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 13, 2023
9:31 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 250

TRANSCRIPT OF TRIAL DAY 10
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

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ALSO PRESENT: Special Agent Sarah Halleran

I N D E X

W I T N E S S

E X H I B I T S

(Call to order of the Court, 9:31 a.m.)

THE COURT: Hi. Good morning.

Let me acknowledge the presence of the Defendant.

MS. WEINTRAUB: Judge, before we start, may I say something?

THE COURT: Certainly.

MS. WEINTRAUB: I apologize to the Court and to the Government for my conduct yesterday afternoon.

I am kind of sleep deprived -- no excuse -- and I totally lost it, and I apologize to the Court. I certainly have more respect for the Court and the system than that. So I apologize, and I hope the Court accepts it.

THE COURT: Thank you. Of course. Thank you, Ms. Weintraub.

MS. JIMENEZ: Your Honor, I would like to take up an issue before we bring in the jury, please.

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

MS. JIMENEZ: Yes, Your Honor -- and I think that the witness probably needs to step outside.

(Pause in proceedings.)

MS. JIMENEZ: Your Honor, there were a number of exhibits that were shown to the witness that were most -- you know, introduced through the witness, starting with a Burlington lease. And the question to the witness was: "Are you familiar with the Burlington lease?"

The answer is: "No, I am not," and then it goes on for pages about questions -- and the Court overruled my objection, which is fine, but it goes on for pages. He doesn't know anything about this lease. And then there is some other document, something called a Q-35, that was put up on the screen for the witness which was some potentially executed version of this lease, and then the witness just answers: "This is the first time I'm seeing the signature," and then they remove it from the screen.

And so -- and my point, one, with respect to this Burlington lease, whatever it is, if they want to put it in evidence about it, they're perfectly entitled to do that, but not through the Government, especially when a witness starts out with a response saying: "No, I am not."

We have -- Your Honor, since the very first day of this trial, our paralegal pointed out since November 28th -- let me back up for a second. The Defense exhibit list was filed November 10th of this year, was not amended. It goes through an Exhibit Number K-1. We start the trial November 28th with the very first witness O-1, then back to I-13, which was not on the exhibit list. We are down now to Q-30 of exhibits the Government never saw before, exhibits that have nothing to do with impeaching any witness. It's substantive evidence being put into this case over and over again through every single Government witness.

We have asked for a year and a half for reciprocal discovery. Quite frankly, we have been complaining during the course of this trial, and the Court, respectfully, has done really nothing about it, except to allow this to continue with witness after witness. It is unfair to the Government. It is prejudicial to the Government, not to mention the delays that it's causing with the trial when we're looking at something for the very first time with impeachment that's not really impeachment of any witness.

And so, one, I ask that any testimony regarding any Burlington lease or Burlington lease extension, where the witness is, you know, shown something and he blurts something out, and then it's taken off the screen -- that any reference to any Burlington lease -- whatever -- I have no idea what relevance it might have -- that it be stricken from the record. And that also the Defense, with this witness and any subsequent witness -- that they do not continue to introduce or seek to introduce substantive evidence that is not true impeachment of any witness.

THE COURT: All right. Response?

MS. JIMENEZ: That's the Government's request.

MR. ETRA: Your Honor, just on the Burlington --

MS. JIMENEZ: And to -- and I'm sorry -- and to provide whatever binders full of stuff they have for all of the remaining witnesses, that they provide it to the Government today.

THE COURT: All right. Response?

MS. MARTINEZ: Now.

MR. ETRA: A few things, Your Honor. First, on the Burlington documents, they were produced by the Government. So most of those letters -- both the one that was unexecuted was produced as -- from Mr. Cupersmith's materials and the executed from Burlington because they subpoenaed Burlington.

So I don't want to give a percentage number because I wasn't prepared for this argument. But well over 90 percent of these other exhibits are simply -- as Your Honor pointed out last night, are putting letters -- and we wanted to have our own numbers on it, but the Court's not -- doesn't want us to do that on their exhibits.

The rule here is simple, Your Honor. We have to give documents for our case in chief. We're not in our case in chief. These are all true impeachment records. Some get admitted because the record gets -- the evidence gets established, the foundation to be admitted, some don't. But there's true impeachment material. Your Honor, they have all come and said they've produced every document they have. I'm allowed to impeach them on documents they haven't produced.

On the Burlington issue in particular, Your Honor, he got up there and he testified through the direct examination that this is all the material that he got from the company and he took it all into account. I showed him the unexecuted Burlington lease that his company produced. I got it from the Government, and I cross-examined him on that.

Now, if he says he hasn't seen it, that's fine, but I get to say: "As the accountant, wouldn't this normally be relevant to your calculations" because -- so the jury could understand that he had the information needed to give a lower amount of information.

Impeachment is impeachment. They want to see our impeachment so they better prepare their witnesses, so they know what our cross-examination is. We have every right to use the impeachment properly, as we've been doing.

THE COURT: All right. At this point, the exhibits are what they are. The testimony is what it is. And I'm not certain, Ms. Jimenez, if you're asking the Court to reconsider its earlier rulings. I think the record clearly shows that there was a basis in which to allow the testimony.

So let us bring forward Mr. Cupersmith, and all of our jurors are ready, and we will continue this trial.

COURT SECURITY OFFICER: All rise for the jury.

THE COURT: Wait. Hold on. Hold on. Hold on. I need Mr. Cupersmith first.

MR. ETRA: Can I get set up?

THE COURT: Yes.

MS. JIMENEZ: I would ask that any other exhibits he seeks to introduce through this witness, that they be provided to the Government.

THE COURT: Have the exhibits that you're using for purposes of impeachment been provided to the Government, so that we can streamline the remainder of this cross-examination?

MR. ETRA: The only one that -- I produced it -- we gave it to them yesterday.

THE COURT: All right. Mr. Cupersmith, come on forward, sir. Good morning.

(Pause in proceedings.)

THE COURT: Good morning, sir.

THE WITNESS: Good morning, Your Honor.

THE COURT: All right. While you're doing that, let us bring in the jury.

COURT SECURITY OFFICER: All rise for the jurors.

(Before the Jury, 9:39 a.m.)

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

Please be seated, everyone.

It is good to see each of you. Thank you for being so prompt, and we are ready to get right back to work.

We'll continue with the cross-examination.

Mr. Cupersmith, let me remind you, you were previously placed under oath.

Mr. Etra?

MR. ETRA: Thank you, Your Honor.

CROSS-EXAMINATION [CONTINUED]

BY MR. ETRA:

Q. Good morning, Mr. Cupersmith.

A. Good morning.

Q. As we saw yesterday, the company would provide bank account records for several bank accounts -- the companies would, right?

A. Correct.

Q. And you had bank accounts not only for each company, but in some cases an individual company might have multiple -- would have multiple bank accounts, correct?

A. Yes.

Q. And is that acceptable?

A. Bank statement, yes.

Q. Sure. And there's nothing wrong with a company opening a new account for a different purpose than the other accounts, right?

A. There's no reason -- there's nothing wrong with that.

Q. All right. And in particular, when you have a mortgage loan, often a lender will require a separate account, almost like a lockbox, so that the rent that would pay the mortgage goes into that account and sweeps it to the lender; is that right?

MS. JIMENEZ: Objection. Relevance.

THE COURT: Sustained.

BY MR. ETRA:
Q. Do you know whether the Sheppard companies had a lockbox account like that?
MS. JIMENEZ: Objection. Relevance.
THE COURT: Sustained.
BY MR. ETRA:
Q. Did you receive bank records for a lockbox --
MS. JIMENEZ: Objection. Relevance.
THE COURT: Sustained -- well --
MR. ETRA: I'll move on, Your Honor. Well, sorry.
THE COURT: The bank records. Sustained.
BY MR. ETRA:
Q. Yesterday, I think you testified that -- did you rely on all the bank records -- did your firm rely on all the bank records it received to prepare tax returns?
A. It's part of the records, and we relied more on our trial balance and made entries to it.
Q. But you also looked at the records --
A. Yeah.
Q. And did that include bank accounts with -- that were like a lockbox?
MS. JIMENEZ: Objection. Relevance.
THE COURT: Sustained.
BY MR. ETRA:
Q. I think you testified yesterday, sir, that Mr. Sheppard's

companies didn't have any 1099ed workers, individuals versus companies, at the Burlington project. Was that your testimony?

A. Yes.

Q. And -- but you actually didn't prepare the tax returns -- you didn't go through the QuickBooks to prepare the returns for 2020, right?

A. I saw Alex Zaslow's work papers that used the QuickBooks file to prepare the tax return and that his numbers equaled the tax return, the trial balance --

Q. Well, I -- forgive me, but I thought when I showed this to you yesterday you said that you had never reviewed those records before.

A. Which records are you talking about?

MR. ETRA: Well, why don't we put up -- Your Honor, I'm not going to use the Q numbers, I think. I'm using the Bates number, NC 1230, which was Q-22 yesterday, Your Honor. It's part of Government Exhibit 28. There's only one Bates number because it's an Excel spreadsheet. So we don't have individual Bates numbers.

THE COURT: All right.

BY MR. ETRA:

Q. And let's go to the part -- remember the first page, it had a reference to the work done at Burlington, the $1 million? Do you see that?

A. Right.

Q. And then we went to the detail for that, which is code 100.31.

(Pause in proceedings.)

MR. ETRA: I have it as the thirteenth page.

THE WITNESS: That's not readable on the right.

BY MR. ETRA:

Q. I'm sorry?

A. It's not readable on the right.

Q. Well, we'll make it bigger, and you'll let me know when it's big enough to be read.

A. I can see that now.

Q. Okay. And I thought you told me you hadn't seen this before, when I showed this to you --

A. I haven't seen that schedule.

Q. So you haven't seen that schedule.

Okay. So you're not familiar with what information was on that schedule, right?

MS. JIMENEZ: Objection. It was asked and answered.

THE COURT: Sustained.

BY MR. ETRA:

Q. So is this schedule part of the work papers that you reviewed?

A. No. I did not review this particular schedule.

Q. So you don't know if the work papers that you did not review reflect --

A. These --
Q. Let me finish. Let me finish, please. I have to finish my question.
A. Okay.
Q. Thank you.
You don't know if the work papers that you did not review reflect payment to individual 1099ed workers?
MS. JIMENEZ: Objection. Asked and answered.
THE COURT: Overruled. I'll allow that.
THE WITNESS: They're all company names. They're not individual names.
BY MR. ETRA:
Q. Do you want me to show you the individual names?
A. Yeah. You showed me two yesterday. They were probably $22,000.
Q. So you did see individual names?
A. Yeah. The two you showed me, I saw.
Q. Okay. So notwithstanding --
A. It's 815,000.
Q. I'm sorry?
A. It's not $815,000.
Q. I didn't say it was 815,000.
A. Okay.
Q. Do you agree that -- do you agree that Sheppard's companies -- that the records show -- the records that your

company got showed Sheppard's companies paying individuals on a 1099 basis?
A. Yeah. The two that I saw yesterday that you showed me.
Q. And do you have -- okay. You're just saying it's not a lot of money, right?
A. That's correct.
Q. And that's based on a quick review of this page, right?
A. The return that I didn't prepare did the same thing that I did. They capitalized those expenses. These expenses do not reflect on the 8825. I said that yesterday.
Q. These expenses don't reflect what?
A. They're not on the 8825. They were -- whoever prepared the return I didn't sign did not -- did the same thing I did. They capitalized these expenses that are on the balance sheet, not the 8825, which you're trying to make me say.
Q. And just -- could we get your explanation of what "capitalize the expenses" means.
A. It means it gets added to the basis of the building improvements. It's not a write-off. It's a capital. You depreciate it over the life of the asset.
Q. These are tax concepts with how to apply business data, correct?
A. Right.
Q. Okay. It doesn't just -- you're not disputing the fact that Mr. Sheppard -- that the records that your firm received

reflected that the companies paid 1099ed workers, individuals, correct?
A. Based on the two you showed me, yes. I saw those.
Q. I only showed you two.
A. Okay.
Q. But you haven't studied all the records, so you don't know how many?
A. No. There's 1,200 pieces of records that we --
Q. Okay. That's fine.
MR. ETRA: Why don't we take this down.
BY MR. ETRA:
Q. I want to go through the -- go back over there -- finish up on the disclosure of SBA loans on the books and records that your firm received. Okay?
A. All right.
Q. Last topic.
MR. ETRA: So put up, please, Government Exhibit 29-3.
BY MR. ETRA:
Q. And you'll recognize this is the HM Management and Development return for 2020.
A. Correct.
MR. ETRA: Let's go to Bates 010507.
BY MR. ETRA:
Q. And here we saw yesterday under Other Liabilities, SBA loan, it shows about just under 300,000, right?

A. Correct.
Q. Which the evidence here will show that's about two loans. But your firm was given information about one more SBA loan, correct, that's not on here?
A. I only go by this. As I said, I didn't see every document. I saw the worksheets and the adjusting entries. And as I said before, it tied to the tax return.
MR. ETRA: Let's go back to the previous document, which is Bates Number NC 1230 from Government Exhibit 28.
THE WITNESS: The loan is irrelevant. It's shown there. It's not part of a PPP application. It's irrelevant. The liability is there, so I don't know where you're going with it.
MR. ETRA: Your Honor, can I just ask the witness not to -- I move to strike.
THE COURT: All right. The motion is granted.
Mr. Cupersmith, if you'll wait for the question, sir.
THE WITNESS: Thank you.
BY MR. ETRA:
Q. Okay. So if we look at the second page of this document -- remember we looked at this yesterday when we looked at the equity contributions? Do you recall that?
A. Yes.
Q. If you go a few lines up -- and this is HM-UP trial balance for 2020, right?

A. Correct.

Q. Okay. And if you go a few lines up, under Line 200 -- sorry -- .026, Loan Payable SBA, there's also another SBA loan there. Do you see that?

MS. JIMENEZ: Objection. That was a different company.

MR. ETRA: That's the point.

THE WITNESS: I see it.

THE COURT: All right. The objection is overruled.

BY MR. ETRA:

Q. And now let's go to the tax return for that year that your firm, or someone in your firm -- I guess Mr. Zaslow prepared, which is Government's Exhibit 30-3.

Do you recognize this to be the HM-UP 2020 return that your firm prepared?

A. Correct.

Q. Okay.

MR. ETRA: And let's go to the same part of the return that would show the SBA loan. Let's go to Bates Number 10536 -- excuse me.

BY MR. ETRA:

Q. And do you see under Other Liabilities there --

A. Yes.

Q. -- it doesn't reflect the SBA loan that was in the trial balance? Right?

A. I don't see it on there. It might be part of the two affiliates. I can't say.
Q. I'm sorry?
A. I don't have the worksheets here, so I can't say. It could be part of the "Due to Affiliate." It might have been lumped together. I can't answer the question.
Q. So you don't know if that SBA loan that was reported on the trial balance made it to this tax return, correct?
A. I can't answer the question without the worksheets.
Q. Without looking at the worksheets?
A. Yes.
Q. And you -- certainly it wasn't in the location it was for the other SBA loans?
A. That's correct.
Q. Is there another location where it's supposed to be?
A. It should be there as a liability.
Q. Sorry?
A. It should be there as a liability.
Q. Okay. Sitting here, you have no explanation, right?
A. Correct.
Q. Okay. Nevertheless, even though you didn't -- strike that. I'll start again.
MR. ETRA: Let's put up -- oh.
BY MR. ETRA:
Q. I want to talk about the two different terms pass-through

and passive. Okay, sir?
A. Go ahead.
Q. Okay. When you talk about pass-through, which you mean -- that HM Four is a pass-through company, what you mean is that the income that it gets from HM-UP, it simply passes through HM-UP to HM Four, correct?
A. Correct.
Q. And I previously asked you if HM Four got allocated some of the CAM rental money, and you didn't know yes or no, correct?
A. Correct.
Q. All right. That's different -- so you could be a pass-through company and that doesn't necessarily make you a passive company, right?
A. Correct.
Q. So what's a passive company?
A. Someone that's not -- Mr. Sheppard was in the business of real estate, so therefore it's not passive to him, even though it's a passive-type asset, but he's allowed to deduct the losses or income.
Q. All right. So you're just using the tax term of passive?
A. Yes.
Q. Okay. When you say -- did you consider HM Four a passive company?
A. Yes.
Q. In what sense was it passive?

A. Well, all it did was recognize the income or loss from the Alafaya Trails.
Q. Meaning that's how you treated it for tax purposes?
A. Correct.
Q. But you're not saying that it didn't play an active role in the business?
MS. JIMENEZ: Objection. Asked and answered yesterday.
THE COURT: Sustained.
MR. ETRA: Your Honor, just --
BY MR. ETRA:
Q. So your testimony on these terms is limited to the tax returns, correct?
A. That's because we prepared only the tax returns, yes.
Q. Okay. Put up Exhibit 17-10 that you were shown -- it's from the PayPal production that you were shown on direct.
Let's go to the second page, which is the page you were shown.
MR. ETRA: Sorry. The next page.
BY MR. ETRA:
Q. By the way, do you know whether HM Four was the managing member of HM-UP?
A. HM Four had 99 percent of Alafaya Trails.
Q. Right. So it was a member?
A. One percent was HM Eight.

Q. Right. You just described the ownership interest, right?
A. Correct.
Q. But you know that LLCs have to have like a managing member, someone or something that does something for the company, right?
A. Not necessarily, no.
Q. Okay. Do you know whether HM Four was the managing member of HM-UP?
A. No, it was not.
Q. It's not?
A. It was a passive -- all it did was pick up the passive income, which I previously testified.
Q. So your testimony is that HM Four was not the managing member of HM-UP?
A. That's correct.
Q. And you never saw any documents --
A. I personally did not see the documents.
Q. Didn't Mr. Sheppard tell you that HM Four --
A. I didn't have a conversation -- Mr. Sheppard very rarely ever had conversations with me.
Q. I'm sorry?
A. Mr. Sheppard very rarely had conversations with me during the whole 25 years of --
Q. He rarely spoke to you?
A. Very rarely.

Q. Oh, okay. Do you know whether Mr. Sheppard explained to Mr. Zaslow that HM Four is a managing member --
A. I can't answer for Mr. Zaslow.
Q. I'm sorry?
A. I cannot answer for Mr. Zaslow.
Q. Okay. All right. So going to this page that's on the screen, do you recall being asked questions about this on direct?
A. I thought I answered this yesterday. I said I didn't.
Q. Yes. But I didn't get to question you about it.
A. I didn't see it before.
Q. Okay. So the -- it's an indication that says it's from April 23rd, 2020. If you look at the middle of the screen, it says, the description -- "I needed" -- this is from Mr. Sheppard's home to -- or someone from Mr. Sheppard's, I guess, portal to the PayPal: "I needed to add more documentation from my CPA to the submittal, but the site will not let me. Thank you."
Do you recall being asked about that on direct?
A. No.
Q. No? I thought you were, and maybe I'm wrong.
Do you know whether you had a -- did you testify that you had no conversation with Mr. Sheppard around this time?
A. Many times.
Q. Sorry?

A. I said that many times. I did not have a conversation about --
Q. About this. You did testify to that?
A. Yeah.
Q. Okay. Do you know -- and you don't know if Mr. Zaslow did, right?
A. I can't answer for Mr. Zaslow.
Q. And you said that you checked records to see if Mr. Zaslow had conversations with Mr. Sheppard, right?
A. You showed me that yesterday.
Q. Okay. Isn't it a fact there's a record in your firm that shows that you and Mr. Zaslow were trying to set up a conference call with Mr. Sheppard around this time period?
A. I don't have -- I'm not aware of that.
Q. Let's see if I can refresh your recollection.
MR. ETRA: Only for the witness, Q-34.
BY MR. ETRA:
Q. Why don't you take a moment and review the email at the bottom forward, and let me know when you've a chance to do so.
(Pause in proceedings.)
THE WITNESS: I read -- I see them. I read the letter.
BY MR. ETRA:
Q. Does this look like an email record between Mr. Zaslow and Mr. Sheppard?

A. Yes.
Q. And you could see Ms. Gonzalez is copied on the last email?
A. Yes.
Q. Are these the kind of records -- are these records you use in your business to conduct your tax practice with respect to the Sheppard companies?
A. Yes.
MR. ETRA: Your Honor, I'll offer Q-34.
THE COURT: Any objection?
MS. JIMENEZ: No objection.
THE COURT: Admitted into evidence.
(Defendant's Exhibit Q-34 received into evidence.)
MR. ETRA: May I publish it?
THE COURT: You may.
BY MR. ETRA:
Q. So before, we saw the PayPal record was April 23rd. Here at the bottom Mr. Zaslow is saying: "Eric, Neal and I tried your cell just now but it went right to voice mail. Let us know when you want to jump on a call today. Thanks."
Do you see that?
A. I see it.
Q. And you just don't recall that happening, right?
A. I don't recall that it ever got through.
Q. Sorry?
A. I don't recall that it ever -- we had this conversation.

Q. Do you recall trying to have the conversation?
A. If it says it, I probably did. I might have been in another room, and Mr. Zaslow may have called me and said: "We want to do this." I have no idea. I have no recollection. It's two years -- it's three years ago.
Q. So it's hard to remember from a few years ago, right?
A. Correct.
Q. And harder to remember from before that, right?
A. Correct.
Q. Even discussions about HM Four, right?
A. Yes.
Q. Okay. And as it goes on, it said -- in the last email, Mr. Zaslow says: "We'll try calling you around ten o'clock." Do you see that?
A. I see it.
Q. So you don't have -- I think the way we're landing here is you don't have a memory of this -- trying to set up a call or having the call, right?
A. Correct.
Q. And you don't know if Mr. Zaslow ended up --
A. I can't answer the question for Mr. Zaslow.
Q. What?
A. I cannot answer the question for Mr. Zaslow.
Q. Fair.
I showed --

MR. ETRA: We could take this down.
BY MR. ETRA:
Q. I showed you in the trial balance the "TBE," and you said it's tenancy by the entirety, right?
A. Right.
Q. And you've done -- you had -- previously, before the FBI visited you, you had done the personal returns for Mr. Eric Sheppard, right?
A. Correct.
Q. And separate returns for his wife Jennifer?
A. Correct.
Q. And you knew that they owned investment property like HM Four tenancy by the entirety?
A. Yes.
Q. You know when lenders ask for information about borrowers that are owned tenancy by the entirety, they have to understand the ownership, right?
A. Correct.
Q. You were asked on direct if you had discussions with Mr. Eric Sheppard about whether to classify workers as 1099 or W-2. Do you recall that?
A. I don't recall that.
Q. Okay. Do you know whether you had discussions with Mr. Sheppard --
A. No. I did not have discussions.

Q. You got to let me finish.

Do you know -- do you recall as you sit here now whether you had discussions with Mr. Sheppard about whether workers should be 1099 or W-2?

A. I have no knowledge of that. It didn't happen.

Q. Is your recollection so clear over the 25 years that it didn't happen or is it not clear?

A. As I said earlier, I said I very rarely had discussions with Mr. Sheppard about the taxes.

Q. And again, you don't know if Mr. Sheppard had discussions with Mr. Zaslow on that topic?

A. I can't answer the question for Mr. Zaslow.

Q. Sorry?

A. I cannot answer the question for Mr. Zaslow.

Q. Or do you know Jeanette Gonzalez's involvement in decisions to make --

A. I can't answer that question either.

Q. Or before her, the accounting department in general?

A. You're saying with Mr. Zaslow or just --

Q. It's a fair point.

Let me --

A. I'll say it again. I can't answer for Mr. Zaslow.

Q. Okay. What I meant to say was: When the accounting department had more people in it, and it was a more robust accounting department in the earlier days --

A. Are you going back to 2012 and 2016?
Q. Sure. Sure.
A. Yeah. It was a different company then.
Q. Let me just ask: Do you know whether the accounting department handled W-2 versus 1099?
A. The accounting department handled the W-2s and 1099s.
Q. And they certainly were -- your -- people in your firm were always available to the accounting department or Ms. Gonzalez if they needed that, right?
A. Correct.
Q. I think you testified -- and I could be wrong -- that Mr. Sheppard did not take a salary from the companies; is that correct?
A. You can't -- an owner -- when it's a partnership, you can't take a salary. You only can take distribution.
Q. And there's nothing --
A. W-2s are not allowed for ownership.
Q. Okay. And there's nothing wrong with taking a distribution, right?
A. There's nothing wrong with it.
Q. I want to clarify the partnership context versus LLC. For non-tax purposes, you understand these companies are limited liability companies, right?
A. Correct.
Q. But when it comes to classifying for tax purposes, they're

treated as a partnership; is that right?
A. Correct.
Q. Okay. You had indicated on your direct that you were waiting for the 941s for 2019, and you never got them, correct?
A. Correct.
Q. And the reason why you were waiting for them was that the QuickBooks that were provided to your firm showed there should be W-2 workers and payroll taxes for 2019, correct?
A. Yes. We relied on --
Q. All right.
MR. ETRA: Put up -- I want to put up, Your Honor, from Government Exhibit 28, Bates Numbers 32563 to 595. I want to offer it in evidence, since it's from the production, and it's from Government Exhibit 28.
THE COURT: Right. It's already in evidence.
MR. ETRA: I apologize. I misspoke.
THE COURT: Exhibit 28.
MR. ETRA: I just want Pages 32563 to 595.
THE COURT: Okay. It's part of the exhibit.
MR. ETRA: Yes. Sorry, Your Honor. I got a little confused.
(Pause in proceedings.)
BY MR. ETRA:
Q. And just while we're waiting, I just want to clarify something. To the extent that the companies paid a 1099ed

worker or a company, they would not be on the -- for the Burlington project, it wouldn't be on the 8825 because of the way you treated those payments, right?

A. I don't understand.

MS. JIMENEZ: Objection. Asked and answered. It's incomprehensible.

THE COURT: Sustained.

Let's break that down, please.

MR. ETRA: I didn't hear what you said, Your Honor.

THE COURT: Let's break it down.

BY MR. ETRA:

Q. The payments to 1099, whether they're workers or companies, you said you capitalized them, right?

A. No. I did not say that. I said that the 1099s you showed me probably were in other expenses. The sheet that you showed I said was capitalized. That was that main one. It's on both returns, my return and the other return.

Q. And therefore, they would not appear on the 8825 we looked at --

MS. JIMENEZ: Asked and answered. Objection.

THE COURT: Sustained.

BY MR. ETRA:

Q. All right. So if you look at the --

MR. ETRA: Let's just look at the front page, 225.

BY MR. ETRA:

Q. Do you understand this to be a document produced from your firm?

A. Yes.

Q. And it's the HM Management and Development General Ledger for 2019. Do you see that?

A. Correct.

MR. ETRA: And if we could jump to page SHEPP 32582, please, the bottom third -- eight two.

THE WITNESS: You got to make it bigger.

MR. ETRA: Eight two, not nine two.

Just only put that page up, please, and highlight the bottom third.

MS. JIMENEZ: What year is this?

MR. ETRA: This is 2019 HM Management General Ledger.

BY MR. ETRA:

Q. Do you see what's on the screen?

A. Yes.

Q. Could you describe what's basically represented there on this part of the general ledger.

A. That's salary to certain people and the taxes being withheld.

Q. Right. So in the middle, it shows federal taxes, and it says: "941, 944," right?

A. Correct.

Q. So this is what you were referring to earlier, correct, which is the books and records provided by Ms. Gonzalez showed that there was withholding in 2019, right?
A. Correct.
Q. For payroll taxes?
A. Correct.
Q. And that was reflected in the tax returns?
A. Correct.
Q. But you never got the 941s?
A. Never saw them. They were requested. I never saw them.
Q. You're not saying they weren't filed. You don't know if they were filed?
A. I didn't know they weren't filed.
Q. Okay. Fair enough.
MR. ETRA: Let's put up Exhibit 19-13.
BY MR. ETRA:
Q. Let's focus on -- this is a bogus return with your -- where your name is -- signature is forged and your information is contained --
A. And my name is misspelled.
Q. I was going to get there.
A. Okay.
MR. ETRA: Let's blow up the bottom.
BY MR. ETRA:
Q. To your knowledge, does Mr. Sheppard know how to spell your

name?
A. Yes.
Q. And to your knowledge, does -- from your years of dealing with the Sheppard companies, is it understood with people with experience there -- in the relationship -- that returns are always filed with extensions in the second half of the year?
A. That's been the practice of the company. We get the information late.
Q. Right. And in fact, I think, as you said, at this time period you don't even have the information, right?
A. That's correct.
Q. Too early. At least the way the company is ran, right?
A. Correct.
Q. Okay. And you have no information that Mr. Eric Sheppard forged your signature, correct?
A. It's not my signature. I have no idea who signed it.
Q. Right. You have no information that Mr. Sheppard was at all aware or involved --
A. I can't answer that question, no.
Q. I'm sorry?
A. I can't answer that question.
Q. You don't know?
A. I don't know.
Q. Okay. And 25 years of working with him, you always believed he gave accurate information, right?

