

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 18, 2023
9:13 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant.

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

Appearances:

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1 (Call to order of the Court, 9:13 a.m.)

2 THE COURT: Hi. Good morning to everyone.

3 MS. WEINTRAUB: Good morning, Your Honor.

4 MS. MARTINEZ: Good morning, Your Honor.

5 THE COURT: We are continuing the case of United
6 States of America v. Eric Sheppard, Case Number 22-cr-20290.

7 We were -- first and foremost, I hope everyone had a
8 nice weekend. And we were in the middle of the testimony of
9 John Rodenhuis. Do we have that --

10 MS. WEINTRAUB: We finished him, Your Honor.

11 MS. MARTINEZ: We completed that.

12 THE COURT: Ah, okay. I actually have that as the
13 last entry. My apologies.

14 Are we ready to proceed with the next witness?

15 MS. MARTINEZ: Yes, Your Honor.

16 THE COURT: Is the Defendant ready to proceed?

17 MS. WEINTRAUB: Yes, Your Honor.

18 There is one matter that I'd like to bring to the
19 Court's attention --

20 THE COURT: Certainly.

21 MS. WEINTRAUB: -- for the Court to consider.

22 THE COURT: All right.

23 MS. WEINTRAUB: And that is, we are very concerned
24 the -- the Defense is very concerned about being in the middle
25 of testimony and recessing for several weeks.

1 We would ask the Court, most respectfully -- because
2 we very well may put on our client, and the timing of that is
3 very if-y, and we don't want to be in the middle of that
4 certainly and break. So we've tried to rearrange scheduling,
5 but we would ask -- because of that, we would ask to break
6 after the Government's case and motions.

7 THE COURT: I'm not certain what you're asking.

8 MS. WEINTRAUB: I'm asking --

9 THE COURT: We have two days left. The Government has
10 represented that it believes it will be done by today. Is that
11 correct, Ms. Jimenez?

12 MS. JIMENEZ: Yes, Your Honor.

13 THE COURT: So you're asking that we not work
14 tomorrow?

15 MS. WEINTRAUB: Yes. And the reason is because I do
16 not want to be in a position where my client is on the witness
17 stand and we break for two weeks for them to figure out cross
18 and have two weeks to prepare for that. That's just, I
19 believe, unfair. And I also -- I object to breaking up the
20 Defense case.

21 THE COURT: Ms. Weintraub --

22 MS. WEINTRAUB: I mean, honestly, I thought we would
23 have been done before.

24 THE COURT: All right. Hold on.

25 COURTROOM DEPUTY: I just spoke to the jurors. I

1 would like to know exactly how long in that first week -- how
2 many days. Because I spoke to them. I have one juror that has
3 two appointments towards the end of that week.

4 THE COURT: Which week are you referring to?

5 COURTROOM DEPUTY: January 8th. I really need to tell
6 them how long in that week that we're going to be in session
7 because I have one juror that absolutely has two appointments
8 at the end of that week that he needs to attend.

9 THE COURT: We have worked with the jurors' schedules.
10 We have provided additional dates to which the jurors never
11 anticipated. They have reshuffled their professional and
12 personal lives to be here for the schedule that the Court has
13 given them. And to now tell them that we are not going to be
14 in session tomorrow, when I've advised them that today and
15 tomorrow are full days, is just without merit and it certainly
16 is not going to be what the Court's going to do.

17 We are going to make full use of the days that we
18 have, regardless of whether we're in the middle of a witness or
19 certainly when we're in the middle of the presentation of the
20 Defendant's case. So that request would be denied.

21 Now, with regard to today, the Government has
22 represented that it will be done by today. As I stated, we
23 will certainly address any motions. I have received the
24 Defendant's Motion for Judgment of Acquittal.

25 And in terms of next week, I believe that the jury is

1 entitled to know realistically how much more time that they're
2 going to need to consider the evidence. So on behalf of the
3 Government, how much more time do you anticipate?

4 MS. JIMENEZ: We expect to close today. We don't know
5 if we would have a rebuttal case. But if we did, it would be a
6 single witness.

7 THE COURT: On behalf of the Defendant, how many days
8 do you anticipate?

9 MS. WEINTRAUB: I've always said a day and a half, and
10 that's what I still think. But, you know, again, it depends on
11 the Government. I mean, the Government thought this case was
12 going to be six or seven trial days, and I think we're on --

13 MS. JIMENEZ: We said 10.

14 MS. WEINTRAUB: Then it became 10, and I think we're
15 on number 13. So I don't know. I think it's a day and a half.
16 They know who our witnesses are.

17 MS. JIMENEZ: And I'll say on the "we know who their
18 witnesses are," they disclosed three witnesses pursuant to the
19 Court's order on Friday. And then last night -- late last
20 night, they said: "Oh, we've changed our mind and we're
21 calling one of those three and two other ones."

22 MS. WEINTRAUB: The reason --

23 MS. JIMENEZ: So the trial by ambush continues. We
24 got something after midnight that I haven't seen about
25 documents that they intend to use in their case in chief.

1 MS. WEINTRAUB: Judge, what happened, so the record is
2 clear, is that at four o'clock yesterday afternoon, it was
3 still not known and waiting to be clarified whether the witness
4 we intended to call, Jeanette Gonzalez, did, in fact, have
5 immunity. Her lawyer was not sure, reached out to the
6 Government. The Government did not respond till seven
7 something. And that's when --

8 MS. MARTINEZ: You're misstating.

9 MS. WEINTRAUB: Excuse me. And that's when, within
10 that time period -- we just couldn't wait for the Government
11 any longer after four o'clock on Sunday and had to make
12 strategy decisions. As soon as I made that strategy decision,
13 I emailed the Government at 7:15 after they responded that she
14 had immunity.

15 MS. JIMENEZ: Let me say that they disclosed Jeanette
16 Gonzalez as a witness on Friday. So any issue regarding her
17 immunity or not immunity does not mean that that would have
18 caused them to change the other two witnesses who they were
19 going to call, and advised us last night with documents that
20 came after midnight that -- and I haven't had a chance to even
21 open that email.

22 MS. WEINTRAUB: Judge, she asked if he's taking the
23 Fifth -- if she's taking the Fifth Amendment. So obviously
24 there were questions about immunity. I was going to put a
25 witness on the stand who was going to claim the Fifth

1 Amendment. It's not even ethical to do that. So --

2 THE COURT: That's understandable.

3 All right. At this point, I will advise the courtroom
4 deputy she will advise the jurors that we anticipate that we
5 will need Monday the 8th, which will be a full day from nine to
6 five, and Tuesday the 9th, which will be a full day from nine
7 to five. And let's see how far we get today and tomorrow.

8 Okay?

9 MS. MARTINEZ: Your Honor, I --

10 THE COURT: Ms. Martinez?

11 MS. MARTINEZ: No. Just in light of everything that
12 I've seen throughout this case, I would suggest that we may
13 need at least an additional day with the jurors because there
14 is closing argument.

15 THE COURT: Yes. I understand. And again, let's see
16 how far we get today. But in answer to the courtroom deputy's
17 question, I think that it's clear to let the jurors know that
18 at the very least the first two days.

19 With regard to any reshuffling for purposes of closing
20 argument and deliberation, we will certainly do that so that
21 the jurors have enough time for both.

22 All right. As soon as Liz is done -- they are all
23 there?

24 Okay. You have your next witness ready to go?

25 MS. JIMENEZ: We do.

1 THE COURT: Okay. Can you see if she's done speaking
2 with them, so we can bring them out.

3 (Pause in proceedings.)

4 COURT SECURITY OFFICER: Ready, Judge?

5 THE COURT: Yes.

6 COURT SECURITY OFFICER: All rise for the jury.

7 THE COURT: Is this the witness?

8 MS. JIMENEZ: Yes.

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

10 THE COURT: Hi. Good morning, Ladies and Gentlemen.
11 It's good to see each of you.

12 Please be seated, everyone.

13 I hope you had a pleasant weekend and ready to get
14 back to work.

15 And the Government's next witness, please.

16 MS. JIMENEZ: Yes. Thank you, Your Honor.

17 The Government calls Mr. Maged Salem, who is currently
18 on the witness stand.

19 THE COURT: All right. Mr. Salem, if you'll stand.
20 Raise your right hand to be placed under oath.

21 MAGED SALEM, GOVERNMENT WITNESS, SWORN

22 THE COURT: Please be seated, sir.

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

25 THE WITNESS: Maged Salem, M-A-G-E-D S-A-L-E-M.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good morning, Mr. Salem. If you could pull the microphone closer to you so...

Thank you.

Mr. Salem, were you subpoenaed to appear at this trial?

A. Yes, I was.

Q. What do you do for a living, sir?

A. I own a business.

Q. In 2020, did you own a business that went by the name of Mattress1One?

A. Yes, I did.

Q. Was that the trade name of the business?

A. It was doing business as Mattress1One. Correct.

Q. So what was the official name of the business?

A. SOS Furniture Company, Inc.

Q. What kind of business was this?

A. A mattress retail company.

Q. Did you have locations -- stores at different locations?

A. Yes, I did.

Q. Were they -- did you have stores in various locations in the state of Florida?

A. Yes, I did.

Q. Did you have stores outside the state of Florida?

1 A. Yes, I did.

2 Q. All right. Now, did you have a Mattress1One store in
3 Orlando, Florida?

4 A. Several in Orlando.

5 Q. All right. Did you have one located at the shopping center
6 named the Shoppes at Alafaya?

7 A. Yes, I did.

8 Q. All right. Mr. Salem, did you make any -- did you make
9 rental payments to the landlord of the store that was at that
10 location?

11 A. Yes, I did.

12 MS. JIMENEZ: Can we show Government Exhibit 39-10,
13 please.

14 BY MS. JIMENEZ:

15 Q. Were those checks that you yourself signed?

16 A. Wait a minute.

17 Q. Were they checks that you yourself signed? Looking at --

18 A. Yes. That's a check I signed.

19 Q. -- 39-10 --

20 MS. JIMENEZ: I'm sorry. If you can bring it out
21 again.

22 BY MS. JIMENEZ:

23 Q. -- 39-10, dated 6/4/2019, that was -- that's a Mattress1One
24 check; isn't that right?

25 A. That is correct.

1 Q. And what is the name of the business to whom the check was
2 made?

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

4 Q. Is that your signature on this check?

5 A. Yes, it is.

6 MS. JIMENEZ: All right. Can we show the next check,
7 please.

8 BY MS. JIMENEZ:

9 Q. That's -- what is the date of this check?

10 A. 5/22/2020.

11 Q. Now, this is a different company. Pacific MS Management,
12 LLC, what is that company?

13 A. This is a management company that was created to manage the
14 affairs of SOS and Mattress1One stores.

15 Q. So now, this company took the place of SOS in terms of
16 the --

17 MS. WEINTRAUB: Objection. Leading.

18 THE COURT: Sustained.

19 BY MS. JIMENEZ:

20 Q. Well, what did -- I'm sorry. What did Pacific MS
21 Management do in relation of SOS Furniture?

22 A. MS Management was created internally to manage payroll and
23 pay internal expenses.

24 Q. All right.

25 MS. JIMENEZ: Can we show the next check.

1 BY MS. JIMENEZ:

2 Q. This is July 22, 2020. Same? Was it pretty much the same?

3 A. (No verbal response.)

4 Q. Is that yes?

5 A. Yes.

6 Q. Is that your signature?

7 A. Yes, it is.

8 Q. All right.

9 MS. JIMENEZ: Let's show another check.

10 BY MS. JIMENEZ:

11 Q. September --

12 MS. WEINTRAUB: Could we have an exhibit number?

13 MS. JIMENEZ: This is part of Exhibit 39-10.

14 THE COURT: All right.

15 BY MS. JIMENEZ:

16 Q. Check dated September 9th, 2020. Yes?

17 A. Yes. That is my signature.

18 Q. And Pacific MS checks are paid to the order of what
19 company?

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

21 Q. Is that the same company you had been paying before?

22 A. Yes, it is.

23 Q. All right.

24 MS. JIMENEZ: Is there another check in this exhibit?

25 Is that the last one?

1 All right. Can we show Exhibit -- hold on.

2 One more check that is in Composite 39. And let me
3 give you the Bates stamp number. It's Bates Stamp Number
4 009809. It's in composite Exhibit 39.

5 Can we zoom out.

6 We're labeling this Exhibit 78.

7 Can you zoom out, please.

8 BY MS. JIMENEZ:

9 Q. Now, this is January 20, 2021. Who's the check from and
10 who's the check made out to?

11 A. Check is from Pacific MS Management, LLC, and it's to HM-UP
12 Development Alafaya Trails, LLC.

13 Q. Is that your signature?

14 A. Yes, it is.

15 Q. And now what happened to your business, to Mattress1One?

16 A. Mattress1One -- most of our stores was forced to close
17 during COVID. And once trying to reopen, once the cities was
18 allowing for reopening, it was very hard to get employees back
19 to work. And the industry went south because people wouldn't
20 come into mattress stores to try mattresses because everyone
21 was afraid of COVID.

22 Q. All right. And when did that begin to happen,
23 approximately?

24 A. Took a very bad turn in January, around January,
25 February 2020.

1 Q. And then -- well, COVID came upon us in March of 2020; is
2 that right?

3 A. It started in December of 2019, and it became -- people
4 started getting scared. Around February is when we started to
5 feel that the traffic was falling off.

6 Q. And so how was the rest of 2020 for your business?

7 A. The whole 2020 was pretty much a disaster.

8 Q. All right. Now -- so ultimately, what happened to
9 Mattress1One?

10 A. Mattress1One eventually went into a receiver. One major
11 large creditor, we couldn't come to terms, and they pretty much
12 pushed us into -- took over the company. And they eventually
13 filed bankruptcy, and then the company is now in a trustee's
14 position.

15 Q. All right.

16 MS. JIMENEZ: Let me show you Government Exhibit 25.

17 BY MS. JIMENEZ:

18 Q. All right. This is the first page of this document. What
19 is this document?

20 A. This is -- this is my original lease for the space at
21 Alafaya shops, lease from October 23rd, 2012.

22 Q. All right. And so the tenant -- who is the tenant?

23 A. SOS Furniture Company d/b/a Mattress1One.

24 Q. All right. And then who was the landlord?

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

1 Q. All right. And the -- did -- the lease started
2 October 23rd, 2012, correct?

3 A. Yes.

4 MS. JIMENEZ: Could we go to Page 2 of this agreement.

5 BY MS. JIMENEZ:

6 Q. All right. In here, you see Subsection F that says:
7 "Initial Term"?

8 A. (No verbal response.)

9 Q. The lease -- what was the period of time contemplated for
10 this lease?

11 A. There was a first five-year term and then two five-year
12 options to be followed.

13 Q. All right.

14 MS. JIMENEZ: Can we go to Page 10.

15 All right. Going down to Subsection 303 there. It
16 says: "Term Extension Options" -- hold on a second, so we
17 don't have to read.

18 BY MS. JIMENEZ:

19 Q. All right. About halfway into this paragraph, the sentence
20 or the line that starts: "Commences," can you read from:
21 "Then the tenant" or "Then tenant shall." Do you see that?

22 A. Can you put the mouse over it?

23 Q. There we go. "Then."

24 A. "Then tenant shall have, and is hereby granted, two
25 separate consecutive options to extend the term upon the terms,

1 covenants, conditions, and provisions set forth herein for two
2 periods of five years each," in parenthesis, "each renewal
3 term."

4 Q. All right. So then, if your lease started in 2012, the
5 first five-year term would have ended when?

6 A. 2017.

7 Q. And then, in 2020, you would have been in another five-year
8 term; is that right -- in the middle of another five-year term?

9 A. In 2020 we would have been in our second term, yes.

10 Q. All right.

11 MS. JIMENEZ: Can we go to Page 10, please -- I'm
12 sorry -- Page 43.

13 MS. WEINTRAUB: I'm sorry. Page?

14 MS. JIMENEZ: 43.

15 MS. WEINTRAUB: Thank you.

16 BY MS. JIMENEZ:

17 Q. All right. Now looking at Page 43, the landlord is what
18 company?

19 A. HM-UP Development, LLC -- Trail, LLC.

20 Q. HM-UP Development Alafaya Trails, LLC, right?

21 A. Yes.

22 Q. All right. It is signed by an owner. What is the name?

23 A. Scott Fisher.

24 Q. All right. And then?

25 A. I'm sorry. Scott Fish.

1 Q. And the tenant is -- who is the tenant?

2 A. SOS Furniture Company, Inc.

3 Q. All right. And this lease is signed by whom?

4 A. Myself, Maged Salem.

5 Q. And is that your signature?

6 A. Yes, it is.

7 Q. All right. I notice at the bottom of the page, 43 --

8 MS. WEINTRAUB: Objection, Your Honor. Counsel is
9 testifying.

10 THE COURT: Sustained.

11 BY MS. JIMENEZ:

12 Q. At the bottom of Page 43, if you could look at that, is
13 there some handwriting at the bottom of the page?

14 A. Yes. It's my initials.

15 Q. Is that something that you would put on the lease?

16 A. Yeah. Every lease I sign, or every contract I sign, I
17 always initial each page.

18 Q. All right.

19 MS. JIMENEZ: Can we go up -- just scroll up, please.

20 BY MS. JIMENEZ:

21 Q. Is that your handwriting on Page 42?

22 A. Yes. Those are my initials.

23 Q. Page 41, is that -- are those your initials?

24 A. Also, yes.

25 Q. All right. I'm not going to go through the entire

1 document. Did you initial each page on this document?

2 A. Yes, I did.

3 Q. All right. Let me show you Government's Exhibit 58-1,
4 please. This is another document.

5 MS. JIMENEZ: Let me -- can we go to the -- this --
6 BY MS. JIMENEZ:

7 Q. Can you read who the landlord is of this lease agreement.

8 A. "This lease agreement is made and entered into by and
9 between HM Four, LLC," in parenthesis "Landlord."

10 Q. And who is the tenant?

11 A. Pacific MS Management, Inc. d/b/a Mattress1One.

12 Q. Did at some point Pacific MS Management -- was it doing --
13 did it replace SOS Furniture as the entity that was doing
14 business as Mattress1One?

15 MS. WEINTRAUB: Objection. Leading.

16 THE COURT: Sustained.

17 THE WITNESS: It --

18 BY MS. JIMENEZ:

19 Q. Well, you can't -- did Pacific One -- I'm sorry. Did
20 Pacific MS do business as Mattress1One?

21 A. As accounts payable department, not signing leases or
22 making contracts.

23 Q. Who would have signed a lease or made a contract --

24 A. SOS Furniture Company.

25 Q. And then did you ever have a lease agreement with HM Four?

1 A. No, I did not.

2 Q. All right.

3 MS. JIMENEZ: Can we go to the signature page.

4 Go down to the bottom.

5 BY MS. JIMENEZ:

6 Q. In 2021 -- I'm sorry -- in 2022, were you interviewed by
7 the FBI and shown this document?

8 A. Yes, I was.

9 Q. At that time --

10 MS. WEINTRAUB: Judge, I'm going to object to
11 bolstering.

12 THE COURT: Sustained. Rephrase, please.

13 BY MS. JIMENEZ:

14 Q. All right. You were shown this lease; is that right?

15 A. Correct.

16 Q. All right. At that time did you recognize your lease
17 agreement?

18 A. This document was presented in front of me. And just by
19 quickly looking at it, I recognized the address of the
20 location, and I assumed that this was a lease that had been the
21 actual lease. So I believe I said: "Yes, I recognize it."

22 Q. Then did you do anything after you were shown that lease?

23 A. After they spent a short period of time --

24 MS. WEINTRAUB: Excuse me. Objection to who is
25 "they."

1 THE COURT: Sustained. Be specific.

2 THE WITNESS: The FBI. They appeared at my home, and
3 then they left me with the documents that they had. And I went
4 through it, and I immediately noticed that my name was
5 misspelled in this lease, that it had no initials on any pages.
6 And then I looked at the signature and that signature was not
7 my signature. So I called -- I called them the next morning.

8 MS. WEINTRAUB: Objection. Narrative.

9 BY MS. JIMENEZ:

10 Q. Who did you call?

11 THE COURT: I'm sorry. And the -- hold on. There's
12 an objection.

13 MS. WEINTRAUB: It's a narrative. There was no
14 question pending.

15 THE COURT: Sustained.

16 BY MS. JIMENEZ:

17 Q. And -- all right. Did you call anyone?

18 A. Yes. I called the agent, the FBI agent that came. He left
19 me his number and I called him the next day.

20 Q. All right. And did you communicate anything about the
21 lease to them?

22 A. Yes. I expressed to them that the document that they
23 showed me was not the lease that I thought it was. This was
24 the wrong lease. This lease didn't have any initials, this
25 lease didn't have my signature correctly, and my name was

1 misspelled.

2 Q. How do you spell your name?

3 A. M-A-G-E-D S-A-L-E-M.

4 Q. Your first name has a D, not an S?

5 A. Yes. The last letter is a D.

6 Q. All right. Well, did you --

7 MS. JIMENEZ: Let's go to the front of the lease.

8 BY MS. JIMENEZ:

9 Q. Let me ask you: Did you authorize Eric Sheppard or anyone
10 on his behalf to sign your name on this document?

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

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

13 BY MS. JIMENEZ:

14 Q. You can answer.

15 A. No, I didn't.

16 Q. Did you authorize Sheppard or anyone on his behalf to use
17 your title as president of Mattress1One --

18 MS. WEINTRAUB: Judge, I'm going to object to the form
19 of the question. There's absolutely no basis for it or
20 foundation.

21 THE COURT: It's whether he granted authorization.

22 Overruled.

23 BY MS. JIMENEZ:

24 Q. You can answer.

25 A. No, I did not.

1 Q. All right. Now, this lease has a commencement date of
2 May 18th, 2020. Do you see that on the first page?

3 A. Yes. I see that.

4 Q. Do you have any recollection whether you might have been
5 renegotiating your lease with the landlord at that time?

6 A. In May, specifically around this time, this was the hardest
7 time during COVID and we were not signing any leases. Our
8 stores were not even able to be opened. Less than 10 percent
9 of our staff returned to work as the company was trying to
10 reopen, and this was not a time that we would have been signing
11 any new leases or contracts. We were trying to exit leases at
12 the time.

13 Q. Was the landlord HM-UP Development Alafaya Trails trying to
14 renegotiate a lease with you at that time? Do you have any
15 recollection?

16 A. No.

17 MS. JIMENEZ: I have no further questions, Your Honor.

18 THE COURT: All right. Cross-examination.

19 CROSS-EXAMINATION

20 BY MS. WEINTRAUB:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. We've never spoken, right?

24 A. No, we have not.

25 Q. You were first contacted in this case on April 11th; is

1 that right, 2022?

2 A. I don't have the date in front of me, but I believe that's
3 correct.

4 Q. Does that sound about right to you?

5 A. It was in 2022.

6 Q. Did you -- you said that the FBI came to your house?

7 A. That is correct.

8 Q. And they showed you the lease to review, right?

9 A. That is correct.

10 Q. And you said that they only gave you like a minute. It was
11 very -- you quickly reviewed it?

12 A. No. They didn't give me a minute. They presented it, and
13 I just assumed that it was the lease that belonged to the
14 space. I didn't go through the lease.

15 Q. Well, didn't you tell the FBI agent that you recognized the
16 lease?

17 A. Yes. Because it had the address for a Alafaya shops
18 location that I had previously owned.

19 Q. Okay. And you verified and confirmed to the FBI that you
20 signed the lease, did you not?

21 A. The agent --

22 Q. Yes or no, and then you can explain, sir.

23 A. Yes, I believe I did. And the reason is, again, I assumed
24 that that was the lease that belonged to the space.

25 Q. Okay. But you were shown the signature, and the FBI asked

1 you if you recognized the signature, and you said yes and
2 verified it was yours, didn't you?

3 A. I believe I did at the time, yes.

4 Q. And isn't your brother Marwan the person that handled all
5 the real estate transactions for your company?

6 A. Marwan Salem represented the company in managing locations
7 and real estate for some areas, correct.

8 Q. Did you speak with your brother or anyone else before you
9 called the FBI back four days later?

10 A. Yes, I did.

11 MS. JIMENEZ: That was not his testimony, Your Honor.

12 THE COURT: Overruled.

13 BY MS. WEINTRAUB:

14 Q. Did you call the FBI back four days later or not?

15 A. No, I didn't.

16 Q. When do you claim you called the FBI back?

17 A. I believe it was the next day.

18 Q. Who did you speak with in between regarding this lease
19 before you called them back?

20 A. My brother was one of them, and then someone that was in
21 charge of payables at the time.

22 Q. In charge of what?

23 A. Payables. Account payables.

24 Q. Now, you told your -- you told the agent when you called
25 back that you weren't sure that it was your signature because

1 there was a typo, right? Because the S and the D are next to
2 each other on the keyboard, right?

3 A. No. I told them that it was not my signature.

4 Q. Isn't it true, Mr. -- is it Salem?

5 A. Salem, yes.

6 Q. Isn't it true, Mr. Salem, that during your first meeting
7 with the FBI you told the agent that you were unaware of an
8 individual named Eric Sheppard? Right?

9 A. That's correct.

10 Q. And then, when you called them back, you changed your
11 entire story, didn't you?

12 A. No. I didn't change my entire story.

13 Q. Well, you went from telling them you signed the lease to
14 you didn't sign the lease, right?

15 A. (No verbal response.)

16 Q. Right?

17 A. Can I explain my answer? The answer is: Yes, I did.

18 Q. Okay.

19 A. But I did that because I quickly looked at the lease when
20 they came in. And after looking at it thoroughly, I realized
21 that it was missing my initials, my signature was not
22 correct --

23 Q. Okay. And you went from having no idea who Eric Sheppard
24 was the first time you met the FBI to saying that at the
25 request of Eric Sheppard employees were asked to make out

1 rental checks to another company. Isn't that what you said?

2 A. I never said: "Eric Sheppard."

3 Q. If the FBI wrote that down, you think they just got it
4 wrong or...

5 A. I never said that -- I never met Eric Sheppard, never spoke
6 to Eric Sheppard, so I could never have said that.

7 Q. Now, your brother negotiated the leases typically with the
8 project manager in Orlando, right?

9 A. In the last three years of the company -- in the last three
10 years of the company -- 2012, I negotiated the lease with the
11 actual landlord for 2012.

12 Q. Did you deal with Jeff Vasilas?

13 A. No. I dealt with Scott Fish in 2012.

14 Q. That was the first lease. How about --

15 A. There was no second lease.

16 Q. I'm sorry?

17 A. There were no second lease.

18 Q. There was no second lease. We'll talk about it in a
19 second.

20 So are you saying that you did not tell the FBI that
21 Eric Sheppard's employees would ask for rental checks to be
22 made payable to a different company? Is that your testimony
23 today, sir?

24 A. I said that someone representing that location would
25 request that, that -- the checks being made to different names.

1 Q. And were you speaking with the FBI agent that's sitting
2 here at the table, Sarah Halleran, case agent, and Ryan Villard
3 (phonetic listing).

4 A. At what period? What dates would that be?

5 Q. Did you ever meet the case agent Sarah Halleran, who is
6 sitting at the table, or not?

7 A. More recently. By phone.

8 Q. Okay. Did you meet her on April 12th or 13th?

9 A. No, I did not.

10 Q. Did you speak with her on April 12th or 13th?

11 A. The first two agents that came was two men -- gentlemen.
12 Sarah wasn't...

13 Q. Now, isn't the truth that you weren't paying rent at
14 Alafaya for quite some time? Isn't that true?

15 A. (No verbal response.)

16 Q. Yes or no?

17 A. When you say "some time," what period of time?

18 Q. Well, we have the rental checks. Do you want to see them
19 or do you admit that you weren't paying rent?

20 A. I just saw checks that I was paying rent.

21 Q. You saw two checks that you paid rent. Are you -- is it
22 your testimony under oath that you never missed payments of
23 rent?

24 A. I don't know what dates -- what period you're referring to,
25 but --

1 Q. I'm referring to 2019, sir, and the beginning of 2020.

2 MS. JIMENEZ: Objection. Relevance.

3 THE COURT: With regard to 2019, sustained.

4 THE WITNESS: So answer?

5 THE COURT: You want to sharpen your question a bit?

6 MS. WEINTRAUB: Yes, Judge.

7 BY MS. WEINTRAUB:

8 Q. Mr. Salem, is it your testimony that you were not in
9 arrears in paying your rent for quite some time at the end of
10 2019 and beginning of 2020?

11 A. I don't recall.

12 Q. Do you recall that Mr. Vasilas tried to have you evicted?

13 A. I don't know who is Mr. Vasilas.

14 Q. Do you remember that someone from management at Alafaya
15 Trails tried to have you evicted for failure to pay rent? Yes
16 or no?

17 A. No, I don't.

18 Q. So that -- you were never locked out of your store and the
19 police were never called, right?

20 A. In 2020, not in 2019. And it was -- whoever was doing it
21 wasn't following the rules. They were ignoring Florida law.

22 Q. The question was: Isn't it true you stopped paying rent,
23 and they called the police, they tried to have you evicted, and
24 they even tried locking the door? Yes or no?

25 A. Ma'am, you're asking me questions without giving me time

1 frames of anything. I owned 300 stores at the time. I don't
2 recall everything that was happening at every location.

3 Q. You owned 300 stores, and you were doing pretty well,
4 right?

5 A. Up to COVID, yes.

6 Q. Up to COVID.

7 (Pause in proceedings.)

8 BY MS. WEINTRAUB:

9 Q. Mr. Salem, is it true that the landlord was trying to evict
10 you for not paying the rent at Alafaya shopping center? Yes or
11 no?

12 MS. JIMENEZ: Objection. Asked and answered.

13 MS. WEINTRAUB: It was never answered.

14 THE COURT: Overruled.

15 BY MS. WEINTRAUB:

16 Q. Yes or no?

17 A. I don't recall that.

18 (Pause in proceedings.)

19 MS. WEINTRAUB: Judge, I need one minute for a video
20 to be put up. It's very brief.

21 THE COURT: I'm sorry?

22 MS. WEINTRAUB: I need one minute for an exhibit.

23 THE COURT: All right.

24 MS. JIMENEZ: Can it be shown to the Government,
25 please?

1 THE COURT: Yes. What exhibit number? Before it's
2 shown.

3 (Pause in proceedings.)

4 MS. WEINTRAUB: I'll come back to it, Judge. And yes,
5 we'll provide it to the Government.

6 BY MS. WEINTRAUB:

7 Q. Now, when the FBI talked to you -- I'll move on and come
8 back. When the FBI talked to you in this case, do you remember
9 they asked you about you receiving some PPP money? Yes or no?

10 A. Yes, they did.

11 Q. And were you honest with the FBI?

12 A. Yes, of course I was.

13 Q. Of course. And you told the truth, of course?

14 A. Yes.

15 Q. To the FBI?

16 A. Yes, I did.

17 Q. And you told the FBI that you had received some PPP money
18 and that it was being held by the courts, right?

19 A. That was the second round.

20 Q. Hold on. Did you tell the FBI that you received PPP money
21 that was being held by the courts, or is that another thing the
22 FBI got wrong?

23 A. Talking in 2020 in April -- again, there was two rounds of
24 PPP. One was while I was functioning and one was after I lost
25 the company. The funds was transferred to a receiver, and all

1 of this was happening around the same time. So --

2 Q. We're going to talk about what was happening.

3 A. Okay. Go ahead.

4 Q. Okay. So my question is: Did you tell the FBI that you
5 got PPP money but it was being held by the courts? Yes or no?

6 A. Yes.

7 Q. Okay. Now, the truth of the matter is that on
8 May 8th, 2020, you received \$1.6 million in PPP money from
9 Legacy Bank, which you immediately diverted to your personal
10 account --

11 MS. JIMENEZ: Objection. Relevance.

12 BY MS. WEINTRAUB:

13 Q. Isn't that true?

14 THE COURT: Sustained.

15 THE WITNESS: When did you say --

16 MS. JIMENEZ: Objection.

17 MS. WEINTRAUB: It's very much relevant.

18 THE COURT: The objection is sustained.

19 BY MS. WEINTRAUB:

20 Q. When the FBI came around to see you, you were nervous that
21 they were going to arrest you for fraud, weren't you?

22 MS. JIMENEZ: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: That's a joke. Go ahead.

25

1 BY MS. WEINTRAUB:

2 Q. Excuse me?

3 A. Go ahead. No comment.

4 Q. What's your answer?

5 A. No. I said: "That's a joke."

6 Q. That's a joke?

7 A. Nothing like that happened.

8 Q. Nothing like that happened? Well, then let's look at some
9 things. Do you remember -- let's just talk straight,
10 Mr. Salem. Isn't it true that the reason you put the company
11 in the name Pacific Management was to avoid creditors and
12 garnished wages? Isn't that true?

13 MS. JIMENEZ: Objection. Objection. Relevance.

14 THE COURT: Sustained.

15 BY MS. WEINTRAUB:

16 Q. Isn't it true that when the Florida courts appointed a
17 receiver it was because you were trying to avoid creditors and
18 committing fraud?

19 MS. JIMENEZ: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MS. JIMENEZ:

22 Q. Did you sign an assurance voluntary complaint with
23 stipulations of your conduct in May at the same --

24 MS. JIMENEZ: Objection.

25

1 BY MS. WEINTRAUB:

2 Q. -- time this is all going on, 2020?

3 A. I don't understand your question.

4 MS. JIMENEZ: Do not -- objection. The Court hasn't
5 ruled.

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

7 THE COURT: Yeah. Come on forward.

8 (At sidebar on the record.)

9 THE COURT: All right. How is this relevant to this
10 case?

11 MS. WEINTRAUB: Judge, this tells the story of --
12 excuse me -- of what was going on in May at the same time that
13 he signed this lease, which we will show that he signed --

14 THE COURT: But I can understand if you're asking
15 questions that relate to the lease itself, but the other issues
16 I'm not seeing the relevance.

17 MS. WEINTRAUB: Well, let me explain.

18 The Government opened the door completely, talked
19 about the receivership, talked about -- he said -- he's lying
20 through his teeth. And he said that he -- being accused of
21 committing a fraud is a joke. The receiver sued him for fraud.
22 There is a finding of fact by the court of his fraud. There is
23 an AVC that he signed two years earlier that he violated and
24 said that he agreed to stop his deceitful practices in
25 selling -- selling used mattresses as new, for one.

1 THE COURT: Okay. But that's two years ago. So I'm
2 referring to the incident of 2019 and early 2020.

3 MS. WEINTRAUB: I'll tell you why. Because he denied
4 signing the lease, because the reason that the lease is changed
5 and put in Pacific Management isn't as a holding company or to
6 do his payroll. It was to circumvent creditors that were after
7 him.

8 THE COURT: Okay. All right. Response?

9 MS. JIMENEZ: The man -- he always said that
10 SOS was -- that Pacific was created as a management company.
11 The company that signed leases and contracts was SOS Furniture,
12 which -- he hasn't been asked anything about the actual lease.

13 The reason I -- the only question that I asked him
14 was: "What happened to Mattress1One?" And he said, you know,
15 it went into receivership.

16 THE COURT: Right. But his credibility is relevant.
17 It goes -- if questions are asked related to his truthfulness,
18 then how is that not relevant?

19 MS. JIMENEZ: Well, it's something -- it's something
20 that happened -- I don't even know when it happened.

21 THE COURT: Well, that's what I'm saying. Two years
22 ago I can understand. But 2019, 2020, in terms of the
23 receivership, is relevant.

