

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 19, 2023
9:01 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant.

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TRANSCRIPT OF TRIAL DAY 13
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, 9:01 a.m.)

2 THE COURT: Hi. Good morning to everyone.

3 I don't see Mr. Sheppard.

4 MR. ETRA: He's coming in in a second.

5 THE COURT: Okay.

6 MS. WEINTRAUB: Good morning, Your Honor.

7 THE COURT: Good morning.

8 All right. Let me acknowledge the presence of the
9 Defendant.

10 Good morning to everyone.

11 This morning the Government will rest its case in
12 front of the jury. And is the Defendant ready to proceed with
13 its witnesses?

14 MS. WEINTRAUB: Yes, Your Honor.

15 THE COURT: All right. And Mr. Sheppard, I did
16 formally advise you of the Government's burden. They have the
17 sole burden of proving all the elements of these offenses. You
18 have no burden. But it is my understanding that you want to
19 call forward some witnesses to testify; is that correct, sir?

20 THE DEFENDANT: Yes, I do, Your Honor.

21 THE COURT: All right, then. Is there anything that
22 we need to address before we bring the jury in?

23 MS. MARTINEZ: Yes, Your Honor. I would ask just to
24 confirm the order of witnesses today. And I believe there's
25 been changes, so I'd like to just confirm that.

1 THE COURT: All right.

2 MR. ETRA: Yes, Your Honor. I advised counsel this
3 morning Mr. Eric Sheppard will testify first and Mr. Glenn
4 Sheppard is available to testify second. I don't think we're
5 going to get past that.

6 THE COURT: Okay. So hold on.

7 Go ahead and have a seat, then.

8 MS. MARTINEZ: May I just ask, just in case we do get
9 past that, who would be after?

10 MR. ETRA: I don't know that I have anyone after that.
11 I don't -- I mean, we did not think -- we don't have anyone
12 planned after that, Your Honor.

13 THE COURT: All right. Not a problem.

14 Let me speak directly to Mr. Sheppard.

15 Mr. Sheppard, last night I did ask you whether you had
16 made the decision to testify. I did advise you, let me advise
17 you at this time, sir, you have a constitutional right not to
18 testify; however, at the same time, you do have the right to
19 testify. And whether you choose to testify in your case is a
20 decision only you can make. You can certainly consult with
21 your attorneys and they can give you their opinion, but in the
22 end the decision needs to be yours.

23 Mr. Sheppard, have you made a decision in this case as
24 to whether you are going to testify?

25 THE DEFENDANT: Yes, I have, Your Honor.

1 THE COURT: And what is that decision, sir?

2 THE DEFENDANT: I will be testifying for -- I'm
3 exercising my right to testify.

4 THE COURT: All right, sir. So at this point in time
5 we will bring in the jury, the Government will rest, and then I
6 will then ask the Defendant if the Defendant has any witnesses.

7 And Mr. Etra, it's my understanding that Mr. Sheppard
8 will be called as the first witness; is that correct?

9 MR. ETRA: That is correct, Your Honor.

10 MS. WEINTRAUB: That is correct, Your Honor.

11 Before we call the jury out, though, we were very
12 rushed, all of us -- my fault -- yesterday, and I just want to
13 make it clear. I understand that the Court -- I have preserved
14 my record in reserving all of my motions and objections to the
15 Court but I also -- before we start our case, I need to
16 specifically state on the record that we object to the
17 systematic exclusion on cross-examination of our right to
18 confront evidence that was going to the credibility and bias of
19 specific witnesses. And even yesterday with Maged Salem, we
20 were denied the right -- he made certain statements to the FBI,
21 and I was not allowed to impeach him with the statements that
22 he made, which we clearly had evidence of. All of that was
23 excluded.

24 The only thing that was permitted on that cross,
25 actually, was that -- and I read it again last night -- was

1 that two judgments were entered against him the week before the
2 lease is executed, and that he lied to the FBI about that. But
3 other than that, everything was shut down. So I just want to
4 renew my objections and I guess reserve the opportunity to
5 further argue it at the Rule 29.

6 THE COURT: All right. Those objections are
7 preserved.

8 Are both sides ready to proceed?

9 MS. MARTINEZ: Yes, Your Honor.

10 MR. ETRA: Yes, Your Honor.

11 THE COURT: All right, then.

12 COURT SECURITY OFFICER: Please rise for the jury.

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

14 THE COURT: Hi. Good morning, Ladies and Gentlemen.
15 Please be seated, everyone.

16 It is good to see you. Thank you for being so prompt.
17 And we are ready to get right back to work.

18 On behalf of the Government?

19 MS. JIMENEZ: Yes. Good morning, Your Honor.

20 The Government rests its case.

21 THE COURT: All right. Thank you.

22 On behalf of the Defendant?

23 MR. ETRA: Your Honor, the Defense calls Mr. Eric
24 Sheppard.

25 THE COURT: All right, then.

1 ERIC SHEPPARD, DEFENDANT, SWORN

2 COURTROOM DEPUTY: Thank you.

3 Could you please state your name and also spell it for
4 the record.

5 THE WITNESS: Eric Sheppard. E-R-I-C S-H-E-P-P-A-R-D.

6 MR. ETRA: Your Honor, may I proceed?

7 THE COURT: Yes, of course.

8 DIRECT EXAMINATION

9 BY MR. ETRA:

10 Q. Mr. Sheppard, good morning.

11 A. Good morning.

12 Q. Where were you born?

13 A. I was born on Christmas Day in Miami, Florida.

14 Q. Were you adopted?

15 A. Yes.

16 Q. Where were you raised?

17 A. Initially, in Miami Beach.

18 Q. Raised by one parent or two parents?

19 A. Up until I was 13 years old, by two parents.

20 Q. What happened when you were 13?

21 A. My parents were divorced, and --

22 Q. What happened?

23 A. -- my mother and brother and sister moved to New Mexico,
24 and I stayed with my father here in Miami.

25 Q. Was your father around when you were growing up after you

1 were 13?

2 A. Yeah. In the mornings. And he was a single guy and he was
3 out a lot, but he was there every morning.

4 Q. How about in the afternoons, did you have supervision?

5 A. No.

6 Q. Where did you go to high school?

7 A. Miami Beach Senior High School.

8 Q. Something happen prom night with your family?

9 A. Yes.

10 Q. What happened?

11 A. After prom night, came home and found out that my mother
12 was -- in New Mexico was ran down by a drunk driver and in a
13 coma for six months.

14 Q. What impact did that have with you and your family?

15 A. Clearly, it was a very difficult -- it's hard to explain,
16 but a very difficult time.

17 Q. And around that time, did you go to college?

18 A. Was supposed to go to college. After the prom, I had to
19 get delayed a little bit because of clearly the situation. But
20 I ended up going to college, yes.

21 Q. Where did you go to college?

22 A. I went to Florida State University.

23 Q. Did you graduate?

24 A. Yes.

25 Q. What year?

1 A. 1990.

2 Q. What degree?

3 A. Economics.

4 Q. Did you work during college?

5 A. Yes.

6 Q. What kind of job did you have?

7 A. I worked at the -- called the Governor's Square Mall. I was
8 in the food court. I worked at a place called The Taco
9 Factory, and I was working there.

10 Q. Were you supporting yourself in college?

11 A. Yeah. That was my way to, you know, be able to pay for
12 things in college, like food and stuff like that.

13 Q. After college, what was your -- what industry did you go
14 into first?

15 A. First, I went into a company called Ernest & Julio Gallo
16 Wines.

17 Q. And why did you go there?

18 A. I think -- a lot of my friends went into like banking,
19 stuff like that. But I think I was a little bit introverted at
20 that particular moment in time, and I wanted to learn, you
21 know, sales. I thought it would take me out of my shell to be
22 able to talk to people, communicate. So I -- you know, it was
23 a little different, but I thought it would be good to learn how
24 to do that and, you know, be able to talk to people.

25 Q. At some point did you go into real estate?

1 A. Well, after that, actually, I worked for a chemical company
2 for a little while. After that, that's what I did. We went
3 to -- we sold chemicals in restaurants, in urinals and stuff,
4 like those little pieces in there.

5 Q. And then at some point did you go into real estate?

6 A. Yes. I --

7 Q. What was your first real estate job? Who was it -- what
8 kind of company -- well, who was it for?

9 A. It was a company -- a commercial real estate developer
10 located in Deerfield Beach, Florida.

11 Q. How did you get the job?

12 A. I interviewed for the job. And it was interesting. A lot
13 of the guys that were applying, they were in line -- I was a
14 little intimidated. They were all like Ivy League kind of
15 people. They were very intelligent people. I mean, I wasn't
16 an Ivy League type of person.

17 Q. So what was your pitch to get the job?

18 A. Well, I waited till everybody left. And when they were
19 closing, I walked in and I said: "I'm here for my interview."
20 And I interviewed, and they said: "Look, why do you want this
21 job?" I said: "Because I love -- I love seeing buildings
22 being built. I don't know how they're built. I don't know
23 anything about it, but I'll work for free." And so I told them
24 I would work for free.

25 Q. Did you get the job?

1 A. I got the job -- well, I got the job and they clowned me
2 the first week or two and said I wasn't getting a paycheck.
3 And then they gave me like a very small paycheck, but I was
4 appreciative. But they wouldn't let me work for free.

5 Q. Approximately when was that that you were working for that
6 company?

7 A. I mean, approximately around 1992.

8 Q. And when did you leave, approximately?

9 A. When did I leave? 1995, approximately.

10 Q. So how old were you when you started to -- 1995, when you
11 left that company, how old were you about, if you could do the
12 math?

13 A. Around 26, I guess -- I mean 25, around there -- 25.

14 Q. When you left that real estate company, what did you do?

15 A. When I left the real estate company, I wanted to start my
16 own company at the time. You know, I didn't meet my wife yet
17 and I just was a single person. And I had -- you know, I was
18 going to try to take a chance in, you know, what I had learned
19 from the company that I worked for.

20 Q. So what did you do?

21 A. The company built in a lot of different states. So I went
22 to Georgia and found a piece of -- a piece of real estate
23 there.

24 Q. What was the real estate?

25 A. It was a -- what they call outparcels to a mall, the little

1 buildings out front, and it was an Arby's restaurant. And
2 so --

3 Q. What did you do?

4 A. I negotiated -- I went to speak to the -- there's a lady
5 there who was a real estate representative for the Arby's
6 people, and I told her I really wanted to buy -- negotiate to
7 buy the property, and she agreed.

8 Q. How much money did you have at the time?

9 A. I don't know exactly. But approximately -- I don't know --
10 2,800, 3,000 dollars maybe or something.

11 Q. How were you going to buy the property with 28 or 3,000
12 dollars?

13 A. It was not well-thought-out at first because I didn't have
14 the money. But I had the relationships with the tenants, the
15 national tenants. So I was able to get a commitment from
16 tenants that they would sign leases with me. I negotiated
17 leases. So when I did that, I went trying to find someone to
18 loan money to give me based upon the leases and based upon my
19 experience. I was very -- I was 26 years old, so I didn't have
20 a ton of experience, but I had some experience.