A. Yes.
Q. You had trust and confidence in him --
A. I always did.
Q. Sorry?
A. In prior years, I always did.
Q. Right. And it wasn't till the FBI showed up and said he's been arrested that --
A. Well, as I saw my name signed to a tax return and it wasn't my signature.
Q. Okay. And in fact, in or around this time period, you actually wrote a letter of -- a reference letter for Mr. Sheppard and his wife, correct?
MS. JIMENEZ: Objection.
THE WITNESS: I'd have to see the letter.
THE COURT: And the basis?
MS. JIMENEZ: Bolstering. The witness --
THE COURT: Overruled.
BY MR. ETRA:
Q. Let me see if I can refresh your recollection.
A. Okay.
Q. In the last few years, didn't you write a reference letter for Mr. and Mrs. Sheppard when they were refinancing the mortgage on their house?
A. You say I did. I have to see the letter.
Q. But it -- I don't have it here, and I'm telling you I don't

have it here. But it wouldn't surprise you -- it's consistent --

A. Anything is possible. Anything is possible.

Q. It's something if he asks you to do, you would have done, right?

MS. JIMENEZ: Objection. It calls for speculation.

THE COURT: Sustained.

BY MR. ETRA:

Q. And certainly in 25 years of working with Mr. Sheppard, you never -- you never knew him to be involved in anything like this, correct?

A. Correct.

MR. ETRA: May I have a moment, Your Honor?

THE COURT: Certainly.

(Pause in proceedings.)

MR. ETRA: No further questions, Your Honor.

THE COURT: Any redirect?

MS. JIMENEZ: Yes.

REDIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Mr. Cupersmith, you were just asked questions about trusting the Defendant Eric Sheppard. Do you remember just being asked that?

A. Yes. Yes.

Q. Why did you put those disclaimers in practically every

single one of the tax returns that your firm prepared for him?
A. Incomplete records. As I stated, we did not get a balance -- a bank reconciliation, payroll taxes.
Q. Was that common in your practice, sir, to insert disclaimer for tax returns?
A. Incomplete records, yes.
MR. ETRA: (Inaudible.)
MS. JIMENEZ: I'm sorry --
THE COURT: Sustained on leading.
THE WITNESS: I said yes --
BY MS. JIMENEZ:
Q. I'm sorry. My question -- did you do that for other clients?
A. Very few other clients because I got the records that I required.
Q. You were asked about this circular, Circular 230?
A. Correct.
Q. Are you familiar with it?
A. Yes.
Q. Does it provide -- yes. Does it provide that a practitioner, a tax preparer advising a client to take a position on a tax return or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client? Is that something that -- is that something that is in that circular

that you are familiar with?
A. Yes.
MR. ETRA: Objection. Leading.
THE COURT: Sustained.
MR. ETRA: Could we have the answer stricken as a result?
THE WITNESS: I did read the Circular 230.
THE COURT: Hold on.
The answer is stricken. The objection is sustained. Let's ask your next question, please.
BY MS. JIMENEZ:
Q. When you prepare a tax return, or prepared tax returns for this client, did it involve any reliance on your part?
A. Relied on the evidence -- information that was submitted was true and correct.
Q. On tax returns, Mr. Cupersmith, is there --
MS. JIMENEZ: Let me show Exhibit 20-11 and 22-3. If we can pull those up, please.
BY MS. JIMENEZ:
Q. These are a couple of the fake tax returns submitted to lenders with your forged signature, Mr. Cupersmith.
A. Yes.
Q. But let's -- looking down at the signature block --
MS. JIMENEZ: If we can highlight it, please. And just for the record, 20-11 is submitted to Northeast Bank, 22-3

was submitted to Cross River Bank.

BY MS. JIMENEZ:

Q. Who on the return signs the return under penalty of perjury?

A. I sign it. I sign the return.

Q. Well, can we look -- under penalty of perjury, whose signature is under penalty of perjury?

A. The taxpayer is. The taxpayer is.

Q. The taxpayer?

A. I misunderstood the question.

Q. Is the preparer signing under penalty of perjury?

A. No. No. No.

Q. And do you have reliance on anyone or anything when you sign the return?

A. I have reliance on the taxpayer.

Q. That's fine.

MS. JIMENEZ: We can take those down.

BY MS. JIMENEZ:

Q. You were asked some questions about who provided records to your firm, and that it was Jeanette Gonzalez providing records to Mr. Alex Zaslow -- at least in recent years it was to Alex Zaslow. I just want to clarify with you, Mr. Cupersmith, in terms of Jeanette Gonzalez providing records to Alex Zaslow, is she providing records to Mr. Zaslow and your firm?

A. Correct.

Q. Okay. Now, with respect to Jeanette Gonzalez providing records, was she providing records because -- was she providing records for her personal tax return?
A. No.
Q. Was she providing records for Jeanette Gonzalez, Incorporated?
A. No.
Q. For whom was she providing records?
A. For the various entities that we prepared the tax returns for.
Q. Whose entities were these?
A. Eric Sheppard's.
Q. Mr. Cupersmith, did you -- did you deal with -- you and Mr. Zaslow and your firm deal with Jeanette Gonzalez for -- I don't know -- for several years?
A. Yes.
Q. Did you have any indication from your dealings or the records that you received from her whether -- did you have any indication that she was not authorized to provide you the records that she was providing to you?
A. I have no recollection of that. She told me they came from the books and records, and she provided them on an annual basis to us.
Q. The books and records belonging to whom?
A. To Mr. Sheppard and the various entities.

Q. And so my question is: Did you have any indication from your dealings with her, or from the records, that she was not authorized to provide you what she provided you?

MR. ETRA: Asked and answered.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. You were asked some questions about being provided bank statements that were unreconciled or reconciled, and whether they were -- I think you indicated they were not reconciled to the trial balances. Can you just explain that briefly, please. What does that mean?

A. What Jeanette Gonzalez turned -- as reconciled, she would check off the deposits that she made and also the expenses, the checks, but it did not tie or reconcile to the books and records or the general ledger or the QuickBooks file.

Q. Does that mean that when you add up the amounts in the bank records they don't add to the amounts reflected on the trial balance?

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Well, are there amounts -- what's reflected on the trial balance?

A. The trial balance is the difference between the receipts and disbursements, but it may not tie to the general ledger,

what's a so-called bank balance.
Q. You were asked some questions about -- about whether -- about whether revenues were based on the accrual method versus the cash method. Do you remember that?
A. (No verbal response.)
Q. All right.
MS. JIMENEZ: Can we pull up Exhibit 30-2 and 30-3, please.
BY MS. JIMENEZ:
Q. 30-2 is your --
MS. JIMENEZ: No. No. Please.
Thank you.
BY MS. JIMENEZ:
Q. -- it's your tax return for HM Management and Development Alafaya Trails for 2019, and 30-3 is your tax return for the same company for tax year 2020.
MS. JIMENEZ: Now can we show the -- can we show that upper box.
Thank you.
BY MS. JIMENEZ:
Q. Do you indicate on the returns whether you're using the accrual method or the cash method?
A. It does indicate -- the box for accrual is checked on both returns.
Q. All right. The accrual is checked.

MS. JIMENEZ: Can we show the other return for 2020.
All right. And so if we could go to Page 8 of both returns, the 8825.
THE WITNESS: Correct.
BY MS. JIMENEZ:
Q. All right. The 8825 for 2019 reflects gross rents of what amount?
A. 1,414,576.
Q. And then gross rents for HM-UP Development Alafaya Trails for 2020 reflects what amount?
A. 1,524,563.
Q. And which amount is greater?
MR. ETRA: Objection, Your Honor.
THE COURT: The basis?
MR. ETRA: It's asking -- no personal knowledge.
THE COURT: All right. If the witness knows which amount is greater.
THE WITNESS: The '20 return.
BY MS. JIMENEZ:
Q. And are you comparing the same -- is your basis of the figures that you -- that you reflect on this return -- let me try to ask something that is comprehensible.
Are you using the same method for both returns?
A. Yes.
Q. What is that method?

A. The accrual method.
Q. Okay. Thank you.
In the tax years 2018 to 2020, were you dealing with 74 companies of the Defendant?
A. No.
Q. At any point, were you dealing with 74 companies at once?
A. In 2012 maybe to 2015. I'd have to check my records. But that's -- when he showed me the schedule --
Q. Did you add them up?
A. I never --
MR. ETRA: Objection, Your Honor. He hasn't finished answering --
THE COURT: Let the witness finish answering the question, please.
THE WITNESS: I didn't add them up. You're talking 10 years ago, 11 years ago.
BY MS. JIMENEZ:
Q. Were there more in the past than in the present?
A. That's correct.
Q. Okay. You were asked some questions about some Burlington lease extension. Do you remember that? And you were shown a document that was unsigned and undated?
A. Yes.
Q. Do you know whether -- if -- whether that lease was ever signed or executed?

A. Well, they showed me some document that was signed. I never saw that.

Q. You never saw that document?

A. No.

Q. Do you know if that occurred in 2020 or the end of 2020?

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

Q. Do you know whether that --

MR. ETRA: Objection. He says he doesn't know. So she's asking him --

MS. JIMENEZ: He was asked a lot of questions about this lease.

THE COURT: Hold on. The witness has responded.

Overruled.

BY MS. JIMENEZ:

Q. Do you know whether -- that there was any penalty on that lease, whether it extended out for a number of years?

MR. ETRA: Objection. He doesn't know.

THE COURT: The witness stated he doesn't know. Sustained.

BY MS. JIMENEZ:

Q. And if it extended out for a number of years, do you know when such penalty would even begin?

MR. ETRA: Objection, Your Honor.

BY MS. JIMENEZ:

Q. Were you provided that information?

THE COURT: Sustained.

THE WITNESS: I have no recollection of that information.

BY MS. JIMENEZ:

Q. You were asked whether the Defendant had filed for bankruptcy. Do you know whether any of his properties were foreclosed on?

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

Q. All right. You were asked some questions about what emails you produced, whether they started in 2021 or 2020. Let me ask you: Did the subpoena from the Government to your firm -- was it for a specific time period? Do you know?

MR. ETRA: Objection. Leading.

THE COURT: Overruled. I'll allow it.

THE WITNESS: I think it was '18 to '20. I can't say. I don't have the subpoena in front of me.

BY MS. JIMENEZ:

Q. And you were asked whether you keep records for seven years. Do you keep records for seven years?

A. Yes.

Q. Did the Government ask you for seven years' worth of records?

A. No.

MS. JIMENEZ: Let's go to some of these emails. Can we go to the -- well, let me -- can I -- I need to use the

ELMO, since I don't have their...

THE COURT: All right.

BY MS. JIMENEZ:

Q. All right. You were shown an email from -- I guess it's March 30th, the bottom -- let me show the bottom. Starts March 30th, 2020, and then it says: "Please let" -- oops.

MS. JIMENEZ: Oh. I love this ELMO.

BY MS. JIMENEZ:

Q. Okay. March 30th, 2020: "Please let me know if you filed my personal 2018. 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."

Did the Defendant, at that time, tell you that he was applying for some government program?

A. Well, the email says that he's applying for government programs. He did not tell me --

Q. Do you know if he mentioned something about an economic injury loan?

A. No.

Q. Did you, at that time, end of March of 2020, speak with Mr. Graff or hear from Mr. Graff about assisting the Defendant with some SBA loan?

MR. ETRA: Beyond the scope, Your Honor.

THE COURT: Overruled. I'll allow it.

BY MS. JIMENEZ:

Q. Now, the Defendant is asking about his personal return. Do you see that?

A. Yes.

Q. Is that a 1040?

A. I assume it is, yes.

Q. Well, what is a personal return? Is it a 1040?

A. A 1040, yes.

Q. Okay. Then the email chain, as it goes up -- March 30th, Mr. Zaslow responds: "No, we have not. Still waiting on HM Management from Jeanette. You will need to sign the return when it is completed."

Why do you need to wait for HM Management to finish the personal return?

A. Because the flow from HM Management flows through to the personal return.

Q. Do you need to complete the partnership returns to be able to prepare or finish the personal returns?

A. Yes.

Q. Okay. Then -- then April 1st: "When did she send the stuff? She was supposed to send it Monday night. I need this filed before Friday for HM, or a copy of it, even if we have to amend it. I'm applying for funds for a government relief package." And then Mr. Zaslow responds: "I just spoke to Jeanette. She's going to reclass some of the transactions and resend me financials."

MS. JIMENEZ: Hold on a second.

Oops. I missed Page 2. That's what it was. Oh, sorry.

Okay. Okay. So let me just --

BY MS. JIMENEZ:

Q. March 30th, the question was: "What do you need from Jeanette?" March 30th, then the response is: "Everything; the books, the trial balance, profit and loss, general lender, quarterly payroll tax filings, bank recs."

Do you see that?

A. Yes.

Q. Is that what you need to prepare a tax return?

A. Yes.

Q. Now, personal tax returns, are they due April 15?

A. Yes.

Q. So for 2018, they would be due April 15th, 2019?

A. Correct.

Q. Now we're March 30th, 2020?

A. Correct.

Q. Okay. So then she's going to reclassify some of the transactions.

At some point after April 1st, was Mr. Sheppard's personal income tax return for 2018 prepared and finalized, if you know?

A. I don't know for a fact, but I believe it was. That would be a year later. I can't tell you the date that it was filed.

Q. All right. Then you answered some questions about the IRS losing some tax records. And this was a July 7, 2020 -- and this is their Q-30 -- your letter or your assistant's letter: "For the above-referenced taxpayer, we received the attached notice. Enclosed are copies of the taxpayer's 2018 tax return."

Were you providing the tax return or a copy of the tax return previously filed at that point?

MR. ETRA: Objection. Leading.

THE WITNESS: The answer is yes.

THE COURT: Overruled.

THE WITNESS: Enclosing a copy of the taxpayer 2018 tax return.

BY MS. JIMENEZ:

Q. All right. And so -- but as of April 1st, was this tax return for 2018 for the Defendant -- had it been prepared?

A. It probably was prepared if we're sending another copy.

Q. I'm sorry?

A. If we're sending another copy, it had been prepared. I can't tell you --

Q. I'm sorry. I think my question was unclear.

A. Okay.

Q. Oops. Certainly -- as of June 7, was it prepared?

A. Yes.
Q. All right. But let me ask you -- but as of March 30th, Mr. Cupersmith, based on these emails -- here, March 30th: "Did Jeanette get over the info yet?"
"Nothing yet."
As of March 30th, had that tax return been prepared?
A. It could be the '19 return. I don't know. I can't answer. It could be the '19 return.
Q. Okay. Well, the email starts --
A. The year 2020 you would file the 2019 return.
Q. I'm sorry. I don't mean to confuse you. But here, the email started in -- on -- March 30th, 2020, with Mr. Sheppard asking about his personal 2018 return, right? March 30th, 2020?
A. Correct.
Q. Okay. And the response was that there was nothing received at that point, correct?
A. From the Internal Revenue, yes.
Q. No. Your office.
A. You're going back and forth. Show me where I said we sent another copy.
Q. Okay. Hold on a second. Let me show you -- "Did Jeanette get over the info yet?" This is still March 30th, 2020?
A. Correct.
Q. "Nothing yet."

A. I don't know which year he's talking about. Could be the '19 return.

Q. Okay. So the email chain started, Mr. Cupersmith, regarding his personal 2018 return.

A. Correct.

Q. Okay. As of March of -- March 30th, 2020, had the April -- had the 2018 return been prepared?

A. To the best of my knowledge, yes.

Q. Okay. Let me just go through this. The response was: "Nope, we have not. Still waiting on HM Management for Jeanette. You will need to sign the return when it is completed."

Was the return completed?

A. Again, I'll say I don't know if it was the '18 or the '19 return. Because March of '20, we could be trying to prepare the '19 return.

Q. But Mr. Cupersmith, the question from Mr. Sheppard was about his 2018 return. Do you see that?

A. Yes.

Q. Okay. So then I just want to note for you, obviously you are providing a copy, which has been prepared --

A. I said before I don't know if it actually got sent to the Internal Revenue --

Q. Okay. Now, what's attached -- I just want to show you the notice from the IRS.

A. Okay.
Q. All right -- the notice from the IRS to Mr. Sheppard.
THE COURT: I'm sorry. Which exhibit is this?
MS. JIMENEZ: This is their same Exhibit Q-30. The next page is the actual notice from the IRS, which is now blurry. Okay.
BY MS. JIMENEZ:
Q. It says: "Tax year 2018." The notice date was March 23rd, 2020, before those emails that I just showed you. Yes?
A. Correct.
Q. Okay. So before those emails, the IRS is notifying Mr. Sheppard on March 23rd, 2020, that his 2018 tax return has not yet been filed.
A. It had been prepared. I can't tell you it was filed.
Q. All right.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. All right. Now, going back to this government program that he references in the email, did the Defendant provide any loan documents to your firm?
A. Not to my knowledge, no.
Q. Okay. Then the next email you were shown -- or actually, you were shown the emails in reverse order.
A. Those documents are irrelevant for the preparation of a tax return.

MR. ETRA: Your Honor, I move to strike his comment as non-responsive to a question.

THE COURT: The motion is granted. If the witness will wait for the question to be asked.

BY MS. JIMENEZ:

Q. You were shown this email, Mr. Cupersmith, on cross-examination from April 28, 2021, where she asks: "Is an SBA loan a long-term liability or current liability?"

Do you see that?

A. Yes.

Q. And then he provides a response, April 28, 2021, I guess regarding HM Management and Development. Do you see that?

A. Yes.

Q. In 2021, was your firm preparing tax returns for HM Management for 2020? In 2021, were you --

A. We were accumulating data at that point.

Q. You were accumulating data, but the -- well, do you recall, sir, when in 2021 did you actually receive records to prepare the HM Management tax return for tax year 2020?

A. My routing sheet would show the --

Q. Sure.

MS. JIMENEZ: Let's just show 29-6, please.

Oh. So do we have to switch?

I'm sorry. We have to switch to the counsel's table. I apologize.

Can we go down to the bottom.

Okay. And go up, please.

All right. Here. Can we show including the date.

BY MS. JIMENEZ:

Q. Now, December 6th, 2021, Mr. Cupersmith, Jeanette Gonzalez writes to Alex: "Please find attached year-end 2020 financials for HM Management and Development."

Do you see that?

A. Yes.

Q. Was Jeanette Gonzalez now providing the records for you to prepare the 2020 return for HM Management?

A. Correct.

Q. Not in April of 2021?

A. Correct.

Q. Let me show you the actual tax return. If I could just find the exhibit number so you see it.

MS. JIMENEZ: Exhibit 29-3, please, so that he could see the date.

Could we show the date.

BY MS. JIMENEZ:

Q. So the 2020 HM Management tax return was prepared and signed by you on what date?

A. December 22nd, 2021.

Q. Not April of 2021, right?

A. No. That's correct.

Q. Now, the next email is back to 29-6, the one that we had gone over on direct and you were asked on cross-examination.

MS. JIMENEZ: Could we show him 29-6 again, please.

BY MS. JIMENEZ:

Q. All right. So here, December 15, Alex Zaslow is actually asking Jeanette Gonzalez -- what is he asking?

A. He's asking if they are sending any loan documentation on the loan payable to the SBA for 296.

Q. All right. And what did Jeanette Gonzalez respond above -- where it says: "Alex," what does she respond?

A. "The only thing I have is the bank statement showing the money coming in. I will ask Eric to let me know."

Q. So Jeanette Gonzalez -- the record that she had, was it a bank statement?

A. She showed the money coming in on a bank statement.

Q. And she was going to ask who?

A. Eric.

Q. And were you provided any loan documents?

A. Not on the SBA loan, no.

Q. Not an SBA loan or a PPP loan?

A. Or a PPP loan.

Q. And it showed how you -- you actually reflected this amount as a liability on the return?

A. Correct.

Q. Okay. That was based on the representations provided by

the Defendant's bookkeeper?
A. Correct.
Q. On behalf of whom?
A. Eric Sheppard.
MR. ETRA: Objection, Your Honor. I'm sorry.
THE COURT: I'm sorry?
MR. ETRA: I apologize, Your Honor. I can't object to his answer, but --
THE COURT: All right.
BY MS. JIMENEZ:
Q. Did you communicate by email very much with the Defendant?
A. Very, very little.
Q. Did you communicate by phone with him?
A. Maybe once a year.
Q. Did you communicate more by phone than by email?
A. I tried to visit him at least once a year.
Q. Well, did you communicate more by phone than by email?
MR. ETRA: Objection. Asked and answered.
MS. JIMENEZ: He didn't answer.
THE COURT: Overruled. I'll allow it.
THE WITNESS: Ask me the question again.
BY MS. JIMENEZ:
Q. Yes. I'm sorry. Did you communicate with him by phone more than by email?
A. Probably by phone.

Q. So in 2020 did you have any conversations with the Defendant?
A. I can't recall.
Q. Did you have conversations with the Defendant on a periodic basis around the time when you were finalizing the returns?
A. No.
Q. At any point -- you said once a year?
A. Just once a year.
Q. All right. So in 2020 how many times?
MR. ETRA: Objection. He said he couldn't recall.
THE COURT: Sustained.
BY MS. JIMENEZ:
Q. In 2021 how many times?
A. I don't recall. It could be once. I said I only spoke to him at least once a year.
Q. All right. And so, in 2020, in 2021, in 2022, did the Defendant ever tell you he had applied for a government loan?
MR. ETRA: Objection. He answered he doesn't recall about 2020.
THE COURT: Sustained.
THE WITNESS: That's -- okay.
BY MS. JIMENEZ:
Q. Did the Defendant tell you -- do you have a specific recollection whether he told you about any SBA loan or PPP loan?

A. Yes.
Q. You do? Oh, yes. What did he tell you?
A. On July 28th, I called him --
Q. July 28th of what year, sir?
A. Of 2022.
Q. What did he tell you?
A. I called him about getting personal information to complete his return, and he told me he had a problem with the PPP loan but he was going to use local accountants and would not bother me.
Q. Is that the only recollection you have about the Defendant mentioning some kind of PPP loan or government loan?
A. Yes. Yes.
MS. JIMENEZ: Could we go back to the ELMO, please.
BY MS. JIMENEZ:
Q. You were shown this March 29th, 2020, email from your firm. Do you see that? Do you recognize it?
A. Yes.
Q. What was this?
A. It's a letter we sent out on a monthly basis to our clients about tax changes.
Q. Did that go out to everyone?
A. Yes.
Q. In the portion that they helpfully highlighted for you, it says: "Generally eligible business is defined as small

businesses with fewer than 500 employees. Employees include individuals employed full-time, part-time, or other basis."

Now, this doesn't define employees. Did the Defendant ever ask you to define or to explain what is an employee?

A. No, he did not.

Q. You were shown from the Defendant a record -- I don't know what number this is, what number they gave this -- oh, Q-36. Q-36 is actually the same individual, two records for him; HM-UP Development Alafaya Trails, Martin Joe Beirne, and HM Management, Martin Joe Beirne. Do you remember being shown this yesterday?

A. Yes. Yes.

Q. Now, is this a 1099?

A. Yes.

Q. All right. Now, this was in the Defendant's possession for Mr. Martin Joe Beirne for 2020, and this tax record -- how does it define what Mr. Martin Joe Beirne is? What does it say about his compensation?

MR. ETRA: Objection. Leading, saying it was in Mr. Sheppard's personal --

THE COURT: Sustained. Rephrase.

BY MS. JIMENEZ:

Q. Well, you --

MR. ETRA: It's also not in evidence, Your Honor.

MS. JIMENEZ: Oh, it was in evidence.

MR. ETRA: I don't think I got it into evidence. I think I just showed it to the witness.

MS. JIMENEZ: I'd like to certainly move it into evidence, Your Honor.

THE COURT: Is there any objection?

MR. ETRA: No objection, Your Honor.

THE COURT: All right. And what's the exhibit number, please?

MR. CAVALLO: Q-36.

MR. ETRA: Q-36.

THE COURT: All right.

(Defendant's Exhibit Q-36 received into evidence.)

BY MS. JIMENEZ:

Q. All right. Does this record explain -- the record shown to you by the Defense explain to you the type of compensation that Mr. Martin Joe Beirne -- Martin J. Beirne receives?

A. It's non-employee compensation.

Q. That's for HM Management. And then HM-UP Development Alafaya Trails, does this 1099 explain the type of compensation that Mr. Martin Joe Beirne received from that business?

A. It does. Non-employee compensation.

Q. All right. And then for tax year 2020 --

MS. JIMENEZ: Can we show 29-3 -- oh. I'm sorry. We have to go back to the table -- 29-3 and 30-7.

BY MS. JIMENEZ:

Q. For tax year 2020, that tax year -- well, that tax year, did your return reflect the information that you were provided by the Defendant by way of Jeanette Gonzalez?

MR. ETRA: Objection, Your Honor, with respect to the Defendant personally. It's leading, and it's -- leading.

THE WITNESS: Well, there are two different --

THE COURT: Overruled.

Does the witness understand the question?

THE WITNESS: Yes.

BY MS. JIMENEZ:

Q. Let me just show --

A. They're two different tax returns.

Q. Let me show you. They are both 2020.

A. Okay.

Q. Let's go down to the -- this is the profit on the right side, the profit and loss for 2020.

A. Okay.

Q. That's right. You're right. I pulled up the wrong -- the wrong number. The 29-3 is --

MS. JIMENEZ: Hold on. Let me get the right one. I apologize.

No. You can leave 29-3.

It's 29-10 that should be on the right.

BY MS. JIMENEZ:
Q. All right. So now we're talking about the same company.
Okay. HM Management and Development. Do you see on the right Profit and Loss for 2020?
A. Yes. Yes.
Q. All right. So -- okay.
MS. JIMENEZ: And then let's go back and out.
And then down toward the middle of the page, if we can highlight the middle down to Wages.
BY MS. JIMENEZ:
Q. Okay. So the amount of wages that -- what was the amount of wages that the Defendant, by way of Jeanette Gonzalez, provided to you?
MR. ETRA: Objection, Your Honor. She keeps saying "Defendant" and it's improper.
THE COURT: Sustained. Rephrase.
BY MS. JIMENEZ:
Q. The Defendant's company, HM Management, what did they provide to you for tax year 2020 as a wage amount?
A. $2,456.
MS. JIMENEZ: And then can we go to the tax return prepared by Mr. Cupersmith on the right.
BY MS. JIMENEZ:
Q. Line 9, for tax year 2020, what did you report for wages for that business?

A. $2,456.

Q. Was that based on information provided to you by HM Management?

A. Correct.

Q. Based on the records that you reviewed over the years for HM-UP Development Alafaya Trails, was that business -- up through the time that you stopped working with the Defendant, was it a construction company at any point?

A. No.

Q. All right. Can we show -- hold on. You were asked about whether -- about giving advice regarding 1099 versus W-2. Was it the type of work your firm was engaged to provide the Defendant and his companies, to advise him about how to run his business?

A. We did not provide that.

Q. And specifically as to wage employees and 1099ed contractors, do you recall -- did you ever -- or your firm -- were you providing them advice as to who should be classified as what kind of workers?

MR. ETRA: Objection, Your Honor. He already testified he doesn't know about Mr. Zaslow --

THE COURT: Sustained.

BY MS. JIMENEZ:

Q. Yourself? Mr. Cupersmith, did you yourself -- did you give him any advice?

A. No, I did not.
Q. What was your firm hired to do for Mr. Sheppard and his companies?
A. Just prepare the tax returns for the four entities for the two years -- two years, '19 and '20, and then the related companies.
(Pause in proceedings.)
MS. JIMENEZ: Can we show 29-4.
BY MS. JIMENEZ:
Q. This is a 2019 --
THE COURT: Ms. Jimenez, one of the jurors -- we need to take a comfort break at this time.
MS. JIMENEZ: Okay.
THE COURT: All right. Ladies and Gentlemen, let's take a 10-minute recess.
COURT SECURITY OFFICER: All rise.
(Jury not present, 10:53 a.m.)
THE COURT: All right. We're on a 10-minute recess.
(Recess from 10:53 a.m. to 11:03 a.m.)
THE COURT: All right. Let me acknowledge the presence of the Defendant.
Are we ready to continue?
We need Mr. Cupersmith.
Come on forward, sir.
MS. MARTINEZ: Your Honor, may I just ask the Court --

when this witness gets off, there will be another witness. Will we have a small break to address the exhibits? Because we haven't finalized the admission of the exhibits for the next witness.