24 COURT REPORTER: I can't hear you at all.

25 THE COURT: Yeah. It's only Ms. Weintraub.

1 MS. WEINTRAUB: There were three judgments in --

2 COURT REPORTER: I cannot hear you.

3 MS. WEINTRAUB: -- 2020 from the receivership. It's
4 all at the same time. It is part of the story. It's why he
5 lied.

6 THE COURT: Anything further?

7 MS. MARTINEZ: Your Honor, may I just ask one
8 question?

9 THE COURT: Okay. It's -- actually, I just want one
10 attorney.

11 Ms. Jimenez, is there anything further? Your
12 objection was relevance. There was a request for a sidebar.
13 This goes directly to his credibility.

14 MS. JIMENEZ: We don't know anything about -- where is
15 this --

16 MS. WEINTRAUB: Well, maybe you should have
17 investigated your own witness --

18 THE COURT: Hold on. Hold on. 2020.

19 And with regard to the receivership that was asked on
20 direct examination, it's directly relevant, goes to his
21 credibility.

22 Let's step back.

23 (End of discussion at sidebar.)

24 BY MS. WEINTRAUB:

25 Q. Mr. Salem, in May of 2020, isn't it true that there were

1 massive judgments against your company SOS, which was the
2 original tenant to the lease? Yes or no?

3 MS. JIMENEZ: Objection. Relevance.

4 THE COURT: Overruled. I'll give you a standing
5 objection.

6 BY MS. WEINTRAUB:

7 Q. Please answer the question, sir.

8 A. Can you reword the question, please?

9 Q. Sure. In May 2020, didn't you have massive judgments --
10 many? We can show them to you, if you would like -- against
11 SOS, amounting to fraud by SOS, your company. Yes or no?

12 A. Can you give a number of how many cases you're talking
13 about? You're just saying "massive." I don't know what
14 "massive" means.

15 Q. Sure. Let me see if I can refresh your recollection.

16 Showing you Defense Exhibit M-82, which is an
17 unopposed post-judgment. Do you see what that says, sir?

18 A. (No verbal response.)

19 Q. Do you see it?

20 A. Yes. I see.

21 Q. Is this your case? Yes or no?

22 A. This isn't a landlord. This is from a creditor.

23 Q. Sir, is this pertaining to your business? Yes or no?

24 A. Yes, it is.

25 Q. That's correct. It's from a creditor.

1 MS. WEINTRAUB: At this time, I would move it into
2 evidence, Your Honor.

3 MS. JIMENEZ: On what basis? Objection.

4 THE COURT: The objection is sustained with regard to
5 admission into evidence.

6 BY MS. WEINTRAUB:

7 Q. So now I'll ask you again. Did you have millions of
8 dollars of judgment against you by May 4th, 2020? Yes or no?

9 A. Yes, we did.

10 Q. You had a judgment for \$6 million, did you not, on
11 May 4th, 2020, right?

12 A. Yes, I did.

13 Q. And you had a judgment on May 4th, 2020, for another
14 \$6 million, different number -- a different judgment, correct?

15 A. (No verbal response.)

16 Q. It's highlighted right there for you, sir. It was against
17 SOS, wasn't it?

18 A. (No verbal response.)

19 Q. Mr. Salem, are these judgments --

20 A. That second judgment was for another company. It's SOS,
21 yeah.

22 Q. And SOS Furniture company -- you were the president,
23 correct?

24 A. Correct.

25 Q. These were against your company doing business as

1 Mattress1One? Yes or no?

2 A. Can I ask you and elaborate?

3 Q. Mr. Salem, answer the question, please.

4 A. This -- yes.

5 Q. Yes or no?

6 A. This was my main supplier. I was buying a lot of
7 merchandise, and merchandise were not being sold. Simple as
8 that.

9 Q. It was as simple as that. It wasn't a situation where you
10 were selling used mattresses as new and Tempur-Pedic went and
11 sued you and got a judgment against you for --

12 MS. JIMENEZ: Objection. There's nothing here about
13 anything like that.

14 THE COURT: Overruled.

15 BY MS. WEINTRAUB:

16 Q. No? It wasn't that?

17 A. Absolutely not.

18 Q. You had another judgment for \$898,000 on May 4th, 2020. Do
19 you see that?

20 A. No. I don't. The screen hasn't changed.

21 Oh. SOS. Okay.

22 Q. Yes or no? Do you see it?

23 A. Yes, I see it. It's all from the same creditor.

24 Q. They were all for the same part of time. But there's \$14
25 million, right? All same kind of time? Yeah?

1 A. Yes, from the same creditor.

2 Q. And they were all against SOS doing business as
3 Mattress1One, right?

4 A. No, not correct. Two of the items here are from
5 Mattress1One, Inc., separate company, not my company.

6 Q. Mattress1One, Inc. was not your company?

7 A. No. That was a company that was in Miami operated by my
8 brother.

9 Q. And they obtained a judgment against you for \$400,000, did
10 they not, on May 4th?

11 A. Not against me, no. Against Mattress1One, Inc., which was
12 owned by my brother.

13 Q. Now, a receiver was appointed in May 2020. Is that -- in
14 May 2020, on the date of the lease, this was all going on; is
15 that right?

16 A. A receiver was appointed. I don't know the days.

17 Q. Well, hold on a minute. We're talking about a lease that
18 was signed in May of 2020, right? You saw the lease.

19 A. A lease that was signed, but not by me, yes.

20 Q. A lease that had Pacific Management as the tenant, right?

21 A. Yes. I saw that lease.

22 Q. And the reason that you wanted to use Pacific Management
23 was because you had all of these judgments against you; isn't
24 that right?

25 A. No, it's not.

1 Q. A receiver was appointed, correct?

2 A. Yes, he was.

3 Q. And again, you wanted to be completely honest, right?

4 A. (No verbal response.)

5 Q. With the receiver? Yeah?

6 A. Related to what? What is the question?

7 Q. Well, did you hold things back from the receiver or were
8 you compliant and giving them the information they needed to
9 manage the companies?

10 A. I dealt through my attorney. I'm not sure what you're
11 referring to. I don't know if this is relative here, but go
12 ahead.

13 Q. By June 2nd you declared bankruptcy; is that right?

14 A. I did not declare bankruptcy. The receiver declared
15 bankruptcy.

16 Q. Okay. For your company? Yes or no?

17 A. For my previously owned company.

18 Q. Now, did you just say that you were compliant with the
19 receiver in turning things over? Yeah? A receiver is
20 appointed by a judge, right?

21 A. I don't understand the question. I'm not an attorney.

22 Q. You've been involved in quite a bit of litigation in the
23 past few years, have you not?

24 MS. JIMENEZ: Objection. Relevance.

25 THE COURT: Sustained.

1 BY MS. WEINTRAUB:

2 Q. Now, you said you didn't know anything or it was a joke
3 about Tempur-Pedic. Isn't it true that Tempur-Pedic sued you
4 for selling new mattresses as old -- they were old mattresses.
5 You were selling them as new as a deceptive selling practice,
6 and then you refused to turn over your books to the receiver?

7 MS. JIMENEZ: Objection. Time, relevance.

8 THE WITNESS: No. That's false.

9 THE COURT: All right. Let's sharpen the time frame.

10 MS. JIMENEZ: Does she have a good-faith basis for
11 throwing all this out is the other objection.

12 THE COURT: Sustained.

13 BY MS. JIMENEZ:

14 Q. You said that there was not an order compelling you to turn
15 over your books to the receiver because you refused to, right?

16 MS. JIMENEZ: Objection. Relevance.

17 THE COURT: Sustained.

18 MS. WEINTRAUB: Judge, it's all part of the same two
19 months.

20 THE COURT: The objection is sustained.

21 MS. WEINTRAUB: He also just denied --

22 THE COURT: The objection is sustained.

23 Your next question.

24 BY MS. WEINTRAUB:

25 Q. Now, the trustee in November, a few months later, sued you

1 for fraud. Isn't that true? You said it was a joke before,
2 but I'd like you to consider it again. Is it true or not?

3 A. I did not say anything about trustee was a joke. I said
4 that what you said didn't apply to anything pretty much. But
5 what is the question now, ma'am?

6 Q. Mr. Salem, we could have it read back to you. But when I
7 asked you if you were sued by the receiver for fraud, your
8 answer was: "That's a joke." Are you --

9 MS. JIMENEZ: Objection. That was not the answer to
10 the question.

11 MS. WEINTRAUB: Objection.

12 THE COURT: All right. The objection is overruled.
13 If you don't understand the question, Ms. Weintraub, if you can
14 ask it again or we can have it read back.

15 MS. WEINTRAUB: Yes, ma'am.

16 BY MS. WEINTRAUB:

17 Q. Did you understand the question, Mr. Salem?

18 A. No. You can ask it again.

19 Q. I was asking you, about 10 minutes ago, didn't you say --
20 when I asked you if you were sued by the trustee for fraud, you
21 said: "That's a joke," did you not?

22 A. No, I did not. You asked me if I thought the FBI was
23 coming to arrest me. That's when I responded that.

24 Q. Okay. Well, let's talk about the trustee suing you for
25 fraud. Did he?

1 A. (No verbal response.)

2 Q. He did, didn't he? You have to answer.

3 MS. JIMENEZ: Objection. It's --

4 THE WITNESS: Trustee sued --

5 MS. JIMENEZ: Objection. Is there some -- I mean --
6 just a lawsuit.

7 THE COURT: The objection is overruled.

8 BY MS. WEINTRAUB:

9 Q. So a couple of months after you signed this lease that you
10 first said you did sign and then realized you shouldn't admit
11 it, you're sued by the trustee for fraud?

12 A. (No verbal response.)

13 Q. Yes?

14 A. No.

15 MS. WEINTRAUB: Let's pull it up.

16 Could we have the exhibit where he's sued for fraud,
17 the adversary complaint.

18 BY MS. WEINTRAUB:

19 Q. Now --

20 MS. MARTINEZ: Your Honor, the United States requests
21 to see these documents.

22 THE COURT: If you'll show it to counsel, and before
23 it's shown to the jury.

24 (Pause in proceedings.)

25 MS. WEINTRAUB: Could we pull up M-81 and go to Page

1 19, please, Paragraph 5.

2 (Pause in proceedings.)

3 MS. WEINTRAUB: I'm sorry. I had it backwards. It's
4 Page 5, Paragraph 19. Can you pull that up.

5 BY MS. WEINTRAUB:

6 Q. Can you look at Paragraph 19, sir. You see what it says?

7 MS. JIMENEZ: Your Honor, I believe the witness needs
8 to be asked a question, as opposed to reading from a document
9 that's not evidence.

10 THE COURT: Hold on. Hold on. Let's ask the
11 question. If you need to refresh his recollection with
12 Paragraph 19, you can do so. What's the question?

13 BY MS. WEINTRAUB:

14 Q. The question is: Weren't you sued for fraud, and you said
15 no. I'm trying to first refresh your recollection. Does this
16 refresh your recollection, Mr. Salem, or not?

17 A. You said: "Sued for fraud." I didn't commit fraud nor did
18 I agree to commit fraud -- that I committed fraud. So...

19 Q. You recognize this document, though, don't you?

20 A. I never read the whole document. My lawyer did. I did
21 not.

22 Q. You didn't read it?

23 MS. JIMENEZ: Objection, Your Honor.

24 THE COURT: Sustained.

25

1 THE WITNESS: When you say: "Sustained," am I
2 supposed to answer?

3 THE COURT: All right. It's sustained. There's no
4 need to answer the question.

5 BY MS. WEINTRAUB:

6 Q. Mr. Salem, is it true or not that you were sued by the
7 trustee for your company systematically looting and
8 misappropriating assets as part of an ongoing multiyear scheme
9 to hinder delay and defraud creditors? Yes or no?

10 A. I was sued by the trustee. I never read the details you
11 just mentioned.

12 Q. So you never heard that before?

13 A. No. I assume that this is the process. When a company
14 goes to a receiver, then it goes to a trustee, and they go
15 after any potential recovery money. That's what I understood.

16 Q. Are you denying what the trustee put in pleadings and --

17 MS. JIMENEZ: Objection. Asked and answered.

18 THE COURT: Sustained. The objection is sustained.

19 BY MS. WEINTRAUB:

20 Q. Were you defrauding creditors, Mr. Salem?

21 MS. JIMENEZ: Objection. Asked and answered.

22 MS. WEINTRAUB: It was never answered.

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

24 THE WITNESS: No, I was not.

25

1 BY MS. WEINTRAUB:

2 Q. Now let's go back to when you signed the lease. The lease
3 is signed in May, right?

4 A. Yes. Based on --

5 Q. Would there be any reason on earth that the landlord would
6 know that you were trying to defraud creditors and therefore
7 started a new company, Pacific Management?

8 A. I believe Pacific Management was started in 2018, and we're
9 talking about a document in 2020.

10 Q. How come you didn't mention to the FBI -- when you said
11 that the PPP money you got was being held by the courts, did
12 you explain the predicament you had been in?

13 A. The FBI did not ask me to go into details on any of that.

14 Q. They didn't ask you. Did they ask you how much PPP money
15 you got?

16 MS. JIMENEZ: Objection. Relevance.

17 THE WITNESS: I don't recall. I don't recall.

18 THE COURT: Sustained.

19 MS. WEINTRAUB: Judge --

20 THE COURT: The objection is sustained.

21 BY MS. WEINTRAUB:

22 Q. Did you lie to the FBI?

23 A. No, I did not.

24 Q. Isn't it true that you told the FBI that the money -- the
25 PPP money was being held by the courts? Yes or no?

1 MS. JIMENEZ: Objection. Asked and answered.

2 THE COURT: Sustained.

3 BY MS. WEINTRAUB:

4 Q. You said that you always sign and initial the bottom of the
5 legal documents that you enter into, right?

6 A. Yes. Leases.

7 Q. And you're very sure of that, right?

8 A. Yes.

9 MS. WEINTRAUB: Pull up 88 for him only first.

10 BY MS. WEINTRAUB:

11 Q. Do you remember entering into a tenant estoppel letter with
12 the landlord in this matter? Yes or no?

13 A. No.

14 Q. No. Let me show it to you. It's M-88. Does that refresh
15 your recollection, looking at the Tenant Estoppel Certificate?

16 A. This is from 2015. It doesn't, but --

17 Q. Well, you said that you always put your initials on legal
18 documents, right?

19 A. On leases, on contracts, yes.

20 Q. Okay. So a Tenant Estoppel Certificate that's an
21 attachment to the lease doesn't count? Because there's no
22 signature, is there?

23 MS. JIMENEZ: Objection.

24 BY MS. WEINTRAUB:

25 Q. There's no initial on it, is there?

1 THE COURT: Overruled.

2 THE WITNESS: There's no signature as well.

3 BY MS. WEINTRAUB:

4 Q. Do you see your signature -- you shouldn't just always
5 listen to the prosecutor. You see your signature?

6 A. (No verbal response.)

7 Q. She's not going to object. Do you see your signature?

8 A. That's a guarantor document.

9 Q. Do you see your signature? Yes or no?

10 A. That's my signature. That's a guarantor document,
11 different than the document -- different than an estoppel.

12 Q. Okay. So let's back up. Because obviously you don't want
13 to admit that's your signature, right?

14 A. I just said it is.

15 Q. Okay. And do you see this is our signature on a legal
16 document? Yes or no?

17 A. This is a one-page guarantor.

18 Q. Is it a legal document?

19 A. Yes, it is a legal document.

20 Q. Do you see your initials on it, like you say you always do?
21 Yes or no?

22 A. The signature page doesn't need any initial.

23 Q. It's three pages, isn't it? It's not one page. Do you see
24 it says: "Tenant Estoppel Certificate, Page 3" for your
25 signature?

1 A. Can I see all three pages?

2 Q. Sure. There's one, two, and your signature page, right?

3 A. Page 2 is the signature page for the estoppel, and the
4 guarantor page is independent. Can I see the third page? The
5 guarantor page is independent.

6 Q. Is your initial on the bottom, like you say you always do,
7 or not?

8 A. The guarantor -- if it's one page, it doesn't need an
9 initial. I have my signature.

10 Q. You said that you always put your initials on anything that
11 you sign at the bottom of the page, didn't you?

12 MS. JIMENEZ: Objection. That's not what he said.

13 THE COURT: The objection is overruled.

14 MS. JIMENEZ: Misstates the testimony.

15 THE COURT: Overruled.

16 You may answer the question, sir.

17 MS. WEINTRAUB: Your Honor, at this time, I would move
18 M-88 into evidence.

19 MS. JIMENEZ: Objection. 608, extrinsic.

20 THE COURT: The objection is sustained.

21 THE WITNESS: M --

22 THE COURT: The request is denied.

23 THE WITNESS: The --

24 THE COURT: All right. There's no question pending,
25 sir.

1 Your next question.

2 BY MS. WEINTRAUB:

3 Q. By the way, the PPP money, did you use it for employees,
4 the money -- the \$1.6 million, did you use it to pay employees?

5 MS. JIMENEZ: Objection. Relevance.

6 THE COURT: The objection is sustained.

7 BY MS. WEINTRAUB:

8 Q. Now, let me see if I understand this. Originally your
9 lease was \$11,000 -- \$11,000 a month, right?

10 A. I don't recall this. I have many locations with different
11 rents.

12 Q. Okay. On direct examination, the prosecutor showed you the
13 lease and showed you the check for \$11,000. Do you remember
14 that? It was a few minutes ago.

15 A. I saw checks, yes.

16 Q. Can you answer the question?

17 MS. JIMENEZ: Objection. He's answered the question.

18 MS. WEINTRAUB: Objection, Your Honor.

19 THE COURT: Overruled.

20 Do you understand the question, sir?

21 THE WITNESS: Please repeat the question.

22 BY MS. WEINTRAUB:

23 Q. Wasn't the original lease with Alafaya Trails \$11,000 a
24 month for rent? Yes or no?

25 A. If that's what's in the lease, yes.

1 Q. I'm asking you -- you just saw the -- you want to see the
2 lease and the payment again?

3 MS. JIMENEZ: Objection.

4 THE WITNESS: I would.

5 MS. WEINTRAUB: Okay. Can we bring up the original
6 lease with the \$11,000.

7 THE COURT: The objection is overruled.

8 Is this going to refresh your recollection, sir?

9 THE WITNESS: Yes.

10 THE COURT: All right. Then show the witness.

11 BY MS. WEINTRAUB:

12 Q. Is this the lease that we -- that you were shown on direct
13 examination and identified for the prosecutor?

14 A. Yes.

15 Q. And was the term of the lease --

16 MS. WEINTRAUB: Bring up the \$11,000 check.

17 BY MS. WEINTRAUB:

18 Q. -- for the \$11,000 a month?

19 A. There's no amount. And I'm assuming yes, if it's in the
20 lease. But I'm not looking at an amount. I'm just looking at
21 a lease with a lot of words.

22 Yes. That check says \$11,479. That's a 2019 payment.

23 Q. And it says: "For June rent," right?

24 A. Yes.

25 Q. So without having to go through every page of this lease,

1 do you accept the fact that the lease payments were \$11,000 a
2 month?

3 A. Approximately, yes.

4 Q. Would you pay approximate numbers or would you pay exact
5 numbers?

6 MS. JIMENEZ: Objection. Argumentative.

7 THE COURT: Sustained.

8 There's no need to answer the question, sir.

9 BY MS. WEINTRAUB:

10 Q. Now, the new lease that you were shown by the FBI was a
11 very short-term lease, wasn't it?

12 A. Can you repeat that question, because we were interrupted.

13 Q. The initial lease was a five-year lease, right?

14 A. Correct.

15 Q. You stopped -- the lease expired and you stopped paying
16 rent timely. Is that accurate or not?

17 A. No. We was in second option. The lease finished -- the
18 first initial five-year term would have finished in 2017. We
19 would have been -- in 2020, we would have been in the second
20 term of the lease.

21 Q. But you were what's called a holdover?

22 A. (No verbal response.)

23 Q. We talked about you not paying the rent, right?

24 A. I don't recall anything like that. But again, I had a lot
25 of locations and...

1 Q. Now, you had a five-year lease provided -- the option was
2 provided that there was written notice to the landlord,
3 right -- which you never provided -- of your intent to exercise
4 another option. Isn't that true?

5 A. (No verbal response.)

6 Q. Want to see it? It's in the lease on Page 10 --

7 A. I know what the lease said. And I'm looking at a check
8 that was written on 6/4/2019, which would have been a period in
9 the second term of the lease. So we were in the second term of
10 the lease and paying the rent.

11 Q. And there came a point where you stopped paying and they
12 tried to get you out.

13 MS. WEINTRAUB: Do we have the video yet?

14 MS. JIMENEZ: Objection. Asked and answered.

15 THE COURT: Sustained.

16 BY MS. WEINTRAUB:

17 Q. I'm going to show you a clip to see if it refreshes your
18 recollection that you were being evicted, the police were
19 called, and you were locked out of the store. See if it
20 refreshes your recollection.

21 MS. JIMENEZ: Objection. Relevance.

22 THE COURT: Hold on. The objection is sustained.

23 MS. WEINTRAUB: This is May 2020, the week before or
24 two weeks before the lease is signed, Your Honor.

25 MS. JIMENEZ: Objection. Relevance.

1 THE COURT: With regard to a video, sustained.

2 MS. WEINTRAUB: Well, Your Honor, there's --

3 BY MS. WEINTRAUB:

4 Q. Do you recognize this?

5 MS. JIMENEZ: Objection. It's the same objection.

6 THE WITNESS: No. I worked in an office. I didn't
7 work at this location. I don't even know that this was even
8 happening.

9 BY MS. WEINTRAUB:

10 Q. You also said you didn't recognize Jeff Vasilas or know
11 Jeff Vasilas, right?

12 A. That's correct.

13 MS. JIMENEZ: Objection. Asked and answered.

14 THE COURT: Overruled.

15 BY MS. WEINTRAUB:

16 Q. Wasn't that him in the video or do you want to see it
17 again?

18 A. This video is a video of a door.

19 MS. JIMENEZ: Objection, Your Honor. Regarding the
20 video --

21 THE COURT: All right. Hold on. The objection is
22 sustained with regard to the video. You may ask questions with
23 regard to Mr. Vasilas. Let's continue.

24 BY MS. WEINTRAUB:

25 Q. Did you see Mr. Vasilas? He was the person that was

1 talking on the video.

2 MS. JIMENEZ: Objection.

3 THE COURT: Sustained.

4 BY MS. WEINTRAUB:

5 Q. Now, let's look at the new lease. The new lease was a
6 short-term lease, right?

7 A. I don't know.

8 Q. With a lease payment due, the terms of the lease were to
9 pay \$22,800 up front, was it not?

10 MS. WEINTRAUB: And this is in evidence.

11 THE WITNESS: (No verbal response.)

12 BY MS. WEINTRAUB:

13 Q. Correct? You were supposed to pay \$22,800, correct?

14 A. (No verbal response.)

15 Q. That's what it says?

16 A. The amount that I'm looking at says 22,800, correct.

17 Q. And now let's look to see if you paid that money on a lease
18 that didn't exist.

19 MS. WEINTRAUB: Can you bring up the check for the --

20 BY MS. WEINTRAUB:

21 Q. Now looking at this check which is in evidence for \$22,800,
22 right? And you made it out to HM-UP Development; is that
23 correct? On May -- in May 2020; is that right? Yes or no?

24 A. (No verbal response.)

25 Q. Mr. Salem, do you see the check?

1 A. This payment is still to HM-UP Development Alafaya Trails.

2 Q. That's what I said, Mr. Salem. Is that a check for \$22,800
3 made out to HM-UP Development? Yes or no?

4 A. Correct. But the lease you're showing me is to HM Four
5 Development.

6 Q. You made out the check from Pacific Management to HM-UP for
7 the amount of money that's in the lease, didn't you? Yes or
8 no?

9 A. I don't know where the number -- that amount came from. It
10 just says: "All rents owed through June 30th, 2020," to HM-UP
11 Development Alafaya, which is the company we were on the lease
12 by.

13 Q. That's because you had failed to pay rent, so they wanted
14 the twenty-two eight up front. And you -- it's in the lease on
15 the left, is it not, sir? Is it not?

16 A. (No verbal response.)

17 Q. "Term of the Lease. In the event on May 21st, 2020 the
18 amount of 22,800 is not received" -- do you see that?

19 A. (No verbal response.)

20 Q. Do you see it or not?

21 MS. JIMENEZ: Objection. Asked and answered.

22 MS. WEINTRAUB: He's not answering.

23 THE COURT: He hasn't answered the question. If
24 you'll respond to the question.

25 THE WITNESS: I'll answer you, but then I would like

1 to explain this.

2 BY MS. WEINTRAUB:

3 Q. Do you see the \$22,800 that's required in the new lease
4 that you claim was not done? Yes or no?

5 A. This amount could have been due and the lease created for
6 it.

7 MS. WEINTRAUB: I'd ask for the Court's assistance in
8 directing the witness to answer --

9 THE COURT: The question calls for a yes-or-no
10 response, sir. If you need to explain your answer, you may
11 certainly do so.

12 THE WITNESS: The amount is for the amount stated on
13 this document -- lease, yes.

14 BY MS. WEINTRAUB:

15 Q. And for some reason, even though you say this lease didn't
16 exist, you made a payment for \$22,800, the exact amount that's
17 in the lease that you deny, right?

18 A. Give me one second. Let me read this.

19 Q. Excuse me?

20 A. Give me one second. Let me read the highlighted part.

21 (Pause in proceedings.)

22 BY MS. WEINTRAUB:

23 Q. Are you ready to answer the question?

24 A. Okay. Now ask me the question, please.

25 Q. The term of the new lease was that you pay \$22,800 up

1 front. Yes or no?

2 A. This payment appears to be a payment --

3 Q. Mr. --

4 MS. JIMENEZ: Objection.

5 THE WITNESS: Then the answer is no.

6 BY MS. WEINTRAUB:

7 Q. Mr. Salem, I'm going to interrupt you and ask the Court to
8 direct you, if you can't understand, that you must answer yes
9 or no first. My question, sir, is this: The lease calls for
10 \$22,800 up front to be paid. Yes or no?

11 A. No.

12 Q. No?

13 A. Can I explain?

14 THE COURT: You may explain your answer, sir.

15 THE WITNESS: Okay. So a lease usually has an initial
16 deposit. This is not a deposit. This is back-owed rent.

17 BY MS. WEINTRAUB:

18 Q. Oh. Back-owed rent?

19 A. Back-owed rent.

20 Q. Because you weren't paying it on time, back-owed rent?

21 A. I just explained myself.

22 Q. Yes, you did. And that would explain that you hadn't been
23 paying the rent, and they didn't want to get into a new lease,
24 so they said they wanted the 22,800 up front?

25 MS. JIMENEZ: Objection. Argumentative.

1 BY MS. WEINTRAUB:

2 Q. Is that right?

3 THE COURT: Sustained.

4 BY MS. WEINTRAUB:

5 Q. Well, let's make it simple. So the lease on the left says
6 22,800 up front, and there's a check, lo and behold, for
7 \$22,800 or the amount of money for the rent on the new lease,
8 right? We established that, yes?

9 A. Yes. Can I explain?

10 Q. You just did explain, sir. Now let's go to the next check.

11 MS. JIMENEZ: The witness would like to explain his
12 answer.

13 THE COURT: You may explain your answer, sir.

14 THE WITNESS: Okay. Again, I signed many leases in my
15 time. And this Article II says: "Rent, Security Deposit,
16 Landlord's Work and Tenant Improvement Allowance. Base rent.
17 Tenant shall pay the following amounts as base rent to landlord
18 during lease term, 22,800."

19 This number that's represented in the lease, it shows
20 it as a deposit. But the payment for the check represented --
21 clearly said: "All rents owed through June 30th, 2020." The
22 check does not match the wording of the deposit -- of the
23 contract in front of me.

24 BY MS. WEINTRAUB:

25 Q. The amount does, doesn't it? It's an odd amount, \$22,800.

1 Just happens to be the same exact amount that's in the lease,
2 right?

3 A. (No verbal response.)

4 Q. Right?

5 A. The amount is correct.

6 Q. I'm sorry?

7 A. The amount is correct.

8 Q. Okay. So now let's look. The lease term says after the
9 twenty-two eight was paid that monthly it would be reduced to
10 \$8,000 a month, right? Says: "July 1st, 2020," right, "8,000
11 per month." Yes, you see that?

12 A. I see that. Yes, I do. Yes, I do.

13 Q. Okay. Now, let's go to what you paid. It's 8,000 per
14 month, plus sales tax, right?

15 A. Correct.

16 Q. And so, then we look at 8,000 per month, plus sales tax.
17 So we have a check for \$8,480 for the next month; is that
18 right?

19 A. That's correct.

20 Q. And again, that's exactly the amount of money that is
21 required under the new lease that you deny is there. Yes?

22 A. Yes. And I want to explain again. This check says:

23 "HM-UP Development Alafaya Trails, LLC" --

24 Q. Mr. Salem --

25 A. -- which is the landlord that I signed the lease in 2012.

1 Q. Mr. Salem --

2 A. This contract is for HM Four. It's a completely different
3 company.

4 Q. Mr. Salem --

5 A. Okay. Go ahead.

6 Q. -- you denied the lease. I have now showed you the exact
7 number on the check amounts that you have paid for rent there.
8 Yes or no?

9 A. Yes.

10 Q. And in fact, because you were playing games and changed the
11 name to Pacific Management from SOS --

12 MS. JIMENEZ: Objection. Argumentative, Your Honor.

13 THE COURT: Sustained.

14 BY MS. WEINTRAUB:

15 Q. Isn't it true --

16 THE COURT: Rephrase.

17 THE WITNESS: Can I --

18 THE COURT: There's no question pending. Rephrase,
19 please.

20 BY MS. WEINTRAUB:

21 Q. Isn't it true that your prior lease was in the name of SOS
22 Furniture? Right? Yes?

23 A. Correct.

24 Q. But because of all of the millions of dollars in judgments
25 in fraud that was going on, you then decided that you wanted

1 the tenant to be Pacific MS Management for the first time,
2 right?

3 A. That is not correct, no. And this check says --

4 Q. Is it your testimony, sir --

5 MS. JIMENEZ: He would like to explain.

6 BY MS. WEINTRAUB:

7 Q. -- that the landlord --

8 THE COURT: Hold on. Hold on.

9 MS. WEINTRAUB: I'm sorry.

10 THE COURT: Have you finished your answer, sir?

11 THE WITNESS: No. The check that she's showing me
12 says: "Month-to-month" on it. Again, it's a continuation of
13 payments to the previous contract. It says: "Month-to-month"
14 written in, "month-to-month." How can this be for a new lease?

15 BY MS. WEINTRAUB:

16 Q. This \$8,000 amount is not called for in the original lease,
17 is it? It's only called for in the lease that you deny, right?

18 A. Yes. Can I explain?

19 THE COURT: You may explain your answer, sir.

20 THE WITNESS: It's very normal for landlords to give
21 abatements, adjustments to rent in difficult times, and this
22 was obviously a difficult time.

23 BY MS. WEINTRAUB:

24 Q. A difficult time of fraud or a difficult time because you
25 weren't paying the rent, or what?

1 MS. JIMENEZ: Objection. Argumentative.

2 THE COURT: The objection is sustained. Rephrase,
3 please.

4 BY MS. WEINTRAUB:

5 Q. By the way, are these checks of yours -- they were
6 computerized?

7 A. Yes, they are.

8 Q. And so is your signature, isn't it?

9 A. That is correct.

10 Q. Sir, you were just talking about it's very common to have
11 an abatement, right, and the reduction? Yeah? You just said
12 that. Do you remember?

13 A. Correct.

14 Q. The truth is, there's no abatement in writing, and it's
15 part of a lease, what you're talking about. I mean, you have
16 no personal knowledge of that, do you?

17 A. I don't understand your question, ma'am.

18 Q. I'm sorry?

19 A. I do not understand your question.

20 Q. You just gave an answer trying to explain something by
21 saying: "Well, it's very common to just, you know, get a
22 reduction in rate." But wouldn't that be in writing, sir?

23 A. It could be verbally.

24 Q. A lease can be verbal and legal?

25 A. No.

1 Q. Is that your testimony after executing over 200 leases?

2 A. I've seen it many times. I've done it many times, yes.

3 Q. Never did it with Alafaya Trails, did you?

4 A. I didn't. I believe my brother did.

5 Q. Oh. That's new. Did you tell that to the FBI or is this
6 the first time that we're hearing that?

7 A. (No verbal response.)

8 Q. You can answer. You didn't tell anybody that till just now
9 when you thought of it, right?

10 A. No. I didn't just think of it. I -- this is a common
11 practice in the business.

12 Q. Mr. Salem, you keep going around and around with your
13 explanations. You never answered my question. You have no
14 personal knowledge of any abatement being done or reduction in
15 rent being done, do you?

16 A. No, I don't.

17 Q. Yet, you testified to it a few minutes ago, didn't you?

18 A. You mean if I stated that? Yeah. I stated that.

19 Q. When the FBI came to you and they were asking you about
20 negotiating the lease, why didn't you tell them that your
21 brother was the one who negotiated the lease and just have them
22 call your brother?

23 A. Can you rephrase that question or repeat it?

24 Q. When the FBI came asking you questions about negotiating
25 this lease that's at issue here, why didn't you just say that:

1 "My brother negotiated it and talk to him"? Didn't you just
2 say your brother negotiated this?

3 A. I did not say my brother negotiated this.

4 Q. Mr. Salem, did you tell the FBI that your brother Marwan
5 Salem handled all real estate transactions? Yes or no?

6 A. What was the question from the FBI?

7 Q. Did you tell the FBI that your brother Marwan handled all
8 the real estate transactions? Yes or no?

9 A. I don't recall. Again, can you tell me what the question
10 was from the FBI agent that would have led to that answer?

11 Q. I can only tell you what is written in a report.

12 A. Okay.

13 Q. So I want to know if they got it right or if you're
14 changing your testimony. Which is it?

15 A. No. My brother handled real estate for the last few years
16 of the company, but not signing leases. Discussing and
17 negotiating, not signing leases. He never signed the lease.

18 (Pause in proceedings.)

19 MS. WEINTRAUB: If I can just have a second, Judge.

20 Sorry.

21 THE COURT: All right.

22 (Pause in proceedings.)

23 BY MS. WEINTRAUB:

24 Q. Mr. Salem, you said that you were suffering from hard times
25 because of COVID, right?

1 A. (No verbal response.)

2 Q. That's what you blamed it on?

3 A. Everyone was suffering from hard times.

4 Q. I'm sorry?

5 A. Yeah. COVID affected everyone.

6 Q. Okay. But that wasn't the question. You're good.

7 The question was: Was it your testimony that all the
8 problems that you had in the business was because of COVID?

9 MS. JIMENEZ: Objection. Misstates his testimony.

10 THE COURT: Overruled.

11 THE WITNESS: No. I didn't say all the problems I had
12 was because of COVID. I had a company in Texas that I had a
13 partner, and I had issues with that company in Texas. So there
14 was problems prior, like any business has.

15 BY MS. WEINTRAUB:

16 Q. Like any business has. Does any business have \$16 million
17 of fraud judgments against it, sir, that you agreed to?

18 MS. JIMENEZ: Objection. Argumentative, asked and
19 answered.

20 THE COURT: Sustained.

21 BY MS. WEINTRAUB:

22 Q. Mr. Salem, do you admit --

23 (Pause in proceedings.)