21 Q. Did you get a loan?

22 A. Yes.

23 Q. From what kind of -- was it a bank or who gave you a loan?
24 What kind of person gave you a loan?

25 A. A friend of mine whose family -- you know, whose was

1 opposite of mine. They did very well. And the father -- the
2 kid kept going to school. And he asked me, you know -- I mean,
3 I asked him, and he gave me the opportunity where his bank gave
4 me the loan. He signed on the loan. I mean, I had literally
5 close to maybe 2,500, 2,800 bucks. So he helped me as far as
6 signing the loan for me for the company.

7 Q. So you buy the property. What did you do next with the
8 property? What did you do?

9 A. I had to build it.

10 Q. What were you building?

11 A. Oh. Sorry. It was a -- it was a restaurant and real
12 estate where there's a parking lot. And if you -- in a
13 restaurant -- you need more spaces for restaurants. But I
14 realized that if I don't have a restaurant and I put regular
15 retail, I can build -- instead of 2,000 feet, I can build
16 10,000 feet.

17 So I went up there. I got a guy. His name is Pete
18 DeLeo. He was an engineer and a construction guy, worked at my
19 old company, and older than me, and I told him my vision, what
20 I wanted to do and -- build this company, and he said he's on
21 board.

22 Q. So what did you and Pete DeLeo do to the Arby's?

23 A. We went up there and -- I don't know if they still have
24 them, but there's like a Red Roof Inn. We stayed there and we
25 built the building. He showed me how to build the building,

1 and I was his labor and he was the brains.

2 Q. Did you have any other laborers there too to help?

3 A. Yeah. He hired whoever he was supposed to hire. I had no
4 idea how to build anything at that particular moment in time.

5 Q. So what did you build?

6 A. We built a company called Only Diamonds, and there was like
7 a cellular company -- a cellular company.

8 Q. The retail space for it?

9 A. The retail space, yeah. But we had to build -- you know,
10 we built the walls and hired -- well, not me. But he hired an
11 electrician and all the other trades.

12 Q. How did it work out in the end?

13 A. It was grueling, but it was educational. But more
14 importantly, it was successful. And we built it in about, I
15 would say, a little less than 90 days. Worked day and night,
16 but we were the laborers because no one would work those many
17 hours. So that's what happened.

18 Q. What was the outcome of the project from your perspective?

19 A. It was -- it was great. I mean, it was successful and
20 that's what was able to start my business. At that particular
21 moment in time, it was like -- it was great.

22 Q. You mentioned the store Diamonds. Is that a jewelry store?

23 A. Yeah. It was a company called Helzberg Diamonds, and they
24 had a subsidiary.

25 Q. So there's been testimony about Phil Wolman and WSG. So

1 could you just tell us how that started that you worked with
2 Phil Wolman and worked with WSG.

3 A. There's something called the ICSC Convention in Las Vegas
4 for people in the shopping center business. And I went
5 there -- now that I could afford to go there, I was able to go
6 there and meet other people. And Mr. Wolman came to me and
7 spoke to me and said: "Hey, are you that kid that found this
8 piece of real estate? I was trying to buy that. How did you
9 do that?" I told him the story, and he said: "Why don't you
10 come work for me?"

11 Q. And what was the -- what was his proposal and how did that
12 play out in terms of your --

13 A. Well, at the time, he had For Eyes Optical, and I -- I was
14 like: "I really don't want to start working again for somebody
15 because, you know, I just want to build my own business." And
16 he said: "Great. I'll go with you. We become partners.
17 We'll start a company called WSG Development, but the catch is
18 that you have to work for me in the vice president of real
19 estate and construction and find those kind of locations for
20 the For Eyes store and expand the company across the United
21 States."

22 Q. So could you explain what you were doing for For Eyes and
23 then what you were doing for WSG just very generally, please.

24 A. For Eyes -- I went to about 15 different states, and I
25 worked day and night for three, four years. And I brought Pete

1 DeLeo with me because -- the construction guy, because he was
2 an engineer and they're very smart. And he did construction
3 and I found locations and built 48 new stores for For Eyes, and
4 almost doubled the company in three, four years.

5 And simultaneously, WSG Development was -- I still
6 bought the outparcels with Mr. Wolman's help because it's a
7 lot. And that's what we did. We bought the outparcels and put
8 For Eyes in as a tenant, we put Starbucks in as a tenant, made
9 great relationships, and it was successful. It was a lot of
10 traveling because it was in different parts of the country, but
11 it was great.

12 Q. Now, in general -- with the way that you have done your
13 real estate business, do you generally buy -- build stores or
14 centers that are operating or do you do the construction?

15 A. Like I said before, I'm really fascinated by -- always
16 fascinated by ground-up construction. So I only build
17 ground-up construction. A lot of developers just buy
18 buildings, but I'm not that type. I like to see the land, go
19 through the design, work with the tenants, and then come up
20 with a vision and build something -- well, Pete was the main
21 builder, but...

22 Q. There's been a contention in this case that a developer
23 isn't doing construction because they just hire a general
24 contractor and they walk away.

25 MS. JIMENEZ: Objection to the form of the question,

1 Your Honor.

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

3 BY MR. ETRA:

4 Q. Is that correct with respect to at least your development
5 business?

6 A. I'm sorry. I didn't understand.

7 Q. Sure. I'll start again. With respect to your development
8 business, there's -- do you just hire the general contractor
9 and not consider yourself a construction company? How do you
10 see yourself in terms of that?

11 A. I know what most people do. That's not -- based upon how I
12 learned with Pete building, I was always taught by him that if
13 you have a great superintendent, project manager who is on your
14 jobsite, you can go -- and you know how much the steel costs,
15 you know how much the block costs, and you can figure how many
16 manpower you need. And that lesson taught me -- building it
17 myself with Pete, he taught me how to actually build a building
18 properly and efficiently and economically by putting good
19 people in place, but also doing the grunt work, doing the hard
20 work, and buying everything out. It's hard to do.

21 So we always -- from that day, I've always looked to
22 always either build it ourselves, self -- what's called
23 self-performing; you build it yourself. Or if you have a good
24 GC company partner, and you trust them, they can build it for
25 you as well. But you have to develop those relationships.

1 Q. Well, I'm going to talk about the site -- you talked about
2 self-performance. That's when you build it yourself. What
3 about when you work with a GC? Do you just sort of walk away
4 or are you still really involved with the GC -- general
5 contractor? Excuse me.

6 A. Well, you're always involved, but it's -- it depends on the
7 size of the project. If it's a large project, you have offices
8 there. If it's a very small project, like a 5,000-square-foot
9 building or a 10,000-square-foot building, you don't have an
10 office, but you have someone dealing with the project manager
11 or superintendent all the time.

12 Q. What about the subs? Even when using a general contractor,
13 who brings the subcontractors and organizes them and picks
14 them?

15 A. Are you saying like --

16 Q. When you're not self-performing, when you're using a
17 general contractor, what role, if any, does your company have
18 with respect to organizing and picking the subs?

19 MS. JIMENEZ: Objection. Vague.

20 THE COURT: Sustained. Rephrase.

21 MR. ETRA: Sure.

22 BY MR. ETRA:

23 Q. With respect to when you're not self-performing and there's
24 a general contractor, who picks the subcontractors?

25 MS. JIMENEZ: Okay. Same objection. No time frame.

1 THE COURT: Sustained. Rephrase.

2 All right. Let's narrow the question, please.

3 BY MR. ETRA:

4 Q. Well, why don't we go to Orlando and the construction of
5 Toys "R" Us and DICK'S. Did you use a general contractor for
6 that?

7 A. We did.

8 Q. Who picked the subcontractors?

9 A. When we built the Toys and the DICK'S, I had -- the project
10 executive in Orlando he did the vertical construction of the
11 Toys, Babies "R" Us Superstore, and also the DICK'S; however,
12 we self-performed all the site work because we had a
13 superintendent that worked with us and he was doing the site
14 work, and the vertical construction was done by a third-party
15 general contractor.

16 Q. Let me cover some of those terms, "vertical construction,"
17 "site work." Could you explain the difference between vertical
18 and horizontal construction.

19 A. In horizontal site work, it's basically the infrastructure.
20 It's the -- it's when you go to -- like you see a parking lot
21 anywhere, you see everything underneath it, the earthwork, and
22 all the stormwater -- all the sewer systems, the stormwater
23 draining system, all the FPL lines, all that stuff is what we
24 call the site work. The paving, the grading, that's site work,
25 horizontal. And vertical is when you start going vertical, in

1 the air.

2 Q. You mentioned the term "project executive." What is a
3 project executive in your business?

4 A. A project executive in this business -- there's a developer
5 and then there's a project executive. He's the one who
6 coordinates the different parts of the project team when you're
7 building something, from a project accountant to a
8 superintendent and other people.

9 Q. Okay. There's been some testimony about different
10 companies. Let me just ask you generally -- you know, HM-UP
11 and HM Management, HM Four, and HM Eight, and some other
12 companies. Just generally speaking, was that your idea to set
13 up the companies the way you set them up?

14 A. No.

15 Q. Where did that come from?

16 A. My initial attorney was in Philadelphia because Phil Wolman
17 introduced me to a guy by the name of Neal Cupersmith.
18 Actually, Neal was here. And the attorney in Philadelphia and
19 Neal Cupersmith, they set up -- when you buy real estate, they
20 are the ones that explained to me that you're supposed to
21 have -- everything is like its own business. It's a LLC, and
22 you put it into one company. And they are the ones who
23 explained that to me and they set all that stuff up.

24 Q. Let's talk about Neal Cupersmith for a moment. Who are the
25 people at his firm that you dealt with?

1 A. In what time frame?

2 Q. Let's say the earlier time frame, before 2015.

3 A. From 1996, when he started, when I was partners with Phil,
4 and I used Neal because he was his long-term accountant. So
5 from 1996 through about 2003, '04, it was mainly Neal. It was
6 mainly Neal because he was doing For Eyes and also the WSG
7 because he was on retainer for both companies on a monthly
8 basis. He's on a retainer, so he does it for both companies.

9 Q. And after 2003?

10 A. After 2003, we started getting into much -- in Colorado and
11 then Miami. We started getting bigger projects than the
12 smaller -- small shopping center, you know, 10,000-square-foot
13 buildings. And so Neal had a guy by the name of Arthur
14 Steiger. Arthur Steiger was like the accountant for real
15 estate. And that's -- Neal's not really a real estate guy, but
16 Arthur was an expert in real estate accounting.

17 Q. Mr. Cupersmith testified, I think, that he only spoke to
18 you maybe a half hour a year or something along those lines.
19 Do you recall that general testimony?

20 MS. JIMENEZ: Objection to the form of the question.

21 THE COURT: Sustained. Rephrase.

22 BY MR. ETRA:

23 Q. How often did you speak to Mr. Cupersmith?

24 A. In what time period?

25 Q. Well, say the time period through 2003.

1 A. A lot.

2 Q. Would you give some --

3 A. I'm sorry.

4 Q. That's okay. It's okay. It's just -- I'm following up.

5 Tax return, all right. Could you give some way of
6 measuring how frequently or how long your conversations were?

7 A. Well, we were on the board of directors of For Eyes, so at
8 our monthly meetings for the board of directors. Also, we also
9 spoke probably every quarter, you know, every three months,
10 about different matters.