THE COURT: Okay. This is with regard to the SBA loans and the loan numbers and the companies?

MS. MARTINEZ: Right. There's two witnesses. The first one coming up after this is not from the SBA, but it does relate -- she has -- was a processor --

THE COURT: Are you seeking to introduce the records through her?

MS. MARTINEZ: Well, she has records from her own company.

THE COURT: Yes.

MS. MARTINEZ: It was a company that was hired to process loans. And then separately we have the SBA records. So there's records relating to her from her company only.

THE COURT: All right. And the records in dispute, is that going to be through the next witness?

MS. MARTINEZ: Through the next witness.

THE COURT: All right. Have we had an opportunity to look at the loan numbers?

MR. CAVALLO: Yes, Your Honor.

So I may have -- there may have been some misunderstanding between us yesterday. So here's what I've looked at, as far as -- remember, there's two different arguments. The first argument is that some of these records go beyond the time frame. And then the second argument is that some of these entities just are not mentioned in the Indictment and don't belong.

So on that issue, on the other entities, they didn't even get loans. So Sheppard Flagler, HM-UP TRU, and HM Six did not have loan numbers in what I looked at. They did have all distinct application numbers.

MS. MARTINEZ: Of course.

MR. CAVALLO: So those are very easily separable --

THE COURT: Well, which documents -- if they didn't obtain loans, then what documents would reflect Flagler, TRU, and HM Six?

MR. CAVALLO: They have on their exhibit list -- I could pull it up, Your Honor. They have entire categories of loan files from the SBA for Sheppard Flagler Holdings, which is all documents, I guess, on an attempted SBA loan. Then they have an entire folder for HM-UP Alafaya Trails TRU, which is just all documents on an attempted SBA loan. And then they have a whole folder of, you know, every document for HM Six SBA.

So none of those other loans -- they are all distinct application numbers.

MS. MARTINEZ: I'm not clear if he's talking the

Nationwide exhibit or the SBA exhibits, Your Honor. However, it is absolutely disingenuous to suggest that because something did not get funded that it is not part of the scheme. As I explained yesterday, on July 24th, 2020, the Defendant asked the next witness to submit four applications at the same time for four different companies. Two were funded over a couple of months, and the other two Mr. Sheppard continued trying to have it reconsidered and having them funded.

And now I'm just talking about the records only relating to the next witness, which is from a business called Nationwide Lending Direct, that was submitting them on their behalf. But it is completely intertwined with the -- it is part of his scheme to defraud. He is submitting records that are false, he's making statements that are false, and he's doing it exactly on the same dates and at the same time. These all were submitted on the same day. And when I said loan numbers, what I meant is application numbers.

THE COURT: So give me the exhibit number that you're seeking to introduce, and then let me know what Bates stamps relate to Flagler, TRU, and HM Six that you believe are not inextricably intertwined.

MR. CAVALLO: All of them, Your Honor.

THE COURT: All of the records? What's the exhibit number?

MR. CAVALLO: Your Honor --

THE COURT: What is the Government's exhibit number that you're seeking to introduce with the next witness?

MS. MARTINEZ: He first needs to separate with respect to --

THE COURT: What is the Government's exhibit number that you're seeking to introduce through this next witness?

MS. MARTINEZ: The next witness is from Nationwide Lending Direct, Your Honor. The exhibits with respect to this witness go from 61 through 68.

THE COURT: And what are the Bates stamp numbers that you believe are not inextricably intertwined or outside of the Indictment period?

MS. MARTINEZ: That question goes to the Defense.

THE COURT: I'm directing it to the Defendant. That's what you were to do last night.

MR. CAVALLO: One of the problems, Your Honor, is that 64 is -- and we asked for this, by the way, months ago. We asked for them to --

THE COURT: It's reflected on the exhibit list. So when you say: "We asked for it," all of these exhibits should have been provided.

MR. CAVALLO: They were provided. They are voluminous records. We asked for Bates numbering on the exhibit list so we could tell.

But the answer to your question, Your Honor, is

Exhibit 64 is all Nationwide records for Sheppard Flagler Holdings. And based on what we discussed yesterday, that does not share a loan number with HM Management, HM-UP, or HM Four. In fact, it was never funded, and they're easily removable. It's its own category of documents. That's Exhibit 64.

MS. MARTINEZ: He's completely confusing the statements to the Court. He is misstating the evidence to the Court.

THE COURT: Okay. Then you know what? Instead of introducing them on a wholesale basis, you're just going to need to lay the proper foundation with that witness.

So at this point in time, not looking at the exhibits -- I told you last night that if you can identify them by the Bates stamp that I would look at each of those disputed items. But to that extent, if it can't be identified, then lay the proper foundation through the next witness.

Let's bring the jury back in, and let's continue with the redirect.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 11:09 a.m.)

THE COURT: Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And continuing with the redirect examination.

MS. JIMENEZ: Thank you.

BY MS. JIMENEZ:
Q. Mr. Cupersmith, I think you indicated that a routing sheet would help refresh your recollection as to those 2018 tax returns I was asking you about?
A. Yes.
Q. All right.
MS. JIMENEZ: Can I show -- can we just show the witness this, Your Honor --
THE COURT: What's the exhibit number, please?
MS. JIMENEZ: -- on the ELMO?
This is to refresh his recollection.
THE COURT: What's the exhibit number, please?
MS. JIMENEZ: I don't have an -- what's the next number?
Seventy-five. Or make it 76, actually.
Seventy-six, Your Honor. I apologize.
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. All right. Mr. Cupersmith, without saying what this is, if you could just take a look at that.
A. Yes. I see it.
Q. Are you able to read the date -- I mean read to yourself the date?
A. Yes.
Q. And this is -- all right. Now, did the HM Management 2018

tax return have to be prepared before the Defendant's personal tax return from 2018?
A. Yes.
Q. All right. And when was the -- well, when was the -- let me see. In what month was the HM Management tax return -- in what month and year was the HM Management tax return prepared for tax year 2018?
A. I signed it 4/9/20.
Q. Okay. That was in April of 2020. So would -- in terms of timing, Mr. Sheppard's personal tax return for tax year 2018, would that have been prepared or finalized after that date?
A. It would have to be because it was part of his tax return.
Q. All right. So just going back to the notice from the IRS -- and I understand your letter indicates that July 7th, 2020, you were providing them a copy of his personal tax return --
A. Correct.
Q. -- for 2018. But the IRS notice to him was March 23rd, 2020, that his personal tax return for 2018, his 1040, had not been filed. And so now refreshing your recollection, would that be consistent with your records?
A. Yes.
Q. All right.
MS. JIMENEZ: We were going to show -- and this was going back to -- going back to the table -- 29-4.

BY MS. JIMENEZ:

Q. You were shown a general ledger, which was another document that sort of --

MR. ETRA: Objection, Your Honor. This was not shown during cross.

MS. JIMENEZ: Well, this relates to the document --

THE COURT: Hold on. Was this shown during cross-examination?

MR. ETRA: No, Your Honor.

MS. JIMENEZ: Can we show the general ledger?

THE COURT: The objection is sustained.

MS. JIMENEZ: Can we show the ledger, please, that you showed.

MR. ETRA: Of course.

Do you want him to pull it up?

MS. JIMENEZ: It's our Exhibit 28.

No. This is unreadable. Let me -- take that off the screen, please.

BY MS. JIMENEZ:

Q. Were you provided for tax year -- to prepare the returns for tax year 2019, in 2020, were you provided some sort of payroll record from Jeanette Gonzalez --

A. Yes.

Q. -- for HM Management?

A. Yes. Yes.

Q. Did the payroll record reflect some sort of withholdings from their pay?
A. Correct.
Q. Did the record indicate whether or not those payments were actually made to the IRS?
A. No, it does not.
Q. All right.
MS. JIMENEZ: Let's just show the HM Four tax returns, please, which are -- he was -- just give me a moment here.
(Pause in proceedings.)
MS. JIMENEZ: All right. Thank you.
Exhibit 31. And was it Exhibit 32 also?
All right. Thank you.
Can we just show those.
BY MS. JIMENEZ:
Q. What information did you and your firm use to prepare the HM Four tax returns for tax year 2019 and 2020?
A. The information -- this is a 99 percent owner of --
Q. I'm sorry. Whose information did you use to prepare the returns?
A. Comes from the client bookkeeper.
Q. All right. Did you report, for 2019 or 2020 --
MS. JIMENEZ: If we can show the -- Lines 1 through 30, please.

BY MS. JIMENEZ:

Q. Did you report any gross receipts for sales for HM Four --

A. Not on this --

Q. -- for 2019?

A. Not on this page.

Q. And then, for 2020, did you report any gross receipts or sales --

A. Not on this page.

Q. -- for HM Four?

MR. ETRA: HM Four. Beyond the scope. I didn't ask about this tax return.

MS. JIMENEZ: He was asked --

THE COURT: The objection is overruled.

BY MS. JIMENEZ:

Q. Did you report any cost of goods sold, Line 2, for HM Four in 2019 or 2020?

A. No.

Q. Did you -- and for 2020 --

A. No.

Q. Did you report any income generated by HM Four in either return in 2019 or 2020?

A. No.

Q. Based on the records that you reviewed -- you received from HM Four, did you see any records to indicate that it had income apart from what Alafaya Trails's business reported up to it --

A. No.
Q. -- as an income or loss?
A. No. No.
MS. JIMENEZ: I don't have any other questions, Your Honor. The witness can be excused.
THE COURT: On behalf of the Defendant, is the witness excused?
MR. ETRA: Yes, Your Honor.
THE COURT: Thank you, sir. You are excused.
THE WITNESS: Thank you.
(Witness excused.)
THE COURT: And the Government's next witness.
THE WITNESS: Thank you, Your Honor.
THE COURT: Thank you, sir.
MS. MARTINEZ: The United States calls Nelia Palancar. We're going to get her.
(Pause in proceedings.)
THE COURT: Is this Ms. Palancar?
THE WITNESS: Yes.
THE COURT: Hi. Good morning.
Do we have our courtroom deputy?
No?
Ms. Palancar, let me ask that you remain standing, raise your right hand to be placed under oath.
NELIA PALANCAR, GOVERNMENT WITNESS, SWORN

THE COURT: Please be seated.

Once you're fully seated, if you will state your full name, spelling your first and last name, please.

THE WITNESS: Okay. My name is Nelia Palancar Carvallo. And the way you spell it is N-E-L-I-A. Last name is Palancar, P-A-L-A-N-C-A-R, Carvallo, C-A-R-V-A-L-L-O.

DIRECT EXAMINATION

BY MS. MARTINEZ:

Q. Good morning, Ms. Palancar.

A. Good morning.

Q. Ms. Palancar, where were you working during the pandemic of -- in between 2020 and 2021?

A. I was working for Nationwide Lending Direct.

Q. And as part of Nationwide Lending Direct, what was your job position?

A. My job position was a processor for the company.

Q. Does that mean that you processed loans?

A. Yes.

Q. And what does a loan processor do?

A. A loan processor, what they do is that they collect the documents and submit the application to the -- to the bank lender.

Q. When you said: "Collect the documents," from who do you collect the documents?

A. From the client. From the borrower.

Q. And as part of your position as a loan processor at Nationwide Lending Direct, did you handle loans for Mr. Eric Sheppard?
A. Yes, I did.
Q. And did you process loan applications for him?
A. Yes, I did.
Q. As part of that, did you have an opportunity to speak with Mr. Sheppard initially, along with your boss?
A. Yes.
Q. And how did that happen?
A. The first communication with Eric Sheppard was with my boss, Daniel Sheps, about doing the application.
MR. ETRA: Objection, Your Honor, hearsay, if it's a conversation she was not in.
BY MS. MARTINEZ:
Q. Were you in the conversation?
THE COURT: The objection is sustained.
THE WITNESS: Yes.
BY MS. MARTINEZ:
Q. Yes. As I had asked, was that a conference call, a three-way?
A. Yes. It was a conference call.
Q. So you were in the conversation, right?
A. Yes, I was in the conversation.
Q. And you were introduced to Mr. Sheppard?

A. Yes.
Q. And you exchanged phone numbers with Mr. Sheppard?
A. Yes.
Q. And emails with Mr. Sheppard?
A. Yes.
Q. As part of your work, did the company keep records of the loan applications that clients like Mr. Sheppard ask you to do?
A. Yes.
Q. And were those provided to the United States?
A. Yes, they were.
Q. And in addition to including loan files, that included also emails and texts, correct?
A. Correct.
MS. MARTINEZ: Your Honor, I'm going to call up for the witness only Exhibit 61, which -- oh, goodness. It's so little. But it's Bates labeled 033878 to 033879.
BY MS. MARTINEZ:
Q. We're not going to read the document at this point. I just want to ask you: Do you recognize it?
A. Yes.
Q. And is that a record that was created at or near the time of the dates on the record?
A. Yes.
Q. And was it created by a person with knowledge of what was happening in this record?

A. Yes.
Q. And was the record regularly kept and maintained by Nationwide Lending Direct?
A. Yes.
Q. And again, was it regularly kept so that you were able then to provide it to the United States?
A. Correct.
MS. MARTINEZ: Your Honor, the United States moves into evidence Government's Exhibit 61.
MR. ETRA: No objection, Your Honor.
THE COURT: Admitted into evidence.
(Government's Exhibit 61 received into evidence.)
MS. MARTINEZ: Could you highlight the top, just so that we could read it.
BY MS. MARTINEZ:
Q. Ms. Palancar, the first thing I'm going to ask you is: What is Global Project Developers?
A. That's the parent company of Nationwide Lending Direct.
Q. And who's the client on this document?
A. Eric Sheppard.
Q. And the company?
A. HM Management and Development, LLC.
Q. And what's the address he gives you for the company?
A. 118 Bal --
Q. Is it 118 or 180?

A. I mean -- I'm sorry. One -- sorry -- 180 Bal Cross Drive, Bal Harbour, Florida 33154.

MS. MARTINEZ: Can you do the second part of it. Thank you.

BY MS. MARTINEZ:

Q. What is the membership that is described in this document? From your own knowledge of it, what was being provided to Mr. Sheppard?

A. Okay. So the membership was a program that was created -- and it lasts for 12 months -- that we will help and provide financial services with products of -- different products of lending within this period of time.

Q. And did it include some government loans as well?

A. Correct.

Q. As well as regular private loans, correct?

A. Correct.

MS. MARTINEZ: Can you highlight the signature.

BY MS. MARTINEZ:

Q. So who's signing there agreeing to participate in your membership?

A. Eric Sheppard.

Q. And when did he sign?

A. He signed on July 21st, 2020.

MS. MARTINEZ: Could you go to the second page. Yes. Please highlight.

BY MS. MARTINEZ:
Q. So on this second page of the membership, could you read out -- what is Mr. Sheppard authorizing Nationwide Lending to do? Maybe start from --
A. "Nationwide Lending" --
Q. Yes.
A. -- "Direct, LLC and its affiliate is applying for and on my behalf any loans for me to review the terms and acceptance within the next 90 days, unless canceled by me in writing."
Q. And it indicates that Mr. Sheppard was the owner of HM Management and Development, right?
A. Correct.
Q. And that he was authorizing you to apply for loans on behalf of HM Management and Development for him, right?
A. Correct.
Q. The second paragraph -- could you read the second paragraph that Mr. Sheppard signed for you.
A. Sure. "Therefore, I will like you to know that I am the person assisting to complete my loan application and would like you to include me as the contact person of record assisting in the" -- "any loan application."
Q. So Mr. Sheppard is the name that you put as the contact for the loans, right?
A. Yes.
Q. In addition to this form, Government's Exhibit 61, did

Mr. Sheppard enter into similar agreements with respect to other companies that he was also asking you to apply for loans?
A. Yes. He applied for --
MR. ETRA: Objection, Your Honor. We're getting into an area of other companies. It's broad and it would raise questions about companies that we discussed at the break.
THE COURT: Overruled at this point.
BY MS. MARTINEZ:
Q. Did all this happen at the same time in July of 2020?
A. Yes.
Q. All four companies at the same time?
A. All four companies was applied for.
Q. At the same time?
A. Yes.
Q. With respect to this company, HM Management, I'm going to --
MS. MARTINEZ: Your Honor, if I may approach the witness. I'm going to show her a disk that she has previously reviewed containing the records relating to this company.
THE COURT: All right. And what exhibit?
MS. MARTINEZ: It's Government's Exhibit 62, Your Honor. And I can likewise give the Court the full Bates numbers for that exhibit.
THE COURT: All right.
MS. MARTINEZ: Oh, my goodness. It is 033824 through

033914.

THE COURT: All right.

BY MS. MARTINEZ:

Q. Taking a look first at the disk, do you see your initials on that disk?

A. Yes.

Q. And did you have an opportunity to open up the disk and to take a look at what was in it?

A. Yes.

Q. I've also handed you Government's Exhibit -- marked for identification government's Exhibit 62, which contains a paper printout. Have you also reviewed the paper printout?

A. Yes. I reviewed all this documentation before coming here.

Q. And are those the records that -- both on the disk 62 and the printed version of 62 -- are those -- oh. Again, I just mentioned you have your initials on the disk that you put after you reviewed it, correct?

A. Yes.

Q. Are those the records that Nationwide Lending Direct provided to the United States relating to the application that you submitted for Mr. Sheppard for HM Management and Development, LLC?

A. Yes.

Q. Again, with respect to those records, were those records created at or near the time of the events that are covered in those records?

A. Yes.

Q. And were they created by a person with knowledge of the events that are covered in those records?

A. Yes.

Q. And the records -- are they -- were they regularly made and maintained by Nationwide Lending Direct?

A. Yes.

Q. And were they regularly kept by Nationwide Lending Direct?

A. Yes.

MS. MARTINEZ: Your Honor, the United States moves into evidence Government's Exhibit 62.

MR. ETRA: We object only for the documents that post-date the period of the Indictment, Your Honor.

THE COURT: All right. The objection is noted. At this point, it is overruled and Exhibit 62 will be admitted into evidence.

(Government's Exhibit 62 received into evidence.)

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

THE COURT: You may.

(Pause in proceedings.)

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

THE COURT: You may.

MS. MARTINEZ: I'm going to show the witness what's been marked for identification as Government's Exhibit 68. It runs from Bates label 034810 to 034869.

THE COURT: All right.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. Ms. Palancar, without reading the document, do you recognize what's Government's Exhibit 68?

A. Yes, I do.

Q. And in general, what is it?

A. These are my text messages, communication between myself and Eric Sheppard.

Q. And were those relating to the loans that he asked you to apply for?

A. Yes.

Q. And why were you texting with Mr. Sheppard?

A. It was a quicker communication. And then we would speak over the phone, too, as well.

Q. Did you always get authorization from Mr. Sheppard for what you did with respect to his loans?

MR. ETRA: Objection. Leading.

THE WITNESS: Yes.

THE COURT: Sustained.

MR. ETRA: Could I get the answer stricken, please.

THE COURT: Let's re-ask the question and the answer is stricken.

BY MS. MARTINEZ:
Q. What would you discuss in the texts with Mr. Sheppard?
A. I would sometimes get authorization from him. I would text him to please give me a call so we can call the SBA, permission for writing letters to the SBA regarding the reconsideration, things like that. We -- just about any -- anything that I needed like right away. I know he was a busy man. That's why I would text him and then he would call me.
Q. In addition, would he text you on his own?
A. Yes.
Q. Meaning to ask you questions?
A. Yes.
MS. MARTINEZ: Your Honor, the United States moves into evidence Government's Exhibit 68.
MR. ETRA: Your Honor, it's the issues we've discussed at the break. They are all mixed in together. It's not broken out, so it includes both matters that post-date -- and applications that post-date the March '21 end of the Indictment, as well as companies that are not in the Indictment.
THE COURT: All right. With regard to the text messages, we can take that up at lunch break. But with regard to Exhibit 68, the proper predicate has been laid, and the objection is noted. I'm going to overrule at this point. And the Court will look at the specific text messages once they are

presented to the witness with regard to any loan outside, but Exhibit 68 will be admitted into evidence.

(Government's Exhibit 68 received into evidence.)

MS. MARTINEZ: All right. Your Honor, as I had indicated previously, from the get-go, from the very first text, there are four applications at the same time.

THE COURT: All right. And you may continue.

MS. MARTINEZ: I'm going to approach the witness, if I may.

THE COURT: You may.

MS. MARTINEZ: Your Honor, may I get leeway to approach the witness without asking permission from the Court?

THE COURT: You may.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. Ms. Palancar, I've shown you what's been marked for identification as Government's Exhibit 67.

MS. MARTINEZ: And for the record, Your Honor, the Bates labels are 34288 to 34370.

THE COURT: All right.

BY MS. MARTINEZ:

Q. Ms. Palancar, without reading those, do you recognize what those are?

A. Yes.

Q. What is that?

A. These are my emails between Eric Sheppard and myself.
Q. Are they emails from your Nationwide Direct position?
A. Correct.
Q. And do they relate to the loan applications that Mr. Sheppard had asked you to submit for him?
A. Yes.
Q. As part of Nationwide Lending, did Nationwide Lending regularly keep and maintain the emails that were exchanged with customers like Mr. Sheppard?
A. Yes.

MS. MARTINEZ: Your Honor, at this time, the United States moves into evidence Government Exhibit 67.

MR. ETRA: Your Honor, the only objection we have is the exact same issue as with the text messages. So we would request Your Honor's similar ruling for the emails as to the text messages.

THE COURT: Similar ruling. Admitted into evidence, Exhibit 67.

(Government's Exhibit 67 received into evidence.)

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, I'm going to hand to the witness a disk, as well as a paper copy of Government's Exhibit 63. The Bates labels are 34311 to 34437.

THE COURT: All right.

(Pause in proceedings.)

BY MS. MARTINEZ:
Q. Ms. Palancar, have you reviewed the disk that I just handed you, as well as the printout copies of Government's Exhibit 63?
A. Yes.
Q. And after you reviewed the disk, did you place your initials on the disk?
A. Yes, I did.
Q. Are those the records relating to the application that Mr. Sheppard asked you to submit with respect to HM-UP Development Alafaya Trails, LLC?
A. Yes.
Q. And were those records from Nationwide created at or near the time of the events covered in those documents?
A. Yes.
Q. In addition, were they created by a person with knowledge of the events that were occurring in those documents?
A. Yes.
Q. And were they regularly made and maintained by Nationwide Lending Direct?
A. Yes.
Q. And were they regularly kept by Nationwide Lending Direct?
A. Yes.
MS. MARTINEZ: Your Honor, the United States moves into evidence Government Exhibit 63.
MR. ETRA: Your Honor, the only objection we had, like

62, it goes beyond the time frame in the Indictment.

THE COURT: All right. The objection is noted. It's overruled. Exhibit 63 will be admitted into evidence.

(Government's Exhibit 63 received into evidence.)

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, I've -- oh, my goodness. Can I read my own handwriting?

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, I've handed the witness what's been marked for identification as Government's Exhibit 64. For the record, the Bates labels are 033915 to 033962.

BY MS. MARTINEZ:

Q. Ms. Palancar, do you recognize the records in the disk and in the printed copy of Government's Exhibit 64?

A. Yes.

Q. And do those records relate to the application for Sheppard Flagler Holdings that the Defendant asked you to submit on the same day that you submitted the last two applications that we just --

MR. ETRA: Objection, Your Honor. Based on the subject matter being beyond the scope of the Indictment.

THE COURT: All right. It's noted. Overruled.

BY MS. MARTINEZ:

Q. Are those the records relating to the application for

Sheppard Flagler Holdings?
A. Yes.
Q. And were those records created at or near a time of the events that are covered by those records?
A. Yes.
Q. And were they created by a person with knowledge of those events?
A. Yes.
Q. And were they regularly made and maintained by Nationwide Lending Direct?
A. Yes.
Q. And were they regularly kept by Nationwide Lending Direct?
A. Yes.

MS. MARTINEZ: All right. Your Honor, the United States moves into evidence Government's Exhibit 64.

MR. ETRA: Your Honor, we object because it relates to a loan that's a different company than what's in the Indictment, as well as beyond the time period of the Indictment.

MS. MARTINEZ: Your Honor, I object to the Defendant --

THE COURT: Hold on. Hold on. We've addressed the objection. The objection is noted and it is overruled. Exhibit 64 will be admitted into evidence.

(Government's Exhibit 64 received into evidence.)

MR. ETRA: Your Honor, we have the same issues for 65 and 66. So instead of wasting the time of repeating that, could I get an advance objection and continuing objection on those issues?

THE COURT: Yes. And as the Court has stated, I will review those disputed items, but at this point the documents will be admitted into evidence, subject to the --

MR. ETRA: I don't need to necessarily object every time, correct?

THE COURT: All right. You have a standing objection.

MS. MARTINEZ: And may I move them in without laying the business record foundation?

MR. ETRA: No objection.

THE COURT: All right, then.

MS. MARTINEZ: So the United States moves into evidence Government Exhibit 66 and Government Exhibit 67 -- excuse me. I misspoke. Government Exhibit 66 and 65.

THE COURT: All right. Without objection, with regard to laying the foundation, admitted into evidence.

(Government's Exhibit 65 and 66 received into evidence.)

(Pause in proceedings.)

MS. MARTINEZ: Could you bring up Government's Exhibit 68, first page.

BY MS. MARTINEZ:
Q. Ms. Palancar, what's the first date on the text?
A. July 24, 2020.
Q. And who is texting you?
A. Eric Sheppard.
Q. And what does he tell you?
A. "Hi, Nelia. I tried to fill out the four applications yesterday and submit them. Let me know if you received them today" -- "Let me know if you received them yet."
Q. And at 3:34, when he sends that to you, what are your replies to him?
A. I replied: "I got it. Please look at my email about the other -- the other owner."
Q. And then later, at 7:41 p.m., on July 24th, 2020, what do you tell him?
A. "Eric, call me a" -- "call me a second, please."
(Pause in proceedings.)
MS. MARTINEZ: Could you pull up what we have marked as a sub-exhibit, 62-1. And for the Court and the Defense, the Bates labels of this sub-exhibit is 033870, 33872.
Could you first just highlight the top part.
BY MS. MARTINEZ:
Q. What's the date on the first email?
A. July 23rd, 2020.
Q. And who is emailing you there?

A. This was the assistant from the company, and she sent me the applications that Eric Sheppard filled out online.

MS. MARTINEZ: Could you go to the second half.

BY MS. MARTINEZ:

Q. It shows there that Daniel Sheps also forwarded the message. He was the owner of Nationwide Lending Direct?

A. Yes.

Q. Now, the bottom part of the email, we see something being forwarded. What is that that is being forwarded to you?

A. Nationwide Lending Direct -- that's their email.

Q. Right.

MS. MARTINEZ: And then can you -- can you highlight the bottom part.

BY MS. MARTINEZ:

Q. This is just the first page of the document.

A. Correct. That's the first -- the email from Nationwide Lending Direct going to the admin, which -- this is the application that he applied online. These are the questions that he answered.

Q. So explain to the jury what Nationwide Lending Direct offered to the customer in terms of a portal where the customer could answer these questions.

A. Correct.

Q. Explain that to the jury.

A. So the customer had the ability to -- had the ability to

have a portal and submitting everything through the portal and -- all the information. And then I would receive them.
Q. It was -- that portal belonged to Nationwide Lending Direct, right?
A. Correct.
Q. And the questions that were on them, did they relate to an EIDL loan?
A. Yes. This one specifically is for the EIDL. Uh-huh.
Q. And that's the Economic Injury Disaster Loan?
A. Correct.
Q. Which is from the Small Business Administration, right?
A. Yes.
Q. So this -- obviously there's a second page, which we'll turn to that second page. But in the first part of the responses here, what is the business legal name that Mr. Sheppard is asking you to submit an application for?
A. This application is -- legal name was HM Management and Development, LLC.
Q. And how much funding did he tell you to seek?
A. 160,000.
MS. MARTINEZ: Can you turn to the next page.
If you could highlight up to step 2, all the way up to -- just through the number of employees.
Oh, that's too much. I think it's not going to be big enough.

If you could highlight from the top part -- the top part of the application through the number of employees, and then we'll turn next to Owner Information.