24 BY MS. WEINTRAUB:

25 Q. Do you admit that long before COVID -- couple of years

1 before COVID, you agreed and stipulated, you signed and agreed
2 that you would not make any more false or misleading
3 misrepresentations when selling mattresses and related sleep
4 items to consumers?

5 MS. JIMENEZ: Objection. Relevance.

6 THE COURT: Sustained.

7 MS. WEINTRAUB: Judge, it's direct impeachment.

8 THE COURT: The objection is sustained.

9 You may continue.

10 BY MS. WEINTRAUB:

11 Q. Didn't you agree years before COVID to cease and desist
12 from selling or delivering mattresses as new --

13 MS. JIMENEZ: Objection. Relevance.

14 THE COURT: Sustained.

15 BY MS. WEINTRAUB:

16 Q. -- when they were used?

17 MS. WEINTRAUB: Judge, just so I don't go through more
18 of it is the Court prohibiting me from using the document at
19 all?

20 THE COURT: If it relates to the last question, yes.

21 (Pause in proceedings.)

22 THE COURT: Ladies and Gentlemen, how is everybody
23 doing? Do we need a little break?

24 Yeah?

25 Let's go ahead and take a 10-minute recess, please.

1 (Jury not present, 10:44 a.m.)

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

3 MS. WEINTRAUB: Can the witness be admonished not
4 to --

5 THE COURT: Sir, as you're on the witness stand you're
6 not to discuss your anticipated testimony or any other aspect
7 of the case. All right, sir?

8 We'll see you back here in 10 minutes. I'm speaking
9 to you, sir.

10 THE WITNESS: To --

11 THE COURT: You can't speak with anyone, sir.

12 THE WITNESS: Okay.

13 (Recess from 10:45 a.m. to 10:55 a.m.)

14 THE COURT: All right. We're just waiting for the
15 witness.

16 All right. Come on forward, Mr. Salem.

17 Both sides ready to continue?

18 MS. WEINTRAUB: Yes, Your Honor.

19 THE COURT: All right.

20 MR. ETRA: Let's bring in the jury.

21 (Before the Jury, 10:56 a.m.)

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

24 Please be seated, everyone.

25 And we'll continue with the cross-examination.

1 MS. WEINTRAUB: Thank you, Your Honor.

2 BY MS. WEINTRAUB:

3 Q. Mr. Salem, I'm going to show you again the Exhibit
4 Number...

5 MR. CAVALLO: M-88.

6 BY MS. WEINTRAUB:

7 Q. And this is the estoppel letter that we talked about
8 before. Do you recognize it again?

9 A. (No verbal response.)

10 Q. Yes?

11 A. This says: "Guarantor."

12 Q. Yes. Now, you said, when I was talking to you about this,
13 that this was a stand-alone document. Do you remember that?

14 A. It appears to be, yes.

15 Q. And the truth is -- if you go up to the page before, the
16 truth is that it is not a stand-alone document. It was Page 3
17 of a three-page document, correct?

18 MS. JIMENEZ: The objection's not in evidence. I've
19 checked. We're talking about the document.

20 THE COURT: All right. If the witness -- if this is
21 refreshing his recollection, he can look at the document not
22 being shown to the jury but just to the witness.

23 MS. WEINTRAUB: I'm happy to move M-88 into evidence,
24 Your Honor.

25 MS. JIMENEZ: No. Objection.

1 THE COURT: All right.

2 MS. JIMENEZ: I said: "No," comma, "objection."

3 THE COURT: Do you have an objection?

4 MS. JIMENEZ: Yes.

5 THE COURT: All right. Then show it for purposes of
6 refreshing the witness's recollection.

7 BY MS. WEINTRAUB:

8 Q. You see that, right? You see that actually what's
9 happening is your signature -- if you want to read what it
10 says -- your signature is guaranteeing the above provisions.
11 Do you see that? It says that: "Agrees with lender and its
12 successor" --

13 MS. JIMENEZ: Objection. She's reading from a
14 document not in evidence.

15 THE COURT: Sustained.

16 MS. WEINTRAUB: Sorry.

17 BY MS. WEINTRAUB:

18 Q. Do you see this on the --

19 MS. WEINTRAUB: I was just trying to move it along.

20 BY MS. WEINTRAUB:

21 Q. It's on the fourth line, Judge -- I mean Mr. Salem. Do you
22 see that? It's highlighted now. Does that refresh your
23 recollection?

24 A. Estoppel and guarantor agreements are stand-alone
25 agreements. Page 2 of the estoppel is not signed. The

1 guarantor page is what's signed.

2 Q. Okay. And now can you answer my question please, sir? The
3 question is: Your signature there guarantees the above
4 conditions, does it not?

5 MS. JIMENEZ: Objection. He's answered the question.
6 Asked and answered.

7 THE COURT: Overruled.

8 MS. JIMENEZ: He's not a lawyer.

9 BY MS. WEINTRAUB:

10 Q. It binds you, does it not, on the previous guarantees?

11 A. (No verbal response.)

12 Q. Yes or no?

13 A. No.

14 Q. Okay.

15 A. Not from my understanding. A guarantor is a separate
16 document, separate contract -- agreement. An estoppel is
17 something different. The estoppel is not signed.

18 Q. But the guarantee is, right?

19 A. They could have been connected at a later date.

20 MS. JIMENEZ: Asked and answered.

21 THE COURT: Sustained.

22 BY MS. WEINTRAUB:

23 Q. Now, in summing up, I just want to make sure that I
24 understand that the first time the FBI came, you told the
25 truth, right?

1 A. I always tell the truth to the best of my ability.

2 Q. Isn't the reason that you called the FBI back was because
3 you realized that when you admitted and verified your
4 signature, and admitted that that lease was real, it was with
5 Pacific Management and you were just incriminating yourself to
6 having a scheme to avoid your creditors? Is that right?

7 MS. JIMENEZ: Objection.

8 THE COURT: And the basis?

9 THE WITNESS: No, absolutely not.

10 MS. JIMENEZ: Argumentative.

11 THE COURT: Sustained.

12 BY MS. WEINTRAUB:

13 Q. Is that because you would never do something like that?

14 MS. JIMENEZ: Objection. What was the -- I couldn't
15 hear. I'm sorry.

16 MS. WEINTRAUB: Well, he answered.

17 THE WITNESS: I said no, it's not because of that.
18 It's because I realized that it wasn't my signature, and my
19 name was misspelled, and I was missing the initials. That's
20 why I called back.

21 BY MS. WEINTRAUB:

22 Q. And the misspelling is the typo, right, with the S and the
23 D which are next to each other on a keyboard; is that right?

24 A. I don't have a keyboard in front of me. I don't know.

25 Q. And as you said, you tell the truth all the time, right?

1 MS. JIMENEZ: Objection. Argumentative.

2 THE COURT: Sustained.

3 All right. Any redirect?

4 REDIRECT EXAMINATION

5 BY MS. JIMENEZ:

6 Q. Mr. Salem, when your business went into bankruptcy, did
7 that mean that you couldn't pay creditors?

8 A. The business went into bankruptcy after the receiver took
9 it over. But I couldn't pay even before the receiver took it
10 back -- took it over.

11 Q. So was it the case that creditors sued you --

12 MS. WEINTRAUB: Objection. Leading.

13 THE COURT: Sustained.

14 BY MS. JIMENEZ:

15 Q. -- so that you could get your money back?

16 MS. WEINTRAUB: Objection.

17 BY MS. JIMENEZ:

18 Q. Were you sued by creditors?

19 A. I was sued by creditors.

20 Q. Did they want their money?

21 A. Yes, they were [sic].

22 Q. You were asked about the two times you spoke with the FBI,
23 April 11th, and then you call them the following day. When you
24 were first approached by the FBI, did you know they were going
25 to come and talk to you?

1 A. No.

2 Q. Did they schedule an appointment with you ahead of time?

3 A. No. They just showed up.

4 Q. And were you confronted with a lease for the first time?

5 MS. WEINTRAUB: Objection. Leading.

6 THE COURT: Sustained.

7 BY MS. JIMENEZ:

8 Q. Were you confronted with a document?

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

10 Confronted.

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

12 THE WITNESS: I was presented a document. Yes.

13 BY MS. JIMENEZ:

14 Q. Had you seen that document before?

15 A. No, I never had.

16 Q. You were asked what you said about your brother. Did you
17 say that your brother, Marwan Salem, handled the real estate --

18 MS. WEINTRAUB: Objection. Leading.

19 BY MS. JIMENEZ:

20 Q. -- transactions?

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

22 BY MS. JIMENEZ:

23 Q. Did you say that?

24 A. Yes, I did. He was handling the real estate for the last
25 few years.

1 Q. Did you tell the FBI that because you're president of the
2 company you would be the one to sign the lease?

3 A. Yes. That's correct.

4 Q. Did you also tell them in that interview that a final lease
5 would have to have your initials?

6 MS. WEINTRAUB: Objection, Your Honor.

7 THE COURT: Basis?

8 BY MS. JIMENEZ:

9 Q. Did you tell them that?

10 MS. WEINTRAUB: It's a prior consistent statement --

11 MS. JIMENEZ: He was asked about it.

12 MS. WEINTRAUB: -- and it's leading.

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

14 BY MS. JIMENEZ:

15 Q. Did you tell them in that interview?

16 A. I told them that my signatures always comes with initials
17 on every page. That's my habit.

18 Q. And then you spoke to the FBI again? Did you speak with
19 the FBI again the next day?

20 A. The next day is when I told them about the signature and
21 the initials.

22 Q. So you spoke with someone from the FBI the following day --

23 A. Correct.

24 Q. -- right? Did you call the FBI or did the FBI call you?

25 A. No. I called them.

1 Q. And you -- and when you called them, why did you call them?

2 MS. WEINTRAUB: Objection. Asked and answered.

3 THE COURT: Sustained.

4 BY MS. JIMENEZ:

5 Q. What did you tell them when you called them?

6 MS. WEINTRAUB: Same objection.

7 THE COURT: Overruled.

8 THE WITNESS: I told them that I had some questions
9 about the document that was left. I told them that it didn't
10 appear to be something that I signed, and I told them that my
11 name was misspelled, the signature didn't look right, and it
12 was missing initials throughout the pages.

13 BY MS. JIMENEZ:

14 Q. Did you tell them whether or not you'd ever heard of this
15 company, HM Four?

16 A. I don't recall at the time. And I didn't just -- I
17 never -- I didn't look.

18 MS. WEINTRAUB: There's no question pending.

19 THE COURT: Sustained.

20 BY MS. JIMENEZ:

21 Q. Please explain your answer. Go ahead.

22 A. No. I just -- I saw the date -- I mean I saw the address,
23 and that's why I thought it was the same agreement initially.
24 I did not look to see that there was a difference in the name.
25 I figured that out later on.

1 Q. So you don't recall telling them --

2 MS. WEINTRAUB: Objection, Your Honor.

3 BY MS. JIMENEZ:

4 Q. -- that you -- that you didn't remember --

5 THE COURT: Sustained. Rephrase.

6 BY MS. JIMENEZ:

7 Q. Did you, the second day, tell them that --

8 MS. WEINTRAUB: Objection.

9 BY MS. JIMENEZ:

10 Q. -- whether the company --

11 THE COURT: Sustained. Rephrase.

12 BY MS. JIMENEZ:

13 Q. -- whether the Defendant's company asked you to make
14 payments to other companies?

15 MS. WEINTRAUB: Your Honor, objection.

16 THE COURT: The objection is sustained. Rephrase.

17 BY MS. JIMENEZ:

18 Q. Well, do you remember talking or telling them anything else
19 that had to do with your payments?

20 A. Yeah. I told them -- and I'm trying to remember exactly
21 how -- what I told them. But I told them that there was
22 something weird about this collection because someone would --
23 people would show up to the office, which was not typical, to
24 collect. And I believe there was even an incident where the
25 store was forced shut because a payment wasn't released.

1 I also was told by someone in the office that --

2 MS. WEINTRAUB: Objection. Hearsay and --

3 THE COURT: Sustained.

4 MS. JIMENEZ: Can we pull up 39-10, please.

5 And then can you put it to one side. And can you put
6 up 78, is it?

7 BY MS. JIMENEZ:

8 Q. At any point did anyone tell you you were paying the wrong
9 company?

10 A. No.

11 Q. Did anyone ask you to make payments to an HM Four, not
12 HM-UP Development Alafaya Trails?

13 A. There was a request to write checks to different names,
14 different companies.

15 Q. Did you ever receive a request that you recall specifically
16 to pay HM Four?

17 A. No.

18 MS. JIMENEZ: Can we show the Exhibit 20 -- no.

19 Sorry. Hold on.

20 (Pause in proceedings.)

21 MS. JIMENEZ: Exhibit -- can you just leave 78. Put
22 up Exhibit 58-1, please.

23 MS. WEINTRAUB: Judge, Government's 79 is not in
24 evidence -- 78, sorry.

25 MS. JIMENEZ: What I indicated is that this is part of

1 Composite 39, and I indicated the Bates numbers and that we
2 were going to call it 78.

3 THE COURT: All right. So it is in evidence or it is
4 not?

5 MS. JIMENEZ: It is in evidence. It's part of
6 Composite Exhibit 39, and I gave the Bates page of Exhibit 39.

7 THE COURT: All right. 9809. All right. You may
8 continue.

9 BY MS. JIMENEZ:

10 Q. Did anyone ever say to you that they wanted to negotiate a
11 lease with you with a different company, HM Four?

12 MS. WEINTRAUB: Objection. Leading.

13 THE COURT: Sustained.

14 BY MS. JIMENEZ:

15 Q. Did you have any discussions or were you advised at any
16 point that your lease was now with a different company?

17 MS. WEINTRAUB: Objection. Calls for a hearsay
18 response.

19 THE COURT: Overruled.

20 THE WITNESS: No. I was never told that any -- there
21 was any request to change any company.

22 MS. JIMENEZ: Can we go to the last page of 58-1.

23 BY MS. JIMENEZ:

24 Q. The signature for you -- let me ask you: On checks, your
25 signature you indicated is, what, like an automated signature?

1 MS. WEINTRAUB: Objection, Your Honor. Counsel is
2 testifying.

3 THE COURT: Sustained.

4 MS. WEINTRAUB: He said it was a computer.

5 THE COURT: All right. Let's continue.

6 BY MS. JIMENEZ:

7 Q. What did you say about your signature on the checks?

8 A. I said this is a digital signature, but my signature is
9 pretty consistent.

10 Q. When you -- and for your company, you're the one who signs
11 the leases; is that right?

12 MS. WEINTRAUB: Objection. Leading and asked and
13 answered.

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

15 THE WITNESS: Yes. I sign leases.

16 BY MS. JIMENEZ:

17 Q. Do you sign with a computer or do you actually sign a
18 lease?

19 A. A physical signature.

20 Q. Looking at Exhibit 58-1, the signature page, is that your
21 signature, Mr. Salem?

22 A. No, it's not.

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

25 THE COURT: All right. Is the witness excused?

1 MS. JIMENEZ: Yes.

2 MS. WEINTRAUB: Definitely. Yes.

3 THE COURT: All right. Thank you, Mr. Salem. You are
4 excused.

5 (Witness excused.)

6 THE COURT: The Government's next witness.

7 MS. MARTINEZ: The United States calls Heimdal
8 Barrios.

9 (Pause in proceedings.)

10 THE COURT: All right. Good morning, sir.
11 Come on forward.

12 COURTROOM DEPUTY: Please raise your right hand.

13 HEIMDAL BARRIOS, GOVERNMENT WITNESS, SWORN

14 COURTROOM DEPUTY: State your name and spell it for
15 the record.

16 THE WITNESS: H-E-I-M-D-A-L. Last name B-A-R-R-I-O-S.

17 DIRECT EXAMINATION

18 BY MS. MARTINEZ:

19 Q. Good morning, Mr. Barrios.

20 A. Good morning.

21 Q. Mr. Barrios, in 2020, where were you working?

22 A. SunTrust Bank.

23 Q. Get closer to the microphone there.

24 A. SunTrust Bank.

25 Q. And how long had you been working for SunTrust Bank? When

1 did you roughly start there?

2 A. I was working for about five years. So sometime in 2016
3 probably I started.

4 Q. And in 2020, what was your location? In what location of
5 SunTrust Bank were you working?

6 A. The Bal Harbour office on Collins and 96th Street.

7 Q. And what was your particular position?

8 A. I was the bank manager or financial center manager.

9 Q. For that particular branch?

10 A. For that office. Correct.

11 Q. During your time at the Bal Harbour office, did you ever
12 know Mr. Eric Sheppard?

13 A. Yes.

14 Q. I'm going to show you what's --

15 MS. MARTINEZ: Could you pull up Exhibit 39-11.

16 Could you just -- yeah, highlight the top.

17 BY MS. MARTINEZ:

18 Q. Do you recognize what's already been admitted into evidence
19 as Government's Exhibit 39-11?

20 A. Do I recognize it? Yes.

21 Q. Do you recognize what type of document this is? What is
22 it?

23 A. Yes. This is a signature card that is used at the
24 beginning of establishing an account. So this is what we would
25 use to verify a customer's signature if they were to cash a

1 check or anything pertaining to that account.

2 Q. And what is the company name?

3 A. HM Four, LLC.

4 Q. And what are the last four digits of the account?

5 A. 5817.

6 Q. And who is the signer in the account?

7 A. Eric Sheppard.

8 Q. And what's his listed title?

9 A. Manager.

10 Q. Is there anybody else on that signature card that has
11 authority over this account?

12 A. No.

13 Q. And what was the date that it was opened?

14 A. October 22nd, 2020.

15 MS. MARTINEZ: Can you just show the bottom.

16 BY MS. MARTINEZ:

17 Q. What's the box that's checked, the type of company?

18 A. It's an individual/sole proprietor or a single member LLC.

19 Q. And there's an additional signature and date at the bottom.

20 Is that -- who normally fills out that signature at the bottom?

21 A. The signer of the account.

22 Q. The same person that you have on the signature card above?

23 MS. WEINTRAUB: Objection, Your Honor.

24 THE WITNESS: Correct.

25 THE COURT: And the basis?

1 MS. WEINTRAUB: There's no personal knowledge and
2 there's no foundation for this. Is this --

3 THE COURT: Overruled. Overruled.

4 (Pause in proceedings.)

5 MS. MARTINEZ: Could you pull up 58-3. It's already
6 been admitted into evidence.

7 BY MS. MARTINEZ:

8 Q. Mr. Barrios, have you seen this document before?

9 A. Yes.

10 Q. Who showed it to you?

11 A. The first time I saw this document from -- was Sarah.
12 Sarah from the FBI text it to me.

13 Q. Do you recognize the signature on the document?

14 A. It's similar to mine, but I don't believe it's mine.

15 Q. Why -- why do you say that it's not your signature?

16 MS. WEINTRAUB: Objection. That's not what he said.

17 THE COURT: The objection is sustained.

18 BY MS. MARTINEZ:

19 Q. Do you recall signing this letter?

20 A. No. The reason for that is because it's common for a
21 customer or a client of the bank to request a letter of this
22 kind. So I would not be able to tell you the specific
23 instant -- whether I signed this or not, because I've signed so
24 many of them.

25 Q. Do you recognize this as your signature?

1 A. No.

2 Q. And what is your -- how is your signature different from
3 this one?

4 MS. WEINTRAUB: Objection, Your Honor.

5 THE COURT: Basis? I'm sorry?

6 MS. WEINTRAUB: That's not what he said.

7 THE COURT: No. The question is: "How is your
8 signature different?"

9 Overruled.

10 THE WITNESS: May I continue?

11 BY MS. MARTINEZ:

12 Q. You may answer.

13 A. So the H -- so my signature consists of an H and a B
14 combined at the beginning, followed by the rest of my last
15 name, which I usually end with an S and a dot for the I, and
16 the S at the end of my name.

17 Aside from that, the H and the B seems -- doesn't seem
18 as smooth as my signature would be. So those are the two
19 reasons why I believe that may not be my signature.

20 Q. The date is November 11th, 2020, correct?

21 A. Correct.

22 Q. We just saw that the bank account had just been opened
23 October 22nd, correct?

24 A. Yes.

25 Q. And we saw that the signer on the bank account was Mr. Eric

1 Sheppard?

2 A. Correct.

3 Q. Could you read out the first sentence in this letter.

4 A. "Eric Sheppard and Jennifer Sheppard are a valued customer
5 of SunTrust Bank."

6 Q. Is Mrs. Sheppard on this account?

7 A. Based on the signature card we saw previously, no.

8 Q. In your experience, when you wrote any letter for a
9 customer relating to an account, did you add --

10 MS. WEINTRAUB: Objection, Your Honor. Hypothetical.

11 THE COURT: Sustained. Rephrase.

12 BY MS. MARTINEZ:

13 Q. Looking at the letter, does the first sentence indicate to
14 you whether or not you wrote this letter?

15 A. The signature card states Eric Sheppard is the only signer.
16 I wouldn't type a letter with false information on purpose.

17 Q. And what is the false information?

18 A. Based on the signature card previously shown to me,
19 Jennifer Sheppard is not a client -- I'm sorry -- is not a
20 signer on that specific account. I can't confirm whether she's
21 a client of the bank or not. I don't recall. I don't have
22 that information. But she was definitely not a signer based on
23 the signature card.

24 Q. On the HM Four account?

25 A. On the HM Four account, correct.

1 MS. MARTINEZ: Can you zoom out. Can you Zoom so just
2 the top, what is -- the account that we're talking about.

3 BY MS. MARTINEZ:

4 Q. And just -- this letter lists an account number. What are
5 the last four digits of the account number?

6 A. 5817.

7 Q. And the company name?

8 A. HM Four, LLC.

9 Q. Now, in addition to a letter like this, is there a process
10 at SunTrust for verification of accounts?

11 A. Yes.

12 Q. And what is that?

13 A. We would indicate for the customer to call the 800 number,
14 where there is an option for different types of investigations
15 on your account/bank relationship.

16 Q. Is that a way that you use for account verifications --
17 you?

18 MS. WEINTRAUB: Objection.

19 THE COURT: I'm sorry. What is the basis?

20 MS. WEINTRAUB: Again, it's a hypothetical.

21 THE COURT: Overruled.

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

23 BY MS. MARTINEZ:

24 Q. Can you explain to the jury how the account verification
25 process works and in your experience how you use it.

1 A. So there's a process where the customer would call the 800
2 number, and that 800 number would have the authority to verify
3 the customer over the phone and give any kind of information
4 necessary or requested.

5 Q. And do you refer requests for verification to that 1-800
6 number?

7 A. Correct. Yes.

8 MS. MARTINEZ: Could you pull up 58-5.

9 Could you just highlight the top part, just because
10 it's difficult to read. I'm sorry. Just the whole...

11 Can you zoom this down and go back to the previous
12 exhibit. Do you remember the number -- or do I need to give it
13 to you?

14 Okay. Good.

15 BY MS. MARTINEZ:

16 Q. Does -- is SunTrust open on holidays, like Veterans Day?

17 A. No.

18 Q. And I suppose you don't have a calendar with you.

19 November 11th, 2020 was Veterans Day?

20 A. They took my phone from me, so unfortunately I don't.

21 Q. Okay. Let's just say if November --

22 A. Sure.

23 MS. MARTINEZ: Your Honor, could the Court take
24 judicial notice that November 11th, 2020 was Veterans Day?

25 THE COURT: On behalf of the Defendant, is there any

1 dispute?

2 MS. WEINTRAUB: I'd have to look at the calendar, to
3 be honest, Judge. I have no reason to doubt Ms. Martinez,
4 though.

5 THE COURT: All right. Well, to the extent that it
6 is, the Court can take judicial notice.

7 BY MS. MARTINEZ:

8 Q. Mr. Barrios, was the SunTrust Bank open on Veterans Day?

9 A. I don't believe so. It's a national holiday, so we should
10 have been closed.

11 Q. A national federal holiday?

12 A. Correct. A national federal holiday.

13 Q. Okay.

14 MS. MARTINEZ: Can we go back to the other exhibit.

15 I think it was 58-5.

16 And go to the top.

17 BY MS. MARTINEZ:

18 Q. Do you recognize this type of document?

19 A. Yeah. It looks like either a bank statement or a
20 transaction history.

21 Q. Well, what's the period of time given on the right?

22 A. November 1st to November 17th of 2020.

23 Q. So is that a full transcript?

24 A. It's not.

25 Q. And why did you call it like a transaction history?

1 A. Because there's two different documents that we would be
2 able to print out to show this kind of information. One would
3 be your monthly statement, which is generated automatically
4 every month. The other would be a transaction history, which I
5 would be able to print out -- or myself or any of the bankers
6 or tellers would be able to print out from their desk. And
7 with that document, you would be able to choose what dates you
8 print the transactions for.

9 Q. So taking a look at 58-5, what are the two deposits -- the
10 dates of the two deposits that are in the transaction history?

11 A. There was a deposit on November 12th for \$80 and a deposit
12 on November 16th for 60,000.

13 MS. MARTINEZ: Can you go to the bottom part of this,
14 and all the way to the -- there you go.

15 BY MS. MARTINEZ:

16 Q. Do you recognize the items on the bottom half of the
17 document?

18 A. I don't recall any documents stating "printed by," so that
19 stands out to me.

20 Q. And does the stamp -- do you recognize the stamp?

21 A. The stamp does look similar. It is -- it may be a stamp
22 that I have used, SunTrust Bank. I'm not sure why it would say
23 "Miami" after "SunTrust Bank." But there is -- if this is not
24 the stamp, there is a stamp that I use that's very similar to
25 this one.

1 Q. And during --

2 MS. MARTINEZ: You can bring it down.

3 You can zoom out.

4 BY MS. MARTINEZ:

5 Q. During -- during the pandemic, was the branch open in the
6 normal way?

7 A. No.

8 Q. Or did it have different procedures?

9 A. There were different procedures during the pandemic.

10 Q. And what were those?

11 A. So when we first -- when the pandemic first started, we
12 were completely closed to the public.

13 Q. That would be -- you mean when there was like the national
14 shutdown in March of 2020?

15 A. Right.

16 MS. WEINTRAUB: Leading.

17 THE COURT: Sustained. Rephrase.

18 THE WITNESS: Because we were still reporting to the
19 bank. We were -- I believe they call it essential workers. So
20 we would report to the bank, but we were not able to deal with
21 the public. Then shortly after, I can't tell you how much time
22 after --

23 MS. WEINTRAUB: Objection, Judge. Judge, this is
24 still narrative from the first question that was sustained.

25 THE COURT: Let's ask another question.

1 BY MS. MARTINEZ:

2 Q. What were the procedures with respect to the pandemic in
3 2020?

4 A. Okay.

5 Q. You can just explain again.

6 A. Okay. So the -- at the beginning, we were unable to deal
7 with the public. Shortly after, we were able to take care of
8 clients through the drive-through, as well as being able to
9 have them park in the parking lot. And then we would go out,
10 get any kind of document we needed signed with a form of an ID,
11 and then come back in, scan, do what we had to do. And then,
12 eventually, they let us have about 10 customers in the bank at
13 once. And then slowly but surely we continued to just
14 eventually open fully to the public.

15 (Pause in proceedings.)

16 BY MS. MARTINEZ:

17 Q. During the pandemic, your bank did offer Paycheck
18 Protection Program loans, right?

19 A. Correct.

20 Q. To your recollection, did Mr. Sheppard seek one from --

21 MS. WEINTRAUB: Objection, Judge.

22 THE COURT: Sustained.

23 BY MS. MARTINEZ:

24 Q. Did you ever deal with Mr. Sheppard with respect to any
25 loan?

1 MS. WEINTRAUB: Objection, Judge.

2 THE WITNESS: No.

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

4 BY MS. MARTINEZ:

5 Q. Let me state the question again, so the record states it.
6 Did you deal with Mr. Sheppard with respect to any loan?

7 A. No.

8 MS. MARTINEZ: No further questions, Your Honor.

9 THE COURT: All right. Cross-examination.

10 CROSS-EXAMINATION

11 BY MS. WEINTRAUB:

12 Q. Good morning, Mr. Barrios.

13 A. Good morning.

14 Q. We've never met, right?

15 A. I don't believe so.

16 Q. My name is Jayne Weintraub. I'm one of the lawyers
17 representing Mr. Sheppard. We have never met, right?

18 A. I don't believe so.

19 Q. Okay. Mr. Barrios, you have known Eric Sheppard since
20 2017, right?

21 A. I can't give you an exact date on when I met Mr. Sheppard.
22 But it has been a few years, yes.

23 Q. Well, maybe I can refresh your recollection.

24 A. Sure.

25 MS. WEINTRAUB: For the witness only.

1 (Pause in proceedings.)

2 BY MS. WEINTRAUB:

3 Q. Do you recognize this document, sir?

4 A. Looks like an email.

5 Q. From?

6 A. From me.

7 Q. It looks like an email from you to?

8 A. Mr. Sheppard.

9 Q. Dated?

10 A. May 17th, 2017.

11 Q. Does that refresh your recollection that you knew
12 Mr. Sheppard as long ago as 2017?

13 A. You just confirmed it. Yes.

14 MS. WEINTRAUB: Your Honor, at this time we would move
15 it into evidence.

16 MS. MARTINEZ: Your Honor, I have no objection.

17 THE COURT: All right. Admitted into evidence.

18 (Defendant's Exhibit M-24 received into evidence.)

19 BY MS. WEINTRAUB:

20 Q. And you reached out to him just to say?

21 THE COURT: My apologies. The exhibit number?

22 MR. CAVALLO: It's M, as in Mary, 24, Your Honor.

23 THE COURT: Thank you.

24 All right.

25

1 BY MS. WEINTRAUB:

2 Q. You knew Eric Sheppard's family also around that time,
3 right?

4 A. No.

5 Q. Did you meet his family and other members that have
6 accounts in your bank as the manager of the bank?

7 A. I don't believe so.

8 Q. Okay. Is it your testimony that Eric Sheppard and his
9 family did or did not have many other accounts in your bank at
10 the time, September, October, November of 2020?

11 A. I can definitely confirm that Eric Sheppard had multiple
12 accounts with the bank.

13 Q. And can you also confirm that they were in the millions of
14 dollars and he was a valued customer?

15 A. Correct. That's one of the only reasons I would deal with
16 him as the manager of the bank.

17 Q. Of course. And is it your testimony that you are not sure
18 if his family, in particular his wife Jennifer Sheppard, had a
19 personal account there as well?

20 A. I wouldn't recall.

21 Q. Now, when you were first approached by the Government in
22 this case, it was in the middle of June last year, right?

23 A. June of last year? No. It was a few months ago.

24 Q. Okay. And it was the FBI agent seated right here, right,
25 Sarah Halleran?

1 A. Correct.

2 Q. Now, did she come to you in person or did she call you?

3 A. She called me.

4 Q. And she called you at the bank; is that right?

5 A. Incorrect. She called my cell phone.

6 Q. Do you know how she had your cell phone, aside from the
7 fact she's the FBI?

8 A. Nope. Just assumed because she was the FBI she had my
9 phone number.

10 Q. That's okay.

11 MS. WEINTRAUB: Now pull up M-76.

12 MR. CAVALLO: For the witness only, please.

13 Oh. That's in evidence.

14 BY MS. WEINTRAUB:

15 Q. The FBI agent wanted to come --

16 MS. WEINTRAUB: Actually, it's up, right, for the
17 jury?

18 BY MS. WEINTRAUB:

19 Q. The FBI agent wanted to come -- wanted you to look at this
20 letter, right?

21 A. Correct.

22 Q. And she texted you and asked you, did she not, if you
23 signed the letter?

24 A. Correct.

25 Q. And you responded to her: "I don't recognize the signature

1 as my own"?

2 A. Correct.

3 Q. Essentially, you were saying you didn't remember the
4 letter, not that you didn't write the letter. Is that
5 accurate?

6 A. I don't remember typing the letter, nor does that signature
7 look like mine.

8 Q. Okay. Are you denying under oath, sir, that you signed
9 this letter?

10 A. I am telling you I don't recall signing the letter.

11 Q. Okay. Let me see if I can refresh your recollection. Do
12 you see the signature block on this?

13 A. Yes.

14 MS. WEINTRAUB: Let's pull up M-89 and M-19, just for
15 the witness.

16 And M-19.

17 BY MS. WEINTRAUB:

18 Q. Do you recognize M-89, the exhibit that only you can see at
19 this time, as an email?

20 A. It looks like an email, yes.

21 Q. Whose email is it?

22 A. It's from me.

23 Q. So that is your email? Yes?

24 A. It looks like it, yes. Yeah. Yeah.

25 Q. Does anybody else use your email from SunTrust Bank?

1 A. I would be the only one to use that email, ma'am.

2 Q. Okay. So can we confirm that M-89 is your email?

3 A. If you're stating that this is my email, then that's my
4 email. You're showing me something on a screen that I don't
5 know where you got it from.

6 Q. Okay. But it is your email. I'm asking you to look at
7 your signature.

8 A. Heimdal.barrios@suntrust.com was my email at that time.

9 Q. Thank you.

10 A. You're welcome.

11 Q. Now I'm going to ask you -- I'm sorry. Were you done?

12 A. No. I'm just saying you're welcome.

13 Q. I'm going to ask you --

14 MS. WEINTRAUB: Can you highlight the signature block
15 on the left, where it says "Heimdal Barrios, VP Branch Leader."

16 Right.

17 BY MS. WEINTRAUB:

18 Q. You see that signature?

19 A. Yes.

20 Q. And where it says -- on the next document, on M-19, do you
21 recognize that email address from you?

22 A. It's the same email address.

23 MS. WEINTRAUB: At this time, Your Honor, I would move
24 M-19 into evidence.

25 THE COURT: Any objection?

1 I'm sorry. Is there any objection?

2 MS. MARTINEZ: Your Honor, the witness does not
3 remember these documents.

4 MS. WEINTRAUB: That's not what his testimony was.

5 THE COURT: Is there any objection to the introduction
6 of these two exhibits?

7 MS. MARTINEZ: Your Honor, the -- we just don't have
8 it authenticated. So yes, I object.

9 THE COURT: All right. Then let's set forth the
10 sufficient predicate to admit the documents.

11 MS. WEINTRAUB: Yes, Your Honor.

12 BY MS. WEINTRAUB:

13 Q. Mr. Barrios, looking at those emails, do you recognize
14 as -- I think you said you're the only one who used your email
15 that's on this email.

16 A. Correct. I'm the only one with access to that email
17 address, yes.

18 Q. And do you recognize the signature block that is
19 highlighted in yellow as your own?

20 A. It looks like a signature block from one of my emails,
21 correct.

22 MS. WEINTRAUB: At this time, I would move Exhibit
23 M-89 and M-19 into evidence.

24 THE COURT: Any further objection on behalf of the
25 Government?

1 MS. MARTINEZ: What are they requesting to move into
2 evidence?

3 THE COURT: M-19 and M-89. It should be on your
4 screen.

5 (Pause in proceedings.)

6 THE COURT: Any objection?

7 MS. MARTINEZ: Your Honor, I object. Just -- it has
8 not been properly authenticated.

9 THE COURT: Overruled. M-19 and M-89 admitted into
10 evidence.

11 (Defendant's Exhibits M-19 and M-89 received into
12 evidence.)

13 BY MS. WEINTRAUB:

14 Q. Mr. Barrios, I'm going to ask you now to look at M-19, and
15 look at the date of that email. First of all, who is that
16 email from?

