm prepared the returns?
A. My partner, Alex Zaslow.
Q. And did you have any role relating to the tax returns before they were finalized and sent out?
A. Yes. I reviewed his work papers and the preparation of the tax return.
Q. Did you do anything else before it was sent out?
A. No.
Q. Did you sign the return?
A. Yes.
Q. How many copies of the return would you sign?
A. Just the one.
Q. Just the one?
A. That went to the client to mail to the Internal Revenue.

Q. So was there a single original return?
A. Yes.
Q. At what point in the process did you sign the return?
A. When it was ready to go out, be mailed to Eric, and -- Eric and his wife for the personal, and Eric for all the corporate and the partnerships.
Q. Did you make any changes to any income tax return after you signed it?
A. No.
Q. At any point, for any of the tax returns that you prepared for the Defendant over the years, did you make any changes to any tax return after you signed it?
A. No.
Q. Did you keep a copy of the tax returns in your office?
A. Yes.
Q. Did you keep a signed copy of the returns in your office?
A. No.
Q. Why not?
A. Wasn't necessary to sign the signed copy. It's part of our records, so I didn't need to sign it.
Q. Did you file the Defendant's tax returns?
A. No. We sent it to him with mailing instructions.
Q. Whose responsibility was it to file the returns after you prepared it?
A. The taxpayer.

Q. What type of business structure was -- were the Defendant's entities?
A. Mostly a lessor of real estate shopping centers.
Q. I mean --
A. And he had a management company.
Q. I'm sorry. Let me ask you this --
A. Okay.
Q. Let me ask you: When are the personal returns -- income tax returns due?
A. October 15th, after extensions from April 15th.
Q. Did you typically -- and who would file extensions for the personal tax returns?
A. Someone in my office would do that, probably Alex Zaslow, in behalf of the client.
Q. Who are we talking about, Eric Sheppard?
A. Eric Sheppard and his various entities.
Q. All right. So -- and then what about the companies? When are the company tax returns due?
A. They're due March 15th and September 15th on extension.
Q. Do you submit extensions for his businesses?
A. Our office did, yes.
Q. Was it -- in typical years were you filing extensions or were you filing on March 15th and April 15th?
A. From my -- best of my recollection, we always had extensions.

Q. Before the -- well, at any -- in the years when you filed for extensions, at what point during the year did your office begin to actually prepare the returns?
A. Once we got all of the information that we requested, we attempted to prepare the returns. So it would be sometime in October of that year or December of that year.
Q. Would you prepare the returns in the first quarter of the year if you were getting the extension?
A. No. I would not have the information at that time.
Q. All right. What records did you typically receive from the Defendant's office to prepare the income tax returns?
MR. ETRA: Objection. Is it him or is it his office, because he wasn't the preparer of the returns.
THE COURT: All right. Let's clarify the question, please.
BY MS. JIMENEZ:
Q. Did someone in your office request records to prepare the tax returns?
MR. ETRA: Objection. No foundation. Hearsay.
THE COURT: Overruled.
BY MS. JIMENEZ:
Q. Did someone in your office request records to prepare --
A. My partner, Alex Zaslow.
Q. And so that we're clear, let's just say the last -- let's say 2018 through 2021. All right?

A. We didn't prepare anything for 2021. So it would be '18, '19, and '20.
Q. Well, for tax a -- for tax year 2020, when would the return be prepared?
A. For '20, it would have been -- depends on which year, but it should have been prepared before September 15th for the businesses. They were prepared -- some were prepared in October and some were prepared in December.
Q. Right. So for tax year 2020, in which calendar year was the tax return prepared?
A. In '21.
Q. All right. So -- and that's what I mean --
A. Okay.
Q. -- in my time frame.
A. Okay.
Q. That is for tax -- the -- the tax returns -- so I'll take your point. For tax returns for tax year -- up through tax year 2020, prepared in 2021, who at the Defendant's company or companies provided the records?
A. The bookkeeper.
MR. ETRA: Objection. Hearsay. If he knows, it's because Mr. Zaslow told him, and that's hearsay.
MS. JIMENEZ: It's his firm.
THE COURT: The objection is overruled. I'll allow it.

THE WITNESS: I actually spoke to the bookkeeper as well. And often I used to visit his office, so I know Jeanette Gonzalez. So I sat with Alex when he called her, and also I saw emails to her requesting information.

BY MS. JIMENEZ:

Q. So was it Jeanette Gonzalez who provided records?

A. Yes.

Q. What records did she provide?

A. Multiple bank statements, trial balances, journal entries -- not journal entries, cash receipts, cash disbursements.

Q. Did she provide you like draft tax returns?

A. No.

Q. Did -- in those tax years, for tax year 2018, tax year 2019, tax year 2020, did you deal with a controller at the business, HM Management?

A. I'm not sure of the timeline, and I don't remember if Jeff Graff had a title at all. And I'm not sure when he was there and not there, but I really dealt directly with Jennifer [sic].

Q. With Jeanette Gonzalez?

A. I meant Jeanette Gonzalez.

Q. Did she have the title of controller?

A. Not that I was aware of, no.

(Pause in proceedings.)

BY MS. JIMENEZ:
Q. What are QuickBooks?
A. That's a summary of your transactions for the year, cash receipts, cash disbursements. If you're on a cash basis, then you could enter the accruals as well, items that are unpaid but are deductible for the year in question.
Q. Is it like --
A. It produces an accountant's trial balance.
Q. Is it like a ledger where you --
A. Yes.
Q. -- enter --
A. You enter the information, the cash receipts, cash disbursements, and journal entries you make. She would provide us that QuickBooks file.
Q. Did you have conversations with the Defendant from time to time about the preparation of tax returns?
A. Very slightly. Very little conversation with him.
Q. During the 20, 25 years that you prepared income tax returns for the Defendant and his businesses, did he ever tell you that he had another outside accountant?
A. No.
Q. Did you produce records to the United States in response to a subpoena?
A. Yes.
Q. All right. Did your firm prepare tax returns for a

business by the name of HM Management and Development, LLC?
A. Yes.
Q. What's an LLC?
A. It's a limited liability company. It's a partnership. It's a limited -- it's a form of a corporation, but it's taxed as a partnership.
Q. Why were the Defendant's businesses partnerships?
A. It's just -- you can select an S corporation. You can select various types. It's an easier way -- LLCs are an easy way -- and especially in real estate, to have the transactions flow through a partnership -- taxed as a partnership.
Q. And the transactions in the partnership -- you said: "Flow through." Where do they flow through to?
A. The LLC is a non-taxable entity. It prepares -- it reports K-1s, which is a summary of the information on the LLC, which passes through to the individual members of the LLC.
Q. It passes through to the individual tax return?
A. Correct.
MS. JIMENEZ: Can we show Government's Exhibit 29-2, please.
All right. Can we enlarge the top box, please.
BY MS. JIMENEZ:
Q. All right. For tax year 2019 did your firm prepare a 1065 partnership return for HM Management and Development, LLC?
A. Yes.

Q. There is a -- in Box C, on the left-hand side, there is a business code. What is that?
A. That describes -- I think it's called N-C-I-S [sic]. It's a code the government uses to decide what type of business it is. I believe that's for lessors of other real estate, that code number.
Q. The code number, did you have to determine what type of business this company was in to enter the code number?
MR. ETRA: Objection. Leading.
THE COURT: Overruled. I'll allow it.
THE WITNESS: Yes.
MS. JIMENEZ: All right. Can we go to the -- can we back out for a second and we -- go to the second page of the return.
All right. Can we box -- can we bring this out.
BY MS. JIMENEZ:
Q. Mr. Cupersmith, this is a page -- the second page of this tax return -- well, let me back up.
We saw the first page. Did your firm prepare the 2019 tax return for HM Management and Development?
A. Yes.
Q. All right. The second page, what is this, Declaration of Preparer?
MR. ETRA: Objection. He's not the preparer. He already said he did not prepare these returns.

THE COURT: Overruled. At this point.
BY MS. JIMENEZ:
Q. Who is the preparer? Is it your firm?
A. The firm is the preparer. Just because someone else prepared it, it's still the firm prepared it.
Q. What is this declaration about?
A. If I don't get sufficient information to prepare the return, I put this Declaration of Preparer. We -- we requested certain information and were not provided for it. So it's my way of telling the Internal Revenue if something comes forward after we file the tax return, I would -- I would -- it would be my obligation to report it to the Internal Revenue. But we did not get all the information that we requested.
Q. All right.
MS. JIMENEZ: Can we go to Page 17 of this tax return.
All right. Can we -- just go down to the percentage, please. All the way down to the percentage.
Thank you.
BY MS. JIMENEZ:
Q. And the K-1 that you indicated, what does it reflect?
A. It reflects ownership by Eric Sheppard of 99 percent.
Q. For --
A. Of HM Management and Development, LLC.
Q. All right.
MS. JIMENEZ: And then can we go to Page 20.

BY MS. JIMENEZ:
Q. All right. And then the one percent owner of HM Management for tax year 2019, who was that?
A. Jeffrey Graff.
Q. All right.
MS. JIMENEZ: Can we go back to the first page.
All right. Can we -- down to the -- there we go.
BY MS. JIMENEZ:
Q. Okay. For this company, the gross receipts in Line 1, can you see that?
A. Yes.
Q. What is that?
A. That's the management fees charged to the entities.
Q. The management fees?
A. Charged to his other entities.
Q. All right. Okay. And then was there a net income --
A. Yes.
Q. -- reported?
A. You have to go further down.
MS. JIMENEZ: We have to go further down for the net income.
The line -- there we go.
BY MS. JIMENEZ:
Q. Line 23, what is that?
A. It's 22.

Q. Or 22. I'm sorry.
A. 490,320.
Q. Is that what goes to the personal tax return?
A. Yes.
Q. Okay.
MS. JIMENEZ: Can we go to Line 9.
BY MS. JIMENEZ:
Q. Mr. Cupersmith, this tax return for 2019, for salaries and wages, what does it reflect?
A. $134,811.
Q. Now, for tax year 2019, aside from HM Management and Development, LLC, did any of the Defendant's businesses report any wages or salaries to your firm?
A. We had asked for copies of 941s and were -- that's one of the things that wasn't provided to us.
Q. Well, let me ask you -- my question is this: Aside from HM Management and Development, aside from this company, did any of the other Defendants -- did any of the other companies belonging to the Defendant report any salaries and wages?
A. In '19 and '20 or just '19?
Q. Well, '19 or '20. Did any --
A. This company reported -- I don't have it in front of me -- a few thousand dollars in '20.
Q. Right. But aside from HM Management, did any of the other businesses report any salary and wages?

A. No. No.
Q. All right.
MS. JIMENEZ: Can we go to Exhibit -- just leave this to the side. Can we go to Exhibit 29-9, please.
BY MS. JIMENEZ:
Q. What records did you receive for Line 9, Salaries and Wages?
A. We received with the QuickBooks file the trial balance. And we also received -- as I said before, we requested the 941s, which were not given to us. We did get a sheet that showed wages equaling to that.
Q. Okay.
MS. JIMENEZ: And on this one, can we highlight the top.
BY MS. JIMENEZ:
Q. This document says: "Profit and Loss." Did you receive this from the client?
A. Yes.
Q. All right.
MS. JIMENEZ: Let's go down this page to -- to the bottom third of the page.
BY MS. JIMENEZ:
Q. Do you see where it says: "Payroll Expenses" and "Wages"?
A. Yes.
Q. All right. And they reported to you how much in wages for

tax year 2019?
A. 177,060.
Q. All right.
MS. JIMENEZ: Can we go to 29-4. Leave the tax return on the left.
All right. 29-4 -- can we enlarge.
Can you go back and don't cut out the top heading.
BY MS. JIMENEZ:
Q. All right. 29-4, what is this?
A. This is a summary given to us of the payroll for the year 2019.
Q. All right. Who provided this to you -- to your firm?
A. Jeanette Gonzalez.
Q. All right. And then the right side, there's something called "Monthly Adjustments." What are those?
A. These would show picking up the journal entries. You get it on the books. They were so much for payroll, so much for payroll taxes.
Q. All right. But who prepared the adjustments? Was it the client or was it your firm?
A. I'm not positive. I would say the client, but I'm not a hundred percent positive.
Q. Well, do accountants make adjustments when they receive records?
A. Yes. Yes.

MS. JIMENEZ: Can we go back out for a second.
All right. And then -- I can't see the figures.
Give me a moment.
(Pause in proceedings.)
MS. JIMENEZ: I can't see. Can you pull out the document again.
Okay. Well, I don't see it on here.
Okay. Go back out.
BY MS. JIMENEZ:
Q. Is this the record that you -- that your firm received to establish the payroll that ended up on Line 9 of the tax return?
A. Yes. Yes.
Q. Okay. Did you request any IRS Form 941s or Forms 940?
A. We did request 941s, 940s, and W-2s.
Q. Did you receive them?
A. No.
Q. Okay.
MS. JIMENEZ: Can we show him Exhibit 12-5 and 12-6, please.
Can we highlight the middle.
Yes.
BY MS. JIMENEZ:
Q. Okay. These are IRS records, 12-5 and 12-6, for HM Management Form 940 and 941s.

A. Okay.
Q. Do you see that?
A. Yes, I do.
Q. All right. So for tax year 2019, 2020, and 2021, those tax forms were not provided to the IRS. Were you aware at the time the tax return was prepared that those --
A. We never saw the returns themselves. We were told they were prepared and filed.
Q. The 940s or 941s?
A. Right.
Q. Would you have made any changes to the tax return if you had this information?
A. I would have removed the wages.
Q. All right.
MS. JIMENEZ: Could we go to Exhibit 29-5, please.
Down -- is this the only page?
Okay. Go down, please, to...
I'm sorry. Can you go down to the last -- last email.
Is it -- okay. Go up.
Okay. Let's go up.
That's okay. Let me ask -- well, the -- go down to the next email below this.
BY MS. JIMENEZ:
Q. There's an email from Eric Sheppard. Do you see that?
A. Yes.

MS. JIMENEZ: Don't cut all of the email heading, please.

BY MS. JIMENEZ:

Q. That eric.sheppard10@gmail.com, is that email familiar to you?

A. Yes. I've seen it.

Q. All right. Did -- what does it mean when the Defendant asks: "Do I have losses to offset the income?"

A. Basically he has carried forward losses from other entities in prior years. Whenever a real estate --

(Court reporter interruption.)

THE WITNESS: Yes. I've seen this letter before. Mr. Sheppard had carried forward losses from prior years, net operating losses which were carried forward. So they would offset any gains he had in this particular year.

MS. JIMENEZ: All right. Can we go to Exhibit -- can we go to Exhibit 12-1.

This is the IRS filed return. Can we put this alongside 29-2, please.

BY MS. JIMENEZ:

Q. Mr. Cupersmith, Exhibit --

MS. JIMENEZ: Can we go down to the signature of 29-2 -- no. First page.

BY MS. JIMENEZ:

Q. Mr. Cupersmith, your copy of the -- is this your copy of

the tax return for 2019?
A. All I see is the signature.
Q. Let me --
MS. JIMENEZ: Can we show him the signature block.
BY MS. JIMENEZ:
Q. Mr. Cupersmith, is your copy of the 2019 tax return signed, your office copy?
A. No.
Q. All right. Now showing you 12-1 of an IRS filed tax return for HM Management --
MS. JIMENEZ: Can we show him the signature block.
THE WITNESS: Yes. That's my signature. The returns -- those two returns are the same.
BY MS. JIMENEZ:
Q. Right. And so was the copy of the return that you provided to the Defendant the one you actually signed?
A. Correct.
MS. JIMENEZ: Can we go to Exhibit 37, please.
Exhibit 37, the top here, can we highlight the title of this.
BY MS. JIMENEZ:
Q. What is this document?
A. It's a routing sheet from our office that tells the time the return was prepared and sent out.
Q. Does your office keep this for all of the returns that you

prepare and send out?
A. Yes. Yes. Yes, we do.
Q. All right. For HM Management and Development year-end 2019, does it indicate who prepared it?
A. Yes, Alex. "AZ" is Alex Zaslow.
Q. And then there's another -- there's a date 10/14/2020. What is that date?
A. That's the date it was processed by Tracey Shipton, my office manager.
Q. All right. Then -- well, the date next to Mr. Zaslow's initials, what is that date?
A. 10/14/2020.
Q. Right. But the date that is next to Mr. Zaslow's signature, is that the date that he prepared it?
A. Yes.
Q. And then the next day --
A. After anything else, it would be the date he prepared it and it was processed that day.
Q. All right.
MS. JIMENEZ: So can we go back out.
All right. Can we highlight the bottom section.
BY MS. JIMENEZ:
Q. All right. This is prepared October 2020; is that right?
A. Yes.
Q. And so at what point is it mailed out?

A. Should have been the same day.
Q. All right. And then where was -- the October 2020 return for 2019, where was it mailed to?
A. It was mailed, as requested, to Mr. Sheppard's home, 180 Bal Cross Drive.
Q. All right.
MS. JIMENEZ: Can we show Exhibit 62.
Could we pull up Exhibit 12-1 on one side, please.
Just a moment.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. All right. With respect to the 2019 return for HM Management that we have in front of us, which is the filed copy, did you sign multiple versions of this tax return?
A. No.
Q. Meaning do you have -- did you sign another tax return that had different figures as the return that was filed with the IRS that we're looking at?
A. No, I did not.
Q. Did you authorize anyone to sign the return for HM Management tax year 2019 besides yourself?
A. No, I did not.
Q. Outside your firm or inside your firm?
A. No.
MS. JIMENEZ: Can we look at Exhibit 20-3, please.

(Pause in proceedings.)

MS. JIMENEZ: I'm sorry. I misspoke. I'm sorry. 29-3.

BY MS. JIMENEZ:

Q. All right. Mr. Cupersmith, did you, the following year, in 2021, prepare the 2020 tax return for HM Management and Development as well?

A. My firm prepared this return for 2020.

Q. All right.

MS. JIMENEZ: Can we go to the top box, please.

BY MS. JIMENEZ:

Q. Did the type of business remain the same in tax year 2020 as it was in 2019?

A. Yes.

MS. JIMENEZ: Now, can we go to -- on this return, the middle, Line 9. Can we highlight Line 9, please.

BY MS. JIMENEZ:

Q. Does it indicate salaries and wages for tax year 2020?

A. Yes, it does, $2,456.

Q. In 2020 were you -- you prepared other of the Defendant's business tax returns as well, right?

A. Right.

Q. Did any other business besides HM Management report any wages to you?

A. No.

MS. JIMENEZ: Can we go to the bottom. The signature block, highlight it, please.

BY MS. JIMENEZ:

Q. This -- is this your copy of the return?

A. That is my copy.

Q. That's unsigned; is that right?

A. Correct.

Q. And it has a date of December 22, 2021?

A. That's correct.

Q. And what is -- why does it have that date?

A. Because that's when we finished the return and processed it and mailed it out.

MS. JIMENEZ: Can we go to the K-1 -- hold on.

Page 14 and Page 17. Could you show Page 14.

Could we show him.

BY MS. JIMENEZ:

Q. The -- did the ownership for HM Management in 2020 remain the same?

A. Yes, it did.

Q. All right.

MS. JIMENEZ: Let's go back to -- let's go -- leave the return -- the first page of the return. Can we go to Exhibit 29-10.

BY MS. JIMENEZ:

Q. Looking at 29-10 --

MS. JIMENEZ: Could we highlight the top, please.
BY MS. JIMENEZ:
Q. -- what is this document?
A. The document that was prepared by Jeanette Gonzalez and given to us.
Q. All right.
MS. JIMENEZ: And go back out.
Let me show him -- can you highlight the middle.
Okay. There we go.
Can you highlight "Wages," please, at the bottom.
BY MS. JIMENEZ:
Q. This record came from Jeanette Gonzalez?
A. Yes.
Q. How much in wages did she report to you?
A. $2,455.86.
Q. All right. Is that the amount that's reflected on the return?
A. Correct.
MS. JIMENEZ: Can you put that back out.
All right. Can we show Line 9 of the tax return highlighted, please.
BY MS. JIMENEZ:
Q. Did you get any payroll records from Jeanette Gonzalez for that tax return?
A. We requested the same 941s and 940s and W-2s and were not

given those.

Q. All right.

MS. JIMENEZ: Can we show Exhibit 29-6 -- leave the tax return on the left. Can we show Exhibit 29-6, please.

Okay. Can we go down.

All right. Go down a little farther.

Okay. Stop.

Can we highlight -- I'm sorry. Can we bring out -- because it's hard to see.

BY MS. JIMENEZ:

Q. All right. Now, December 6th, Jeanette Gonzalez, do you see that email?

A. Yes.

Q. And the first line addressed to Alex says: "Please find attached the year-end 2020 financials for HM Management and Development for your review." Do you see that?

A. Yes.

Q. Is that when -- this tax return for tax year 2020, is that when your firm began to prepare the return?

A. Yes.

Q. Okay.

MS. JIMENEZ: Go back, and let's go to the next email up.

Okay. Stop here.

Can you highlight -- okay.

BY MS. JIMENEZ:

Q. Now, this is an email from Alex Zaslow, December 15th, to Jeanette Gonzalez. In the second bullet point --

MS. JIMENEZ: Can you highlight it, please.

BY MS. JIMENEZ:

Q. Do you see that?

A. Yes.

Q. What does it say?

A. "Can you send me the quarterly payroll tax reports to tie in the payroll?"

Q. Are those the 940s and 941s?

A. Correct.

Q. Were you provided that?

A. No.

Q. All right.

MS. JIMENEZ: Go back. Go to the next email.

Okay. Stop.

Can you highlight -- I'm sorry. I skipped -- go back down one more.

All right. Okay. Let's go up to that email that we were just looking at.

Okay. This one.

BY MS. JIMENEZ:

Q. Okay. So December 15, from Alex Zaslow: "Also, do you have any documentation on the loan payable, SBA, for 296,357?"

Do you see that?
A. Yes. We do not have any documentation.
Q. All right. Well, that was a question he posed to Jeanette Gonzalez. Did -- can we read her answer. "Alex" --
MS. JIMENEZ: Can you highlight the -- can you highlight the "Alex" -- her response?
THE WITNESS: Do you want me to read it?
BY MS. JIMENEZ:
Q. Yes, please.
A. "The only thing I have is the bank statement showing the money coming in. I will ask Eric. Let me know."
Q. All right. Did you receive any records for any loans involving the SBA?
A. No.
Q. Did you have -- did you receive -- aside from this request, did you receive any loan information from Jeanette Gonzalez or anyone at HM Management regarding any Paycheck Protection Program loan?
MR. ETRA: Objection. Hearsay because it would be based on what Mr. Zaslow told him.
THE COURT: Overruled.
BY MS. JIMENEZ:
Q. Did you receive any?
A. No.
Q. Did you receive any information or any documents regarding

any Economic Injury Disaster Loan?
A. No.
Q. Were you aware at the time the 2020 tax return was prepared that no 940 or 941 had been filed?
A. No.
Q. Would that have changed the figure you entered on Line 9 -- or was entered on Line 9 that you signed for this tax return?
A. Yeah. I would have changed that number. It would probably be zero.
Q. All right.
MS. JIMENEZ: Can we go to Exhibit 29-7, please. Leave the tax return.
Okay. Can we highlight the email so that we could see it better.
BY MS. JIMENEZ:
Q. All right. This is an email from Jeanette Gonzalez to Alex Zaslow. Do you see that? December 21st --
A. Yes.
Q. -- for HM Management, and it says: "Spoke to Eric and he says you can use his home address." Do you see that?
A. Yes, I do.
Q. Okay.
MS. JIMENEZ: Let's go to Exhibit 37 again, Page 3.
Leave the tax return.