BY MS. MARTINEZ:

Q. Do you see that?

A. (No verbal response.)

Q. Going through the questions here, these, again, are questions that were answered on the Nationwide portal by whom?

A. By Eric Sheppard.

Q. And he provides you with specific financial numbers, correct?

A. Correct.

Q. What does it state here for gross revenues?

A. 1,540,000.

Q. And for cost of goods sold?

A. 1,180,000.

Q. And for lost rents due to the disaster?

A. None.

Q. With respect to the business address, what business address does he give?

A. 180 Bal Cross Drive, Bal Harbour, Florida 33154.

Q. And the phone numbers that he provides?

A. (305)861-0088. The alternative number is (305)582-5529.

Q. And what email does he give?

A. Eric.sheppard10@gmail.com.

Q. And the number of employees?
A. Fourteen.
Q. Okay.
MS. MARTINEZ: Could you go to the second half of the application from Owner Information all the way down.
BY MS. MARTINEZ:
Q. Who is stated as the owner of HM Management?
A. Eric Sheppard.
Q. And what ownership percentage does he have?
A. Ninety-nine.
Q. And what email does he give?
A. Eric Sheppard -- I mean -- sorry -- eric.sheppard10@gmail.com.
MS. MARTINEZ: You can take out the highlighting.
Could you bring up what I marked as sub-exhibit 62-2, which for the Court and the Defense attorneys, the Bates labels are 033883 through 33885.
BY MS. MARTINEZ:
Q. I know this might be a little bit little on your screen. But just from looking at it like that, can you tell the jury what this is that was in your records.
A. This is a copy that I did prior to submitting it to the SBA.
Q. So you went on the SBA portal and you plugged in information on behalf of Mr. Sheppard?

A. Correct.
Q. So -- and how did you create this? Did you create like a PDF of the screen?
A. Yes. This is a PDF copy before I hit "submit" -- button on the bottom.
Q. So if you take a look at the cost of goods sold on this form, it's a little bit lower than what was on the email that you received from the Nationwide portal. What discussions did you have with Mr. Sheppard about that?
A. We spoke about this over the phone, regarding all the questions that he answered, and went over them. And this one in particular is one of them that was -- we changed the amount.
Q. It's a little bit lower than what had been on the portal for Nationwide, right?
A. Yes. Right.
Q. And did you have Mr. Sheppard's permission to --
A. Yes.
Q. -- put the number that's on the SBA website?
A. Yes. We spoke about it on the phone.
MS. MARTINEZ: Can you go a little bit lower on this form.
All right. The rest of this information on the page is the same. Can you go to the next and highlight the top.
BY MS. MARTINEZ:
Q. So the email shown here, what is it?

A. This email is --
Q. Read it out.
A. Es.hmmd2020@yahoo.com.
MS. MARTINEZ: Excuse me.
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. So can you explain to the jury why this email is different than the email that Mr. Sheppard had originally on the Nationwide portal.
A. Sure. These emails were created because there were different companies and it was very confusing to know which documentation coming from what company. So each company would -- created a email for each company, so that way we know what is needed for each company. And he -- Eric had access to the emails himself.
Q. And when you say he had access, why do you say that? How could he access it?
A. He had access to it because he had the password and -- username and password.
Q. So you created it for him?
A. Yes.
(Pause in proceedings.)
MS. MARTINEZ: Your Honor, I need to turn to ELMO. Can I shift that?
I'm going to show the witness Bates label 033886 from

the same exhibit, Government's Exhibit 62.

BY MS. MARTINEZ:

Q. Ms. Palancar, do you recognize that?

A. Yes.

Q. What is that?

A. That's the application number. Every application had its number.

Q. And is this also a printout that you did from the SBA portal?

A. Correct.

Q. Could you read out what the application number is for this particular application?

A. The number is 3311797815.

(Pause in proceedings.)

MS. MARTINEZ: Could you show to the witness only what I've marked for identification as 62-3, which is Bates labels 033824, 0333845.

We need to go back to counsel's table. Can we do that?

BY MS. MARTINEZ:

Q. There were tax returns within the application file for this same application. Did you receive those from Mr. Sheppard?

A. Yes.

MS. MARTINEZ: Your Honor, I request permission to publish this to the jury. This is admitted into evidence.

THE COURT: You may.

Show it to the jury, please.

MS. MARTINEZ: And can you show the entire document for a second.

BY MS. MARTINEZ:

Q. This is a tax return for what company?

A. HM Management and Development, LLC.

Q. And what year?

A. 2019.

MS. MARTINEZ: Could I likewise show to the jury what has been marked for -- actually, go back. Go back to the entire document.

Could you highlight what it says here for wages and salaries.

BY MS. MARTINEZ:

Q. What does it say there for wages and salaries in 2019?

A. Wages and salary is 678,410.

Q. Is what's indicated here?

A. (No verbal response.)

Q. Okay.

MS. MARTINEZ: Could you show what I've marked for identification as Government's Exhibit 62-4, which is Bates labeled 033846.

BY MS. MARTINEZ:

Q. Okay. Is this a form that you received from Mr. Sheppard?

A. Yes.

Q. And when -- what forms -- what type of form is this --

A. It's a 4506-T, signed by him, for that company of HM Management and Development, LLC.

Q. And what --

MS. MARTINEZ: Can you go to the bottom.

BY MS. MARTINEZ:

Q. What tax returns is this authorizing the SBA to look at?

A. 2019, 2018, and 2017.

MS. MARTINEZ: Now could you bring up 12-1, and then bring back up 62-3.

BY MS. MARTINEZ:

Q. I'm showing you, Ms. Palancar, a document -- 12-1 is a document that was filed with the Internal Revenue Service. And the one on the right is the document that was in your files, the 2019 tax return that was in your files.

MS. MARTINEZ: Can you highlight the wages that are on the filed return, 12-1 -- Exhibit 12-1. And that's the one -- you've just highlighted the one that's 62.3. If you could just compare the two.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. Ms. Palancar, what is the number on the -- for wages on the filed exhibit, which is 12-1 on the left of your screen?

A. 134,811.

Q. Did you have any idea at the time that you received those tax returns that they were not the same as the ones that were filed?

A. No.

Q. You had never seen this before, right?

A. No.

THE COURT: Ms. Martinez, let me know when it might be a good time to give the jurors a recess for lunch.

MS. MARTINEZ: This would be a good time, Your Honor.

THE COURT: All right. Ladies and Gentlemen, it's 12:15 and I'll see you back here at 1:15.

Have a pleasant lunch.

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 12:15 p.m.)

THE COURT: All right. As you are on the witness stand, you are not to discuss your anticipated testimony, the testimony of any individual, or any aspect of the case.

And I'll see you back here at 1:15.

THE WITNESS: Okay. Thank you.

THE COURT: And if we can just have a seat for a moment, since we have some unfinished business with regard to these exhibits.

And you're free to go. We'll see you back here at 1:15.

As I stated, I am concerned with regard to application numbers outside of the companies listed in the Indictment. I am also concerned with issues related to the separate companies and efforts made of companies that as well are not listed in the Indictment.

The Court's cursory research reveals a Fifth Circuit case that addressed the question in Morris v. United States, 112 F.2d 522, where the district court had overruled certain objections to the introduction of documentary evidence regarding companies not named in the indictment and concerning post-indictment acts.

And the Circuit found that those objections were without merit, reasoning that it's a long-established doctrine that in cases involving fraud, where the intent with which an accused does an act, collateral facts and circumstances and his other acts of a kindred character, both prior and subsequent not too remote in time, are admissible in evidence.

Having read the case law -- certainly, if there's other case law that the Court should be provided with, I'm happy to consider it. At this point in time, I would like to parse out those applications that are related to other companies that have separate application numbers.

If it's the same application, and it relates to the companies named in the Indictment, then I do believe it's inextricably intertwined. If it's a separate application, then I do have a concern, number one, with regard to the remoteness in time. And secondly, with regard to the notice provided to the Defendant by way of this Indictment.

MS. MARTINEZ: Your Honor, with respect to -- the different applications with respect to this witness actually are not remote in time at all. As you saw from the texts, they all happened on the same day. And it's very -- and number one, without a doubt, in a scheme to defraud that is a scheme to defraud both the SBA and private lenders with respect to the Economic Injury Disaster Loan Program, as well as the Paycheck Protection Program, there is no question that the scheme to defraud involved applying for all his various companies as he could. And the fraud was done on the same day, where he is trying to do it in July 24th, 2020.

And part of what he does is that he submits similar -- he will just take numbers and submit them in any application as he can, which in part, Your Honor, shows the intent to defraud.

THE COURT: And again, if that's part and parcel of the same application, and it's on the same date, then obviously it's not too remote in time and it relates to the same application. But contained within this Indictment are nine specific acts of wire fraud.

MS. MARTINEZ: Right. Your Honor, the wire fraud, as I have described, the -- it is a scheme to defraud which we have the burden to prove. We have the burden to prove the element of the scheme to defraud, that he devised and executed a scheme. We have to prove that he had the element of intent to defraud. And then separately we have to prove an interstate wire transmission as to a specific count.

However, without a doubt, with respect to the case law with respect to schemes to defraud and wire fraud, it is -- that's why you charge it as spanning for months, and in this case over a year where he is devising the scheme to defraud. And it is specifically stated in the Indictment to defraud the SBA, and to defraud the PPP lenders, the Paycheck Protection loan program lenders.

It is -- what I just want to clarify for the Court is that the application number runs with the company. So on one day he got himself four application numbers. And then he continues -- he gets one funded right away. It takes him about two months to get the second one funded. And then he continues asking for reconsideration on two that are denied that were applied for on July 24th. He continues repeatedly continuing to try and providing additional documents which are false to Nationwide. And then those are being submitted to the SBA, which is a separate witness. But the scheme continues. It doesn't end.

THE COURT: Then it appears to comport with the Fifth Circuit case, which would be binding on this Court.

MS. MARTINEZ: And then, just to clarify for the Court, there's four applications on one day. There are also going to be other applications that are -- you know, that are -- there's just one more that comes up with respect to the SBA, Your Honor, which is HM Six, where he applies two more times, one in September of 2020 and one in September of 2021.

Right. September 2020 is within the time period.

THE COURT: Well, why would the September 2021 be admissible in terms of the evidence and the testimony?

MS. MARTINEZ: Your Honor, we would agree to redact that one.

THE COURT: All right, then. Am I correct that that is the only issue, is the loan application from September 2021? And I want to ask the Defendant because you're the one that's raising the objection with regard to these particular exhibits.

MR. CAVALLO: Thank you, Your Honor.

No. It's all of the entities, which include Sheppard Flagler Holdings, HM Six, HM-UP Alafaya Trails TRU. And the reason is exactly why Your Honor said; the notice in the Indictment.

And by the way, the Indictment was superseded on August 24th, about a month before we were supposed to go to trial. It was updated very recently. And the Indictment is very clear, Your Honor. The Indictment says, on Page 3, Paragraph 9: "The Defendant and relevant entities Alafaya Trails, HM Management, HM Four."

And then, again -- one second, Your Honor. I apologize. In the actual counts, Paragraph 4 of Count 1 -- it's on Page 5 -- "Eric Sheppard and his accomplices submitted and caused to be submitted false and fraudulent PPP loan and EIDL applications" -- we're in EIDL world right now -- "on behalf of HM-UP, HM Management, and HM Four."

There was no notice to us via the Indictment, which was superseded, that they were going to go beyond that. They're saying: "These are the entities. These are two loan programs. This is what's false and fraudulent, and these are the companies that were the subject of the scheme." They're now, here, expanding that to other companies.

And I agree with Your Honor. I think that was the notice in the Indictment. They had the chance in -- very recently in August to expand it. And they did make substantial changes to this Indictment on August 24th, and they did not make any changes along the line of what they're now here arguing.

MS. MARTINEZ: Your Honor, counsel is completely being disingenuous.

THE COURT: Well, where would the Court find any notice -- if, in fact, that's the argument -- I'm looking at the case law, Ms. Martinez. And you can provide the Court some additional case law, if you believe that it assists. But I'm failing to see, unless it's the same application at the same time, with regard to other entities, why this jury should be hearing about other entities -- particularly the entities that are in dispute, Flagler, TRU, HM Six -- if it's not contained within your Indictment that specifies what the relevant entities are, HM-UP Development Alafaya Trails, HM Management and Development, LLC, and HM Four, LLC.

MS. MARTINEZ: Your Honor, the Indictment is not intended in any way to flesh out every aspect of the scheme. In fact --

THE COURT: Then give the Court the case law. I understand the argument on inextricably intertwined. And that's why I've said if it's the same application, on the same date, then I can understand the argument. But if there were separate entities, to which separate applications were made, to which it's alleged that there is false and fraudulent information within those applications, but it's not contained within the four corners of the Indictment, then why should the Court allow this jury to consider it when the jury is considering specifically nine counts of wire fraud and five counts of aggravated identity theft? That's all that the jury is to consider.

MS. MARTINEZ: But, Your Honor, again, with respect -- we can put aside the fact that an indictment does not need to allege every detail of a scheme to defraud --

THE COURT: Of the particular companies that you have set forth in the Indictment. So all I'm saying, Ms. Martinez, is I've allowed those to be placed outside for the Court's consideration. And at this point in time, I would like to see the case law that would support it.

MS. MARTINEZ: And let me -- let me add that, aside from it being direct evidence of the Defendant's intent on the same day to defraud the SBA, aside from that being direct evidence which is not extrinsic, it is completely inextricably intertwined, even if it were outside of the charges, which I strongly say it is not.

I mean, even the Defendant moved to strike surplusages, saying that the Indictment was too detailed. And now the Defendant says, no, we had to have more in it.

And I'm going to add one more thing, Your Honor. The Defendant's expert is putting forth an opinion that supposedly you have to look at all of the accounts that the Defendant had, et cetera, and they are extending their expert summaries all the way to December of 2021.

So are they saying -- and they have asked the witness questions about CJUF. They asked Tamara Och, the Department of Revenue lady, whether or not there had been payments made by CJUF. They have asked -- and in this case, Your Honor, including even in the PPP loans, the Defendant submitted false documents relating to CJUF, pretending that CJUF had payroll. So it is completely inextricably intertwined.

And when I say very, very strongly that the Defense is being disingenuous it's because they have had this discovery, Your Honor, I mean, for longer than I have seen this case. And we have been begging repeatedly to have these discussions in advance. And this is like an ambush because I'm in court, Your Honor. I am a great researcher, but I cannot get out there and research right now. It is unfair. But aside from that, they're just wrong, Your Honor. They are wrong.

THE COURT: The Court will admit, once again, under the authority that the research that this Court conducted, that the Court will admit collateral facts and circumstances and other acts of a kindred character not too remote in time.

MS. MARTINEZ: And Your Honor, because I wanted to listen to you, could you give me the citation for your case again.

THE COURT: 112 F.2d 522, Morris v. United States.

MS. MARTINEZ: At this point, like I said, Your Honor, they are applications that this witness is talking about that happened on exactly the same day. There's four of them.

In reality, Your Honor, I'm not going to be making some kind of a big deal out of it, but it is the Defendant's documents. And like I said, CJUF -- which, by the way, that's Sheppard Flagler -- that CJUF, like I said, that's even in the false documents with respect to the Paycheck Protection Program, and they asked Tamara Och about it. So it's just --

THE COURT: I'm just asking for some case law that would support the argument. Right now, it appears that the case law does support the argument. But I am concerned about different applications at a point in time after the period of time contained within the Indictment.

MS. MARTINEZ: So with respect to that, the United States is agreeing to not put in the information regarding the September '21 HM Six application. That would not come through with this witness, Your Honor. That would go with SBA, because not every application that the Defendant submitted to the SBA did he do through this witness.

This witness is only going to testify as to a few that she was asked to handle. Then the SBA witness is going to testify about what he received, as well as ones that were not done through this witness.

But I just want to clarify to the Court for clarity, with respect to the ones that were funded and that are in the Indictment -- so the first two that I covered, HM Management and HM-UP Alafaya Trails, which were funded for Economic Injury Disaster Loans, and this witness had to do with that application -- the Defendant did seek a modification of that same application during the time that he was continuing to deal with her --

THE COURT: Well, that's clearly inextricably intertwined.

MS. MARTINEZ: Yes.

THE COURT: All right. Let me give you a lunch recess. I'll see you back here at 1:15.

COURT SECURITY OFFICER: All rise.

(Recess from 12:30 p.m. to 1:16 p.m.)

THE COURT: Where is our witness?

Back on the record.

Let me acknowledge the presence of Mr. Sheppard.

I don't see the witness.

(Pause in proceedings.)

THE COURT: Both sides ready to continue?

MS. MARTINEZ: Yes, Your Honor.

MR. ETRA: Defense is ready, Your Honor.

THE COURT: All right. With regard to the disputed documents, let me reemphasize that, given the case law that the Court has reviewed, looking at the Indictment, unless the applications are the same application numbers and relate to the related -- let me just specifically note what was contained within the Indictment.

"The Defendant and the relevant entities," which appear to be HM-UP Development Alafaya Trails, HM Management and Development, LLC, and HM Four, LLC. Unless the other entities are inextricably intertwined to the extent that it's the same application number, the same date, and within the time period of stated scheme to defraud in the Indictment -- and that is the period of time being October 2020 to March 2021 --

those matters will be admissible. The other matters, the Court is not permitting.

MS. JIMENEZ: And Your Honor, I would just ask the Court reserve ruling. We haven't had much of an opportunity to research it, but I do have a case to cite to the Court.

THE COURT: All right.

MS. JIMENEZ: Yes. United States v. Davis, 172 Fed. Appx. 175. It's Eleventh Circuit 2006.

And in this case -- and I have not had the opportunity to read it, but it indicates that evidence of other foreclosed loans involving defendant were inextricably intertwined with the ongoing scheme to defraud the Department of Housing and Urban Development and did not constitute other acts, and were thus admissible.

THE COURT: Are you attempting to introduce this at this time with this witness?

MS. MARTINEZ: Your Honor, it is so inextricably intertwined --

THE COURT: No. No. But I'm asking --

MS. MARTINEZ: Yes. Yes. Yes, Your Honor, because --

THE COURT: Then let me resolve this. Let me look at the case.

MS. MARTINEZ: And if I may just add that it sounds like the case -- this is not even like a mortgage fraud case where you would make a lie on a specific loan application.

This is a case where -- we're not charging false statements on an application, which is a Statute 1014. This is a case where we're charging a scheme to defraud over a period of time. And the acts that I'm talking about, these applications, like I said, were submitted on exactly the same day, for the same purpose, an Economic Injury Disaster Loan.

So it's -- it's more than inextricably intertwined. It is part of the scheme. And the Defense has had notice of it from day one in the discovery. It's never been outside of the discovery.

MS. JIMENEZ: And this case, the Davis case, is a wire fraud case. So that's why it refers to intertwined with the ongoing scheme to defraud HUD.

MR. CAVALLO: Your Honor, we're looking at it, but I'll just note this is a Ninth Circuit case.

MS. JIMENEZ: Oh. I'm sorry. Was it? Hold on.

I can't see.

Oh, I'm sorry. It is. It is.

MR. CAVALLO: And Your Honor, just based on reading this, they appear to be completed and then foreclosed loans. And the Sheppard Flagler, TRU, HM Six, the other ones we're talking about, they weren't even completed.

THE COURT: All right. Well, as I stated, with regard to the period of time of the scheme to defraud, if submitted within that time, yes. If outside, no, unless the Government can show that the outside the period is inextricably intertwined with the applications that were submitted within.

MS. MARTINEZ: And thank you for that. And to clarify, yes, the ones that I am going to talk to this witness about are the four that the Defendant mentioned in that text, the -- that -- on the same day, July 24th, 2020, where he, at the same time, sent four separate portal applications to this witness at her job.

THE COURT: All right. But then there is one outside in September 2021.

MS. MARTINEZ: That one, Your Honor, we have agreed to not -- and that does not relate to this witness. That's with respect to the SBA witness, and we've agreed not to go into that.

I just want to clarify that with respect to the two that were funded, using the Defendant's words, closed loans -- the two that were funded, which are the first two that I'm addressing with this witness -- once they were funded, they were eligible for a modification for an increase. And the request for the increase does go just slightly outside of the time period. She has a text with the Defendant where he says: "Yes, accept that" on April 27th, 2021, and there's some documents related to that. But it's all part of the same application number. It's just being modified.

THE COURT: All right, then.

MR. CAVALLO: Your Honor, could I just clarify? I'll admit, I'm confused --

THE COURT: Well, if it's part of the same application number --

MR. CAVALLO: I know. It's not. That's exactly what I want to talk to you about. I agree that it's part of the same application number -- when HM Management applies for an EIDL loan in 2020, and then tries to get an extension in 2021, it's the same application number. Conceded.

My question for the Court, because I don't understand, is that Sheppard Flagler Holdings has a different application number from HM Management and a different one from Four and a different one from UP. I just want clarity on the Court's ruling, is if you're saying, okay, different application number, it's out, or if you're saying, no, because they are around the same time, it's coming in. I just don't --

THE COURT: Well, under the Fifth Circuit case it's the same time. They were submitted, as Ms. Martinez states, on the same exact time. So that would appear to allow the Court to introduce it into evidence. If it was at a different time, outside of the date of the conspiracy, then I agree that it should not be admissible.

MR. CAVALLO: Okay. Well, then I just -- for the record, our argument is that we're without notice of that in the Indictment, which was superseded in August 2023. It's --

those companies are not mentioned. We're without notice that this was going to be part of the case. It specifically says which companies are relevant companies, and all of the charged acts for the wire fraud relate to those three companies.

I didn't get a chance to address this. Our expert -- they keep saying our expert's going to be a global analysis. Our expert's limited to those three companies, HM Management, HM-UP, and HM Four, and that Sheppard Flagler, TRU, HM Six are all entirely outside the scope of this Superseding Indictment.

MS. MARTINEZ: Your Honor, respectfully, Mr. Cavallo is misstating the criminal law with respect to notice. The criminal law with respect to notice allows the Defendant to ask for a bill of particulars. In this case, that was done before even Ms. Aimee Jimenez came to this case and before I came into this case. It was denied because the law regarding notice includes that the discovery gives the Defendant notice.

It is preposterous in this case for these three experienced lawyers, who have known about this through two other attorneys that do not include me, and who have had us begging to have discussions about this before trial, to state now that they don't know in excruciating detail and have had notice of this. In fact, if they didn't have notice, how is it that they're making the argument now?

THE COURT: Okay. And again, with regard to the case law that is binding on this court, the Fifth Circuit case, it is still good law. Collateral facts and circumstances and other acts of a kindred character, which this appears to be within the period of time of the scope of this scheme to defraud, as laid out in the Indictment -- the fact that they may be different companies, if, in fact, it was during the same period of time, then I will permit it. But I'm not going to allow any activity outside of the period of the conspiracy or the scheme to defraud.

MS. MARTINEZ: Right. Unless it relates to the same application number.

THE COURT: Unless it relates to the same application number.

All right. Let's bring in the jury.

MR. CAVALLO: Your Honor, just -- we have a continuing objection to this.

THE COURT: It's noted.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 1:27 p.m.)

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

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

Please be seated, everyone.

And we'll continue with the direct examination.

BY MS. MARTINEZ:
Q. We were -- we were discussing the application that you submitted on behalf of Mr. Sheppard for HM Management and Development.
MS. MARTINEZ: Could you pull up Government's Exhibit 68.
Could you go to the next page.
BY MS. MARTINEZ:
Q. Could you read what Mr. Sheppard is telling you on August 3rd, 2020.
A. "Hola, any news or information on those four companies?"
Q. And what do you reply?
A. "Not yet. Hand [sic] in there" -- "hang in there."
MS. MARTINEZ: Can you go to the next page.
BY MS. MARTINEZ:
Q. What does Mr. Sheppard tell you on August 7th?
A. August 7th. "Hey, young lady. Any words on the wire correction and other deals? I spoke to the SBA people today and convinced them to change the wiring instruction within the application and he sent a request" -- "he sent a request to redo the wire. You -- you -- you may want to check the portal, as I do not know the access numbers."
MS. MARTINEZ: Go to the next page.
BY MS. MARTINEZ:
Q. What does he report to you on August 12th, 2020?

A. August 12. "I got the first wire in for HM Management."

Q. Now, after this particular application was funded for HM Management, did it become at a later time eligible for an increase of the amount that was funded, for a modification?

A. Yes.

MS. MARTINEZ: Your Honor, may I go to ELMO?

THE COURT: All right.

MS. MARTINEZ: I'm going to show Bates label 033888, and it goes on to 033889.

And I don't know if I stated it from the record, Your Honor, but this is from Government's Exhibit 62.

THE COURT: All right.

BY MS. MARTINEZ:

Q. Could you read the first part of the agenda at the meeting. Well, first what does it say at the top? What's the title of the document?

A. Okay. The title is the Board Member Meeting Minutes for HM Management and Development, LLC.

Q. And what's the date?

A. The date was May 7th, 2021.

Q. And who are the stated attendees at the meeting?

A. Mr. Eric Sheppard, Mrs. Jennifer Sheppard, and Mrs. Jeanette Gonzalez.

Q. And who is the managing member?

A. Eric Sheppard.

Q. And what does it state with respect to his wife?
A. Minority member under 20 percent.
Q. So what is the first agenda at the meeting? Could you read that.
A. Okay. The first agenda was -- the agenda for the meeting was to "review the" --
Q. Excuse me. Let me make it --
A. -- okay -- "existing SBA governmental loan in place to help fund ongoing economic impact affecting employees and operations." The second is to "analyze SBA's newly increased loan amount ability" -- "availability for the company, which would be capped at 500,000, and to the terms and conditions associated with the loan modification."
And the third is to "review the financial forecast for 24 months of work and operation and other costs."
Q. Could you read the results of the agenda items, beginning with B.
A. Okay. The result is: "The opportunity to increase the credit facility provided by the SBA an additional 350 would not impact current financial cash flow. It would significantly provide the advantage to" -- "in delivery time to tasks for employees, creating accelerated cash flow.
"Accelerated cash flow, combined with the immediate credit increase, will allow for 20 new workers which would cut construction time by 31 percent, according to Jeff,

construction estimator."

Q. What was the vote?

A. Excuse me? What was that again?

MS. MARTINEZ: There we go. Hang on.

BY MS. MARTINEZ:

Q. Could you read out the results of the vote?

A. The vote is Eric Sheppard, managing member, voted yes for increasing the SBA loan credit facility to maximize 500,000.

Q. And at the bottom it says: "Approved and certified by managing member." Who is described there as the managing member at the bottom?

A. Managing member, Eric Sheppard.

MS. MARTINEZ: Could I go back to counsel table. And Exhibit 68.

Could you -- it's close to the end. I don't know if you can find it. It's Bates label 034852. The date is April 27th, 2021.

I'm going to guess that it's about Page 40.

There you go. That's it.

BY MS. MARTINEZ:

Q. What do you tell Eric on April 27th, 2021?

A. I tell him: "Please call me. I have the EIDL additional 500,000. Do you want me to accept?"

MS. MARTINEZ: Next page.

BY MS. MARTINEZ:

Q. What does Eric say?

A. "Yes. Accept."

Q. Were you doing something on the SBA portal?

A. Yes.

Q. On Eric's behalf?

A. Yes. In the SBA portal, you had to accept if you wanted to do the -- the additional 500,000.

Q. And -- and the document that I just showed you previously, that was part of the documents to support that request?

A. Correct.

Q. When you clicked "accept" on that -- well, let me -- when Mr. Sheppard told you to accept on that day, on April 27th, 2021, were you working at Nationwide's office or on that day were you home?

A. No. I was working from home because we were working mobilely.

Q. And in whose name is the Internet in your house?

A. My husband's name, David Carvallo.

(Pause in proceedings.)

MS. MARTINEZ: Could we pull up Government's Exhibit 63. I'm going to give you -- 63.1, and it's Bates label 033693 to 033695.

BY MS. MARTINEZ:

Q. Ms. Palancar, do you recognize this exhibit?

A. Yes. This exhibit is the application for --

MS. MARTINEZ: Let's highlight the -- the name is at the bottom of the email.

BY MS. MARTINEZ:

Q. Do you see --

MS. MARTINEZ: Can you highlight the bottom half of the email, where you can see the business legal name?

BY MS. MARTINEZ:

Q. Ms. Palancar, was this another application that you received --

A. Yes.

Q. -- from the Nationwide portal form to submit on behalf of Mr. Sheppard?

A. Yes.

Q. And looking at this email right here that was forwarded to you, what is the date and time that that email was sent to you or that it was submitted in the portal?