17 A. From me.

18 Q. And the email is to Eric Sheppard, right?

19 A. Correct.

20 Q. And it's November 12th, 2020, right?

21 A. Correct.

22 Q. And what does it say is the subject?

23 A. "Ref Letter."

24 Q. Reference letter, right?

25 A. Right.

1 Q. And it says that there's an attachment, right?

2 A. Correct.

3 Q. And it's from you, Heimdall Barrios, VP Branch Leader,
4 right? We've established that?

5 A. Yes.

6 Q. And you're the only one who uses that email?

7 A. Correct.

8 Q. Now let's show you the attachment.

9 MS. MARTINEZ: Your Honor?

10 BY MS. WEINTRAUB:

11 Q. Now showing you the attachment. It is dated November 11th;
12 however, you sent it --

13 MS. MARTINEZ: Your Honor -- Your Honor --

14 MS. WEINTRAUB: Can I finish my question?

15 MS. MARTINEZ: We had not seen this attachment. So
16 I --

17 THE COURT: All right. Let's look at the attachment.

18 MS. MARTINEZ: Without --

19 THE COURT: Hold on. Hold on, Ms. Martinez. Let's
20 make sure. You were shown the exhibits, not the attachment.
21 Let's make sure that the witness recognizes the attachment.

22 MS. MARTINEZ: Yes. But this is being shown to the
23 jury.

24 THE COURT: No. It shouldn't be shown to the jury.

25 MS. WEINTRAUB: Isn't this in evidence?

1 THE COURT: M-19 and 89 are not -- are in evidence but
2 not the attachment.

3 MS. MARTINEZ: Right. You can't slip an attachment
4 like that.

5 THE COURT: All right. So let's take it -- let's take
6 it -- let's take it off the screen, and let's establish the
7 predicate with regard to what was attached.

8 BY MS. WEINTRAUB:

9 Q. Mr. Barrios, you were asked to look at the letter which is
10 Government's Exhibit...

11 MR. CAVALLO: 58-3.

12 BY MS. WEINTRAUB:

13 Q. You were asked to look at this letter on direct examination
14 with the prosecutor, were you not?

15 A. I'm sorry. Can you repeat that? I didn't hear you.

16 Q. Yes. You saw this letter when the prosecutor was
17 questioning you, right?

18 MS. MARTINEZ: Objection.

19 THE WITNESS: No. This is not the same letter.

20 THE COURT: The objection is sustained.

21 BY MS. WEINTRAUB:

22 Q. Sir, isn't it true that Eric Sheppard called you and asked
23 you to write a letter for him confirming his business account
24 with your bank?

25 A. I do not recall.

1 Q. You're not saying that it didn't happen. You're just
2 saying you don't remember?

3 A. I don't remember that specific instant, correct.

4 Q. And as you said on direct, you signed so many of these
5 kinds of letters it's hard to remember them all, right?

6 A. Correct.

7 Q. Now, you were asked by the prosecutor -- or you stated to
8 the prosecutor that the letter does not contain accurate
9 information.

10 MS. WEINTRAUB: Put the exhibit up. And can you pull
11 up 58-23 next to this.

12 BY MS. WEINTRAUB:

13 Q. And do you see, sir, the letter -- the wording of the
14 first, say, sentence of the letter? The one that's in evidence
15 says: "Eric Sheppard and Jennifer Sheppard are valued
16 customers of SunTrust Bank." Do you see that?

17 A. Yes.

18 Q. Do you have any reason to doubt that?

19 A. No -- well, do I have a reason to doubt that they -- that
20 she was on the account?

21 Q. And that they have millions of dollars -- I'm sorry?

22 A. Based on what the FBI and DOJ have explained to me,
23 Jennifer Sheppard was not on this account, but I cannot confirm
24 or deny. I don't recall.

25 Q. Hold on. Hold on. Hold on. I didn't ask you if Jennifer

1 Sheppard was on the account.

2 A. What was your question? I apologize.

3 Q. That's okay. All I asked you was: Was she a valued
4 customer at the bank as well?

5 A. I don't recall. I answered that previously.

6 Q. But you also said that the information was false --

7 A. I didn't say the information was false. I was told the
8 information was false. I cannot confirm or deny whether she
9 had an account with us or was on the account.

10 Q. Okay. So you were told by the FBI? Yes?

11 A. That she was not on the account, correct.

12 Q. But you don't know if that's accurate or not, true?

13 A. Correct.

14 Q. Now, the wording of these two letters -- the sentence
15 doesn't say that Jennifer Sheppard is on the account. The
16 sentence says that she is a valued customer of SunTrust Bank,
17 right?

18 A. That's accurate.

19 Q. So there was nothing that was not accurate at the time.

20 The account HM Four was in good standing on November 11th and
21 12th, was it not?

22 A. I don't know what was the status of the account in -- at
23 that time. I wouldn't be able to tell you.

24 Q. Well, you were just testifying about the account and a
25 \$60,000 deposit, right?

1 A. Based on the information that was showed to me on the
2 screen, yes. I was just confirming what I was seeing on the
3 screen.

4 Q. Okay. So -- but you did testify, did you not, sir, that
5 the account -- there were the two deposits that you talked
6 about, right?

7 A. Correct.

8 Q. Do you have any reason to doubt that HM Four, LLC was in
9 good standing at the time?

10 A. Not at this moment.

11 Q. Okay. And the bank also gave Mr. Sheppard -- the bank
12 account was opened October 2020, right?

13 A. I don't recall what the signature card said. If you want
14 to bring that back up, we can all confirm.

15 MR. ETRA: For the jury, and not admitted. Take that
16 down and just do the admitted one for the jury.

17 MS. WEINTRAUB: Chris, put up October 2020, the bank
18 account.

19 BY MS. WEINTRAUB:

20 Q. The bank gave Mr. Sheppard voided checks and a direct
21 deposit slip; is that right?

22 A. At the account opening. Yeah, that's the norm.

23 MS. WEINTRAUB: Let's pull that up.

24 BY MS. WEINTRAUB:

25 Q. Showing you M-21. Is this a bank statement from your bank,

1 as it was?

2 A. It could be. I believe we established it was a transaction
3 history because of the dates. It wasn't a full month's bank
4 statement.

5 Q. But it comes from the bank? Yes?

6 A. It definitely looks like it comes from the bank, yes.

7 MS. WEINTRAUB: And let's now show the direct deposit
8 form, M-20.

9 BY MS. WEINTRAUB:

10 Q. And that looks like a starter check and it's voided from
11 the bank, right?

12 A. It's a direct deposit form. Now -- yes. Now it's a
13 starter check.

14 MS. WEINTRAUB: We would move M-20 into evidence.

15 MR. CAVALLO: It's in. It's in.

16 MS. WEINTRAUB: Okay.

17 BY MS. WEINTRAUB:

18 Q. I'm showing you the direct deposit enrollment.

19 THE COURT: Hold on. Let me just make it clear. M-20
20 is in evidence.

21 MS. MARTINEZ: It should be part of Exhibit 39, Your
22 Honor, the SunTrust account records.

23 THE COURT: Thank you.

24 MR. CAVALLO: Correct.

25

1 BY MS. WEINTRAUB:

2 Q. All right. And M-21. Do you see the other exhibit,
3 Mr. Barrios?

4 A. The direct deposit, yes. Enrollment form, yes.

5 Q. And that is also showing that the bank account was
6 operating then? That's a bank document, is it not?

7 A. Yes.

8 Q. And you printed a November bank statement for Mr. Sheppard,
9 did you not?

10 A. I don't recall.

11 Q. Do you remember after you left the bank that you contacted
12 Mr. Sheppard for a job?

13 A. I remember Mr. Sheppard offering me to call him when I
14 explained to him that I was leaving to work on real estate,
15 yes, and I called him and he didn't answer me.

16 Q. And...

17 A. And I called him, like I called many clients.

18 Q. Mr. Barrios, I got to stop you because there's not a
19 question pending.

20 A. Sure. I just thought -- I was under the impression that --

21 THE COURT: There's no question pending, sir.

22 THE WITNESS: Okay.

23 (Pause in proceedings.)

24 BY MS. WEINTRAUB:

25 Q. You've said a lot of times here today that you don't really

1 have a good recollection about these documents that you're
2 being shown with your name on them, right?

3 A. Yes.

4 Q. And for some reason -- well, you left the bank and it
5 wasn't able to be accessed. And for some reason, you don't
6 remember the letter being written. Do you remember Eric
7 Sheppard coming to the bank in person to see you?

8 A. Eric came to the bank many times to see me.

9 Q. Did he come to the bank to see you about this letter?

10 A. I don't recall.

11 Q. Okay. So you saw the email -- you don't know. You saw the
12 email where you sent him the reference letter he asked for.
13 Did he come to get it?

14 A. I don't recall.

15 MS. WEINTRAUB: Could I have a moment, Judge.

16 THE COURT: Certainly.

17 (Pause in proceedings.)

18 BY MS. WEINTRAUB:

19 Q. And Mr. Barrios, with regards to the letter, I mean, your
20 bottom line is you just don't remember it, right?

21 A. Correct.

22 Q. But you do see that you sent the letter in your email,
23 right?

24 MS. MARTINEZ: Objection. The attachment has not been
25 authenticated.

1 THE COURT: Overruled.

2 THE WITNESS: I saw the images on the screen, yes.

3 BY MS. WEINTRAUB:

4 Q. And do you agree that that's from your email?

5 A. I agree that it has my email on it, and it has my signature
6 that would normally be on my emails, yes.

7 Q. And that nobody else had access to that email while you
8 were at the bank?

9 A. Nobody else had access to that email, correct.

10 MS. WEINTRAUB: I move it in and say it's
11 authenticated.

12 MS. MARTINEZ: Authenticate what?

13 THE COURT: The attachment.

14 MS. MARTINEZ: There has been no one who can say what
15 those little words really have in them. There's no
16 authentication --

17 THE COURT: It's sufficient for the jury to consider.
18 The objection is overruled. And the attachment -- I'm not sure
19 if it was to M-19 or M-89, but the attachment will be admitted
20 into evidence.

21 (Defendant's Exhibit M-19 Attachment received into
22 evidence.)

23 (Pause in proceedings.)

24 BY MS. WEINTRAUB:

25 Q. And again, with your signature, you're just saying it's

1 similar; you're not sure because you signed so many documents?

2 MS. MARTINEZ: Asked and answered.

3 BY MS. WEINTRAUB:

4 Q. You can't swear it is, but you can't say it's not.

5 MS. MARTINEZ: Asked and answered, many times.

6 THE COURT: Sustained.

7 MS. WEINTRAUB: Can the record indicate that the
8 witness was nodding his head in the affirmative?

9 THE WITNESS: Yes.

10 MS. MARTINEZ: What? What? What?

11 THE COURT: The objection is sustained.

12 MS. MARTINEZ: I couldn't even hear what counsel was
13 saying.

14 THE COURT: Is that the end of the cross-examination?

15 Ms. Weintraub, have you completed --

16 MS. WEINTRAUB: I just want to confirm with my client,
17 Judge, but I think the answer is yes.

18 (Pause in proceedings.)

19 MS. WEINTRAUB: Yes, Your Honor.

20 Thank you.

21 THE COURT: All right. Any redirect?

22 MS. MARTINEZ: Yes, Your Honor.

23 Can you bring up again Government's Exhibit 39-11.
24
25

REDIRECT EXAMINATION

BY MS. MARTINEZ:

Q. Mr. Heimdal?

A. Yes, ma'am.

Q. Again, Exhibit 39-11 is a bank record from SunTrust,
correct?

A. It looks like a --

MS. WEINTRAUB: Objection. Leading and beyond the
scope.

THE COURT: Sustained.

Rephrase, please.

BY MS. MARTINEZ:

Q. What type of document is that?

A. This looks like a business account signature card.

Q. For what account?

A. For HM Four, LLC.

Q. And who is the only signer?

A. Eric Sheppard.

Q. You were asked on cross-examination about a letter that
discussed this particular account, correct?

A. Yes.

Q. And in the letter, it describes not just Mr. Sheppard but
also his wife?

A. Correct.

Q. Can you tell the jury, would you add --

1 MS. WEINTRAUB: Objection, Your Honor, to the form of
2 the question.

3 MS. MARTINEZ: Can you --

4 MS. WEINTRAUB: It's a hypothetical.

5 THE COURT: Rephrase. Sustained.

6 BY MS. MARTINEZ:

7 Q. Can you explain to the jury whose name would be on a letter
8 that you wrote regarding an account, the account signer or
9 other people?

10 MS. WEINTRAUB: Objection, Your Honor.

11 THE COURT: What's the end of the question? Whose
12 name -- let me hear the end of the question.

13 BY MS. MARTINEZ:

14 Q. Whose name would be on an account verification letter?

15 THE COURT: The objection is overruled. You may
16 answer the question, sir.

17 THE WITNESS: If we're speaking about a reference
18 letter, the only individuals that should be named on the letter
19 are the individuals on the account.

20 BY MS. MARTINEZ:

21 Q. And who was the only individual on this account?

22 A. Based on this business account signature card, Eric
23 Sheppard.

24 Q. Now, you were shown an email that purported to have an
25 attachment. Do you have any recollection of that attachment?

1 A. No.

2 Q. You were shown an email that had not your signature but
3 your name, right?

4 A. Correct.

5 Q. When counsel was talking about it as your signature,
6 really, can you explain to the jury what that is. That's just
7 a signature?

8 MS. WEINTRAUB: Objection, Your Honor. Leading.

9 BY MS. MARTINEZ:

10 Q. Can you explain --

11 THE COURT: Sustained.

12 BY MS. MARTINEZ:

13 Q. -- to the jury what that is.

14 A. That is a signature on your email, which is -- it's
15 automatic. I don't type that in every time. It goes with
16 every email that is sent out.

17 Q. And I don't have the exhibit, but you saw that, the
18 purported attachment?

19 MS. WEINTRAUB: Objection.

20 MS. MARTINEZ: Basis?

21 THE COURT: And the basis?

22 MS. WEINTRAUB: "Purported." It's in evidence and he
23 identified his email.

24 THE COURT: Overruled. You may continue.

25

1 BY MS. MARTINEZ:

2 Q. You saw that there was some little letters after the word
3 "attachment," right?

4 A. Yes.

5 Q. And the letters were -- and, I mean, you --

6 MS. MARTINEZ: I am just restating what is in the
7 document that you have moved into evidence.

8 BY MS. MARTINEZ:

9 Q. E-R-I-C, dot, D-O-C-M.

10 MS. WEINTRAUB: Objection, Your Honor.

11 MS. MARTINEZ: I am restating what is --

12 THE COURT: Hold on. What's the basis? Give me the
13 legal basis for the objection.

14 MS. WEINTRAUB: Yes, Your Honor. She's referring to a
15 document that isn't identified. I'd like to --

16 THE COURT: All right. Just give the exhibit number
17 you're referring to.

18 MS. MARTINEZ: What is the exhibit number of your
19 exhibit?

20 MR. CAVALLO: M-19.

21 MS. MARTINEZ: Okay. So I'm referring to M-19.

22 THE COURT: All right. Do you understand the
23 question, sir?

24 THE WITNESS: Can you repeat the question, please?
25

1 BY MS. MARTINEZ:

2 Q. Do you recall the little words that were -- that -- the
3 little letters that were following the attachment?

4 A. No.

5 MS. MARTINEZ: Could I have a copy of M-19?

6 MR. CAVALLO: Did you want us to put it up?

7 MS. MARTINEZ: No. I would like a copy.

8 (Pause in proceedings.)

9 MS. MARTINEZ: Can you -- thank you.

10 Go to ELMO.

11 BY MS. MARTINEZ:

12 Q. I'm showing you a document that is Defense Exhibit M-19.
13 First, the top of it says: "Barrios, Heimdal. On behalf of
14 Barrios, Heimdal." What does that mean? Is it somebody that
15 had access to that email or is it --

16 MS. WEINTRAUB: Objection, Your Honor. Leading.

17 THE COURT: Overruled. If the witness knows.

18 THE WITNESS: I was definitely the only person that
19 had access to that email.

20 BY MS. MARTINEZ:

21 Q. And what does it mean when it says: "On behalf of"?

22 A. Honestly, I don't know.

23 Q. Okay.

24 A. I don't know if it maybe was forwarded. Honestly, I don't
25 know. I don't want to guess. I don't want to --

1 Q. Okay. Do you see the little letters after the word
2 "attachments"?

3 A. Yes.

4 Q. Eric.D-O-C-M?

5 A. Yes.

6 Q. Do you recognize this being a document that can be
7 modified?

8 MS. WEINTRAUB: Objection, Your Honor.

9 BY MS. MARTINEZ:

10 Q. Do you recognize --

11 MS. WEINTRAUB: Objection, Your Honor. You know, this
12 is the third time.

13 THE COURT: Hold on. What's the legal basis for this
14 objection?

15 MS. WEINTRAUB: It's outrageous.

16 THE COURT: Overruled.

17 MS. WEINTRAUB: She is accusing counsel of modifying a
18 document.

19 THE COURT: Overruled. You may answer the question.

20 MS. WEINTRAUB: And it's in evidence, and it wouldn't
21 have been --

22 THE COURT: It's in evidence. The objection is
23 overruled. You may answer the question, sir.

24 BY MS. MARTINEZ:

25 Q. Let me ask you a question. Do you sometimes write

1 documents in Microsoft Word?

2 A. Yeah. Of course.

3 Q. Okay. Do you sometimes print a document to PDF?

4 A. Sure. Yes.

5 Q. Okay. A Microsoft Word document, if you send that to
6 someone else --

7 MS. WEINTRAUB: Objection. Calls for a hypothetical,
8 and not what happened in this case, and he doesn't recall.

9 THE COURT: Overruled. The witness may answer the
10 question.

11 BY MS. MARTINEZ:

12 Q. If you send someone a document in Microsoft Word, can the
13 other person open it in Microsoft Word, too?

14 MS. WEINTRAUB: Objection.

15 THE COURT: Sustained.

16 BY MS. MARTINEZ:

17 Q. Is Microsoft Word something --

18 MS. WEINTRAUB: Objection.

19 THE COURT: Okay. Hold on.

20 Is Microsoft Word -- what's the question?

21 BY MS. MARTINEZ:

22 Q. Whether that is a printed document or scanned document, or
23 is that a document with a native sort software that can be
24 changed?

25 Native software, do you understand what I mean by

1 that?

2 MS. WEINTRAUB: Oh, my God. Objection. And I request
3 an instruction.

4 THE COURT: The objection is sustained. The objection
5 is sustained.

6 BY MS. MARTINEZ:

7 Q. A Microsoft Word document --

8 A. Yes.

9 Q. -- when you receive it by email, can you open it?

10 A. Yes.

11 MS. WEINTRAUB: Objection, Your Honor.

12 THE COURT: If the witness can open a -- overruled.

13 THE WITNESS: Yes.

14 BY MS. MARTINEZ:

15 Q. Okay. Does it open within Microsoft Word?

16 A. Yes.

17 MS. WEINTRAUB: Objection. Relevance.

18 THE COURT: Sustained.

19 MS. MARTINEZ: Your Honor, the witness has been
20 asked --

21 THE COURT: I -- let's continue with our redirect,
22 please.

23 BY MS. MARTINEZ:

24 Q. That document -- the document that you were shown -- this
25 document -- well, let me -- let me ask you: This attachment,

1 the letters that you see there, do you recognize that?

2 A. It likes like an email that was printed out.

3 Q. No. No. The attachment, E-R-I-C --

4 A. No. I don't know. I don't know what that is. It just
5 looks like words on a paper.

6 Q. Do you recognize it as Microsoft software?

7 MS. WEINTRAUB: Objection.

8 THE COURT: If the witness recognizes it. Overruled.

9 THE WITNESS: I can't confirm whether it's Microsoft
10 or another program. I can't confirm based on the letters.

11 BY MS. MARTINEZ:

12 Q. Based on your experience, would you send someone --

13 MS. WEINTRAUB: Objection. He's not --

14 THE COURT: Hold on. It's based on his experience.
15 At this point, overruled.

16 What's the question, Ms. Martinez?

17 BY MS. MARTINEZ:

18 Q. My question relates specifically to this document, M-19.

19 Would it be your practice to send a client an unsigned letter
20 in software that can be changed?

21 MS. WEINTRAUB: Objection, Your Honor.

22 THE WITNESS: That is --

23 THE COURT: Overruled.

24 THE WITNESS: That is not the norm. That wouldn't be
25 normal for me to do.

1 BY MS. MARTINEZ:

2 Q. Okay. And what would be normal for you to do if there was
3 a reference letter? Would you actually sign it at your office
4 and then send it?

5 MS. WEINTRAUB: Objection, Your Honor. He has said he
6 doesn't know or recall --

7 THE COURT: As to his normal practice. Overruled.

8 MS. WEINTRAUB: -- three times.

9 THE COURT: Overruled.

10 You may answer the question, sir.

11 THE WITNESS: Based on --

12 MS. WEINTRAUB: Can he be asked if he remembers before
13 he answers?

14 THE COURT: It's his normal practice. Overruled. The
15 question is proper.

16 THE WITNESS: Based on the processes, I would not send
17 an unsigned letter. I may sign it and send it, but I
18 definitely wouldn't send it blank.

19 BY MS. MARTINEZ:

20 Q. So if you would sign --

21 A. That wouldn't be the norm, is what --

22 Q. Right. To send a signed letter, what would be your
23 practice? Would you scan the document so that it could be --
24 then create a PDF and then send it?

25 A. Correct.

1 MS. WEINTRAUB: Objection, Judge. These are the same
2 questions that were sustained five minutes ago, what he would
3 do about scanning or a PDF or a Word document.

4 THE COURT: In terms of his normal practice,
5 overruled.

6 BY MS. MARTINEZ:

7 Q. Would it be your practice to write a letter on a federal
8 holiday?

9 A. No. I wouldn't have access to my email.

10 MS. WEINTRAUB: Objection, Judge. The email is
11 November 12th, not the 11th.

12 MS. MARTINEZ: Stop interrupting the witness.

13 THE COURT: Sustained.

14 Okay. Ms. Martinez, let's continue and I'll rule on
15 the objections.

16 MS. MARTINEZ: My concern, Your Honor, is that --

17 THE COURT: We don't need to know the concern. What
18 we need to hear are the questions.

19 (Pause in proceedings.)

20 BY MS. MARTINEZ:

21 Q. I'm going to -- I'm showing you a comparison -- I'm going
22 to try to show you a comparison of Government's Exhibit 58
23 Bates label 031143, which is a letter --

24 MS. WEINTRAUB: Objection, Your Honor.

25 THE COURT: It's in evidence, correct?

1 MS. MARTINEZ: Yes, Your Honor.

2 THE COURT: All right. Let's continue. Overruled.

3 (Pause in proceedings.)

4 MS. WEINTRAUB: Judge, it's being shown to the jury.

5 THE COURT: They are both in evidence, correct? This
6 is M-20. And is this -- what's the other exhibit number? Let
7 me -- if you can pull it up so I can see the Bates stamp on the
8 other one.

9 MS. MARTINEZ: Your Honor, this is what's been
10 admitted.

11 MS. WEINTRAUB: Can you take off the Post-it?
12 Thank you.

13 THE COURT: All right. So SHEPP 31143 is what
14 exhibit?

15 MS. MARTINEZ: I'm going to tell Your Honor. It's
16 from Exhibit 58, and it's -- I've marked it separately as 58-3.

17 THE COURT: All right. You may continue.

18 MS. MARTINEZ: And I believe -- the Defense Exhibit is
19 M-19, I believe.

20 MR. CAVALLO: Correct.

21 BY MS. MARTINEZ:

22 Q. First let me -- Mr. Barrios, what I'm showing here on
23 ELMO -- we call it ELMO. It's a projector -- is side by side
24 the Government's exhibit, which purports to have your
25 signature, and then the unsigned attachment that was in the

1 Defense exhibit. Do you see -- do you see your signature on
2 the Defense exhibit?

3 A. Yes.

4 Q. This is the Defense exhibit.

5 A. Oh. I'm sorry. No. No, I don't see my signature on that
6 document.

7 Q. And would you send a document unsigned like that to a
8 client?

9 A. That would not be the normal process, no.

10 Q. Would you -- do you see that the letters --

11 MS. WEINTRAUB: Objection, Your Honor. It's leading.

12 THE COURT: Sustained.

13 BY MS. MARTINEZ:

14 Q. Are the letters exactly the same or is there some
15 difference between them?

16 MS. WEINTRAUB: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: They are not exactly the same.

19 BY MS. MARTINEZ:

20 Q. So there has been a change in Exhibit M-19, right?

21 A. Yes, there's a difference.

22 Q. Or one from the other?

23 A. There's a difference --

24 MS. WEINTRAUB: Objection.

25 THE WITNESS: -- between the two documents in front of

1 me.

2 THE COURT: Overruled.

3 BY MS. MARTINEZ:

4 Q. Did you ever authorize anyone to sign for you and to submit
5 a letter signed by you -- I'm sorry. Did you authorize anyone
6 to sign for you?

7 A. No.

8 (Pause in proceedings.)

9 BY MS. MARTINEZ:

10 Q. Just to -- the letter is dated November 11th, 2020, which
11 was a federal holiday. Would you have written a letter on that
12 day, on November --

13 MS. WEINTRAUB: Objection. Asked and answered.

14 THE COURT: Sustained.

15 BY MS. MARTINEZ:

16 Q. In addition to what you stated with respect to not allowing
17 someone to sign for you, again, did the signature in
18 Government's Exhibit 58-3 have the little dots that you
19 normally put in a signature?

20 A. No.

21 Q. How about that break that there is right here? Is that --

22 MS. WEINTRAUB: Objection, Your Honor. This is all
23 asked and answered about this signature.

24 THE COURT: Sustained.

25

1 BY MS. MARTINEZ:

2 Q. Is that the way you would normally write?

3 A. No.

4 (Pause in proceedings.)

5 MS. MARTINEZ: No further questions, Your Honor.

6 THE COURT: All right. Thank you.

7 Is Mr. Barrios excused?

8 MS. MARTINEZ: Yes, Your Honor.

9 MS. WEINTRAUB: Yes.

10 THE COURT: All right. Thank you, sir.

11 You are excused.

12 (Witness excused.)

13 THE COURT: And Ladies and Gentlemen, as you can see,
14 it's 12:15. We'll take our one-hour recess for lunch, and I'll
15 see you back here at 1:15.

16 Have a pleasant lunch.

17 COURT SECURITY OFFICER: All rise for the jury.

18 (Jury not present, 12:14 p.m.)

19 THE COURT: All right. Go ahead and have a seat for
20 just a moment.

21 Will the Government be resting its case?

22 MS. MARTINEZ: We have another witness, Your Honor.

23 MS. JIMENEZ: We have another witness.

24 THE COURT: Which witness do you have?

25 MS. MARTINEZ: I have the accountant, and he's going

1 to put in several summaries.

2 THE COURT: All right. All right. Have a pleasant
3 lunch, and I'll see you back here at 1:15.

4 MS. WEINTRAUB: Judge, I have a quick motion to make.

5 THE COURT: All right.

6 MS. WEINTRAUB: And that's a motion for a mistrial
7 based on prosecutorial misconduct. This is the third time --
8 and I just need to remind the Court. The first was that we
9 were accused of staging pictures that are in evidence that were
10 not staged. The second time was Neal Cupersmith. We produced
11 emails, and the Government said that they can't be real or
12 genuine, they have to be fake because Neal Cupersmith gave them
13 all of their emails, and again accused the Defense lawyers of,
14 I guess, manipulating evidence or faking evidence. This is the
15 third time, and it's in front of the jury, and this has got to
16 stop.

17 I am a lawyer in good standing for 31 years, and I
18 have never been accused of -- I've been accused of a lot of
19 things, Judge. I've never been accused of anything like this.
20 Manipulating documents or faking evidence that goes in before a
21 jury is one of the most outrageous claims I could ever fathom,
22 and there is no -- no good-faith basis even for the questions
23 that the prosecutors tender. And in front of the jury, it's a
24 disgrace. And I even asked for an instruction to the jury
25 right away, and it was denied.

1 THE COURT: Response?

2 MS. MARTINEZ: Your Honor, with respect to the witness
3 that was just on the stand, the purported email that was given
4 to us for the first time had a modifiable document, meaning,
5 you know, native software document. The question was only to
6 go -- it had nothing to do with counsel. It only had to do
7 with the facts of the case.

8 The attachment on it had software that could be opened
9 and changed. And in fact, the evidence moved into evidence
10 reflects that the document, in fact, was changed. If it was
11 sent, it certainly was changed because the paragraphing was
12 moved.

13 THE COURT: Do you want to respond specifically to the
14 motion that claims that the Government was accusing the
15 Defendant's attorneys of manipulating evidence?

16 MS. MARTINEZ: It's just that it had nothing to do
17 with the attorneys. I never referred to them or anything like
18 that. It was completely having to do with is it software -- is
19 it a scanned document that has a signature or is it a document
20 that could be opened up at the other end and could be -- in
21 fact, Your Honor, even the change doesn't even have to be like
22 a negative change. It just could be that it could be moved
23 around, which is what it -- appears to have been done.

24 So it's just -- it appears like a complete
25 overreaction to something that is actually in the record.

1 MS. JIMENEZ: And Your Honor, the case is full of
2 forgeries and changed documents, not anything that Defense
3 counsel did.

4 THE COURT: Okay. One argument from one attorney.
5 Thank you, Ms. Jimenez. Ms. Martinez has done a fine job of
6 responding.

7 Ms. Weintraub, is there anything further?

8 MS. WEINTRAUB: Yes, Your Honor.

9 I was specifically accused at sidebar of staging the
10 pictures and of producing a fake email with regard to Neal
11 Cupersmith.

12 THE COURT: Well, the record will bear out whether the
13 attorney was personally accused. And at most, that was at
14 sidebar and outside the presence of the jury.

15 But with regard to the comment on the evidence, I
16 believe that the comment was fair, and I don't believe that
17 there is any evidence before this jury that the lawyer was
18 being accused of manipulating evidence. To the extent that the
19 Defense believes that there was, then certainly the Court can
20 give an appropriate cautionary instruction, and I would ask
21 that the Defense attorneys prepare one for the Court to
22 consider --

23 MS. WEINTRAUB: Yes, Judge.

24 THE COURT: -- to give either following the lunch
25 break or at the close of all of the evidence.

1 Have a pleasant lunch, and I'll see you at 1:15.

2 MS. WEINTRAUB: Thank you, Judge.

3 THE COURT: And for the record, the motion for
4 mistrial is denied.

5 COURT SECURITY OFFICER: All rise.

6 (Recess from 12:19 p.m. to 1:17 p.m.)

7 THE COURT: All right. Welcome back.

8 Let me acknowledge the presence of the Defendant.

9 Are both sides ready to continue?

10 MS. MARTINEZ: Yes, Your Honor.

11 There's just -- I'm looking through the exhibit list,
12 and there's just a couple of exhibits that I want to make sure
13 that I move into evidence and to clarify whether or not -- so
14 I'm going through...

15 (Pause in proceedings.)

16 THE COURT: What exhibits?

17 MS. MARTINEZ: All right. Let me -- you want us to --

18 MS. JIMENEZ: 3-1 through 3-3, they are certified
19 deeds.

20 THE COURT: No. They're not in evidence.

21 MS. MARTINEZ: No. No. We are -- we're moving them
22 in.

23 THE COURT: Oh. You're moving them in now.

24 All right. Is there any objection?

25 MR. CAVALLO: I'm sorry. Which ones?

1 THE COURT: 3-1 to 3-3.

2 MR. CAVALLO: No objection.

3 THE COURT: All right.

4 MS. MARTINEZ: Your Honor --

5 THE COURT: Admitted into evidence.

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

8 MS. MARTINEZ: Thank you.

9 And again, we're just doing a -- checking through the
10 list. There's a subscriber information, 9-1, from Yahoo. The
11 other ones were admitted. We just don't have in our list that
12 this one was.

13 THE COURT: It was admitted into evidence.

14 MS. MARTINEZ: 9-1?

15 THE COURT: Yes. 9-1.

16 MS. MARTINEZ: Thank you so much, Your Honor.

17 MS. JIMENEZ: 9-2 and 9-3?

18 THE COURT: 9-2 and 9-3.

19 Okay. Are we ready to bring back the jury?

20 MS. MARTINEZ: Your Honor, I'm just going through
21 this. There's only a couple more.

22 THE COURT: All right.

23 MS. JIMENEZ: I have Exhibit 75, which wasn't
24 previously on the list. These are a couple of additional
25 emails that PayPal produced. If the Court remembers, the

1 Defense introduced a couple of emails from PayPal that they had
2 not provided to me. They went back and retrieved a couple of
3 additional emails. I've turned them over to the Defense a week
4 or two ago. They have a business record certification, and we
5 have them marked as Government Exhibit 75.

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

8 MS. JIMENEZ: Yes.

9 THE COURT: Is there any objection?

10 MR. ETRA: There is an objection, Your Honor. These
11 are documents that are Rule 16 materials that were not provided
12 until after the PayPal witness got on and off the stand. We
13 weren't able to question the witness about them, and we
14 shouldn't be able to --

15 THE COURT: All right. So this is a supplemental
16 certification?

17 MS. JIMENEZ: It is, Your Honor. They -- they did
18 not -- they produced the emails with respect to the company
19 that applied. There were a couple of additional emails that
20 they introduced with other companies' tax returns. So to them
21 that was a separate record. So they retrieved -- and really,
22 it's just a couple of -- there's -- from the email that they
23 put in evidence from February 17th, 2021, there was a
24 subsequent email February 22nd, 2021, which is not in the
25 record. That's one additional email.

1 THE COURT: So your supplemental certification
2 includes the emails that the Defendant introduced, as well as
3 these additional ones?

4 MS. JIMENEZ: Yes. A couple of additional emails.

5 THE COURT: And what would be the basis of the
6 objection?

7 MR. ETRA: Because it's untimely, not because it's
8 late generally. Because we cross-examined -- we didn't --
9 we're prejudiced. We didn't have it for the witness. We went
10 through the witness if their production was incomplete. The
11 witness insisted their production was complete. We established
12 that it wasn't, and we asked questions on those, and now they
13 want to come after the fact and do more documents we weren't
14 able to ask the questions about and create a false record:
15 "Oh, look, I don't know what they were saying about the
16 documents not being complete."

17 THE COURT: I agree. You can call another witness,
18 but for purposes of entering in these additional documents
19 after the witness has already testified would be improper.

20 All right. Anything further?

21 MS. MARTINEZ: Let me proceed with my exhibits.

22 With respect to the SBA witness, my records show that
23 59 had been admitted, but the paralegal asked me a question
24 about it. So I just wanted to ask the Court. Fifty-nine.

25 THE COURT: I have to look at my notes. I don't see

1 59 on the exhibit list as being admitted into evidence.

2 MS. MARTINEZ: We had, with the SBA witness, from 51
3 through 59. I'm sorry -- yes, 51 through 59.

4 (Pause in proceedings.)

5 THE COURT: And the question is -- yeah, M-59?

6 MS. MARTINEZ: No. No. This is Government's
7 Exhibit 59.

8 THE COURT: Oh. All right.

9 MS. MARTINEZ: My records show that 51 through 59 were
10 admitted when I put on that witness. I just --

11 THE COURT: With which witness?

12 MS. MARTINEZ: Brent Motes from the SBA. We may have
13 admitted them in advance of him testifying at the time that
14 Ms. Palancar testified at well.