11 Q. And then throughout your time period, who else would you
12 speak -- you would speak to Mr. Steiger as well?

13 A. I mean, I've spoken to about seven different people in his
14 office, and -- depending on the activity of the business that
15 year.

16 Q. Could you just explain why you're speaking -- from your
17 perspective as a businessperson, why you're speaking to the
18 accountants about the business activity. Why is that something
19 you felt you needed to do?

20 A. Well, I didn't feel I needed to do anything. But that's
21 what he told me, that -- he's the one that told me that I need
22 to -- everything we do as far as -- if you're buying something,
23 or if you're refinancing something, you need to explain what
24 the project is, and -- you know, so he understands it. And so
25 I used to give him, you know, the details of it. He wanted to

1 know what the forecast was for the next year.

2 So it was basically what business -- because we had
3 just a small shopping center business. Then we did some
4 residential and office. So all different changes in the
5 business, he wanted to make sure he was aware of it so he
6 understood. I mean, I'm not an accountant so I couldn't tell
7 you what that means --

8 Q. What about later on when you got to the big shopping
9 centers? Did you also have those discussions then?

10 A. Yeah.

11 Q. Mr. Cupersmith testified that he recalled you telling him
12 that HM Four had --

13 MS. JIMENEZ: Objection to the form of the question.

14 MR. ETRA: Can I --

15 THE COURT: Sustained. Rephrase.

16 BY MR. ETRA:

17 Q. Did you have a discussion with Mr. Cupersmith about -- or
18 people -- well, let's start with Mr. Cupersmith. Did you have
19 a discussion with Mr. Cupersmith about HM Four's role or --

20 MS. JIMENEZ: Objection. Hearsay.

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

22 THE WITNESS: Yes. Just like any other company.

23 Every LLC that's set up, there's a discussion about every LLC,
24 what's its role, what's its function. And so it's a
25 standard -- not just HM Four but every company that's set up.

1 It's just you always tell your accountant what you're doing as
2 far as business so they can do whatever they do.

3 Q. In the past six or seven years, who in your office dealt
4 mostly with Mr. Cupersmith's office?

5 A. Six or seven years?

6 Q. Yeah. Who in your office dealt mostly with
7 Mr. Cupersmith's office?

8 A. I would say Addy Sosa, Jeanette Gonzalez, Jeff Graff,
9 Bernie Warner.

10 Q. Okay. And what was -- let's focus on, say, Jeanette
11 Gonzalez. What was the business purpose for Jeanette Gonzalez
12 to be communicating with Mr. Cupersmith's office?

13 A. Jeanette, she handles the -- she is -- as I've heard in
14 this trial, that she's the bookkeeper. I mean, she is a
15 bookkeeper and handles the QuickBooks. She handles all the
16 money, the checks, the processing of all that kind of stuff.
17 And so she speaks to him about -- him or actually another guy
18 named Alex Zaslowsky.

19 Q. Who was her primary point of contact in the last three or
20 four years pre-COVID?

21 A. Alex Zaslowsky.

22 Q. And dealing with the -- not the big picture, but the
23 mechanics year to year of doing tax returns, who at your
24 company was working on that?

25 A. Tax returns?

1 Q. Yes.

2 A. We don't do tax returns. The accountant does the tax
3 returns.

4 Q. Right. But who in your company assisted the Cupersmith
5 firm on -- in preparing the tax returns?

6 A. It depends. When Bernie Warner was there --

7 Q. I mean in the last four or five years before COVID.

8 A. What year are we in? Up until about 2018, Bernie Warner,
9 he would deal with his projects -- because he's a project
10 executive. So he would deal with his project in Miami. And
11 then in Orlando, Jeffrey Graff would deal with Jeanette
12 Gonzalez, and they would both work with Alex.

13 Q. So in terms of all the -- let me just talk about this --
14 talk about whether there's an accounting department at your
15 company. In your mind, the way you use the term, has there
16 always been an accounting department at your company?

17 MS. JIMENEZ: Objection. Leading.

18 THE COURT: Sustained. Rephrase.

19 BY MR. ETRA:

20 Q. Is there an accounting department at the HM companies?

21 A. Yes.

22 Q. And generally, last, say, maybe four years -- three or four
23 years before COVID, who was in the accounting department?

24 A. Jeanette Gonzalez, and she used her daughter Vanessa
25 Gonzalez for some stuff. And Jeff Graff was there as far as

1 quasi. He was working on the development -- trying to work on
2 the development side, and then he would also be overseeing them
3 and -- he was a CPA, and so he would oversee them.

4 Q. And was there -- what about the project executives? Do
5 they have a role in the accounting department or not? In
6 the -- the project executives in the different sites.

7 A. Every project executive -- you don't have a project
8 executive if it's a small site. Right? If it's a bigger
9 project, you have a project executive with their team. So like
10 Orlando or Miami or other projects, we have a project
11 executive, they have a private accountant, and they do their
12 particular location, so they're involved with it. And then
13 after that, it goes to Miami and also the people in
14 Philadelphia.

15 Q. So essentially, a project executive from outside Miami has
16 to work with the accounting people in Miami; is that right?

17 MS. JIMENEZ: Objection. Leading.

18 THE WITNESS: They don't really work with them --

19 THE COURT: I'll allow it.

20 THE WITNESS: -- but they do their own and then
21 they forward the information --

22 MS. JIMENEZ: Did she rule on the objection?

23 THE WITNESS: Oh. I'm sorry.

24 MR. ETRA: I didn't hear Your Honor's ruling.

25 THE COURT: I said: "I'll allow it."

1 MR. ETRA: Thank you.

2 THE WITNESS: Sorry, Your Honor.

3 BY MR. ETRA:

4 Q. That's fine. Let's continue, then.

5 There's been some discussion about Canyon Ranch. I
6 just want to get to the meat of it. When Lehman goes under --

7 MS. JIMENEZ: Objection to the form of the question.

8 THE COURT: Overruled at this point. You may
9 continue.

10 BY MR. ETRA:

11 Q. When Lehman goes under, what happens at Canyon Ranch? What
12 happened -- excuse me -- at Canyon Ranch?

13 A. Well, Lehman, the lender -- and they were also an equity
14 partner. And when Lehman -- Lehman Brothers went bankrupt.
15 And I was the manager of that entity, amongst a lot of other
16 entities. So when they went bankrupt, there was obviously a
17 problem for the world. But we weren't completed with the
18 construction, and so that was a problem at the time.

19 Q. So what did you do when your funder, partner, went under?

20 A. Well, Phil didn't go under, but Lehman Brothers went under.

21 Q. That's what I meant.

22 A. So I stepped in and I funded myself personally to finish
23 the project because I've never not finished a project in my
24 life, and it was a high-profile project. And you know, I
25 worked day and night, I sat on the jobsite, and started to run

1 the project with the construction people.

2 Q. How common is it in your industry to have that record of
3 never not completing a project?

4 A. I can't tell you about the industry. People get named a
5 developer. And a lot of developers, when things get tough,
6 they run and they blame everybody else. But I don't, because I
7 went in, I always finished. Most of our projects have always
8 been pretty, you know, successful. But there are projects that
9 get -- there's problems. And I've stepped in every single time
10 myself and worked with my team and finished it. It's
11 everything. If you don't finish a project, then you're --
12 you're just tarnished forever. It's a bad reputation. And
13 that's what I do.

14 Q. There's been some reference to bankruptcies. Did you ever,
15 Mr. Sheppard, ever file bankruptcy?

16 A. I've never filed bankruptcy.

17 Q. Did your HM -- your companies file bankruptcy?

18 A. HM companies have never filed bankruptcy.

19 Q. Any companies that you were ever involved with filed
20 bankruptcy?

21 A. Well, involved with, yeah. I was involved with Lehman
22 Brothers, and we had a lot of assets, even though I was the
23 majority owner. And they were the equity partner, but they
24 were also the lender too. So when they went bankrupt, the
25 whole thing went bankrupt. So yes, I had to deal with

1 bankruptcies.

2 It was -- it's a very difficult situation because you
3 don't control the bankruptcy. You're not the person in the
4 bankruptcy. It's the entity with -- you know, everyone
5 understands the Lehman bankruptcy was...

6 Q. I want to understand your area of your knowledge and focus
7 on real estate. In terms of the world of real estate, what is
8 the thing that you do? How did you refer to that?

9 A. What I do?

10 Q. Yeah. What is your area of expertise or experience in the
11 world of real estate?

12 A. I'm the guy who doesn't sit still a lot. I'm always kind
13 of moving and active.

14 MS. JIMENEZ: Objection. This is non-responsive.

15 THE COURT: Overruled.

16 BY MR. ETRA:

17 Q. What -- in terms of the things that your companies do, how
18 would you describe what your companies do in real estate in
19 terms --

20 A. It's my personality. I'm very active. And I'm the person
21 who -- I visualize things. I see things. Like I told you from
22 the beginning, I always was fascinated by how does a building
23 get built, who could own a building. I just thought it was
24 very cool, you know? And I love to look at something that
25 people don't see, and I figure out what you're supposed to do.

1 So I'm more of the design visionary. I love going to
2 a construction site and sitting with people and talking to them
3 and, you know -- and I love just the building of a building. I
4 like concrete tangible things that get built over time.

5 Q. Let's focus on individual tasks. Who finds the land for a
6 development that you do?

7 A. My expertise. And why I became partners with Mr. Wolman is
8 because I'm very good at the research with regards to the
9 acquisition of a property and identifying the markets. So you
10 have to identify the market, and that's what I do. I deal with
11 national companies. We build in places like -- you know, like
12 the Dadeland Mall, or the Aventura Mall, or you know, the
13 Kohl's -- regional places. Where you have your local places,
14 we specialize in regional places. So you have to go all across
15 the country.

16 So I'm very good at understanding all parts of the
17 country, the locations. So I research it. I know where young
18 families are moving, and I do all that kind of stuff, and I
19 know what the tenants want. There's certain criterias when you
20 go to a regular store. Right? When you go to a Starbucks or
21 you go to a Walmart, there's certain specifics for their
22 customers. So I understand all that, and that's what I focus
23 on.

24 And then the actual talking to a landowner, a
25 person -- they may not want to sell. They may sell. You try

1 to, you know, work on something that's satisfactory, and that's
2 what I do.

3 Q. What about working with the national tenants? Who in your
4 organization does that?

5 A. I do.

6 Q. And what does that involve very generally, in terms of
7 putting together a development?

8 A. National tenants have very -- a lot of them are public
9 companies. So you have to. When you say something, it has to
10 mean something. If you have to -- if you say you're going to
11 deliver something, you have to deliver. And so I work with
12 them to understand what markets they're relocating the store,
13 or if they're building a new store.

14 And I take that and -- that communication, and I deal
15 with, you know, some very -- I deal with Walmart, I deal with
16 Starbucks, I deal with Men's Wearhouse, a lot of different
17 companies. And that's what -- we developed the relationship
18 over the years, a lot of years of traveling around the country
19 every single day. I've traveled a lot doing this.