A. It was submitted through the portal at July 23rd, 2020. And this is the business for HM-UP Development Alafaya Trails, LLC.

Q. Now, this is a second company?

A. Yes. This is the second company.

Q. And what are the gross revenues, cost of goods sold, and rents lost that are listed here?

A. Okay. The gross revenue was 2,140,000 and the cost goods was 1,250,000.

Q. And the lost rents claimed due to the disaster?

A. The rent was none.

Q. And the gross revenues that are described here is for the 12-month period prior to January 31st, 2020, right?

A. Correct.

MS. MARTINEZ: Could you go to the next page of this document.

Could you highlight just the top half.

Thank you.

BY MS. MARTINEZ:

Q. Again, could you read out the phone numbers and the email that was provided by Mr. Sheppard.

A. Okay. The phone number was (305)861-0088, alternative phone number was (305)582-5529, business email was eric.sheppard10@gmail.com.

MS. MARTINEZ: And could you highlight the number of employees listed here.

BY MS. MARTINEZ:

Q. What's the number of employees that he put on the portal application?

A. Number of employees was 12.

Q. Now, with respect to the email, did you use this particular email for the SBA portal?

A. No. This one had another -- different email, which is --

you'll find it there below on the copy to the SBA.
Q. Right. As you explained earlier, you created unique emails for each application?
A. Each company had this -- was created an email.
MS. MARTINEZ: Could you go back to the first page, and again the bottom of that page.
BY MS. MARTINEZ:
Q. Where it says: "How much funding are you seeking," what was the answer that Mr. Sheppard gave?
A. He answered 160,000.
Q. Now, did this company get funded as quickly as the first one?
A. No. This one took a little bit, about a month afterwards. It had, I believe, some issues with the wire and the email. It was two things, the wire and the emails.
Q. With respect to -- to this particular application where I'm going to --
MS. MARTINEZ: Can you pull up Government's Exhibit 67, and can you go to Bates label 034311. I'm going to say that it's about 20 pages down. It's an email from August 21st, 2020.
But again, the -- there you go.
Could you highlight the email that is being forwarded, yes, from Eric Sheppard.
No. From the top. From the top. So you see it's all

the -- sorry. Could you go from where it just says "Eric Sheppard" -- from the yellow line to the bottom. To the bottom. To the bottom.

There you go.

BY MS. MARTINEZ:

Q. What is Eric Sheppard doing here in this email to you on August 27, 2020?

A. He's forwarding me some documentation from Jeanette Gonzalez, 2019 and 2020 first quarter and second quarter profit and loss.

MS. MARTINEZ: Could you pull up what I have marked as Exhibits 63-2, 3, and 4.

And Your Honor, those were Excels, so they have no Bates numbers.

THE COURT: All right.

MS. MARTINEZ: Can you bring up the second one next to it also, the first quarter.

If you don't mind, can you flip the order. Can you put the -- 63.2 on the left, 63.3 on the right. 63.2.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. According to the profit and loss statement for 2019 for the entire year, what was the gross profit?

A. Gross profit was 2,294,781 with eight cents.

MS. MARTINEZ: And now could you highlight the same line but for the first quarter of 2020.

No. On 63.3.

I'm sorry. I meant the gross profit line. Just if you could pull it out.

BY MS. MARTINEZ:

Q. And what does it say for the first quarter of 2020?

A. For 2020 -- the first quarter for 2020 was 573,695.27.

MS. MARTINEZ: Could you pull up 63-4, which is the second quarter of 2020. But please leave the first quarter up, meaning just remove 63.2 and bring up 63.4.

63-4. Could you highlight on the right on 63-4 what it states in the profit and loss statement for the quarter of 2020. And that's just a direction to the paralegal.

BY MS. MARTINEZ:

Q. Ms. Palancar, what did it state on the profit and loss statement that Mr. Sheppard emailed to you with respect to the second quarter of 2020?

A. The second quarter gross profit was zero.

Q. And what does it say with respect to income? What are the words there, instead of numbers? What is stated there in words?

A. "No rent collected due to COVID 19 rent deferral."

MS. MARTINEZ: Can you pull out for there -- for that document, so we can see the entire -- now can you just highlight the entire profit and loss statement for the second quarter of June of -- I mean of 2020.

BY MS. MARTINEZ:

Q. So again, it said what for gross profit with respect to the second quarter of 2020?

A. Gross profit was zero.

Q. And so what is the negative income reflected at the bottom?

A. The negative income is showing minus 40,000 --

Q. Approximately -- yeah. Go ahead. Read out the whole number.

A. 40,224 with 36 cents.

MS. MARTINEZ: You can bring that down.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. Did you continue working to help Mr. Sheppard get funding for this company, HM-UP Alafaya Trails?

A. Yes, I did.

(Pause in proceedings.)

MS. MARTINEZ: Can -- can you go to the text from September 17th, 2020. It's Bates label 034822.

I'm sorry. On Exhibit 68. It's approximately about 15 pages down.

Oh. You went too far, I think. You need to go back.

September 17th. So it's a little further.

Okay. Slow down. Slow down.

This is Bates label 04826. Can you go to the page before it so we can see the date. September 18th.

Go to the page before it.

And the page before that.

Page before that.

Keep going just backwards till we get to September 17th.

One more.

One more.

BY MS. MARTINEZ:

Q. Okay. Can you read what Mr. Sheppard tells you on September 17th, 2020?

A. Okay. "Okay. Young lady, money does not sleep. Let's work on this and get funded."

MS. MARTINEZ: Can you go forward on the text until I tell you.

Forward.

Okay. Stop.

Go back.

BY MS. MARTINEZ:

Q. What -- what is on this screen which is Bates label 034826?

A. Okay. This was a letter that I prepared for the SBA, because we had an issue regarding the email, like I was saying before. On this particular company, they had an email issue. So I wrote this letter and I sent it to him so he can review it and approve it so I could send it to the SBA agent.

Q. And when you said that you sent it to him, who did you mean that you were sending it to?
A. To Eric Sheppard.
Q. And could you read what the letter is that you were saying to the SBA.
A. Yes. This is: "Hi, SBA agent. In the past four weeks, we have been trying to enter the SBA portal to continue with the process of the application; however, it has not been possible because of the email issue. The initial email on the application was es.hmudat2020@yahoo.com. If you can be so kindly to change our primary email address to the following so hopefully we will finally be resolved and sign closing documentation."
MS. MARTINEZ: And can you go to the next page of the text.
BY MS. MARTINEZ:
Q. You don't have to read out the entire continuation of the text, but what else are you providing here to the SBA?
A. Here, I'm providing the name of the company, the application number, Eric Sheppard's email and Robert Kallman's email and phone number. And their driver's license was attached to that email. Both of them was, Eric Sheppard and Robert Kallman's driver's license.
Q. And why was Robert Kallman on this one?
A. Because he was -- he was an owner as well.

Q. Of HM-UP Alafaya Trails?
A. Correct.
Q. And did you obtain their driver's licenses?
A. Yes.
MS. MARTINEZ: Could you pull up Government's Exhibit 67.
And could you go to Bates label 034313. And I'm going to estimate it's about 20 pages in.
Okay. Stop.
Oh, we're close.
There you go.
Can you highlight just the bottom email there, the bottom -- no. The bottom, bottom, bottom.
There you go. That's it.
BY MS. MARTINEZ:
Q. And what's the date there?
A. The date there was September 14, 2020, at 12:27 p.m.
Q. And that email is from who to who?
A. That's from Eric Sheppard to myself, Nelia Palancar, at nelly@nationwidelendingdirect.com.
Q. And what does Mr. Sheppard say that he's sending you?
A. Attached is the -- Robert's -- two licenses.
Q. So you actually got the license for Robert Kallman from Mr. Sheppard?
A. Correct.

MS. MARTINEZ: Can you bring up Government's Exhibit 68.

And can you go down to a text from September 29, 2020. So again, it's about 20 pages in. That seems to be my guess.

Okay. You're very close. Little more.

Oh. You passed it.

BY MS. MARTINEZ:

Q. Okay. Could you read what you ask Mr. Sheppard on September 29, 2020.

A. "Did you get funded?"

"Yes. The wire came in at 12:30 today," he answered.

Q. And you answered: "Awesome"?

A. "Awesome."

Q. Now, that was the second application that you were able to get funded for him, right?

A. Yes, that's the second one.

Q. The one we've been talking about, HM-UP Alafaya Trails, right?

A. Alafaya Trails.

(Pause in proceedings.)

MS. MARTINEZ: Can you bring up what's been marked as sub-exhibits 64-1, which is Bates label 033925, 0 -- through 033926. And also, could you next to it bring up what's been identified as 66-1, which is Bates labels 033795 through 033796.

BY MS. MARTINEZ:
Q. Ms. Palancar, do you recognize these two documents?
A. Yes, I do.
Q. And looking at the --
MS. MARTINEZ: This is just a direction to the paralegal. Could you bring up on the document on the right just the top part of the forwarded message so that we can see the date and time that the message was forwarded. And then do the same thing for the other one, but the forwarded message is below, the part where it's forwarded from the portal.
There we go.
Little bit -- go ahead. And compare those two.
I'm going to ask you to -- can you bring the one on the right down, just so we can see the exhibit that we're looking at.
There you go.
BY MS. MARTINEZ:
Q. So for Exhibit 66-1, at what time was the EIDL loan application submitted through the Nationwide Lending portal?
A. It was on July 23rd, 2022, at 6 --
Q. No. Was it 2022?
A. I'm sorry. 2020. I'm sorry. July -- July 23rd, 2020, at 6:57 p.m.
Q. And the one on the left, which is Exhibit 64-1?
A. Was July 23rd, 2020, at 7:07 p.m.

Q. So let's look at the one from 6:57, which is 66-1.

MS. MARTINEZ: Can -- from the document on the right, can you just highlight the top part of the application so we can see the entity that's applying.

Yes. And come down -- come down, if you would. Yeah.

There you go.

BY MS. MARTINEZ:

Q. So could you read out the business legal name here.

A. Yes. The legal name is HM-UP Development Alafaya Trails TRU, LLC.

Q. Now, this was a different application than the one with a similar name that we were just talking about, right?

A. Correct. This was -- that's the -- another -- the third application.

Q. And how much funding is Mr. Sheppard asking for here?

A. The same amount, which is 160 -- a hundred and sixty thousand.

Q. And what does he state is the gross revenues?

A. The gross revenues states 408,000.

Q. And the cost of goods sold?

A. And the cost of goods is 128,000.

Q. And the loss of rent?

A. None.

MS. MARTINEZ: Can you zoom back out so we can go a little bit below on that application, just a little further.

BY MS. MARTINEZ:
Q. Who --
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. On this application, what are the phone numbers provided and the email?
A. The phone number is (305)632-1407, and the alternative phone number is (305)582-5529.
Q. The 582-5529 is the same as in the previous application, right?
A. Correct.
Q. And is that the number you used to reach Mr. Sheppard?
A. Yes.
Q. And what's the business email given here?
A. This business used jeanette@hmmanagementdev.com.
Q. And what is the -- the activity -- the business activity given here?
A. The business activity is construction and contractors.
Q. And the number of employees?
A. Number of employees, seven.
Q. Who is indicated as the owner?
A. The owner is Eric Sheppard.
MS. MARTINEZ: Can you go further down on the document.
THE WITNESS: Thanks -- thank you.

MS. MARTINEZ: Oh, too much. Too much.

Just -- if you could go from where we start talking about the owner, and down all the way to where it says: "Thank you."

Can you go lower. I know it's going to make it a little -- okay. Perfect. Right there.

BY MS. MARTINEZ:

Q. What percentage of ownership does Mr. Sheppard say he has?

A. Fifty-two.

Q. Now, again, he provides his regular email here, his Gmail, correct?

A. Yes, he did.

Q. But again, that's not the email you used with the SBA, right?

A. Correct.

Q. Again, what did you do with respect to the emails?

A. I created a email for each company.

Q. And --

A. For -- to distinguish the difference of company.

MS. MARTINEZ: Could you look at the bottom of that and highlight where the money is being requested to be sent.

BY MS. MARTINEZ:

Q. Could you read where Mr. Sheppard is asking for this funding to be sent to.

A. With this one, he requested it to be with One Florida Bank.

And the routing number --
Q. You can just say the last four numbers of the account number.
A. The last four is 2368.
MS. MARTINEZ: Can you zoom out, and then let's go to the application on the left, which is 64-1.
Can you highlight the business -- from -- I guess just the bottom of the application.
Yes. Please.
THE WITNESS: Uh-huh.
BY MS. MARTINEZ:
Q. What is the business legal name for the application in 64?
A. The legal name is Sheppard Flagler Holdings.
Q. And what is the trade name that Mr. Sheppard put in the Nationwide portal?
A. HM Six/CJUF Flagler.
Q. And how much funding is he seeking?
A. A hundred and sixty.
Q. A hundred and sixty what?
A. Thousand.
Q. And what are the gross revenues and cost of goods sold that he put in the Nationwide portal?
A. Gross revenue is 685,000 and cost of goods sold was 75,000.
Q. And rents lost due to the disaster?
A. None. None.

MS. MARTINEZ: Could you go lower on the application.
Okay. A little bit lower.
Thank you.
BY MS. MARTINEZ:
Q. What is the detailed business activity given in this one?
A. Business activity was finance.
Q. Where it says: "Detailed business activity"?
A. Oh. Detailed is "Investment in businesses."
Q. And the number of employees?
A. One.
Q. And who is below indicated as the owner?
A. The owner was Eric Sheppard 50 percent.
Q. Okay. A different number is given. What number is given here?
A. Repeat.
Q. Different phone number --
A. Oh. Sorry. Different phone number was -- mobile number is (305)613-5893 -- I mean 5898.
Q. And what's the ownership percentage stated?
A. Ownership is 50 percent.
Q. Now, this has another email. What is the email provided here? Can you spell it?
A. Yes. It's J-E-N-S-H-E-P-P-A-R-D@bellsouth.net.
MS. MARTINEZ: Can you go lower on the application.

BY MS. MARTINEZ:
Q. And where does he ask for the funds to be sent for this application?
A. The bank SunTrust Bank with --
Q. And just the last four numbers?
A. -- account number 7571.
MS. MARTINEZ: Can you zoom back -- I mean remove the zoom.
BY MS. MARTINEZ:
Q. These two applications that came from the portal on September -- I'm sorry -- July 23rd, 2020, were you able to get these two funded?
A. No. These did not fund.
Q. Did Mr. Sheppard ask you to continue working on trying to get them funded?
A. He asked me to continue working to -- to be re-considerated [sic] and we did -- worked on that consistently, and at the end it just didn't work -- it got denied.
Q. In addition to those applications -- I don't want you to give the specifics, but I'm just asking you in general: Did you work on commercial loans for him as well?
A. I work -- I tried to get him a loan -- a bridge loan with one of his companies. And he -- I got him some LOI, which is a letter of intent, but he wasn't too happy with the terms and -- the rate and terms.

Q. When you say: "The rate," you mean the interest rate?
A. Yeah. The interest rate and terms of the loan. It was a high rate.
Q. Than the Economic Injury Disaster Loans?
A. Of course. It was higher.
MR. ETRA: Objection Your Honor. Introduced --
(Court reporter interruption.)
THE COURT: I'm sorry?
MR. ETRA: This is outside the scope of the Indictment. Objection.
THE COURT: Why don't we narrow the time frame?
MS. MARTINEZ: Yes. This is --
THE COURT: Why don't we ask the witness to narrow the time frame with regard to the bridge loan.
MS. MARTINEZ: I'm going to -- let me just ask my team something here.
(Pause in proceedings.)
MS. MARTINEZ: Your Honor, the only thing I would like to establish is -- here, I'll show the witness. I'm not sure. Did I move into evidence Government's Exhibit 65? Because I probably did not.
THE COURT: No -- oh. I'm sorry. Yes. Sixty-six and 65 were moved in, yes.
MS. JIMENEZ: Yes, I did.
THE COURT: Yes.

MS. MARTINEZ: All right.

THE COURT: All right.

MS. MARTINEZ: I'm actually just going to show it to the witness, Your Honor.

THE COURT: All right.

BY MS. MARTINEZ:

Q. Ms. Palancar, I just want to clarify, the document that you're looking at does not relate to a Small Business Administration loan, right?

A. Correct.

Q. And so you did not submit any loan for a company called HM Six for -- to SBA, correct?

A. Correct.

Q. Now, that document that you're looking at, look at the second page. What is the date?

MR. ETRA: Your Honor, I can't see. I don't know what that is that the witness --

MS. MARTINEZ: Government's Exhibit 65.

THE COURT: All right. It's in evidence. You may continue.

THE WITNESS: February 11, 2001 -- 2021. This is an application.

BY MS. MARTINEZ:

Q. Right. And that does not -- that relates to HM Six, right?

A. Correct.

Q. But that was not a Small Business Administration effort or loan, right?
A. Correct. This is not a SBA loan. This is an application to do other applications for other lenders.
Q. And what I'm trying to clarify is just the companies you did not help Mr. Sheppard with. You did not help Mr. Sheppard with a company called HM Four, correct?
A. Correct.
Q. In fact, you only helped him with the ones -- the four that we just went through, where you received an application from the Nationwide Lending Direct portal?
A. That is right. Only four applications that was submitted in the beginning.
Q. And with respect to the two that were funded, which are HM Management and HM-UP Development Alafaya Trails, with respect to those two, on his behalf, you did accept an invitation to increase the loan amount, correct?
A. Correct.
Q. And that -- those companies are the limits of your efforts to help him with Small Business Administration loans, correct?
A. Correct.
(Pause in proceedings.)
MS. MARTINEZ: I have no further questions, Your Honor.
THE COURT: All right. Cross-examination.

MS. MARTINEZ: May I approach the witness? I think I left the exhibits.

THE COURT: Certainly.

(Pause in proceedings.)

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good afternoon, Ms. Palancar. Is that how to pronounce it?

A. Yes.

Q. I will probably mispronounce it. And if I do, I apologize.

A. That's okay.

Q. You described your line of business as a loan processor?

A. Yes.

Q. Did you describe Nationwide, the company, you work for -- you still work for them?

A. No. I'm not working for them anymore.

Q. You were working for them at the time of the events?

A. Yes. Yes.

Q. You described Nationwide as a loan processor?

A. Yes.

Q. Doesn't Nationwide describe itself as a finance company?

A. Yes.

Q. Very generally, what does Nationwide do?

A. Nationwide Lending does mortgage loans and business loans, business financing.

Q. Right. So do they loan with their own money or they are

like a broker and find loans?
A. We are a broker and we also act like a lender too.
Q. So in the context of your involvement with Mr. Sheppard, Nationwide was acting as a loan broker, right?
A. Yes.
Q. Which means what?
A. Again?
Q. Which means looking for financing, right?
A. Right.
Q. Okay.
MR. ETRA: Put up from the emails -- the Sheps emails, July 14th, Bates Number 034296.
COURTROOM DEPUTY: These are all in evidence, Counsel?
MS. MARTINEZ: Yes.
MR. ETRA: It's already in evidence, Your Honor, the package of emails.
BY MR. ETRA:
Q. Do you see the email in the middle of the page or most of the page here?
A. Yes. I see it.
Q. And that's an email from Daniel Sheps. Do you see that?
A. Yes.
Q. Who is Daniel Sheps?
A. He's my boss.
Q. Okay. And this is before the documents that we've looked

at so far today chronologically, right?
A. Correct.
Q. And the way it starts is that Mr. Sheps writes an email to you -- or writes an email with -- it says: "HM Management and Development 1.5 million, HM-UP two million, HM Six five million." Did I interpret that email fairly?
A. Yes.
Q. Okay. And then it says: "Nelly, please send him the loan authorization form for each company, DocuSign, and the invoice," correct?
A. Correct.
Q. What's going on here is that your boss is basically saying, looking at the information, looks like we can get this type of funding for Mr. Sheppard's companies, right?
A. Correct.
Q. Okay. And do you know what conversations preceded this email exactly?
A. No. I don't know anything about that email. My first contact was after -- after the 20 -- the 21st.
Q. Okay. And so you're not sure exactly the initial discussions between Mr. Sheppard and Mr. Sheps --
A. No.
Q. -- about --
A. No.
Q. Stop. You got to let me -- you got to let me finish my

question, and then you give the answer. Otherwise we're going to have a problem. Okay?
A. That's fine.
Q. Even if you know the answer. Okay?
A. Okay.
Q. So you don't know what discussions preceded between Mr. Sheppard or anyone at his company and Mr. Sheps before you personally got involved. Is that fair to say?
A. Yes.
Q. Okay. And you actually did send him the loan authorization form and the invoice, correct?
A. Correct.
Q. And even though you've had all these different emails for Mr. Sheppard's companies, when Mr. Sheppard communicated with you, what email did he use?
A. He used the eric.sheppard10@gmail.com.
Q. Even if -- for all the different companies, he used the same email, right?
A. Correct.
Q. Okay. Let's look at the invoice, which -- I think that's what you're referring to here. Let's look at Government's Exhibit 61, which you were shown on your direct examination.
Do you recall -- is this the invoice?
A. Yes.
MR. ETRA: Could we make the middle part a lot bigger.

BY MR. ETRA:

Q. Okay. So I want to go through parts of it that weren't shown during the direct examination.

MS. MARTINEZ: Objection to referring to it as not shown. I published the entire exhibit.

THE COURT: All right. The objection is noted.

Let's continue.

MR. ETRA: I want to refer to the premium membership's services, and if we can highlight those services.

BY MR. ETRA:

Q. Okay. So this is a premium program, right?

A. Uh-huh.

Q. It says: "Dedicated secure login and password credentials to your account," correct?

A. Correct.

Q. What you're referring to is not the SBA's portal, right?

A. Correct.

Q. You're referring to a Nationwide portal that you provided for information, correct?

A. Correct.

Q. Okay. Can we agree that Mr. Sheppard's companies could have applied directly to the SBA? Correct?

A. Correct.

Q. And in all the times that you were dealing with Mr. Sheppard, do you ever tell him: "By the way, you know, you could just apply directly to the SBA?" Did you ever tell him that?

A. No.

Q. Okay. And then next item is: "Monday to Friday, ten to five p.m., dedicated loan experts." What does that mean, "dedicated loan experts"?

A. Dedicated loan expert is basically you -- from -- we were open from ten to -- that's the time that we're open, from ten to five, right.

But dedicated loan expert is a -- is different loans for businesses. This -- this -- this membership service, premium membership service, is not only for the SBA. It was for different loans. For even -- it could be for SBA -- the 7(a) or SBA 504, can be for a bridge loan. It could be for a line of credit. It's -- it's, you know, a bundle of products that are out there and -- you know, that we offered to our clients.

The loan officer -- the loan officer is the one that does that. I'm only the one that does the financing processing, dealing with the -- with the bank directly, and making sure that everything is -- is submitted correctly to the -- to the bank.

Q. Let me start again here. Am I correct that through this premium membership service Nationwide was telling Mr. Sheppard that Nationwide was providing dedicated loan experts? Is that

correct?
A. Exactly.
Q. Okay. That's Nationwide, not Mr. Sheppard, right?
A. Right.
Q. Okay. And then the next bullet item is: "Free Advisory Services and Suggested Products." Do you see that?
A. Uh-huh.
Q. So again, Nationwide -- what Mr. Sheppard was getting in signing up for this program was free advisory services from Nationwide, right?
A. Uh-huh.
THE COURT: I -- just -- if the witness will just answer verbally.
MR. ETRA: Oh. Sorry.
BY MR. ETRA:
Q. You have to say yes or no.
A. Yes.
MR. ETRA: Sorry, Your Honor.
BY MR. ETRA:
Q. In other words, the advice was coming from Nationwide to Mr. Sheppard and his companies, right?
A. Right.
Q. Not the other way around?
A. Right.
Q. Okay. And then the next item is: "Customized Financial

Plan of Action," right? That's also offered in these services, right?
A. Correct.
Q. By Nationwide, right?
A. Correct.
Q. And the next item is: "Free evaluation and review of your financial situation as it applies" -- "as it pertains to qualifying for lending products," right?
A. Correct.
Q. You're nodding. I have to say --
A. Correct.
Q. Okay. That's fine.
And that's what Nationwide provided, right?
A. Correct.
Q. One of the advice and expertise that Nationwide brought was to suggest to Mr. Sheppard that his companies could qualify for the SBA loans, right?
A. Correct.
Q. Okay. And you knew that, right?
A. Yes.
Q. Okay. This was your -- part of this process was your -- I say "you," I'm saying Nationwide -- Nationwide's advice that all these companies qualified for SBA loans, right?
MS. MARTINEZ: Objection.
THE COURT: And the basis?

MS. MARTINEZ: Your Honor, speculation with Nationwide's advice.

THE COURT: If the witness knows the answer. Overruled.

BY MR. ETRA:

Q. Let me start again. Because, you know, these things happen in court.

A. Okay.

Q. Part of what -- what happened here is Nationwide advised Mr. Sheppard and his companies that -- in these applications, that they should be eligible for the SBA loans, right?

A. Correct.

Q. Okay. And we're not talking about the PPP program, right?

A. No. We're not talking about --

Q. It's only the EIDL?

A. Right.

Q. Okay. Great. Great. Okay.

MR. ETRA: And if we can go --

BY MR. ETRA:

Q. And I want to go back to the terms --

MR. ETRA: Let's go a little higher up --

BY MR. ETRA:

Q. -- the terms of this membership. I think you said it's for a year membership, right?

A. Yes.

Q. But there's another -- there's some fine print there, isn't there? I'll show you on the right-hand side. It says: "Conditions. Membership fee is fully refundable within the first 90 days if client not fully satisfied with service."
A. Correct.
Q. And the reality is that what happened is that you invoiced Mr. Sheppard and the company at the beginning, correct?
A. Correct.
Q. And you didn't actually charge the credit card at that time, correct?
A. Correct.
Q. You waited until the -- this is HM Management, right?
A. Excuse me. Repeat that.
Q. We're talking about HM Management and Development?
A. Right.
Q. You didn't charge him the $7,500 until the loan was accepted by the SBA, correct?
A. Correct.
Q. So it's essentially a $7,500 fee charged upon successful completion of the loan, right?
A. It's actually -- the 75 is actually the fee -- the fee that was charged.
Q. Right. It was charged -- you actually charged it, in terms of got the money from the credit card, only after the loan was accepted by the SBA?

A. Right. It was only charged -- the fact that he got funded.
Q. Right. So it only gets charged if you're successful, correct?
A. Correct.
Q. Okay. And in this case, Nationwide was successful and got its $7,500 fee, correct?
A. Correct.
MR. ETRA: Let's go to the next page.
BY MR. ETRA:
Q. This is a loan authorization form. I just want to make sure I understand what's happening here. Am I correct that in this form, that -- this form is provided to Mr. Sheppard for him to DocuSign, right?
A. Correct.
Q. To govern the relationship between Nationwide and him and his company?
A. Correct.
Q. And it was prepared by Nationwide?
A. Yes.
Q. And what it's saying is that Nationwide -- that -- that the company, HM Management, is appointing Nationwide to apply for loans, right?
A. Correct.
Q. So you're the agent of the company, right?
A. Agent?

Q. Let me strike that. Sorry.
In the second paragraph, it says that Mr. Sheppard would assist, right?
A. (No verbal response.)
Q. Second paragraph?
A. Okay. The second paragraph.
Yes. Okay. I see what you're saying now.
Q. So the application that is submitted to the -- that we talked about that got submitted to the SBA is done by Nationwide, right?
A. Yes.
Q. With Mr. Sheppard and his team assisting you, correct?
A. Yes.
MR. ETRA: Let's go to Exhibit 62-1. It's Bates Number 33870 to 72.
BY MR. ETRA:
Q. This is the beginning of the application process, I suppose?
A. Yes.
Q. Okay. If we go to the very bottom of this chain --
MR. ETRA: Let me go to the previous page. Sorry.
BY MR. ETRA:
Q. And this is the information that you talked about that's, I guess, in the SBA -- that's in the Nationwide portal, right?
A. Correct.

Q. Okay. And at the very bottom --

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

BY MR. ETRA:

Q. -- it says: "Thank you. Daniel Sheps, Managing Director." Do you see that?

A. Uh-huh. Yes.

Q. Are you sure it's not Mr. Sheps that filled out this information?

A. No.

Q. How do you know that?

A. Because we had a web -- we had -- on our website, we had the application there that you -- that we will direct the clients to apply, and -- when they wanted to do the EIDL application. So once that was filled out, it would go directly to Daniel Sheps.