15 THE COURT: All right. Here we go. Yeah, 51 through
16 59.

17 MS. MARTINEZ: That's right.

18 Okay. So check for the paralegal.

19 Your Honor, I'd like to move into evidence
20 Government's Exhibit 70. It's records relating to vehicles.
21 It's just financial records.

22 THE COURT: Any objection?

23 MR. ETRA: Sorry, Your Honor, we just weren't
24 expecting this. We're checking up.

25 THE COURT: Okay. Recall I didn't want to take a lot

1 of time away from the jury. You need this for the next
2 witness?

3 MS. MARTINEZ: Yes, Your Honor. GMC [sic], yes. It's
4 the financial records, Your Honor. It's just --

5 THE COURT: Is there any objection?

6 (Pause in proceedings.)

7 MR. ETRA: Your Honor, the fact that GMAC is someone
8 that got payments, and who they are, part of it we have no
9 objection to. We're just concerned because some of these
10 financial documents, because it's a GMAC, may implicate other
11 things. We don't want to stop them from establishing that --
12 the ownership information, the payment information. They can
13 call on their witness. So maybe we can put only that part in
14 and then we can check at the break.

15 MS. MARTINEZ: Your Honor, these are business records
16 with a certification.

17 THE COURT: Oh. All right. So there is a
18 certification. So would there be any other basis to object?
19 What information is in there that would need to be redacted?

20 MR. ETRA: The problem is that this is one of the
21 documents where kind of like we thought there was more
22 information than needed to be, just simply -- it's not a
23 business certification issue. It's not an authentication
24 issue. It's simply the fact that there's a lot of financial
25 information that seems unrelated to this case.

1 THE COURT: All right. How many pages is Exhibit 70?

2 MR. ETRA: Forty pages.

3 MS. MARTINEZ: Your Honor, may I say that it is not
4 unrelated, number one. There are payments to this company from
5 the bank accounts that received PPP and EIDL money. It is part
6 of the evidence, and obviously we subpoenaed the records --

7 THE COURT: All right. Then Exhibit 70 will be
8 admitted into evidence, subject to -- and Mr. Etra, you'll just
9 need to advise the Court as to what redactions need to be made,
10 and we can certainly argue outside the presence of the jury
11 with regard to those issues.

12 MR. ETRA: Thank you, Your Honor.

13 (Government's Exhibit 70 received into evidence.)

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

15 COURT SECURITY OFFICER: All rise for the jury.

16 (Before the Jury, 1:26 p.m.)

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

19 Please be seated, everyone.

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

22 And the Government's next witness.

23 MS. MARTINEZ: Your Honor, the United States calls
24 Mr. Hysa. I do know how to spell his last name. It's H-Y-S-A,
25 but I cannot even pronounce his first name.

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

2 (Pause in proceedings.)

3 THE COURT: Good afternoon, sir.

4 If you'll remain standing. Raise your right hand to
5 be placed under oath.

6 LAVDERIM HYSA, GOVERNMENT WITNESS, SWORN

7 COURTROOM DEPUTY: Thank you.

8 You can have a seat.

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

11 THE WITNESS: Lavderim Hysa. L-A-V-D-E-R-I-M. Last
12 name H-Y-S-A.

13 COURTROOM DEPUTY: Thank you.

14 DIRECT EXAMINATION

15 BY MS. MARTINEZ:

16 Q. Mr. Hysa, because you have such a long first name, do you
17 have a shorter nickname that is used?

18 A. Yes. My mom called me day one Ladi, L-A-D-I. So...

19 Q. Ladi Hysa?

20 A. Ladi Hysa, correct.

21 Q. Where do you work, Mr. Hysa?

22 A. For Federal Bureau of Investigation, FBI.

23 Q. And when did you start working for the Federal Bureau of
24 Investigation?

25 A. May 11th, 2011. I'm sorry. Take it back. May 8 is my EOD

1 date, 2011.

2 Q. What is your position at the FBI?

3 A. Forensic accountant.

4 Q. What does a forensic accountant do at the FBI?

5 A. Typically, a forensic accountant performs financial and
6 analyzes financial records and provides summary findings, fact
7 findings in this situation, for litigation purposes to
8 stakeholders. And stakeholders today are the Ladies and
9 Gentlemen of the Jury, Judge, Government, and Defense counsel.

10 Q. What was your education with respect to accounting?

11 A. I received bachelor of science in administration with
12 concentration in accounting from University of Pittsburgh, and
13 I also received master of science in finance in state of
14 Michigan.

15 Q. In addition to your degrees, have you also been an adjunct
16 professor of accounting?

17 A. That is correct.

18 Q. What licenses and credentials do you have?

19 A. I do possess a CPA, certified public accountant, as well as
20 CFE, certified fraud examiner.

21 Q. Can you explain to the jury -- certified public accountant,
22 what type of education do you have to have in general for that?

23 A. In general, to be a CPA, you have to -- it is, first of
24 all, a statutory license required by the state. And you are
25 required to gain this license through education, passing a

1 standard CPA examination and experience.

2 Q. Are there some things with respect to financial statements
3 that only someone who has a CPA license can do?

4 A. Indeed. That is correct. And it depends on the situation.
5 If you are a certified public accountant, with title
6 "independent auditors," and you are working, let's say, for a
7 public accounting, a certified public accountant increases the
8 trust and the reliability of the financial statements for us,
9 investors, creditors. So in other words, it increase the
10 reliability. It protects the integrity of the market.

11 Q. So there's certain audits of financial statements that only
12 CPAs can do?

13 A. That is correct.

14 MR. CAVALLLO: Objection, Your Honor. And the
15 objection is that Mr. Hysa is not here as an expert. There was
16 no expert disclosure --

17 THE COURT: Overruled at this point.

18 BY MS. MARTINEZ:

19 Q. As part of your job at the FBI -- well, before I go back to
20 the FBI, let me ask you: Prior to the FBI, did you have other
21 work especially as an accountant?

22 A. I did.

23 Q. And did you work both in the government and in private?

24 A. That is correct.

25 Q. Tell the jury what your government job was before the FBI.

1 A. I was working for Inspector General, United States Office
2 of Personnel Management, as a compliance auditor.

3 Q. And what is the Office of Personnel Management of the
4 United States?

5 A. It's practically a human resources of United States
6 Government in basic terms.

7 Q. So it deals with the employees of the United States, right?

8 A. That is correct. And in this case, I was as an auditor to
9 audit federal employee program to ensure that the federally --
10 by auditing the largest -- Blue Cross Blue Shield, for example,
11 if they were in compliance with obligation contracts and so on.

12 Q. And did you also have experience in private accounting?

13 A. I did.

14 Q. And where did you work?

15 A. I worked for KPMG.

16 Q. And what IS KPMG?

17 A. KPMG is one of the fourth largest public accounting firms
18 in the world.

19 Q. In addition to your experience working for the United
20 States Government, Office of Personnel Management, and for
21 KPMG, did you also have some experience actually working with
22 smaller businesses?

23 A. I did. While I was teaching financial and intermediate
24 accounting in undergrad and graduate program, I had my own
25 small bookkeeping and 1040 small individual tax returns.

1 Q. Your own -- I think you didn't complete --

2 A. My own firm.

3 Q. Okay. Thank you.

4 Now, since you've been at the FBI in 2011, what type
5 of cases -- were they criminal cases that you worked on?

6 A. That is correct. Criminal.

7 Q. Tell the jury what type of cases you've worked on.

8 A. I've been working typically investment security cases
9 including wire, mail fraud, money laundering, as well as
10 working loan -- fraud loan activity, like prepaid advanced fee
11 schemes, "Pay me a little money, I promise you the world,"
12 including the PPP and EIDL loans.

13 Q. Do you also have experience working in cyber?

14 A. I do.

15 MR. CAVALLO: Object again, Your Honor. This is
16 bolstering a summary witness. He's here under Rule 1006. He's
17 not here as an expert --

18 THE COURT: This is not an expert. Can we get to the
19 testimony, please.

20 MS. MARTINEZ: We're almost there, Your Honor.

21 THE COURT: Sustained.

22 MS. MARTINEZ: Your Honor, the witness is summarizing
23 records. So --

24 THE COURT: I understand. Let's get to the testimony.

25

1 BY MS. MARTINEZ:

2 Q. When you say the word "cyber," what does that mean?

3 A. It's a criminal cyber. In other words --

4 MR. CAVALLO: Same objection, Your Honor.

5 THE COURT: Sustained.

6 THE WITNESS: -- subject --

7 THE COURT: The objection is sustained.

8 MS. MARTINEZ: Can you pull up for the witness only
9 Government's Exhibit 72.

10 BY MS. MARTINEZ:

11 Q. Can you see that?

12 A. I do.

13 Q. Without -- don't read from it yet. Just tell me: Do you
14 recognize it?

15 A. I do.

16 Q. And did you work on preparing this summary?

17 A. I did.

18 Q. And did you review a large amount of documents to prepare
19 this summary?

20 A. Yes.

21 Q. What type of documents did you review? Just in general
22 what type of documents did you review?

23 A. Loan records and bank records.

24 MS. MARTINEZ: And Your Honor, the United States will
25 move into evidence Government's Exhibit 72.

1 MR. CAVALLO: We object, Your Honor.

2 THE COURT: And the basis of the objection?

3 MR. CAVALLO: The basis of the objection goes back to
4 something we argued, which is that this chart includes entities
5 that are not named in the Superseding Indictment.

6 THE COURT: The objection is noted. It's preserved.
7 Overruled. Exhibit 72 will be admitted into evidence.

8 (Government's Exhibit 72 received into evidence.)

9 MS. MARTINEZ: Can you also now put that down, and can
10 you pull up Government's Exhibit 71. Only for the witness.
11 We're still working only with the witness.

12 BY MS. MARTINEZ:

13 Q. Do you recognize Government's Exhibit 71?

14 A. I do.

15 Q. Did you work on preparing that summary?

16 A. I did.

17 Q. And what type of records did you review to prepare this
18 summary?

19 A. For this one, I reviewed loan notes, IP addresses, and loan
20 agreements.

21 Q. What's an IP address?

22 A. IP address stands for Internet Protocol. It's like a
23 unique identifier which connects to devices and transmits
24 electronic -- just like a telephone number, if I could say.

25 Q. Right. And the IP records that you reviewed were from

1 Breezeline?

2 A. That is correct.

3 MS. MARTINEZ: Your Honor, the United States moves
4 into evidence Government's Exhibit 71.

5 THE COURT: Any objection?

6 MR. CAVALLLO: Your Honor, we object because we don't
7 believe the document's complete and contains all IP address
8 information that was presented in the case.

9 THE COURT: All right. You'll have an opportunity to
10 cross-examine. That goes to the weight as opposed to its
11 admissibility. The objection is overruled. Exhibit 71 is
12 admitted into evidence.

13 (Government's Exhibit 71 received into evidence.)

14 MS. MARTINEZ: Now let's go back to Exhibit 71 -- I'm
15 sorry -- 72, and let's publish to the jury.

16 BY MS. MARTINEZ:

17 Q. Mr. Hysa, now both you and the jury can see the document.
18 Can you explain to the jury first what did you review with
19 respect to -- first, what's the title of the summary?

20 A. It's a Summary of Loan Applications.

21 Q. And let's go through the first row, the first row from left
22 to right, so that we can explain to the jury what is there. On
23 the first column, the first row, what is shown there?

24 A. The first one is application date, 4/15/2020.

25 Q. That's April 15th, right?

1 A. Right. April 15th.

2 Q. And what type of application -- the next column gives us
3 the loan application type, correct?

4 A. That is correct.

5 Q. And what type of application was that application?

6 A. This is a PPP loan.

7 Q. Well, it was a Paycheck Protection Program loan to what
8 entity?

9 A. To HM-UP Development Alafaya Trails d/b/a HM Management and
10 Development.

11 Q. Okay. I'm going to slow you back and go to the column that
12 says "Loan Application Type."

13 MS. MARTINEZ: Go to that column.

14 BY MS. MARTINEZ:

15 Q. And that is a PPP loan to what lender?

16 A. WebBank, but through the PayPal.

17 Q. And the applicant -- the legal business name of the
18 applicant according to the application, that's the third
19 column, right?

20 A. That is correct.

21 Q. And for that particular application, what was the name on
22 the application records that you reviewed?

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

24 Q. And was there a doing business as name as well on the
25 application?

1 A. Correct.

2 Q. What was it?

3 A. HM Management and Development.

4 Q. And the next column. What do you show on the next column?

5 A. I see -- I read here: "Representative/Owner per
6 Application Eric Sheppard."

7 Q. And the next column has two parts. The next column that
8 says: "Loan Amount." It has two parts. Can you explain that
9 to the jury. Why does the next column have two parts?

10 A. The first one is requested when Eric Sheppard applied for
11 the loan. And then the second one is the actual -- the
12 receiving, so funded.

13 Q. In that actual -- in that particular one, you have an
14 additional note. What's the additional note with respect to
15 that application?

16 A. The "forgiven" means the loan application filed by Eric
17 Sheppard to -- for loan forgiveness.

18 Q. Meaning that there was an additional application for loan
19 forgiveness?

20 A. That's correct.

21 Q. And "forgiven" means that it was granted?

22 A. That's my understanding.

23 Q. From the records?

24 A. That is correct.

25 Q. You were just summarizing records, right?

1 A. That is correct.

2 Q. Now, you have a final column on the right that says: "Bank
3 Account Number" and "Signer." Again, for that particular
4 application, what does it say for the bank account and the
5 signer?

6 A. It says SunTrust account ending 7571, and the signer is
7 Eric Sheppard.

8 Q. Now, you're familiar with that particular account, right?

9 A. I am.

10 Q. So is that 7571 the bank account of HM-UP Development
11 Alafaya Trails?

12 A. That is correct.

13 Q. Actually, 7571 -- do you remember?

14 A. I do remember. It's under HM-UP -- I'm sorry -- HM
15 Management and Development, SunTrust 7571.

16 Q. Right. Which is -- do you remember which is the account
17 that was under HM-UP Development Alafaya Trails?

18 A. It is SunTrust 5973.

19 Q. Now, with respect to -- I'm not going to review the entire
20 rest of the Summary of the Loan Applications.

21 But following April 15th, 2020, there are four -- look
22 at the exhibit -- there are four additional applications. Do
23 those applications all have the same date?

24 A. They do.

25 Q. And what is that date?

1 A. 7/24/2020.

2 Q. And those next four applications, what type of loan was the
3 application for?

4 A. EIDL. Economic Injury Disaster Loan.

5 Q. And for those applications, were they to a private lender
6 or were they to the US Government?

7 A. SBA, US Government.

8 Q. And what's the SBA?

9 A. Small Business Administration, one of the -- another agency
10 of United States Government.

11 Q. With respect to the loan amounts for those four
12 applications, you listed amounts --

13 MS. MARTINEZ: Can you highlight that, Ms. Font.

14 BY MS. MARTINEZ:

15 Q. -- the loan amounts for those four applications?

16 A. That is correct. I did.

17 Q. Right. You -- you reviewed records with respect to these
18 numbers?

19 A. Yes, I did.

20 Q. And what is the amount that was requested on those records
21 for these four applications, for each one?

22 A. \$160,000.

23 Q. And I'm going to go back for a second, because I'm just not
24 sure I put it on the record. The amount that was funded for
25 the previous one, for the one that went to WebBank, what was

1 the amount that was funded?

2 A. \$150,000 minus --

3 Q. Read your own product.

4 A. Correct. \$146,000 and 457.

5 Q. Now, with respect to the four that we were just talking
6 about, that were from July 24th, 2020, were all of them funded?

7 A. No.

8 Q. How many of them were funded?

9 MR. CAVALLLO: Objection, Your Honor.

10 THE WITNESS: Two --

11 THE COURT: Hold on. What's the basis?

12 MR. CAVALLLO: My objection is this is a summary
13 witness, the document speaks for itself, and this is like
14 closing argument where they're just having the witness read --

15 THE COURT: Sustained.

16 BY MS. MARTINEZ:

17 Q. Does your -- does your summary reflect whether or not the
18 applications were funded?

19 MR. CAVALLLO: Same objection, Your Honor. The
20 document speaks for itself.

21 THE COURT: Referring to the summary, you may
22 certainly answer that question.

23 THE WITNESS: Yes.

24 BY MS. MARTINEZ:

25 Q. And do you have separate columns for whether it was funded

1 or not?

2 A. I do.

3 Q. And when it was funded, do you list the amount?

4 A. I do.

5 Q. Okay. I'm going to ask you with respect to -- you see the
6 fourth application that was on July 24th, 2020?

7 A. I do.

8 Q. Do you see the bank account that is listed there as the
9 receiving bank account even though it wasn't funded?

10 MR. CAVALLO: Same objection, Your Honor.

11 MS. MARTINEZ: Your Honor, this is a fact witness.

12 THE COURT: You may answer the question referring to
13 the summary exhibit.

14 MS. MARTINEZ: Your Honor, this is a fact witness --

15 THE COURT: I just -- I'm overruling the objection.
16 You may continue.

17 THE WITNESS: Correct.

18 BY MS. MARTINEZ:

19 Q. With respect to the fourth one, and you see One Florida
20 Bank, what is that account?

21 A. It is SunTrust 7571.

22 Q. My question was: With respect to the fourth application on
23 July 24th, the fourth one, what's the company there?

24 A. It is HM Management Development Alafaya Trails TRU, LLC.

25 Q. And what bank account is listed on the far right?

1 A. One Florida Bank 2368.

2 Q. And have you reviewed those bank records?

3 A. Yes, I have.

4 Q. Is that bank account connected to another bank record of
5 Mr. Sheppard's?

6 A. Yes.

7 Q. What type of other bank record is that?

8 A. It's a SunTrust Bank account.

9 Q. My question is with respect to the One Florida Bank
10 account. Does the One Florida Bank account have another
11 account in addition to 2368?

12 A. Correct. Loan account 1470.

13 Q. Okay. You remember the number. And what type of loan is
14 that?

15 A. It's a private loan.

16 Q. And was that connected to this checking account that's
17 listed in your summary?

18 A. It is.

19 Q. Now, sometimes in your summary -- sometimes you have more
20 than one name. Again, where did that come from?

21 A. From the application. For example, he applied under
22 Nationwide. The Nationwide notes both names.

23 Q. And did the applications also indicate an account for the
24 money to go to?

25 A. Yes, it does.

1 Q. And that's why you have an account even though some were
2 not funded, right?

3 A. Correct.

4 Q. What is the total amount on this summary that was requested
5 in terms of PPP and EIDL loans?

6 A. 1,766,333.

7 Q. And what is the total that was funded?

8 A. 893,445.

9 MS. MARTINEZ: Can you bring up Government's
10 Exhibit 71.

11 BY MS. MARTINEZ:

12 Q. This is another summary that's been admitted into evidence.
13 Can you explain the -- obviously there's a date column,
14 correct?

15 A. Correct.

16 Q. And can you describe to the jury how you created this --
17 what kind of documents did you look to find the IP address that
18 is listed next to that date?

19 A. I reviewed the application -- for example, the first one --
20 PPP application through PayPal.

21 Q. And it's from there that you obtained that IP address?

22 A. That is correct.

23 Q. Now, did you -- with respect to the Breezeline records,
24 what did the Breezeline records say about that particular IP
25 address?

1 A. The Breezeline records also indicate this specific IP
2 address.

3 Q. And who's the subscriber?

4 A. Eric Sheppard.

5 Q. And specifically at what location Eric Sheppard -- what
6 address?

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

8 MS. MARTINEZ: Can you go -- I realize I should have
9 followed up on something else on the previous exhibit. I
10 apologize. Can you go back to Exhibit 71.

11 Thank you -- or 72.

12 BY MS. MARTINEZ:

13 Q. We had covered that the first one on April 15th, 2020 was a
14 Paycheck Protection Program and the next four were Economic
15 Injury Disaster Loans. How about the next two, the next two,
16 what type of loans were those?

17 A. 9/5/2020 EIDL, and 10/22/2020 EIDL as well.

18 Q. Now, for the dates -- you have four dates in 2021. What
19 type of loans were those?

20 A. These are all PPP loans.

21 Q. Okay.

22 MS. MARTINEZ: Go back to 71.

23 Thank you.

24 BY MS. MARTINEZ:

25 Q. So now, for this particular exhibit, which is the one of

1 the IP addresses, in addition to applications, you have other
2 documents. For example, the first line, April 15th, 2020, what
3 type of document is listed there?

4 A. PPP application.

5 Q. And then, for the next one, May 1st, 2020, what type of
6 document -- and read out the entire type of document that you
7 have there.

8 A. "DocuSigned Application and Loan Note for Alafaya Trails
9 PPP Loan from PayPal/WebBank."

10 Q. In this particular summary, you have not just loan
11 applications but also loan notes, correct?

12 A. Correct.

13 Q. And other DocuSigned documents, right?

14 A. Correct.

15 Q. So you have the first two that relate to Alafaya Trails,
16 and at the bottom of your summary you put some asterisks. Can
17 you explain to the jury what these asterisks mean.

18 A. It means abbreviation of "Alafaya Trails" represent HM-UP
19 Development Alafaya Trails, LLC. And "HM Management," HM
20 Management and Development, LLC.

21 Q. So the first two documents related to what you have called
22 an abbreviated way is Alafaya Trails, right?

23 A. That is correct.

24 Q. Just going by date, on September 5th, 2020, just tell me
25 the type of application and the company name.

1 A. "EIDL Application Intake Information from HM Six to SBA."

2 Q. On September 25th, 2020?

3 A. "DocuSigned Loan Agreement and Note for Alafaya Trails EIDL
4 Loan from SBA."

5 Q. And on October 22?

6 MR. CAVALLLO: Objection, Your Honor. Again, it's just
7 reading from this summary.

8 THE COURT: Sustained.

9 (Pause in proceedings.)

10 BY MS. MARTINEZ:

11 Q. I'm going to -- again, looking at your summary, I see that
12 there's two dates for January 19th. Those are two different
13 things. Can you explain to the jury two different documents on
14 the same date.

15 A. There are two different documents.

16 Q. And does -- the first one relates to which company, the
17 first one on January 19th, 2021?

18 A. Alafaya Trails.

19 Q. And the second one, on January 19th, 2021, does it relate
20 to a different company?

21 A. Yes, it does.

22 Q. And between the first one that you said was
23 January 19th, 2021 Alafaya Trails, to what lender was that?

24 A. The first one was WebBank.

25 Q. And --

1 A. And the second one is Cross River Bank.

2 Q. And again, the second one was for a different company, HM
3 Management, right?

4 A. That is correct.

5 Q. Now, on -- the next dates that you have is that you again
6 have two for March 12, 2021.

7 A. Is that a question?

8 Q. My question is -- my question is: Do those -- the first
9 one from March 12th, 2021, with respect to what company does
10 that relate?

11 MR. CAVALLO: Objection, Your Honor. Same thing.
12 Just asking the witness to read from the summary. The document
13 speaks for itself.

14 THE COURT: Is there anything on the summary that you
15 think would be helpful for the witness to explain to the jury?

16 MS. MARTINEZ: Yes, Your Honor. As I'm going through,
17 I'm explaining that there are multiple items that are done on
18 the same day, and they're not the same items. The only way to
19 do it is to just point it out.

20 THE COURT: All right. All right. I'll allow it.
21 Overruled.

22 BY MS. MARTINEZ:

23 Q. On March 12th, were there two separate items in 2021?

24 A. There were.

25 Q. The first one was with respect to which company?

1 A. Alafaya Trails.

2 Q. And the second one was with respect to which company?

3 A. HM Management.

4 Q. And then, on March 25th, 2021, again, are there two
5 separate wire transmissions on that day?

6 A. Yes.

7 Q. And the first one relates to which company?

8 A. Alafaya Trails.

9 Q. And the second one relates to which company?

10 A. HM Management.

11 MS. MARTINEZ: For the witness only, can you go to
12 41-1.

13 BY MS. MARTINEZ:

14 Q. Do you recognize Exhibit 41-1, what's been marked for
15 identification as Exhibit 41-1?

16 A. I do.

17 Q. Did you prepare that summary?

18 A. I did.

19 Q. What type of records did you review to prepare that
20 summary?

21 A. Bank records and loan application.

22 MS. MARTINEZ: Your Honor, the United States moves
23 into evidence Government's Exhibit 41-1.

24 THE COURT: Is there any objection?

25 MR. CAVALLO: I would object that it's duplicative of

1 what we just went through and contains the same information.

2 MS. MARTINEZ: Your Honor, this is just the funded
3 ones.

4 THE COURT: The objection is overruled. 41-1 will be
5 admitted as a summary.

6 (Government's Exhibit 41-1 received into evidence.)

7 MS. MARTINEZ: Can we publish to the jury?

8 THE COURT: You may publish.

9 BY MS. MARTINEZ:

10 Q. Mr. Hysa, can you -- first let me ask you: What's the
11 title of 41-1?

12 A. Summary of the Bank Accounts and PPP and EIDL Loans.

13 Q. Now, this particular summary only includes loans where
14 Mr. Sheppard actually received money, right?

15 A. That is true.

16 Q. Now, your summary says: "Sole Authorized Signer." Did you
17 review all the signature cards for each and every account that
18 is on this summary?

19 A. Yes.

20 Q. And who is the sole authorized signer for every bank
21 account that received PPP and EIDL money?

22 A. Eric Sheppard.

23 Q. Now, explain to the jury your summary, the first column.

24 A. The first column is the date, deposit date when the loans
25 were actually deposited in these bank accounts.

1 Q. In the column that says: "Loan Amount Received," the next
2 one, what did you base that on -- what did you base that amount
3 on?

4 A. Solely on the bank records.

5 Q. Now I'm going to -- I'm going to go to the opposite side,
6 to the far right side of your summary. You have specific --
7 like last four digits of numbers. What are those?

8 A. These are the account numbers.

9 Q. The account numbers that actually received the deposit of
10 the loans?

11 A. That is correct.

12 Q. And then you have another column in the far right that --
13 what is that far column?

14 A. This "Date Account Opened" represent when Eric Sheppard
15 opened the bank accounts.

16 Q. The particular one on that row, right?

17 A. That is correct. Pertaining to these three accounts.

18 Q. Now, the third column on the right, what is that?

19 A. It's the "Loan Type," PPP versus EIDL.

20 Q. And the next column?

21 A. "Lender."

22 Q. Now, after that, you have two columns. "Entity Borrowing,"
23 "Entity Receiving." Let's walk through the first row so we can
24 explain to the jury why you have two columns.

25 On the first deposit date, what is it?

1 A. 5/1/2020.

2 Q. And the amount received?

3 A. 146,457.

4 Q. The loan type?

5 A. PPP.

6 Q. And the lender?

7 A. WebBank.

8 Q. Now, you have "Entity Borrowing." Is that based on loan
9 documents?

10 A. That is correct.

11 Q. So for that first row, what was the entity borrowing?

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

13 Q. Now, did the bank account for HM-UP Development Alafaya
14 Trails receive the money?

15 A. Not in this case, but it did receive others.

16 Q. Others. But this particular deposit went into -- that's
17 why you have the next column that says "Entity Receiving the
18 Funds"?

19 A. That is correct.

20 Q. So you just said the amount that was for the PPP -- the
21 first PPP loan. For the next three, which are Economic Injury
22 Disaster Loans, are all three of the amounts the same?

23 A. They are.

24 Q. And what's the amount that was deposited for each of those
25 three loan -- Economic Injury Disaster Loans?

1 A. 149,900.

2 Q. And then, in 2021, you have two deposits relating to PPP.

3 I don't want you to read the exact numbers, but they're
4 approximately how much each one?

5 A. \$148,000.

6 Q. Two of them in March of 2021, right?

7 A. Correct.

8 Q. And what is the total that was actually funded and received
9 into accounts where Eric Sheppard is the only signer?

10 A. 893,145.

11 Q. 893,000?

12 A. \$893,145.

13 MS. MARTINEZ: Your Honor, if I could go to the
14 witness only.

15 Okay. I'm going to ask Ms. Font to bring up four
16 additional summaries but we're going to show them to you, just
17 for you to identify them, two at a time. Because that's the
18 only thing we can do, two at a time. So could you first pull
19 up 41-2 and 41-3.

20 BY MS. MARTINEZ:

21 Q. Do you recognize 41-2 and 41-3?

22 A. I do.

23 Q. And did you create those summaries?

24 A. I did.

25 Q. Do they relate to specific bank accounts?

1 A. They do.

2 Q. I'm going to --

3 MS. MARTINEZ: Can you now bring up 41-4 and 41-5.

4 BY MS. MARTINEZ:

5 Q. Do you recognize 41-4?

6 A. I do.

7 Q. Did you prepare that summary?

8 A. I did.

9 Q. Does it also relate to a specific bank account?

10 A. It does.

11 Q. Are you familiar with 41-5?

12 A. I am.

13 Q. And does that one relate to the three bank accounts that
14 are in 41-2, 41-3, and 41-4?

15 A. That is correct. It's representation of those three
16 accounts.

17 Q. And what type of documents did you review to create those
18 summaries?

19 A. Bank accounts.

20 MS. MARTINEZ: Your Honor, the United States moves
21 into evidence Government's Exhibit 41-2, 41-3, 41-4, and 41-5.

22 MR. CAVALLO: No objection, Your Honor.

23 THE COURT: All right. Admitted into evidence.

24 (Government's Exhibits 41-2 through 41-5 received into
25 evidence.)

1 MS. MARTINEZ: Can you put up 41-2, please.

2 And can you -- yes. Highlight the top, please.

3 BY MS. MARTINEZ:

4 Q. What -- what is the title of the bank account that you
5 summarized here?

6 A. The title of the bank account is SunTrust 7571.

7 Q. Actually, the name of the company.

8 A. And the name of the company receiving money.

9 Q. What is the name of the company?

10 A. HM Management and Development, LLC.

11 Q. And who is the sole authorized signer of this account?

12 A. Eric Sheppard.

13 Q. You go from -- you have dates of your analysis here. What
14 are the beginning and end dates of your analysis?

15 A. 5/1/2020 to 3 -- I'm sorry -- 10/20/2021.

16 Q. I know you're reading the numbers because that's what we
17 have. But if you don't mind, could you say it in words, like
18 May 1st and October, just normal?

19 A. Absolutely. May 1st.

20 MR. CAVALLLO: Objection, Your Honor. Again, just
21 asking him to read dates that are right there for everyone to
22 see.

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

24 THE WITNESS: May 1st, 2020 through October 20, 2021.

25

1 BY MS. MARTINEZ:

2 Q. Can you explain to the jury, why did you use May 1st, 2020
3 as the beginning date for your analysis?

4 A. This is the first date when the first loan -- government
5 loan, in this case, PPP loan, is received on this account.

6 Q. And why is your end date October 20th, 2021?

7 A. When the bank is zeroed out.

8 Q. Zeroed out meaning --

9 A. Meaning no activity.

10 Q. In that bank account --

11 A. In this specific bank account. Correct.

12 Q. So we're looking at the top section of your summary. The
13 first line in the top section of your summary -- first, it has
14 a title. What's the title?

15 A. Summary of Money Flow.

16 Q. For the first box, what's the title?

17 A. Sources of Funds.

18 Q. Okay. And then you took the trouble to create a first row.
19 Can you describe -- explain to the jury what that means. Why
20 do you have a first row with a certain number?

21 A. This account represents, I mean, the beginning balance,
22 like any other bank. So on the day, 5 -- May 1st, 2020, when
23 the -- the first loan coming in, the balance -- beginning
24 balance is 35,300 -- almost 347 dollars.

25 Q. So that's what was in the account --

1 A. Before.

2 Q. -- before the first loan was funded, right?

3 A. That is correct.

4 Q. Now, the next -- and again, this is just to explain to the
5 jury your summary. The next box that you have in your summary,
6 can you explain to the jury, what is that?

7 A. This is the combination sources of funds coming from these
8 three loans.

9 Q. So what type of loans?

10 A. Two PPP and one EIDL.

11 Q. So do you -- do you list there -- what are the three loans
12 that came into this account, from what lender --

13 MR. CAVALLO: Objection, Your Honor.

14 MS. MARTINEZ: Your Honor, this is a fact witness. He
15 is not limited --

16 THE COURT: Let me hear the basis of the objection.
17 What's the basis?

18 MR. CAVALLO: Again, it's just calling for the witness
19 to read from a summary that we all have and can see.

20 THE COURT: To the extent that walking through with
21 the witness is helpful to the jury, I'm going to allow it.

22 BY MS. MARTINEZ:

23 Q. Mr. Hysa, did you review in detail the bank records of
24 SunTrust 7571?

25 A. I did.

1 Q. And as a fact witness, are you familiar with 7571 beyond
2 these summaries?

3 A. I am.

4 Q. Have you spent quite a bit of time with this bank account?

5 A. Quite time.

6 Q. Did you actually review the checks?

7 A. I did.

8 Q. Did you actually review the bank statements?

9 A. I did.

10 Q. Did you review Excel spreadsheets that you created to be
11 able to summarize this bank account?

12 A. I did.

13 Q. So do you have factual knowledge about the bank account
14 beyond this summary?

15 A. I do.

16 Q. Now, with respect to this particular summary that you
17 tried -- that you've worked on for the jury, explain to the
18 jury -- you have a name of a lender, a type of loan, and a
19 deposit date. Can you explain to the jury how to read that
20 section of the box of your summary. What is it that you're
21 providing to them in that summary?

22 A. The total money in, total sources of funds coming from two
23 PPP loans and one EIDL, which the total is \$444,000 and 948,
24 which is the total of three loans.

25 Q. Okay. Now, you've gone to the far right column.

1 MS. MARTINEZ: Let me have Ms. Font -- can you
2 highlight that \$444,948? Do you see it on the right there?

3 BY MS. MARTINEZ:

4 Q. Just to explain to the jury how to read this type of
5 document, what is 444,948? What is that addition of -- what is
6 that the sum of?

7 A. This is the sum of three loans, WebBank PPP loan, SBA EIDL,
8 and Cross River PPP loan.

9 Q. Right. But the numbers that are below the 444,000, are
10 those the numbers that are added into the 4 --

11 A. That is correct. So from bottom up, I'm adding the
12 numbers.

13 Q. Now, your summary also includes the name of each lender,
14 right?

15 A. That is correct.

16 Q. The type of loan?

17 A. Yes.

18 Q. And then you've also added a notation. For example, for
19 the first one, there's a notation about the deposit date. What
20 does that reflect?

21 A. This is the first loan coming from WebBank, May 1st, 2020,
22 for the amount 146,457.

23 Q. For each loan, do you note in the summary the exact date
24 when the deposit came in?

25 A. I do.

1 Q. So this account had received two loans in 2020 and one in
2 2021, right?

3 A. That is correct.

4 Q. Now, again, to try to explain to the jury how your chart
5 works, go to the box that says: "Internal Transfers from
6 within Sheppard Accounts Receiving PPP and EIDL Loans."

7 A. So these are -- are the two accounts who received PPP loan.

8 Q. This -- we're still looking at money coming into the
9 account, correct?

10 A. That is correct.

11 Q. The first line says: "HM-UP Development Alafaya Trails
12 SunTrust Account 5973," and then you list an amount on the far
13 right. What's the amount on the far right?

14 A. The total amount?

15 Q. Yeah -- no. The amount coming in from the 5973 Alafaya
16 Trails account.

17 A. \$189,450.

18 Q. Now, you've listed that in that box. Explain to the jury
19 what you mean that this is an account that also received PPP
20 and EIDL loans that is moving money into this account. Explain
21 that to them, how that worked.