BY MS. JIMENEZ:
Q. All right. Showing you Exhibit 37 --
MS. JIMENEZ: Can we go to Page 3.
BY MS. JIMENEZ:
Q. Is this the same routing sheet?
A. Yes.
Q. All right.
A. For the year --
MS. JIMENEZ: Can you highlight the top -- yeah.
THE WITNESS: It's for the year 2020.
BY MS. JIMENEZ:
Q. All right. So for tax year 2020, HM Management and Development, who prepared the return?
A. Alex Zaslow.
Q. And what's the date that he prepared the return?
A. 12/22/21.
Q. And then it was processed when?
A. 12/23/21.
Q. All right.
MS. JIMENEZ: Can we go back in.
BY MS. JIMENEZ:
Q. All right. And is that when the return would have been mailed?
A. Yes.
Q. Now, your copy of the return is not signed. Did you sign

this tax return before you mailed it to Eric Sheppard?
A. Yes, I did.
MS. JIMENEZ: Can we leave the tax return on the left side. Can we share Exhibit 22-3, please.
BY MS. JIMENEZ:
Q. All right. Mr. Cupersmith, this is a tax return submitted for HM Management and Development same tax year, 2020, for a loan with Cross River Bank. Do you see -- can you see the --
MS. JIMENEZ: Can we show the top box, please.
BY MS. JIMENEZ:
Q. The business code -- is that the business code that you provided --
A. No.
Q. -- on the return?
A. No.
MS. JIMENEZ: Can you go back out.
Can we show the middle that shows Line 9, Salaries and Wages. Can you put that on one side, please.
Can you highlight the figure.
BY MS. JIMENEZ:
Q. Is that the amount of salaries and wages that you indicated on your tax return?
A. No.
MS. JIMENEZ: Can we show -- can we show his tax return.

Can we show Line 9 from his tax return, please.

BY MS. JIMENEZ:

Q. 2,456, is that a few dollars off?

A. Right. That's on my return. Their return has 815,358.

Q. Is that a few dollars off?

A. Just a couple dollars.

MS. JIMENEZ: Can we go to the signature block on Exhibit 22-3, please.

BY MS. JIMENEZ:

Q. All right. This return is dated February 18th, 2021. Do you see that?

A. Correct.

Q. Was your firm preparing this tax return in January or February of 2021?

A. No.

Q. Looking at that signature, Mr. Cupersmith, did you sign that return?

A. That is not my signature.

Q. Now, the signature block has to the right-hand side a PTIN number. What is that?

A. That's my number given to me by the Internal Revenue. Only I can use that.

Q. Is that a preparer tax identification number?

A. That's a preparer tax identification number.

Q. Is that number unique to you?

A. Yes.
Q. And underneath your name, is that your firm's name at the time?
A. Yes.
Q. Cupersmith Wilensky --
A. Stempler & Company, LLP.
Q. Does your firm have its own employer identification number --
A. Yes, we do. It's shown there.
Q. Is that it?
A. Yes.
Q. Okay. Is that your firm address and phone number?
A. Yes.
Q. Did you authorize anyone at your firm --
A. In fact, now looking at it, the phone number is changed. My phone number is 661-1610. That's showing 1619. So that's not my phone number.
Q. Did you authorize anyone at your firm to sign for you?
A. No, I did not.
Q. Did you authorize Mr. Sheppard to sign for you?
A. No, I did not.
Q. Did you authorize anyone on his behalf to sign for you?
A. No, I did not.
Q. Or to use your PTIN or your firm?
A. No, I did not. I never have.

MS. JIMENEZ: Can we go to Exhibit 30-2, please, the top box.

BY MS. JIMENEZ:

Q. Did you prepare tax returns for a business named HM-UP Development Alafaya Trails, LLC?

A. Yes, we did.

Q. Is that one of the Defendant's businesses?

A. Yes, it is.

Q. The business code number on the left side, 531120, did you -- did you provide that number on the return?

A. Yes.

Q. What was that based on?

A. Based on my knowledge of what this company did. It's for lessors of non-real estate.

Q. Lessor being -- meaning a landlord?

A. Landlord. Yes.

Q. All right.

MS. JIMENEZ: Can we go to the K-1, Page 20.

BY MS. JIMENEZ:

Q. All right. This company, HM-UP Development Alafaya Trails, was owned 99 percent by what entity?

A. HM Four, LLC.

MS. JIMENEZ: And can we go to the other page, Page 23.

BY MS. JIMENEZ:
Q. And the one percent owner is who?
A. HM Eight, LLC.
Q. All right.
MS. JIMENEZ: Can we go to the first page -- no -- yes.
Actually, Page 2.
All right. Can we highlight.
BY MS. JIMENEZ:
Q. What is this on this tax return?
A. The same Declaration of the Preparer, not receiving sufficient information to be able to say that everything is true and correct. Not that I was saying that, but I'm missing the 941s, bank records, loan documents. So therefore -- this return had to be filed, so -- it was already delinquent.
Q. All right.
MS. JIMENEZ: Page 8 of the return, can we take a look at it.
BY MS. JIMENEZ:
Q. What is this?
MS. JIMENEZ: Can we highlight the top.
BY MS. JIMENEZ:
Q. What is Form 8825?
A. That's the form the Internal Revenue uses to show rental income and rental expenses.

Q. So a company of this type that receives rental income, does it report its gross receipts or its income on the first page?
A. No, it does not. It reports it on the 8825.
Q. Okay. So let's take a look at this page.
MS. JIMENEZ: Can you go back out -- the middle portion.
There we go.
All right.
BY MS. JIMENEZ:
Q. And so the reported gross rents are what amount for tax year 2019?
A. 1,414,576.
Q. And what did it report for wages and salaries, Line 13?
A. Zero.
Q. Did HM-UP Development Alafaya Trails, LLC ever report wages and salaries?
A. No.
Q. And who did you receive records to -- from whom did you receive records to prepare this return?
MR. ETRA: Objection. From whom? Is this a person or company? And he didn't receive them.
THE COURT: An individual. If you know, sir.
THE WITNESS: Who gave it to us or who received it?
BY MS. JIMENEZ:
Q. Who provided records that --

A. Jeanette Gonzalez.
Q. -- that you used to prepare this return?
A. Correct.
Q. All right.
MS. JIMENEZ: Can we go to the first page.
All right. Can we go to the signature block.
BY MS. JIMENEZ:
Q. All right. Mr. Cupersmith, this return is not -- well, it's not dated or signed. Is this your office copy of this tax return?
A. Yes.
Q. Did you sign and date the return that went to the Defendant?
A. Yes, I did.
Q. All right.
MS. JIMENEZ: Can we put this document to the left. Can we show Exhibit 30-4, please.
Okay. Can you highlight the bottom box, the bottom email.
BY MS. JIMENEZ:
Q. All right. This is an email from Jeanette Gonzalez, dated October 2nd, 2020; is that right?
A. Say -- I'm sorry --
Q. This email --
MS. JIMENEZ: Can we highlight the -- and the date,

please.

THE WITNESS: October 2nd, 2020.

BY MS. JIMENEZ:

Q. From Jeanette Gonzalez, right?

A. Correct.

Q. Okay.

MS. JIMENEZ: And then can we highlight the sentence: "Alex, please find."

BY MS. JIMENEZ:

Q. All right. And what did Jeanette Gonzalez tell Alex Zaslow in this email?

A. She's sending us a trial balance. That's what he considered a financial statement. And then she also included certain financial information.

Q. All right. And does this email indicate to you when your firm received records to prepare this return?

A. Correct.

Q. Okay.

MS. JIMENEZ: Can we go back to the tax return.

Could we go to page -- what was that -- 8825, Page 8. For the tax return, Page 8.

All right. Can you leave that page. Can you show Exhibit -- well, I'm sorry. Take the return off the page for a moment. Can you show Exhibits 13-4 and 13-5.

Can you highlight the middle.

BY MS. JIMENEZ:

Q. Okay. Mr. Cupersmith, showing you IRS records 13-4, 13-5. For HM-UP Development Alafaya Trails Form 940 and 941, as of June 2022, the IRS had not received any such IRS forms for tax year 2019, 2020 or 2021. Do you see that?

A. Yes.

MR. ETRA: Objection. It says they can't find it, not they haven't received it.

THE COURT: Overruled. The witness can respond.

THE WITNESS: Yeah, I see it.

MS. JIMENEZ: All right. Can be go back to Page 8825 of the tax return.

BY MS. JIMENEZ:

Q. Okay. Line 13, is that consistent with those IRS records?

A. Correct. It is.

Q. All right.

MS. JIMENEZ: Can we show him -- leave the tax return on the left. Can we show Exhibit 37.

All right. Go down.

Sorry. I didn't indicate the page.

Okay. Stop.

BY MS. JIMENEZ:

Q. Okay. The top part of this -- this is your routing sheet?

A. Correct.

Q. Do you see that?

Now, for this company HM-UP Development Alafaya Trails' 2019 tax return, to the right of Mr. Zaslow's initials, what date was it prepared?
A. 10/2/2020.
Q. What day was it processed?
A. 10/5/2020.
MS. JIMENEZ: Can you go down to the bottom of this routing sheet, the bottom portion, and highlight that.
BY MS. JIMENEZ:
Q. All right. This return, after it was prepared, did you sign it?
A. I signed the return. Yes.
Q. Okay. And then how was it provided to the -- well, was it provided to the Defendant?
A. Yes. We mailed it to his home address, as requested.
Q. All right.
MS. JIMENEZ: Let's go back to the tax return.
All right. Can we show, on the right side, Exhibit 13-2, please.
All right -- no. Sorry.
Yes. Let's put -- oh, yes -- 13-2.
Is this -- 13-2 is an IRS exhibit. Can we highlight the bottom.
BY MS. JIMENEZ:
Q. All right. Now, the IRS copy of this return, does that

have your signature?
A. Yes, it does.
Q. All right. And your signature is dated what date?
A. 10/5/2020.
Q. Is that when you signed it?
A. Yes.
Q. All right.
MS. JIMENEZ: Let's leave Exhibit 13-2 -- or just -- yeah.
BY MS. JIMENEZ:
Q. Let me show you Exhibit 19-8 --
MS. JIMENEZ: But leave 13-2.
BY MS. JIMENEZ:
Q. Okay. This is a tax return that's in evidence submitted to PayPal for a loan -- do I have the wrong number -- 19-8. Did I say 19-8?
All right. I'm sorry. One moment.
(Pause in proceedings.)
MS. JIMENEZ: 19-9. I'm sorry. My apologies.
BY MS. JIMENEZ:
Q. Mr. Cupersmith, I'm showing you a tax return submitted to PayPal for a loan application. This is HM-UP --
MS. JIMENEZ: Can we show the top --
BY MS. JIMENEZ:
Q. -- HM-UP Development Alafaya Trails tax year 2019. Do you

see that?
A. Yes, I do.
Q. All right. And that's the same business code that you had provided.
MS. JIMENEZ: Now, can we go to Page 6 of 19-9.
Can we go to Page 8 of 13-2.
Okay. I'm sorry. Up.
All right. Stop.
Now, Exhibit 19-9, the PayPal exhibit, can we show the middle, please.
All right. And can you box the middle over here.
Thank you.
BY MS. JIMENEZ:
Q. All right. The one on the right, the gross rent amounts, is it the same?
A. Yes.
Q. All right.
MS. JIMENEZ: Can we look at Line 13, please, on the exhibit on the right, the PayPal exhibit.
BY MS. JIMENEZ:
Q. How much is reported for wages?
A. $717,743.
Q. Is that more than zero?
A. Yes.
MS. JIMENEZ: Let's go to the first page of both

exhibits, please.

All right. Can we show the signature box for both.

BY MS. JIMENEZ:

Q. Mr. Cupersmith, showing you Exhibit 19-9, which is on the bottom. It's signed. It purports to have your signature, signed October 14, 2020. Did you sign that return?

A. That is not my signature.

Q. Did you sign that return?

A. No, I did not.

Q. And this return, Exhibit 19-9, does it also have your PTIN and firm name and address and identifiers?

A. Yes. That is correct.

Q. All right. Did you authorize anyone at your firm to sign your 2019 tax return for HM-UP Development Alafaya Trails?

A. No, I did not.

Q. Did you authorize Mr. Sheppard, or anyone on his behalf, to sign for you the 2019 return for this business?

A. No, I did not.

MS. JIMENEZ: Can we show Exhibit 30-3, please.

I'm sorry. One more thing on 19-9. Can we just show it real quickly, the signature block.

The signature block.

BY MS. JIMENEZ:

Q. This tax return, Exhibit 19-9, submitted to PayPal, just looking at the PTIN, I just want to ask you: Is that your

preparer tax identification number?
A. Yes, it is.
Q. All right. Is that your firm's EIN?
A. Yes, it is.
Q. All right.
MS. JIMENEZ: Let's go now to 30-3.
BY MS. JIMENEZ:
Q. And did you authorize anyone to use your preparer identification number or your firm --
A. No, I did not.
Q. -- on that tax return?
A. No, I did not.
Q. Okay.
MS. JIMENEZ: 30-3.
BY MS. JIMENEZ:
Q. For tax year 2020 -- so now we're in 2021 -- did you prepare -- and your firm prepare a tax return for -- 1065 tax return for the same company, HM-UP Development Alafaya Trails?
A. Yes, we did.
Q. Did the business stay the same? Was it the same type of business?
A. Yes.
Q. Lessor of commercial property? Yes?
A. Correct.
Q. All right.

MS. JIMENEZ: Now, let's go back.
The signature -- can we show the signature block.
BY MS. JIMENEZ:
Q. Is this your copy of the tax return?
A. Yes, it is.
Q. And is it signed?
A. No, it's not.
Q. All right. But it's dated; is that right?
A. Correct.
Q. October 1st, 2021?
A. Correct.
Q. All right.
MS. JIMENEZ: Can we go to the second page.
BY MS. JIMENEZ:
Q. All right. And what is this?
A. It's my Declaration of Preparer. Certain information requested is not provided.
Q. All right. And then, in 2020, for HM-UP Development Alafaya Trails, did the ownership stay the same?
A. Yes.
Q. Owned 99 percent by HM Four, one percent by HM Eight?
A. Yes.
Q. All right.
MS. JIMENEZ: Can we go to Page 8 of the tax return.
Here.

BY MS. JIMENEZ:
Q. All right. Is this the page where the company receiving rental income would report its rental income?
A. Correct.
Q. All right. So what's reported as gross rents for tax year 2020?
A. 1,524,563.
Q. And what's reported for wages and salaries?
A. Zero.
Q. Okay.
MS. JIMENEZ: All right. Could we show -- can we show Exhibit 30-5.
Can you go down, please.
All right. Stop here, September 12, 2021.
BY MS. JIMENEZ:
Q. All right. From Jeanette Gonzalez to Alex Zaslow. Can you read that first sentence: "Alex."
A. "Please find attached the year-end 2020 financials with the added chart of accounts for interest. One Florida we spoke about. I have also attached the December 2020 bank statements for Wells Fargo, SunTrust, and One Florida."
Q. All right. So was it on or about September 12 when your firm received records to prepare the 2020 tax return for HM-UP Development Alafaya Trails?
A. I don't know if she sent it -- I can't identify if she sent

it on that date or not.
Q. Closely thereafter or --
A. Probably sometime thereafter, early October.
Q. Okay.
MS. JIMENEZ: All right. Can you go up, the next email up.
Go up.
MS. JIMENEZ: And then, Alex Zaslow, September 13.
BY MS. JIMENEZ:
Q. Did your firm prepare the tax returns right away?
A. Once we received the information, yes.
Q. All right. Then September 13 Mr. Zaslow wrote -- what did he request? What did he say?
A. We were asking for amounts for the preparation of the tax returns listed in that letter -- in that email.
Q. What did he say?
A. "We're waiting" -- you want me to read the letter?
Q. Just read that --
A. "We are not waiting another year to get paid. Every return needs to be paid prior to release. Below fees from last year."
Q. All right.
MS. JIMENEZ: Can you go up.
Okay. Now, can we go to Exhibit 30-6.
BY MS. JIMENEZ:
Q. All right. This 30-6 --

MS. JIMENEZ: Well, and 30-7.
Put that on one side, 30-7.
All right. Can you highlight the top box until "Gross Profits."
There.
And the other one too.
BY MS. JIMENEZ:
Q. So are these records your firm received from Jeanette Gonzalez?
A. Yes.
Q. All right. And does it indicate income for Alafaya Trails in 2019 -- the exhibit on the left, 30-6?
A. Yes, it does.
Q. And the amount, 1.4?
A. One point four hundred fourteen thousand five hundred seventy-six.
Q. And then, for 2020, for HM-UP Development Alafaya Trails, what was the gross profit reported?
A. It's really gross receipts. 1,524,563.
Q. All right. And the 1.5 million figure, is that the amount you reflected on your return?
A. Yes.
MS. JIMENEZ: Can we show the tax return, which is 30-3, please -- 30-3, Page 8.

BY MS. JIMENEZ:
Q. Is that the amount you reflected as gross rents?
A. Yes.
Q. All right.
MS. JIMENEZ: Can we show Exhibit 37, Page 4.
Can we show the top.
BY MS. JIMENEZ:
Q. For HM-UP Development Alafaya Trails tax year 2020, when did Alex Zaslow prepare that return?
A. 10/1/21.
Q. When was it sent out to the client?
A. 10/1/21.
Q. All right.
MS. JIMENEZ: Can you go to the bottom portion.
BY MS. JIMENEZ:
Q. Does that record indicate how it was provided to the Defendant?
A. It was mailed to Eric Sheppard's home.
Q. It was both emailed and mailed to the home, right?
A. I'm not sure the email went to Jeanette. It might have gone to the office. I can't tell by that.
Q. All right.
A. But he got the return to be signed and be mailed at his home.
THE COURT: Ms. Jimenez, let me know when it might be

a good time to give the jurors a lunch recess.

MS. JIMENEZ: Okay. I just want to finish up with this tax year for this return. Ten minutes or should we break now?

THE COURT: Yeah, let's go ahead and break now.

Ladies and Gentlemen, let's go ahead and take a lunch recess. It is 12:30. We're going to take an extended recess until 1:45. So I'll see you back here at 1:45.

Have a pleasant lunch.

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 12:29 p.m.)

THE COURT: All right. Mr. Cupersmith, we'll see you back here at 1:45. Since you are on the witness stand, you're not to discuss your testimony, your anticipated testimony, the testimony of any other individual, or any aspect of the case. All right, sir?

THE WITNESS: Thank you, Your Honor.

THE COURT: I do want to advise the attorneys that we have two matters, one at 1:15 and -- actually 1:30, and then another matter following that, where we will need counsel table for one of those. So if you --

MR. ETRA: We're back here at 1:45?

THE COURT: -- if you could just kindly move your items aside -- yes -- and I'll see you back here at 1:45.

Ms. Weintraub, did you want to make your motion at this time?

MS. WEINTRAUB: Yes, I would, Your Honor.

THE COURT: All right. Then go ahead and have a seat.

MS. WEINTRAUB: Judge, I just want to bring to the Court's attention the history very briefly. We briefed the 404(b) notice. We were -- the Court issued its order. We respected the Court's order. We came into court for trial. And before trial started, I asked the Court again to please permit us to argue why the Government has not met its threshold before they elicit the 404(b) evidence from Jeff Graff. The Court denied my motion and the testimony was elicited.

However, I want to point out to the Court, in the Government's pleading, Document 116, they advised the Court that the forged signature and other writing on the engagement letter reflects the Defendant's handwriting while the forged signature on the two documents, the application, does not. However, it goes on to say: "JG is expected to testify the person who signed or forged JG's name on behalf of HM Management would have done so at the Defendant's direction."

We advised the Court that we expected that not to be the testimony. I advised the Court in writing, and I advised the Court orally that we had spoken with him as well, and he has stated that he has never advised the Court -- I'm sorry -- that he has never advised the Government that Eric Sheppard forged that document or that he knew or had any evidence that

Eric Sheppard directed someone else to.

In fact, his testimony -- and I'll read from it -- on Day 8, at Page 117, says: "By the way, you never told the Government that Eric Sheppard forged your name on the visa application, did you?"

"Correct. I did not say that."

"Nor did you ever have any evidence or tell the Government that you know Eric told somebody to forge your name on that application, correct?"

Answer: "Correct."

It's exactly what I knew would happen. There is -- and the Government, in its very calculated and strategic redirects, asks the questions of the witness such that it appears and specifically implies that Eric Sheppard forged the visa documents. Again, on redirect, she went back and forth of the letter, the application, the letter to Mexico. And she argued basically that -- and she will argue -- that he directed somebody to do it or he forged it himself.

That's not what the evidence is. 404(b) is extremely prejudicial. It was nothing but a propensity claim to begin with. You know, he did it before, he did it now. And it is extremely -- it's been exacerbated by the redirect, which I was denied recross on. And based on that, we would ask for a mistrial, Your Honor.

THE COURT: All right. The Government's response?

MS. JIMENEZ: Your Honor, what was elicited from the witness was that he recognized the handwriting on the engagement letter, that the Defendant would be the one to hire a law firm on behalf of HM Management, that the Defendant would be the one to make a decision about having someone apply for a visa application. That was elicited on direct, and that's the gist of the testimony.

It's not that -- there was not a claim that he observed anyone sign anything but that these documents went out with his purported signature, that he was represented as the individual at HM Management engaging the law firm and sponsoring this individual, and that those decisions would be made by Eric Sheppard. That was the gist of it.

MS. WEINTRAUB: But that's contrary to his testimony, Judge. And he was also -- he was also asked and said that he's gone back and forth on his testimony whether or not he believed Eric signed the engagement letter. And yet, it's before the jury that he did. It's -- it does not meet the threshold for the admission of the 404(b).

THE COURT: And again, I'm looking at the Court's order on the 404(b) evidence, and I believe that this amounts to a reargument with regard to the extrinsic evidence that was testified to by Mr. Graff.

The Defendant had the opportunity to cross-examine Mr. Graff, and --

MS. WEINTRAUB: Not really, Your Honor.

THE COURT: -- at this point -- well, you may not believe it was sufficient, but certainly the Court feels that ample opportunity was given.

So the motion for a mistrial has been made. It is preserved, but it is denied.

I'll see you back here at 1:45. Have a pleasant lunch.

COURT SECURITY OFFICER: All rise.

(Recess from 12:35 p.m. to 1:51 p.m.)

THE COURT: All right. Back on the record. I don't see Ms. Jimenez, and I don't see the witness, but let me acknowledge the presence of Mr. Sheppard.

Yes. I see Mr. Sheppard is present. And the only member of the trial team I don't see is Ms. Jimenez. And I'd like the witness to come into the courtroom.

MS. MARTINEZ: The agent went to find them, Your Honor.

MS. WEINTRAUB: Last-minute coaching. As the saying goes, I am who I am.

THE COURT: I know that was said in jest.

All right. Here's Mr. Cupersmith.

All right. Mr. Cupersmith, if you'll step forward.

Are both sides ready to continue?

MS. JIMENEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: All right. Then let's bring in the jury.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 1:52 p.m.)

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

Please be seated, everyone.

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

And we will continue with the direct examination of Mr. Cupersmith.

MS. JIMENEZ: Thank you, Your Honor.

Can we show the tax return on 30-3, which is HM-UP Development Alafaya Trails' 2020 income tax return.

All right. Thank you.

As to this return, can we show -- could you just leave the return on the screen. Can we show Exhibit 37, Page 4.

BY MS. JIMENEZ:

Q. Your routing sheet, Exhibit 37, Page 4, does it have a record of when the 2020 return for this business was prepared?

A. 10/1/21.

Q. Does it indicate when it was processed?

A. 10/1/21.

Q. All right.

MS. JIMENEZ: Can we go to the bottom portion of

Exhibit 37.
BY MS. JIMENEZ:
Q. Does it indicate whether it was sent out to the Defendant?
A. Yes. It was mailed to Eric Sheppard at his home address.
Q. All right. Did -- for -- in 2021, for tax year 2020, was it still your process that you would sign the final return, mail the final return, or send the final return to the Defendant for him to file?
A. Correct.
Q. Yes?
A. Yes.
Q. Were you supposed to be filing any returns in 2021 for tax year 2020?
A. I filed '21 for year 2020.
Q. Were you supposed to be filing any returns?
A. No, I did not file it. I would send it to the taxpayer.
Q. All right.
MS. JIMENEZ: Can we pull up 12-4 and 13-3, please.
BY MS. JIMENEZ:
Q. For the prior returns for HM Management that we looked at for tax year 2020 that you sent to the Defendant, this tax record indicates that the -- that the 1065 return for HM Management was not filed -- as of June 2022, it was not filed for tax year 2020. Do you see that on the bottom?
A. I do see that, yes.