Q. Okay. So --

A. And he then will direct it to me. It's job -- I don't know what it's called. But it goes to a -- from there, it goes and he will get it in his email.

Q. When you say Mr. Sheppard filled this out, you're saying you sent the portal to him and it came back filled out, right?

A. Yes.

Q. You didn't see him do it --

A. No. He didn't do it -- and it's an online application that the clients will fill out, and then it will be submitted, and

then he will receive it.
Q. Right. So what happens is you send the Nationwide portal to Mr. Sheppard, right? And you get it back and then you take that information, with some changes, and you, Nationwide, put it on the SBA portal, right?
A. Correct.
Q. Okay. So let's just go through the -- let's go through the information here.
MR. ETRA: Go to the first page.
BY MR. ETRA:
Q. So again, the bottom it has the name of HM Management and Development, right?
A. This one is HM --
Q. Look at the last line.
A. Yes. This is HM Management and Development, LLC.
Q. I just want to understand. There's a prompt that says: "Business legal name," right?
A. Right.
Q. That's from your Nationwide portal, right?
A. Yes.
Q. Okay. So that's what the person typing in sees, the word "business legal name," right?
A. "Business legal name."
Q. Okay.
MR. ETRA: Let's go to the next page.

Let's go to gross revenue for the 12 months prior to the date of disaster, the sixth line or so.

BY MR. ETRA:

Q. That's exactly how it appears on the Nationwide portal, right?

A. Yes.

Q. It doesn't explain how to calculate gross revenue, correct?

A. No.

Q. It doesn't say to use the accrual or the cash method, correct?

A. No.

Q. It just has those words?

A. It has those words, just like the SBA application.

Q. Okay. Fair enough. The SBA application also just has those words, right?

A. Yes.

Q. Without any explanation, correct?

A. Yes.

Q. And you have the answer given of 1.540 million. Do you have any reason to believe that number is incorrect?

A. No --

Q. Did you discuss with Mr. Sheps how to -- excuse me -- with Mr. Sheppard how to calculate the gross revenue?

A. No.

Q. Do you know if --

A. I requested the -- to verify all those questions to make sure that he knows.

Q. Okay. And you went over this with him. And based on your discussion it sounded reasonable, right?

A. Right.

Q. Nothing about the discussion suggested there was something wrong with this number, right? Correct?

A. Correct.

Q. Did Mr. Sheppard answer your questions about how he got revenue, how he calculated this?

A. Yeah -- yes.

Q. And Nationwide was satisfied with his answers?

A. Right.

Q. You didn't say to him: "No. This isn't going to work. You can't use these numbers"?

A. Correct.

Q. Okay. Next number, cost of goods sold for the 12-month period prior to disaster, with the date of January 31, 2020. Let me take a step back.

SBA defines the date of the disaster as January 31, 2020, right?

A. January.

Q. 31 of 2020. That comes from the SBA application, right?

A. Right.

Q. Same thing with cost of goods sold. You actually discussed

this with Mr. Sheppard afterward, right?
A. Correct. We reviewed it, yes.
Q. You asked him how he got his numbers and he discussed them, right?
A. Right.
Q. And after discussing it, your advice or back-and-forth was: "You know, maybe it should be a little lower," right?
A. Correct.
Q. Is there something about these numbers that are critical to eligibility for this loan?
A. I'm not sure.

THE COURT: Mr. Etra, I apologize. One of the jurors is in need of a break. Let's go ahead and take a 10-minute recess.

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 2:44 p.m.)

THE COURT: All right. We're on a 10-minute recess. But I do want to just place on the record that the court security officer just gave me a note from the juror, and it says: "Can we take a break, please." So I just wanted to make sure that that was on the record.

All right. We're on a 10-minute break.

(Recess from 2:44 p.m. to 2:58 p.m.)

THE COURT: Welcome back.

Both sides ready to continue?

MR. ETRA: Yes, Your Honor.

THE COURT: On behalf of the Government?

MS. MARTINEZ: Yes, Your Honor.

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

(Before the Jury, 2:58 p.m.)

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

Please be seated, everyone.

And we'll continue with the cross-examination.

MR. ETRA: Thank you, Your Honor.

Could we put back on the screen 62-1.

BY MR. ETRA:

Q. Ms. Palancar, I'm going to try not to pronounce your name because I know I'm going to get it wrong.

Okay. So with respect to gross revenue and cost of goods sold, did you tell Mr. Sheppard that these numbers have to match the latest tax return?

A. Okay. Regarding the gross and the cost of goods, those numbers have to be coordinated with the tax returns, yes.

Q. You told him that?

A. Those -- those numbers are usually -- those numbers are according to what -- the gross of your gross returns.

Q. Okay. Let me start again.

When you met -- when you talked to Mr. Sheppard about

the revenues, did you ask him what was on his tax returns?
A. The question is gross revenue.
Q. Right. That's all there is?
A. Yes.
Q. Okay. It doesn't say it has to match the tax returns of the previous year, correct?
A. Right.
Q. In fact, this is the revenues for basically -- basically for 2019, give or take, right?
A. Right.
Q. Because it's 12 months before the -- before the end of January of 2020, right?
A. Correct.
Q. And most people don't have their tax returns done by then, right?
A. Correct.
Q. And tax returns could be on a different basis, cash or accrual, from internal financial reporting, right?
A. Right.
Q. And same thing with cost of goods sold. You didn't tell Mr. Sheppard it's got to match tax returns that haven't been created yet, right?
A. No, I didn't tell him, but these numbers usually go corresponding with what you're going to report with -- you know, he had -- I'm pretty sure that he had his profit and

loss --
Q. Let me -- let me ask you not to speculate. I'm asking you what you told Mr. Sheppard about --
A. Yes.
Q. -- cost of goods sold.
A. Right.
Q. You didn't tell him it had to match tax returns, right?
A. Correct.
Q. And there were no tax returns at that time, right, for -- basically for 2019?
A. Right.
Q. Okay. And -- but you said you had a discussion about what his internal records were, right?
A. Right.
Q. I think you were saying that you're pretty sure he was looking at his internal financial records, right?
A. Correct.
Q. Okay. All right. And then Rental Properties it says: "None" -- sorry. Rental Properties -- lost -- I apologize.
"Lost rents due to disaster" it says: "None," right? This loan was approved, right?
A. Right.
Q. So you don't need to show lost rents due to disaster, right?
A. (No verbal response.)

Q. Yes?
A. Correct.
Q. And by the way, even with like tax returns, they don't work for -- from a -- for the 12 months preceding January 31, right?
A. (No verbal response.)
Q. Tax returns work for the calendar year, right?
A. Different companies have their end of year --
Q. For internal financial reporting, but not for tax returns, right?
A. Right.
Q. So you have to look to your internal financial numbers --
A. Correct.
Q. -- to come up with these numbers, right?
A. Correct.
Q. And -- and I wasn't sure if we got this before the break, but is there anything about these numbers, whether it's -- I'll take them individually, if you want -- revenue, cost of goods sold, or rental property lost, that make one eligible versus not eligible for the EIDL loans, to your knowledge?
A. No.
Q. Okay. All right. So -- okay. So net-net, you know it's not like this is going to make a difference from your perspective as advising him on whether you're eligible or not, right?
A. Correct.

Q. Okay. Let's continue to: "Primary business address, 180 Bal Cross Drive." Do you see that?
A. Yes.
Q. Okay.
MR. ETRA: And then continuing down. Could we go a little further in the document. I want to look at the phone number and the email.
BY MR. ETRA:
Q. So certainly what's listed here in whatever is input into the Nationwide website is Mr. Sheppard's cell phone, right?
A. Right.
Q. Do you recognize that? (305)582-5529, right?
A. Correct.
Q. And the alternate number of 0088, do you know that to be his house?
A. I don't recall.
Q. Okay. And then --
A. I just know the other number.
Q. Okay. And with respect to the business email, it's the email that he uses with you as well, right, eric.sheppard10@gmail.com?
A. Yes.
Q. Okay. And with Business Activity and Detailed Business Activity, again, these lines -- this is the words that appear on your portal, right?

A. Correct.
Q. Just like they appear on the SBA portal --
A. Correct.
Q. With no explanation of how to characterize yourself, right?
A. Correct.
Q. It's up to the borrower in good faith to try to figure out the best way to describe their business, right?
A. Right. But they're plain and simple questions.
Q. I'm not being critical. I'm just getting the facts out.
A. Yes.
Q. It doesn't say: "Go to your tax return and find a code number on the tax return," right?
A. Right.
Q. Okay. And let's go down to Additional Information further below -- well, actually before that, the ownership percentage was 99 percent, right?
A. Yes.
Q. But you actually change that in the application that you submitted -- Nationwide submitted for this company, right?
A. That was changed because I didn't -- I didn't have another -- there was no -- I verified with him. I go: "Hey, who's the only owner in that company?" So it was changed to a hundred percent.
Q. Based on discussions with Mr. Sheppard?
A. Yes.

Q. And your expertise, correct?
A. Right.
Q. Okay. And if I go -- and then it mentions a bank account, right, name of the bank?
A. Yes.
Q. It doesn't say that you have to have a new account or an old account. You just have to put an account, right?
A. It doesn't say there if it's old or new. It's just you need to have a bank account.
Q. To receive the funds if you're eligible?
A. Correct.
Q. Under Additional Information, which is in the middle, can you explain what those questions are asking.
A. The questions in the middle. Okay. "In the past year, has the business or listed owner been convicted of a felony or -- committed during and in connection with riot, civil disorder or declared disaster, or even engaged in production or distribution of products of service that was determinated [sic] to be obscene by a court of competent jurisdiction?"
"No."
Q. Let me not make you read the whole thing. These are a series of questions that appear as well identically in the actual SBA application, correct?
A. Correct.
Q. And if they answer yes to some of these, like the one you

answered, or the next one involves criminal history, or things like that, you're not eligible, right?

A. You're not eligible. Yes. That's --

Q. These are the core eligibility questions from your perspective, right?

A. Yes. Right.

Q. As long as the business or -- and when it refers to an owner, they're referring to 20 percent owner; isn't that right?

A. Excuse me?

Q. Are you aware of the fact that when they refer to an owner they're referring to a 20 percent or more owner?

A. Yes. That's correct.

Q. So as long as anyone who is an owner or who owns at least -- as long as anyone who has at least 20 percent could answer honestly "no" to these questions, that's the critical eligibility issue for these loans, right?

A. Correct. Okay.

MR. ETRA: Let's go to 62-2, Government exhibit.

Sorry. It's in Government's Exhibit 62, Bates 33883. 33883.

(Pause in proceedings.)

BY MR. ETRA:

Q. While we're waiting -- I'm sorry. We're here, but let me just ask a different question. At any point in time -- you did four applications around the same time period, right?

A. Yes. The same time.
Q. Did you ever say that you're not allowed to do that? Did you tell Mr. Sheppard that you can't do that?
A. No, I did not.
Q. It was part of your advice that he do so, correct?
A. I'm not the one that does the advising. I just process it. I know that Daniel told me to submit these loans, and he did the -- he's the one that --
Q. He's the expert?
A. The expert in this.
Q. And you were transmitting his advice and direction?
A. Correct. So I just took his application and submitted, and made sure that I gave him good customer service and make sure that everything was done correctly.
Q. And throughout all these -- all the work you did with respect to these companies, you would keep Mr. Sheps informed about what you were doing?
A. Correct. Always. I always kept him informed either by email or --
MS. MARTINEZ: Objection, Your Honor. I just want to be clear whether we're talking about Mr. Sheppard or Mr. Sheps, the owner of Nationwide Lending.
MR. ETRA: I thought --
THE COURT: I think you said Mr. Sheps.
MR. ETRA: Correct. Sheps. Owner of Nationwide.

BY MR. ETRA:
Q. Sorry. Were you in the middle of your --
MR. ETRA: May I ask if she's in the middle of an answer?
THE COURT: Yes. Of course.
BY MR. ETRA:
Q. Were you in the middle of your answer?
A. Okay. So what I was answering, that I always had communication with Mr. Sheppard, Eric Sheppard, not my boss.
Q. Okay.
A. Communication with him through email, text, and by phone calls regarding of -- any of the -- of these applications.
Q. How about Mr. Sheps? Did you check in with him to make sure that you were following his expert --
A. Yes. Of course. We have -- we have protocol that we have to inform every day what are we doing on our -- on our CRM.
Q. CRM means the database?
A. Yeah. The database that we have, we communicate and -- and also, by phone I always communicate with my boss, and in meetings, what's going on on each -- each client's file.
Q. And you were -- and when you engaged with Mr. Sheppard, it was based on the expert advice and direction from Mr. Sheps, your boss?
A. Yes. Mr. Sheps, yes.
Q. So is there anything that you have done in this -- with

respect to these companies that's inconsistent with what Mr. Sheps directed you to do?
A. I did exactly what he told me to do.
Q. And he was the one providing the expertise from your company, correct?
A. Correct.
Q. Okay. Fair enough.
Okay. We talked about the differences in the -- I think we've covered the differences -- oh, sorry.
So now we're looking at 62-2. This is actually the actual -- you say it's a printout --
A. Correct.
Q. -- from the SBA portal, right?
A. Yes.
Q. So what this means is that you sat -- were you working at home or in the office generally?
A. I was working at home.
Q. At home because of COVID?
A. Yes.
Q. Okay. So you sat at your home office?
A. Yes.
Q. And you opened up the SBA portal, right?
A. Yes.
Q. And you took the information that you got from the -- from Mr. Sheppard --

A. Correct.
Q. -- in one form or another and you inputted it to the SBA portal and you applied for it?
A. Correct.
Q. Okay. So where -- just generally, what part of South Florida -- I don't want your address -- did you live?
A. I live in Kendall.
Q. Okay. So you're sitting -- this is actually being filled out in Kendall in your house?
A. Yes.
Q. Okay. And I want to go to the very bottom of this, where there's some questions -- it starts at the previous -- next to the last page, at the very, very bottom it says: "Individual name." Do you see that?
A. Yeah.
Q. And then I want to go to the page after that and see what's there after --
MR. ETRA: Thank you. That's perfect.
BY MR. ETRA:
Q. "Name of Company, Phone Number." Do you see that?
A. Yeah. Yes.
Q. There's a line that says: Fee Charged or Agreed Upon." Do you see that?
A. Yes.
Q. And all that is blank here, right?

A. Correct.
Q. And you filled out this application, correct?
A. Correct.
Q. Could you explain what information is supposed to be here, if it applies.
A. The fees -- the fee that we were charge -- that is charging.
Q. Okay. So let's back up a little bit. This is the part of the application where the SBA asks the applicant to acknowledge if any third party is assisting them in the application?
A. Right.
Q. And the reality is that Nationwide was assisting Mr. Sheppard --
A. Yes.
Q. -- in his applications, correct?
A. Correct.
Q. In fact, it was taking the lead?
A. Correct. But at that point we didn't charge him anything yet.
Q. Okay. So in fact, they asked specifically in this part of the application: "Is any" -- "If anyone assisted you with this application, and whether you're paying for it or not, provide this information." Isn't that what they say -- it says in the SBA application?
A. I'm not sure.

MR. ETRA: I'm going to show only for the witness --

THE WITNESS: I'm not sure. But I know that I did not -- I did not complete that section because I already had his permission and his authorization to submit the file under -- you know, because he had signed my forms.

BY MR. ETRA:

Q. All right. I want to see if I can still refresh your recollection. This is from the --

MR. ETRA: Your Honor, this is from the SBA production. It's a form that has more information. So it's part of Government Exhibit 51 not yet in evidence, and it's Bates Number 030447 to 450.

MS. MARTINEZ: Your Honor, I believe the witness is going to be shown documents that she's never seen before, because she does not work for the SBA. So I object to this.

MR. ETRA: Your Honor, this is the --

THE COURT: All right. Hold on. Hold on.

So right now you want to show the witness a form to refresh her recollection?

MR. ETRA: Correct.

THE COURT: All right. Then Exhibit 51 for purposes of refreshing recollection.

MS. MARTINEZ: Your Honor, I object because this is an SBA document --

THE COURT: Okay. Hold on. And it may not refresh her recollection, but let's move forward.

MS. MARTINEZ: Your Honor, has the witness said she doesn't remember something and needs refreshing?

THE COURT: Well, I'm assuming you're going to ask the question that would allow you to refresh recollection.

MR. ETRA: Yes. I also may seek to move it in on its own, but we haven't gotten there yet.

THE COURT: All right. Well, let's continue.

BY MR. ETRA:

Q. Do you see the document that's on the screen?

A. Yes.

Q. Do you recognize that document?

A. No.

Q. You don't recognize this to be the completed --

MS. MARTINEZ: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. ETRA:

Q. I want to try to show you -- show a part of this and see if that --

THE COURT: Okay. Let's take it down. She already said it doesn't refresh her recollection.

MR. ETRA: That's the document as a whole. I want to refer her to a specific part.

THE COURT: But it's not in evidence.

MR. ETRA: Okay. Your Honor --

THE COURT: Let's continue.

MR. ETRA: Your Honor, I respectfully move this in evidence. It is part of the production.

THE COURT: You don't have to explain in front of the jury what it is. You're seeking to introduce Exhibit 51.

MR. ETRA: This part of --

THE COURT: Is there any objection?

MS. MARTINEZ: Your Honor, I would agree to move in the Government's Exhibit 51 through 60, which are all the SBA business records.

THE COURT: Hold on. Right now the request is to introduce Exhibit 51, 30447 to 450. Is there any objection?

MS. MARTINEZ: No, Your Honor.

THE COURT: All right. Then admitted into evidence. Let's continue.

(Government's Exhibit 51 Bates 30447 through 30450 received into evidence.)

MS. MARTINEZ: I do object to continuing to ask a witness a question about a document that she does not -- has never seen.

THE COURT: Well -- okay. Let's continue, please.

MR. ETRA: Okay. Could we go to the very end of the document.

THE COURT: Is this the document the witness just said she doesn't --

MR. ETRA: I'm showing her --

THE COURT: I know, but you're showing her an exhibit to which she doesn't know anything about.

MR. ETRA: The way it looks, perhaps not, but there's a part of it that may refresh her recollection --

THE COURT: What's the question that would allow refreshing recollection?

MR. ETRA: It's where you were before.

MS. MARTINEZ: Well, first, what doesn't she remember?

THE COURT: What's the question?

BY MR. ETRA:

Q. The question is: Where it says --

THE COURT: No. What's the question that would allow this witness to use a document that she's never seen to refresh her recollection?

MR. ETRA: If the sentence above Line 62 refreshes her recollection of how the SBA portal application looked.

MS. MARTINEZ: Objection, Your Honor. The --

THE COURT: The objection is sustained. Let's continue.

MS. MARTINEZ: Your Honor, I object to showing this document at this time to the --

MR. ETRA: I'm taking it down.

THE COURT: Let's take it down, and let's continue with your questioning.

MR. ETRA: Oh. You know, I have to go back to something before. Let's go back to 62-2, and I want to go to the email address on the top of the second page.

BY MR. ETRA:

Q. You see that, ma'am?

A. Yes.

Q. Okay. That email address of es.hmmd2020@yahoo.com --

A. Yes.

Q. -- you actually opened up that email address, correct?

A. Yes, I did.

Q. And that was at the advice and direction of Nationwide, correct?

A. Correct.

Q. Okay. It wasn't Mr. Sheppard's idea to use that email address, correct?

A. No. It was not his idea.

Q. In fact, Mr. Sheppard provided to you in his online portal his regular email address?

A. Correct.

Q. And the reason for that is it was Nationwide's view that each application should have a separate email address, correct?

A. Correct.

Q. Okay. That was Nationwide's advice to Mr. Sheppard in or about July of 2020, correct?

A. Yeah. Yes. He accept the fact to have the separate emails, so that way we know how to -- it was very confusing with four applications. It just made it a lot easier to have each -- each company with separate emails.

Q. And it was an email that was opened up -- and again, that was the advice and direction of Nationwide, right?

A. Correct.

Q. Okay. And was the process confusing?

A. The process confusing?

Q. You said it was very confusing having different --

A. No. If you would have one email, it would have been confusing -- confusing. But since we had different emails, it -- everything pertaining to one company --

Q. In that email address?

A. Right.

Q. So the SBA only saw, from your perspective, this email address or whatever this email -- the Yahoo email address --

A. Right.

Q. Does the SBA require separate email addresses for different applications?

A. No.

Q. But that was your practice, right?

A. Right.

Q. Okay. And in fact, you had access -- you had the password for this email address, correct?

A. We both had access to it.

Q. At the beginning, only you had access; is that correct?
A. In the beginning, way beginning, I had access, but I gave it to him afterwards.
Q. Because he asked for it, correct?
A. Yes.
Q. And who had access to the SBA portal for this application?
A. We both had access to it as well. It was the same.
Q. Well, no -- okay. He had access to the Nationwide portal, right?
A. Right.
Q. And you had -- Nationwide had access to the SBA portal, right?
A. Right. But Mr. Eric Sheppard had access to the SBA --
Q. At some point you gave him access as well?

MS. MARTINEZ: Your Honor, I object to him speaking over the witness.

THE COURT: All right. It's going to drive the court reporter crazy. So let the witness answer the question, then move on to your next question for the witness.

BY MR. ETRA:
Q. Tell me, did you produce -- did Nationwide produce all the emails between Nationwide and Mr. Sheppard?
A. Yes.
Q. What kind of search did you undertake?
A. Excuse me?

Q. What kind of search did you do to get all the emails?
A. What do you mean "what kind of search"?
Q. How did you go about making sure you had all the emails?
A. I don't understand your question. Sorry.
Q. I'll withdraw the question.
(Pause in proceedings.)
MR. ETRA: Your Honor, I want to put up for the witness only an email that -- I don't know that it's in the production, but it's between Mr. Sheppard and Ms. Palancar. I did not --
MS. MARTINEZ: Objection to describing a document that no one has seen, including me.
THE COURT: Identify it by its exhibit number.
MR. ETRA: R-2.
THE COURT: Is this the first time the Government has seen it or are you aware of R-2?
MS. MARTINEZ: First time I've seen this, Your Honor, in the middle of testimony.
THE COURT: How many pages is R-2?
MR. ETRA: One and then it carries over.
THE COURT: What's the Bates number?
MR. ETRA: I don't have a Bates number. We don't have a Bates number, Your Honor. It wasn't -- we didn't do a production. I can describe it, as it ends in an email from Mr. Sheppard to --

THE COURT: Hold on.

MR. ETRA: I'm sorry.

THE COURT: So are you -- is this an impeachment exhibit?

MR. ETRA: First it's an impeachment exhibit --

THE COURT: Okay. Then let's lay the grounds to be able to impeach the witness with this, while showing the Government.

Let's continue.

BY MR. ETRA:

Q. Ms. Palancar, without describing the email -- the substance of the email, let's look at the very bottom part of it, please.

THE COURT: What's the question that will allow you to use this exhibit for impeachment purposes?

MR. ETRA: Well, that she produced all the documents, and this is not one of them. This was not in the production.

May I proceed?

THE COURT: This was the production that the Government gave?

MR. ETRA: We did not see this in the production the Government gave, but we had it from Mr. Sheppard.

THE COURT: All right. Let's continue.

BY MR. ETRA:

Q. Do you see the email exchange -- the email in front of you?

A. Yes.

Q. Okay. Do you recognize this exchange?
A. I recognize that I did give him the email with the password.
Q. Right. And do you recognize the email at the bottom half of this without describing it?
A. The bottom half?
Q. From the SBA. It's not an email. It's some kind of a message.
A. That's the portal.
Q. Okay. Oh. That's from the portal?
A. Yes.
Q. Okay. And did you send this email to Mr. Sheppard on or about that date in the ordinary course of your business at Nationwide?
A. Yes, I did.
Q. Okay.
A. I sent -- I sent him the login and the pass -- and the password. And I also sent him -- I also sent him the -- to review the portal from -- the SBA portal.
Q. Did you produce this document?
A. I sent him that email, yes.
Q. I'm asking if you produced this to the Government.
A. Oh. I produced everything that I had in my -- in my emails.
MR. ETRA: Your Honor, we offer R-2 as a business

record.

THE WITNESS: Now --

MS. MARTINEZ: Your Honor, I have no objection to this document.

THE COURT: All right. Admitted into evidence.

(Defendant's Exhibit R-2 received into evidence.)

THE WITNESS: -- it could be that if it's not with the documents -- but I've always told them that he had the access because I gave it to him.

BY MR. ETRA:

Q. Okay.

A. On the portal and the emails.

Q. All right. Could we just go through this document now, ma'am?

A. Yeah.

Q. So in this document you're taking -- you went into the portal and saw the message --

MR. ETRA: Let's go to the bottom.

BY MR. ETRA:

Q. -- from the portal that the loan -- this is HM Management -- loan had been approved, right?

A. Correct.

Q. And you forwarded that to Mr. Sheppard, right?

A. Correct.

Q. Because he probably -- because he didn't have access at

that point to the portal, correct?
A. Right. But this is showing that I was giving him access to go into both.
Q. Right.
A. So this is an evidence that what I said is correct. I gave him access to the portal and to the emails.
Q. Okay.
A. And that's what is important. Him and I were always coordinated of everything.
Q. Okay. Okay. So when you say you're forwarding login -- do you see at the upper left-hand corner.
A. Uh-huh. Yes.
Q. -- it says "login"? That's the Yahoo email address that you opened, correct?
A. Correct.
Q. And the password, that's the password for the Yahoo email --
A. Correct. Uh-huh.
MS. MARTINEZ: Objection.
BY MR. ETRA:
Q. So here when the loan got approved --
MS. MARTINEZ: Objection, Your Honor. It's not clear from this whether that's to the email or to the SBA portal.
THE COURT: And you'll have an opportunity for redirect. Overruled.

BY MR. ETRA:
Q. And that's what you're doing here, is, at this point, now that the loan has been approved, you're sending him the notice essentially that it's been approved, correct?
A. Correct.
Q. Okay. Which includes access to the email, right?
A. Correct.
Q. Okay.
A. I'd like to say one statement, please. The SBA portal password and email is the same -- is the same as the SBA portal and also the email. It's the same.
Q. Okay.
MR. ETRA: Could we go to the text messages that are in evidence on August 10th.
(Pause in proceedings.)
THE COURT: Any further cross-examination?
MR. ETRA: Yes, Your Honor.
BY MR. ETRA:
Q. We're on the text messages in evidence on August 10th, and you're writing to Mr. Sheppard. You went over this on direct -- in the middle, correct?
A. Excuse me?
Q. The message here in the middle, which says: "I spoke to the SBA people today and convinced them," do you see that?
A. Yes.

Q. Is that you writing?
A. No. That's him.
Q. Okay. And he's saying: "You may want to check the portal, as I do not know the access numbers," right?
A. Correct.
Q. So he's saying, two days later, on August 10th, he doesn't know the access numbers to the portal, right?
A. He had it. It's just, you know -- he had to go in and -- to sign the documents, he had to go into the -- to the email -- and signed. And it would lead him to the SBA portal. Like I said, the passwords were the same for the SBA and for the email. It was the same username and password.
Q. And then that's when -- after the loan got approved is when you sent documents for Mr. Sheppard to approve the payment for the membership fee of $7,500; is that right?
A. After the fact that he got funded, I verified that he was funded, and then we proceeded with -- with the invoice.
Q. Okay. Let's talk about HM-UP.
MR. ETRA: Let's go to R-21.
BY MR. ETRA:
Q. And I think you testified this was done the same day or close in time, the -- we're talking about the -- putting information into Nationwide's portal. It was done around the same time for HM-UP?
A. Yes.

Q. As it was for HM Management; is that right?
A. Correct.
Q. Okay. And here -- and your testimony is that you sent this to Mr. Sheppard. And from what you understand, he filled it out, right?
A. Yes.
Q. Not Mr. Sheps. Not Mr. Sheps, "P," correct?
A. Daniel. Just call him Daniel, please.
Q. Okay. If that's okay, I'll call him Daniel.
Not Daniel?
A. Huh?
Q. Daniel didn't fill it out, from your understanding?
A. No.
Q. You believe Mr. Sheppard filled it out?
A. No. Mr. Sheppards [sic] filled it out.
Q. Okay. All right. So let's go through some of the pieces of information here. In terms of the information the portal gives, it's the same, right? It doesn't give any more explanation than we saw before, right?
A. Uh-huh.
Q. Yes?
A. It's the same exact questions.
MR. ETRA: And then let's look at gross revenue and cost of goods sold and rental properties, the bottom three, and pull them up. Let's get the rest of the rental properties in

there too.