22 A. So total I reviewed three accounts. And all three accounts
23 are receiving six loans, three PPP and three SBA. So here, the
24 internal transfer means the money's moving two from within
25 these three accounts.

1 So in this case account 7571, HM Management, is
2 receiving \$189,450 from other SunTrust account who also got
3 government funds. And then the next one is HM Four account
4 5817 is bringing in \$19,700.

5 Q. And in addition to noting the total that came from these
6 other accounts, you also include in your summary deposit dates
7 but it's a range. Can you explain to the jury -- for example,
8 focusing again on HM-UP Development Alafaya Trails, SunTrust
9 account 5973 that brought in \$189,450, you have deposit dates
10 there. What does that mean?

11 A. There were multiple deposits versus like a first one.
12 May 1st, 2020, we received a loan. In this case, we are
13 receiving multiple deposits within this range.

14 Q. So the range that you have of deposits that are coming from
15 the Alafaya account is what?

16 A. It is June 1st, 2020 through June 15th, 2021.

17 Q. In addition to this box that you have -- in addition to
18 this box that you have of other Sheppard accounts that received
19 PPP EIDL loans, you have another box called "Other Sheppard
20 Accounts." Can you explain that box to the jury.

21 A. These are two other accounts who are not receiving PPP and
22 EIDL loans.

23 Q. Right. And is this HM Management account 7571 receiving
24 money from these other accounts?

25 A. That is correct.

1 Q. Now, again, One Florida Bank is the one you previously
2 mentioned that had a commercial loan?

3 A. That is correct.

4 Q. And then the other one that you have bringing money in is
5 Amerasia. Amerasia brings in only after -- actually, a
6 two-month period after September of 2021, right?

7 A. That is correct.

8 Q. And from the One Florida Bank, which is the one with the
9 commercial loan, how much came in?

10 A. \$261,688.

11 Q. Now, you do -- for this incoming money, you do create a
12 total at the bottom, right?

13 A. I do.

14 Q. And it's roughly a million, right?

15 A. Correct.

16 MS. MARTINEZ: Can you go to the bottom of this
17 summary.

18 BY MS. MARTINEZ:

19 Q. Can you explain -- you divided this -- the "Uses of Funds"
20 into basically groups; is that right?

21 A. Correct.

22 Q. So explain to the jury what the first group -- I'm going to
23 call it a category. Is that what you would call it?

24 A. Correct. Category.

25 Q. Can you explain to the jury what that is.

1 A. This is -- the first box or --

2 Q. The first box, yeah.

3 A. The first box is a payment, money used to pay credit card,
4 card payments at Credit One Bank.

5 MS. MARTINEZ: Excuse me one second.

6 (Pause in proceedings.)

7 BY MS. MARTINEZ:

8 Q. With respect to the credit cards, again, can you just --
9 there's a number at the top. What is the 290,000 number?

10 A. The same logic, the summation of the numbers from top --
11 I'm sorry -- from top down or down up. So the total -- I mean,
12 summation here is a combination of credit cards, card payments,
13 and Credit One Bank.

14 Q. And how much money went to paying credit cards?

15 A. \$271,022.26.

16 Q. The next grouping that you have is "Mortgage Payments."

17 A. Correct.

18 Q. Did you review those records?

19 A. Could you repeat the question, please.

20 Q. Did you review the records relating to the IBERIABANK
21 mortgage payments?

22 A. I did.

23 Q. And whose home was that mortgage for?

24 A. Eric Sheppard.

25 Q. And how much was paid out of this account during this time

1 period?

2 A. \$117,287.61.

3 Q. Now, in addition, you have again sections that talk about
4 internal transfers. Now, this is money going out to other
5 accounts that also received PPP EIDL money?

6 A. Correct. The same logic processing money, but now the
7 money from 7571 is going out to account 5973, \$50,000.

8 Q. When we had looked at the part above, we had seen that
9 money had come into this account from the Alafaya Trails
10 account, and now we're seeing some money going out?

11 A. Correct. If I correctly recall, it was about 189,000 in,
12 and now 50,000 is going out.

13 Q. Now, in addition, you have again another box that's "Other
14 Sheppard Accounts." Again, these --

15 A. Correct. That's -- I'm sorry.

16 Q. Go ahead.

17 A. Yeah. It's the same logic. Has money in, but in this
18 case, total of \$45,038.81 is going out --

19 Q. Now --

20 A. -- to accounts 1470 loan account and One Florida Bank 2368.

21 Q. So the money going out to other Sheppard accounts that
22 didn't receive PPP EIDL money is all to One Florida Bank where
23 there was a commercial loan, right?

24 A. That is correct.

25 Q. Now, in addition, you have auto payments and you break it

1 down by car company, right?

2 A. By car company, correct.

3 Q. And what's the total of auto payments going out from this
4 account?

5 A. \$25,784.93.

6 Q. Now, in addition, you have payments that you have grouped
7 relating to tuition, Jennifer and Jacob Sheppard. What is the
8 total there?

9 A. The total is \$25,366.52.

10 Q. Now, in each of the accounts that you -- that we're going
11 to look at, you also have categories of payments to individuals
12 and entities. What -- what are those? There's names --

13 A. Just like I noted here, names which I don't know the
14 capacity. But there are companies, entities, for example,
15 could be LLC, could be Inc., could be all the above.

16 MS. MARTINEZ: Could you go to 41-3.

17 BY MS. MARTINEZ:

18 Q. Now, what is the company name of this account?

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

20 Q. And what is the number of the bank account?

21 A. 5973.

22 Q. And who's the sole signer?

23 A. Eric Sheppard.

24 Q. Now, in this particular account, you don't begin on
25 May 1st, 2020. You begin on August 14th, 2020. Can you

1 explain to the jury why.

2 A. This is the first money incoming from another account who
3 received PPP loan, which is 8/14/2020.

4 Q. So let's find that on your Sources of Funds. It was
5 actually not a direct -- not a direct funding into this account
6 but actually receiving another account, right?

7 A. That is correct.

8 MS. MARTINEZ: Can you highlight in "Internal
9 Transfers," HM Management and Development.

10 BY MS. MARTINEZ:

11 Q. Mr. Hysa, I've just highlighted a source coming in of
12 \$50,000 from the account we were just looking at, 7571 --

13 A. Correct.

14 Q. -- in the name of HM Management. And you indicate a
15 deposit date of 8/14/20, August 14th, 2020. Is that the reason
16 you started this analysis on August 14th, 2020?

17 A. Yes.

18 Q. So basically, you're summarizing and looking at records
19 after Mr. Sheppard receives PPP or EIDL money?

20 A. Correct.

21 Q. Okay. With respect to receiving PPP EIDL money into this
22 account, can you just --

23 MS. MARTINEZ: Can you highlight the total. Do you
24 see that 298,297?

25 I'm just asking Ms. Font.

1 Can you highlight that.

2 I'm sorry. I meant the total of the PPP EIDL loans.
3 I didn't finish my sentence.

4 BY MS. MARTINEZ:

5 Q. Mr. Hysa, I've had Ms. Font highlight for you -- what is
6 the total of PPP EIDL money that came directly into this
7 account?

8 A. \$298,297.

9 Q. So we have the 298,297 that came directly, and then in
10 addition we have the 50,000 that came from HM Management,
11 right?

12 A. That is correct.

13 MR. CAVALLO: Objection, Your Honor. That's basically
14 testimony -- the attorney is basically giving testimony in the
15 form of a question.

16 THE COURT: Sustained.

17 BY MS. MARTINEZ:

18 Q. Did you tell the jury where in your Source of Funds are the
19 PPP and EIDL loans?

20 A. The second bolded row, "EIDL/PPP Loans," total amount,
21 \$298,297 is summation of two loans, SBA EIDL loan deposited
22 9/28/2020 and from Northeast Bank PPP loan on March 31st, 2021.

23 Q. And then, in addition, there was some coming in from
24 another account, right?

25 A. Correct.

1 Q. Now, in your Source of Funds for this particular account,
2 you also have a box that says: "Rent/Lease Related." Can you
3 explain that to the jury.

4 A. These are the -- as the name notes for itself, are some
5 entities Burlington Coat, Batteries Plus, Posh Nails Day Spa,
6 LLC, J-Petal Alafaya, Pacific MS Management, GMRI, Inc. --

7 THE COURT: Slow down.

8 MS. MARTINEZ: Slow down. You need to slow down.
9 Okay? Just because the court reporter needs to get whatever
10 you're saying. Okay?

11 THE WITNESS: Okay.

12 BY MS. MARTINEZ:

13 Q. You don't have to read the whole thing. Just an example of
14 rent/lease-related payments is Burlington Coat Factory,
15 correct?

16 A. Correct.

17 MS. MARTINEZ: Now could you remove the highlights
18 that you have and highlight Pacific MS Management d/b/a
19 Mattress1One. It's one of the rent/lease related. All the way
20 to the...

21 BY MS. MARTINEZ:

22 Q. Could you read out to the jury this company that was paying
23 for rent.

24 A. Pacific MS Management, LLC d/b/a Mattress1One. Deposit
25 dates September 11th, 2020, January 20, 2021, for \$42,400.

1 Q. Now, that's a total of payments during that time period,
2 right?

3 A. Yes.

4 (Pause in proceedings.)

5 MS. MARTINEZ: Could you take that one down, that
6 highlight.

7 I'm sorry. Just the highlight.

8 And then could you highlight "Internal Transfers" on
9 this one.

10 BY MS. MARTINEZ:

11 Q. In addition to the 50,000 that came in from HM Management,
12 which you had indicated was another loan, what other company
13 that received PPP EIDL money is moving money into here?

14 A. HM Four and HM Management and Development.

15 Q. And what is the amount?

16 A. The amounts are 64,000, 50,000, respectively.

17 Q. For HM Four what's the amount?

18 A. 64,000 for HM Four, and 50,000 for HM Management and
19 Development.

20 MS. MARTINEZ: Can you take that down and go to the
21 "Other Sheppard Account."

22 Just a little lower. "Other Sheppard Account."

23 I'm sorry. When I say: "Take that down," I should
24 say: "Remove the highlight."

25 Stay at the top.

1 There you go.

2 BY MS. MARTINEZ:

3 Q. This account -- in "Other Sheppard Account," this account
4 is receiving funds from what account?

5 A. Account One Florida Bank 2368 under the name HM-UP
6 Development Alafaya Trails, LLC.

7 Q. From One Florida Bank, correct?

8 A. Correct.

9 Q. And again, that's the account that had the commercial loan,
10 correct?

11 A. Correct.

12 MS. MARTINEZ: Can you zoom back in and then go to the
13 bottom, "Uses of Funds."

14 BY MS. MARTINEZ:

15 Q. For this account, what is the total that you have in your
16 category for credit cards, card payments, and Credit One?

17 A. \$388,220.64.

18 MS. MARTINEZ: And can you highlight how much for
19 IBERIABANK mortgage payment.

20 A little lower.

21 BY MS. MARTINEZ:

22 Q. How much is that?

23 MR. CAVALLO: Objection, Your Honor. I'll do a
24 standing objection if you want.

25 THE COURT: Yeah.

1 MR. CAVALLO: Just repeatedly asking the witness to
2 just read from the --

3 THE COURT: Yeah. In terms of just -- if there's
4 something that needs to be explained in terms of the summary,
5 let's go ahead and do that. Otherwise, it's in evidence.

6 The objection is sustained.

7 BY MS. MARTINEZ:

8 Q. Did you separate the categories, similar as you did before,
9 including mortgage payments, auto payments? Is that right?

10 A. Yes, I did.

11 Q. And in addition to that, there are payments that are going
12 out from this account to other Sheppard accounts, correct?

13 A. Correct.

14 Q. And by "other Sheppard accounts," I mean accounts that are
15 not receiving PPP EIDL money, correct?

16 A. Correct.

17 MR. CAVALLO: Object, Your Honor. Counsel is
18 testifying.

19 THE COURT: Sustained.

20 MS. MARTINEZ: Your Honor, if I can't refer to the
21 summary and I can't ask a question --

22 THE COURT: You can refer to the summary, but -- and
23 by asking questions that are not leading in nature.

24 BY MS. MARTINEZ:

25 Q. With respect to the category "Other Sheppard Accounts,"

1 there are some accounts -- there are two accounts there from
2 One Florida Bank. Can you describe to the jury, are those
3 related?

4 A. They are related.

5 Q. One is a loan and another is a checking, correct?

6 A. Correct.

7 Q. Now, there's another account that we have not talked about
8 under Other Sheppard Accounts from Wells Fargo. Can you tell
9 the jury what the name of that one is and the number.

10 A. Yes. HM-UP Development Alafaya Trails, LLC, FBO Basis,
11 Wells Fargo account 5874.

12 Q. And again, this is money going out to that account, right?

13 A. Yes.

14 Q. And in addition, you have a section under "Use of Funds."
15 It's "Internal Transfers Within Sheppard Accounts Receiving PPP
16 and EIDL Loans." Now, this is money going out to other
17 accounts that received PPP EIDL money, correct?

18 A. Yes.

19 MS. MARTINEZ: So what I'd like you to do is I'd like
20 you to zoom out, Ms. Font -- zoom out completely, meaning
21 let's -- and can you do something where you zoom at the top
22 where it says: "Internal Transfers," and then also zoom at the
23 bottom where it says: "Internal Transfers."

24 BY MS. MARTINEZ:

25 Q. Mr. Hysa, the top is money coming in and the bottom is

1 money going out. In particular, I'd like you to focus on HM
2 Four. How much money is going out to HM Four 5817?

3 A. 66,000.

4 Q. And how much money came in?

5 A. 64,000.

6 Q. So what's the net between those two?

7 A. It's a net out \$2,000.

8 Q. From this account to HM Four, right?

9 A. Correct.

10 MS. MARTINEZ: Zoom away.

11 Can you go to Exhibit 41-4.

12 And can you pull up -- before you do that, can you
13 pull up next to it Exhibit 39-11.

14 BY MS. MARTINEZ:

15 Q. I don't know if you can see that, Mr. Hysa. Do you
16 recognize Exhibit 39-11 on the right?

17 A. I do.

18 Q. And what type of document is this?

19 A. This is a signature card.

20 MS. MARTINEZ: And Ms. Font, can you highlight the
21 bottom -- I mean zoom out on the bottom, the part where it
22 shows the date.

23 Yeah. The whole bottom section.

24 BY MS. MARTINEZ:

25 Q. The signer on the account is who, Mr. Hysa?

1 A. Eric Sheppard.

2 Q. And when was the account opened?

3 A. October 22nd, 2020.

4 Q. Okay.

5 MS. MARTINEZ: Okay. You can take Exhibit 39-11 down.

6 Can you go to 41-4.

7 There you go.

8 And can you highlight the top.

9 BY MS. MARTINEZ:

10 Q. Now, on this account, we just saw that was opened on

11 October 22nd. You start the sources of funds on

12 November 11th -- I'm sorry -- November 16th -- oh. We have a

13 typo on this one. I can see that. It's not 2023, is it? I

14 thought we had fixed that one.

15 A. Correct. It is a typo.

16 Q. What is the correct date?

17 A. 2020.

18 Q. Just like it says at the top in the title, correct?

19 A. Correct.

20 Q. On what basis did you start on November 16th, 2020?

21 A. November 16th, 2020 is the first money coming in. Also,
22 the first deposit, meaning first deposit of \$80, but also there
23 is money coming in from another SunTrust account.

24 MS. WEINTRAUB: He's just reading from the document.

25

1 BY MS. MARTINEZ:

2 Q. And is that the 66,000 total?

3 A. That is -- 60,000 actually comes on 11/16/2020.

4 Q. Do you recall -- 60,000 comes in on November 16th, 2020?

5 A. 16th, 2020.

6 Q. What happens on the next day, November 17th?

7 A. Fifty thousand dollars goes back, goes to account -- if you
8 could see, it's account 5973.

9 Q. We're going to see that in the Uses of Funds.

10 A. Correct. Correct.

11 Q. But you recall -- what you just said to the jury you recall
12 from your review of the bank statements, right?

13 A. Yes, I do.

14 Q. So on November 16th, 2020, 60,000 comes in. On
15 November 17th, 60,000 goes right back out, right?

16 MR. CAVALLO: Objection, Your Honor. Counsel is
17 reading the chart and testifying.

18 THE COURT: Sustained.

19 BY MS. MARTINEZ:

20 Q. In addition to that, what happens on November 23rd? What
21 is deposited into the account on November 23rd?

22 A. SBA loan, EIDL loan on 11/23/2020, for the amount 149,900.

23 MS. MARTINEZ: Can you -- Ms. Font, can you go to the
24 bottom of the chart.

25 Oh. I -- let me scratch that. Go back to the top.

1 BY MS. MARTINEZ:

2 Q. Mr. Hysa, are there any rental moneys that come into this
3 account HM Four?

4 A. No.

5 Q. Your top summary "Sources of Funds" includes everything
6 that comes into this account, right?

7 A. Correct.

8 Q. Okay.

9 MS. MARTINEZ: Go to the bottom.

10 With respect to Uses of Funds, can you highlight the
11 section, Ms. Font, that says -- it's the first category --
12 "Internal Transfers."

13 BY MS. MARTINEZ:

14 Q. Mr. Hysa, could you just explain to the jury again how
15 these transfers back out to other accounts relates to what you
16 just described from the incoming money.

17 A. Correct. So in this case, these are two accounts, 5973,
18 7571, receiving money from 5817. So this is money took out.
19 And in this case, 5973 receives 64,000, and account 7571
20 received 19,700. Both these accounts received government
21 funds.

22 Q. Right.

23 MS. MARTINEZ: And Ms. Font, if you could just do
24 this: Zoom out, and now compare the "Internal Transfers" at
25 the top to the "Internal Transfers" at the bottom.

1 BY MS. MARTINEZ:

2 Q. So Mr. Hysa, again, this HM Four account received, you
3 indicated, how much money from HM-UP Alafaya Trails?

4 A. 66,000.

5 Q. And how much money went right back out?

6 A. 64,000.

7 Q. And here we also have money being transferred over to HM
8 Management 7571. How much?

9 A. 19,700.

10 MS. MARTINEZ: Can you zoom back in. And just -- can
11 you do the bottom section of the chart.

12 BY MS. MARTINEZ:

13 Q. So other than these internal transfers, you have various
14 categories here similar to the other accounts?

15 A. Correct.

16 Q. One of the categories includes mortgage payments to
17 Mr. Sheppard's house, correct?

18 A. Correct.

19 Q. Another one includes auto payments, correct?

20 A. Yes.

21 Q. And then another one includes credit card payments,
22 correct?

23 A. Yes.

24 Q. And like your other summaries, you have some listing of
25 payments to individuals and entities, right?

1 A. Yes.

2 Q. There's an over-the-counter withdrawal. What does that
3 mean, an over-the-counter withdrawal?

4 A. This could be hard cash or could be a purchase of cashier
5 check. In this case, the bank did not provide the support. So
6 it is exactly what the bank statement notes.

7 MR. CAVALLLO: Objection, Your Honor. Move to strike.
8 He's saying "could be," speculating what --

9 THE COURT: Sustained.

10 BY MS. MARTINEZ:

11 Q. I think you indicated over-the-counter withdrawal is
12 exactly what the bank statement says?

13 A. Exactly what the bank statement --

14 Q. And what is cash out? What does that mean?

15 A. It's cash. It's cash out. Hard cash.

16 MS. MARTINEZ: You can take that down.

17 Can you put up 41-5, which has been already admitted
18 into evidence.

19 Okay. Just stay there for one second.

20 BY MS. MARTINEZ:

21 Q. And can you explain to the jury now, what have you done in
22 Summary 41-5?

23 A. This is a summary of -- to identify sources and uses of
24 funds. So this --

25 Q. Okay.

1 A. This summary --

2 Q. And in the ones that we just covered previously, you
3 focused on individual accounts, right?

4 A. Correct.

5 Q. And in this one, what did you do?

6 A. I combined all three accounts into one summary sheet.

7 Q. And again, now, the three accounts that we are summarizing
8 here, read just the company names.

9 A. HM Management and Development, LLC, HM-UP Development
10 Alafaya Trails, and HM Four, LLC.

11 Q. And for all the accounts who is the authorized signer?

12 A. Eric Sheppard.

13 Q. And what's the time period of your analysis now?

14 MR. CAVALLO: Objection, Your Honor. That's three in
15 a row just reading the title of the chart.

16 THE COURT: Sustained.

17 BY MS. MARTINEZ:

18 Q. Well, you'll see that --

19 MS. MARTINEZ: Ms. Font, can you highlight the date of
20 the -- the date of the time period for this summary. You see?
21 And zoom that out, and -- if you could. And then -- no. No.
22 No. Just the top. Just the title. Just the title.

23 Now, you see the little tiny asterisks at the bottom?
24 Can you highlight that for the jury, so we can see what we're
25 talking about. So we can see that we're not just reading a

1 summary.

2 BY MS. MARTINEZ:

3 Q. Can you explain to the jury the asterisk at the bottom of
4 how you combine these and what time periods you used for the
5 data that you have in this combined summary.

6 A. So the first date, May 1st, 2020, pertains to HM Management
7 and Development SunTrust account 7571. This is a date when the
8 first loan comes in.

9 And then, for the next one, 5973, Alafaya Trails, the
10 first \$50,000 coming from another HM account, SunTrust account.

11 And the last, 5817, HM Four, is the date when they
12 deposit the first \$80, the first deposit, plus \$60,000 coming
13 from Alafaya Trails.

14 Q. The point is to explain that the data -- even though the
15 title says: "May 1st, 2020 through October 20, 2021," the
16 data, the information that you have in this combined summary,
17 with respect to the second account, it only starts on
18 August 14th of 2020. And with respect to the third account, it
19 only starts on November 16th, 2020; is that right?

20 MR. CAVALLO: Objection, Your Honor. Testifying and
21 leading.

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

23 THE WITNESS: That is correct.

24 BY MS. MARTINEZ:

25 Q. And the reason you only took data from that time period is?

1 A. Is to focus on government loans, to make sure what are
2 exact sources and uses of funds pertaining to the six
3 government loans.

4 MS. MARTINEZ: Can you bring the highlights down.

5 Now, for this particular summary, can you highlight
6 the first box -- I mean Zoom out on the first -- yeah. You can
7 just zoom out the first top -- thank you.

8 BY MS. MARTINEZ:

9 Q. After the beginning balance, what is the first category
10 that you have in this combined box?

11 A. "PPP and EIDL Loans."

12 Q. And in this box do you list the type of loan and the
13 deposit date?

14 A. Correct.

15 Q. And then the amounts on the far right, right?

16 A. Correct.

17 Q. Now, what is the total of all six loans?

18 A. \$893,145.

19 MS. MARTINEZ: Can you do something where -- just --
20 is there some way to do this?

21 Yeah, just do the next box.

22 BY MS. MARTINEZ:

23 Q. Now, with respect to the next category, what is it?

24 A. It's "Rent/Lease Related" pertaining to HM-UP Development
25 Alafaya Trails account 5973.

1 Q. Now, you have that parenthetical in your summary that says:
2 "HM-UP Development Alafaya Trails SunTrust 5973." What does
3 that tell the jury with respect to these deposits? What
4 account of the three actually received all these rental
5 deposits?

6 A. Alafaya Trails.

7 Q. 5973, right?

8 A. Correct.

9 Q. Not the other two accounts?

10 A. No.

11 Q. Okay. And what was the total?

12 A. \$873,037.18.

13 Q. Okay.

14 MS. MARTINEZ: Can you zoom back out -- oh, wait. I
15 guess -- no. That's okay. That's okay. We've already done
16 it. That's okay.

17 I don't know if you can do this, but can you -- this
18 is a two-page document. Can you go -- can you zoom "Internal
19 Transfers Within Sheppard Accounts" on the sources, and then
20 also do a little blowup of the second page?

21 No chance. Technology limits? I will recommend that
22 as an improvement.

23 Okay. So no worries. Can you highlight -- I mean
24 zoom up -- no, just -- only -- only "Internal Transfers" for a
25 moment.

1 BY MS. MARTINEZ:

2 Q. Again, when you call it "Internal Transfers," it means only
3 coming in from accounts that also received PPP/EIDL loans,
4 right?

5 A. Correct.

6 Q. Okay. And what's the total, at least in this situation of
7 movement in --

8 A. \$389,150.

9 MS. MARTINEZ: Could you now go to the "Uses of Funds"
10 and just highlight "Internal Transfers" for a moment.

11 Internal Transfers is the third category. Third
12 category at the top. Third category at the top.

13 There we go.

14 BY MS. MARTINEZ:

15 Q. And this is the section of your summary that is use of
16 money going out. With respect to internal transfers, meaning
17 money going out to other accounts receiving PPP/EIDL loans,
18 what's the total?

19 A. The total is \$304,150.

20 THE COURT: Ms. Martinez, just let me know when it
21 might be a good time to give the jurors a comfort break.

22 MS. MARTINEZ: Any time, Your Honor.

23 THE COURT: All right. Ladies and Gentlemen, let's
24 take a 10-minute recess.

25 COURT SECURITY OFFICER: All rise for the jury.

1 (Jury not present, 2:53 p.m.)

2 THE COURT: All right. We're on a 10-minute recess.
3 How much longer do you have on the direct?

4 MS. MARTINEZ: Your Honor, I would say at least half
5 an hour.

6 THE COURT: All right. We're on a 10-minute -- yes?

7 MS. MARTINEZ: Before -- I really appreciate the
8 break. But before we break, I just wanted to let the Court
9 know it's entirely possible that, in addition to this break, at
10 some point the witness may need a break for medical reasons.
11 So -- and I can advise the Court of that at sidebar --

12 THE COURT: Can he take the break now?

13 MS. MARTINEZ: No. No. We are. But I'm just -- I
14 didn't have an opportunity to mention that before. And it's
15 nothing contagious or anything like that, but --

16 THE COURT: All right. Sir, did you need to take an
17 additional break? This witness, correct?

18 MS. MARTINEZ: This witness.

19 THE COURT: All right. Just let the Court know if you
20 need to take another break after this one. All right, sir?

21 THE WITNESS: Thank you.

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

23 MS. WEINTRAUB: Judge, I'm just asking in terms of
24 scheduling, because this was the witness that was going to be
25 15 minutes, according to Ms. Jimenez on Thursday, when we

1 broke. So we are two hours in, with another half hour on
2 direct. I assume that cross will be a half hour or 45 minutes.
3 We have a Rule 29. I don't know if the Court wants to consider
4 that after the jury leaves or early before they come so that we
5 don't waste jury time. I'm just throwing that out there and
6 asking the Court to do that.

7 Most respectfully, I don't mean to put more work on
8 you, but I'm just -- I'm extremely upset about what's going on
9 with the scheduling because -- especially, I should not have
10 made the announcement I did this morning about my client, I
11 guess. Because before I told them that it would be our client
12 testifying, it was a 15-minute witness. And now -- and I made
13 a specific motion so that we are not caught between direct and
14 cross for a two-week break.

15 THE COURT: What are you requesting, Ms. Weintraub?

16 MS. WEINTRAUB: I just want some guidance from the
17 Court, Judge.

18 THE COURT: I think the guidance is my hope was that
19 we would have already finished the Government's case some time
20 ago. But I can't -- all I can do is rule on the objections.
21 But the parties have taken a significant amount of time with
22 these witnesses. So at this point in time, we're on a
23 10-minute recess.

24 I'll see you back here in 10 minutes.

25 (Recess from 2:55 p.m. to 3:06 p.m.)

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

3 Are both sides ready to continue?

4 MS. MARTINEZ: Yes, Your Honor.

5 THE COURT: On behalf of the Defendant?

6 MS. WEINTRAUB: Yes, Your Honor.

7 THE COURT: All right. Can we see if they're ready to
8 go.

9 Okay. Thank you.

10 (Pause in proceedings.)

11 MS. WEINTRAUB: The Government's not here -- I'm
12 sorry. I'm sorry.

13 MS. MARTINEZ: I'm very little, but --

14 MS. WEINTRAUB: I'm sorry. I'm sorry. I apologize.

15 THE COURT: Do we need to wait for Ms. Jimenez?
16 Ms. Martinez, do we need to wait for Ms. Jimenez?

17 MS. WEINTRAUB: No. She'll just be telling her to
18 hurry up.

19 MS. MARTINEZ: Let the record reflect that no one
20 knows what she's telling me.

21 THE COURT: Do we need to wait for Ms. Jimenez?

22 MS. MARTINEZ: She's coming.

23 MS. WEINTRAUB: Does that mean yes?

24 THE COURT: I just need an answer.

25 MS. MARTINEZ: There she is.

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

2 MS. MARTINEZ: Thank you. Thank you, Your Honor.

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

5 (Before the Jury, 3:07 p.m.)

6 THE COURT: Welcome back, Ladies and Gentlemen.

7 Please be seated.

8 And we'll continue with the direct examination.

9 MS. MARTINEZ: Ms. Font, could you please go to 41-2.

10 And this one is dead -- can you help me to bring it
11 back to life.

12 (Pause in proceedings.)

13 BY MS. MARTINEZ:

14 Q. Mr. Hysa, I've gone back to Exhibit 41-2.

15 MS. MARTINEZ: And I'm going to ask Ms. Font, on the
16 Uses of Funds, can you just zoom up where it says: "Florida
17 Department of Revenue" at the bottom, bottom, bottom. Lower,
18 lower, lower. Florida Department of Revenue.

19 BY MS. MARTINEZ:

20 Q. Mr. Hysa, from reviewing the bank records of HM Management
21 and Development, 7571, do you remember reviewing the checks
22 that actually went to the Florida Department of Revenue?

23 A. Yes.

24 Q. And what was the memo line on those?

25 A. "State tax" and there's a unique number.

1 Q. And was there another company name listed?

2 A. Correct.

3 Q. Do you remember the other company name?

4 A. CJUF, CJUFF [sic].

5 Q. Thank you.

6 MS. MARTINEZ: You can bring that down.

7 Can you go back to 41-5, and go to "Uses of Funds,"
8 the second page.

9 Can you go to "Other Sheppard Accounts" and bring that
10 out.

11 BY MS. MARTINEZ:

12 Q. Mr. Hysa, what is the total amount that went to One Florida
13 Bank, loan number 1470?

14 A. \$47,397.03.

15 Q. And what is the amount that went to the related checking
16 account, 2368?

17 A. Thirteen dollars and 51 -- 13,000 dollars and 51 dollars.

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

19 THE COURT: Certainly.

20 BY MS. MARTINEZ:

21 Q. Mr. Hysa, I'm showing you what's been admitted into
22 evidence --

23 MS. MARTINEZ: Well, I went too high up and I turned
24 it off.

25

1 BY MS. MARTINEZ:

2 Q. I'm showing you what's been admitted into evidence as
3 Exhibit Number 47, which includes the account opening documents
4 for 2368. And also, I'm going to show you Bates label 034077.

5 Can you read who is the lender on this promissory
6 note.

7 A. One Florida Bank.

8 Q. And at the top left, what is the principal amount of the
9 loan?

10 A. \$600,000.

11 Q. And what are the last four digits of the loan?

12 A. 1470.

13 Q. What is the loan date and then the maturity date?

14 A. May 18th, 2020.

15 Q. And what is the maturity date?

16 A. November 18th, 2020.

17 Q. And on the left where it says: "Borrowers," who are the
18 borrowers?

19 A. Eric Sheppard and Robert Kallman.

20 Q. And what is the residential address given?

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

22 MS. MARTINEZ: Your Honor, while I'm at ELMO, could I
23 publish only to the witness?

24 THE COURT: All right.

25

1 BY MS. MARTINEZ:

2 Q. This is just for you to identify it, Mr. Hysa. Do you
3 recognize this document, 41-16?

4 A. Yes.

5 Q. Did you prepare that summary?

6 A. Yes.

7 Q. And did you likewise prepare it from bank records that you
8 reviewed?

9 A. Yes.

10 MS. MARTINEZ: I'm going to come back to it, Your
11 Honor. I'm just going to show the witness a number of
12 summaries.

13 THE COURT: All right.

14 MS. MARTINEZ: If I could go back to counsel's table,
15 but only for the witness.

16 Could you bring up 41-15.

17 BY MS. MARTINEZ:

18 Q. Now, do you recognize that document?

19 A. Yes.

20 MS. MARTINEZ: Now, just for the witness only, can you
21 scroll down so he can see that it consists of three pages.

22 BY MS. MARTINEZ:

23 Q. Do you recognize that document?

24 A. Yes.

25 Q. Did you prepare that summary?

1 A. Yes.

2 Q. And did you prepare it from the bank records of Wells Fargo
3 5874?

4 A. Yes.

5 Q. Again, just for identification I'm going to show you a few
6 summaries. Okay?

7 MS. MARTINEZ: Can you bring up 41-11.

8 BY MS. MARTINEZ:

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. Did you prepare that summary?

12 A. Yes.

13 Q. Now, that one you prepared from the same bank records as
14 the combined PPP/EIDL loan accounts, right?

15 A. Yes.

16 MS. MARTINEZ: Can you bring up 41-10.

17 BY MS. MARTINEZ:

18 Q. Do you recognize this document?

19 A. Yes.

20 MS. MARTINEZ: Can you scroll down just so that the
21 witness can see that it's three pages -- oh. It's actually
22 four.

23 BY MS. MARTINEZ:

24 Q. Did you prepare that summary?

25 A. Yes.

1 Q. And did you prepare it from American Express records?

2 A. And Discover.

3 MS. MARTINEZ: Can you bring up 41-6.

4 BY MS. MARTINEZ:

5 Q. Do you recognize this summary?

6 A. Yes.

7 Q. Did you prepare it from reviewing the three bank records
8 from SunTrust that received EIDL and PPP funds?

9 A. Yes.

10 Q. And also from reviewing the mortgage documents from
11 IBERIABANK?

12 A. Yes.

13 MS. MARTINEZ: Your Honor, the United States would
14 like to move into evidence Exhibits 41-15 and 41-16.

15 THE COURT: Any objection? Any objection to 41-16 and
16 41-15?

17 MR. CAVALLO: No objection to 41-15. I'm looking for
18 41-16.

19 No objection, Your Honor.

20 THE COURT: All right. Both admitted into evidence.
21 (Government's Exhibits 41-15 and 41-16 received into
22 evidence.)

23 MS. MARTINEZ: In addition, at this time, since I just
24 showed the witness, I'd like to move into evidence Government's
25 Exhibit 41-10, 41-11, and 41-6.

1 MR. CAVALLO: No objection to 41-10. No objection to
2 41-11. And I'm sorry, counsel. What was the last one?

3 THE COURT: 41-6.

4 MR. CAVALLO: No objection, Your Honor.

5 THE COURT: All right. Each admitted into evidence.

6 (Government's Exhibits 41-6, 41-10, and 41-11 received
7 into evidence.)

8 MS. MARTINEZ: Thank you, Your Honor.

9 Can you bring up 41-5, and just highlight -- zoom out
10 again, rent/lease amounts, the box of money coming in.

11 BY MS. MARTINEZ:

12 Q. Mr. Hysa, as you had indicated, the account that received
13 PPP/EIDL money, that also received rent money, was the Alafaya
14 account, 5973, right?