Q. And then for HM-UP Development Alafaya Trails' 1065 return, this record indicates that as of June 2022 the 2020 return also was not filed, the one we were just discussing.
A. Yes. I see that.
Q. All right.
MS. JIMENEZ: Can we pull up -- put these down. Put 30-3 back up, please, and pull up 19-13.
This is a PayPal record of a tax return for the same company. Can we show the box, the upper box of Exhibit 19-13, please.
Yeah.
BY MS. JIMENEZ:
Q. So this is a 2020 tax return for the same business.
MS. JIMENEZ: Can we show the signature block.
BY MS. JIMENEZ:
Q. All right. This document, 19-13, tax return for the same business, shows a signature purported to be yours, signed February 9, 2021. Did you sign that return?
A. No, I did not.
Q. Did your firm prepare a return, a draft return, in the beginning of the year, 2021?
A. No, we did not.
Q. Is that -- is this -- did you authorize anyone at your firm to sign this return?
A. No, I did not.

Q. Did you authorize the Defendant, or anyone on his behalf, to sign for you on this tax return?
A. No, I did not.
Q. Is that your PTIN on the right-hand side?
A. Yes, it is.
Q. And is that also your firm -- is that your firm underneath your name, Mr. Cupersmith?
A. Yes. It's misspelled, though.
Q. It's misspelled. Is there a K in your name, Cupersmith?
A. They have it C-U-P-E-R-S-M-I-K-T-H. There's no K in my name.
Q. Does your firm -- when they prepare your returns, do they tend to misspell your name?
A. No.
Q. Is this your --
A. In fact, it comes up because -- due to my number. Each accountant in my office has a number. So that's already printed on the return once I use my identification number. So it's already printed.
Q. Aside from the misspelling of your name, is that the information for your firm and your firm's employer identification number?
A. Yes. That is correct.
Q. All right.
MS. JIMENEZ: Can we -- with Exhibit 19-13, show Page

9, please.

All right. Can we show for -- the prepared return on the left, 33, Page 8, please.

BY MS. JIMENEZ:

Q. Mr. Cupersmith, gross rents that you reported of $1.5 million, what is the figure that's reflected on the other exhibit, 19-3?

A. $1,047,653.

Q. All right. For Line 13, Wages, your return reflects zero?

A. Zero.

Q. What does Exhibit 19-13 indicate?

A. 815,358. Many of the numbers have been altered on the return.

Q. I'm sorry?

A. Many of the numbers on that return have been altered.

Q. Were they altered so that when you add up Line 13 they add up?

A. Yeah. Well, it's a different bottom line. The loss is different. But it would -- namely, to get to the wages, it was 815. You can see the interest is different. The gross receipts is different.

Q. Right.

A. Depreciation is different.

Q. Right. And the interest that you reported of $1.1 million, Line 9, what is that from?

A. That's from the trial balance given to us by Jeanette Gonzalez.

Q. And then the interest is interest on what?

A. On the construction loans and any other loans that he had. We had no verification of the loans. That was the number they used.

Q. All right.

MS. JIMENEZ: Can we leave 19-13 on the screen, first page, and show 20-11, please.

BY MS. JIMENEZ:

Q. Now, the --

MS. JIMENEZ: Actually, I'm sorry. Can we just briefly show 19-13 alongside of 30 -- the prior exhibit -- 30-3, briefly.

BY MS. JIMENEZ:

Q. All right. Your return on the right here --

MS. JIMENEZ: Can we show the business code.

BY MS. JIMENEZ:

Q. -- that was the business code that you had assigned based on --

A. Yes. Yes.

Q. What was it based on?

A. Based on -- I looked at the business code section, which provides lessors of non-real estate companies.

Q. Okay.

MS. JIMENEZ: Can we look at the -- Exhibit 19-13, the top portion.
BY MS. JIMENEZ:
Q. Business code, is it the same?
A. Yes.
Q. All right.
MS. JIMENEZ: Can we go to Exhibit -- leave 19-13. Can we go to Exhibit 20-11, please.
This is a tax return with ACAP and Northeast Bank. Can we show the top portion of the return, please.
BY MS. JIMENEZ:
Q. Same tax year, 2020, for the same business, HM-UP Development Alafaya Trails. The business code, is that the one you had assigned?
A. No. That's handwritten in.
Q. All right.
MS. JIMENEZ: Okay. Can we go to the bottom of that return and show the signature.
THE WITNESS: That's not my signature.
BY MS. JIMENEZ:
Q. And the date of that return is also --
A. And it's got the same K in my name -- the firm's name.
Q. Right. And it's purported to be signed February 9th, 2021?
A. Right.
Q. Right. Just as Exhibit 19-13, right?

A. Correct.
Q. The other one we just saw.
MS. JIMENEZ: Okay. Can we go for Exhibit 20-11 -- 20-11. I didn't mark the 8825. Can we find 8825?
Keep going.
BY MS. JIMENEZ:
Q. Did you have any discussion in 2021 with Mr. Sheppard about changing the business code on the tax returns to reflect something else?
A. No, I did not.
Q. All right.
MS. JIMENEZ: This Exhibit 20-11, now Page 8825, which is Page 9, can you highlight the figures, please, in the middle.
BY MS. JIMENEZ:
Q. Wages and salaries, what is reported?
A. 815,358.
Q. All right. And gross rents?
A. 1,047,853.
Q. Okay. And were those the figures that you had entered on your return?
A. No, I did not.
Q. All right.
MS. JIMENEZ: Going back to the first page.

BY MS. JIMENEZ:
Q. As to what this -- this return with a business code of 236200, going to the signature, did you authorize anyone, including the Defendant or anyone on his behalf, to sign for you and submit such a tax return in support of a loan application?
A. No, I did not.
Q. Did you authorize the Defendant or anyone on his behalf to use your preparer tax identification number or your firm's identification?
A. No, I did not.
Q. All right. Was there -- did you review your records before coming to -- well, before coming to testify?
A. Yes, I did.
Q. Was there anything in your records to indicate that the Defendant, or anyone on his behalf, had made a request to you to prepare the business tax returns earlier in the year?
A. I wouldn't have had the records, so I couldn't have prepared it in February.
Q. But was there a request?
A. No, there was no request.
MS. JIMENEZ: Can we go to Exhibit 17-10, please.
Okay. This is a PayPal record. Can you show -- yeah, the -- no. Include that, but capture -- yeah, information.

BY MS. JIMENEZ:
Q. All right. This is -- I'm going to ask you --
MS. JIMENEZ: I'm sorry. Once again, let's see if we can capture the date as well, the dates on the bottom.
BY MS. JIMENEZ:
Q. Okay. This is a PayPal record from April of 2020. The subject and the description here -- the description reads --
MS. JIMENEZ: No. Sorry. Apologize. Wrong email.
Okay. Go up.
All right. Here. This one. If we can capture the date. It's "created by" up here.
BY MS. JIMENEZ:
Q. All right. Now, this is another email in the PayPal records, which -- the description of which -- this is from April of 2020: "I needed to add more documentation from my CPA to the submittal, but the site will not let me. Thank you."
Did you in 2020 -- April of 2020 or any point in 2020, or in 2021, have any discussion with the Defendant Eric Sheppard about applying for any kind of Paycheck Protection Program loan?
A. No, I did not.
Q. Sorry?
A. No, I did not.
Q. Was there anything in your records to reflect whether your partner Alex Zaslow had any discussions with Eric Sheppard

about a PPP loan?

MR. ETRA: Objection. Your Honor, he shouldn't be allowed to testify about records that are not in evidence. He's testifying about --

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Do you have any records to show that Alex Zaslow had any conversation about --

MR. ETRA: Same objection.

THE COURT: If he has records. Overruled.

THE WITNESS: I have no records. I had no knowledge until I spoke to him that July date, when he told me he had some problems with a PPP loan.

BY MS. JIMENEZ:

Q. Okay. Did you have any discussion with the Defendant about providing any records for an Economic Injury Disaster Loan?

A. No.

Q. All right.

MS. JIMENEZ: Can we go to Exhibit 31, please. HM -- yeah. Exhibit 31.

Can we show the top portion.

BY MS. JIMENEZ:

Q. This is a tax return for tax year 2019 for HM Four, LLC. Is that one of the Defendant's companies for which you prepared tax returns?

A. Yes.
Q. And what is HM Four?
A. It's a company that owns partially the Orlando property through various partners.
Q. All right.
MS. JIMENEZ: Can we show the K-1 toward the bottom. I don't have the page number.
Here. Stop.
BY MS. JIMENEZ:
Q. Okay. All right. For HM Four -- who is a 52 percent owner of HM Four?
A. Eric and Jennifer Sheppard, joint tenants by the entirety.
Q. And this is for tax year 2019, correct?
A. Correct.
Q. Okay.
MS. JIMENEZ: Can you just keep going and find the other K-1.
Okay. Can we show that.
BY MS. JIMENEZ:
Q. All right. Who's the other partner of HM Four?
A. WAPD Holdings, LLC, Robert Kallman.
Q. And he's a 48 percent owner; is that right?
A. Correct.
MS. JIMENEZ: Can we go to the first page.

BY MS. JIMENEZ:
Q. Okay. In the whole middle section here, from Line 1 to 30 --
MS. JIMENEZ: Can we show that.
BY MS. JIMENEZ:
Q. -- it doesn't report anything. You don't report anything.
A. The numbers get passed through from Alafaya Trails.
Q. Did HM Four generate any gross receipts of its own?
A. No.
Q. Did it pay any salaries or wages?
A. No.
Q. Did it have a Form 8825 to report rents?
A. No.
Q. Did it have any business operations of its own that you can discern from the records you received for this business?
A. No.
MS. JIMENEZ: Can we show -- can you leave 31 and show 32, Exhibit 32.
BY MS. JIMENEZ:
Q. All right. And for tax year 2020, did you also prepare a tax return for HM Four in 2021?
A. Correct. I did -- we did.
Q. All right.
MS. JIMENEZ: Can we go to the K-1 for this 32, which is toward the bottom.

Okay. Stop here.
BY MS. JIMENEZ:
Q. Ownership of HM Four for tax year 2020 -- did the ownership stay the same?
A. It stayed the same.
Q. Eric and Jennifer Sheppard were 52 percent owners; is that right?
A. Correct.
Q. All right.
MS. JIMENEZ: Could we go to the first page.
All right. Lines 1 through 30, can we show that.
BY MS. JIMENEZ:
Q. Did HM Four have any operations, any gross receipts, any salaries, any business activity of its own that you reported?
A. No, it did not.
Q. Were you provided any records to indicate that it had any operations?
A. No, I was not.
Q. What do these tax returns -- what do you report on this tax return for --
A. Report the percentage income to each individual, what's the income from HM --
Q. Alafaya Trails?
A. -- Development Alafaya Trails, yeah.
Q. So if Alafaya Trails business reported a loss, is that

passed through?
A. That passes through to this entity and then it passes through to the individuals on their K-1.
Q. Okay. On their personal tax returns?
A. Personal tax returns.
Q. All right. So is there an 8825 reflecting gross rents for HM Four in 2020 either?
A. No.
MS. JIMENEZ: Can we show Exhibit 33.
BY MS. JIMENEZ:
Q. Is HM Six another business of the Defendant's?
A. Yes, it is.
Q. All right.
MS. JIMENEZ: Can we show the K-1, please.
MR. ETRA: Restate our objection from earlier about HM Six.
THE COURT: All right. It's preserved.
BY MS. JIMENEZ:
Q. By the way, for HM Four, which I didn't show -- but did you also have a prepared declaration?
A. I'm pretty sure we did, but you would have to show it to me.
MS. JIMENEZ: Come back a moment.
BY MS. JIMENEZ:
Q. Here, this is HM Six.

A. Okay.
Q. Is that the same declaration?
A. Yes.
Q. All right.
MS. JIMENEZ: Can we go down to the K-1.
(Pause in proceedings.)
MS. JIMENEZ: Getting there.
Okay. Here we go.
BY MS. JIMENEZ:
Q. All right. So who owns 50 percent of HM Six?
A. Sheppard Flagler Holdings, LLC.
Q. And who owns Sheppard Flagler Holdings?
A. Well, it's 48 -- 48 percent is owned by --
MR. ETRA: Objection. Personal knowledge. It should be clear he's reading from the document and not answering personally, Your Honor.
THE COURT: Hold on. The objection is sustained. Rephrase, please.
BY MS. JIMENEZ:
Q. From the returns -- well, did you review any tax -- did you prepare tax returns for Sheppard Flagler Holdings as well?
A. Yes, we did.
Q. All right.
A. Approximately 90 percent was held of this -- of Flagler by Eric and his wife, and 10 percent with someone -- Mitch

Lieberman.

Q. Okay.

MS. JIMENEZ: Could we show who the other 50 percent owner of HM Six is.

I'm sorry. I can't see.

No. Go down.

There's another K-1 form here. Keep going.

THE WITNESS: It's owned by Wildstein Investments.

BY MS. JIMENEZ:

Q. All right. Fifty percent owner by Wildstein Investments. And reviewing the tax returns for the Defendant, do you know who owned Wildstein Investments?

A. Leon Wildstein.

Q. Okay. Did you also prepare Defendant's personal tax returns?

A. Yes, we did.

Q. All right.

MS. JIMENEZ: Can we just go to Exhibit 35, 2020.

BY MS. JIMENEZ:

Q. All right. This is -- is this the Defendant's tax return?

A. Yes.

Q. Okay.

MS. JIMENEZ: Can we show -- can we show Box 1 to 15 here.

BY MS. JIMENEZ:
Q. What do you report?
A. On Other Income would be -- all the partnership returns on Schedule E would apply to that --
MR. ETRA: Your Honor, same objection of personal tax returns.
THE COURT: It's noted. Overruled.
BY MS. JIMENEZ:
Q. So the income or losses from all of the businesses get reported to the personal tax return?
A. Yes, they do.
Q. And is this the total amount from the company tax returns, corporate tax returns?
A. Plus carried-forward losses.
Q. I'm sorry. What?
A. Plus losses carried forward and operating losses carried forward.
Q. And what do they do to any income?
A. Well, they would offset any income.
Q. Did you give the Defendant any advice regarding wage employees?
A. No, I did not.
Q. Did you give him any advice as to people whom he should treat as W-2 employees or people he should treat as 1099ed contractors?

A. Nobody asked me, so I did not.

MS. JIMENEZ: Go back for a moment.

BY MS. JIMENEZ:

Q. Let me show you Exhibit 23-1, please --

MS. JIMENEZ: Just for the witness. This is not in evidence.

BY MS. JIMENEZ:

Q. Mr. Cupersmith, can you see this --

A. Yes.

Q. -- chart?

A. Yes.

Q. Okay. Does this chart reflect ownership interest of HM-UP Development Alafaya Trails, HM Management, and CJUF III Flagler?

A. Yes.

Q. Does this chart fairly and accurately represent ownership interest based on the tax returns that you have prepared for the Defendant and his companies?

A. Yes.

MS. JIMENEZ: I'd like to move Government's Exhibit 23-1 into evidence.

MR. ETRA: Objection, because the dotted lines aren't ownership interest and they convey something else that the witnesses --

THE COURT: I'm sorry. The legal basis of the objection?

MR. ETRA: It's not supported by the testimony. The chart has more information than the ownership. It's got the dotted lines which are not ownership.

THE COURT: The objection is overruled. It will be admitted into evidence.

(Government's Exhibit 23-1 received into evidence.)

BY MS. JIMENEZ:

Q. Mr. Cupersmith, HM Management and Development is in the middle of the chart. Do you see it?

A. Yes.

Q. What is its relationship to the Orlando shopping center and the Miami shopping center?

A. They manage --

MR. ETRA: Objection. Personal knowledge.

THE COURT: If the witness has personal knowledge. Overruled.

THE WITNESS: I have personal knowledge. They manage those two properties.

BY MS. JIMENEZ:

Q. And what is its relation to HM-UP Development Alafaya Trails and CJUF?

A. They also -- Alafaya Trails, through HM Four and HM Eight, own the shopping center.

Q. And does HM-UP Development Alafaya Trails and CJUF pay fees

to HM Management, management fees?
A. I couldn't tell you the amount. But they were paying fees, yes. I couldn't tell you what they are.
Q. All right.
A. All we had was summaries, so I didn't have individual payment schedules.
Q. Did the Defendant at any point when COVID began reach out to you to ask about how to qualify for a PPP loan?
A. No, he did not.
Q. Did he at any point mention to you that he had received any PPP money?
A. Until that call in July, I did not know. No.
Q. Did he tell you whether he had a PPP loan forgiven?
A. No, he did not.
Q. Are those things you would report on tax returns?
A. Yes, I would.
Q. Did the Defendant reach out to you to ask how to apply for an EIDL loan?
A. No, he did not.
Q. Did he mention to you that he had received EIDL funds?
A. No, he did not.
Q. Is the owing of an EIDL loan or receiving an EIDL loan -- is that something you would report on the tax returns?
A. We -- the only thing we had was a loan to the SBA. That's all. We asked for documentation. That's one of the items we

never received.
Q. All right.
A. Which showed as a liability.
Q. Thank you.
MS. JIMENEZ: Can we show Exhibit 38, please.
Can we go down.
Here.
BY MS. JIMENEZ:
Q. July 28, 2022, Mr. Cupersmith, did you write the Defendant a letter?
A. Yes.
Q. What did you say in this letter?
A. "Unfortunately, effective immediately, we feel that we no longer can represent you personally or any of your entities which are listed below." That's my signature.
Q. Did you send him this letter?
A. Yes.
Q. Why did you write this letter and send him this letter?
A. An hour after I spoke to him that day, two FBI agents entered my office and showed me their badges, showed me tax returns which I did not sign.
Q. When you had -- you said you had a conversation with the Defendant that day?
A. Yes.
Q. Did he mention anything about any PPP loans?

A. I called him to get the information to do his '21 tax return. He then told me he had a problem with a PPP loan, but he was going to handle it locally and I didn't have to worry about it.
Q. All right.
MS. JIMENEZ: Can we go back to the letter.
Can you go up from this letter, please.
All right. So can you show -- can you show everything down to -- there's two emails here.
A little more.
"From" down to "Tracey."
All right. So on -- no.
BY MS. JIMENEZ:
Q. All right. So does this record reflect that that letter was provided to Mr. Sheppard that day?
A. Yes.
Q. All right.
MS. JIMENEZ: And then we cut off his email, the "from." Now go up to the "from" here, please.
Thank you.
BY MS. JIMENEZ:
Q. All right. And then Mr. Sheppard wrote back to you July 28, 2022. Can you read what he wrote.
A. "I have received your email. Disturbing, but okay. Please immediately have every file you have for all my entities and

all my personal files boxed up and sent to the below address immediately. This should include any work notes and all returns filed for the past 10 years."

Q. Mr. Cupersmith, did you comply with the Defendant's request to provide him all of your files?

A. The files are accountant's files. I'm required to keep those files under the AICPA and state licensing. They are my files. Any records that were the client's had already been returned to the client.

MS. JIMENEZ: If I could have a moment.

THE COURT: All right.

(Pause in proceedings.)

MS. JIMENEZ: I don't have any other questions of the witness.

THE COURT: All right. Cross-examination.

(Pause in proceedings.)

MR. ETRA: May I proceed, Your Honor?

THE COURT: Of course.

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good afternoon, Mr. Cupersmith. Nice to meet you.

A. Good afternoon.

Q. We have not met before, correct?

A. Correct.

Q. You first learned about this matter when the Government

came to your office on a surprise visit; is that correct?
A. That's correct.
Q. And that was about July 25th of 2022?
A. July 28th.
Q. July 28th, 2022?
A. Yes.
Q. Okay. And that was -- and in that meeting, it was a surprise visit. They didn't call ahead to schedule, correct?
A. Correct.
Q. And before that meeting -- and in the meeting they told you that your client of 25-odd years had been arrested, correct?
A. Correct.
Q. And before they arrested Mr. Sheppard, the FBI never reached out to you to investigate these tax matters, correct?
A. Correct.
Q. Never asked you about documents?
A. No.
Q. Never asked you about his business?
A. No.
Q. At the meeting, you didn't have a lot of time because you were surprised, right?
A. Correct.
Q. And you had to run to another meeting?
A. Correct.
Q. Okay. But they did give you a subpoena, correct?

A. Correct.
Q. And after the meeting, you went out and hired a lawyer, Mr. Buz Eizen. Do I have that right?
A. Yes.
Q. And you --
MS. JIMENEZ: Objection. Relevance.
THE COURT: Overruled.
BY MR. ETRA:
Q. And you fired your client of 27 years, Mr. Sheppard. We saw the letter, correct?
A. Correct.
Q. Is that right?
A. That's correct.
Q. And then you produced -- you had a subpoena, so you had to look through your files to produce the records you have, right?
A. That's correct.
Q. The records that according to -- did you say AICPA?
A. Yes.
Q. What is the AICPA?
A. American Institute for CPAs.
Q. In short terms -- in plain terms, what does it mean? What is it?
A. It's a licensing -- a national licensing agent for CPAs. And then you have your state licenses. Each state has their own state licensing.

Q. And I think you said that under those rules or standards, your papers are yours, they don't belong to the client, right?
A. Correct.
Q. And that's why you were not willing to give them to Mr. Sheppard, right?
A. Correct.
Q. So you looked through your files --
A. If he requested certain copies, we would have given him copies. Nobody made that request. They wanted us to box up everything I ever had.
Q. I'm sorry?
A. They wanted me to box up everything I had. If the next accountant -- I've always cooperated with -- if I lost a client, something happened, I've always cooperated and given certain schedules. But no request came for that.
Q. But you weren't willing to give it to Mr. Sheppard, correct?
A. I wasn't going to turn all of my records because I'm not required to turn -- if somebody requested specifics, like depreciation or specific schedules, I would have turned that over.
Q. Did you indicate that to Mr. Sheppard at the time?
A. No.
Q. And so you got a subpoena and that means you have to look for documents and produce them, right?

A. Correct.
Q. And you looked for documents after you got the subpoena, right?
A. Correct.
Q. So you produced your copies -- your office's copies of the actual filed tax returns, right?
A. Right.
Q. At that time, you did not produce any other documents, correct?
MS. JIMENEZ: Objection. Relevance.
THE COURT: Overruled.
THE WITNESS: I don't understand the question. I produced what the subpoena asked me to produce.
BY MR. ETRA:
Q. Did you produce, at that time, only the actual tax returns, not emails or work papers? Is that correct?
A. I don't -- I don't recall. I don't remember the -- because we turned over emails and everything. I don't remember if that was that time or something later. I don't know the answer.
Q. That was a few months ago you turned over emails, right?
A. I don't recall that. My office handled that. I don't recall the exact date.
Q. And they came back and they -- FBI interviewed you again after you had turned over documents, right?
A. Correct.

Q. And this time they set up an appointment, and actually Special Agent Halleran was there this time in person, correct?
A. I don't know. We did maybe Zoom. I don't think it was in person.
Q. It was a long meeting?
A. An hour.
Q. Covered a lot of issues?
A. Yes.
Q. You answered all the questions?
A. Yes.
Q. And in that meeting, they asked you about those fake tax returns with the forged signature, right?
A. Correct.
Q. And you explained that that's not your signature, right?
A. Correct.
Q. But they asked you other questions about the returns you actually prepared, correct?
A. Yes.
Q. And your lawyer made a statement at the beginning of the meeting to clarify your lack of involvement in those returns, correct?
A. I reviewed the work papers at the end and signed the tax return. The work papers equaled the tax return.
MR. ETRA: Could we just put up -- not for the jury -- could we put up Q-6. It's the second 302 -- 302 of the second

meeting.

MS. JIMENEZ: Is there something that he's not recalling? Does he need to be refreshed?

THE COURT: Yeah. I think he's answered the question.

Did you want to ask him another question that would require a refreshing recollection?

MR. ETRA: Am I not allowed to just use a document to show the witness and ask him if this is correct? I'd like to do that.

MS. JIMENEZ: This is not his Jencks.

THE COURT: I'm sorry. Are you seeking to introduce this document?