20 Q. What about financing for these projects? Who's involved
21 with that?

22 A. In what respect? I mean --

23 Q. What is your role?

24 A. My role? My role is developing relationships, cultivating
25 them with -- a lot of them have been banks in New York and some

1 local banks. Not many local banks, but a lot of larger banks
2 in New York or in a local community. There's always a
3 community bank that I've dealt with.

4 So I'm involved with the -- talking to them and
5 presenting the loan package on every transaction, whether it be
6 a construction loan, development loan, or a permanent
7 financing.

8 Q. And what about taking from a -- a dirt or land to what
9 was -- what it's going to be? Who does the vision for that?

10 A. Well, I mean, that's what my expertise was. But obviously,
11 I have other people. You have a team. You have other people
12 that work with you. So from -- identifying a site. Then once
13 you've identified it, you have to buy it. Then you call the
14 lawyer. The lawyer sets up an LLC. Tell the accountant, the
15 accountant deals with the accounting stuff. And then that's
16 how I do that.

17 And then, once you buy the site, right -- and part of
18 buying is that you negotiate a -- like, I negotiate a lease
19 with the tenant because I want to make sure -- I don't want to
20 make a risk. I'm very conservative like that. I want to make
21 sure I have a tenant's lease first, or if it's an office
22 building, have commitments from office tenants or whatever.

23 So then after that, I go ahead and we acquire it, and
24 you have -- and then you have an architect, you have an
25 engineer, you have a surveyor.

1 Q. What is your role with those folks?

2 A. I just -- myself or someone with me -- but I've taught
3 people how to do it. You go and you sit with them. You give
4 them your vision. You tell them what you want them to do. And
5 they -- they're professionals. I rely on them to -- they
6 design what I think and they go and do that.

7 Q. What about budgeting and making sure it's economically
8 feasible? Do you have a role in that?

9 A. I have a role because I understand enough to be dangerous,
10 I guess. But I rely on really a quality project manager,
11 superintendent. Some guys really understand like the nuts and
12 bolts of construction. I'm not going to -- those guys are --
13 they're -- they're a -- they're a rare kind. They really
14 understand it. So I rely on them to give me numbers.

15 But I know inside -- I know how much block, steel,
16 what things cost pretty much. And -- but they give me numbers,
17 budgets. Then I get it. I look at it. And the project
18 executive also is obviously involved.

19 Q. How about the process of government approvals, zoning
20 permitting, and all that? Are you involved in that?

21 A. Yes. I go ahead and I -- I try to figure out what the
22 local codes are, and I understand what I want to do and what
23 would be the -- to maximize profit and density, and just to
24 make sure that the actual deal works.

25 And once I do that, then I usually have a zoning

1 attorney. Then the zoning attorney goes and they deal with the
2 county. And then people in my office also go deal with the
3 county. They have to be there to meet with the county. I
4 always tell my people: "You have to go" -- I know it's the
5 Internet in this world today, but I say: "You have to
6 physically go and speak to people face to face so they
7 understand what you're saying and they know you. But you can't
8 go emailing and texting people all the time. Just go there,"
9 and I tell them to do that.

10 Q. Do you work on one deal at a time?

11 A. No.

12 Q. Are they all in the same stage at the same time?

13 A. No. We're unique because we're limited in at least the
14 small shopping center. But you're limited because there's
15 only -- when you're building in regional areas, you can only go
16 to so many areas. You can't -- so you have to go to other
17 cities. So you have the one project being built, one project
18 being designed, one project being bought, one project being
19 turned over to the property management. There's all different
20 parts of it.

21 Q. What are your work hours?

22 MS. JIMENEZ: Yes. Time frame, please.

23 THE COURT: Sustained.

24 BY MR. ETRA:

25 Q. How about in the last -- from 2017 through the beginning of

1 COVID?

2 A. I work a lot. I mean...

3 Q. Do you have set hours?

4 A. No, I don't. I'm constantly on the phone. I'm constantly
5 working. I walk a lot on the phone, which my family -- it
6 drives my family nuts. I walk in circles.

7 Q. Okay. I want to focus on other aspects of your business.
8 We talked about the accounting department. Are there other
9 people who handle administrative functions?

10 A. I'm sorry?

11 Q. Let me say it again. Who handles the bookkeeping in your
12 company?

13 MS. JIMENEZ: Objection. Could we have a time frame,
14 please?

15 THE COURT: Sustained.

16 BY MR. ETRA:

17 Q. Let's go from 2017 to COVID -- to the beginning of --
18 before COVID -- to before COVID.

19 A. The actual bookkeeping, like do the entry thing?

20 Q. Yeah.

21 A. Jeanette Gonzalez.

22 Q. What is your role in bookkeeping?

23 A. I have zero role in bookkeeping.

24 Q. In the same time period, who handles the payroll? The time
25 period being 2017 until before COVID.

1 A. Jeanette Gonzalez.

2 Q. And same time period, who handled human resources, hiring?

3 A. Well, it depends if it's in the office or it's at a
4 specific jobsite.

5 Q. What if it's in the office?

6 A. If it's in the office, it would be Jeanette.

7 Q. And what if it was at a jobsite?

8 A. It would be either the project manager, superintendent, or
9 the project executive.

10 Q. What was your role in those years for payroll and human
11 resources?

12 A. My role?

13 Q. Yeah. 2017 to before COVID.

14 A. My role is -- I have no role, except for the fact that if
15 money goes into the payroll account they call me to tell me
16 that they're putting money into the payroll account.

17 Q. What about things like paying insurance? Whose job was
18 that?

19 A. Are you talking about the same time frame?

20 Q. Yeah. 2017 to before COVID.

21 A. Jeanette. And also, Jeff Graff was involved with a lot of
22 health insurance because of certain requirements he needed for
23 his wife.

24 Q. What about paying invoices of suppliers or bills,
25 utilities, whatever? Who was in charge of that from 2017 until

1 before COVID?

2 A. The project executive, project accountant, and then that
3 would go transfer to Jeanette in the office, and also I believe
4 Vanessa. And there's somebody else I can't think of right this
5 second. So there would be a process that goes with that.

6 Q. And earlier in time, who were some of the people -- if you
7 recall any names -- who were in charge of those areas?

8 A. Well, originally from 1996 through 2000 was -- in the For
9 Eyes office, we had a guy named John Puckle and Bob Kitchen.
10 One was the CFO and the other guy was in charge of that stuff.
11 And then, after that, Jeff Graff came in 2000. He was the CFO,
12 and then he had some people that worked with him.

13 And then when Jeff Graff decided that he wanted to be
14 in the development side, in 2006 around, I think, then a guy by
15 the name of Steve Faloso -- Falosi or Faloso [phonetic
16 listings], he became the CFO after that. Then he had a project
17 team, Denise Soriano, Addy Sosa, Joanne Puckett, and Dagny
18 something, and some other people.

19 And then, after that, Denise left to run a project for
20 another company in town, a high-rise developer. And then Addy
21 Sosa, who worked under her, she was the person -- Addy. And
22 then she had a couple people, including Jeanette. And then
23 Addy ended up leaving at some point in 2016, and then Jeanette
24 took over for Addy. And then Jeanette was there with I want to
25 say Vanessa and a lady named Barbara. And Barbara was there

1 and --

2 MS. JIMENEZ: Objection. Narrative. Move to strike.
3 No time frame.

4 THE COURT: There was a time -- overruled.

5 THE WITNESS: Okay. That was -- again, that was
6 around 2016. And then, about 2017, '18 -- then Addy left. And
7 from that period on until today, Jeanette Gonzalez.

8 BY MR. ETRA:

9 Q. Okay. Do you recall Mr. Graff's testimony that Eric
10 Sheppard, you, decided who was a 1099 and who was a W-2?

11 A. I do.

12 Q. Is that correct?

13 A. No.

14 Q. What was -- what was the level of your focus on who's a
15 1099 versus W-2?

16 A. I never like thought about it. I've never -- that's never
17 been in my wheelhouse about that kind of stuff.

18 Q. Why?

19 A. It's not my job. I focus on what I do. I'm on -- there's
20 this side of the house and there's that side of the house. I
21 look at employees as employees, and I don't get involved with
22 how they're identified and stuff like that.

23 Q. When you say you look at employees as employees, what do
24 you mean?

25 A. You know, we're not a big corporation. We're just a

1 regular company and they're employees. I mean, if they're
2 working for myself, or working with the project, or -- everyone
3 works together, you know. And they work -- you're paying
4 somebody, and how they get paid, or what they get paid, they're
5 showing up every day, whether it's on a jobsite, whether it's
6 here or there, and that's what they are. They're -- to me,
7 they're workers. They're people. I don't get involved with
8 how they fill out the paperwork or how they -- that kind of
9 stuff.

10 Q. How do you refer to someone -- well, let me restate that.

11 In your world, do you ever use the term "independent
12 contractor"?

13 A. I do.

14 Q. What does an independent contractor refer to from your
15 perspective?

16 A. From my perspective is on the construction side of my
17 business. When someone tells me an independent contractor, I
18 look at them as a Carrier air-conditioning, a electrical
19 company. They're third-party companies. They have their own
20 workers. So to me -- that, to me, is like an independent
21 contractor. You pay them, and if there's a problem on the job,
22 talk to the superintendent. Superintendent goes, talks to the
23 owner of their company, and they talk to the workers.

24 That's how I view my -- I mean, maybe -- I'm not
25 brilliant, but -- maybe not understanding the world, but that's

1 how I've always looked at it. As an independent contractor,
2 we're paying you one check. I don't tell you what to do with
3 your workers. You do whatever you want. But just make sure
4 you have a contract and you deliver the product on schedule, on
5 time.

6 Q. Over the course of your years doing what you do, have you
7 had anyone bringing you papers to sign?

8 A. Mr. Graff said thousands and thousands. Yes. A lot.

9 Q. You agree with that part of Mr. Graff's testimony?

10 A. That part, I agree with his testimony.

11 Q. And did Mr. Graff ever bring you things like loan documents
12 to sign?

13 A. Yeah. From time to time.

14 Q. And when he brought them to you, do you sit and review them
15 or no?

16 A. No.

17 Q. Why not?

18 A. Because typically, when you have loan documents, you have
19 lawyers and you have other people look at it. So by the time
20 you're getting to sign the loan document, it's already been 60
21 days that they've already negotiated between the bank and the
22 lawyers, and that's what lawyers do. I mean, I'm not a lawyer,
23 but that's what they do. And through the process I'm involved
24 by -- they ask me business questions, but I'm not a lawyer. I
25 can't talk about legal stuff or accounting stuff. I know the

1 business stuff.

2 Q. What about the accounting department, say, Addy Sosa or
3 Jeanette Gonzalez? Did they ever bring you papers to sign?

4 A. Yes.

5 Q. And when that happens, do you review those papers?

6 A. I don't understand. Say again.

7 Q. When they bring the papers to you, do you sit and read them
8 before you sign them?

9 A. It depends what they're bringing me.

10 Q. What if it's something about accounting or bookkeeping or
11 payroll?

12 A. If it's anything to do with accounting stuff, I'm relying
13 on them to say: "Okay. This is true and correct," and I sign
14 it. And normally, I only sign stuff once a week or maybe once
15 every two weeks. So I'm not in the office. So when they come
16 to me, they bring me a stack of papers, I go through it, and
17 sign them, and that's it.