15 A. Correct.

16 Q. And the total received during the time period that you
17 looked at?

18 A. You want me to --

19 Q. The total that was received.

20 A. Correct. I did see the total.

21 Q. What's the total?

22 A. \$873,037.18.

23 MS. MARTINEZ: Can you bring that exhibit down and
24 bring up 41-15.

25

1 BY MS. MARTINEZ:

2 Q. Now, Mr. Hysa, this is a different bank account. It's not
3 at SunTrust, right?

4 A. That is correct.

5 Q. What is the name of the company account?

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

7 Q. So the name is the same as the other account we had just
8 looked at, 5973 from SunTrust, right?

9 A. Yes.

10 Q. Now, this account is in Wells Fargo and what are the last
11 four digits?

12 A. 5874.

13 Q. Now we're looking at the first page.

14 MS. MARTINEZ: Can you just scroll down so that we can
15 see that there's three pages, and then go back up to the first
16 page.

17 BY MS. MARTINEZ:

18 Q. Can you explain to the jury -- each page covers a different
19 year?

20 A. Correct. Each page covers different year. The first --
21 this one here is 2019.

22 Q. And these are rental payments that Mr. Sheppard was
23 receiving from other companies that did not go into the 5973
24 account?

25 MR. CAVALLO: Objection, Your Honor. Counsel

1 testifying, leading.

2 THE COURT: Sustained.

3 BY MS. MARTINEZ:

4 Q. Have you looked at who's the signer of the Wells Fargo
5 account?

6 A. Yes.

7 Q. Who's that?

8 A. Eric Sheppard.

9 Q. And these rental payments that you summarized within this
10 exhibit, 41-15, they came into this account, not into the other
11 account that you previously testified about, right?

12 MR. CAVALLO: Objection. Counsel testifying, leading.

13 THE COURT: Sustained.

14 BY MS. MARTINEZ:

15 Q. These particular companies that are listed -- did you list
16 the company names here, as well as the dates when the amounts
17 were received?

18 A. Yes.

19 Q. Did these companies also deposit into the 5973 account?

20 A. Could you repeat the question?

21 Q. These companies, DICK'S Sporting, Aspen Dental, did they
22 also deposit in the 5973 account or were there deposits in the
23 5973 account from different companies like Burlington, et
24 cetera?

25 A. So these are different companies who did not put money on

1 the 5973.

2 Q. So how did you organize this summary? Can you explain that
3 to the jury.

4 A. So this is just one account, 5874. This is just the money
5 coming from these rental/lease related, as noted here, and I
6 divided this per quarter. This is based on the inflows, which
7 is deposits, and money going out.

8 Q. So you have a column for deposits in and money for -- a
9 column for money going out?

10 A. Correct.

11 Q. Okay. And at the bottom, what do you do, do a total for
12 each year?

13 A. Correct.

14 Q. So do you have a total of rental money received into this
15 account in 2019?

16 A. I do.

17 MR. CAVALLO: Objection, Your Honor. Again, just
18 asking the witness to read the bottom of the chart.

19 THE COURT: All right. And again, to the extent that
20 this may be helpful in the jury understanding the chart, I'll
21 allow it.

22 MS. MARTINEZ: Oh, dear God. Sorry, Judge.

23 MS. WEINTRAUB: Judge, I think what the Court just
24 missed was that about six of the jurors just had their hands
25 raised.

1 THE COURT: Oh. Is there something wrong with the --

2 MS. MARTINEZ: They have been admitted and we're not
3 publishing it to them. I didn't realize.

4 THE COURT: Ah, okay. Let's make sure that the
5 exhibit is published to the jury. It's in evidence.

6 MS. MARTINEZ: It's 41-15.

7 When they press a button, it will work.

8 BY MS. MARTINEZ:

9 Q. Okay. There it is. The jury can see it now, Mr. Hysa.

10 How did you -- as you had indicated, you organized
11 this by quarter?

12 A. Correct.

13 Q. And I know you know what it means, but when you say you
14 organized by quarter, that's for like three months of the year,
15 then another three months of the year, another three months of
16 the year; is that right?

17 MR. CAVALLO: Objection. Leading.

18 THE COURT: I'll allow it.

19 THE WITNESS: So yeah, one year has four quarters,
20 January through March, and so on.

21 BY MS. MARTINEZ:

22 Q. And again, on the first page, that's the total received by
23 the account in rental money for 2019?

24 A. \$1,166,323.19.

25 MS. MARTINEZ: Ms. Font, can you go to the next page.

1 BY MS. MARTINEZ:

2 Q. And what's the total for 2020?

3 A. \$1,047,653.87.

4 MS. MARTINEZ: And the next page, Ms. Font.

5 BY MS. MARTINEZ:

6 Q. And what's the total for 2021?

7 A. 1,207 -- I'm sorry -- \$1,247,612.13 [sic].

8 MS. MARTINEZ: Your Honor, I need to go to ELMO just
9 for one second.

10 One minute.

11 BY MS. MARTINEZ:

12 Q. What's been admitted into evidence as Exhibit 41-16, now,
13 this one is not of an individual account. Which accounts did
14 you combine together for this summary?

15 A. This one I combined Wells Fargo account 5874, which we just
16 went through, SunTrust 5973, Amerasia, 1903.

17 Q. And in this case -- so all of those three accounts were in
18 the name of HM-UP Development Alafaya Trails?

19 A. Yes.

20 Q. So in this one you also divide it by quarters?

21 A. Yes.

22 Q. But what you have is totals on the right side by year,
23 right?

24 A. Yes.

25 Q. So without reading the exact numbers, roughly --

1 approximately how much money came in total in 2019?

2 A. 1.4 million.

3 Q. 1.4 million. And roughly in 2020?

4 A. Approximately the same.

5 Q. And in 2021?

6 A. 2.4 million.

7 MS. MARTINEZ: Can you pull up Government's
8 Exhibit 41-11.

9 Oh. I'm sorry. Can you go to counsel's table.

10 Yeah. Thank you.

11 BY MS. MARTINEZ:

12 Q. Just to explain to the jury --

13 MS. MARTINEZ: Can you just do the top, just so we can
14 see what the title of the summary is.

15 BY MS. MARTINEZ:

16 Q. Just to explain to the jury, what did you do on this
17 summary?

18 A. In this summary, per three accounts, I grouped payments to
19 individuals. There are a total of 44 individuals, as well as
20 27 company related.

21 Q. And these are payments specifically out of the three
22 accounts that received PPP/Economic Injury Loans, right?

23 A. Yes.

24 MS. MARTINEZ: Can you take that down.

25 Can you bring up 41-10. It's been admitted into

1 evidence. Can you just scroll down so that we can all see that
2 it includes several pages.

3 Okay. Can you go to the top.

4 BY MS. MARTINEZ:

5 Q. First, the "Summary of Credit Cards" box, the top section
6 of this, just to explain to the jury, what credit cards in
7 general did you look at? I know it's listed in the summary,
8 but what type of credit cards did you look at, the type of
9 credit cards?

10 A. Two type, AmEx -- American Express and Discover.

11 Q. And on the left, what are the names of the cardholders that
12 you analyzed?

13 A. Eric Sheppard, Jennifer Sheppard, and Jordan Sheppard.

14 MS. MARTINEZ: Can you zoom back out.

15 And can you do -- the two bottom boxes, can you zoom
16 those -- both of them out.

17 BY MS. MARTINEZ:

18 Q. So just to explain to the jury -- because there's a
19 difference here, and I want you to explain to them why.

20 There's a difference in your dates for summary of charges and
21 also -- and there's a difference in your dates for summary of
22 payments. Walk the jury through that. Why do you start
23 March 13th, 2020 for the charges but then you only start the
24 payments on May 1st, 2020?

25 A. When we use a credit card, we use a credit card and then we

1 pay later. So normally the expenditure happens first and then
2 we pay later. And there is a time, could be a month I would
3 say more or less, to pay your charges for your time, credit
4 card charges.

5 Q. So with respect to Mr. Sheppard, what is the total amount
6 that was paid -- what's the total -- I'm sorry. No. Because
7 you have it by charges.

8 Let's go to the payments. For the Alafaya Trails
9 account, 5973, how much money from that account was used to pay
10 these credit cards?

11 A. 377,000 --

12 Q. You don't have to read the exact number, just roughly.

13 A. -- 951.

14 Q. And how much money was used from the HM Management account
15 to pay these credit cards?

16 A. The SunTrust account 7571, HM Management paid 184,735.

17 Q. And go to the HM Four. How much money was used from HM
18 Four to pay these credit cards?

19 A. HM Four, LLC, SunTrust 5817 paid 36,176.

20 MS. MARTINEZ: And can you go to the next page.

21 BY MS. MARTINEZ:

22 Q. And just to explain to the jury, you broke out the summary
23 into categories and descriptions. Did you base that on the
24 actual charges that you saw in the records?

25 A. Correct. I relied on this categorization solely on the

1 credit card statement itself.

2 Q. And what are your general categories that you divided it
3 into?

4 A. "Property, Retail," "Legal," "Utilities," "Other," and
5 "Meals, Lodging/Hotel."

6 MS. MARTINEZ: Can you go back up for a second.

7 BY MS. MARTINEZ:

8 Q. So for example, under "Property," you have "Pool," and you
9 listed that under "Property," right?

10 A. Correct.

11 Q. For "Retail," you have "Grocery," for example?

12 A. Yes.

13 Q. Okay. And what does "Apparel and Merchandise" mean?

14 A. The "Apparel and Merchandise," it is, for example, Target,
15 Macy's, Nordstrom, et cetera.

16 MS. MARTINEZ: Can you go to the --

17 BY MS. MARTINEZ:

18 Q. Now, here in this particular page that we're looking at,
19 which is Page 2 of this exhibit, it's focusing specifically on
20 cards under Mr. Sheppard's name, right?

21 A. Yes.

22 MS. MARTINEZ: Can you go to the next page.

23 Stop.

24 BY MS. MARTINEZ:

25 Q. So again, the categories that you broke it out, "Pet,"

1 "Vet," "School," it was based on the -- what was reflected on
2 the charges, right?

3 A. That is correct.

4 MS. MARTINEZ: Could you go to the next one, next
5 page.

6 And stop.

7 BY MS. MARTINEZ:

8 Q. What is the total amount paid for Jennifer Sheppard's card?

9 A. \$94,166.

10 MS. MARTINEZ: And can you go to the bottom.

11 BY MS. MARTINEZ:

12 Q. What's the total paid for Jordan Sheppard's card?

13 A. 2,398.

14 Q. Okay.

15 MS. MARTINEZ: You can put that down.

16 Can you go to Exhibit 41-6.

17 BY MS. MARTINEZ:

18 Q. Can you explain to the jury what this is.

19 A. This is a summary of mortgage payments made out of three
20 SunTrust accounts, and they are --

21 Q. You don't have to read the exact numbers. We know. These
22 are the accounts that received PPP/Economic Injury Disaster
23 Loans, right?

24 A. Correct.

25 Q. And the mortgage is for the house of who?

1 A. Eric Sheppard.

2 Q. And is that the house in Bal Harbour?

3 A. Correct.

4 Q. And you reviewed again the IBERIABANK mortgage documents,
5 correct?

6 A. Yes.

7 Q. And in addition, you reviewed all these bank account
8 records from SunTrust, right?

9 A. Yes.

10 Q. Now, from May 1st to December 1st of 2020, which account is
11 being used to pay the mortgage?

12 A. 7571.

13 Q. And that's in the name of which company?

14 A. HM Management and Development, LLC.

15 Q. And without reading the exact, you know, numbers, roughly,
16 how much is the monthly amount?

17 A. It's roughly average over 11,000.

18 Q. Per month?

19 A. Per month, correct.

20 Q. And then in January and February of 2021, what company is
21 used to pay the mortgage?

22 A. SunTrust 5817, under HM Four, LLC.

23 Q. And then we have, in March, it goes to which company?

24 A. To HM-UP Development Alafaya Trails, LLC, SunTrust 5973.

25 Q. And then the next two go to HM Management, right?

1 A. Correct.

2 Q. And the last one that you have in your chart,
3 June 1st, 2021, what company is paying the mortgage?

4 A. HM-UP Development Alafaya Trails.

5 Q. For the time period that you have, May 1st, 2020 to June
6 1st, 2021, what's the total amount that is paid for the home
7 mortgage out of these three accounts?

8 A. 162,542.

9 (Pause in proceedings.)

10 MS. MARTINEZ: I have no further questions, Your
11 Honor.

12 THE COURT: All right. Cross-examination.

13 (Pause in proceedings.)

14 CROSS-EXAMINATION

15 BY MR. CAVALLO:

16 Q. Good afternoon, Mr. Hysa.

17 A. Good afternoon.

18 Q. It was your testimony that you're a forensic accountant,
19 correct?

20 A. Yes.

21 Q. And a certified fraud examiner?

22 A. Yes.

23 Q. And you have experience investigating the sources and uses
24 of funds, correct?

25 A. Yes.

1 Q. But you're here today as a summary witness, aren't you?

2 A. Yes.

3 Q. And what that means is you were given documents, like bank
4 statements, and you were asked to create charts like we just
5 looked at, correct?

6 A. Yes.

7 Q. And you're not here to give any opinion based on your
8 expertise in forensic accounting, correct?

9 A. Yes.

10 MR. CAVALLO: Your Honor, I'm working off an old set
11 of exhibits, so I'm going to ask if the Government minds
12 putting up -- until my side can get a copy, could you please
13 put up 72, Government's 72, which is in evidence.

14 (Pause in proceedings.)

15 MR. CAVALLO: Do you mind just putting up 72 while
16 he -- thank you. Thank you. Appreciate it.

17 BY MR. CAVALLO:

18 Q. Mr. Hysa, do you remember reviewing this chart on your
19 direct examination?

20 A. Yes, I do.

21 Q. And this is a chart you prepared, correct?

22 A. Correct.

23 Q. And am I right that the documents you reviewed to create
24 this chart are the loan applications?

25 A. Loan applications. Correct.

1 Q. Were there any other documents you reviewed in order to
2 prepare this chart?

3 A. Bank records as well.

4 Q. Okay. The column that says: "Representative/Owner," that
5 was just the name that was listed on the application, correct?

6 A. Correct.

7 Q. You didn't investigate who actually filled out these
8 applications, correct?

9 A. I'm part of the investigation team, and I did note the
10 names of these accounts per bank records.

11 Q. The bank accounts. But my question is: You don't know
12 which human being actually sat down and completed these
13 applications, correct?

14 A. Filling this application, I don't know. But what I know is
15 what's given to me and I reviewed.

16 Q. Correct. So you're agreeing with me. You don't know who
17 filled out these applications, correct?

18 A. I don't know. I wasn't there.

19 Q. And you don't know who submitted supporting documentation
20 with each of these applications, correct?

21 A. If you could show me the other exhibit, I know that
22 application came from Internet Protocol provider number which
23 is tied to Eric Sheppard.

24 Q. Well, it's tied to Mr. Sheppard's modem at his house,
25 correct?

1 A. That's fair statement.

2 Q. So it's inaccurate to say it's tied to Mr. Sheppard.

3 A. It's coming to the address, so I read and noted exactly
4 what I reviewed.

5 Q. It would be inaccurate to say that the applications are
6 tied to Mr. Sheppard, the human being, correct?

7 A. That could be. Could be possible, true.

8 Q. You didn't investigate whether there was a loan broker who
9 was assisting in the preparation of some of these applications,
10 correct?

11 A. When I reviewed, I noted Nationwide Lending, PayPal.

12 Q. Did you say PayPal?

13 A. PayPal. To fill up applications.

14 Q. Do you know which applications on this chart Nationwide
15 assisted in preparing?

16 A. If you could show me the underlying documentation. But it
17 is my understanding 7/24s are filled -- are processed through
18 Nationwide. And I do have my underlying support with me to
19 give you a precise answer.

20 Q. So your testimony is the 7/24, those four applications,
21 it's your understanding those were -- Nationwide assisted in
22 preparation of those applications?

23 A. Correct.

24 Q. Okay.

25 MR. CAVALLO: Could we look at 71. I think my side

1 has it now under control.

2 Oh. You're downloading it?

3 Okay. I'm sorry. Could you put up 71.

4 BY MR. CAVALLO:

5 Q. Mr. Hysa, the four applications on July 24, 2020 are not on
6 this chart, are they?

7 A. They are not.

8 Q. And they're not on this chart because they were submitted
9 from a different IP address, correct?

10 A. Because some of them were not funded.

11 Q. Some of them were submitted from a different IP address,
12 correct?

13 A. That is correct.

14 Q. Did you do any investigation into where that IP address was
15 located?

16 A. No, I did not.

17 MR. CAVALLO: If you can go back to 72, please.

18 BY MR. CAVALLO:

19 Q. The chart speaks for itself, but you agree with me that
20 half of the loans on this chart -- or more than half weren't
21 funded?

22 A. There are total of 12, and -- 12 funded and 12 sought,
23 requested.

24 Q. And you were asked specifically about the application for
25 HM-UP Development Alafaya Trails TRU, LLC, the last one on

1 7/24/20, correct?

2 A. Correct.

3 Q. And you were asked specifically about the bank account at
4 One Florida Bank, correct?

5 A. Yes.

6 Q. And this is one of the applications that Nationwide
7 assisted in filling out, correct?

8 A. Yes.

9 Q. And you don't know whether it was Nationwide or someone
10 else who put in the One Florida Bank bank account information,
11 correct?

12 A. I noted here exactly what I noted on Nationwide
13 application.

14 Q. And you don't know if it was Nationwide or someone else who
15 put in that information, correct?

16 A. Oh, yes. I was not there physically. I did not observe.

17 Q. And this loan was not funded, correct?

18 A. This loan was not funded. Correct.

19 Q. So no EIDL money went to any bank account at One Florida
20 Bank, correct?

21 A. Could you please repeat the question?

22 Q. Sure. No EIDL money went to the One Florida Bank account
23 ending in 2368, correct?

24 A. Correct. Correct.

25 (Pause in proceedings.)

1 MR. CAVALLO: Are you set up now?

2 UNIDENTIFIED SPEAKER: Yes.

3 MR. CAVALLO: We can switch to Defense table.

4 Thank you.

5 Thank you for helping.

6 Could you please put up 41-5.

7 (Pause in proceedings.)

8 BY MR. CAVALLO:

9 Q. You were asked about this chart on your direct as well,
10 correct?

11 A. Yes.

12 Q. And am I correct that this chart is summarizing bank
13 account information?

14 A. Correct. Three bank accounts receiving six loans.

15 Q. Isn't it also true that this chart does not include other
16 bank accounts for HM-UP that were open at the same time --
17 during this period?

18 A. That is correct.

19 Q. So there are other bank accounts for HM-UP that are not
20 taken into account in this chart?

21 A. Correct. But they are reflected as far as money in and
22 money out. Meaning, with these accounts --

23 Q. I didn't ask a question. Thank you.

24 Am I also reading this correctly that from this period
25 of time for the -- just these three accounts, there's 893,000

1 in PPP and EIDL loan money?

2 A. That is correct.

3 Q. And am I also correct that if you total the other
4 categories, including "Leases," "Transfers," the "Other
5 Sheppard Accounts," that there's over 1.6 million in
6 non-government loan funds in just these three accounts?

7 A. Could you -- could you help me. How did you come up with
8 1.6?

9 Q. Sure. It's the 2.6 million total at the bottom.

10 A. Correct.

11 Q. Minus the 893,145 in government loan money.

12 MS. MARTINEZ: He's got it wrong.

13 THE WITNESS: We have "Internal Transfers" here and
14 "Other Sheppard Accounts." We have to net them out to give the
15 jury the precise answer.

16 BY MR. CAVALLO:

17 Q. Okay. So that's about 600,000. So it would net -- even
18 netting those out, if they were accurate to net those out, it's
19 over one million?

20 A. They are accurate. That's for sure. But yeah, absolutely
21 right.

22 Q. Over one million in non-government funds, correct?

23 A. Correct.

24 Q. And again, this isn't every account. This is just these
25 three?

1 A. Correct.

2 Q. And isn't it also true that in one of the accounts that's
3 missing from here, which is a Wells Fargo account you testified
4 about, there's millions of dollars of rent money that are
5 flowing into that account per year?

6 A. That is correct.

7 MR. CAVALLO: If you could scroll down to the "Use of
8 Funds" section.

9 UNIDENTIFIED SPEAKER: Next page?

10 MR. CAVALLO: Yeah. Next page.

11 BY MR. CAVALLO:

12 Q. This is the other side of the coin, so to say. This is the
13 uses of the funds for just those three accounts?

14 A. That is correct.

15 Q. Isn't it correct that you did not investigate, for example,
16 how much of the 735,000 in credit card payments went to
17 business expenses versus personal expenses?

18 A. I relied solely on the credit card statements. Meaning I
19 read the credit card statements, and if I know they are pool,
20 ABC Pool, I note pool related. So solely relied on the credit
21 cards, and I don't know exactly if it would be a business or
22 personal.

23 Q. Because the credit card doesn't tell you if it's personal
24 or business, correct?

25 A. No.

1 Q. Home Depot could be for my house or it could be for my
2 business, correct?

3 A. Fair statement.

4 Q. And it's the same thing with payments to individuals, which
5 is the next line down, 517,000. Those could be -- you didn't
6 do any investigation as to whether those payments are to -- for
7 workers or for some personal expense, correct?

8 A. Solely I relied on the bank records, meaning when I have a
9 check, it was written to John Doe, and if the check was
10 "payroll" on memo, and then I just categorize to individuals
11 because I don't know the capacity of this individual.

12 Q. Because you're a summary witness and you weren't asked to
13 investigate that kind of thing, correct?

14 A. I investigated my bank records to make sure I categorized
15 over 4,500 rows of transactions.

16 Q. I see that. But my question is: You didn't -- you didn't
17 go a step further and then investigate whether the people and
18 entities receiving payments listed on this chart -- whether the
19 purpose of that was for business or for personal?

20 A. Well, that's fair statement.

21 Q. Okay. And on "Internal Transfers," you didn't investigate
22 whether there was some business purpose for transfers occurring
23 at certain times, correct?

24 A. Internal transfers are internal transfers, so I don't know
25 the purpose of money in and money out.

1 Q. Right. So you don't know whether or not there was a
2 business purpose for each of those transfers?

3 A. No, I don't.

4 Q. Same -- I'm not going to belabor the point, but it's the
5 same for "Legal," "Insurance," "Atlantic Retail," and many
6 other categories on this "Use of Funds." You're just going by
7 the bank statements and credit card statements. You did no
8 investigation as to which of these categories of "Use of Funds"
9 is business or personal, correct?

10 A. Yes.

11 Q. And just to go back up to the first page again, 893 is the
12 PPP and EIDL loan funds, correct?

13 A. Yes.

14 MR. CAVALLO: And if you could go back down.

15 BY MR. CAVALLO:

16 Q. You didn't investigate whether there's more than 893 in
17 business expenses listed in the bottom of this chart, correct?

18 A. Correct. I -- I noted exactly what bank records identify.

19 Q. So you agree with me it's possible that there's more than
20 893,000 in business expenses, including potentially payments to
21 workers in this part of your chart?

22 MS. MARTINEZ: Objection to the form of the question.
23 Vague and compound.

24 THE COURT: Does the witness understand the question?

25 THE WITNESS: I do.

1 THE COURT: All right. Overruled.

2 THE WITNESS: I did not -- like I said, I did not --
3 was there to physically identify what's the purpose of the
4 money. What I noted per my review is exactly what you see
5 here.

6 BY MR. CAVALLO:

7 Q. Right. Okay. Thank you.

8 (Pause in proceedings.)

9 MR. CAVALLO: Could we please go to 41-2.

10 BY MR. CAVALLO:

11 Q. This is, once again, a chart you reviewed on direct. And
12 this is a chart that's limited to the 7571 account for HM
13 Management and Development?

14 A. Correct.

15 Q. That's the only account that's being reviewed in this
16 chart, correct?

17 A. No. I reviewed three charts.

18 Q. No. No. In this one chart. That's the only bank account
19 that provided the information that's in this chart?

20 A. That is correct. Yes.

21 Q. On your direct, I think you testified that you chose the
22 10/20/21 end date because that's when the account was zeroed
23 out. I think that's the terminology you used.

24 A. That is correct.

25 Q. Does that mean the account was closed then?

1 A. Correct. Was closed.

2 Q. Okay.

3 MR. CAVALLLO: If you go to the second page.

4 BY MR. CAVALLLO:

5 Q. I have the same question for you. You agree with me that
6 you did no investigation to determine whether these categories
7 under "Use of Funds" went to business or personal, correct?

8 A. Could you rephrase the question, meaning -- investigation,
9 what do you mean exactly?

10 Q. You did not go beyond the bank and credit card statements.
11 So for example, "Credit Cards," the first category 290,698 --

12 A. Correct.

13 Q. -- you didn't take any steps or conduct any investigation
14 to determine if those were business or personal expenses?

15 A. No, I did not. But based on this one, I can speculate. I
16 have to --

17 Q. I'm not asking you to speculate, sir.

18 And for example, I direct your attention to Miami
19 Country Day School, 10,000 -- the category "Tuition" and
20 Jennifer/Jacob Sheppard, 25,366.

21 A. Is that a question?

22 Q. I just want your attention there so they're highlighting
23 it.

24 A. Okay.

25 Q. Did you conduct any investigation to determine whether

1 these expenses had been historically paid from HM Management or
2 HM-UP?

3 A. I have noted this before.

4 Q. So you agree with me that this type of expense has been
5 paid by the companies long before May 1, 2020?

6 A. That could be possible.

7 Q. So you agree with me it's not like the companies began
8 paying -- sorry -- the sun. It's not like -- you agree with me
9 that it's not like the companies began paying this expense in
10 May 1, 2020?

11 A. I don't agree with you a hundred percent.

12 Q. You don't agree with me a hundred percent?

13 A. On this chart did I investigate this business or personal?

14 Q. Right. My question is: You don't -- did you do any
15 investigation to determine whether, for example, Miami Country
16 Day School had been historically paid by the companies?

17 A. Correct. That's possible it was paid prior to this
18 account.

19 Q. So my follow-up question -- I'm sorry if I wasn't clear --
20 you agree with me it's not like this expense just started being
21 paid by the companies on May 1, which is the start date for
22 your chart?

23 A. That is true.

24 Q. And it's the same for IBERIABANK, correct?

25 A. That is true.

1 Q. That was also -- did you do any investigation to determine
2 whether IBERIABANK had historically been paid by HM Management
3 or HM-UP?

4 A. And when you say: "Investigation," I worked prior to this
5 timeline, meaning May 1st, 2020, when the first loan --
6 government loan comes in, so my recollection is yes.

7 Q. And how far back did you look?

8 A. I believe 2013.

9 Q. And did the companies historically pay this expense going
10 back that far?

11 A. I don't recall that far, but I do recall there were some
12 payments.

13 Q. It's possible that the companies had been paying the
14 IBERIABANK expense going back to 2014, correct?

15 MS. MARTINEZ: Objection. No foundation.

16 THE COURT: If the witness -- overruled. If the
17 witness knows.

18 MS. MARTINEZ: Objection to the form of the question,
19 "possible."

20 THE COURT: Hold on.

21 In terms of possibilities, the objection is sustained.
22 The witness can certainly answer based on his personal
23 knowledge of the documents.

24 BY MR. CAVALLO:

25 Q. The IBERIABANK expense. You said you reviewed as far back

1 as you think 2013 the bank statements?

2 A. That's my recollection.

3 Q. And you don't know whether IBERIABANK has been paid by HM
4 Management or HM-UP going back as far as 2014?

5 A. I don't recall exactly.

6 Q. The category of Legal, 51,273.97, you see that?

7 A. I do.

8 Q. You didn't investigate whether those payments were for
9 representation for the business, did you?

10 A. No, I didn't. Or personal.

11 Q. You didn't investigate whether those payments were for
12 representation for Mr. Sheppard personally?

13 A. I did not.

14 Q. Did you do any investigation to determine if Mr. Sheppard
15 has taken any salary going back as far as 2013 through the end
16 of this chart?

17 A. I've seen payments made to Eric Sheppard.

18 Q. You've seen payments made to Mr. Sheppard personally?

19 A. Yes. I've seen payments, as I noted, per check to -- under
20 the payee, Eric Sheppard.

21 Q. Did you review the QuickBooks for HM-UP and HM Management?

22 A. I reviewed them like three years ago, two and a half years.

23 Q. Sorry. You reviewed them two years ago, the QuickBooks?

24 A. About right.

25 Q. Okay. Do you remember how personal expenses like

1 IBERIABANK were booked in the QuickBooks?

2 A. I don't recall.

3 Q. So you don't know whether they were booked as personal
4 expenses in QuickBooks?

5 A. I don't.

6 Q. You don't know if they were booked as equity reductions in
7 the QuickBooks?

8 A. No, I don't.

9 Q. And looking at the top again, PPP and EIDL Loans 444,000,
10 pretty much 445,000, right?

11 A. Correct.

12 Q. You don't know whether there was more than 445,000 in
13 business expenses paid from this account during this period of
14 time, correct?

15 A. I don't know it's a business or personal. What I know --
16 what I noted in this chart.

17 Q. So it's possible -- well, strike that.

18 You agree with me there very well may be more than
19 445,000 in business expenses in the "Use of Funds" section of
20 this chart?

21 A. I agree what I have noted here. I don't know the purpose,
22 business or personal.

23 Q. Okay.

24 MR. CAVALLLO: Let's go to 41-3.

25

1 BY MR. CAVALLO:

2 Q. This is a chart for HM-UP Development, correct?

3 A. HM-UP Development Alafaya Trails.

4 Q. Right. And again, this is a chart you prepared based on
5 your review of one bank account, SunTrust 5973?

6 A. Yes.

7 Q. And you agree with me that HM-UP had other accounts that
8 were opened during this period of time, correct?

9 A. HM-UP Development Alafaya Trails?

10 Q. Correct.

11 A. That could be possible.

12 Q. And this chart doesn't take into account what was occurring
13 in those bank accounts during this period?

14 A. Correct.

15 Q. Looking at the top, the "Source of Funds," there's 298,000
16 in government loan money there between EIDL and PPP, correct?

17 A. Yes.

18 Q. And even netting out the internal transfers, as you've said
19 is appropriate, you agree with me that there is roughly a
20 million dollars of non-government money that was in these
21 accounts during this period of time, correct?

22 A. Is it possible to show me the internal money out, the
23 second portion?

24 Q. Well, I'm asking based on this top portion.

25 A. No. I just want to net out 298 coming in versus money out

1 to give you -- to give the jury a good answer.

2 Q. I'm just asking based on -- do you agree with me there's
3 873,000 in rent?

4 A. Absolutely.

5 Q. That's not government funds, correct?

6 A. Correct.

7 Q. And do you agree with me there's 21,000 from SBK Realty?

8 A. Correct.

9 Q. And do you agree with me there's other funds coming from US
10 Treasury and miscellaneous?

11 A. US Treasury, yeah, I do.

12 Q. And those are non-government funds, correct?

13 A. Treasury is government money.

14 Q. You're right. You're right. Okay. Those are -- you've
15 got me. Those are non-PPP/non-EIDL funds?

16 A. Non-PPP, correct.

17 Q. Okay.

18 MR. CAVALLO: You can zoom out.

19 BY MR. CAVALLO:

20 Q. And without going through each one under "Use of Funds,"
21 again, you're not here to testify which of these expenses are
22 personal and which are business, correct?

23 A. Correct.

24 Q. And you don't know sitting here whether there are more than
25 298,000 in business expenses that are listed here?

1 MS. MARTINEZ: Objection. Asked and answered.

2 THE COURT: Sustained.

3 (Pause in proceedings.)

4 BY MR. CAVALLO:

5 Q. And you also agree with me -- I know we already talked
6 about this -- this chart is missing HM-UP Development accounts,
7 correct?

8 A. Correct.

9 MS. MARTINEZ: Objection to the form of the question.
10 This is only one account.

11 MR. CAVALLO: Right. Exactly.

12 THE COURT: Overruled.

13 BY MR. CAVALLO:

14 Q. And this does not include Wells Fargo 5874?

15 A. Correct.

16 Q. And you also agree with me that there was millions of
17 dollars in rent money, non-government money, flowing into Wells
18 Fargo 5874 in 2020 and 2021?

19 MS. MARTINEZ: Okay. Good. Thank you.

20 THE WITNESS: Correct.

21 MR. CAVALLO: Could we go to 41-10.

22 Could you go down. I'm not sure which page I want
23 based on this.

24 That one right there. Thank you.

25

1 BY MR. CAVALLO:

2 Q. These categories that the credit card expenses are broken
3 into, and I'm talking about "Property," "Retail," "Legal," did
4 you come up with those?

5 A. Yes.

6 Q. Okay. So that's not -- those categories weren't given in
7 the credit card statements?

8 A. Correct.

9 Q. Okay. And I just want to make sure I'm correct, so I'm
10 going to ask you again --

11 MS. MARTINEZ: Again?

12 BY MR. CAVALLO:

13 Q. -- you don't -- I'm not trying to be repetitive --

14 MS. MARTINEZ: Objection. Asked and answered.

15 THE COURT: I haven't heard the question.

16 MS. MARTINEZ: He said he was going to ask again.

17 THE COURT: I understand that, but that's not the
18 question. What's the question?

19 BY MR. CAVALLO:

20 Q. You cannot tell sitting here today which of these property
21 expenses, for example, are for business or personal?

22 A. No, I don't [sic].

23 Q. And it's the same for every other category of charge on
24 this AmEx, correct?

25 A. Correct.

1 Q. And you don't know who physically was holding
2 Mr. Sheppard's AmEx card during this period of time, do you?

3 A. No.

4 Q. And you don't know how AmEx and Discover card payments were
5 booked in the company's QuickBooks either, correct?

6 A. No, I don't.

7 MR. CAVALLO: I'm sorry. I didn't write down which
8 chart this is. Could you go to the chart that lists the
9 five -- or sorry -- the six loans.

10 This one here. I don't know which one. Do you know
11 which chart this is -- sorry -- that lists the loans?

12 MS. MARTINEZ: 41-1.

13 MR. CAVALLO: 41-1.

14 Could you please go to 41-1.

15 BY MR. CAVALLO:

16 Q. You reviewed this chart on your direct?

17 A. Yes.

18 Q. I believe you testified that Mr. Sheppard received the
19 893,000 listed here, correct?

20 A. These bank accounts, under a sole authorized signer, Eric
21 Sheppard, received 893,145.

22 Q. Mr. Sheppard didn't receive \$893,000. These borrowers did,
23 correct?

24 A. These bank accounts received from lenders 893,145.

25 Q. Okay. And these bank accounts are in the -- for example,

1 the first one, the bank account is in the name of HM Management
2 and Development, correct?

3 A. Correct.

4 Q. That's not Mr. Sheppard's personal account?

5 A. This is a business account.

6 Q. The second one, HM Management and Development, that's not
7 Mr. Sheppard's personal account?

8 A. Correct.

9 Q. You agree with me that none of the government loan funds
10 went into Mr. Sheppard's personal account?

11 A. I'm not sure, because there's money in and money out.

12 Q. I'm talking about the deposit from the SBA, or whoever it
13 is, into the receiving account, the first transfer. They all
14 went into company accounts, correct?

15 A. It would be misleading because when you pay Jennifer
16 Sheppard, or Jordan Sheppard, or Eric Sheppard's affiliated
17 entities, that money, which we noted, made to the
18 personal-related accounts.

19 Q. That's not what I'm asking you. I'm asking if the loan
20 amount went into an entity bank account.

21 A. Correct.

22 Q. On your direct you noted the difference on the first loan
23 between the borrowing entity and the receiving entity, correct?