MR. ETRA: No. Just put it on the screen for the jury -- for the witness. Pardon.

THE COURT: But for what purpose?

MR. ETRA: To go over what's on --

THE COURT: But it's not in evidence, sir.

MR. ETRA: Okay. I'll -- fine. I'll do it differently.

BY MR. ETRA:

Q. At the beginning of the meeting, isn't it true that your lawyer, Mr. Eizen, said he wanted to be clear that although you reviewed the tax documents you did not actually prepare all of them; is that correct?

A. That's correct.

Q. Is that correct?
A. That is correct.
Q. And you explained --
A. I said that before.
Q. That's because Mr. Zaslow prepared the returns at least in the last few years, right?
A. Correct.
Q. How many years back has it been that it's Mr. Zaslow that's prepared the returns, not you?
A. Four or five years back.
Q. Okay. So maybe from 2016 or '17 or so?
A. Could be, yes.
Q. Okay.
A. I don't have anything in front of me to say that's true or not.
Q. And at that point, did they say: "Excuse me. I'm sorry. Let me go down the hall to speak to Mr. Zaslow"?
A. No, I did not.
Q. They just kept asking you questions about the returns that you did not prepare, correct?
A. Correct.
Q. And you answered them, right?
A. Correct.
Q. Because if the FBI asks questions, you try to answer them, right?

A. Right.
Q. Correct?
A. Correct.
Q. And all you were doing was looking at the returns and trying to interpret them, correct?
A. Correct.
Q. Because you didn't have personal recollection of preparing those returns, right?
A. I didn't prepare those returns personally, but I did review the work papers before I signed the tax returns.
Q. When you're saying: "Work papers," what specifically are you referring to?
A. Mr. Zaslow took the trial balance and created our own work papers and made certain journal entries to correct the mis-postings.
Q. Okay.
A. And that bottom line -- let me finish. That bottom line equaled the tax return.
Q. So when -- I'm sorry. I didn't mean to cut you off.
A. Whatever that final worksheet did, I made sure it equaled the tax return.
Q. You made sure that those numbers were in the actual tax return?
A. Correct.
Q. All right. So if I got this right -- and we'll talk about

how these returns are prepared -- when Mr. Zaslow finished -- Mr. Zaslow worked primarily with Ms. Gonzalez, correct?
A. Correct.
Q. And when he was done preparing them, he had a final worksheet, that's when you looked at it, correct?
A. Correct.
Q. And you wanted to make sure the numbers on his worksheet matched the numbers in the return?
A. That's correct.
Q. That's your involvement in the tax returns?
A. That's correct.
Q. And that's what your testimony today is based on, you're comparing a final sheet from Mr. Zaslow and the numbers on the actual return?
MS. JIMENEZ: Objection. Misstates the testimony. Argumentative.
THE COURT: Overruled.
BY MR. ETRA:
Q. That means you have to answer the question.
A. Say the question again.
Q. And that's what you're here to testify today about, your involvement in these returns, which is taking the final work from Mr. Zaslow, the number -- let's say it's 1.4 million for revenue -- and making sure it's in the right place on the tax returns for revenue. Is that the basis of your testimony

today?
A. That's correct.
Q. Is Mr. Zaslow -- is he still alive?
A. Thank God, yes.
Q. Thank God, yes. Okay. Is he younger than you? Is he more of a junior partner?
A. He's younger than me.
Q. Is he still working with you?
A. He's still my partner.
Q. So when he was your partner at the Cupersmith -- I call it the Cupersmith firm. I hope that's okay. He was a partner at your old firm and now your new firm, right?
A. Correct.
Q. Isn't it true also at the meeting that -- talking about the second meeting, the longer meeting -- your lawyer wished to clarify that you, Cupersmith, confirmed -- Mr. Cupersmith -- it says "Cupersmith." I mean Mr. Cupersmith.
A. Okay.
Q. No offense intended.
It says that the lawyer -- your lawyer wished to clarify that you confirmed that the tax information reported to you was from Sheppard. Did he say something like that?
A. I'm not aware that he said that.
Q. Okay. Because that wouldn't make any sense in the context of these returns, right?

A. No.
Q. Because the information is coming from Ms. Gonzalez, correct?
A. Correct.
Q. And it's not going to you. It's going to Mr. Zaslow.
A. That's correct.
Q. Okay. But it is reflected in here that you told the agents that in general, meaning in the history, when you were getting information from Mr. Sheppard, you believed he was giving you accurate information; is that correct?
A. I've always trusted Mr. Sheppard in the past.
Q. Because year in, year out, you're doing his returns, you wouldn't have kept doing it --
A. No. That's correct.
Q. I'm from up north. We're going to talk over each other, so we have to give each other a second. It's probably my fault too.
Let me start again. You worked with him over 27 years, about 25 -- 25 years, right?
A. Correct.
Q. Okay. And you wouldn't have kept working with him if you thought he was trying to pull one over on you, right?
A. That's correct.
Q. You got along with Mr. Sheppard, right?
A. Correct.

Q. You actually became kind of friendly, correct?
A. We did.
Q. So you have no information -- you have no personal knowledge of any information given by Mr. Sheppard that ended up in these tax returns for 2018, 2019, and 2020, correct?
A. That is correct.
Q. And you don't know if anything was told to Mr. Sheppard about adjustments, or calculations, or accounting principles for these returns, 2018, 2019, and 2020; is that correct?
A. That's correct.
Q. And you didn't have any discussions with Mr. Sheppard about when you used the term "revenues" on accounting -- on a tax return, how that would apply for his regular business, correct -- I mean not in the tax world, correct?
A. I don't understand your question.
Q. Okay. You never told him that when you go to the tax return and you see the word "revenues," that he has to tell all lenders that's the amount of revenue he has, correct?
A. That's the gross revenue, yes.
Q. You never told him that, right?
A. He never asked, and I never told him. He never asked me about the tax returns.
Q. Exactly. You guys just talked about how to take information from the business and apply it on the tax returns, right?

A. That's all we talked about.
Q. And you didn't talk about how to take information from the tax returns and apply it on the business, for example, on a loan application, right?
A. I don't know anything about the loan application.
Q. I'm sorry?
A. I don't know anything about a loan application.
Q. And you never told him that: "If you ever fill out a loan application, and you have to use revenues, you better use the information on these returns"?
A. Somebody would have to ask me that. My clients that borrow money ask me -- call me and ask me about a loan application, and I usually help them fill it in. I was not requested.
Q. I'm having a hard -- could you say that again a little louder, please.
A. Normally, with my clients, I help them fill in loan applications. Normally they would call me and ask for me to help them fill in that application. I had no such call.
Q. Are you saying Mr. Sheppard always asked you for help on loan applications?
A. No. He never did.
Q. And you know he's filled out a lot -- over the years --
A. Filled out himself.
Q. Let me finish. Over the years, you're aware that he had taken out a lot of loans, correct?

A. Correct.
Q. Big loans, right?
A. Correct.
Q. And you never said to him: "Eric, you can't do this without checking with me," did you?
A. Nobody asked me that. So --
Q. And you never told him that?
A. No. If I got to call every client and tell them things, I would never be done on any tax return. My clients ask me specifically what they want. He never asked me. So I can't volunteer.
Q. I wasn't criticizing you and suggesting that you didn't tell him these things. I just want to establish that you never told him --
A. No. I never told him.
Q. That's all. Okay. Fair enough.
Now, I have seen the notes of the second meeting. Was that about November of 2022?
A. If you say it is. I don't exactly remember.
Q. About three or four months after the first meeting?
A. Yes.
Q. And is that the only time you met with the Government?
A. No. I've talked to them several times after that.
Q. How many times have you spoken or met, video, in person, or phone calls with the Government?

A. Maybe four or five times more.
Q. And who was present in those meetings?
A. Aimee Jimenez. And then also -- I don't remember who else was there. There was some other people in the room as well.
Q. Anyone ever taking notes in those meetings?
A. Not me. I don't know if they were taking notes. They were asking me specific questions about the tax returns.
Q. Isn't it true that you ultimately did produce documents besides the returns? You produced emails, right?
A. Correct.
Q. How did you go about looking for emails to produce?
A. Anything that had Eric Sheppard's name on it, we would kick it out on the computer.
Q. And you have been doing his tax returns for about 25 years?
A. Correct.
Q. And the earliest email I have from you, or from the Government from you, is July of 2021. Does that sound right?
A. Sounds right.
Q. How is it possible -- so to be clear, you did not produce any communications between your firm and Mr. Sheppard's firm for about almost the entire 25-year period you were working with him, correct?
A. We would -- if I had -- I used to visit his office once a year until COVID came.
Q. We're going to get there.

A. Okay.
Q. But I'm talking about producing -- written communications you have not produced, right?
A. I would call him. I'm not an email type of person. I would have called him.
Q. Okay. Well, Mr. Zaslow is an email-type person, right?
A. That's correct.
Q. Well, did you search for emails?
A. We searched for emails.
Q. And why is it that --
A. My office -- I can't answer the question. I didn't do the search, so I can't answer the question.
Q. Don't you have a duty to keep all your files for about seven years --
A. That is correct.
Q. -- from the time of the return?
A. It is correct.
Q. Is that correct?
A. That's correct.
Q. And we know the files include the communications with the client to prepare, correct?
A. Correct.
Q. And you violated your duty in not keeping those files, right?
A. I don't know what you're saying. You're making an

accusation --
Q. I'm sorry?
A. You're making an accusation that I don't know to be true.
Q. Well, let me take it in pieces, okay? Your firm has a duty to keep all the papers relating to a return for seven years. Yes or no?
A. Yes.
Q. And you did not do that with Mr. Sheppard --
A. We produced the records during that period of time that they asked us.
Q. Okay. Tax returns -- did you do any tax returns for 2012 -- sorry. Let me start again.
You did a tax return in 2016?
A. Yes.
Q. Okay. Did you keep those documents for seven years?
A. Yes.
Q. You kept the emails?
A. I can't answer the question because I didn't produce the emails. Someone in my office did, someone else other than myself.
Q. Are you saying that you may have emails --
A. I don't know the answer to that. You're trying to change my words. I didn't say that. I said I personally do not know if there are other emails. I don't think there are, but there may be. I just don't know the answer.

Q. When you say you don't think there are, why do you say that?
A. Because we had very little communication. We -- all we prepared for Mr. Sheppard were tax returns.
Q. Are you saying Mr. Zaslow only started emailing in July of 2021?
A. I don't know the answer to that. You could ask me six different ways if you want. I don't know the answer.
Q. So is it your testimony that your office generally did keep records for the returns for seven years?
A. Yes.
Q. And that would include emails, right?
A. It would include emails.
Q. So those emails should be in your office?
A. They should be.
Q. But they were not produced?
A. I don't know the answer. You are asking the same question two different ways. I told you I don't have knowledge of that.
Q. Did you review the emails before you testified?
A. Yes.
Q. Did you notice any before July 2021?
A. I only looked at the ones that were produced by my office.
Q. I am asking --
A. I didn't search for any -- I've answered that question. I did not search for anything prior. I don't know the answer to

the question.
Q. Let me start again. You said you reviewed the emails that you produced in connection with this testimony; is that correct?
A. Correct.
Q. Okay. Did you notice when you were reviewing those emails that the earliest email is from, give or take, around July of 2021? Did you notice that?
A. Yes.
Q. Okay. And did you then say: "Okay. I need to go back and look for more emails"?
A. No, I did not.
Q. Why not?
A. Because I was told that's all we had, so I accepted that. It's my office manager.
Q. So you can't testify about the written communications before July 2021, correct?
A. Not sitting here. I don't have the information with me to be able to testify to that.
Q. You don't know what people at the Sheppard company said to your firm and vice versa, right?
A. Correct.
Q. Let me understand the role of -- your role as a certified public accountant, okay?
A. Okay.

Q. Let me take a step back. What does it take to become a CPA? Could you describe generally the process. It's always sounded arduous to me.
A. Well, when I passed the CPA exam, you needed four years of college education, 32 hours in accounting, and certain other requirements. Today it's five years. And I had to wait two years to sit for the exam when I passed it. I had to work for another CPA firm to be able to sit for the exam.
Q. It's a series of challenging exams, correct?
A. Yes. Yes.
Q. And you're licensed as a CPA in New Jersey, in Pennsylvania, in Florida as well --
A. I'm not licensed in Florida.
Q. I'm sorry?
A. I am not licensed in Florida.
Q. But New Jersey and Pennsylvania?
A. Correct.
Q. In order to do your job, you have to learn -- as a CPA, you have to learn about the business that you're dealing with, right?
A. Correct.
Q. It's not as simple as bookkeeper sends financial information and you work it up. You have to understand the business, right?
A. If I'm only preparing the tax return, I accept the

information from the client and prepare the tax return. We did no auditing. We did no compilation. We did no review. We accepted the information and prepared a tax return. That was the requirements.
Q. You'll agree you have a special skill as a CPA, correct?
A. I don't know what you mean by that.
Q. Okay. You have knowledge that other people who aren't CPAs have, correct?
A. Correct.
Q. And what is that?
MS. JIMENEZ: Objection.
THE WITNESS: Business knowledge.
MS. JIMENEZ: Relevance.
THE COURT: Overruled.
THE WITNESS: I have business knowledge. I have -- I know a lot of bankers. I have credibility for over 50 years. I'm skilled in tax returns, tax audits.
BY MR. ETRA:
Q. Okay. You have knowledge about the tax code and accounting principles that your typical small business owner may not have, correct?
A. Correct.
Q. That's why they hire you, to your knowledge, right?
A. Correct.
Q. And you market yourself and your firm as having expertise,

experience, and analysis and thorough research. Is that fair to say?

A. Correct.

Q. Right?

A. Correct.

Q. You're bringing value as an expert in the field that you're in, correct?

A. Correct.

Q. And that is understanding the tax law and the accounting principles and applying them to the business information in front of you. Is that fair to say?

A. Correct. Correct.

Q. Okay. Mr. Sheppard is not a tax expert, right?

A. Correct.

Q. You understand that with clients like him they are looking for you to apply the principles of the IRS and accounting to the business information, correct?

A. Correct.

Q. Now, the tax preparer -- you signed all these returns as the tax preparer, correct?

A. Correct.

Q. But the internal documents, the notes that you were shown by Ms. Jimenez, that shows when they're sent out to the client -- recall that?

A. Correct.

Q. For every time internally where it says "preparer," it said: "AZ," correct?
A. Correct.
Q. For Alex Zaslow, correct?
A. Correct.
Q. But you signed for the public facing, for the IRS facing --
A. I'm the partner in charge.
Q. You signed that you are the tax preparer, correct?
A. Yes. And I signed because I'm the -- it's my client and I'm the -- I'm the -- the partner on that -- for that client.
Q. You didn't write "partner in charge." You just wrote "tax preparer"?
A. I've never written "partner in charge" in my life.
Q. Right. And in reality, the person who has primary responsibility is supposed to sign as tax preparer, correct?
A. Correct.
Q. And that was Mr. Zaslow, correct?
A. No. I was the primary --
Q. You had primary responsibility?
A. No. I signed the return.
Q. Okay.

(Pause in proceedings.)

BY MR. ETRA:
Q. I'm advised that I misspoke. The emails go back to July 2020, not 2021. Does that change any of your answers?

A. You have me at a loss. I don't have anything up here to be able to show. You've asked me that several times.

Q. Isn't it true that when you sign as a tax preparer, even though it doesn't say under oath, you're signing under oath?

A. Correct.

Q. Okay. Can you explain what Circular 230 is?

MS. JIMENEZ: Objection. Outside the scope. Relevance.

THE COURT: Overruled. I'll allow it.

THE WITNESS: It tells you the requirements of the IRS code. It's a section put out by the IRS for preparing returns.

BY MR. ETRA:

Q. Standards of practice, right?

A. Right.

Q. Okay. And there's a duty of competence for a CPA, correct?

A. Correct.

Q. Part of it is have the appropriate knowledge and skill, correct?

A. Correct.

Q. Which I don't doubt that you have. But it also requires thoroughness and preparation; is that correct?

A. That's correct.

Q. And that means you have to understand the business and the documents, correct?

A. Correct.

Q. Yes?
A. Yes.
Q. All right. So you didn't do an audit of the company, right?
A. Correct.
Q. And you didn't do a compilation and a review of documents, right?
A. Correct.
Q. That has nothing to do with tax preparation, those concepts, right?
A. Correct.
Q. Okay. So let's talk about what did you do for tax preparation. You had to have thoroughness and preparation to do these tax returns, right?
A. Correct.
Q. You can't just sit at your desk and read a bunch of documents and type in the information, correct?
A. Correct.
Q. And there's also a duty of diligence, isn't there?
A. Correct.
Q. As to accuracy?
A. Correct.
Q. Right. And you're supposed to communicate with the client about what's going on on the returns?
A. I never had that communication with him.

Q. Okay. You're supposed to establish facts and figure out what's relevant for purposes of the return?
A. I prepared the return based upon the information given to me. That's why we put the tax preparer clause in there, because I was not given all the information to accurately prepare the return. That's why I said in the letter if I found additional information I would amend the tax return.
Q. Let me just go back to my question. Try to answer yes or no, if you can. Okay?
A. Okay.
Q. You're required to establish the facts, figure out what's relevant, and make sure your assumptions are valid. Isn't that part of the obligations of a CPA?
A. Correct. To the best of what's supplied to us.
Q. I'm sorry?
A. To the best of what is supplied to us. We're not magic -- we're not magicians. If something is not supplied, we can't put it on a piece of paper.
Q. Well, if there's something not supplied, you can't use it, right?
A. A tax preparer has to file a tax return. It was already delinquent, so we prepared it based upon the information that was supplied by the taxpayer.
Q. Are you telling me if you receive insufficient information you can't say to the client: "I can't file these returns"?

A. We said in the letter, if you read the letter, that we would -- that if additional information was supplied to us we would amend -- encourage the client to file an amended tax return.

Q. I'd like you to try to answer my questions.

A. Okay.

Q. And then explain if you can. The Judge will let you, I promise. Okay?

Are you saying that as a CPA, if you don't get enough information, you still have to file the returns or you're allowed to say: "I'm sorry. I'm not doing it"?

A. I'd have to resign. That's the only thing I could do.

Q. Exactly. And you had that option for 25 years?

A. But I was with him 25 years.

Q. Sorry?

A. I trusted him for 25 years.

Q. You had the option to resign for 25 years, correct?

A. Correct.

Q. And you never did?

A. No.

Q. So you were comfortable with the information you were receiving, correct?

A. Based upon the information I was given, yes.

Q. You're allowed to rely on information from the client, right?

A. Correct.
Q. But you have to follow up if something looks wrong or something doesn't quite make sense; is that right?
A. Correct.
Q. And if there's an error, you have to tell the taxpayer, right?
A. Correct.
Q. And if an error doesn't get corrected from year to year, that might be one of the times to resign, right?
A. Correct.
Q. Let's talk about the history of you dealing with Mr. Sheppard. Okay?
A. Okay.
Q. You've known him for a long time, right?
A. Correct.
Q. He was more of an up-and-coming developer when you first met him?
A. Yes. He worked for a company that I represented.
Q. Was that WSG Development?
A. Uh-huh. Excuse me. Yes.
Q. Is that Phil Wolman?
A. Yes.
Q. Was it Wolman Sheppard Group?
A. Yes.
Q. Was there a third person there?

A. Yes. John Guroski (phonetic listing), who was subsequently deceased.
Q. And you understood Mr. Sheppard's job was to go around, look for places For Eyes might want to have a shop and build up and develop, correct?
A. Correct.
MS. JIMENEZ: Objection. Outside the scope. Relevance.
THE COURT: Overruled. I'll allow it.
BY MR. ETRA:
Q. Is that right?
A. Correct.
Q. Okay. And ultimately, unfortunately, Mr. Wolman had health problems?
MS. JIMENEZ: Objection. Relevance.
THE COURT: Sustained.
BY MR. ETRA:
Q. WSG Development ultimately changed to HM Management, right?
A. Correct.
Q. And you stayed on, right?
A. Correct.
Q. And there were a lot of different companies?
A. Correct.
Q. And at what point were you preparing or your firm preparing approximately 74 return -- returns for 74 different companies?

A. I can't tell you the number.
Q. Sound about right?
A. Could be. They didn't all exist at the same time.
Q. I'm sorry?
A. They did not exist at the same time.
Q. No. I mean during a given year would there be as many as --
A. Wouldn't be 74.
Q. I'm sorry?
A. I don't think there would be 74.
Q. Okay.
MR. ETRA: Could we put up just for the witness Exhibit Q -- I think it's -- Q-29 is the list.
BY MR. ETRA:
Q. I have a list here for 2012. Could you just take a look at the first page, and then we'll go to the second page, and then I'll ask you if those look like the companies that you did returns for even in the same year.
MS. JIMENEZ: Your Honor, objection, 2012. Irrelevant. We've never seen the document.
MR. ETRA: It's impeachment about --
THE COURT: Perhaps you can focus on the year that you're asking the witness.
MR. ETRA: Well, Your Honor, respectfully, the practice was developed in other years and it's going to go

forward.

THE COURT: Why don't you lay the predicate with regard to this document.

MR. ETRA: He's just looking --

THE COURT: Is he just refreshing recollection --

MR. ETRA: Just refreshing recollection.

Thank you, Your Honor. I apologize.

BY MR. ETRA:

Q. Does this refresh your recollection of the number of companies --

A. Yeah. You're talking -- I didn't know you were going that far back.

Q. I'm sorry?

A. I didn't know you were going back to 2012. A lot of these companies were just companies of -- shell companies. Their assets have been sold. I can't tell you which. I mean, that's 11 years ago.

Q. Do these names look familiar?

A. Yes, they do.

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

BY MR. ETRA:

Q. Do these names look familiar as well?

A. Most of them, yes.

Q. Okay.

MR. ETRA: Put it down.

BY MR. ETRA:
Q. So you're not denying that, back then at least, you would do returns for maybe 60 or 70 companies at a time, right?
A. Correct.
Q. And when you did the returns, as I understand your testimony, would you mail or FedEx them to Mr. Sheppard at his business or house?
A. Yes.
Q. And they were already signed, right?
A. I signed them.
Q. Right. You signed them?
A. Right.
Q. Correct. So you sent them signed by you for Mr. Sheppard to sign, right?
A. Correct.
Q. So you sent them a final version?
A. Yes.
Q. You weren't expecting him to go through the returns of -- say return number 70 -- 35 and say: "I'm not sure about the revenue here for return number 20," and say the cost of goods sold -- that wasn't part of the process, right?
A. No.
Q. You were giving it to him because you were the accountant, and you're telling him: "Here are the returns. Please sign and file," right?

A. Correct.
Q. And in all that time, when you sent the returns to Mr. Sheppard, he wouldn't, again, call you up and have those kinds of conversations: "I don't understand what's going on on Page 10 of this return," right?
A. Never did.
Q. And you didn't expect him to, right?
A. No, I did not.
Q. Because he was relying on you to apply accounting principles?
A. Correct.
Q. Earlier -- before Mr. -- well, at some point in time, was there another accountant at your firm named Mr. Arthur Steiger?
A. Yes.
Q. Was he working on these files?
A. Yes.
Q. What time period, roughly, if you can?
A. At least six or seven years ago.
Q. Okay. And was he more in the construction space?
A. No. They were all general accountants.
Q. Okay. Did Mr. Steiger understand the business of Mr. Sheppard?
A. Yes.
Q. And you always had junior people helping you. I think your son was helping you at some point?

A. Not on these returns.
Q. Okay. And Mr. Zaslow, right?
A. Yes.
Q. Did you tell the FBI about Mr. Steiger's knowledge about the companies?
A. Nobody asked me about it.
Q. But Mr. Steiger understood the business, right?
A. Mr. Steiger has been gone for six or seven years, did not prepare these returns.
Q. Right. But he understood the business in general, right?
A. Correct.
Q. Is it your testimony that nothing -- for these returns, we're talking about 2018 through 2020, is it your testimony that nothing before that -- before 2018 matters for these returns?
A. I didn't see anything strange about them. I got the information from the client and prepared the tax returns. That's all we were engaged to do, is prepare the tax returns.
Q. Don't you have to know how the business operates in order to apply the information from Ms. Gonzalez and put them on the tax returns?
A. It's simple for accountants. It's revenue, which are the gross receipts, if it's a lessor, and --
Q. So you didn't have to --
A. I didn't have knowledge. So -- but you don't have to have

knowledge. You're trying to make it that you had to be a special accountant to prepare this tax return, which you do not.