18 Q. Is there like a tab for a signature?

19 A. Yes.

20 Q. Why do you think -- do you think that's okay to do? Did
21 you feel like you were doing -- that that was reasonable as a
22 businessperson to rely on your accounting people?

23 A. Well, rely on them if they've been there for some time. I
24 mean, if the person just started that day, I'm not going to
25 rely on them. But if someone's been there for a long period of

1 time, I would rely on them. But not just a person that just
2 started that I don't really know yet. So...

3 Q. Let's jump ahead and focus on the 941s in this case, the
4 941, 940s, and RT-6s that we've seen in this case. Can we
5 focus on that for a second?

6 A. Sure.

7 Q. Do you have a memory of ever signing any of those
8 documents?

9 A. I do not.

10 Q. If they were given to you by Jeanette Gonzalez or Jeff
11 Vasilas, would you have signed them?

12 A. Yes.

13 Q. Would've reviewed them first?

14 A. No.

15 Q. Why not?

16 A. Like I said, people that -- people that I know, that I
17 trust, I rely on. If it's not in my wheelhouse or my -- my
18 world, I'm relying on them. Because, I mean, I wouldn't even
19 know what to look for anyways. So that's their job.

20 Q. If you were told: "Hey, these are 941s. They're connected
21 to W-2s" --

22 MS. JIMENEZ: Objection. Leading.

23 THE COURT: Sustained.

24 BY MR. ETRA:

25 Q. At the time in, let's say, the beginning -- well, in COVID,

1 did you know what a -- that a 941 was connected to W-2s?

2 A. No.

3 Q. Did you know if you had W-2s versus 1099s in your company?

4 A. I never -- I never asked that question. It's not a topic
5 of conversation.

6 Q. If you were told that this document that you're being asked
7 to sign was fraudulent, would you have signed it?

8 A. No.

9 Q. What if it meant you couldn't get a loan?

10 A. Then I would go a different source, a different way. I
11 would either fund myself or go to a different -- I would not
12 get a loan if I didn't qualify for a loan.

13 MR. ETRA: I'd like to put up in evidence photographs
14 that are Q-1.

15 Let me just go quickly through each of them and then
16 I'll ask the witness questions. Could we just go through --
17 just click on each of them.

18 BY MR. ETRA:

19 Q. Do you recognize these photos?

20 A. I do.

21 Q. What are we looking at?

22 A. That was --

23 Q. Generally, what are we looking at in all the photos?

24 A. An office. My office at 12000 Biscayne Boulevard, Suite
25 508.

1 Q. When did you have that office?

2 A. From -- I don't know the exact dates but until some time in
3 2020. Started probably 2017, '18, around there, maybe. I
4 don't know.

5 Q. The state of the office, in terms of the papers sitting
6 around on desks and on the floors and whatnot, was that typical
7 or not typical of your office and conference room?

8 A. It was pretty typical.

9 Q. There was a question about whether these pictures were
10 staged for this litigation --

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

12 THE COURT: Sustained. Rephrase.

13 BY MR. ETRA:

14 Q. Were these pictures staged for this litigation for this
15 case?

16 A. No.

17 Q. Did you have -- after you were arrested, did you still have
18 your office at that point?

19 A. I was out of my office in 2020. So...

20 Q. Before your arrest?

21 A. Yeah. I mean, just...

22 MR. ETRA: You could take this down.

23 BY MR. ETRA:

24 Q. I want to talk about Mr. Graff. What were the
25 circumstances of his hiring?

1 A. He was working at Braman Automotive in accounting,
2 assisting -- I don't know, whatever, assistant something to the
3 CFO. And he -- you know, I've known him for 40 years. And he
4 came to me and asked me, he said: "I would love to get out of
5 Braman right now. There's not a lot of upward mobility and I
6 want to do something new. And I'd like to be a CFO and also be
7 in the real estate industry because I want to learn the real
8 estate industry." And I said: "Okay." It was good timing.

9 Q. Why was it good timing for you?

10 A. For me, I think it was around, I want to say, 2000 maybe.
11 And my role at For Eyes in 1996 -- 5, whatever, through 2000,
12 WSG Development Company -- the development company grew very
13 fast, and I reduced my role at For Eyes at that point. And I
14 was relying only on the For Eyes accounting people and all
15 that. So I wanted to have my own accounting people because we
16 were changing. And that was around 2000. I said: "It's good
17 timing," and I said: "Okay. If you want to do this, that
18 would be great." And I've known him my whole life and I trust
19 him and, you know, we've been through a lot together, and I was
20 like: "Okay."

21 Q. A lot together growing up.

22 A. Yeah. You know, childhood friends.

23 Q. I'm not asking for details.

24 A. Yeah.

25 Q. What were the circumstances of Mr. Graff becoming -- going

1 from a W-2 to a 1099?

2 A. Well, I heard him testify. So you know, it refreshed my
3 memory. Prior to that, I didn't even really remember anything,
4 but --

5 Q. What is your refreshed memory of the circumstances of him
6 going from a W-2 to 1099?

7 A. That was around 2008, '09. And frankly, Lehman Brothers
8 was going bankrupt, they had all these projects, and it was an
9 economic meltdown in the world. And I remember him -- I do
10 remember him coming up to me and talking to me about it, and he
11 says: "Hey, listen, do you mind if I do this to a 1099?" And
12 I said: "Look, do whatever you want. You're the CPA. You're
13 an accountant. I don't -- I got other things to deal with
14 right now. Whatever you feel. If that's what you want to do
15 for your benefit, great."

16 Q. So did you tell him -- was it your idea for him to be a
17 1099?

18 A. No. That was far from reality. That's not -- no.

19 Q. Was there any reason that you at that time would want to
20 pick out Mr. Graff and say: "You need to be a 1099"? Any
21 business reason at the time?

22 A. Any business reason? Just, it was -- I never -- first of
23 all, him or anybody, I've never gotten involved with that. I
24 just -- he's a CPA. What am I going to -- the guy's an
25 accountant. That's like way much more brain power than myself.

1 "So you do what you do. Tell me what you want to do. Great.
2 That's what you think is great. You want your tax benefits.
3 Go do it."

4 What were the circumstances of him going from being --
5 going into the development side? He wanted to be a developer,
6 and two guys I brought in around 1997, '98, this guy Jim Leach
7 and Eric Gordon, they were developers and they worked with me.
8 They were just like me, started with nothing and I taught them
9 the business and they went on the road. And they decided to
10 leave after they worked for a while, and they wanted to start
11 their own company, which was great. And I said: "Okay," and
12 that's when Jeff Graff said: "Hey, can I jump on this side and
13 like take their positions?"

14 Q. And was that okay from your perspective for him to start
15 getting into development?

16 A. Yeah. I mean, I had no problem because his development was
17 the small shopping center business. I was concentrated on
18 other projects at the time to expand the company. And you
19 know, he was my childhood friend and, you know, I had no
20 problem with it.

21 Q. Do you recall his testimony that he brought --

22 MS. JIMENEZ: Objection to the form of the question.

23 THE COURT: Sustained.

24 BY MR. ETRA:

25 Q. Did Mr. Graff bring in the WSG Arundel deal?

1 MS. JIMENEZ: Objection. Same objection.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MR. ETRA:

5 Q. Who brought in the Arundel deal?

6 A. The tenant was mine because I had relationships, but it was
7 Jim Leach from 2003, something like that.

8 Q. Do you recognize the document that's put in front of you?
9 It's not in evidence, so please just answer generally.

10 A. Yes, I do.

11 Q. Generally, what is it?

12 A. It's a 2015 tax return for WSG Arundel, LLC.

13 Q. Is that --

14 MS. JIMENEZ: Objection. Relevance.

15 THE COURT: Overruled.

16 BY MR. ETRA:

17 Q. Was that one of your companies?

18 A. Yes.

19 MR. ETRA: Your Honor, the Defense offers Exhibit X-1
20 as a business record.

21 MS. JIMENEZ: Objection. What's the relevance?

22 THE COURT: Is that the basis of the objection?

23 MS. JIMENEZ: Yes.

24 THE COURT: On grounds of relevance, Ms. Jimenez?

25 MS. JIMENEZ: We haven't seen this.

1 THE COURT: All right. Let's look at it, and let the
2 Court know what the basis of the objection is.

3 MS. WEINTRAUB: It was produced over the weekend.

4 MR. ETRA: It was produced.

5 THE COURT: Let's look at the exhibit, X-1, and advise
6 the Court what objections you have.

7 MS. MARTINEZ: Could he flip through the pages? This
8 may have been produced at midnight on Sunday night, but I
9 haven't looked at it.

10 (Pause in proceedings.)

11 MS. JIMENEZ: It's 2015, and relevance as to this
12 company as to the time frame.

13 THE COURT: The objection is overruled. X-1 will be
14 admitted into evidence.

15 (Defendant's Exhibit X-1 received into evidence.)

16 BY MR. ETRA:

17 Q. Showing you on the screen the cover page and the first page
18 of WSG Arundel. Do you see that?

19 A. I do.

20 MR. ETRA: Highlight Section E, "Date Business
21 Started," right next to the top.

22 BY MR. ETRA:

23 Q. While we're waiting, why don't you talk about -- what does
24 it say on Date Business Started?

25 A. September 6th -- well, it says: "'02," but 2002, I

1 imagine.

2 Q. What does that say about when the deal was first found, for
3 lack of a better term?

4 A. Well, like I said, every deal is set up into a separate LLC
5 that stands on its own. And when you acquire the property you
6 set up with the government like the identification number, the
7 EIN number, and -- so you know when the business starts, and
8 that's when you start the process of that company.

9 Q. So when was this deal first located or started?

10 A. It was acquired in '02.

11 Q. And when did Mr. Graff start looking for properties to
12 develop?

13 A. In 2006.

14 Q. Okay. What about the other deals -- and then -- but then
15 did you offer him -- what about the other deals, Hanover and
16 Kansas City? Are they other deals that you got him involved
17 in --

18 MS. JIMENEZ: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. ETRA:

21 Q. What other deals you got him involved in initially -- well,
22 sorry. Let me start over again.

23 Did you give Mr. Graff any percentage interest in this
24 project?

25 A. Yes.

1 Q. How much?

2 A. I believe -- whatever Mr. Gordon and Mr. Leach had, the
3 10 percent each, I gave -- when they left, I gave him their
4 10 percent.

5 Q. Did you do that for any other deals?

6 A. Yes.

7 Q. Which ones?

8 A. WSG Kansas City, which is a project I built in Kansas City.
9 And then a project in Hanover, Maryland, WSG Hanover. One in
10 Oklahoma, WSG Oklahoma. I don't know the name -- Quail
11 Springs, WSG Quail Springs, LLC.