BY MR. ETRA:

Q. So here, this is the information that came back from Mr. Sheppard, for example, gross revenue for that 12-month period, 2.1 million, right?

A. Correct.

Q. And you had a discussion with Mr. Sheppard about this number, correct?

A. Yeah. We spoke -- we went over every aspect of questions of the application.

Q. And he explained his calculation for these numbers, right?

A. Yes.

Q. Basically, what he told you, it made sense to you, right?

A. Yes.

Q. And so, from your perspective, it was a check, based on the way he described how he calculated revenues, right?

A. Correct.

Q. Same thing for cost of goods sold, right? He described how he -- he described how he calculated his cost of goods sold of 1.2 -- almost -- 1.2 million about, and you were okay with it based on your discussion, right?

A. Yes.

Q. And the same thing: "Rental properties, None" -- sorry. "Rental properties, lost rents due to disaster," he explained his thinking at that time of how he saw that number, right?

A. Yes.
Q. And you were okay with that?
A. Yes.
Q. And again, none of this went to eligibility issues from your perspective?
A. Correct.
Q. You just wanted to get the numbers as accurate as you could?
A. Right.
Q. Okay. And if we go to the next page, with respect to owner information, there are now two owners listed here, right?
A. Yes.
Q. Okay. So -- well, let me do this in pieces. Actually, right here it actually has one owner, so we'll get to that later.
MR. ETRA: Let's actually go above "Owner," if we can. Let's look at the phone number, and the alternate phone number, and the email. Let's do them all together.
BY MR. ETRA:
Q. Mr. Sheppard provided the exact same contact information for HM-UP as HM Management, right?
A. Yes.
Q. So he provided the same 088 business phone, right?
A. Yes.
Q. He provided the cell phone number you recognize, 5529?

A. Yes.
Q. And he provided his regular email address, right?
A. Correct.
Q. And if we can go to Owner Information, it has Mr. Sheppard there, right?
A. Yes.
Q. And he provides his cell phone number and his regular email, right?
A. Yes.
Q. And his address of 180 Bal Cross Drive, right?
A. Correct.
Q. Okay. Just like he gave the first time, right?
A. Yes.
Q. And -- and it says: "Ownership Percentage, 52 percent." Do you see that?
A. Yes.
Q. Did that lead to a discussion about who the other owner was?
A. Correct.
Q. Tell me about that.
A. The other owner was discussed. And I called him to -- because I would need -- I would need the information from the other owner, too, as well.
MR. ETRA: Could we look at the emails at Page 034290.

BY MR. ETRA:
Q. Do you recognize that email?
A. Yes.
Q. What was going on in that email?
A. That was me verifying with him about the ownership -- the 52, so there had to be a 48 owner. So I needed -- and Mr. Robert Kallman was -- he mentioned to me that he's the other -- the other owner.
Q. So he provided you with Mr. Kallman's information?
A. Yes, he did -- provided me with that. And he -- and he provided me with the driver's license that I needed.
Q. Right. And the email address here is an aol.com email address, right?
A. Correct.
Q. And the phone number is a 516 number, correct?
A. Correct.
Q. But that's not the information that you put in the actual SBA application, right?
A. The -- only the email was -- was the email changed.
Q. Okay. Let's go to that.
(Pause in proceedings.)
BY MR. ETRA:
Q. Having trouble finding the document, so I'll just ask you: What email addresses did you put into the SBA portal for HM-UP? You don't have to give the exact names. Just describe them,

please. Do you recall?
A. Okay. Okay. For which company?
Q. For HM-UP.
A. HM-UP?
Q. Yes.
A. There's two HM-UP.
Q. Right. So was one of them es.hmudat2020?
A. Uh-huh.
Q. And the other one was RS dot same thing?
A. Right.
Q. Okay. And again, these are email addresses that you came up with -- these are email addresses that you actually opened at the time, right?
A. Correct.
Q. And it was Nationwide's practice to use these new email addresses for the SBA application?
A. Right.
Q. And at least initially you had access to the email and the password. At some point, you provided those to Mr. Sheppard, right?
A. Correct.
Q. And there was some kind of complication at the end of this process about getting the funding. There was a lot of back-and-forth and changing of emails, right?
A. Well, on -- one of them had an issue because of -- for some

reason, the email was -- was -- instead of ES it was RS. But that was fixed by just writing a letter to the SBA representative, which is actually on my text. This was one of the -- the letters that I was asking for him permission to accept so I can correct that -- that issue.

But it was also the -- the delay was also because of the wire instruction on this second -- the second loan, the company, HM-UP Alafaya Trails, which delayed just a month. Four weeks later he received the funding.

Q. And when the loan was approved, when you got the notice that the loan was approved --

A. It was approved from the beginning. It was just that the -- the documents were sitting in the email and we couldn't get -- and they were sending it to the incorrect email.

Q. And when the loan was approved is when you charged Mr. Sheppard the $7,500 for that?

A. Yes. After the -- after he got funded and -- we would charge him the -- our -- the fee, servicing fee.

Q. And in terms of applying for four loans at the same time, was that a problem from Nationwide's perspective?

A. If that's a problem for --

Q. From Nationwide's perspective, with whatever expertise it has, did it view the application of four loans at the same time for different companies to be a problem?

A. No. That was not a problem. That's what we do. We try to help and finance. But the goal was to give him more financing in different ways.

Q. Right. Okay.

Okay. And this is on August 21, 2020. I have on the screen one of the emails from you to Mr. Sheppard, right?

A. Yes.

Q. And you're emailing him at his regular Gmail, right?

A. Yes.

MR. ETRA: And let's just go a little below that to see what's below this.

Next page.

BY MR. ETRA:

Q. Like before -- well, you're forwarding information from the portal, right?

A. Correct. Yes.

Q. And so you were forwarding it to him because at least at this point Mr. Sheppard didn't have access to the portal, correct?

MS. MARTINEZ: That's not --

THE WITNESS: No. He had access to the portal. It's just that I would -- I will always send things to him when he had to do things.

BY MR. ETRA:

Q. Okay. So you were more focused day to day on this loan process, right?

A. Yes.
Q. And if we go back to the other page, you were forwarding him access to the portal and you were including the email address and the password, right?
A. Correct.
Q. Which, as you said, is the password not just for the email address but also for the portal?
A. Correct.
Q. Okay.
MR. ETRA: Your Honor, I'd like to put up just for the -- let me actually ask a different question. Let me ask a question to set this up properly.
BY MR. ETRA:
Q. You would use the email addresses that you created to communicate with the SBA, correct?
A. Those emails is where we would get correspondent emails from the SBA, or if you needed to send some -- a letter -- like, for instance, I sent a letter regarding the issue with the email that we needed to correct. So yes, you use the email, but everything was uploaded from the portal.
Q. I just want to focus on my question, please.
A. Okay.
Q. You used those email -- those Yahoo email addresses to communicate with the SBA, correct?
A. Correct.

Q. And when you did that, you would sign the email address with the name of either Eric Sheppard or Robert Kallman, correct?

A. Correct.

Q. Okay. So you essentially were communicating with the SBA as if you were either Mr. Sheppard or Mr. Kallman; is that correct?

A. Correct.

Q. And then, when you were done doing that, you would forward that to Mr. Sheppard and tell him: "This is what I've done"?

A. No. I would do it before. I would let him know before.

Q. But then after it got sent, you would send a copy to Mr. Sheppard?

A. I didn't have to send him a copy. He had access to the emails.

(Pause in proceedings.)

BY MR. ETRA:

Q. Okay. Are you aware of the fact that during this process Mr. Sheppard would communicate directly with the SBA using his own Gmail account?

A. Yes.

Q. Okay. So Mr. Sheppard wasn't hiding behind those Yahoo emails that you created, right?

A. That's fine. He -- he has access a hundred percent.

Q. You didn't tell him he shouldn't be doing that, did you?

A. He has access a hundred percent.
Q. Okay.
A. He and I would always talk to the SBA together.
Q. Okay. Did Mr. Sheppard also -- around the time in September of 2020, did he provide you financial data on HM-UP?
A. H?
Q. HM-UP Alafaya Trails.
A. Uh-huh. Yeah. He at one point send me financials for his companies, yes.
Q. And that was as early September of 2020, correct?
A. I don't recall the time -- the date, but yes. He -- in my emails, you could see when he send it to me.
Q. Right. And that was even before the HM-UP loan funded, correct?
A. Rephrase that question again.
Q. He sent you HM-UP financials before the HM-UP loan funded, correct?
A. I don't recall. But I don't think that -- that the first funding -- the financial was needed, the tax returns.
Q. I'm not talking about -- I'm just asking a simple question, and I think the answer is you don't recall, but let me just clarify --
A. Okay.
Q. -- that Mr. Sheppard sent you financials on HM-UP before the HM-UP loan actually funded.

A. (No verbal response.)
Q. Is that true or not, or do you not recall?
A. I don't recall right now.
Q. Okay. Well, do you recall when the HM-UP loan funded?
A. Yes.
Q. When was that?
A. One was funded in August, and the other one was funded in September.
Q. Late September, right?
A. Uh-huh. Yes.
Q. Okay. Because he actually paid -- he actually got charged on like October 2nd, right?
A. Correct.
Q. Okay.
MR. ETRA: And I would like to use a document to try to refresh the witness's recollection of when Mr. Sheppard sent financial information on HM-UP. May I do so?
THE COURT: All right.
MS. MARTINEZ: Have I -- what's the document?
THE COURT: Show that to Ms. Martinez.
MR. ETRA: R-12.
MR. CAVALLO: They have R-12 and R-16.
MS. MARTINEZ: Okay. I was just provided this. Let me take a look.
(Pause in proceedings.)

MS. MARTINEZ: Okay. This is not an email. This has nothing to do with Nationwide.

MR. ETRA: Oh. I have the wrong document. I apologize. R-16. I apologize. R-16, which you have.

(Pause in proceedings.)

MR. ETRA: Is it okay? May I proceed?

THE COURT: You may.

MR. ETRA: Okay.

BY MR. ETRA:

Q. Do you see the document on the screen is R-16?

A. Yes.

Q. Does that refresh your recollection that on September 3rd, certainly before the HM-UP loan funded, that Mr. Sheppard's companies were sending you financial information on HM-UP?

A. Yes.

Q. Okay. So when Mr. Sheppard -- and that was sent by Jeanette, right?

A. It was sended [sic] by her. Yes.

Q. Do you recall generally getting financial information or -- and other information from Jeanette Gonzalez?

A. Yes. She -- she -- I recall her sending me financial --

Q. When you got the information, and you looked at the financial information, did you check -- did you call Mr. Sheppard and say: "I see the information that's on the HM-UP SBA applications, but it's inconsistent with the

financial information"?
A. I don't recall.
Q. Okay. You never -- but you had actual financial statements before the loan funded. You had that from --
A. Yes.
Q. -- from Jeanette, correct?
A. Correct. She gave it to me on -- with -- September 3rd.
Q. Right. Before the HM-UP SBA loan funded, correct?
A. Right.
Q. Okay. And you never called Mr. Sheppard to say: "Oh, my God. Your numbers are all off. We have a problem with this application," correct?
A. Correct.
Q. You never thought there was ever a problem with these applications?
A. No.
Q. Correct?
A. I didn't think so.
(Pause in proceedings.)
BY MR. ETRA:
Q. Ms. Palancar, you were shown a, I think, HM Management 2019 tax return that you said came from your files. Do you remember that testimony?
A. Uh-huh.
Q. You got to say yes or no.

A. Yes.
Q. Okay. I understand. It's for the record.
A. Sorry.
Q. That's okay. And you testified -- and the Government showed you the version that was filed versus the version that was in your files, correct?
A. Correct.
Q. And the version that was in your files had -- this is HM Management 2019, right?
A. '19, yes.
Q. It had a number for I think wages.
A. Yeah.
Q. Of several hundred thousand dollars?
A. Salary and wages.
Q. First of all, is there any issue with wages that are relevant to -- from your perspective, to an EIDL application?
A. (No verbal response.)
Q. There's no connection, right?
A. There's -- like I say, that's not my decision. That's a SBA decision.
Q. Let me say it differently. Did you give any advice to Mr. Sheppard about whether wages has any impact on an SBA loan being approved?
A. No.
Q. Okay. Likewise, we talked a little -- you were asked on

direct about employees. Do you recall that?
A. Yes.
Q. Number of employees?
A. Yes.
Q. Did you give any advice to Mr. Sheppard about how to determine or allocate employees from his companies?
A. No.
Q. Did you tell him this was a critical issue from your perspective with SBA approval?
A. No.
Q. No. Okay. Great.
Okay. What I didn't see in your documents is any email transmitting that -- those -- let's call them fake returns for 2019. Do you have an email showing that?
A. An email showing?
Q. Showing the transmission of the fake 2019 returns that you testified about in your direct.
A. Forwarding it to who?
Q. Well, you say they're in your files, correct?
A. Yes.
Q. I'm trying to trace how they got there.
A. Oh. How they got there. He sent them to me with my -- he sent them to me.
Q. Well, when you say he sent them to you --
A. Through email.

Q. Did you produce that email?
A. No. I didn't produce that email.
Q. Why didn't you produce the email?
A. I don't understand your question.
Q. Okay. I apologize. You say for the fake 2019 returns that Mr. Sheppard emailed them to you, correct?
A. Yeah. He emailed them to me.
Q. Right. So there's an email from Mr. Sheppard to you, you're saying, with the fake 2019 returns, correct?
A. Correct. Well, I didn't know that those were fake.
Q. I understand.
A. But he send them to me in an attachment and through to my email.
Q. Okay. I don't see that email in your production. Have you seen that email?
A. It is in the emails, in the documents.
Q. When was it sent?
A. I need to see the exhibit.
Q. Fair enough. Why don't I show you something else, then.
MR. ETRA: Your Honor, I'd like to put on the screen for the witness only R-31, which is an email forwarding 2019 tax returns from HM Management.
THE COURT: All right. All right. Just identify it as R-31 without describing what it is.
Let's -- does the Government have a copy of R-31?

MS. MARTINEZ: I just received a copy.

THE COURT: All right. Let's continue.

BY MR. ETRA:

Q. Do you see R-31 in front of you?

A. (No verbal response.)

THE COURT: That question is directed to you, Ms. Palancar.

THE WITNESS: Oh. I'm sorry. I'm looking at this.

BY MR. ETRA:

Q. The first question is: Do you see it in front of you?

A. Yes, I do.

Q. Very generally, do you recognize it?

A. Okay. So this is the copies of the tax return of '17 and '18 and '19 of HM that was forward from Eric to Daniel and myself. So back in February 8th of 2021.

Q. Do you recognize this to be an email exchange?

A. Yes. It could be an email exchange that -- you know, I was added to it.

Q. Okay. Do you recognize this as an email forwarded by Mr. Sheppard to you and Daniel -- I'm using his first name at your suggestion --

A. Yeah. Daniel.

Q. -- in the ordinary course of your work for the Sheppard companies?

A. Yes.

Q. And you see it's from --

MR. ETRA: Your Honor, the Defense offers R-31.

MS. MARTINEZ: Your Honor, I have no objection to the email. I've been handed a set of, I don't know, maybe 30 pages of attachments. I'd like an opportunity to -- which doesn't have to be now, but before we finalize the admission, I'd like an opportunity to compare it to the files.

THE COURT: All right. That's fair.

MR. ETRA: Your Honor, the next point would be to go through the attachments, particularly the 2019 one.

MS. MARTINEZ: Oh, my goodness.

Your Honor, I don't know what the point would be.

THE COURT: Yeah. I don't know what the point would be either.

MR. ETRA: I could proffer. I don't know if you want me to do it on sidebar or not. I could just show her the first page.

THE COURT: Aren't these exhibits already in evidence?

MR. ETRA: No.

MS. MARTINEZ: No. I put into evidence the records from Nationwide. I have -- I need the opportunity to compare what has been just provided to me to see if it's authentic. I don't know.

THE COURT: And I'm not going to waste the jury's time with having to look through 30 documents. This is an impeachment exhibit. And if you want to use it as such, you can use it. But to introduce in the Government's case in chief additional evidence that has been described as impeachment is improper. So let's continue with the cross-examination.

MR. ETRA: May I proceed with the questioning?

THE COURT: You may proceed with the question.

BY MR. ETRA:

Q. Do you remember receiving a 2019 HM Management return different from the one the Government asked you about on your direct examination?

A. Okay. One more time, please.

Q. Sure. No problem.

You testified on your direct examination about a version of a 2019 HM Management tax return, correct?

A. Correct.

Q. Which the Government showed was different from the actual filed return?

A. Correct.

Q. That return that the Government showed you that you say was from the Nationwide files, do you recall from your memory of this matter ever reviewing a 2019 HM Management tax return different from that one?

A. I really don't recall seeing a different one.

Q. Okay. Well, I'd like to see if I can refresh your recollection.

MR. ETRA: Just for the witness only, let's go to the 2019 HM Management --

MS. MARTINEZ: Your Honor, objection, just because I haven't had an opportunity to compare these to the authentic files.

MS. WEINTRAUB: Judge, can we take a 10-minute break?

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

COURT SECURITY OFFICER: All rise.

(Jury not present, 4:01 p.m.)

THE COURT: All right. Ms. Martinez, take the time to review the -- do you have the attachments that you gave to her?

MR. ETRA: Yes, Your Honor.

(Recess from 4:01 p.m. to 4:11 p.m.)

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

Before we bring the jury, it is 10 after four on Day 10 of our trial. I have been very clear that tomorrow we will be in session, and then we will be in session on Monday and Tuesday, the 18th and the 19th. And it's very clear to this Court that given the number of witnesses the Government still needs to call, that we will be looking at January. So I have asked the courtroom deputy to ask the jurors their availability on -- I believe we said the 8th and the 9th, that Monday and Tuesday.

COURTROOM DEPUTY: I was waiting for two people who were on the phone.

THE COURT: You can actually do it at the end of the day. We don't need the information right now. I just did want to share with the attorneys that I had asked you to inquire.

Unless you're telling me, Ms. Jimenez and Ms. Martinez, that you believe that you'll be done tomorrow, it would appear that -- given the Defendant's representation that they need at least two days, that we're not going to finish this by the 19th.

MS. WEINTRAUB: Probably a day or day and a half. I don't want to misrepresent anything.

MS. JIMENEZ: Your Honor, it's not up to us. We have, you know, so-called impeachment records submitted on cross-examination -- a very lengthy cross-examination, that we were never advised of, nor was the Court advised of. And so we have witnesses -- and you know -- so I can't say to the Court whether we'll be finished tomorrow.

THE COURT: All right. Well, was R-31 part of the emails that the Government produced?

MS. MARTINEZ: Your Honor, no --

THE COURT: Okay. Then it is true impeachment.

So at this point in time --

MS. MARTINEZ: No, no, no, Your Honor. Your Honor -- Your Honor, it is completely different from what made it into the witness's records. So my point is that I need to -- I need to object to even -- I had agreed to in good faith thinking that R-31 was something authentic, but I looked at the attachments and they are not authentic. So I cannot -- I have to withdraw my agreement to the front page of R-31 and ask that should they want to move that in they need to authenticate it through a different witness. It did not make it into this witness's files.

MS. JIMENEZ: So Your Honor, it is tax returns -- purported tax returns forwarded from Jeanette Gonzalez to Eric Sheppard with the attached -- the true tax return that's in Mr. Cupersmith's file and that was filed, and then it's forwarded from Eric Sheppard to Nationwide. I know from my own experience, when you forward something you can remove an attachment, change an attachment, change anything and everything that you want. What has made it into this witness's files is a false tax return.

MS. MARTINEZ: And she has authenticated that. But to use her to try to authenticate something that she doesn't recognize, and that we can assert to the Court it did not make it to her files, we just object.

THE COURT: All right. At this point in time, the request to introduce it is denied, and you can attempt to move forward with the cross-examination in whatever way you see fit.

Let's bring in the jury.

(Before the Jury, 4:15 p.m.)

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

Please be seated, everyone.

We'll continue with the cross-examination.

BY MR. ETRA:

Q. Ma'am --

MR. ETRA: We're still on R-31 only for the witness.

BY MR. ETRA:

Q. Okay. I just want to --

MS. MARTINEZ: Your Honor, I object. This is not from the witness's files, and there's no basis, no foundation to show it to her.

THE COURT: All right. It's not being shown to the jury. What other questions do you have for the witness?

MR. ETRA: Okay.

BY MR. ETRA:

Q. Do you see the first page of the HM Management 2019 tax return?

MS. MARTINEZ: Your Honor, I have --

THE COURT: This is the attachment?

MR. ETRA: Correct.

MS. MARTINEZ: This is an attachment to a document that has not been --

THE COURT: The objection is sustained.

MR. ETRA: I just want to ask if it refreshes her recollection that she saw this.

THE COURT: You're showing her one page -- the objection is sustained.

BY MR. ETRA:

Q. Did you ever see a 2019 tax return with a different figure for -- for -- with a different figure of wages, other than the one that the Government showed you?

A. Okay --

MS. MARTINEZ: Your Honor, I object to showing this to the witness.

MR. ETRA: Your Honor --

THE COURT: Without showing the witness, you're asking -- take it down, and let's ask a question.

BY MR. ETRA:

Q. Okay. Did you ever see a different version of the 2019 HM Management tax return?

A. No.

Q. You're sure about that?

A. In my records --

Q. I'm asking you what you have seen, your recollection.

MS. MARTINEZ: Her statement was her records.

MR. ETRA: I'm just asking about her recollection.

THE COURT: You may continue.

THE WITNESS: In my records, what I gave to them is what I had in the file. Today is when I saw that other one.

BY MR. ETRA:

Q. So your testimony is you never received a different version of the 2019 HM Management tax return. Is that your testimony?

A. I have to say no, because the one that I gave to them was in my records and that's the one that I gave to the SBA.

Q. You gave that to the SBA? Is that what you said?

A. Yes.

Q. Okay. Let me take a step back.

Your testimony is based on what you found in your records, correct?

A. What I have in my records.

Q. You're not testifying from personal recollection from 2021; is that correct?

A. Okay. Can you kind of explain me again that question?

Q. Sure. Sure. What I mean is you don't have a memory of what the tax returns looked like that you saw back in 2021. You're not testifying from a memory of what those returns looked like, correct?

A. Correct.

Q. You're testifying about what you found in your records, correct?

A. Correct.

Q. Okay.

A. What I have in my records and what I submitted. So the SBA

would know what was sent, and that's what I have.
Q. And the HM Management application that was successful, that funded, that did not involve the 2019 tax returns, correct?
A. (No verbal response.)
Q. It wasn't part of the application, correct?
A. No.
Q. Are you agreeing with me?
A. For the funding? For the funding?
Q. Yeah.
A. At that moment, no. They asked for the tax returns once you were doing the increase-ment [sic].
Q. All right. In 2021?
A. Yes.
MR. ETRA: Your Honor, can I go back to the cover email that she saw in R-31?
MS. MARTINEZ: No, Your Honor. I object.
MR. ETRA: This is cross-examination, Your Honor.
THE COURT: All right. Hold on.
You've already shown it to her. She's already responded to -- what additional questions do you have with regard to your impeachment exhibit?
MR. ETRA: To establish that she received that email, and that's where she got the 2019 returns. If I'm not allowed to show the attachments with this witness, I just want to at least lock her in on that.

MS. MARTINEZ: Lock her in?

THE COURT: All right. Let's continue. You may show the witness.

MR. ETRA: R-31, please, the email.

THE COURT: For the witness only.

MR. ETRA: For the witness only.

BY MR. ETRA:

Q. You're not denying that you received this email in February 2021 from Mr. Sheppard, correct?

A. I'm not denying it, because I see that it's -- my name is there. But I'm not sure what's in those documents there.

Q. I understand that. But that certainly an email where Mr. Sheppard is forwarding to you the 2019 tax returns we just -- today we're not going to cover what those attachments --

A. Well, this is -- this is Jeanette Gonzalez forwarding to Daniel. This was forward to Eric, and then Eric forwarding to Daniel and myself.

Q. Right. And that's when you guys got the 2019 tax returns, correct -- whatever version it looks like, because we're not doing that today.

A. I really don't recall this email. But I could tell you that it -- I don't know what's in those emails. I just know that I received it directly from Eric, and I sent in -- the ones that he gave me is the one I had in my file, and that's

the one I used.
Q. You're basing that on the fact that you see what's in your file, correct?
A. Correct.
MR. ETRA: May I have a moment, Your Honor?
THE COURT: All right.
(Pause in proceedings.)
MR. ETRA: Could you put up Exhibit 63 at Bates Number 33647, please.
In evidence, right?
In evidence.
We got to take that down. You got to take that down.
(Pause in proceedings.)
BY MR. ETRA:
Q. Do you see what's up in front of you, which is Government Exhibit 63, which is the 2019 HM-UP tax returns? Correct?
A. Correct.
Q. And that was given to you by Mr. Sheppard, correct?
A. Correct.
MR. ETRA: And I want to put next to it the version from Mr. Cupersmith, Exhibit 30-2, in evidence.
BY MR. ETRA:
Q. You'll agree with me these look like the same returns, correct?
A. (No verbal response.)

Q. At least on the first page?
A. Yes.

MR. ETRA: No further questions, Your Honor.

THE COURT: All right. Redirect.

MS. MARTINEZ: Your Honor, this is Exhibit -- I'm trying to find just the exhibit that he just --

THE COURT: It was represented it's Exhibit 63 at 33647.

(Pause in proceedings.)

MS. MARTINEZ: I just don't have that Bates number in Exhibit 63.

THE COURT: All right. Where is the -- 33647?

MS. MARTINEZ: That's not my Exhibit 63.

MR. ETRA: Chris, could you help her?

MS. MARTINEZ: Could I please see what exhibit is this?

MR. ETRA: Sixty-three. This is what I have.

MS. MARTINEZ: Okay. This is 63. And it starts at 34, not 33?

THE COURT: Which exhibit is 33647?

MS. MARTINEZ: I just want to know --

THE COURT: I'm asking -- it was represented it's Exhibit 63, which appears to be inconsistent with Ms. Martinez's exhibit. It's the Government's exhibit. So where is Bates 33647?

MR. CAVALLO: It's in -- we were provided with folders. I'm looking at the Government trial exhibits folder, Folder EX 63. It's the sixth document down, Exhibit 63. And it's called "2019 Tax Return HM-UP Development Alafaya Trails, LLC," paren, one, close paren. And it has the Government's Bates stamp on it. That's SHEPP. And the numbers following that are the Government's Bates stamp.

MS. MARTINEZ: Again, there may be different productions. So this is not the Government's exhibit that's been admitted into evidence. So I'm just trying to find it.

MR. CAVALLO: I offered to go show the Government on my computer screen.

THE COURT: Yes. Mr. Cavallo, why don't you go ahead and show Ms. Martinez, so she can --

MS. MARTINEZ: I found it, Your Honor.

THE COURT: All right. Is it Exhibit 63?

MS. MARTINEZ: Yes, Your Honor.

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

MS. MARTINEZ: Can you take that down, please.

(Pause in proceedings.)

REDIRECT EXAMINATION

BY MS. MARTINEZ:

Q. Ms. Palancar, you were asked on cross-examination regarding your role at Nationwide, and you explained that you were a processor. Who made the decision whether to approve the loans

or not to approve the loans? Was it you or was it the SBA?
A. The SBA.
Q. Who provided you the information that you provided to the SBA? Who gave you the information for the loans?
A. The client.
Q. And the client in this case is?
A. Eric Sheppard.
Q. Did Mr. Sheppard -- did he speak directly with the SBA himself?
MR. ETRA: Objection. Based -- personal knowledge.
THE COURT: If the witness knows. I'll allow it.
BY MS. MARTINEZ:
Q. Did Mr. Sheppard speak to the SBA directly?
A. Yes. From time to time, yes, he spoke directly.
MS. MARTINEZ: Can you pull up Government's Exhibit 68.
Next page.
BY MS. MARTINEZ:
Q. Do you see the top text there from Eric?
A. Yes.
Q. He's forwarding to you a cell phone number?
A. Yes.
Q. As to someone for you to speak to?
MR. ETRA: Objection. Beyond the scope. This was covered in direct, not on cross.

THE COURT: Overruled. I'll allow it.

BY MS. MARTINEZ:

Q. Mr. Sheppard is forwarding it to you for you to talk to them as well?

A. Yes.

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

MS. MARTINEZ: Go to the next page.