Q. Do you have to have knowledge about what HM Four does?

A. Yes.

Q. So does that count as having knowledge about the business?

A. That's having knowledge about the business, yes.

Q. Okay. That's what I'm talking about.

A. Okay.

Q. Having knowledge of each company, how they operate, and what they're supposed to do together, right?

A. Correct.

Q. That's part of what you need to know to do these returns?

A. Correct.

Q. And so that could have been knowledge that you got before 2018 that you're still applying to these returns?

A. Correct.

Q. I think you mentioned something about visiting pre-COVID. And I said I'd get back to it, so I'm going to ask you now about that. All right? Before COVID, you went down to Miami to visit with Mr. Sheppard once or twice a year, correct?

A. Correct.

Q. And others would come with you, like Mr. Steiger?

A. Yes.

Q. And sometimes Mr. Sheppard went to -- I thought you were in

Philly, but he went to Philly or New Jersey to meet with you, right?
A. Very rare. It would just be social.
Q. Okay. So most of the time you came down to meet with Mr. Sheppard and his team, right?
A. Correct.
Q. Once or twice a year?
A. Yes. Mostly once a year.
Q. Once a year for about 25 years?
A. I don't remember every year.
Q. Was there a reason to come down to visit his office?
A. I also came down for other clients and spent maybe an hour or two at his office.
Q. Did you meet with people of his team?
A. It was a small team.
Q. Can I get a yes or no?
A. Yes. I met with Jeanette. And earlier it was Jeff Graff. I didn't meet with anybody else.
Q. The entire time that you were working with Mr. Sheppard, those are the only two people you met with?
A. Yes. I don't know if there was somebody before Jeanette. I don't know the answer to that.
Q. You meet with Denise Soriano?
A. That was a different company. Now you're going back to the '12 and --

Q. I'm thinking of them both together. And I apologize.
A. Well, you have to separate the years. People change.
Q. Okay. Did you meet with Addy Sosa?
A. I don't remember the name, to be honest with you.
Q. Jessica Hernandez?
A. Yes.
MS. JIMENEZ: Objection. Relevance. Time frame.
THE COURT: Yeah. Let's give a time frame, please.
BY MR. ETRA:
Q. Well, let me just go through the different stages. Mr. Sheppard worked first with Mr. Wolman in Hialeah, right?
A. Correct.
Q. And you were there, right?
A. Yes. I was the independent accountant.
Q. And then he moved to Miami Beach, on 41st Street, and you went there, right?
A. Correct.
Q. And then they moved to upper Biscayne Boulevard, North Miami, and you met there, right?
A. Correct.
Q. And when you met -- did you meet with the accounting department?
A. I met with Jeanette.
Q. Okay. Before Jeanette, did you meet --
A. I don't know who the person -- I can't tell you who -- I

probably met maybe -- I was only there an hour, hour and a half. So maybe I talked to Jeff. But I don't remember when Jeff left or -- I can't answer that question.
Q. But you met with Jeanette, right?
A. Correct.
Q. And you needed to understand what she was doing?
A. Yes.
Q. And you had learned what she was doing?
A. Yes.
Q. And and you also met with Mr. Sheppard, right?
A. Correct.
Q. And you needed to understand what he was doing, right?
A. Yes.
Q. You needed to understand about the leases that he was entering into?
A. Only described who the lessees were.
Q. I'm sorry?
A. He only told me who the tenants were.
Q. Okay. You never had any leases?
A. No. We were only doing the tax return. I'll say it again: We were not preparing any financial statements.
Q. So you were never given copies of any leases?
A. No. It's not required.
Q. And did you have to learn about the loan agreements that the companies entered into?

A. I asked for those loan agreements. They were not presented to me.
Q. You have to talk a little louder --
A. I asked for the loan agreements and they were never presented to me.
Q. So you never got a copy of the loan agreements?
A. No. That's why I asked for -- that's why I put that letter attached to the tax return.
Q. So I'm talking about in all the years. You never got copies of loan documents?
A. No.
Q. And we --
A. Wait a minute. You're trying to confuse me. Are you talking about '18, '19 and '20 or are you talking about 2012?
Q. I'm talking about the entire time. Did you get --
A. I can't answer that. I don't know what I did in 2012.
Q. Do you know that the -- you showed mortgage interest of a million dollars a year. Do you remember seeing that?
A. Which years are we talking about?
Q. The recent years.
A. I didn't get copies of those documents.
Q. Do you know what loan that's from?
A. I assume one of the shopping centers. I'm not sure which.
Q. Do you know if it's the Basis loan for Alafaya Trails?
MS. JIMENEZ: Objection. He said he does not know.

THE WITNESS: I have no idea.

THE COURT: Sustained. The objection is sustained.

BY MR. ETRA:

Q. When you say that you don't know -- you haven't gotten documents or you don't know, is it possible other people on your team had this information?

A. No.

Q. How do you know?

A. Because I asked.

MR. ETRA: Your Honor, I'm going to put up Exhibit Q-13. It's from the production that was put into evidence. But this was not shown on -- it's the --

THE COURT: All right. So Q-13 is part of which exhibit?

MS. JIMENEZ: Which Government's exhibit is this?

MR. ETRA: Chris, which exhibit?

MR. CAVALLO: It would be part of Composite 28.

MR. ETRA: Part of Composite 28.

THE COURT: All right.

MR. ETRA: Offer that in evidence, Your Honor.

THE COURT: Well, it's already in evidence.

MR. ETRA: Okay. Then I'm offering it as Q-13 then.

THE COURT: I'm assuming the Government has no objection. This is part of the Exhibit 28.

MS. JIMENEZ: No objection.

THE COURT: All right. Admitted into evidence.

(Defendant's Exhibit Q-13 received into evidence.)

BY MR. ETRA:

Q. You see the Bates number there "NC" at the bottom?

A. Yes.

Q. And do you understand that means it was produced by your office?

A. Yes.

Q. And could you read the top of the document, please.

A. "Second Amendment to Lease."

Q. Is that part of a lease document?

A. I would assume it is. I have not read this. So --

Q. So you testified that you never got any lease documents, and that was an issue. And yet, you have -- you've produced at least part of a lease document, correct?

A. It's a lease document, not a loan document. I would not look at the lease documents.

Q. You would not look at lease documents?

A. No.

Q. So did you receive the lease -- I thought you said you don't get the leases either.

A. I said I don't get the loan documents.

Q. Maybe I confused things, and I apologize. Let's go back to leases. Did you get the leases?

A. If you got them -- this exhibit -- they got them from my

office, yes.
Q. Wasn't your testimony that you don't usually get them --
A. I didn't say that. I said I don't look at them because I'm only comparing the tax return. Please don't try to confuse me.
Q. Okay. This lease ended up in your office, right?
A. I didn't say it didn't.
Q. How did it get there?
MS. JIMENEZ: Objection.
THE COURT: How did the lease get into his office? Is that the question?
MR. ETRA: Yes. Yes.
THE COURT: All right. You may answer the question.
THE WITNESS: They probably sent it to us.
BY MR. ETRA:
Q. Right. So then there would be other documents sent to you that you're not aware of, correct, like loan documents or other leases, right?
A. I never saw any loan documents.
Q. And you said you never saw the leases?
A. I didn't see this. It wasn't required of me -- as I said, again, I took the receipts and disbursements and did a tax return.
Q. Let's talk about why the lease may or may not be required of you and the return you did in HM-UP for 2020.
MR. ETRA: Could we go to the second paragraph --

let's look at the second paragraph under the whereas clause, the second whereas clause.

BY MR. ETRA:

Q. Says: "Whereas landlord owes tenant the total allowance and reimbursement for certain out-of-pocket expenses, some of which are disputed by landlord, totaling approximately $1.1 million." You see that?

A. Yes.

Q. Are you familiar with the Burlington lease?

A. No, I'm not.

Q. Are you familiar with the fact that because of COVID and problems like that there was a delay in getting it done?

A. Getting the lease done?

Q. Sorry. Getting the building done --

A. Yes.

Q. You're familiar with that?

A. Yes.

Q. Okay. And you're familiar with the fact that Burlington exercised its rights to essentially penalize HM-UP by the tune of $1.1 million for the fact that it wasn't delivered when it should have been delivered --

MS. JIMENEZ: Objection. Relevance. Outside the scope.

MR. ETRA: It goes directly to the preparation of the returns --

THE COURT: Hold on. Whether -- his knowledge. The objection is overruled.

You may answer the question, Mr. Cupersmith.

THE WITNESS: Ask me the question again. Please ask me the question.

BY MR. ETRA:

Q. Okay. Sorry. Are you familiar with the fact that because of delays from COVID in delivering the finished product to Burlington, Burlington exercised its right to penalize HM-UP by about $1.1 million?

A. I see the clause.

Q. And you didn't need to know that in order to prepare the HM-UP tax returns. Is that your testimony?

A. It was never -- it was presented to us, but I didn't see it.

Q. Sitting here now, don't you think it's important for the preparation of the --

A. I'd have to look at the total, what happened afterwards. You're showing me something I haven't seen. So therefore, it might affect the tax return. Right now, I can't answer the question.

Q. You didn't prepare these returns, right?

A. That's correct.

Q. You have no idea if they were taken into account?

A. I do not.

Q. Well, let's take a look at -- where would that be in the HM-UP 2020 tax returns if they were taken into account?

A. I'd have to read the whole lease. I mean, you're asking a paragraph. I'd have to read the whole lease. Is this lease signed? Was this lease signed, this second amendment?

Q. Okay. Let me ask you something. Did your firm act based on this information or not?

A. Right now, I'd say no.

Q. You don't know?

A. I do not know.

Q. Was it incorporated into this tax return in 2020? Do you know?

A. I do not know.

MR. ETRA: Go to Page -- if we go to Page -- Bates Number 524.

MS. JIMENEZ: Objection. Can we see the date of this lease agreement, this amendment. It's an amendment.

THE COURT: I believe that --

THE WITNESS: I don't even know if it's signed.

THE COURT: Hold on. Is this Q-13 or is this another --

MR. ETRA: She's asking about Q-13.

THE COURT: All right. So Q-13, as I understand, is part of Exhibit 28. So the parties should have the benefit of that date. Let's continue.

MS. JIMENEZ: But the witness does not have the benefit of the date of the lease amendment that was shown to him.

THE COURT: Is the witness requesting to see the date? Mr. Cupersmith?

THE WITNESS: Yes.

THE COURT: All right. Then why don't you show the witness.

THE WITNESS: I also want to know if it was signed.

THE COURT: So scroll down.

MR. ETRA: What?

THE COURT: Scroll down to the fourth page, please.

MR. ETRA: Your Honor, there's no date on this document.

THE COURT: Well, then show the witness that.

MR. ETRA: Let's show the witness.

All right.

THE WITNESS: And it's not signed, either.

MR. ETRA: May I continue?

THE COURT: Yes. Of course.

BY MR. ETRA:

Q. Okay. Mr. Cupersmith, could you tell me where -- I'm showing you the HM-UP 2020 returns -- let me take a step back.

Do you know when the -- Burlington was actually delivered, the building was actually delivered to --

A. No, I do not.
Q. Do you know if it was in 2020?
A. I do not.
Q. Do you know if a penalty was assessed?
A. I do not.
Q. In 2020?
A. This document's not signed or dated.
Q. I understand that. Do you know sitting here -- you're testifying about these returns. You got to let me finish. Now I'm going fast because I'm worried about you talking. So let me start again.
In the 2020 returns, do they take into account penalties that had to be paid for late delivery of the Burlington lease?
A. No, I did not.
Q. They did not. You agree with me?
A. Correct. Because I didn't know if they were enforced at this point.
Q. I'm sorry?
A. This document's not signed or dated. I did not know it was in force at the time.
Q. So you're looking at a document now that's not signed and dated, right?
A. Correct.
Q. Before I showed it to you, you didn't know this document

existed, right?
A. That's correct.
Q. So you don't really know what you were thinking back then when you were working on the returns, right?
MS. JIMENEZ: Objection. Argumentative.
BY MR. ETRA:
Q. Correct?
MS. JIMENEZ: Asked and answered.
THE COURT: Sustained.
BY MR. ETRA:
Q. You're not testifying about what Mr. Zaslow was thinking with respect to this penalty in 2020, are you?
A. I can't -- I can't testify what Mr. Zaslow --
Q. And you don't remember what you were thinking to the extent you compared one piece of -- numbers on one paper to the other in 2020, right?
A. I don't understand the question.
Q. The little you did for the 2020 returns, when you compared numbers in the final document for Mr. Zaslow to the actual returns, you can't say that you were thinking about this damages issue, right?
A. That's correct.
Q. Correct?
A. Correct.
MR. ETRA: Take that down.

BY MR. ETRA:
Q. Do you know whether anyone -- do you know whether Mr. Sheppard referred to any people on his team as a controller or a comptroller?
A. I never heard that title.
Q. Do you know whether he sometimes referred to his accounting people or bookkeeping people that way?
A. Yes. Not here.
Q. I'm sorry?
A. Not at this place I didn't. I referred to Jeanette as the bookkeeper.
Q. Okay. But you don't know how Mr. Sheppard might refer to her?
A. I do not.
Q. And is it fair to say there was always -- throughout the history there was always some kind of accounting department, it just may have been a little less formal or less structured over the years?
A. When I go back, yes.
Q. And it's just -- the difficulty is that Ms. Gonzalez is not a CPA, right?
A. Correct.
Q. And Mr. Graff sort of -- had a foot in and foot out helping out, correct?
A. Correct.

Q. After COVID, how many times did you meet with Mr. Sheppard?
A. Zero.
Q. What would the effect of the $1.1 million liability in 2020 -- what effect would that have on the returns?
A. I don't know the answer to that because I don't know if it's correct or not.
Q. Well, if I'm correct that it was in 2020, what effect would it have on the returns?
A. Well, it has a major effect if you agree to it. If he didn't agree to it -- and it's not signed -- it has no effect.
Q. I understand. Assuming it was done as written, that number, just please -- just tell me what effect it would have on the returns.
A. It would reduce the bottom line.
Q. By?
A. By the million 166.
Q. Your firm has worked with Jeanette a long time, right?
A. Correct.
Q. Yes?
A. Yes.
Q. And from your perspective, from the perspective of the outside CPA, did she seem like a good worker?
A. Yes.
Q. Tried to do her best?
A. Yes.

Q. But maybe not as knowledgable as you would like her to be?
A. Correct.
Q. And Mr. Graff was there to help out when he was there?
A. Early part, yes.
Q. And afterwards you know that she looked to Mr. Zaslow for assistance, right?
A. Correct.
Q. Okay.
A. On an annual basis.
Q. I'm sorry?
A. On an annual basis.
Q. Well, would she reach out to him in between --
A. Most likely not.
Q. Do you know?
A. I don't know the answers. But I know talking to Mr. Zaslow we only did this return once a year. I didn't have -- we didn't prepare any financial statements or anything. So once a year, when I did the tax return, we'd have conversations with Jeanette Gonzalez.
Q. Do you have any -- do you have any personal knowledge of whether or not Ms. Gonzalez and Mr. Zaslow would speak other than that once a year when they worked on the tax returns?
A. I was there for most of the conversations. I can't say I was there for every conversation.
Q. Do you know? Yes or no?

A. I answered the question that I spent most of the time on those conversations with her with Alex. I can't say that Alex had a conversation separate from mine. I can't answer that.
Q. You're not here to say that it never happened, right?
A. No.
Q. Okay. And your testimony is that HM Four had no operational responsibilities, correct?
A. It picked up the income or loss from -- for Alafaya Trails.
Q. Your testimony is that HM Four had no operational responsibilities; is that correct?
A. Well, just based upon the tax return, yes.
Q. Oh. So you're basing that based on how the tax return reads?
A. That's all I was engaged to do.
Q. I'm sorry?
A. I was engaged to prepare the tax return.
Q. Right. And part of that is learning what these companies do, correct?
A. Based upon the information that was submitted to us, correct.
Q. And do you know what -- isn't it true that Mr. Sheppard explained to you and Mr. Steiger what HM Four does? Right?
A. I don't know if Mr. Steiger was there at the time.
Q. And he explained --
MS. JIMENEZ: Objection. Hearsay. The Defendant

explained.

THE COURT: All right. The witness has answered the question. What's the next question?

BY MR. ETRA:

Q. And further explained -- you had information from Mr. Sheppard what HM-UP -- excuse me. I apologize -- HM Eight -- before HM Four, what HM Eight was doing, right?

MS. JIMENEZ: Objection. Hearsay.

THE COURT: Sustained.

MR. ETRA: Your Honor, he testified to what knowledge he had --

THE COURT: Based on his knowledge. But the question is with regard to the knowledge of others.

BY MR. ETRA:

Q. You don't know whether Mr. Sheppard explained to Mr. Steiger how HM Eight and then HM Four operated, correct?

MS. JIMENEZ: Objection. Hearsay.

THE COURT: Whether he has knowledge. Overruled.

MR. ETRA: Doesn't know or he does.

THE WITNESS: I have no knowledge, but Mr. Steiger was probably not there when these companies were operating. I'd have to go back and look at my -- he was disabled and he retired. I just can't tell you the year he retired.

BY MR. ETRA:

Q. I'm just going to ask the question again. Try to give me a

yes-or-no answer if you can. You have no knowledge what, if anything, Mr. Sheppard told Mr. Steiger about the operational responsibilities first of HM Eight and then HM Four; is that correct?
A. He wasn't there. I mean, I have no knowledge. Okay?
Q. And for your knowledge, you have no recollection of being told by Mr. Sheppard --
A. No.
Q. -- of what HM Eight does or HM Four does, correct?
A. No.
Q. Did you -- do you know what an REA is?
MS. JIMENEZ: Objection. Relevance.
MR. ETRA: It's directly relevant --
THE COURT: I'll allow it. Overruled.
MR. ETRA: -- to this issue.
THE WITNESS: I don't know what it is. I don't, I said.
BY MR. ETRA:
Q. You don't?
A. No.
Q. You don't know what an REA is in the context of a shopping center development?
MS. JIMENEZ: Objection. Asked and answered.
THE COURT: Sustained.

MR. ETRA: I'm going to put up first just for the witness Q-15.

Q-15's a document that comes from the Government's Exhibit --

THE COURT: All right. Exhibit --

MR. ETRA: From the Government, Exhibit 58, a composite exhibit I think from the SBA. We're talking Exhibit Q-15.

MS. JIMENEZ: Exhibit 58 is not in evidence.

THE COURT: All right. No objection by the Defendant?

MS. MARTINEZ: We move to admit Government's Exhibit 58.

THE COURT: All right. Any objection?

MR. ETRA: Hang on. Hang on. Hang on. Just -- I apologize, Your Honor. I just want to put up the document first.

THE COURT: I understand that.

MR. ETRA: I object because --

THE COURT: You just said it was part of Exhibit 58, which is not in evidence.

MR. ETRA: Right. Well, there are things in 58 I have outstanding objections to. Not this part. There are other things.

THE COURT: All right. Well, what's the question that would require that you show the witness a document that's not in evidence?

MR. ETRA: Well, they are going to put it in evidence, and it shows the operational responsibilities --

THE COURT: Okay. Well, why don't you ask the question -- the predicate question that would allow the witness to view the exhibit.

MR. ETRA: Just for the witness.

THE COURT: What is the question? There's no need to show the witness an exhibit that's not in evidence, unless it's necessary to refresh recollection.

BY MR. ETRA:

Q. Do you recall that HM Four was at -- had a management agreement in which it agreed to undertake and be responsible for the obligations of HM Eight?

A. I was told that there was one.

Q. You were told there was one?

A. Yes.

Q. By whom?

A. By Mr. Sheppard.

Q. When were you told that?

A. A long time ago, when we started doing this -- oral conversation. We had -- we knew who the owners were. Again, I'm preparing the tax return.

Q. Okay. Great.

MR. ETRA: Now could I show him the document?

MS. JIMENEZ: For what?

THE COURT: Are you seeking to introduce it at this time?

MR. ETRA: I first want to show it to him, and then I would seek to introduce it.

THE COURT: Right. But he stated he had a conversation. I'm just -- I'm trying to understand the reliance on the document that's not in evidence. So you're asking the witness about questions that allow him to look at a document that's not in evidence. That's improper.

MR. ETRA: Okay. I hear what you're saying, Your Honor. I'll go without the document for now. I mean, to be clear, Your Honor, they agreed to put that in. They just --

THE COURT: Is there any objection to the introduction of this exhibit?

MR. ETRA: This one, Q-15.

THE COURT: It's part of Exhibit 58.

MS. MARTINEZ: Your Honor, I do object to it being submitted without the entire context of the entire exhibit. Some of the documents in our exhibits are false.

THE COURT: All right. Then let's continue. This witness is obviously not able to lay a proper predicate. So without the reference to the exhibit, you can certainly ask the questions to the witness about his knowledge of certain conversations.

MR. ETRA: Thank you, Your Honor.
BY MR. ETRA:
Q. Going forward, Mr. Cupersmith, Mr. Sheppard told you that HM Eight entered into a contract with HM Four, correct?
MS. JIMENEZ: Objection. Hearsay.
THE COURT: Calls for a yes-or-no response. Overruled.
THE WITNESS: I believe he did orally.
BY MR. ETRA:
Q. Right. Okay. And that means that HM Four had operational responsibilities, correct?
A. But not expenses or income.
Q. Just -- can I just get a yes or no, please. That means HM Four had operational responsibilities; is that correct?
A. Yes. Yes.
Q. Yes?
A. Yes.
Q. So they're not just a passive company. They actually do something, correct?
A. No.
Q. Why do you say they don't do anything?
A. Because all they are doing is picking up income, 99 percent, and throwing it through to the individual returns.
Q. So Mr. Sheppard told you there was a contract, right?
A. Yes. Probably.

Q. And that it showed that -- okay. And did you ask to see the contract?
A. I don't believe I did.
Q. Okay. So you don't know exactly what HM Four's responsibilities are under that contract, right?
A. It was to manage the Alafaya Trails property.
Q. Is that right?
A. That's correct. But all it did -- it's a flow-through.
Q. How do you know what his responsibilities were if you didn't read the contract?
A. You're misstating everything I've said this entire day about what -- our preparation, what our orders were to prepare a tax return. We're not auditing, verifying, or we had no fiduciary responsibility.
You present a Circular 230. If you look at 230, there's a section in there -- and I forget the section. 34, something like that. I have to look at it. It lists the responsibilities in the preparing of the tax return, which we did. And I want to submit you asked me that same question several different times in different ways.
Q. How do you know what HM Four's responsibilities were under the contract if you never read the contract? Can you please answer that question, sir?
A. It's irrelevant.
Q. It's irrelevant. Okay. Great.

Now, did the Government tell you that HM Four had no responsibilities?
A. No.
Q. Do you know whether HM Four got income apart from being an owner in HM-UP?
A. Can you say the question again?
Q. Do you know whether HM Four got income apart from being an owner of HM-UP?
A. I have no knowledge.
Q. Okay.
A. Just remember, I said it in the beginning, I did not prepare the tax return. I took what the final worksheet is from Mr. Zaslow and applied it, made sure it equaled to the tax return. Mr. Zaslow may have looked at these documents. I can't answer for him.
Q. Right. To your point, you can't say what Mr. Zaslow knew about whether HM Four had income apart from being an owner of HM-UP; is that right?
A. That's correct.
THE COURT: Mr. Etra, just let me know when it might be a good time to give the jurors a little break.
MR. ETRA: I think it's always a good time to give them a break.
THE COURT: All right. Then, Ladies and Gentlemen, let's take a 10-minute recess.

COURT SECURITY OFFICER: All rise.

(Jury not present, 3:26 p.m.)

THE COURT: All right. Let's take a 10-minute recess.

And when we come back, if you'll check your calendars. I want to make sure, for purposes of the jury, on the 18th and 19th that we are able to have a full day. I'm not sure if you have checked. If not, I'll --

MS. JIMENEZ: Yes.