24 A. Yes.

25 Q. You didn't do any investigation to determine whether

1 Mr. Sheppard or whoever applied for that loan tried to correct
2 the application --

3 MS. MARTINEZ: Objection. No foundation.

4 MR. CAVALLO: I'm asking if he did any investigation.

5 THE COURT: Hold on. Then let's rephrase, please.
6 Sustained.

7 BY MR. CAVALLO:

8 Q. Did you do any investigation into what occurred between the
9 applicant and PayPal for that first loan?

10 A. I reviewed the loan application, and I noted exactly what
11 you see here.

12 Q. Okay. You didn't review anything beyond the loan
13 application, correct?

14 A. Bank records.

15 Q. You didn't review the communications in Salesforce between
16 the applicant and PayPal, correct?

17 A. I reviewed communication -- the lending -- Nationwide, for
18 example.

19 Q. I'm asking about the first loan Nationwide wasn't involved
20 in. I'm asking about communications between the applicant and
21 PayPal on the first loan.

22 A. No, I didn't.

23 Q. Did you review any documents besides the loan applications,
24 the bank statements, the credit card statements, and the
25 QuickBooks?

1 A. I reviewed the IP address, Breezeline, and loan agreements.

2 Q. You didn't review all the business records of HM Management
3 and HM-UP, did you?

4 MS. MARTINEZ: Objection. Vague. I don't know what
5 he means by "business records."

6 THE COURT: Does the witness understand the question?

7 THE WITNESS: Yeah. I need some clarification --

8 BY MR. CAVALLO:

9 Q. Well, without listing again -- you said you reviewed the
10 bank statements, the credit card statements, the QuickBooks,
11 the loan applications, and I think you said one -- did you
12 review anything -- and the IP addresses. Did you review
13 anything besides that?

14 A. What I stated I reviewed.

15 Q. Is that what I just listed, what you stated? Is there
16 anything else beyond what I just listed that you reviewed?

17 A. No.

18 Q. You didn't investigate the relationship between HM
19 Management, HM-UP, and HM Four, correct?

20 A. Would you clarify your question?

21 Q. Sure.

22 A. "Relationship"? What do you mean exactly?

23 Q. I mean you didn't investigate whether, for example, HM
24 Management or HM-UP would on occasion pay expenses on behalf of
25 HM Four, correct?

1 A. I see money in and money out transfers.

2 Q. But you didn't do any investigation as to why that was
3 occurring, correct?

4 A. As I testified, I don't know the purpose.

5 Q. You didn't investigate how these companies operate day to
6 day, correct?

7 A. Why do you mean by "operate"?

8 Q. You didn't investigate what HM Management does day to day,
9 correct?

10 A. No, I didn't.

11 Q. You didn't investigate what HM-UP does day to day, correct?

12 A. Can you note companies -- the name, the full name?

13 Q. I'm sorry. I thought I did. Sorry. HM-UP Development
14 Alafaya Trails, LLC.

15 A. Correct.

16 Q. You didn't investigate -- you didn't investigate whether HM
17 Four has responsibilities and obligations, correct?

18 MS. MARTINEZ: Objection, Your Honor. No foundation.

19 MS. WEINTRAUB: This is cross.

20 THE COURT: The objection is sustained.

21 BY MR. CAVALLO:

22 Q. You're not here to testify about the SBA rules for EIDL,
23 correct?

24 A. I'm here to testify on my summaries.

25 Q. And you're not here to testify about PPP rules, correct?

1 A. I'm here to testify about the summary charts I produced.

2 (Pause in proceedings.)

3 BY MR. CAVALLO:

4 Q. You don't know whether there was over a million dollars
5 paid to workers from May 1st through the end of 2021, correct?

6 MS. MARTINEZ: Objection. No foundation.

7 THE COURT: Sustained.

8 (Pause in proceedings.)

9 MR. CAVALLO: If you would give me one second, Your
10 Honor.

11 THE COURT: Certainly.

12 (Pause in proceedings.)

13 MR. CAVALLO: Could you please put back up 41-2.

14 BY MR. CAVALLO:

15 Q. In the "Use of Funds" section, "Tuition," and Jennifer and
16 Jacob Sheppard -- do you see that, 25,366 --

17 A. Yes.

18 Q. -- is it your testimony that the bank accounts showed
19 tuition being paid for Jennifer and Jacob Sheppard?

20 A. It says -- if you see down here Miami Country Day Schools,
21 I detailed -- and there is a name I believe on the bank records
22 I reviewed which notes Jacob Sheppard. And then Jennifer
23 Sheppard is noted here because she receives 6,700. And then
24 Jacob receives 5,400.

25 When it comes to tuition, Miami Country Day School for

1 10,300 and Florida Prepaid I categorized as a tuition. But
2 Jennifer's and Jacob Sheppard, I kept them stand-alone, as you
3 can see on the second row.

4 Q. Isn't that a mistake in your chart, Mr. Hysa? Jennifer
5 Sheppard is Mr. Sheppard's wife.

6 A. I just -- I just noted the name. I grouped them for the --
7 for the stakeholders here. As I noted, there were over 4,500
8 lines of transaction for --

9 Q. It's your testimony that there's in the bank statements
10 payments going for Jennifer Sheppard tuition?

11 A. I didn't say are for Jennifer Sheppard tuition. What I
12 note in this chart, there is a group payments made to tuition
13 and Jennifer and Jacob Sheppard, and I detailed them. Miami
14 Country Day School and Florida Prepaid is paid \$13,267,
15 Jennifer Sheppard 6,700, and Jacob Sheppard 5,400, which makes
16 12,100 --

17 Q. Okay.

18 A. -- based per bank records.

19 Q. You didn't investigate -- well, strike that.

20 How current does your review of the bank statements
21 go?

22 A. Current?

23 Q. Yeah.

24 A. 10/20/2021.

25 Q. That's where you stopped your review of the bank

1 statements?

2 A. For this summary chart.

3 Q. I'm talking in general. Your review to be here today, what
4 are the -- what is the latest set of bank statements you
5 reviewed?

6 A. Some of them goes to 12/31/2021.

7 Q. Okay.

8 A. It's Exhibit 41-15, I believe, the Summary of Rental
9 Deposits.

10 Q. Sitting here today, based on your review of the bank
11 statements, you don't know whether Mr. Sheppard is paying back
12 all of these loans, correct?

13 MS. MARTINEZ: Objection. No foundation.

14 THE COURT: Sustained.

15 (Pause in proceedings.)

16 MR. CAVALLO: I don't have anything further, Your
17 Honor.

18 THE COURT: All right. Any redirect?

19 MS. MARTINEZ: Yes, Your Honor.

20 THE COURT: Do you need some water?

21 Yes, of course.

22 Do we have some -- I'm not sure what happened to our
23 water pitcher for the witness.

24 THE WITNESS: That's fine.

25 THE COURT: I saw the court security officer bring it

1 out.

2 Just hold on one moment. Let's get the witness some
3 water, please.

4 MS. MARTINEZ: I got it. I got it.

5 Thank you, Ms. Martinez.

6 REDIRECT EXAMINATION

7 BY MS. MARTINEZ:

8 Q. Mr. -- don't worry. You don't have to talk. You can
9 swallow.

10 A. I don't want to splash here.

11 Q. Mr. Hysa, you were -- oh. Thank you.

12 A. Thank you.

13 Q. Mr. Hysa, you were asked about QuickBooks. Can you explain
14 to the jury whether or not QuickBooks are audited?

15 A. No, I don't.

16 Q. No. Are QuickBooks audited?

17 A. Oh, yeah. QuickBooks are audited. Yes. Absolutely.

18 Q. But in this case, are you familiar whether Mr. Sheppard's
19 QuickBooks were audited to see if the information in it was
20 true?

21 A. I don't know that answer.

22 Q. What does it mean to check and audit something like a
23 QuickBooks? What does that mean?

24 A. Well, in QuickBooks there are pretty much three types of
25 transaction: the original one when you enter debits and

1 credits; the second one is when you void something; and the
2 third one when you delete.

3 Normally the QuickBooks captures all these three
4 situations with corresponding dates, and there is audit log for
5 these three situations. So the audit -- the QuickBooks can
6 produce an audit log for all three, original, edits, deletion,
7 or void.

8 Q. And who inputs the information into QuickBooks? In other
9 words, can someone manually insert information into QuickBooks?

10 MR. CAVALLO: Objection, Your Honor. Personal
11 knowledge.

12 THE COURT: Sustained.

13 BY MS. MARTINEZ:

14 Q. You were asked about whether or not you had included
15 QuickBooks in your analysis, and you answered that you had
16 reviewed some QuickBooks some years ago. My question is: Is
17 the QuickBooks something that a human being can put information
18 in?

19 A. Correct.

20 Q. So it depends on the truthfulness of the person putting in
21 the information, right?

22 MR. CAVALLO: Objection. Leading.

23 THE WITNESS: That is --

24 THE COURT: Sustained.

25

1 BY MS. MARTINEZ:

2 Q. So in your summary charts, you relied on bank records,
3 correct?

4 A. That is correct.

5 MR. CAVALLO: Objection. Leading.

6 THE COURT: Sustained.

7 BY MS. MARTINEZ:

8 Q. Did you -- and on American Express records, correct? And
9 other credit card records, right?

10 MR. CAVALLO: Objection. Leading.

11 THE COURT: Sustained.

12 BY MS. MARTINEZ:

13 Q. Did you rely on business records that came from banks and
14 credit card companies?

15 A. Yes.

16 Q. With respect to QuickBooks, after someone enters
17 information in it, can it be changed?

18 A. Yes.

19 Q. You were -- you were asked about whether or not you knew
20 what Mr. Sheppard's business was. In the HM-UP accounts, 5973,
21 and also the Wells Fargo account, which is also HM-UP Alafaya
22 Trails, what type of money, what type of payments and deposits
23 was coming into those accounts?

24 A. Rental, lease related.

25 Q. And it's based on those bank records -- that is your

1 understanding of what Mr. Sheppard's business is, correct?

2 MR. CAVALLO: Objection. Leading.

3 THE WITNESS: Correct.

4 THE COURT: Sustained.

5 BY MS. MARTINEZ:

6 Q. Your knowledge of what Mr. Sheppard does comes from the
7 bank records, correct?

8 MR. CAVALLO: Objection. Leading.

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

10 THE WITNESS: Correct.

11 BY MS. MARTINEZ:

12 Q. And what type of deposits were made into the HM-UP
13 Development Alafaya Trails accounts 5973 and the Wells Fargo
14 account under that same name?

15 A. Rent, lease related.

16 Q. And the rent, was it from individuals or from companies?

17 A. Companies.

18 Q. What does that tell you is the business of Mr. Sheppard?
19 What does he do? What does that tell you?

20 MR. CAVALLO: Objection.

21 BY MS. MARTINEZ:

22 Q. What do the bank records tell you?

23 A. Does not tell me anything.

24 Q. You were -- you were asked about the payments that you
25 categorized from the American Express card, right?

1 A. Yes.

2 Q. And you were asked questions whether you could tell from
3 some of the entries whether it was personal or business, right?

4 A. Yes.

5 MS. MARTINEZ: Could you put up Exhibit 41-10, and
6 could you go to the last page.

7 Go up.

8 BY MS. MARTINEZ:

9 Q. Do you see notations -- this is the page that summarizes
10 charges by whom?

11 A. By Jennifer Sheppard.

12 Q. And at the bottom?

13 A. Jordan Sheppard.

14 Q. Now, with respect to Jennifer Sheppard's cards, what is the
15 first line?

16 A. "Retail."

17 Q. And what is the second line?

18 A. "Meals/Entertainment."

19 Q. What did you include in "Meals and Entertainment"?

20 A. Steakhouse. Could be a movie theater.

21 Q. What did you include under "Medical"?

22 A. "Medical." It could be --

23 MR. CAVALLLO: Objection, Your Honor. Speculating.

24 Move to strike.

25 THE COURT: Sustained.

1 BY MS. MARTINEZ:

2 Q. No. No. No. It's just based on what you recall -- what
3 you recall. What do you recall seeing that made you put it
4 under "Medical"?

5 A. It was, for example -- I don't exactly recall, but it was
6 like noted medical related, Baptist or DO or MD, and there was
7 a name.

8 Q. With respect to "Jewelry Related," I'm going to show you
9 from Composite Exhibit 49 --

10 MS. MARTINEZ: Could I go to ELMO, please.

11 BY MS. MARTINEZ:

12 Q. This is from Composite Exhibit 49, Bates label 005440.
13 This is -- what do you recognize this to be?

14 A. This is American Express credit card ending 2006, under
15 Eric Sheppard's name.

16 Q. Now I'm going to page forward so that we can see. Does the
17 same document on Bates label 005445, which we can see here --
18 does the same statement go on to also list charges by someone
19 else?

20 MR. CAVALLLO: Your Honor, I object. This is outside
21 the scope of cross. I did not go into these particular charges
22 in my questioning.

23 MS. MARTINEZ: He was asked in detail about whether he
24 separated business or personal. And I'm only going to show one
25 transaction, Your Honor.

1 THE COURT: All right. All right. I'll allow a
2 limited amount. It is proper on redirect.

3 BY MS. MARTINEZ:

4 Q. Does the same bill then go on to show charges by another
5 individual?

6 A. Yes.

7 Q. And who is that?

8 A. Jennifer Sheppard.

9 Q. And on Bates label 005447, could you just read the
10 transaction at the top. Can you read it?

11 A. Richemont, Inc., jewelry, watch, sil -- S-I-L-V-E-R-W-A-R
12 [sic].

13 Q. And did you say the date?

14 A. The date, no. June 3rd, 2021.

15 Q. And the location?

16 A. New York.

17 Q. And let's see if we can see the amount.

18 MS. MARTINEZ: Hoping this thing will autofocus.

19 There we go.

20 BY MS. MARTINEZ:

21 Q. Can you see the amount charged for jewelry, watch,
22 silverware?

23 A. \$4,548.

24 Q. Now, I know you didn't make a separation in your charts
25 regarding business or personal. In that case, does the jewelry

1 appear business or personal?

2 A. This one appears personal.

3 Q. You were asked on cross-examination --

4 MS. MARTINEZ: I'm going to bring up Government's
5 Exhibit 72, please.

6 Oh. I need to go back to counsel table, please.

7 Actually, I'll stay on ELMO. That's okay.

8 BY MS. MARTINEZ:

9 Q. You were asked with respect to Government's Exhibit 72,
10 correct?

11 A. Yes.

12 Q. And you recall being asked with respect to HM-UP
13 Development Alafaya Trails TRU that there was a bank account by
14 the -- in the application One Florida Bank 2368. You recall
15 that?

16 A. Correct.

17 Q. I'm going to show you from Government's Composite 66 what's
18 been marked and admitted into evidence as 66.1.

19 Do you remember reviewing this document?

20 A. Yes.

21 Q. Is that Nationwide document one of the documents that you
22 used to prepare the summary?

23 A. It is.

24 (Court reporter interruption.)

25

1 BY MS. MARTINEZ:

2 Q. My question is that -- I'm on Bates label 033796.

3 Mr. Hysa, do you see on the document that you reviewed
4 to prepare Government's Exhibit 72?

5 A. "Bank name: One Florida Bank," "Account Number" --

6 Q. You can just give the last four digits.

7 A. Account number last four 2368.

8 MS. MARTINEZ: Can you bring up 41-5, please.

9 Can you go to counsel's table please.

10 And can you go to the second page, please.

11 Can you highlight or zoom out the "Other Sheppard
12 Accounts," which is the box in the middle.

13 BY MS. MARTINEZ:

14 Q. You were asked on cross-examination whether any of the
15 PPP/EIDL loans had been deposited directly into the One Florida
16 Bank account. I ask you now, taking a look at the "Use of
17 Funds" in Exhibit 41-5, do you see funds going to One Florida
18 Bank loan and One Florida Bank checking account?

19 MR. CAVALLLO: Objection, Your Honor. Goes beyond the
20 scope of a summary witness.

21 THE COURT: Sustained.

22 BY MS. MARTINEZ:

23 Q. You were asked on cross-examination specifically whether
24 PPP and EIDL money had gone to the One Florida Bank account.

25 A. Correct.

1 Q. Does your -- and 41-5 is a summary relating to the three
2 accounts that received six PPP and EIDL loans, correct?

3 A. Yes.

4 Q. Which totaled almost \$900,000, correct?

5 A. Correct.

6 Q. From those accounts, does money go to One Florida Bank loan
7 1470?

8 A. Yes. There is \$77,011.

9 MR. CAVALLO: Your Honor, I object. And I would move
10 to strike. He's a summary witness, and he's apparently
11 conducting some kind of tracing that an expert witness --

12 THE COURT: Sustained.

13 BY MS. MARTINEZ:

14 Q. You were asked on cross-examination whether or not PPP/EIDL
15 money went to One Florida Bank account. Did the three bank
16 accounts that you summarized in 41-5 -- did they receive six
17 loans from PPP and EIDL?

18 A. Correct.

19 Q. And then, after receiving that money, did money go out to
20 One Florida Bank?

21 MR. CAVALLO: Objection. Leading.

22 THE COURT: Sustained.

23 BY MS. MARTINEZ:

24 Q. Looking at your chart, what are the other Sheppard accounts
25 that received -- other Sheppard accounts, meaning not PPP/EIDL

1 receiving accounts, that received money from these accounts?

2 A. One Florida Bank 1470, One Florida Bank 2368, SunTrust
3 5452, and Wells Fargo 5874.

4 Q. Now, you were asked on cross-examination whether you knew
5 who was actually filling out these forms. Remember that?

6 A. Yes.

7 MS. MARTINEZ: Can you pull up Government's
8 Exhibit 71, please.

9 BY MS. MARTINEZ:

10 Q. Government's Exhibit 71 includes approximately 13 loan wire
11 transmissions, correct?

12 MR. CAVALLO: Objection. Counsel testifying.

13 THE COURT: Sustained.

14 BY MS. MARTINEZ:

15 Q. How many does it list, approximately?

16 A. Thirteen.

17 Q. And what do the dates range from? From which date to which
18 date do you have?

19 A. April 15th, 2020 through March 25th, 2021.

20 Q. And every single one, who is the IP address subscribed to?

21 A. Eric Sheppard.

22 Q. And for every single one, what address was -- that IP
23 service address, what was the IP connected to?

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

25 MS. MARTINEZ: Can you bring up Exhibit 41-1, please.

1 BY MS. MARTINEZ:

2 Q. And for the PPP/EIDL loans that were funded, who was the
3 signer --

4 A. Eric Sheppard.

5 Q. -- of -- let me complete my question. Who was the signer
6 of every account that received PPP/EIDL money?

7 A. Eric Sheppard.

8 Q. Was there anybody else who was a signer on these three
9 accounts?

10 A. No.

11 MS. MARTINEZ: No further questions, Your Honor.

12 THE COURT: Is the witness excused?

13 MS. MARTINEZ: Yes, from the United States.

14 THE COURT: On behalf of the Defendant?

15 MR. CAVALLO: Yes, Your Honor.

16 THE COURT: Thank you, Mr. Hysa. You are excused.

17 (Witness excused.)

18 THE COURT: The Government's next witness?

19 MS. JIMENEZ: Your Honor, the Government does not have
20 any other witnesses.

21 THE COURT: Does the Government rest its case?

22 MS. JIMENEZ: Well, we have a couple of exhibits to
23 move in, but aside from that...

24 THE COURT: All right.

25 MS. JIMENEZ: Yes.

1 THE COURT: Did you want to move them in at this time?

2 MS. JIMENEZ: We would.

3 MS. MARTINEZ: There were some remaining issues that
4 we need to make sure that they are resolved, Your Honor, with
5 respect to some redactions.

6 THE COURT: All right. Then, Ladies and Gentlemen, we
7 will adjourn early for the day. As you can see, it is quarter
8 to five. Tomorrow's schedule, we will begin -- we were able to
9 re-schedule one of the morning matters so we'll begin right at
10 nine a.m. Unfortunately, we will need to end the day by 4:30.

11 So I'll see you tomorrow morning at nine a.m. Have a
12 pleasant evening.

13 As you leave the courthouse, please remember you're
14 not to discuss this case with anyone, nor permit anyone to
15 speak with you. Everything learned about the case is learned
16 in the courtroom.

17 If you'll place your juror notes in the jury room.

18 Have a pleasant evening. And I'll see you tomorrow
19 morning at nine a.m.

20 COURT SECURITY OFFICER: All rise for the jury.

21 (Jury not present, 4:46 p.m.)

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

23 What exhibits are you seeking to introduce?

24 MS. JIMENEZ: So first of all, Your Honor, I just -- I
25 wanted to raise something with respect to Government

1 Exhibit 75, which is the PayPal additional couple of emails.
2 The Defense put in some emails from PayPal, and the last one
3 was dated February 17 -- February 17, 2021, from the Defendant
4 to the PayPal individual's email address.

5 Subsequent email, which they did not put in, which I
6 have a business record for, and is an admission of the
7 Defendant, or statement of the Defendant, February 22nd, 2021,
8 is also from the Defendant to the same email account at PayPal.
9 So I do not see why that record should not come in. There's a
10 business record provided for it. It is a statement of the
11 Defendant.

12 THE COURT: Didn't you have a business certification
13 stating that the records that the Government introduced into
14 evidence were the true and complete copies?

15 MS. JIMENEZ: Well, it's a business record
16 certification.

17 THE COURT: Did you, in fact, have a certification
18 that the records were the true and complete copies?

19 MS. JIMENEZ: I don't know that the word "complete,"
20 honestly, is there. I mean, it's -- it's a business record
21 certification. These are the records that they produced that
22 they maintained in accordance with their business. They filed
23 these additional records, as the witness testified, under the
24 HM Four because it was an HM Four tax return, so they looked in
25 a separate place essentially. But it's for no other reason to

1 complete the record as to that email chain. It's just a
2 subsequent email by the named individual, the Defendant. It's
3 his statement. And they provided an additional certification.

4 THE COURT: All right. The Defendant's response?

5 MR. ETRA: Your Honor, nothing's changed from Your
6 Honor's ruling. They're just -- we discussed this already, and
7 it's just an additional email.

8 MS. JIMENEZ: Right. And he --

9 MR. ETRA: And she could have done a Rule 16. They
10 did a lot of Rule 16 discovery. We put on the witness. We
11 showed their production was incomplete. We impeached them. We
12 introduced new exhibits, and the witness left, and now they
13 want to fix it without us questioning the witness about it.
14 It's unfair.

15 MS. JIMENEZ: The witness would have this email.

16 MR. ETRA: That was Your Honor's ruling. Nothing's
17 changed.

18 THE COURT: Yeah. Nothing has changed.

19 The records were introduced. They were used in
20 questioning the witness. And now that the witness is long
21 gone, if you want to call another witness for purposes of any
22 rebuttal case, you may certainly do so. But at this point in
23 time, I'm not going to allow what was already introduced into
24 evidence to be supplemented.

25 What other issues?

1 MS. MARTINEZ: Your Honor, I just --

2 THE COURT: What other issues with the exhibits that
3 you'd like to introduce into evidence, so we can have the
4 Government rest on the record, please?

5 MS. MARTINEZ: There's only two issues that I just
6 wanted to clarify. First, with respect to -- because it
7 requires certain steps. So first with respect to the -- some
8 of the SBA loan files, at the end of the notes, meaning at the
9 very end, it has a statement about the Defendant being
10 indicted.

11 Now, that is not -- that's not something that is not
12 known. Obviously, the Defendant is on trial. But I just
13 wanted to confirm the Court would like us to go back in and
14 redact just that page that says that he has been indicted?

15 THE COURT: I believe that was what you had agreed to
16 do, correct?

17 MS. MARTINEZ: Yes.

18 THE COURT: All right. Then what other evidence needs
19 to be introduced by the Government so the Government can rest
20 on the record this evening?

21 MS. MARTINEZ: With respect to -- with respect --
22 here. With respect to -- there were some exhibits that the
23 Defense had objected to portions of a credit report, and I
24 still am not clear what portions they would want redacted.
25 There's one in particular that is like 300 pages, and I

1 don't -- and there's some that are much shorter, like only four
2 pages.

3 But I just want to be clear which are the ones that
4 they need redaction and what part do they need redaction. I
5 still -- I mean, it doesn't affect -- the exhibits are already
6 into evidence --

7 THE COURT: All right. Here's what we're going to do:
8 We've got a lot of time between now and when we're going to
9 pick up this case in January. It is extremely unlikely, given
10 the pace today, that we are going to finish the Defendant's
11 case, the Government's rebuttal, a charge conference, closing
12 arguments, instructions to the jury, and jury deliberation in
13 one day, given that today is day 12 of a seven-day trial.

14 So what I'm going to do right now is ask you to
15 introduce all of the exhibits that you want to introduce so the
16 Government can rest on the record, so I can have a colloquy
17 with the Defendant, so tomorrow we can start the Defendant's
18 case.

19 So with regard to redactions, issues related to
20 personal information that should not be on the exhibit, the
21 attorneys are going to work together because it's the
22 Government's obligation to have one exhibit list with all of
23 the exhibits uploaded on a clean laptop for this jury, so that
24 there is no delay once the jury eventually goes into that jury
25 room to deliberate.

1 So what exhibits does the Government seek to introduce
2 into evidence before it announces that it's resting its case?

3 MS. JIMENEZ: Your Honor, there was also Exhibit 76,
4 which was a routing sheet for HM Management and Development's
5 tax return for tax year 2018, which was shown to
6 Mr. Cupersmith --

7 MR. ETRA: No objection.

8 MS. JIMENEZ: -- on rebuttal.

9 MR. ETRA: No objection.

10 THE COURT: Admitted into evidence.

11 (Government's Exhibit 76 received into evidence.)

12 THE COURT: What other exhibits?

13 MS. JIMENEZ: Your Honor, I believe -- let me just
14 have one moment.

15 (Pause in proceedings.)

16 MS. JIMENEZ: That's it for the Government, Your
17 Honor.

18 THE COURT: Does the Government rest its case?

19 MS. JIMENEZ: Yes, Your Honor.

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

21 MS. WEINTRAUB: Your Honor, on behalf of the
22 Defendant, at this time, we would preserve all our motions that
23 were previously made, and we would move for a judgment of
24 acquittal pursuant to Rule 29, and I'd like argument.

25 THE COURT: All right. And with regard to -- since it

1 has been a long day, I would like to have a colloquy with the
2 Defendant.

3 The Defendant has filed Docket Entry 162, its Motion
4 for Judgment of Acquittal. I would -- and as well, for the
5 record, the Defendant has provided the Court with a binder that
6 contains cases in support of that motion. I'd like to give the
7 Government an opportunity to respond to the motion, and I will
8 reserve ruling on the Motion for Judgment of Acquittal.

9 With regard to the Defendant's case, Ms. Weintraub,
10 have you spoken with Mr. Sheppard as to whether he will be
11 presenting a defense in this case?

12 MS. WEINTRAUB: Yes, Your Honor, I have spoken with
13 Mr. Sheppard and other witnesses as well, as far as timing is
14 concerned.

15 THE COURT: All right. Then let me have a
16 conversation with Mr. Sheppard directly.

17 Mr. Sheppard, the Superseding Indictment, Docket Entry
18 60, charges you separately with nine counts of wire fraud and
19 four counts of aggravated identity theft. The Government
20 carries the sole burden of proving all the elements of each of
21 these offenses. You have no burden; however, while you have no
22 burden, you certainly have the right to present a defense, and
23 that defense would include the calling of witnesses, the
24 presentation of evidence, which has already been presented
25 during the Government's case in chief by your attorneys, as

1 well as your own testimony.

2 So Mr. Sheppard, have you made a decision whether
3 you're going to be calling witnesses in your case?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And what is that decision, sir?

6 THE DEFENDANT: We will be calling witnesses.

7 THE COURT: And have you spoken directly with your
8 attorneys as to the witnesses that will be called in your case
9 in chief?

10 THE DEFENDANT: Yes, Your Honor, I have.

11 THE COURT: Have you spoken with your attorneys with
12 regard to your right to testify? And let me advise you,
13 Mr. Sheppard -- you were here when I did question the jury, so
14 let me advise you of the law again. And that is that you have
15 a constitutional right not to testify; however, you also have
16 the right to testify. And whether you choose to testify, you
17 can certainly consult with your attorneys, but in the end the
18 decision needs to be yours.

19 Mr. Sheppard, have you made the decision whether
20 you're going to be testifying in your criminal trial?

21 MS. WEINTRAUB: Does he have to say that right now,
22 Judge, whether or not he's going to testify, since we're taking
23 a two-week break?

24 THE COURT: All right. So you have not made the --
25 that can be the answer. So you haven't made the decision, sir?

1 THE DEFENDANT: (No verbal response.)

2 MS. WEINTRAUB: That's correct, Judge.

3 THE COURT: All right. Then since Mr. Sheppard has
4 agreed that witnesses will be called, tomorrow -- Ms. Weintraub
5 or Mr. Etra, who will be called tomorrow in the Defendant's
6 case?

7 MS. WEINTRAUB: Your Honor, we don't know. But I do
8 know that there's a witness who is scrambling on his way to an
9 airport in New York as we speak. I went out to talk to him.
10 And that would be Robert Kallman. I also was able to get Glenn
11 Sheppard, who is outside the door.

12 Those would be the two witnesses, in addition to
13 whether or not, depending on the evening -- and I'm sure the
14 Court could see by the length of the motion that was submitted
15 very late last night that we were not in the Keys this weekend
16 having a good time. We've been working very hard, very
17 diligently, and working with our client on whether or not he
18 will testify. We cannot give the Court an answer, but he may
19 testify tomorrow.

20 THE COURT: Then I will colloquy Mr. Sheppard at the
21 conclusion of the last witness, whether -- Mr. Kallman will be
22 first, if he can get into Miami from New York, and then Glenn
23 Sheppard. Following those two witnesses, would that be the
24 time that Mr. Sheppard would make a decision, Ms. Weintraub?

25 MS. WEINTRAUB: Judge, I don't mean to be -- I'm

1 certainly not being disrespectful, and I don't mean to be rude,
2 but it's been a very strategic and trying time, because of the
3 break, to figure this out, and I just want to give the Court an
4 answer. I mean, we can --

5 THE COURT: Well, other than the two witnesses, Robert
6 Kallman and Glenn Sheppard, putting aside the Defendant, will
7 you be calling any other witnesses?

8 MS. WEINTRAUB: Yes, Your Honor.

9 THE COURT: All right. So who else will be testifying
10 tomorrow other than Robert Kallman and Glenn Sheppard?

11 MS. WEINTRAUB: And I don't know if Robert Kallman
12 will get on the flight or not, but we also could call Vanessa
13 Gonzalez and Jeanette Gonzalez. I mean, I've been here all
14 day, and I have not been reaching out to them.

15 THE COURT: All right. So there may be four
16 witnesses, other than whether Mr. Eric Sheppard chooses to
17 testify. And those four witnesses are expected to testify
18 tomorrow?

19 MS. WEINTRAUB: I'm hoping to make those arrangements,
20 Your Honor.

21 THE COURT: All right.

22 MS. JIMENEZ: This is the third different lineup that
23 we've gotten since Friday. I just -- is the Defense expert
24 witness also expected to testify, since that was --

25 MS. WEINTRAUB: Not tomorrow, Your Honor. And Your

1 Honor, we heard Thursday that the summary witness would be 15
2 minutes. And I can tell you the lineup would have been
3 different had we been able to start this afternoon.

4 THE COURT: All right. But this is a different issue.
5 As the Government was required to advise the Defense as to what
6 witnesses it was going to be calling, as well the Defendant
7 should advise the Government so the Government is prepared with
8 regard to those witnesses.

9 So tomorrow you'll be calling Robert Kallman, if he
10 arrives from New York, Glenn Sheppard, Vanessa Gonzalez, and
11 Jeanette Gonzalez; is that correct?

12 MS. WEINTRAUB: That would be correct, and/or my
13 client.

14 THE COURT: All right. Well, I'll certainly colloquy
15 Mr. Sheppard at the appropriate time. But you will have
16 witnesses here at nine o'clock tomorrow, correct?

17 MS. WEINTRAUB: Yes, Your Honor.

18 THE COURT: All right. Then --

19 MS. MARTINEZ: And just to clarify, the Defense expert
20 is not testifying tomorrow or is he on standby?

21 MS. WEINTRAUB: It is not our expectation.

22 MS. MARTINEZ: Is there any possibility? I just need
23 to know whether I need to be -- it's a fair question. Is there
24 a possibility that the Defense expert is going to get on the
25 stand tomorrow? It's a fair -- is there a possibility?

1 MS. WEINTRAUB: Honestly, I do not expect -- honestly,
2 I do not expect to put him on tomorrow.

3 MS. JIMENEZ: And then there were two other witnesses
4 who were mentioned on Friday who are not now being mentioned.
5 Are those off the table? Mercedes Fonseca, Mr. Kerby Kleef?

6 MS. WEINTRAUB: They won't be able to get here by
7 tomorrow, so no.

8 THE COURT: All right. So it's very likely that the
9 Defendant's case will move into Monday, January 8th; is that
10 correct?

11 MS. WEINTRAUB: Yes, Judge.

12 THE COURT: All right, then.

13 All right. Is there anything further that the Court
14 can assist the parties with?

15 MS. WEINTRAUB: Judge, when will the Government be
16 replying to the Rule 29, and when -- will we have argument
17 before we take a break or...

18 THE COURT: I'd like to have full use of the day with
19 the jury and not take time away from the jury --

20 MS. WEINTRAUB: I agree.

21 THE COURT: -- with regard to any argument. So how
22 much time does the Government need to respond to the written
23 Motion for Judgment of Acquittal?

24 MS. JIMENEZ: Well, Your Honor, I am going to be on
25 vacation as well. So I would ask to be able to file something

1 in January.

2 MS. MARTINEZ: And Your Honor, just on my colleague's
3 behalf, she says the word "vacation"; however, she has
4 out-of-town, out-of-country family coming, as well as two
5 teenage boys.

6 THE COURT: All right. And I understand Ms. Jimenez
7 has concerns with regard to her schedule.

8 MS. WEINTRAUB: We all have stuff.

9 THE COURT: But Ms. Martinez, are you able to assist?
10 Is there a reason why that can't be filed by Wednesday or
11 Thursday of this week?

12 MS. JIMENEZ: How about Friday of this week, Your
13 Honor?

14 THE COURT: All right. That's fair.
15 All right, then.

16 MS. WEINTRAUB: Can we have two days for a reply, Your
17 Honor?

18 THE COURT: Certainly.

19 All right. We do not need the tables for tomorrow
20 morning so you're free to leave your items here. The courtroom
21 will remain locked.

22 Is there anything further before we recess for the
23 evening? On behalf of the Government?

24 MS. JIMENEZ: No, Your Honor.

25 THE COURT: On behalf of the Defendant?

1 MS. WEINTRAUB: No, Judge. Thank you.

2 THE COURT: All right. Have a pleasant evening.

3 I'll see you tomorrow morning at nine a.m.

4 COURT SECURITY OFFICER: All rise.

5 (Proceedings adjourned at 5:02 p.m.)

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1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at,
8 and reported in machine shorthand, the proceedings had the 18th
9 day of December, 2023, in the above-mentioned court; and that
10 the foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 268.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida, this 25th day of February, 2025.

16
17 /s/Yvette Hernandez
18 Yvette Hernandez, CSR, RPR, CLR, CRR, RMR
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20 Miami, Florida 33128
21 (305) 523-5698
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