12 Q. And did -- did Mr. Graff bring in any of those deals?

13 A. No.

14 Q. Did Mr. Graff bring in any deals that you worked on -- that
15 your companies worked on?

16 A. To my -- best of my knowledge, I don't believe he brought
17 one develop -- ground-up development deal.

18 Q. What hours did Mr. Graff keep?

19 MS. JIMENEZ: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. ETRA:

22 Q. Did Mr. Graff go on the road, like you, Jim Leach, and
23 Mr. Gordon?

24 MS. JIMENEZ: Objection. Relevance.

25 THE COURT: Sustained.

1 BY MR. ETRA:

2 Q. Generally speaking, where was Mr. Graff -- where was he
3 working most of the time?

4 MS. JIMENEZ: Objection. Time frame.

5 THE COURT: All right. Let's give a time frame,
6 please.

7 BY MR. ETRA:

8 Q. Sure. Let's start with 2006 to 2010.

9 A. He was working in Miami at the different Miami offices.

10 Q. What about 2010 to 2015?

11 A. I'm sorry. 2000 what?

12 Q. 2010 to 2015.

13 MR. ETRA: Sorry to raise my voice, Your Honor.

14 THE WITNESS: He was working at the office building on
15 Miami Beach. And then the office building -- later, in like
16 2015 through '20 or whatever, in North Miami at 1200 Biscayne
17 Boulevard -- or 12000 Biscayne Boulevard. Sorry.

18 BY MR. ETRA:

19 Q. What was the -- did Mr. Graff, even after he started doing
20 development -- did he still play a role in the accounting or
21 the back office?

22 A. Yes. He was the -- he was the glue, basically. And when
23 people had questions -- he wouldn't do the daily work of
24 accounting. He would just be there as like a encyclopedia -- I
25 guess there are no more encyclopedias, I guess. What are

1 they -- the Google. He'd be the guy who would talk about -- I
2 mean, explaining to the people in accounting, you know, are you
3 doing this right, that right. He'd be there on one side. But
4 he'd also be very involved with the accounting banks,
5 reconciliations for year-ends, for tenants and banks. He would
6 do that himself because he had the ability, where they didn't
7 have that ability.

8 MR. ETRA: Putting up only for the witness Exhibit
9 M-43, M, as in Mary, 43.

10 BY MR. ETRA:

11 Q. Mr. Sheppard, do you recognize the document in front of you
12 as M-43 -- I'm sorry -- which is M-43?

13 A. I do.

14 Q. Is that an email from you to Mr. Graff and Ms. Gonzalez as
15 part of your business?

16 A. It is.

17 Q. And was it part of your business practice to email those
18 individuals about the subject matter in the email?

19 A. Would I usually email them?

20 Q. Was the -- the subject matter, was this correspondence with
21 them part of your business practice?

22 A. Well, I would correspond with them. I wouldn't usually
23 write emails about incoming expenses, but...

24 MR. ETRA: Your Honor, the Defense offers M, as in
25 Mary, 43 as a business record.

1 MS. JIMENEZ: Well, I don't object to it as a
2 statement of the Defendant. I don't know if it's a business
3 record.

4 THE COURT: All right. Without objection admitted
5 into evidence.

6 (Defendant's Exhibit M-43 received into evidence.)

7 MR. ETRA: Okay. Could I publish it, please?

8 THE COURT: You may.

9 BY MR. ETRA:

10 Q. So here now we're in March 22 of 2020. Do you see that?

11 A. I do.

12 Q. Okay. And I want to focus on the second paragraph -- well,
13 first paragraph you say: "You've been asking for
14 reconciliations and incoming expenses for 2019 for Flagler and
15 Orlando." Do you see that?

16 A. I do.

17 Q. Did you request those of both individuals, Ms. Gonzalez and
18 Mr. Graff?

19 A. I did.

20 Q. Why were you including Mr. Graff on this?

21 A. Because he handles the reconciliations of incoming
22 expenses, and Jeanette's also involved, but that's more in
23 his -- in his department. I mean, not department, but his
24 scope of work that he was doing.

25 Q. And second paragraph you say: "On both properties, the

1 lender has asked multiple times for us to provide the 2019
2 income and expense statements." What is that issue? Why is it
3 part of the business to provide a lender this kind of
4 information?

5 A. Because -- the loans here were a little bit different.
6 They were called securitizations. So a little bit different
7 than a normal bank, and there's requirements because you have
8 to provide year-end to the bank -- well, any bank you have to
9 provide year-end. But every quarter they weren't complete. So
10 I'm saying: "Look, you're late. This has to be given to
11 these -- the lenders. It's -- otherwise you're in default of
12 your lease agreement -- your loan agreement."

13 Q. And this, then, continuing, you say: "Please forward to me
14 so I can review." Was it part of your business to review this
15 type of information?

16 A. It is.

17 Q. Why?

18 A. Well, they prepare it, and then I look at it and -- because
19 that's what I do. I want to make sure that -- when you're
20 dealing with banks that you make sure that -- I have to see
21 what they're doing. I mean, I want to see the numbers to make
22 sure that they're accurate with the tenants' rents and the
23 expenses, and make sure it's within the budget. And if it's
24 not within the budget, there's a variance. So they prepare it,
25 because that's what they do, and they have the data and the

1 information, and so I have to be involved with that.

2 Q. And then the paragraph further down that's highlighted, you
3 say: "I understand, Jeanette, you have the information in your
4 computer and Jeff sits with you to go over." Do you see that?

5 A. Yes.

6 Q. Was that your understanding at the time?

7 A. This is my understanding all the time. I just -- listen, I
8 was a little frustrated. That's why I wrote it. I usually
9 don't write emails. So I very rarely write that, but I usually
10 say it. And then I wasn't getting the information. And so I'm
11 telling them: "Guys, you do there -- you sit there together.
12 I need you to give me the actual information because it's
13 important."

14 Q. Okay. And then you say: "As a management company, we are
15 supposed to follow leases, loan documents, and any REAs in
16 order to manage the assets properly." Do you see that?

17 A. Yes, I do.

18 Q. What are you referring to when you say: "The REA"?

19 A. REA is a real estate agreement.

20 Q. What is the basic business function of an REA?

21 A. The REA is in larger properties. It's basically the
22 person -- a company that does the rules and regulations and
23 they are responsible for all the common area maintenance and to
24 make sure it's maintained properly in a first-class manner.
25 And it's very important with national tenants and for a lender

1 that you have the REA in place, so -- if there's multiple
2 owners on a property, someone has to be the referee and make
3 the rules and regulations.

4 Q. And if we can jump ahead, for Orlando, the Alafaya project,
5 initially who was the -- what company was the developer which
6 had the responsibility on the REA?

7 A. Initially?

8 Q. Yes.

9 A. HM Eight, LLC.

10 Q. And was there a change at some point?

11 A. Yes.

12 Q. Approximately, when was there a change?

13 A. 2014, I think, around there.

14 Q. And what entity became the -- essentially acting as the
15 developer under the REA?

16 A. Well, they stepped into developer role as authority. And
17 that was HM Four, LLC.

18 Q. And did that remain so through --

19 A. Yes.

20 Q. -- till today? Well, at least through COVID?

21 There's been some testimony or questions that if
22 something happens -- if someone signs something at your company
23 then --

24 MS. JIMENEZ: Objection to the form of the question.

25 THE COURT: Sustained.

1 BY MR. ETRA:

2 Q. Is it the case that if someone signs something at your
3 companies, then you, Eric Sheppard --

4 MS. JIMENEZ: Objection. Leading.

5 THE COURT: Sustained.

6 BY MR. ETRA:

7 Q. Do you personally authorize or approve everything that's
8 signed at your companies?

9 A. Everything?

10 Q. Everything.

11 A. Not that, no.

12 Q. Can you think of any specific examples with respect to the
13 Orlando property pre-COVID where you didn't -- someone signed
14 something that you didn't approve?

15 A. Yes.

16 Q. What is that example or any example?

17 A. There was a guy named Scott Fish and he was the project
18 executive. And he was running the project at -- not just that
19 Orlando project, but the two other buildings they built, and he
20 signed a lot of documents that were just wrong.

21 Q. What was he doing?

22 A. He was stealing money.

23 Q. So what did you do about it?

24 A. We investigated it, and Orange County told us that they
25 were sending rebate checks to his place somewhere in Tennessee.

1 So HM Four, LLC filed a lawsuit against him and his companies
2 called UP Development, and we sued him in Orlando for what he
3 was doing.

4 Q. You said his company was UP Development. Was his company
5 HM-UP or it was the UP?

6 A. It was the "UP." He's from a place called, I guess, the
7 Upper Peninsula maybe, in Michigan maybe -- Upper Peninsula,
8 Michigan, so he calls it UP Development. Good guy. He's a
9 hardworking guy. He was a very hardworking guy, but he --

10 Q. As a -- doing the construction, how was he?

11 A. He's great.

12 Q. But there was a problem?

13 A. Not during construction.

14 Q. Okay. But the problem you described later?

15 A. Oh. When we finished -- when he finished the Toys "R" Us
16 and DICK'S Sporting Goods in 2012, from 2012 to 2014, just --
17 we couldn't get the books and records because, again, each
18 project, they control their own books and records, whatever
19 projects they're at. We couldn't get the books and records.
20 We couldn't get the bank statements. We couldn't get anything.
21 And then there was no money coming in, and it was very strange.
22 So --

23 Q. How does that happen that that happens under your watch?

24 A. Well, I guess you can phrase it my watch. But if you have
25 projects in different states, and you have people that are

1 doing things, like, you can say that I can only be responsible
2 for so much. I mean, I'm responsible for everything,
3 obviously, clearly, but -- as the owner. But I can't
4 micromanage every single person, what they're doing, and I
5 mean, yes, things happen. I can't go to 10 different states
6 and figure out -- or if there's three big projects, I don't
7 know every nickel that goes into the project except for what I
8 get on a report.

9 I mean, I let people -- I let people go into place,
10 and I trust them, rely on them, and I hope -- sometimes you
11 have a lot of good people -- you have to have a lot of good
12 people, and sometimes you have some bad people. And you just
13 hope that, you know, they do the right thing. That's all.

14 Q. Did you try to put guardrails of protections after what
15 happened with Mr. Fish?

16 A. I don't understand the --

17 Q. Sorry. Did you ask anyone to watch over things -- in your
18 organization that you trusted to watch over things after what
19 happened with Mr. Fish?

20 A. Yes.

21 Q. Who was that?

22 A. Jeff Graff and then Joe Beirne.

23 Q. And when did -- and what happened in COVID? Did you have
24 Mr. Graff available in COVID?

25 A. No. He left. Soon as COVID started, he ran -- he left.

1 Q. Okay. And who -- when we get to the COVID period, who was
2 there -- strike that.

3 All right. Let's start the -- get into the chronology
4 and the development of the Orlando project. When did that
5 first begin?

6 A. What do you mean? What part?

7 Q. Just the beginning. Just put a time frame from the very
8 beginning of the Orlando project.

9 A. I owned a property in Coral Springs. And I sold in 2004,
10 2005. And I sold the property in Coral Springs. And it's
11 called a 1031 exchange. You buy the property -- I mean sell
12 the property and you exchange into a different property, which
13 I did, which is in Orlando, this property.