MS. MARTINEZ: Yes.

THE COURT: All right. So not a problem with either side?

MS. JIMENEZ: No.

MR. ETRA: I think we're good, Your Honor.

MS. MARTINEZ: No problem.

MR. ETRA: I think we're good.

THE COURT: Mr. Etra, Ms. Weintraub?

All right. I'll see you back here in 10 minutes.

(Recess from 3:27 p.m. to 3:39 p.m.)

THE COURT: All right. Let me acknowledge the presence of the Defendant.

Are both sides ready to continue?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: On behalf of the Defendant?

MR. ETRA: Yes, Your Honor.

THE COURT: All right. Let's bring in the jury.

MS. JIMENEZ: Go slowly?

Your Honor, this --

MS. WEINTRAUB: She's going to tell on me? I just said --

MS. JIMENEZ: This witness -- the witness has health issues and he's trying to make a flight.

Ms. Weintraub is telling Mr. Etra to go slowly so they can I guess not conclude today for this witness.

MS. WEINTRAUB: Oh, my God. I just said --

MS. JIMENEZ: So I just want to let the Court know that --

THE COURT: All right. Let's continue, please.

All right. Let's stand in silence for the jury.

(Before the Jury, 3:41 p.m.)

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

Please be seated, everyone.

And we'll continue with the cross-examination.

BY MR. ETRA:

Q. Sir, to your knowledge, are you aware of any -- Mr. Sheppard has never filed bankruptcy for his companies; is that right?

A. I'm not aware of any.

Q. You're not aware of any. That's something that you would know if you were his accountant for 25 years, right?

A. Yes.
Q. Okay. And staying on HM Four for a minute, are you familiar with the concept that leases have two components, a base rent and something called common area maintenance, CAM?
A. Correct.
MS. JIMENEZ: Objection. Asked and answered.
THE COURT: I'll allow it. Overruled.
BY MR. ETRA:
Q. And do you know -- isn't it true that the way the companies were set up the CAM is supposed to go to HM Four to handle the common area maintenance? Did you know that?
A. No, I did not.
Q. Okay. I want to go through the mechanics of how these returns got done in the last few years. Okay?
A. Okay.
Q. It's essentially primarily a back-and-forth between Ms. Gonzalez and Mr. Zaslow; is that right?
A. Correct.
Q. And let's just look at some of the documents you produced just to sort of see what that looks like.
MR. ETRA: I'm going to put up Q-16, which is part of the Cupersmith production that's part of Government's Exhibit 25. So I'm going to offer -- sorry.
Sorry. Part of Government's Exhibit 28.
For the record, Your Honor, this is Bates Numbers NC

546 through NC 581. And we offer --

MS. JIMENEZ: Can you -- this email is already in evidence. Can you indicate what Government exhibit it is, please.

THE COURT: Part of Exhibit 28 is the representation.

MS. JIMENEZ: But there was a sub-exhibit. It was shown as a sub-exhibit.

MR. ETRA: It's okay. I'm using this as my exhibit.

MS. JIMENEZ: I understand. I just want to be able to know so that I can refer to it.

THE COURT: That's fair. So it's Exhibit 28 that was already in evidence.

MS. JIMENEZ: But there's a sub-exhibit of 28, and there are a number of emails. So which Sub-Exhibit 28 is this, please?

MR. ETRA: This is -- Q-16 covers Bates range NC 546 to NC 581. Would you like the Sheppard number? Would you prefer the Sheppard number?

MS. JIMENEZ: I would prefer the Government exhibit because there's a sub-exhibit.

MR. ETRA: All right. This is what we're doing. This is a --

THE COURT: All right. It's already in evidence as Exhibit 28.

MR. ETRA: Thank you.

May I proceed?

THE COURT: You may.

BY MR. ETRA:

Q. Let's go back to the earliest email here in the back. And the email at the bottom -- Mr. Cupersmith, any time you want to go above or below, you'll just tell me. Okay?

A. Okay.

Q. And so on the bottom email, this is Ms. Gonzalez writing to Mr. Zaslow on October 2, 2020, right?

A. Right.

Q. Yes?

A. Yes.

Q. And this came from your files, right?

A. Yes.

Q. And essentially she's saying: "Here's the financials for Alafaya Trails for 2018 and we will send the backup," right?

A. Yes.

Q. This is how -- how the sausage got made. This is how the returns got done, right?

A. Correct.

MR. ETRA: And then if we go further up to the top of 579, next page.

BY MR. ETRA:

Q. If you look at this email, second from the top --

MR. ETRA: No not there. Second from the top.

BY MR. ETRA:
Q. -- Mr. Zaslow writes: "The AP aging shows a balance of $200,000, approximately. Your trial balance shows a balance of 254,000, approximately, a difference of about 54,000." Do you see that?
A. Yes.
Q. Again, that's how it got done, right?
A. Correct.
Q. In other words, Ms. Gonzalez would provide the raw data from her QuickBooks, right?
A. Correct.
Q. And Mr. Zaslow's job was to make sense of it all and help fix it, right?
A. Correct.
Q. So when you see the final product, it's not just from Ms. Gonzalez. It's a combination of Ms. Gonzalez giving information to Mr. Zaslow and the two of them working together, right?
A. Correct.
Q. And him applying adjustments as a CPA?
A. Correct.
Q. Okay. And then if you go to above that, Ms. Gonzalez writes: "Let me rerun the trial balance. I made some changes," right?
A. Okay.

Q. Again, it's part of the back-and-forth that went on between them, right?
A. Correct.
Q. And Mr. Sheppard's not on these emails, right?
A. I don't see his name on it.
Q. And you understood that this was going on between Ms. Gonzalez and Mr. --
A. Yes, I did.
Q. Mr. Zaslow, right?
A. Correct.
MR. ETRA: And if you go to Page 572, NC 572.
BY MR. ETRA:
Q. At the bottom, Ms. Gonzalez writes: "Alex, please confirm receipt of this email with the attached bank statement for SunTrust December 2019 for HM-UP." Do you see that?
A. Yes.
Q. That was also consistent with the practice. Ms. Gonzalez would not only provide her QuickBooks, but the actual backup bank records, right?
A. Unreconciled.
Q. Sorry?
A. Unreconciled.
Q. Unreconciled. What does that mean?
A. The bank statements have to be reconciled to the trial balance. She sent us the bank statements.

Q. Okay. And so who did the reconciling?
A. Nobody.
Q. Okay.
MR. ETRA: I'd like to show the witness -- this is -- these are documents that are also part of Government's Exhibit 28. They are individual bank statement records. They are Q-17, which is Sheppard 3 -- 32646 through 657. And then Q-18, which is Sheppard 32658 through 661. And then Q-19, which is Sheppard 032662 through 64. And Q-20, which is Sheppard 032665 through 674.
So we'll start with 17 and 18 because we only put two at a time. Your Honor, I'd offer these in evidence. They're from the Government's exhibit.
THE COURT: They are already in evidence, correct?
MS. JIMENEZ: Yes.
MR. ETRA: I offer them as these exhibits, Q-17, 18, 19, and 20.
THE COURT: Although they will come in as -- already as one exhibit.
So for purposes of identifying them, they're part of Exhibit 28. Am I correct?
MR. ETRA: Yes, Your Honor. Except we have a right to have separate exhibits for the jurors to see when we show them --
THE COURT: But it's a duplicate. So is there any

objection to introducing Q-17 and Q-18 as part of Exhibit 28?

MS. JIMENEZ: It's not our -- I mean, we had Exhibit 28, which includes these records.

THE COURT: Okay. It's part of the exhibit. For purposes of identifying it now, you can identify it in this way, but it will be part of Exhibit 28, identified as Q-17 and Q-18, with the Bates-stamped number that was already provided.

Let's continue.

MR. ETRA: Okay. Thank you.

BY MR. ETRA:

Q. Mr. Cupersmith, these are from your files. Do you see that?

A. Yes.

Q. And it actually has the word "reconciled" on top, right?

A. Yes.

Q. And I think on one of them you can see the initials JG, right?

A. Yes.

Q. Did Ms. Gonzalez reconcile the bank statements?

A. Her definition of reconciliation is different than my definition of reconciliation.

Q. Would you please explain.

A. Yes. She would mark the checks cleared. You could see the tick marks. And she would mark the deposits, but she would not reconcile to the trial balance that she prepared for us. It's

different than ours -- what we call reconcile.
Q. And when you did that reconciliation, you'd have to adjust the trial balance accordingly, correct?
A. Correct.
Q. Correct?
A. Correct.
Q. So when we look at the trial balances that your firm has produced, a lot of it has to do with the work that Mr. Zaslow did, right?
A. Correct.
Q. For example, doing the better reconciliation?
A. I don't think we ended up -- we could not reconcile.
Q. You were not able to reconcile?
A. No.
Q. Which years were you not able to reconcile?
A. I can't answer that question.
Q. Did you ever call up Mr. Sheppard and say: "I've got a problem with your tax returns. We can't reconcile the bank statements"?
A. No, I did not.
Q. So you just went ahead and did the tax returns, even though you couldn't reconcile them, correct?
A. Correct.
MR. ETRA: For the jury only first. Let's go to 19 and 20. And we'd like to admit those as well --

MS. JIMENEZ: For the jury or for the witness?

MR. ETRA: For the witness only, Q-19 and Q-20. Your Honor, these are, again, part of the Government's exhibit. We'd like them admitted as well.

THE COURT: I don't understand. If Q-19 is part of Exhibit 28 as represented, then we don't need to just show it to the witness. It's in evidence, correct?

MR. ETRA: It's in evidence.

THE COURT: Have we confirmed that it is part of the -- Government's Exhibit 28?

MR. ETRA: Yes.

THE COURT: No. I'm asking you because they are identified separately in terms of the Bates number. Who within Mr. Sheppard's team can confirm that this is part of Exhibit 28?

MR. CAVALLO: There was a representation made to us that 28 is Mr. Cupersmith's entire production. So anything Bates stamped NC is Exhibit 28.

MS. JIMENEZ: Before this trial, we produced all of these exhibits. So -- all of the Government's exhibits. So it's not based on a representation. It shouldn't be.

THE COURT: Then if the Bates stamp is consistent with Exhibit 28, then it can be shown to the jury and shown to the witness.

MR. ETRA: Thank you.

BY MR. ETRA:
Q. These are just two more bank statements to the same effect, correct?
A. Say it again.
Q. These are two more bank statements to the same effect --
A. Yes.
Q. -- in other words, reconciled by -- let me just finish -- reconciled by Ms. Gonzalez the way she does it, but you guys -- Zaslow still had to -- Mr. Zaslow still had to do the rest of his work. Is that fair?
A. Correct.
Q. Okay. These are the only bank records that were in your production. Do you agree that that's correct?
A. I guess so. I personally didn't duplicate these so I can't --
Q. But you would receive bank records for all the tax returns, right?
A. Yes. Yes.
MR. ETRA: Let's go to Exhibit 29-5 in evidence, the Government's exhibit.
Let's go to the email at the very bottom or the earliest in the chain.
BY MR. ETRA:
Q. This is a chain that begins with an email from Mr. Zaslow to Mr. Sheppard, right?

A. If you say so. I haven't read it, so...
Q. Well, take a look and let me know when you're ready to proceed. Sorry?
A. I asked for a minute to read it.
Q. Sure.
(Pause in proceedings.)
THE WITNESS: Okay.
BY MR. ETRA:
Q. So here Mr. Zaslow is writing to Mr. Sheppard, and he's explaining why he's writing to him, correct?
A. Correct.
Q. He's saying Jeanette mentioned that you Mr. Sheppard, had a question, right?
A. Correct.
Q. And this is essentially how it proceeded in the sense that everything went on between -- the back-and-forth was between Ms. Gonzalez on the one hand and Mr. Zaslow on the other hand, unless someone had an issue they had to raise, correct?
A. Correct.
Q. So typically, you wouldn't expect to see yourself or Mr. Sheppard on these emails unless an issue came up; is that correct?
A. Right.
Q. Okay.
MR. ETRA: We could take that down.

Let's put up Exhibit 30-5 and 30-6.
I apologize. 30-6 and 30-7.
(Pause in proceedings.)
BY MR. ETRA:
Q. Okay. Mr. Cupersmith, do you see Exhibits 30-6 and 30-7?
A. Yes.
Q. And I don't know -- I think you were shown both of these on direct. Were you?
A. I believe so, yes.
Q. Okay. So let's start in 2019. Well, first of all, I think you were asked if this information came from Ms. Gonzalez. Isn't that correct?
A. That's correct.
Q. That's not -- that's not really a fair way of putting it, is it?
A. Why wouldn't it be a fair --
Q. Well, the raw data comes from Ms. Gonzalez, but this final product here is the work that Mr. Zaslow did, right?
A. No. We would make adjustments.
Q. So are you saying this particular piece of paper right here was first generated by Ms. Gonzalez?
A. Yes.
Q. How do you know that?
A. I've been told by Mr. -- I saw it in our work papers. I was told by Mr. Zaslow. When I examined the work papers, I saw

it.
Q. That was the work that Ms. Gonzalez did?
A. Yes.
Q. Okay. Let's look at the very bottom of this. And you said that revenues -- the rental income for 2019 -- let's start with that one -- was $1.1 million, right?
A. No, I did not. The tax return will show 1.4 million.
Q. One point four. I apologize. My mistake. Thank you for correcting me.
When you say that, you don't mean that the company received cash of 1.4 million, right?
A. On an accrual basis.
Q. What?
A. It's on accrual basis.
Q. Exactly. And that's what it says at the very bottom, right?
A. Correct.
Q. So this doesn't tell you how much cash was actually received by the company in that year?
A. No, it does not.
Q. Correct?
A. It does not.
Q. Could you explain why that is --
A. We're not preparing a financial statement. We're preparing a tax return based on the accrual basis. If I was preparing a

financial statement, I would show the difference between cash and accrual. There would be a statement on that.
Q. I didn't mean it as an attack. I wanted you to explain to the jury what the accrual system is versus the cash system so they would --
A. Cash system is when you recognize the revenue when it comes in, it's deposited in the bank, and you recognize the expenses when checks are written and they go out.

Accrual basis tries to match the revenue and expenses based on a period of time. So you may have accounts receivable that would be recognized in a particular year and collected in the following year. The same thing with expenses. You would have expenses paid in a following year but accrued for the prior year.
Q. Let me put a finer point on it by looking at 2020. What is the gross income in -- or is it profit? Which is the better word --
A. There's two different --
Q. Sorry?
A. It's two different things. Gross profit is one word and net income's the bottom -- bottom of the page.
Q. Fine. Let's just look at gross income in 2020 on the exhibit. Do you see that?
A. Yes.
Q. See it says $1.5 million, right?

A. Correct.
Q. Is it fair to say that that's based on the accrual system? Right?
A. Yes.
Q. That's what would be paid if all the rent was paid fully on time, correct?
A. On time could be three months, four months later.
Q. Give or take?
A. Yes.
Q. But it doesn't tell you that the company actually received 1.5 million during that year?
A. No tax return does that.
Q. I understand that. I'm not arguing with you. I'm just clarifying.
So for example, in COVID, if people aren't paying rent, the actual cash could be lower, right?
A. Cash could be lower.
Q. Okay. Or Burlington is not paying what we want them to pay because of fights about penalties, so the actual amount might be lower, right?
A. It could be.
Q. So you can't tell by looking at this whether HM-UP's revenues -- actual cash revenue went up or down between 2019 and 2020, correct?
A. No, I cannot.

Q. Sorry?
A. I cannot.
Q. Okay. Thank you.
MR. ETRA: By the way -- just for the jury, Your Honor, the -- sorry. I keep saying just for the jury. I apologize. Just for the witness.
THE COURT: What is this identified as?
MR. ETRA: This will be Q-35.
BY MR. ETRA:
Q. You had asked whether the amendment was -- a lease was ever executed. Do you see that it was?
A. This is the first time I'm seeing the signature.
Q. Okay.
MR. ETRA: We can take that down.
BY MR. ETRA:
Q. You didn't receive a QuickBooks for HM Four, correct?
A. No.
Q. That's because it doesn't have a bank account, right?
A. Yes.
Q. But you don't know whether HM Four operates using other bank accounts, correct?
A. I do not.
Q. Sorry?
A. I do not.
Q. Now, to your knowledge, from doing the preparing or being

involved in the preparation of tax returns for Mr. Sheppard's companies, are you familiar with the fact that Mr. Sheppard will pay personal expenses from business accounts?
A. Correct.
Q. And you are aware of this over the course of the years, correct?
A. Correct.
Q. And you never told him he's not allowed to do this, right?
A. No. We would charge it to a distribution account.
Q. Right.
A. The expenses that were -- that's why you gave the memo before. The expenses that were business Jeanette would give us and we would put them in the categories that they belonged.
Q. Right. That's part of the reconciliation, correct?
A. Correct.
Q. To make sure that --
A. He got benefit of those expenses.
Q. -- only true business expenses are counted as deductions?
A. Correct.
Q. And personal expenses are just personal, right?
A. Correct.
Q. And while it may not be the best way of running a small business, you never told him that that's illegal, right?
A. It's legal to call it a distribution account. It's not a C corporation. That's the benefit of a partnership. You could

run it and call it as a draw. Those are his personal expenses.
Q. And to put it in plain terms, if the company spent $20,000 on a certain personal expense, you would -- what adjustment would you make to reflect that?
A. Part of the draw. I'd remove him from any expense it was previously in. In other words, if you put it into repairs, and it was repairs to his house, I'd take it out and put it into a personal expense.
Q. Okay. And that was never hidden from you, your firm, that personal expenses were paid out of business accounts?
A. No. No. She gave us those numbers.
Q. Okay. When you first met with the Government -- sorry. In your second meeting with the Government, you told them that Mr. Sheppard did not mention or report taking PPP or SBA loans, correct?
A. Correct.
Q. I'm sorry. Did you answer?
A. I said: "Correct."
Q. Oh, I'm sorry. I apologize. I misheard.
A. Okay.
Q. And that's an -- that was an incorrect statement, correct?
A. No. That is a correct statement.
Q. Okay. Let's talk about it. Let's put up the HM Management tax returns.
(Pause in proceedings.)

MR. ETRA: Your Honor, in evidence -- what exhibit number?

MR. CAVALLO: 29-3. Government's 29-3.

MR. ETRA: Government's 29-3.

BY MR. ETRA:

Q. I don't know if you saw the first page. Do you want to look at the first page, sir?

A. Yeah. I would like to --

MR. ETRA: Go to the first page.

BY MR. ETRA:

Q. It's the HM Management returns for 2020. Do you see that?

A. Yes.

Q. And by the way, it says in front "Accrual" on it. Do you see that little X?

A. Yes.

Q. That shows that this is based on the accrual system, right?

A. Correct.

Q. Okay.

MR. ETRA: Let's go to Page 10503. Go to the bottom half where it says M-1.

BY MR. ETRA:

Q. Do you recall telling the Government that -- in that second meeting, that if the companies had reported these loans they would be in this section of the return?

A. Only when it was forgiven.

Q. Do you recall telling the Government that if the companies reported the SBA loans they would be in this part of the return?
A. They would not be until it's forgiven.
Q. I just -- could you answer the question yes or no?
A. It would not be in this section of the return.
Q. I'm not asking what it would be. I'm asking: Do you recall telling the Government --
A. I don't recall that.
Q. The truth is some of the SBA loans are in this return, right?
A. They are shown as liabilities.
Q. Okay. Let's go there. Four more -- five more pages in, 010507, do you see under "Other Liabilities"?
A. Yes.
Q. See SBA loans for almost $300,000?
A. Right.
Q. That means that -- and this is a 2020 return, right?
A. Correct.
Q. That means in the process in 2021 between Ms. Gonzalez and Mr. Zaslow, this information was on the QuickBooks, right?
A. Correct.
Q. And --
A. As I stated previously, we asked for those documents and were not provided them.

Q. We'll get there. Okay?
But you put them on the return, right?
A. Yes.
Q. So you were comfortable enough with the information to put it on the return?
A. Correct.
Q. And you signed this as the preparer, correct?
A. Correct.
Q. Which means you swore under oath, correct?
A. Well, it's on the return.
Q. I'm sorry?
A. It's on the return.
Q. That you swore?
A. Yes.
Q. I'm going to go through the emails about these loans with you, if you don't -- if that's okay.
MR. ETRA: Let's go to Government Exhibit 29-6.
BY MR. ETRA:
Q. So here -- I think you went over this on direct, correct?
A. Correct.
Q. This is at the end of 2021, right?
A. Correct.
Q. And Mr. Zaslow writes to Jeanette: "Do you have any documentation of the loan payable" that we just looked at, right?

A. Correct.

Q. And the answer is: "The only thing I have are the bank statements showing the money coming in. I will ask Eric," correct?

A. Correct.

Q. Do you know what happened after this?

A. No.

Q. Sorry?

A. I said: "No."

Q. So you don't know what happened after this?

A. No. Because we didn't get any backup for that information.

Q. How do you know that?

A. I was told that by Alex Zaslow.

MR. ETRA: Your Honor, I move to strike the hearsay.

THE COURT: The objection -- the motion is denied.

BY MR. ETRA:

Q. And you didn't mind putting it in the tax return, correct?

A. It was a deposit and marked as SBA loan, so we took it from Jeanette's records. As I said, we did no auditing, compilation or review of the tax return. We prepared it from the client's records.

Q. You knew generally that the HM companies had few, if any, W-2 workers, right?

A. They had very few.

Q. And you knew that the PPP loans involved W-2 workers,

right?
A. Correct.
Q. Did you pick up the phone and call Mr. Sheppard and say: "What's this all about? Did you guys apply for a PPP loan?"
A. I did not.
Q. Working with him for 25 years, you didn't?
A. I did not.
Q. Okay. And the truth is that this is not the first time that the Sheppard companies told your firm about SBA loans, right?
A. I had no knowledge prior to him calling me on the July 28th date.
Q. Do you know if Mr. Zaslow had knowledge of it?
A. I do not have that knowledge.
Q. Okay.
MR. ETRA: For the witness only.
I apologize, Judge. Q-23.
Let's start at the bottom and go forward.
BY MR. ETRA:
Q. So I want you to be --
MS. JIMENEZ: Your Honor, can the Government have an opportunity to see this, since we've never seen it?
THE COURT: All right. If this is the first time, certainly.
MR. ETRA: I'd ask that Mr. Cupersmith --

THE COURT: A one-page document.

MS. JIMENEZ: Three. Three pages.

MR. ETRA: I'd ask if Mr. Cupersmith could read it at the same time.

(Pause in proceedings.)

MR. ETRA: May I proceed, Your Honor?

THE COURT: Yes.

BY MR. ETRA:

Q. Mr. Cupersmith, have you had a chance to look at the email exchange that's on Q-23 in front of you?

A. Yes.

Q. Do you recognize that to be an email exchange between Ms. Gonzalez and Mr. Zaslow, all on the lines we've talked about already?

A. Yes.

Q. And it's part of the business activity of your firm to have communications like this, correct?

A. Correct.

MR. ETRA: Your Honor, I offer Exhibit Q-23.

MS. JIMENEZ: No objection.

THE COURT: All right. Admitted into evidence.

(Defendant's Exhibit Q-23 received into evidence.)