BY MS. MARTINEZ:

Q. On August 10th, what does Eric Sheppard say to you?

A. "I spoke to the SBA people today and convinced them to change the wire instruction within the application, and he sent a request to redo the wire. You may want to check the portal, as I do not know the access number."

Q. And then, on the next page, he confirms that he got the wire, correct?

A. Correct.

MS. MARTINEZ: Proceed to the next page.

BY MS. MARTINEZ:

Q. What is Mr. Sheppard asking you here?

A. "Hey, any news on yesterday's call with the SBA?"

Q. And what do you say on August 17th, 2020?

A. "Please call me and text me when you are available to speak on the phone. Sorry missed your call. It's okay. We'll try in the morning again. I would not be surprised if when changing the email they forgot to enter the period or messed up a letter."

MS. MARTINEZ: Go down to August 27th, 2020.

BY MS. MARTINEZ:

Q. Do you ask Mr. Sheppard if he's available to answer a call?

MR. ETRA: Objection, Your Honor. This is all beyond the scope. This was covered in direct, not in cross.

MS. MARTINEZ: Cross-examination --

THE COURT: Overruled. I'll allow it.

THE WITNESS: "Can I call you later? Are you available to answer a call," and "Can I call you later?"

"No worries. Please check on the portal status when you can."

BY MS. MARTINEZ:

Q. On September 9th, do you ask him -- what do you ask him on --

A. "Are you available to call today?"

"Yes."

"Okay. Can you" --

MR. ETRA: Objection. Sorry. I apologize --

BY MS. MARTINEZ:

Q. Well, just -- when you're saying there to Mr. Sheppard: "Are you available to call today," who are you indicating that you're going to call?

A. The SBA.

Q. And are you going to call by yourself or with Mr. Sheppard?
A. With Mr. Sheppard.
Q. And the next text shows Mr. Sheppard sending you his driver's license, correct?
A. Correct.
MS. MARTINEZ: Could you go down to September 14th.
BY MS. MARTINEZ:
Q. You're again communicating with Mr. Sheppard?
A. "I'm going to call you after the meeting I have. Okay?"
"I got it, but do you have the back of it?"
"Call" --
Q. And this is now Eric responding to you. What does he say?
A. "Call Robert. He will send it to you shortly."
Q. Actually, it says: "He will send it to me shortly," right?
A. I mean "He will send it to me." Sorry.
Q. And what is Mr. Sheppard talking about there that --
A. The driver's license.
Q. And who's Robert?
A. Robert is the partner.
MR. ETRA: Objection. Beyond the scope.
THE COURT: Overruled. I'll allow it.
BY MS. MARTINEZ:
Q. On September 16th -- September 16th, 2020, what does Mr. Sheppard say to you?
A. "Hey, on" -- "with SBA, the guy is saying he sent you a few

moments ago to the ES period email with the link to log in to the portal. Click the link, then log in to the portal with the rs.hmudat2020@yahoo.com."

"It didn't work, but I think it's" --

Q. No. Now you're reading a September 6th [sic] reply by you, correct?

A. Yes.

Q. Okay. And what do you say back?

A. "It didn't work. But I think it's blocked for trying three times. I'm calling the lady now to see she speaks to me."

MR. ETRA: Your Honor, again, beyond the scope. We're just going line by line through text messages that we never --

THE COURT: Is it necessary for the witness to read line by line?

MS. MARTINEZ: Your Honor, the witness was cross-examined as to whether Mr. Sheppard had --

THE COURT: I understand, and I'm allowing a redirect. I'm just asking whether the witness needs to read when the jury -- it's been published to the jury. They can read it.

BY MS. MARTINEZ:

Q. You were asked on cross-examination regarding whether your boss, Daniel Sheps, filled out the portal applications for Mr. Sheppard. I'm going to -- on the same exhibit, Page 1, July 24th 2020, what does Mr. Sheppard say to you?

A. "Hi, Nelia. I tried to fill out the four applications yesterday and submitted them. Let me know if you received them yet."

Q. Based on your conversations with Mr. Sheppard --

A. Uh-huh.

Q. -- did he fill out the portal application?

A. Yes.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. One of the reasons that -- Ms. Palancar, when you call the SBA, do they speak to anyone without the permission of the person who's the applicant?

MR. ETRA: Objection. Leading.

THE COURT: Sustained.

THE WITNESS: No. They don't talk to anybody. It has to be authorized. They ask security questions.

BY MS. MARTINEZ:

Q. So how was it in this case -- when you were assisting Mr. Sheppard, what process did you use to get the permission?

A. He will authorize -- he will tell the SBA agent that he allows Nelly Palancar to speak for him.

Q. And it was only after he did that that you were allowed to speak to the SBA, correct?

A. Yes. They wouldn't speak to me at all.

Q. You were asked on cross-examination as to whether you had taken documents that Mr. Sheppard had sent you and whether you had reviewed them and compared them. Let me ask you: Do you rely on the customers?

MR. ETRA: Objection. Leading.

BY MS. MARTINEZ:

Q. Did you rely on Mr. Sheppard?

THE COURT: Overruled. I'll allow it.

BY MS. MARTINEZ:

Q. Did you rely on Mr. Sheppard's documents?

A. Yes.

Q. Did you rely on whether he was saying the truth?

A. Yes.

Q. Do you require as part of Nationwide for people going onto the portal to be truthful?

A. Yes.

Q. Is one of the questions that is asked that you certify that the statements that are being made are truthful, that -- on the Nationwide portal?

A. Yes.

(Pause in proceedings.)

MS. MARTINEZ: I have no further questions, Your Honor.

THE COURT: Is Ms. Palancar excused?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: On behalf of the Defendant?

Thank you, Ms. Palancar. You are excused.

(Witness excused.)

THE COURT: And the Government's next witness.

MS. MARTINEZ: Brent Motes.

(Pause in proceedings.)

THE COURT: All right. Good afternoon, Mr. Mote [sic]. If you'll come forward, please.

(Pause in proceedings.)

BRENT MOTES, GOVERNMENT WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

You can have a seat.

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

THE WITNESS: Brent Motes. That's B-R-E-N-T M-O-T-E-S.

COURTROOM DEPUTY: Thank you.

(Pause in proceedings.)

DIRECT EXAMINATION

BY MS. MARTINEZ:

Q. Good afternoon, Mr. Motes.

Mr. Motes, where do you work?

A. I work for the Small Business Administration. Specifically, I work for the Processing and Disbursement Center, for the SBA disaster assistance loans.

Q. And where do you work actually physically?

A. Oh. Fort Worth, Texas.

Q. And what is your current position, your current title?
A. I'm a supervisory loan specialist.
Q. And how long have you been working for the Small Business Administration?
A. Since late 2008.
Q. Did you have prior work experience in lending before that?
A. I did. I've been in lending my entire career.
Q. And that was in private banks?
A. Bank-owned companies and mortgage companies.
Q. With respect to the Small Business Administration, what is an Economic Injury Disaster Loan?
A. These are loans that are specifically designed to help victims or survivors of natural disasters. Business owners have the ability to apply for a loan if they were directly impacted by a natural disaster.
Generally speaking, most of the loans that we do are for physical disasters, hurricanes, earthquakes, tornadoes. And they're limited to parties that are geologically located within a certain group of counties, counties that would have been directly impacted by that event.
We've had two disasters in our history that it's gone beyond that. One was the events of September 11th, in which nationwide businesses were able to apply if they were directly impacted by the closing of airports. And then most recently, the COVID pandemic in which businesses nationwide could apply

if they were directed by the impact of COVID.

Q. And just going back to explaining what it was originally, when it's not a national declaration, it typically is even geographically and time limited, correct?

A. That's correct. It's very geographically limited under normal circumstances. We have what's called primary counties and contiguous counties, which will all be in a certain connected geographic area. And to apply for an Economic Injury Disaster Loan, you have to be located physically in one of those areas, not just a mailbox, not just a PO Box, but you actually have to have a brick-and-mortar location physically located in those areas.

Q. Now, in 2020, what was it that happened that -- was there a declaration -- a national declaration and funding that allowed you to be able to offer Economic Injury Disaster Loans during that time?

A. Well, if -- you're referring specifically to COVID?

Q. Yes.

A. Okay. Yes. Normally, a pandemic is not something that we would be able to assist with. It's not a natural disaster. There's no high winds associated. There's no shaking of the ground, like there would be in an earthquake. And so the legislature passed a law, signed off by the President, which allowed our agency to step in and assist with a pandemic. This is the first and only pandemic we've ever assisted with.

Q. And was there funding that became available, then, through that for business owners who had an economic impact --
A. That's right.
Q. -- economic injury as a result of the pandemic?
A. That's right. The --
Q. Well, I should call it COVID, right?
A. Yes.
Q. Because these particular loans are called COVID-19 Economic Injury Disaster Loans?
A. Yes. COVID EIDL loans.
Q. Okay.
A. And EIDL, E-I-D-L, stands for Economic Injury Disaster Loan. And yes, with the CARES Act -- you know, if you remember back to early 2020 and the onset of the pandemic, Congress and the President signed off on an act called the CARES Act, which set aside funds for our agency to provide a set amount of funds initially for relief for businesses impacted by COVID.
Q. Could you explain to the jury what an Economic Injury Disaster Loan -- the COVID Economic Injury Disaster Loan is supposed to be used for.
A. Working capital needs. These loans are loans that are provided, again, to disaster survivors. In this case, it would be businesses going through the negative impact of the COVID pandemic, facing -- you know, if you think back, many businesses suffered closures and were not allowed to operate.

So any business directly impacted by that set of events could apply for working capital needs. Those working capital needs are usually -- and in this case -- really designed to help a business stay afloat during the pandemic and during the impact of the pandemic. These loans are designed to provide the minimum amount of funding that is needed by a business to stay afloat. There are certain uses that individuals cannot use funds for, and that's spelled out within our documentation.

MR. ETRA: I object to the narrative.

THE COURT: Sustained.

THE WITNESS: Okay.

BY MS. MARTINEZ:

Q. The reason he's objecting is they want my questions to be shorter and your answers to be shorter.

A. Okay.

Q. So with respect to the words "working capital," I know that you know what that means, but could you explain to us that what means.

A. Yeah. The loans are designed to meet the need -- bridge the gap between what a business would typically earn to be able to pay its operating expenses and debt service, you know, paying its monthly payments on debt. And they -- the difference between what they are currently earning as a direct result of the disaster.

Q. So for example -- because you described it as having the minimum requirements to keep the business afloat. For example, is a business allowed to start new projects with the money that is coming from an Economic Injury Disaster Loan?

MR. ETRA: Objection. Leading.

THE COURT: Sustained. Rephrase, please.

THE WITNESS: It's --

THE COURT: Hold on.

If you'll rephrase.

BY MS. MARTINEZ:

Q. I'm going to rephrase the question. Would they have to take care of fixed cost or can they take on new endeavors?

A. The loans are generally intended to meet their operating expenses, not to expand the business.

Q. Were there requirements with respect to whether a business had to be in operation and have business prior to the COVID impact?

A. Yes. The businesses had to be in operation prior to midnight of January 31st, 2020.

Q. And what do you mean that it had to be in operation? What did it have to have?

A. Well, they needed to be operational. They needed to have, you know, the capacity to do business. If it were, for instance, a retail shop, we would want to see that they were in operation, that they had their storefront open, that prior to midnight of January 31st, 2020, somebody could enter their store and buy a good or product.

Q. And with respect to the loans and the funding, was that coming from a private bank or was it coming from the United States Treasury?

A. United States Treasury.

Q. Were the loans at the same market interest rate that a private loan would be available or was it different?

A. No. It was different. These are below-market interest rate loans. Depending on the bank, they would be potentially significantly lower than a rate that you could receive from a bank.

Q. And does the SBA make sure that it is lower than the market rate?

A. Yes. There's market rate comparisons that are done in our headquarters to ensure that the rates that we're offering disaster survivors are below market.

Q. And for the COVID Economic Injury Disaster Loans, how long did the people have to pay them back?

A. They were allowed -- due to the unusual circumstances with COVID, and the fact that these were not planned loans and planned for by the businesses, we allowed every single COVID EIDL applicant who was approved for a loan to receive a 30-year term.

Q. How much money could a business get from an EIDL loan --

how was that calculated, the money that they could get?

A. Well, initially, under the CARES Act, we were allowed to provide working capital needs set that were calculated for the margins of the business, which were basically the revenues less the cost of goods sold.

For many applicants there was a third item that we would take out, which is -- initially, under the CARES Act, we were allowed to provide an advance of up to $10,000 for some applicants. That would come off the top of the loan, and that would give us the amount the applicant was eligible for on an annual basis. We were allowed to provide half of that amount. So six months of working capital needs, six months of margins less the $10,000, not to exceed $150,000.

Q. So the $10,000, is that the part of the loan that had to do with the number of employees?

A. Right. And that actually wasn't part of the loan. It was called an advance, and internally we actually called it a grant because that up to ten thousand dollars was not required to be repaid. Initially, the rules were that you could receive $1,000 per employee up to 10 employees.

Q. So if you had 10 employees, you could get $10,000?

A. Right.

Q. If you had nine, you would only get 9,000?

A. Exactly. Exactly.

Q. You described that there was a difference between revenues and cost of goods sold, and you described the difference as the margin. That's really kind of like -- to use another word, it's like the profit?

A. No. Before you get to profit, you have to back out expenses. The margins come before the operational expenses of the business. The revenue would be the amount of funds brought in by the business in their normal operations.

The cost of goods sold would apply more to retail operations which buy a product and then resell it. The cost of the good that they buy on the wholesale market is the cost of goods sold. The revenues is what they then in turn resell that item for.

Q. So the word "margin" has to do with the margin between the cost of a good, like an inventory, and the money that you get for selling it. So that's the margin between what you bought it for and what you're selling it for?

A. In layman's terms, yes.

Q. Yeah. I'm looking for that. And then you would take the annual -- this was an annual number that -- you would take the annual number and divide that by half?

A. That's correct. And that would give us six months' worth of margins, which we would use to calculate their injury. And initially we would not allow a loan over $150,000. So it would be six months' worth of margins or $150,000, whichever is less.

Q. If the company was like a commercial landlord, and -- would they have filled out that part of the application or would they have filled out the lost rents?

A. Well, the application allowed an applicant to fill out one of four different columns, as far as what they felt like their injury was. So two of those -- or two of the fields were revenues and cost of goods sold. One was for -- if you were a landlord, you could put down the amount of rent you lost during the disaster period. And a fourth field that you could fill out is if you were a non-profit. You could fill out your annual operating expenses. Landlords were, of course, to fill out the field related to the amount of rent that they had lost.

Q. Now, we talked about the fact that you had to have a business in operation before January 31st of 2020, right?

A. That's correct.

Q. If a company owned another company, and that company rented buildings, would -- if a company had losses, would that company have to apply or would the owner company be able to apply?

A. The operating entity that ran the business was who the loans were intended for. The -- the company that owned the operating company would have -- no more eligible than you or I if we were stockholders in IBM. You know, we would not be able to apply for a COVID Economic Injury Loan claiming to be a business simply because we had a partial ownership or even a full ownership in another business.

MS. MARTINEZ: Your Honor, I'm going to go into a new topic. I think this would be a good time to break.

THE COURT: All right. Ladies and Gentlemen, at this point in time we will adjourn for the evening. Our schedule tomorrow will be from 9:30 to 4:30.

Have a pleasant evening.

Please remember as you leave the courthouse you're not to discuss this case with anyone, nor permit anyone to speak with you. Everything learned about the case is learned in the courtroom.

If you'll place your juror notebooks in the jury room.

Have a pleasant evening. I'll see you tomorrow morning at 9:30.

COURT SECURITY OFFICER: All rise.

(Jury not present, 4:59 p.m.)

THE COURT: Mr. Mote, we will see you tomorrow morning at 9:30.

Sir, since you are on the witness stand, you're not to discuss your anticipated testimony, the testimony of any individual, or any aspect of the case.

Have a pleasant evening. I'll see you tomorrow morning at 9:30.

All right. Go ahead and have a seat, please.

After Mr. Mote, who will the Government be calling?

MS. JIMENEZ: Your Honor, we expect to be calling Mr. Heimdal Barrios, Mr. Maged Salem, Mr. John -- whose last name I can never pronounce -- Rodenhuis. And Mr. Ladi Hysa.

THE COURT: All right. Given the witnesses that the Government will still need to call, how many days does the Government anticipate it still needs to complete its case?

MS. JIMENEZ: Again, it depends on the cross-examination. I mean, I think it's possible to conclude tomorrow. I mean, the --

MS. MARTINEZ: It is possible. It's just...

MS. JIMENEZ: Possible.

MS. MARTINEZ: I can go quickly with my directs, Your Honor. The cross-examination is the question.

THE COURT: All right.

MS. WEINTRAUB: I assume I don't have to address --

THE COURT: I don't think there's any need to address it.

Quite frankly, on both sides, there's been an extensive amount of information, an extensive amount of direct, cross, and redirect, and we are where we are.

But moving forward, tomorrow will be Day 11, and I want to be able to give the jury a realistic understanding of when this case will be presented to them.

MS. MARTINEZ: We're going to have all our witnesses here, right? We're going to have all our witnesses to conclude tomorrow. Right? We have John here?

MS. JIMENEZ: Yes. They're here.

MS. MARTINEZ: Everybody's here.

THE COURT: Okay. Are there any issues that we need to address?

MS. WEINTRAUB: I assume that we don't need to have a witness here because between those witnesses and Rule 29 arguments with the Court I assume that will be the day.

MS. MARTINEZ: I think that's correct.

THE COURT: Okay. And the Defendant needs two full days?

MS. WEINTRAUB: No. I don't think so. I think that we need probably a day and a half, again, depending on cross-examination.

MS. MARTINEZ: Okay. Ms. Jimenez might have a different view than I do.

MS. JIMENEZ: Well, I mean, maybe they should have a witness available. I mean...

THE COURT: Well --

MS. WEINTRAUB: Judge, three of our witnesses are out of town, and we haven't made arrangements yet. And that would mean getting them all on planes and them just sitting and waiting till Monday. I mean --

THE COURT: I don't think it's -- given the history of the other individuals that are named within the aggravated identity theft counts, this being Mr. Barrios and Mr. Salem being the next witnesses, I don't think it's necessary for the

Defendant to bring forward a witness.

And we'll proceed -- to the extent that we do finish tomorrow, we can proceed with arguments, but I do need to leave at 4:30. So that's where we are tomorrow. And then obviously we have Monday and Tuesday next week from nine to five.

MS. WEINTRAUB: Does the Court want to do a charge conference Friday or whatever else that we could take care of that's time-consuming?

THE COURT: Well, I've already prepared the instructions. I'm just waiting on certain instructions that may or may not be relevant given who may be testifying. So --

MS. JIMENEZ: If we finish our case tomorrow at the end of the day, I don't know if the Court wants to take up Rule 29 on Friday at some point, so we don't take up time on Monday.

THE COURT: We have a -- I think we have a full day on Friday. Let me see.

Well, if we needed argument on Friday, you've got us going all the way -- we could do from two to three.

COURTROOM DEPUTY: Judge, for us, you mean?

THE COURT: Yeah. Our schedule. We packed everything on Friday now. So I have between two and three, but --

MS. JIMENEZ: I mean, I think that's ample time.

THE COURT: Okay. In terms of the jury instructions, let me wait until the Defendant presents its case, and then I can get them in final form. And then obviously the submission by both sides of the instructions and the Court's determination, you've obviously preserved any argument with regard to certain instructions that may or may not be used, so we don't have to spend a long time with the charge conference.

MS. WEINTRAUB: Okay, Judge.

THE COURT: Is there anything else that we need to address? On behalf of the Government?

MS. MARTINEZ: No, Your Honor.

THE COURT: On behalf of the Defendant?

MS. WEINTRAUB: No, Judge. Thank you.

Unless your deputy clerk has news on the jury's January availability.

COURTROOM DEPUTY: I do. I have one juror, Juror -- I think it's Number 5. She has a trial she needs to go to in Ocala starting January 4th. She does not know how long it will take. It is a murder trial that involves her sister being the victim.

MS. MARTINEZ: Oh, wow. That's horrible.

COURTROOM DEPUTY: She put it on her form, she says.

THE COURT: All right. So that's on January 4th. So she may be available on the 8th, may or may not. Okay.

COURTROOM DEPUTY: And I have another juror who says he comes back on the 7th. But he says, obviously, with the flights he doesn't know -- he hopes it will be on the 7th.

MS. WEINTRAUB: Who is that?

COURTROOM DEPUTY: I've got to check my list. But everybody else is -- they're okay with the 8th and the 9th. But after that, I have about three jurors that said they don't believe they can it make after the 9th.

THE COURT: Well, we need all of the jurors. So let's see if we can get two days where the jurors are all available. So are there jurors that are not available after the 9th?

COURTROOM DEPUTY: There's about three of them that are not available. Three of them said they are not available after the 9th.

THE COURT: Until when? Just for that week?

COURTROOM DEPUTY: I didn't ask for anything after that week. They weren't even discussing anything after that week. They just said after the 9th they will not be available.

THE COURT: How much time does each side need for closing arguments? On behalf of the Government?

MS. JIMENEZ: Your Honor, I would say an hour and a half.

THE COURT: That's why we need that next week.

MS. WEINTRAUB: Judge, I was actually going to ask for two hours myself, thinking that I won't use it. But I don't want at an hour and a half to be told to sit down after -- I mean, this trial, there's just a lot of detail.

THE COURT: Well, we'll tentatively begin back on the 8th, unless the one juror's sister's trial takes her past --

MS. WEINTRAUB: And it might not go. We know how those things are.

THE COURT: And maybe, Liz, you can keep in contact and see if that case is actually going to go. That would be starting on a Thursday, on January 4th.

COURTROOM DEPUTY: So how many days are we looking for?

THE COURT: Two.

COURTROOM DEPUTY: Two more past. So what are we looking at, the 11th?

MS. WEINTRAUB: I mean --

THE COURT: We can look at the 10th and not 11th.

(Court reporter interruption.)

MS. WEINTRAUB: I'm sorry. I'm sorry. Sorry. I don't want to force them into a quick deliberation.

COURTROOM DEPUTY: I just need to know how long it will take for them to get the case in their hands.

MS. WEINTRAUB: I think that it's clear it will be two or three days, maybe less, but that's my best guess. I don't know what the Government --

MS. MARTINEZ: Two or three days for what?

MS. JIMENEZ: For what?

MS. WEINTRAUB: For the Government to get the case. Between now and the Government getting the case.

THE COURT: All right. We'll work on the 8th and 9th, and we'll see what happens with the one juror, since we need all of the jurors. But at this point, it's anticipated that if we don't finish by the 19th, next Tuesday, then we'll pick up again on January 8th.

MS. WEINTRAUB: Judge, would it be too much trouble to ask if the court's deputy clerk could inquire as to the docket or the name of the case so that maybe we could be on top of it or the Court could?

THE COURT: I think Liz can be on top of it.

MS. WEINTRAUB: That's what I kind of meant.

THE COURT: I think Liz will see where we are with that trial proceeding.

Okay. Are there any other issues that we need to address this evening?

MS. WEINTRAUB: No, Judge, not from us.

MS. MARTINEZ: Your Honor, I haven't -- I mean, we don't have to address it tonight. We could address it in the morning, but we haven't concluded the admission of the exhibits of this particular witness.

THE COURT: Of Mr. Mote?

MS. MARTINEZ: Yes.

THE COURT: All right. What's left to address?

MS. MARTINEZ: These are the SBA exhibits. It's from 51 to 59. We are agreeing to withdraw Exhibit 60. So I'm just requesting to move in Exhibits 51 through 59.

THE COURT: All right. So 51 -- a partial 51 from 3447 to 450 is in evidence. So is that the extent -- are there more documents with regard to 51?

MS. MARTINEZ: Oh, yes, Your Honor. It's all the records relating to HM Management and Development. I could give you the entire Bates labels.

THE COURT: Response?

MR. CAVALLO: Yes, Your Honor. Thank you.

It's a repeat of all the same arguments.

THE COURT: Okay. So are we looking at different applications that are with different companies outside of the period identified within the Indictment?

MR. CAVALLO: Yes, Your Honor. So it's all the same issues.

MS. MARTINEZ: Which --

THE COURT: Which applications were made outside of the period of October 2020 to March 2021?

MR. CAVALLO: Your Honor, they have agreed to withdraw 60, so that was September 2021.

So other than that, it's just our same arguments we had. You've already ruled, Your Honor. But it's the same arguments that some of these entities aren't named in the Indictment, Sheppard Flagler, for example, 55; HM Six, 57; TRU, 56. And then the separate argument that the modifications are outside the period ending March 2021.

THE COURT: But the modifications relate to the applications that were made, correct?

MR. CAVALLO: Correct, Your Honor. It's HM Management modifications, so you're correct. HM-UP modifications, so you're correct. I'm just going through the list myself. And HM Four modifications, so you're correct. We believe it's -- again, just for the record, we believe it's a variance of the Indictment.

MS. WEINTRAUB: And we weren't prepared for it.

MS. MARTINEZ: Oh, my goodness.

MS. WEINTRAUB: Not to mention it's 404(b).

THE COURT: Okay.

MS. MARTINEZ: Your Honor, this is -- again, it's the same thing. We have -- let me just tell the Court what's the same and different from the previous witness. The previous witness handled the four applications that came in on the same day, as well as the modifications relating to the two that were funded. Two of the four were funded, and then they became eligible for modifications. So those would be Exhibits 51, 52, 53, and 54. So those were already covered by the previous witness.

In addition, the previous witness covered 55 and 56, which are applications done on exactly the same day, July 24th, 2020, within the period of Indictment. And then, you have now with the SBA an additional one was done by

Mr. Sheppard himself without Ms. Palancar during the time period of the Indictment, and that's HM Six.

And then there's HM Four, which is, again, during the time period of the Indictment, and also it involves a number of the aggravated identity theft counts and a number of the wire fraud counts.

So everything -- we have agreed to -- yeah. And then of course, there's the HM Four mod and the false lease, which is broken out, 58-1 that was submitted with respect to -- it's a forged lease that was submitted with respect to HM Four. But again, we've agreed already to remove the one that's outside the time period. So it's the same ruling that you made before.

THE COURT: All right. Is there any other objection? I mean, you have a certification. So there's no question that those, in fact, the --

MS. MARTINEZ: Yes. We have a certification from the SBA, and this witness -- I mean, I could lay the foundation, but this witness --

THE COURT: You don't have to lay -- I don't want to take time laying a foundation if there's no objection to the authenticity of those records.

MS. MARTINEZ: We received them from the SBA. We got a certification from the SBA. We gave the certification to the Defense. And this witness additionally reviewed individual disks, reviewed hard-copy documents, has rereviewed everything we have. And these are the SBA records.

THE COURT: All right. Then the objection is preserved. It's noted. Sixty is out. 51, 52, 53, 54, 55, and 56 will be admitted into evidence.

MS. JIMENEZ: One thing I did want to --

MS. MARTINEZ: All the way through 59, Your Honor.

THE COURT: The same records?

MS. MARTINEZ: Yes.

THE COURT: All right. Admitted into evidence.

(Government's Exhibits 51 through 59 received into evidence.)

MS. JIMENEZ: Your Honor, one thing I did want to mention with regard to the HM Six application from 2021, which is outside the period of Indictment, I just want to raise this issue, which is the suggestion that there's this person who's now deceased who was, I don't know, breaking into the Defendant's home or something and uploading applications. I just want to get ahead of the argument that, you know, Ladies and Gentlemen, you see, you know, this stopped in the summer or -- of 2021, which coincides with Mr. Vasilas dying, and we have a September 2021 application that doesn't come in.

MR. CAVALLO: Your Honor, they said they withdrew 60, so I don't know --

THE COURT: I think you're raising issues that are not properly before the Court at this time.

MS. MARTINEZ: Well, Your Honor, I would ask that if they have any objection to the foundation of 60 that I be allowed to lay it, because it could be a rebuttal exhibit if, again -- if they make that argument that somehow everything stopped with the death of Mr. Vasilas.

THE COURT: Okay. I think it's premature. To that extent, you have a certification so you don't need to lay a foundation.

And I do need counsel table from nine to 9:30 tomorrow. So if you will be kind enough to move your items, and I'll see you tomorrow morning at 9:30.

Have a pleasant evening.

MR. ETRA: Thank you, Your Honor.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 5:16 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 13th 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 - 250.

IN WITNESS WHEREOF, I have hereunto set my hand at Miami, Florida, this 25th day of February, 2025.

/s/Yvette Hernandez

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