14 Q. What was the concept, the vision, for this property that
15 became Alafaya Trails?

16 A. Well, the vision was -- it was a little bit risky because
17 there was no approvals and it was a swampland. It was what
18 they call a conservation easement. It was in the middle of --
19 near the University of Central Florida, and they were making a
20 conservation easement. So it was a swamp. So the vision was
21 to drain the swamp, like get rid -- get the approvals to do
22 that, and that was basically what it is.

23 Q. What was the -- what about the location -- what was
24 attractive for you?

25 A. It was attractive because University of Central Florida,

1 which is a great school, and they --

2 MR. ETRA: Your Honor, I'm putting up only for the
3 witness Exhibit X-40.

4 BY MR. ETRA:

5 Q. But if you can just finish your answer and I'll then
6 address it.

7 THE COURT: All right.

8 THE WITNESS: Should I talk?

9 BY MR. ETRA:

10 Q. I cut you off because I had to say something for the Court.
11 What was the attraction of the location for you?

12 A. University of Central Florida was -- it still is a very
13 growing university. Now I think it's one of the second largest
14 universities in enrollment. And the property was located from
15 a big mall across the street, about two million square feet.
16 So usually, when there's a big mall, it doesn't really go
17 anywhere. And then a lot of young families were moving to the
18 area. And there was a road called the 408, which is a highway
19 that connected that area to Downtown Orlando. So you got there
20 very quickly, compared to going on Colonial Drive, which is
21 like a U.S. 1. You just go, go, go, go, go. So that
22 connection was able to get people back and forth to downtown.

23 So I thought -- to me, it was -- it was worth the --
24 you know, to get there before the market starts taking off.

25 Q. I have X-40 in front of the screen. It's not in evidence,

1 but describe generally what it shows. Generally.

2 A. It shows a map.

3 Q. Of?

4 A. Of the Waterford Lakes Town Center area, which is -- where
5 it says: "Burlington," that's the area, where the red dot is
6 right there. Yeah.

7 Q. And the surrounding area, correct?

8 A. Correct.

9 MR. ETRA: Your Honor, I offer -- the Defense offers
10 Exhibit X-40.

11 THE COURT: Any objection?

12 MS. JIMENEZ: No objection.

13 THE COURT: Admitted into evidence.

14 (Defendant's Exhibit X-40 received into evidence.)

15 THE COURT: And Mr. Etra, just let me know when it
16 might be a good time to give the jurors a break.

17 MR. ETRA: Any time, Your Honor.

18 THE COURT: All right. Ladies and Gentlemen, let's go
19 ahead and take a 10-minute recess.

20 COURT SECURITY OFFICER: All rise.

21 (Jury not present, 10:27 a.m.)

22 THE COURT: Mr. Sheppard, the rules apply equally to
23 you, sir. You are not to discuss your anticipated testimony or
24 any aspect of the case, since you are on the witness stand.

25 All right, sir?

1 We're on a 10-minute recess.

2 MR. ETRA: Thank you, Your Honor.

3 (Recess from 10:28 a.m. to 10:39 a.m.)

4 THE COURT: All right. Welcome back.

5 Both sides ready to continue?

6 MR. ETRA: Defense is.

7 THE COURT: On behalf of the Government?

8 MS. JIMENEZ: Yes, Your Honor.

9 THE COURT: All right.

10 COURT SECURITY OFFICER: Please remain standing for
11 the jury.

12 (Before the Jury, 10:41 a.m.)

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

15 Please be seated, everyone.

16 And we'll continue with the direct examination of
17 Mr. Sheppard.

18 MR. ETRA: Thank you, Your Honor.

19 We had X-40 in evidence on the screen.

20 BY MR. ETRA:

21 Q. Mr. Sheppard, ready to proceed?

22 A. Yes.

23 Q. Okay. Could you -- using X-40, the map, could you explain
24 your thinking in terms of the location.

25 A. My thinking, along with other people in my company, you

1 know, together, UCF was down the street, which is where it
2 says: "UCF Recreation Wellness Center" there on the top of the
3 screen. And there's the 408 highway, and that goes all the way
4 to Downtown Orlando.

5 And I saw -- there's a lot of growth with a lot of
6 young families. And they always want to get young families in
7 there that they're buying houses and building their life
8 together. So it's a good, stable market where people are, you
9 know, working and, you know, building their life. So that's
10 kind of how we pinpoint a location, so they can have services
11 for them. So that was kind of my thought process to do that,
12 along with some residential apartments as well for the
13 university.

14 Q. Was that part of the plan, to put residential apartments in
15 too?

16 A. Yes.

17 MR. ETRA: For the witness only, could we put up
18 Exhibit X-6.

19 BY MR. ETRA:

20 Q. Generally speaking, do you -- it's not in evidence, so --
21 but generally speaking, what is X-6, sir?

22 A. X-6 is the earthwork that commenced on this particular
23 location.

24 Q. Is this a fair and accurate picture of the development at
25 the very earliest stages?

1 A. Yes.

2 MS. JIMENEZ: Can we give a time frame, please?

3 BY MR. ETRA:

4 Q. What time frame would this be for, Mr. Sheppard?

5 A. I don't know the exact date. 2010, '09 -- '09, '10, around
6 '09.

7 MR. ETRA: We renew our offer for Exhibit X-6.

8 THE COURT: Is there any objection?

9 MS. JIMENEZ: No objection.

10 THE COURT: Admitted into evidence.

11 (Defendant's Exhibit X-6 received into evidence.)

12 MR. ETRA: Can we publish it, please?

13 THE COURT: You may.

14 BY MR. ETRA:

15 Q. What is the -- which part -- could you -- best you can with
16 this photo, could you describe the scope of the land at issue
17 here that was purchased for this development. Which part of
18 this is the land that your companies purchased?

19 A. Where you see all the muck and the site work, where there's
20 like a silt fence -- like a black -- a black little fence that
21 you can see by the -- dividing the property, plus all the trees
22 in the back, all the trees all around it.

23 It's total -- they are different parcels, but about
24 probably around 40 acres, approximately, between all the
25 parcels.

1 Q. This whole area, was this all single-family homes?

2 A. No. It was a swamp. It was a conservation easement.

3 MR. ETRA: And if we could take this down and for the
4 witness only put up Exhibit M, as in Mary, 51.

5 BY MR. ETRA:

6 Q. Without going into detail, because it's not in evidence,
7 could you describe what this picture shows generally.

8 A. It's the -- the market where it's at, and also the overall
9 site of ownership of all of the different parcels.

10 Q. And could you put a time frame on when this picture was.

11 A. 2019, '18, '19.

12 Q. Is this a fair and accurate picture of the development in
13 that time period?

14 A. Yeah.

15 MR. ETRA: The Defense offers Exhibit M, as in Mary,
16 51.

17 THE COURT: Any objection?

18 MS. JIMENEZ: No objection.

19 THE COURT: Admitted into evidence.

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

21 MR. ETRA: Publish it, please.

22 BY MR. ETRA:

23 Q. Could you take us through the different parts of the
24 development, the building and whatnot? Let's start on the very
25 right-hand side, the box there, the square. What is that?

1 A. On the top right side, you asked?

2 Q. Well, not top. All the way to the right -- yeah, top of
3 the developed part, yes.

4 A. Right. So the larger building is a 60,000-square-foot --
5 at this particular moment, probably 18 in this picture because
6 they went bankrupt, but Toys "R" Us, Babies "R" Us Superstore.
7 It was the flagship store that I built -- or we built.

8 Q. Okay. And then the other roughly equal size white square
9 or so on the other corner, what is that?

10 A. Those are -- one is a 50,000-square-foot DICK'S Sporting
11 Goods. And near the road, there was a small shop space that
12 we -- abutted that particular building.

13 Q. Is that the -- there's a thick line sort of toward the
14 bottom. Yeah. So where the circle is now, what was there?
15 What is that?

16 A. That's another building where there was a quarter in
17 between the buildings for fire safety and then the small shop
18 space where the other tenants were at.

19 Q. Does that include Mattress1One -- or did it include
20 Mattress1One?

21 A. At that particular moment in time, yes.

22 Q. Okay.

23 MR. ETRA: And if we could move over to the other
24 smaller boxes, let's just go to the right from where we were.

25

1 BY MR. ETRA:

2 Q. What is the first one?

3 A. The first one is a 10,000-square-foot Bahama Breeze
4 restaurant, which is a restaurant operated by the Darden
5 companies.

6 Q. And the next box over, what is that?

7 A. It's vacant land.

8 Q. Okay. At some point -- and we'll get to that -- what was
9 going to be built there?

10 A. At that time, we were negotiating with one of those
11 urgent-care-type places, but we ended up not moving forward
12 with them and doing something with JPMorgan Chase to build a
13 JPMorgan Chase branch.

14 Q. A bank? A bank branch?

15 A. Yeah. A bank.

16 Q. Okay. And then further over to the right, the next little
17 box area, in the corner, apparently, undeveloped still,
18 correct, at least at this point?

19 A. At this point, yes. It's called an outparcel.

20 Q. What do you refer to as outparcels?

21 A. Outparcels are like these little -- you know, the large
22 buildings in the back are like -- for lack of a better word,
23 big-box centers. But then the outparcels, which was my main
24 business, was these little outparcels in front.

25 Q. Like Bahama Breeze and --

1 A. Bahama Breeze. It's usually right in front on the road.
2 So a smaller -- much smaller buildings but with not a lot of
3 height, so you can see the back.

4 Q. And then over on the further right, the last outparcel on
5 the right, at some point, what was that going to become?

6 A. Starbucks.

7 Q. And then now we've got -- you see the part that's built in
8 and then the part that's green. What is the rest of the area
9 that's green here?

10 A. Well, a portion of it is part of this property. And then
11 the other portion is -- is another conservation easement to be
12 developed at a later date.

13 Q. Could you describe generally what is still part of this
14 property.

15 A. Adjacent to the Toys "R" Us, Babies "R" Us Superstore,
16 there's those two buildings right there. That's part of the
17 improved property. When I say: "Improved," the parking lot
18 and -- the parking lot area. And then the rest of it is part
19 of what they call the phase 3 section.

20 Q. And when you say: "Phase 3," what is that generally
21 referring to?

22 A. I don't understand what you mean.

23 Q. So did -- phase 3 was a part of the development?

24 MS. JIMENEZ: Objection.
25

1 BY MR. ETRA:

2 Q. What was phase 3?

3 THE COURT: Overruled.

4 THE WITNESS: Phase 3 -- it's called a master plan.

5 So you have -- like, in a master plan -- when you get approved,
6 you have a master plan. That was the third part of the
7 project, but you had to get -- it had to be incorporated into
8 the phase 1 and 2. So it wasn't -- at this particular moment
9 in time, it wasn't approved to do anything yet, until the
10 owners of phase 1 and 2 got the approvals to add to the
11 property.

12 Q. So the approval process was staggered to be a little later
13 after what was already built here, right? Or is that wrong?

14 A. It's partially right. I think like it was very tough
15 because we had to get approval. There was a lot of people
16 against it, I guess. So it didn't get staggered on purpose.
17 It got staggered because of just the government doing approvals
18 and stuff like that.