BY MR. ETRA:

Q. So in the first email in this chain, Mr. Zaslow is writing to Ms. Gonzalez: "SBA loan is a long-term liability. Make

deposits to the bank account in the long-term liability as the other account." Do you see that?
A. Yes.
Q. And there's a back-and-forth about that by Ms. Gonzalez, right?
A. Okay.
Q. So at this point, did Mr. Zaslow tell you, as early as April of 2021, that there were some SBA loans, whether they were PPP or EIDL, that the Sheppard companies were involved in?
A. I only saw it as a liability. That's about all I saw.
Q. In April of 2021, did you learn about this exchange?
A. I'd have to look at records. I can't answer.
Q. You don't know?
A. I just don't know.
Q. So you don't really know to what extent the Sheppard companies put your firm on notice of these loans, correct?
A. Correct. Only from the information submitted by the bookkeeper.
Q. I'm sorry?
A. Only the deposits that were submitted by the bookkeeper.
Q. You know about the deposits submitted, but you don't know what else was shared between Mr. --
A. We asked for the documents and did not get the loan documents.
Q. And you didn't get the loan documents. You don't know

about all the communications between Ms. Gonzalez on the one hand and Mr. Sheppard on the other hand about this, correct?
A. I don't know whether Ms. Gonzalez spoke to Mr. Sheppard or not. You already asked me. I can't answer that.
Q. I'm sorry?
A. I don't know if Ms. Gonzalez asked Mr. Sheppard for the documents to send to me.
MR. ETRA: I misspoke, Your Honor.
BY MR. ETRA:
Q. You don't know the communications between Ms. Gonzalez and Mr. Zaslow on this matter, correct?
A. Only what's in front of me.
Q. Okay. Which you hadn't seen until I showed it to you, correct?
A. No. I've seen this before.
Q. You had seen this before?
A. Yes.
Q. Did you produce it?
A. I assume we did. It is marked Government.
Q. Do you recall seeing it in your production?
A. I didn't look at every page. There was 1,200 pages.
Q. Does this cover all the emails between your firm and Sheppard's firm about an SBA loan?
A. As far as I'm concerned, yes.
Q. So you're comfortable saying that under oath?

A. Yes.
Q. There's no communications about other government loans, correct?
A. No.
Q. You're sure about that?
A. I'm sure about it.
Q. Okay.
MR. ETRA: Your Honor, for the witness only, Q-25.
MS. JIMENEZ: Your Honor, can the Government have a moment to read this, please?
THE COURT: Is it just one page?
MS. JIMENEZ: Four pages.
MR. ETRA: For the record, the focus will be on the last page, which is a very short email, but I'm not disputing that the Government should review the whole thing.
(Pause in proceedings.)
MS. JIMENEZ: Your Honor, could we have a moment at sidebar, please, about this document?
THE COURT: With the document?
MS. JIMENEZ: Sorry?
THE COURT: With the document?
MS. JIMENEZ: With the document.
THE COURT: All right. Come on forward.
(At sidebar on the record.)
MS. JIMENEZ: Your Honor, I have not finished reading

this email, but these are emails between Eric Sheppard -- purported emails between Eric Sheppard and Alex Zaslow about -- I guess I'd have to read it -- about the Government loans.

Mr. Cupersmith's firm turned over their emails to us. And as we've shown in this court, the emails for the most part were between Jeanette Gonzalez and Mr. Cupersmith's firm until the very last email where Mr. Cupersmith communicated directly with Eric Sheppard. I am very confident that had Mr. Cupersmith's firm had relevant government loan emails during the time period for which we requested records, which was 2018 through tax year 2020, that they would have turned that over. I have no confidence that this is a real record.

THE COURT: Okay. Response?

MR. ETRA: Your Honor, this is outrageous. We are supposed to take the Government's word and Mr. Cupersmith's word that what they turn over is everything, and if we have something else then we must be wrong because the prosecutor believes Mr. Cupersmith?

MS. JIMENEZ: There's a truckload of false documents in this case.

MR. ETRA: Mr. Cupersmith has already admitted that he doesn't know what the documents are. He's gone in circles on that. If they want to go prove this is a fraudulent document, let them prove it. This is outrageous.

THE COURT: Listen -- listen --

MS. WEINTRAUB: You deliberately did not bring Zaslow on.

THE COURT: There's no reason to believe that these emails are not true emails. If they were not disclosed by the Government, and they are part of the package of information from Mr. Cupersmith's firm --

MS. JIMENEZ: They aren't. They aren't.

THE COURT: Well, that's -- the gentleman -- well, how do we know that? How do we know that?

MS. JIMENEZ: Because they produced to us what they had.

THE COURT: Right. But we've already found from other witnesses that there are additional documents that were not part of the production. So these are additional documents.

MS. JIMENEZ: Where is the emails that --

THE COURT: Well, listen, if you want to bring that individual by way of any rebuttal or in the Government's case in chief to show that this witness has never received this email -- but other than that, if he can identify the email, that it was sent to one of his partners, then it's fair game.

MS. MARTINEZ: Your Honor, may I make a motion to exclude this because it violates the Court's order --

(Court reporter interruption.)

MS. MARTINEZ: My motion is to exclude it because it violates the Court's order to provide reciprocal discovery.

That order applies -- no, it is not impeachment. They have repeatedly been supposedly doing impeachment. But what they've been doing -- and there's a track record already -- is moving in exhibits. So it is just wrong.

THE COURT: But many of the exhibits -- first of all, I need one attorney making the argument. And the Government has represented that these are the complete tax records in Exhibit 28. If these are additional emails that are not part of the production by virtue of the subpoena, it's fair game. It's fair. It's fair to ask this witness. If the witness has never seen it, then that's fine and that's the end of it.

But if -- first of all, we've already -- now there are three or four exhibits that the Government agreed were part of the production. So -- and part of Exhibit 28. Now with Q-25 -- well, Q-23 went into evidence. And now with regard to -- this is Q-25. If this is an email that this witness can identify, unless there's some reason to believe that this is not a true and correct email that was part of their business records, it's fair game.

All right. Let's continue.

(End of discussion at sidebar.)

THE COURT: All right. Let us continue.

I apologize, Ladies and Gentlemen.

MR. ETRA: May I proceed? It's still only in front of the witness, Your Honor.

THE COURT: You may.

BY THE COURT:

Q. I don't know how much of this you got a chance to read. So let's start at the very bottom of the chain.

Oh. We have it right here. Let's just focus on this one email here before we get to the rest.

Do you recognize this to be an email between Mr. Sheppard and Mr. Zaslow on March 30, 2020?

A. Yes.

Q. And it's coming from Mr. Sheppard, always emailed to you from his sheppard10@gmail.com, right?

A. Correct.

Q. And this is Mr. Zaslow --

MR. ETRA: Well, let's go a little further up, so we can see Mr. Zaslow's email address.

Further up?

MS. JIMENEZ: Rather than reading from the document which is not in evidence, could he ask him if he recognizes it?

MR. ETRA: Can I go piece by piece?

THE COURT: Hold on. The objection is overruled. You may continue.

MR. ETRA: Can we just go a little further up, so we can see the email address from Mr. Zaslow.

BY MR. ETRA:

Q. Well, it's got the signature block there. Do you see a

signature block in the middle? Correct, sir?
A. I'm trying to see where you're looking at. You're looking at the bottom?
Q. Right. Do you see what's now highlighted for you is both his email address of azaslow@ -- that's your firm's email address, right?
A. Yes.
Q. And it includes the signature block. Is that typically in his emails?
A. I don't see where your signature block is.
Q. It says: "Alex" -- I don't want to read it, but --
A. That's not a signature. It's just coming from him.
Q. I'm sorry. I'm using -- it may be a term. His email address, right?
A. Yes.
Q. With his -- where to find him, right?
A. Correct.
Q. Does this look like an email between Mr. Zaslow and Mr. Sheppard which would happen from time to time in preparing tax returns?
A. Yes.
Q. And this is part of the business of your firm to have emails not just with Ms. Gonzalez but with Mr. Sheppard when the issue arose as part of your work, correct?
A. Occasionally.

Q. Sorry?
A. Occasionally.
Q. Occasionally. Okay. All right.
Let's go further up and see if these -- just -- I'd like to go look at each page and tell me if these also look like email exchanges that were part of the work that you did for the Sheppard companies. So look at the first page and let me know if we can go to the next page.
A. We can go to the next page.
Q. Sorry. Did you say: "Next page"?
A. Yes. Go ahead.
Next.
Q. Have you had a chance to look at the whole document?
A. Yes.
Q. Is it correct that this is an email exchange done between Mr. Sheppard and Mr. Zaslow as part of the work --
A. Yes.
Q. -- that your firm did?
A. Yes.
MR. ETRA: Your Honor, we offer Q-25.
THE COURT: Any objection?
MS. JIMENEZ: I object that this is a record from Mr. Cupersmith's office.
THE COURT: All right. It's been identified. The objection is overruled. It will be admitted into evidence.

(Defendant's Exhibit Q-25 received into evidence.)

MR. ETRA: And let's look at the bottom email. If you can publish that, please.

BY MR. ETRA:

Q. This is an email from Mr. Sheppard on March 30th, 2020, to Mr. Zaslow. Do you see that?
A. Yes.
Q. And March 30th, 2020 is the beginning of COVID, so to speak, right?
A. Correct.
Q. The CARES Act had come out, right?
A. Correct.
Q. But the rules hadn't yet been put in place, correct?
A. Correct.
Q. Sorry?
A. I said: "Correct."
Q. Okay. So he's writing and he's saying to Alex: "Hope all is good and healthy. Please let me know if you filed my personal 2018." Do you understand what that refers to?
A. His personal tax return.
Q. And he writes: "I applied for some of the government programs and they asked for tax returns. If the 2018 is not on, they will not process the application." Do you see that?
A. Yes.
Q. Okay. And I take it that you weren't aware of this email

before I showed it to you, correct?
A. No, I was not.
Q. Okay. Does this refresh your recollection that, in fact, Mr. Sheppard brought up COVID government program loans --
A. No.
Q. -- earlier?
A. It does not.
Q. Okay. So did Mr. Zaslow tell you about this?
A. I've never seen this before.
Q. But did he tell you about it?
A. No.
Q. Are you sure?
A. I'm pretty sure. I don't -- I'm seeing this for the first time. So this is three -- five years ago.
Q. But we can agree that neither you or Mr. Zaslow -- well, that you did not call Mr. Sheppard at this time and say: "Whoa. You don't really have a lot of W-2 employees. You should not be doing PPP," correct?
A. Doesn't say PPP. It says SBA loan. He also had an EIDL loan, too, out.
Q. Fine. So you didn't call him up and ask him --
A. No, I did not.
Q. -- which government loans, correct?
A. Correct.
Q. You didn't call him up to make sure he wasn't making a

mistake in applying for a PPP loan, correct?
A. Correct.
Q. And you don't know what Mr. Zaslow did or didn't do with this information, correct?
A. Correct.
MR. ETRA: Putting up Government exhibit already in evidence of 50-7.
BY MR. ETRA:
Q. I know you haven't seen this before, but this is a document in evidence, Mr. Cupersmith.
A. I've never seen it.
Q. Okay. This is March 23rd. And I just want to point to an email from Mr. Sheppard to Mr. Graff that said --
MR. ETRA: Go back to the front page. Can you complete -- sorry. Go back. Earlier than that. Sorry.
(Pause in proceedings.)
MR. ETRA: Sorry. This is 50-7. We had the wrong document up before.
BY MR. ETRA:
Q. You haven't seen this one either, sir. Let me just read it for the record. It's a March 30th, 2020, same day. And it's an email from Mr. Sheppard to Mr. Graff, saying: "Hi, Jeff. I received this from Wass," W-A-S-S. Do you see that?
A. Yes.
Q. And then it attaches various documents. And I want to show

you one of the attachments, which is Government's Exhibit 50-12.

MS. JIMENEZ: Objection, Your Honor. This is not a record that is with Mr. Cupersmith's office. It has nothing to do with him.

MR. ETRA: Your Honor, they have freely --

THE COURT: Okay. Hold on.

What is the basis of the objection? That it's not from the witness's records?

MS. JIMENEZ: That's correct. He knows nothing about this record.

THE COURT: All right. Well, based on his personal knowledge, the objection is sustained.

MR. ETRA: Your Honor, they have shown him documents from IRS that he hasn't seen. They've freely taken documents that -- this is in evidence already.

THE COURT: It's in evidence. That's correct. But this witness has never seen it. So what's the question?

MR. ETRA: I'm going to show him the attachment and ask him about what's in the attachment.

MS. JIMENEZ: He's never seen the --

THE COURT: He's --

MR. ETRA: The attachment --

THE COURT: Has the witness seen this document, along with the attachment?

MR. ETRA: I haven't shown him the attachment yet. And it's the kind of guidance that was out at that time. I want to ask him about the guidance.

MS. JIMENEZ: The witness --

THE COURT: All right. Let's ask the question. The witness has not seen this document. So let's ask the question, please.

BY MR. ETRA:

Q. All right. 50-12, if we go toward the bottom, it says: "Will I be eligible if I haven't finished my 2018 returns?" And this is the same date that he was writing to Mr. Zaslow before.

Do you recall that early in this time period there was a sense that you had to have your tax returns ready for the loans? Do you recall that?

A. From other clients, yes.

Q. Sorry?

A. Yes. From other clients that we were preparing.

Q. And if you go to the very top of the page, this refers to cash payments. This is before they had finalized the rules, correct?

A. Right.

Q. Okay. Thank you.

So you understand that Mr. --

MR. ETRA: Take it down.

BY MR. ETRA:

Q. -- that what Mr. Sheppard was doing was saying: "I understand that I need 2018 returns for these government programs. Can you please get them done?" You saw that in the prior email, right?

A. Getting the 2018 tax return done.

Q. Right.

A. Yes.

Q. Right. Okay. And you actually solicited -- solicited Sheppard about the government programs, correct?

A. I have no knowledge of that.

Q. I'm sorry?

A. I have no knowledge that we solicited.

MR. ETRA: Put up Q-24 for the witness only.

I'd ask the witness just to review the document to familiarize himself with it.

THE WITNESS: Yeah. We sent this to every client to explain the Act -- the CARES Act.

BY MR. ETRA:

Q. I'm sorry?

A. This was a document we sent to every client.

Q. Including Mr. Sheppard, right?

A. Yeah. Including Mr. Sheppard. It explains like the CARES Act.

Q. So it's a document that your firm sent to every client,

including Mr. Sheppard, as part of your business relationship to solicit work, right?
A. No, it's not. It was just to make him aware.
Q. Sorry?
A. It was just to make him aware what the law was.
Q. Okay. But it's part of your business to do that, right?
A. We didn't solicit -- we did not solicit clients. We prepared very few PPP loans and EIDL loans.
Q. I take back the word solicit.
A. Okay.
Q. It's a document you prepared to send to your clients as part of your work for the clients, correct?
A. We try to make our clients aware of any tax implications so they can change their returns or apply for. It was not a solicitation.
MR. ETRA: Your Honor, I offer Exhibit Q-24.
THE COURT: Is there any objection?
MS. JIMENEZ: No objection.
THE COURT: Admitted into evidence.
(Defendant's Exhibit Q-24 received into evidence.)
BY MR. ETRA:
Q. And in this email -- this is, again, March 29th. It's still early. So no one's quite sure what's going on, right?
A. Correct.
Q. But in your email you refer to employee to include

individuals employed full-time, part-time, or other basis, correct?
A. Correct.
Q. Nothing in here that tells whoever is reading it not to include 1099 workers, right?
A. It does not say that. The Act itself says you cannot use contract labor.
Q. I'm sorry?
A. The CARES Act explicitly states you cannot use contract labor.
Q. This doesn't say that in this email?
A. No, it does not.
Q. And if you go further down in the middle -- in the middle of the paragraph, under the Act, it says the proceeds of the funds may be used for payroll costs. Do you see that?
A. Correct.
Q. And that refers to employee salaries, right?
A. Correct.
Q. But then it goes through other categories and includes employees' salaries as another category, right?
A. Correct.
Q. So you're saying payroll costs and employee salaries, right?
A. I think they are one and the same.
Q. But it doesn't say payroll costs only includes W-2,

correct?
A. No.
Q. Correct?
A. That's coming from the Act itself. That paragraph is coming from the Act.
Q. Okay. This is a notice to your clients, right?
A. Correct.
Q. You don't assume that they understand the Act, correct?
A. Employee salaries is employee salaries.
Q. Does this document to Mr. Sheppard and other clients like him tell him don't include 1099 payments? Yes or no?
A. Does not say that.
Q. Okay. And then, as you can see, that blast -- I call it a blast. Maybe I shouldn't call it that. It went to all the clients, right?
A. Correct.
Q. And the date of this, again, is March 29th. And yet, right after that, Mr. Sheppard writes to Mr. Zaslow talking about the government loans he's applying for, correct?
A. Correct.
Q. So he's taking you guys up on your offer for help, right?
A. Not necessarily. He's asking --
Q. Sorry.
A. He's asking for an explanation.
Q. Okay.

A. And he needs his tax returns to -- the 2018 to submit.
Q. Let's look at the bottom of the document. It says: "The application process may seem like a daunting task." Is that accurate?
A. Correct.
Q. And it says: "Since we're familiar with your company and its operations, we can help," right?
A. Correct.
Q. And in fact, Mr. Sheppard reached out the next day and talked about the government loans he was applying for, correct?
A. He only talked about getting his tax return. You have to go back to that -- the '18 tax return. I don't think he asked us for help.
Q. He mentioned that he was applying for government loans?
A. He mentioned it, but that's about it. He never asked for help.
Q. That's not enough for the CPA of 25 years to pick up the phone and say: "Hey, let's talk"?
A. Eric did many things on his own, loans, everything he did by himself. If he needed me, he would call me.
Q. So your view was, unless he specifically says: "Help me with a PPP loan," you're not going to pick up the phone and call him. Is that your testimony?
A. Once I sent the letter, if he wanted my help, he would have called me.

MR. ETRA: Put up just for the witness only first -- I think it's in evidence, though -- Q-22.

(Pause in proceedings.)

BY MR. ETRA:

Q. Okay. Is the -- could you tell us what this is?

A. It's a trial balance given to us by Jeanette Gonzalez.

MR. ETRA: I want to go to the second page, please. I want to focus on the part where it talks about equity, HM -- Lines 300.002 and 300.003.

BY MR. ETRA:

Q. Could you explain what those entries say.

A. They say: "Equity, HM Four, LLC. Equity, WAPD," which was the partner, 42 percent partner.

Q. In plain English, the first line, WAPD, that's Mr. Robert Kallman's company, right?

A. Correct.

Q. So it shows in that year he contributed to his company about $45,000, right?

A. That doesn't mean that.

Q. What does it mean?

A. It means at the end that's where it ended up. There could have been debits and credits to that account.

Q. Net-net --

A. Yes.

Q. Okay. Fair enough. And then the bottom line below that

is: "Equity, HM Four, LLC," and it says: "Eric and Jennifer Sheppard TBE." Do you see that?
A. Yes.
Q. What is TBE?
A. I think it's tenants in the entirety. That's the way they owned it.
Q. In plain terms, that means a married couple?
A. Married, yes.
Q. Okay. Great. And you see it shows that net-net the Sheppards contributed $363,000, right?
A. Net-net.
Q. Okay. And that's about, I don't know, nine times as much, right?
A. Yes.
Q. You testified that the ownership of HM-UP was 52 percent Sheppards -- excuse me -- of -- let me start again.
The ownership of HM Four was -- actually, no. It's HM-UP -- was 52 percent Sheppards and 48 percent a Kallman company, right?
A. Right.
Q. And that's how it was every year, right?
A. Correct.
Q. But in reality --
MS. JIMENEZ: It was -- it was -- he testified -- it misstates the testimony. It was HM Four.

THE WITNESS: This is HM Development.

MR. ETRA: HM Four. My apologies.

THE COURT: All right.

MR. ETRA: Let's pretend that we just said HM Four. Okay? We can all agree.

BY MR. ETRA:

Q. In reality, when one partner contributes more to the capital, in your experience, is there sometimes a reallocation of relative interest?

A. Not all the time. It's up to the partners to decide to do that.

Q. Exactly. So again, in your experience, when one partner contributes more than the other, is there sometimes a reallocation of interest one to the other?

A. Not interest but the money. They might have a difference between the 363 and the 45, and not -- they would not change the ownership interest.

Q. You're saying the partners or the operating agreement can't provide that the ownership interest change if one party --

A. If they change the operating agreement, yes.

Q. Have you checked to see --

A. I was not told that the operating agreement changed.

Q. Do you know whether the operating agreement already provides that the interest would change with one side contributing more than the other?

A. No, I did not.
Q. You have no idea, right?
A. Correct.
Q. And you never -- after you saw this, you never picked up the phone and said: "I see one partner is spending more than the other. Are you guys still 52-48," correct?
A. Correct.
Q. You did not?
A. Correct.

MR. ETRA: I apologize. Sorry. This is in evidence. It should have been in front of the jury. Could I put it in front of the jury, Q-22? It's part of the exhibit.

THE COURT: All right. Certainly.

MR. CAVALLO: This is part of NC 1230, which is an Excel.

MR. ETRA: While we're on this, let's go to the first page.

BY MR. ETRA:
Q. And you see the line for --

MR. ETRA: Let's just look at the first page only, please, Line 100.031.

Could we highlight that, please.

BY MR. ETRA:
Q. What does that refer to?
A. Loan receivable for work for tenant Burlington.

Q. You understand that as at least one place where Ms. Gonzalez put the amount of money spent to do the build-out at Burlington?
A. Correct.
Q. And that shows $1.1 million, right?
A. Correct.
Q. Okay.
MR. ETRA: And now could we put that side by side with the tax return of HM-UP for 2020, and open up to the 8825, please.
THE WITNESS: That probably was capitalized, so it's not going to be on the 8825.
BY MR. ETRA:
Q. Sorry?
A. That would probably be capitalized, so it's not going to appear on the -- the 8825 is a revenue and expenses. This is capitalized. I mean, I don't have my work papers. I don't have my work papers. So it's not going to be on the 8825.
Q. Let me ask the questions, and you'll answer as you feel appropriate.
A. Okay.
Q. Now, you were shown the 8825 on the right from the HM-UP 2020 returns?
A. Correct.
Q. For example, it has no wages, right?

A. Correct.
Q. And for repairs it only has about $377,000, right?
A. Correct.
Q. Where does all this work money go that's on the trial balance when -- $1.1 million of work done at Burlington, does it go on this page?
A. No.
Q. Where does it go?
A. It would go to the balance sheet, which I don't have in front of me. And I don't know -- I'd have to total all the buildings and improvements. It would be capitalized.
Q. Okay.
A. And I don't have any work papers, but it doesn't appear on the -- it will not appear on the 8825. It's not an expense.
Q. So the labor -- let's talk about 1099 work.
A. I've never seen any 1099s.
Q. Hang on. Just -- let me just start again.
To the extent that money spent on Burlington includes payments to 1099ed workers, should it appear on the 8825?
A. They weren't his workers.
Q. Sorry?
A. They're not his workers.
Q. To the extent he had to spend money -- how do you know who his workers are?
A. There were no 1099s and had very little expenses. There

were -- there was no payroll.
Q. I'm not talking about W-2. I'm talking about 1099. Okay?
A. Well, I've never seen any 1099s.
Q. Did you ask to see them?
A. Yes.
Q. And Jeanette wouldn't give them to you?
A. She never -- she never gave it to us, so I assumed it didn't exist.
Q. Do you know there's reference here to payment to individuals in the QuickBooks for 2020? Right?
A. Yes.
Q. And did you just assume they didn't exist because you didn't see the 1099s?
A. I've got to look --
Q. Why don't we go right through --
MR. ETRA: Let's stay on Q-22 and let's go to the individual entries.
Your Honor, it's an Excel spreadsheet so we don't have Bates numbers. So I have it as the thirteenth page. But it is -- I could identify it because it's a line-by-line for the item we were talking about, which is 100.031.
BY MR. ETRA:
Q. Okay. Do you see that -- do you see how -- what's on the screen now --
A. There's no way I could read that.

Q. I'm sorry?
A. I cannot read that.
Q. All right.
MR. ETRA: Why don't we just focus on the first part of that. Make it bigger so the witness can see it.
Even bigger. I want to make sure the witness can see it.
BY MR. ETRA:
Q. Are you able to read that?
A. Yes.
Q. Okay. Now, do you see this is the detail for the 1.1 million that we just looked at? Yes?
A. Yes.
Q. Sorry?
A. I don't see the bottom.
Q. Well, I'm only showing a part because it's hard to read. Okay?
A. It's all capitalized. It's electric -- it's all building work, what you showed me so far. Electrical supplies, that all would have been capitalized. Doesn't say individuals.
Q. So when you say: "Capitalized," could you just, in plain terms for my benefit --
A. We could add it to the building improvements on the balance sheet, and then you depreciate it over a period of time.
Q. So the tax returns do reflect this money being spent,

right?
A. Correct.
Q. But you just don't see it on the 8825?
A. It would not be on the 8825. They're outside vendors. They're not -- I don't see individuals --
Q. Okay.
A. -- on what you're showing me. They're all labor -- they're all companies.
Q. All right. Well -- so to the extent that --
A. I'm sure these companies filed a PPP.
Q. Are you sure they filed a PPP?
A. I don't know. But they're employees -- contract labor. This is not even contract labor. These are suppliers.
Q. Let me go one at a time. But before I do, I want to get the big picture. Okay? You're saying that the money that was spent, as reflected here on the Burlington build-out, you would not see that on the 8825. Is that your testimony?
A. Correct.
Q. So you can't look there to see how much money Mr. Sheppard's companies spent on 1099, whether it's vendors, companies, or individuals, correct?
A. Correct.
Q. Okay. Now let's talk about your testimony that everything here is a company, not an individual. You just said that, right?

A. Based upon what you're showing me.
Q. Well, I'll help you out a little bit.
MR. ETRA: Let's go to March 2nd, 2020.
THE WITNESS: You have to enlarge it. I can't see it.
MS. JIMENEZ: Your Honor, I'm going to object as to the relevance of this.
THE COURT: To the relevance of this document?
MS. JIMENEZ: The relevance of this ongoing line --
THE COURT: Sustained.
BY MR. ETRA:
Q. It's fair to say that you don't know whether the list of people cover -- payments covered for the Burlington build-out is companies or workers, correct?
A. You're showing me a document --
MS. JIMENEZ: Asked and answered.
THE WITNESS: You're showing me a document --
THE COURT: The objection is sustained. It was asked and answered. Let's continue.
MR. ETRA: Your Honor, can I show him an entry for an individual?
MS. JIMENEZ: Same objection.
THE COURT: Sustained.
BY MR. ETRA:
Q. Isn't it true that when the HM companies paid individuals who are 1099ed, they referred to it as payroll?

A. I don't know that.

MR. ETRA: Could I show him that on the documents, Your Honor?

THE COURT: He stated that he doesn't know.

MR. ETRA: But could I use his own document to --

THE COURT: But he's already stated he doesn't know, so it's not going to refresh his recollection.

MR. ETRA: Well, then can I read it to the jury, the way the Government --

THE COURT: No. You have a witness on the stand. This is not the time to read something to the jury.

MS. WEINTRAUB: Judge, I'd like to reserve a motion.

THE COURT: Certainly.

(Pause in proceedings.)

MR. ETRA: Could we put up just for the witness Exhibit Q-30.

BY MR. ETRA:

Q. Could I ask the witness to review this document. And let me know when you're ready; we'll go to the next page.

(Pause in proceedings.)

BY MR. ETRA:

Q. Have you had a chance to look at Exhibit Q-30?

A. Yes.

Q. Do you recognize it?

A. Yes.

Q. Generally speaking, without giving all the details, what kind of document is it?

A. The Internal Revenue saying they did not receive his 2018 1040.

Q. And you're responding, correct?

A. This is typical of the IRS, what's going on, lost documents.

Q. Let me just get there a second. But is the letter you wrote to the IRS work you've done that -- for Mr. Sheppard or his companies as part of your CPA work?

A. Correct.

MR. ETRA: Your Honor, I offer Exhibit Q-30.

THE COURT: Any objection?

MS. JIMENEZ: No objection.

THE COURT: Admitted into evidence.

(Defendant's Exhibit Q-30 received into evidence.)

BY MR. ETRA:

Q. So what's going on with --

MR. ETRA: If we could publish it.

BY MR. ETRA:

Q. Could you just -- in your own words, what were you doing here with the Q-30?

A. Sending the government a copy of the tax return that was previously filed.

Q. What was the problem that you had with the IRS here?

A. They lost a copy of his return. That's all I know.
Q. So you had to tell them you filed it and refile it?
A. Yes.
Q. Did you say that's a common problem with the IRS?
A. It's a common problem. It's worse today than it was in 2018.
Q. Than it was in 2000...
A. And 18.
Q. How was it during COVID?
A. It was a problem too -- then too.
Q. So in your experience, you had difficulty sometimes when clients -- you filed returns for clients but the IRS couldn't find them, correct?
A. Correct.
Q. And that happened with -- at least this time you're aware of with Mr. Sheppard, correct?
A. Correct.
MR. ETRA: Put that down.
Just for the witness, Your Honor, can I use the ELMO?
THE COURT: Certainly.
BY MR. ETRA:
Q. Q-36 is a -- Q-36 is a two-page document. It's not in evidence, so I just want you to just look at it for now.
A. Okay.
Q. Do you understand that to be a form of 1099?

A. Correct.
Q. And just notice which company it's from. I don't need you to say it --
A. Alafaya Trails.
Q. I was just going to ask you to notice it.
A. Okay.
Q. And then the second page -- and that's for Mr. Joe Beirne. We'll just call him a witness. Okay? Recall the name, right?
A. Yes.
Q. Martin Joe Beirne.
Okay. And then I'm showing you the next document in the 1099. And do you see that it's a 1099 for the same person from a different HM company?
A. Correct.
Q. Were you aware that the HM companies would have 1099s to the same person in the same year from different companies?
A. No, I was not aware.
Q. Was that a problem?
A. No.
Q. Not an issue?
A. Not an issue.
Q. Are you aware whether the company would -- you know Jeanette Gonzalez was a W-2 worker, right? Do you know whether she also got payments as a 1099ed worker at the same time?
A. I don't know that.

Q. Would that be a problem if she did?
A. No, it would not.
Q. Just to clarify, when you're talking about the revenues or the gross receipts in the tax returns, that's on the accrual system, right?
A. Yes. For these returns, yes.
Q. And it's based on the application of accounting principles and reconciliations given what is given to you by the client, right?
A. Correct.
Q. You don't tell the client this is -- strike that. Start over again.
Same with cost of goods sold. That's also -- it's an accounting principle, right?
A. Correct.
Q. And --
MS. JIMENEZ: Objection. Relevance.
THE COURT: Overruled at this point.
BY MR. ETRA:
Q. And when you have them or you don't have them on a tax return, that's based on your CPA expertise on how to calculate cost of goods sold, right?
A. Correct.
Q. And when it's appropriate to use cost of goods sold, right?
A. Correct.

Q. That's coming from the accountant side, not the business side, right?
A. Correct.
MS. JIMENEZ: Objection. Outside the scope of direct.
THE COURT: Sustained.
BY MR. ETRA:
Q. Let's talk about the NAICS code. Did I get that right?
A. Correct.
Q. Okay. Whose decision was it to put up the code which starts with a five -- which is for real estate development, right?
A. That was our firm.
Q. I'll start again. That was a horrible multiple question. Each of the returns have some version of the real estate code?
A. Correct.
Q. Which starts with a five?
A. Correct.
Q. And now I'm going to re-ask the question. Whose decision was it what code to put on?
A. Our firm.
Q. Did you call up Mr. Sheppard each time to ask him --
A. No, I did not.
Q. -- what was going on with his business to see if it should be a different code?
A. No, I did not. But I knew the business.

Q. I'm sorry?

A. I knew the business. He's a rental -- a lessor. So what the code said, that's where those numbers, 53190 -- I don't remember the exact numbers -- and the 531120. They were the numbers that show him as a landlord.

Q. Okay. Is there also a code for construction?

A. Yes.

Q. Did you use that number?

A. No.

Q. Did you ask Mr. Sheppard what -- what kind of construction the companies were doing in 2020?

A. I knew they were building the two projects.

Q. Okay.

A. Miami and Orlando.

Q. Okay. Did you tell Mr. Sheppard that even though the companies were doing construction you really got to use this real estate --

A. He wasn't really doing himself the construction. It was all subbed out, as you saw the numbers.

Q. Let me start again. Do you know whether the HM companies were subbing out or they were actually self-performing?

A. Both.

Q. Both. So they were doing self-performing?

A. Let me think about it for a minute.

I believe they were all subbing, and I don't remember

having construction workers.
Q. You don't really remember, right?
A. No. I don't think they have any construction workers.
Q. But I was asking a different question. Did you have a conversation with Mr. Sheppard where you said: "I don't care how much construction you're doing. You got to use this code with the five in front of it"?
A. He didn't qualify for the other --
Q. I'd like you to try to focus on the question. Did you have a conversation with Mr. Sheppard where you said: "I know you think you're doing construction but you really got to use this real estate code"?
A. No. No.
Q. You didn't talk to him about the real estate code, right?
A. No.
Q. You've never had a conversation with him about what code, correct?
A. No.
Q. Are you aware of the fact that Mr. Graff at one point was -- you know Mr. Graff, right?
A. Correct.
Q. And he's -- he was trained as a CPA, right?
A. Correct.
Q. Okay. Are you aware of the fact that at one point he was a W-2 employee at the companies?

A. Prior, yes.
Q. And at some point he changed to a 1099?
A. Yes.
Q. Do you know why that happened?
A. No, I do not.
Q. Do you know if his job changed?
A. I do not. He was not coming in as he used to come in. I think he was doing work elsewhere.
Q. Are you saying he didn't come into the company as often?
A. Yes, not every day.
Q. How would you know that if you're --
A. He told me.
Q. He told you that?
A. I also prepared his tax return.
Q. Oh. You prepared his personal returns?
A. Yes -- not me personally, but my office did.
Q. Fair enough.
MR. ETRA: I want to put up the HM-UP -- go back to the HM-UP 2020 returns, which should be Government's Exhibit 30-3.
I want to go to the second page.
BY MR. ETRA:
Q. Let's focus on this Declaration of Preparer. Okay?
A. Okay.
Q. This is in almost every return you guys prepared for the

Sheppard companies, right?
A. Correct.
Q. For years, correct?
A. Correct.
Q. Okay. So year after year you put in some kind of a caveat like this, right?
A. Correct.
Q. And you're basically saying: "We did the returns but we're not really sure," correct?
A. Correct.
Q. So you sign under oath, but you put this little form in there to say: "Eh, we may have it wrong"?
A. Well, we weren't given all the proper documents. So everybody should submit a tax return, best of knowledge if it's correct. As I said, if I found Eric gave me something else besides, I would change it and ask him to sign an amended return.
Q. And you say, for example, the third paragraph: "We relied upon the information as prepared and supplied to us by the taxpayer." Did I get that right?
A. Correct.
Q. Said: "We did not verify or observe all the documentation necessary to prepare this tax return." Did you write that?
A. Correct.
Q. So how can we have confidence that this return is accurate?

A. Every tax return any preparer signs is -- not this statement, but asks the client to sign a statement that the information is correct. I would never have a tax return go out if I had to audit every tax return. We prepare, between individuals and corporations, probably seven or 800 tax returns. If I had to audit every return, none would be filed.
Q. I'm not asking you about doing an audit. Let me take a step back.
And an audit is completely unrelated to tax work, right?
A. Correct.
Q. It's only done in certain circumstances, right?
A. Yes.
Q. For example, public companies have to be audited?
A. There are other companies besides that.
Q. And there are private companies -- lenders sometimes require --
MS. JIMENEZ: Objection. Relevance.
MR. ETRA: He talked about --
THE COURT: Overruled.
BY MR. ETRA:
Q. And some lenders will require private companies to have audited financials?
A. Correct.
Q. Right. That's not what we're talking about here?

A. Correct.
Q. We're talking about the tax return. And you're saying you did not observe all the documentation necessary to prepare this tax return. Is that statement correct?
A. That is correct.
Q. And that's in just about every return that you filed with the IRS year after year?
A. Correct.
Q. And yet, you're saying this return is absolutely correct?
A. I didn't say that.
Q. You don't know if it's correct?
A. No.
Q. You agreeing with me?
A. Yes.
Q. Okay. Did you ever pick up the phone year after year, at some point call Mr. Sheppard and say: "I know I'm doing all this work for you, but I just can't do this because I'm not getting the right information"?
A. No, I did not.
Q. Did you ever pick up the phone and say to him: "Listen, I'm doing these returns, but I got this piece of paper inside that basically says this may not be right"? Did you ever have that conversation with Mr. Sheppard?
A. No. No, I did not.
(Pause in proceedings.)

THE COURT: Mr. Etra, just let me know when it might be a good time to adjourn for the evening.

MS. JIMENEZ: Your Honor --

MR. ETRA: I'm moving to another topic, so maybe now is a good time.

MS. JIMENEZ: Your Honor, my redirect will be brief. If the jury is available, and the witness could go home this evening --

THE COURT: Have you completed your cross-examination?

MR. ETRA: No, I have not.

THE COURT: How much longer do you have, sir?

MR. ETRA: I think about a half hour. I'm not a hundred percent sure.

THE COURT: All right. Then, at this point, we will adjourn for the evening.

Ladies and Gentlemen, please remember that as we adjourn you are not to discuss this case with anyone, nor permit anyone to speak with you. Everything learned about the case is learned in the courtroom.

The schedule for the remainder of the week will be as follows: For tomorrow, I will see you here at 9:30, and it will be a full day until five p.m. On Thursday, it will be from 9:30 to 4:30. We will not be in session on Friday. To the extent that Monday and Tuesday are necessary, we will begin on December 18th at nine a.m. and conclude at five p.m. On

Tuesday, we will begin at nine a.m. and conclude at five p.m.

I know that many of you were asking about the remainder of the month of December. We will not be in session the remainder of the month of December. And let's see where we are Thursday, and this Thursday I will give you further directions with regard to the schedule of this case.

Have a pleasant evening. I'll see you tomorrow morning at 9:30.

COURT SECURITY OFFICER: All rise.

(Jury not present, 5:00 p.m.)

THE COURT: Mr. Cupersmith, I will see you here tomorrow morning, sir, at 9:30. Please remember, since you are on the witness stand, that you're not to discuss your testimony with anyone or any aspect of the case. And I will see you tomorrow morning at 9:30.

Have a pleasant evening, sir.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Please have a seat.

It is very clear to this Court that we will not be finishing by December 19th.

MS. WEINTRAUB: That's not true.

THE COURT: So to advise the parties, that on December 19th at five o'clock p.m., if the case has not been concluded, then I will see the parties back here on January 8th, and we'll begin right at nine a.m.

Are there any further issues to address at this time?

MS. WEINTRAUB: Yes, Your Honor.

Your Honor, I would just like to bring to the Court's attention -- I'm sure that it wasn't deliberate. But the Court -- you know, and I've got pretty thick skin, and I'm sure Mr. Etra does as well. I don't mind being reprimanded by the Court if it's even-steven. But when it's only at our side, when the Court gets frustrated or that it's not moving fast enough -- I mean, you literally yelled at me and you yelled at Mr. Etra. The jury gets it. Especially today, when Ms. Jimenez asked for a sidebar, one of the jurors in the front row, when it was granted, actually made a face and went like this, like: "Of course."

And I have to tell you that, you know, the jurors always look to the Court. And if they perceive that you're looking at us with any disdain, they're going to consider that, and I'm worried about it. I'm worried about losing Juror Number 3. And I'm especially worried we're going to not have an alternate, and we're going to go through Christmas, and we're going to have a hung jury after all this.

So I would just bring it to the Court's attention and ask the Court, respectfully, to be more mindful. If you're going to yell at us, yell at them too, or not to yell at us in front of the jury.

MS. JIMENEZ: And let me just note for the record, since the record can't capture the sounds that are being made, this Court has at no time at any point during this trial done -- raised her voice at any time in front of this jury at any point, even to us.

MS. WEINTRAUB: That's just perfect. That's just perfect because you are just full of misstatements.

MS. JIMENEZ: Just for the record, so the record is clear, this Court at no time --

MS. WEINTRAUB: Oh, my God.

MS. JIMENEZ: -- has raised her voice to any party --

MS. WEINTRAUB: Oh, my God. Shoot me.

MS. JIMENEZ: -- remarkably, to any party.

MS. WEINTRAUB: Please shoot me because I can't be in a room with a lawyer --

THE COURT: To make a statement "Please shoot me" is certainly unprofessional.

Let me say this --

MS. WEINTRAUB: You know what, Judge?

THE COURT: Let me say this --

MS. WEINTRAUB: Judge --

THE COURT: Let me say this, Ms. Weintraub: At no time has the Court been hostile or yelled at anyone. What I did do is I admonished Mr. Etra, who was asking the witness about a document and the witness said he's never seen it, and then Mr. Etra asked if he could read it to the witness. And that's when the record will bear out what I said to Mr. Etra.

It is this Court's responsibility to ensure that this trial proceeds orderly and consistent with the rules. It is clear to this Court, as I've stated, now that the jury is out of this courtroom, that given the pace of this case, given the amount of documents that have not been shown and have for the first time been presented as, quote/unquote, impeachment documents, that it is taking a significant amount of time.

All the Court can do is rule on the issues before the Court and give you the time to try this case. I have done that. I have repeatedly rescheduled, reshuffled, doubled up on things during the time that you are taking a lunch break or you are leaving to go home, so that I can try this case.

So at this point in time, I take offense that I am being disrespectful or yelling at anyone. I certainly am not. I would like this case to proceed just like everyone else. And that's my job, is to ensure a fair trial. And I believe that I have been doing so.

So you can disagree. But with regard to statements of "Just shoot me," let me say that I demand that there be professionalism in this courtroom, not only to the Court, but certainly to officers of this court.

So at this point in time, if the Government will advise the Court tomorrow what witnesses you will be calling after Mr. Cupersmith.

MS. JIMENEZ: Yes, Your Honor.

We have Mr. Brent Motes. We have Ms. Nelia Palancar. We have Mr. Maged Salem. We have Mr. Heimdal Barrios. We have Mr. John Rodenhuis. I mean -- I mean, we would like to get through all these witnesses.

MS. WEINTRAUB: Who was the last one?

MS. JIMENEZ: John Rodenhuis.

THE COURT: Are there any issues related to any of these witnesses that we need to address?

MS. JIMENEZ: Well, admitting -- getting the evidence in.

MS. MARTINEZ: Yes, Your Honor. We would like to move in the evidence from Nationwide and the evidence from the Small Business Administration. We have certification of records.

THE COURT: What exhibit numbers, please?

MS. MARTINEZ: Your Honor, it begins -- it begins at 51. And I will advise the Court that some of them that say "Disk" on the exhibit list, I've actually created some sub-exhibits that are just a few. In other words, I've separated out some of the documents.

But in general, it's the 51 and the sub-exhibits under that, and it goes down all the way to 60. So 51 through 60 is the SBA documents. And like I said, some of those will have sub-exhibits but are within the composites. And then 61 through 68 are the Nationwide records.

THE COURT: Is there any objection?

MR. CAVALLO: Yes, Your Honor.

Objection on two levels. The first one, the broader one, is that the Indictment pleads a scheme ranging from April 2020 through March 2021. That's what it states. It states that the companies at issue are those that received loans from the EIDL and PPP. And those three companies, it states in Paragraph 8, are HM management, HM-UP, and HM Four.

THE COURT: And are these exhibits outside of that time frame?

MR. CAVALLO: They are, Your Honor.

A number of these exhibits are for modifications that were applied for after March 2021 and to my knowledge were unsuccessful and are -- fall outside the time frame. And then, relatedly, there are some within the time frame that are not those three companies, Sheppard Flagler, HM Six, for example.

So there's two issues. There's documents outside that time frame afterwards and then, within the time frame, there are documents that don't relate to the three companies pled in the Indictment.

THE COURT: Response?

MS. MARTINEZ: Your Honor, first, with respect to the time frame, the modifications are exactly the same applications. In other words, it is a continuation of the same intent to defraud --

THE COURT: But it's outside the scope of the Indictment. So why shouldn't the Court limit the documents to the time frames set forth in the Indictment?

MS. MARTINEZ: I would urge the Court that the case law does not say that we are bound by those specific dates. Those specific dates are approximate dates, number one.

Number two, the continuing evidence of trying to modify and increase loans that were fraudulent to begin with is part of the evidence that proves the original scheme. It proves the intent to defraud. It proves the knowledge of the fraud. So it is -- and it is part of the same loan file. It is -- even has the same application number. So it is necessary to complete the evidence, and also it is part of the direct evidence of the original intent to defraud.

In addition, Your Honor, with respect to the ones within the time period, Your Honor, they are so interrelated that, for example, on July 24th, 2020, four applications were made for four different companies for Economic Injury Disaster Loans. It was all on the same day. And the effort by Mr. Sheppard to get those funded continued through the time period at the same time.

So -- and in addition, there is yet another company that he did on his own within the same time period. So -- and the Defense has had these documents the entire time. It is simply -- it's actually inseparable. There's no way that the witness, Nationwide, tomorrow could testify and somehow parse out that she was asked to -- you know, how she could parse out that only two were funded and two were not, when it's all part of the same scheme, and she's doing all in the same day, with receiving emails from the Defendant all the same day.

THE COURT: All right. Response with regard to the loans being interrelated by way of the company and also in terms of the loan number.

MR. CAVALLO: Sure, Your Honor.

So I mean, I hear what they're saying. They have separated out the documents on their exhibit list. It seems like it's been very easy to do. For example, Exhibit 51, all SBA EIDL records related to HM Management; Exhibit 55, all SBA EIDL records for Sheppard Flagler Holdings. So, you know, to the extent they have been able to determine which documents apply to which loans, it doesn't seem what they are saying is accurate.

THE COURT: Well -- but what Ms. Martinez is arguing is that the loan numbers of all of the other documents, as well as the companies, are interrelated. That is, the loan numbers are one and the same. In terms of any outside activity outside the date of the Indictment refers back to the actual loan that may be at issue in this trial, as well as the companies are interrelated.

MR. CAVALLO: My understanding is they did not share the same loan number. Each loan has a different loan number.

MS. MARTINEZ: That's incorrect.

THE COURT: All right. Well, then, to that extent, if, in fact, there are different loan numbers, then I'm going to require that the Defendant just reflect the different loan numbers. And if, in fact, it's not related, then I would agree that that should not be introduced.

As well, I am going to require moving forward -- so the request to introduce the SBA documents wholesale is denied, and you can introduce them as they are reflected on the exhibit list by way of the specific loans related to the specific companies.

I am also going to require, with regard to the hundreds of exhibits that are contained within one composite exhibit, that they be referred to by Bates number because it's getting to be very unclear as to which exhibits are being parsed out by Q-24, 22, Q-23, and all of the Qs and all of the Ms, that there's a representation that they are part and parcel -- I'm going to require the parties to refer specifically to the Bates number so that that can be determined if, in fact, that's part of the exhibit.

MS. JIMENEZ: Your Honor, one other thing. I would like to get a copy of the exhibits that were shown to this witness today and that were moved into evidence. Some were shown and handed over. Some were shown and whisked away. So I would like to get a copy of all of the exhibits.

MR. CAVALLO: Absolutely, Your Honor. We'll do that.

THE COURT: All right. So let's provide that by email, if we could. And let's do that this evening.

Anything further?

MS. JIMENEZ: Just that the representation that the loan numbers are different is incorrect.

THE COURT: All right. To the extent that there's a representation that the loan number is different, then what I've said is parse that out and show it to the Court. Otherwise, there would be no basis not to introduce those records.

MR. CAVALLO: Understood, Your Honor.

THE COURT: All right. We do not need to -- actually, I'm sorry. Tomorrow morning, Liz, we do need the courtroom; is that correct?

COURTROOM DEPUTY: We do. Yes. We have a motion hearing in the morning. He's out of custody, though.

THE COURT: All right. We do have one matter in the morning that we will need to address at nine o'clock. And I'll see -- if you could just move your items, so we can have use of counsel table. And I'll see everyone here tomorrow at 9:30.

Have a pleasant evening.

MS. JIMENEZ: Thank you.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 5:14 p.m.)

UNITED STATES OF AMERICA)

ss:

SOUTHERN DISTRICT OF FLORIDA)

C E R T I F I C A T E

I, Yvette Hernandez, Certified Shorthand Reporter in and for the United States District Court for the Southern District of Florida, do hereby certify that I was present at, and reported in machine shorthand, the proceedings had the 12th day of December, 2023, in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that this transcript contains pages 1 - 284.

IN WITNESS WHEREOF, I have hereunto set my hand at Miami, Florida, this 25th day of February, 2025.

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