19 Q. Took a long time?

20 A. Yeah. Like five years.

21 Q. All right. We'll get to that.

22 MR. ETRA: And then can we put -- take this down and
23 for the witness only, because it's not in evidence, M, as in
24 Mary, 50, 50. And I want to put up the second page, too, for
25 the witness as well.

1 Q. Do you recognize -- it's not in evidence. Describe
2 generally what M-50 is.

3 A. It's an email from Jeff Graff to me.

4 Q. And what is the attachment?

5 A. Is this the one part of it?

6 Q. We got a lot of pages. It's the first page? Why don't we
7 skip through --

8 A. But I'm saying the screen is like two different documents.
9 Are you talking about on the 50 one?

10 Q. Well, the next page is the attachment. So I'm asking you
11 what the attachment is which is on the right side --

12 A. Oh. I'm sorry. I understand.

13 Q. Okay.

14 A. It's the Declaration of Reciprocal Easements, Rights and
15 Maintenance Covenants for Shoppes at Alafaya.

16 Q. In your business, what do you refer to that kind of
17 document --

18 A. An REA.

19 Q. And what is this the REA for?

20 A. That is for the property that HM-UP and all them own.

21 Q. The development?

22 A. The development, yeah.

23 Q. In Orlando that we just looked at?

24 A. Correct.

25 MR. ETRA: The Defense offers M-50.

1 THE COURT: Any objection?

2 MS. JIMENEZ: Can we see the signature on this other
3 document, please?

4 MR. ETRA: Your Honor, I believe I've made the
5 predicate without having to see the signature.

6 THE COURT: I think it's just a matter of courtesy, if
7 you could provide just a showing of the complete document.

8 MR. ETRA: That is on.

9 THE COURT: All right. Any objection?

10 MS. JIMENEZ: No objection.

11 THE COURT: Admitted into evidence.

12 (Defendant's Exhibit M-50 received into evidence.)

13 MR. ETRA: Let's go back to the first page. We could
14 take down the cover email and just focus on the first page of
15 the REA.

16 BY MR. ETRA:

17 Q. So on the upper right-hand corner, what does that indicate
18 generally?

19 A. That is the recording of the document in the public record
20 at Orange County that's required.

21 Q. So this is publicly available to anyone who looks for it,
22 correct?

23 A. Correct.

24 Q. And does it indicate the date that it was filed on the
25 second line? Do you see that?

1 A. September 27th, 2011.

2 Q. Okay. And then on the left -- on the other side, what
3 entity filed that?

4 A. HM Eight, LLC.

5 Q. And if we can go to the first paragraph in the declaration
6 and focus on the words "HM Eight Management" and then how it's
7 defined on the fourth line.

8 A. HM Eight Management? There's not an --

9 Q. Sorry. HM Eight, LLC. My apologies, Mr. Sheppard.

10 A. No worries.

11 Q. Thanks for catching that.

12 It's says: "HM Eight, LLC, a Florida Limited
13 Liability Company, Developer." Is that correct that HM Eight,
14 LLC was the -- had the role of the developer in this document?

15 A. In 2011, that's what it says.

16 Q. Okay.

17 MR. ETRA: And if we can go to Page 3 of the document,
18 focus on the bottom paragraph "Collection Fees."

19 BY MR. ETRA:

20 Q. What does that refer to in the context of the REA?

21 A. It's the collection -- if the owners or tenants or somebody
22 is not paying their CAM, that you have the ability to collect
23 it, and different methods how you can collect it.

24 Q. Why don't we go to the next page and then I'll ask you to
25 focus on the word "Common Areas" at the top. You used the term

1 CAM, okay. Please explain what -- well, first of all, what
2 does it stand for?

3 A. CAM stands for common area maintenance.

4 Q. And generally, what does that refer to in this business?

5 A. Well, generally, it's basically all the areas of a shopping
6 center -- or it can be office too, but -- that are outside the
7 four walls of the building. So the roads, the sidewalks, the
8 landscaping, the offsite improvement, everything outside the
9 four walls where the tenant occupies is called a common area.
10 It's separate.

11 Q. And under this document, who is responsible for that?

12 A. Under this specific document, HM Eight, LLC.

13 MR. ETRA: If we go to Page 13 of the document, first
14 to "Common Area Improvements."

15 BY MR. ETRA:

16 Q. And generally speaking, what is that referring to?

17 A. (No verbal response.)

18 Q. What is common area improvements?

19 A. Common area improvements is the improvements in the common
20 area -- the developer, HM Eight, at this point, they're the
21 party that is responsible to do everything outside the four
22 walls of the building to build, the parking lot -- it's called
23 the infrastructure, the lights, the parking lot.

24 Q. Well, I put that up on the screen. Do you see that,
25 referring to parking and lighting?

1 A. Oh, yes.

2 Q. Is that part of the common area responsibilities of HM
3 Eight?

4 A. Yeah. They're the party that actually has to -- they build
5 it and sometimes they modify it, they alter it, because the
6 counties sometimes make you do stuff. So they're in charge of
7 that area, and none of the owners of the buildings can do it.
8 The developer is the only one who has the ability to go into
9 that area and do any work whatsoever.

10 MR. ETRA: Page 23 of the document.

11 BY MR. ETRA:

12 Q. And let's focus on "Developer's Responsibilities as to
13 Common Areas." And generally speaking, what does that
14 basically set out from your perspective as a businessperson?

15 A. The developer's responsibility is to, like I said before,
16 maintain it. You do all the repairs. It's your responsibility
17 to keep it in a first-class manner so the whole entire shopping
18 center can function. I mean, if it's -- I'm sorry.

19 Q. Sorry. I didn't mean to cut you off. Were you done?

20 A. Yeah. That's fine.

21 MR. ETRA: Go to the next paragraph below that.

22 BY MR. ETRA:

23 Q. It says: "Maintenance Contracts." What does that
24 essentially provide from your perspective as a businessperson?

25 A. That means the developer has the right -- it's really the

1 obligation to enter into some type of management, operation,
2 maintenance, to facilitate the work. I mean, you have to have
3 a contract with someone to facilitate the work and do the work.

4 Q. And did that happen in this case? Did HM Eight enter into
5 a contract with another entity to perform these services and
6 undertake these responsibilities?

7 A. At that particular moment in time, in 2011, yes, they did.

8 MR. ETRA: Let's show -- can we put up in evidence
9 Government Exhibit 58.

10 BY MR. ETRA:

11 Q. Let's -- do you see the document in front of you?

12 A. I do.

13 Q. Let's go to the signature page.

14 MS. MARTINEZ: Your Honor, I think it would be helpful
15 for the record just to state the Bates numbers because it's a
16 composite.

17 MR. ETRA: Oh. Fair enough. That's fine.

18 THE COURT: All right. Certainly.

19 MR. ETRA: That's fine. I didn't realize that. So
20 it's SHEPP -- it's 032151 to 032158.

21 BY MR. ETRA:

22 Q. I've got the first and last page here. Do you see that?

23 A. I do.

24 Q. Do you recognize this document?

25 A. I do.

1 Q. What is this document?

2 A. This document is a management agreement between HM Four and
3 HM Eight.

4 Q. And what's the year of this document?

5 A. 2014.

6 Q. And generally speaking, who's the -- looking at the
7 signature block, who's the owner here?

8 A. It says: "HM Eight."

9 Q. And who's the manager?

10 A. It says: "HM Four."

11 Q. And generally speaking, what does this contract provide for
12 from your perspective as a businessperson?

13 A. It just -- again, you have to have an agreement, and it's
14 HM Eight and HM Four just signing the rights to HM Four from HM
15 Eight to operate the REA, the management of the shopping
16 center.

17 Q. So I've got a section highlighted here, 1.1. What does
18 that provide?

19 A. "Owner hereby appoints manager and manager hereby accepts
20 the appointment to manage the property in accordance with the
21 terms of this agreement."

22 Q. And essentially, in English, what does that mean?

23 A. Essentially, you have to have a document that says that
24 they have the right and authority to do the management, as I
25 described before, of the CAM, the common area -- maintenance

1 area and stuff like that.

2 Q. Do what HM Eight has to do under the REA?

3 A. Correct.

4 MR. ETRA: And if we can go to Paragraph 3.1 just
5 right below that.

6 BY MR. ETRA:

7 Q. You see it provides -- what does that provide, in your
8 words as a businessperson?

9 A. It has the -- again, it describes exactly what the
10 manager -- what they're allowed to do, the authority, what
11 they're supposed to do, and the expectations and requirements
12 that you're -- how you're going to maintain and stuff of that
13 nature.

14 MR. ETRA: Go to Section 3.5, please.

15 BY MR. ETRA:

16 Q. What does that provide?

17 A. The manager is supposed to collect all of the rents from
18 the tenants and other charges that become due. So...

19 Q. And did HM Four actually perform this role?

20 A. They did.

21 Q. Now, in all this time before COVID, did HM Four have its
22 own bank account?

23 A. No.

24 MR. ETRA: I'd like to put up for the witness only
25 Exhibit X-31.

1 BY MR. ETRA:

2 Q. And without going through it -- without describing it in
3 detail, because it's not in evidence, could you look at the
4 first -- it's three pages -- and then I'll ask you questions.

5 A. I can do that.

6 Q. Okay. Tell me when you're ready for the next page.

7 A. I'm ready for the next page.

8 Okay.

9 MR. ETRA: Next page, please.

10 THE WITNESS: I see that.

11 BY MR. ETRA:

12 Q. Let's go back to the first page. What are you looking at
13 here, sir, in these three pages? I'm asking you generally --
14 let me state it differently.

15 Did you -- were you involved in the preparation of
16 these charts?

17 A. Me?

18 Q. Yes.

19 A. No.

20 Q. Did you review these charts?

21 A. No.

22 MR. ETRA: Let's take the chart down for now.

23 THE WITNESS: Well --

24 MR. ETRA: Keep it up for a -- let me go back up and
25 do this again.

1 BY MR. ETRA:

2 Q. Do you recognize these charts?

3 A. I do.

4 Q. What do you recognize them to be? And I'm asking you
5 generally and not the specifics because it's not in evidence.

6 A. It is the rental funds per the documents that we spoke
7 about, and how the cash flow works as far as the tenants to the
8 owners, the REA. And then it shows you exactly how the
9 maintenance -- the cash flow actually works.

10 Q. And do the three charts accurately show the cash flow
11 under -- in different ways?

12 A. Yes.

13 Q. Okay.

14 MR. ETRA: Your Honor, we offer X-31.

15 THE COURT: Is there any objection?

16 MS. JIMENEZ: I don't think he's laid a proper
17 foundation.

18 THE COURT: Can you advise specifically -- Mr. Etra,
19 why don't you -- the objection is sustained. Let's ask the
20 necessary questions.

21 BY MR. ETRA:

22 Q. Okay. Well, let's start with the first page. But again
23 going without the detail, could you describe what generally --
24 generally -- does the first page describe, without going into
25 how it describes it.

1 A. It describes that the property -- where the tenant --

2 Q. No. I'm asking you the topic that's covered by the first
3 page.

4 A. Oh. It's the -- without reading it, is that what you're
5 asking me?

6 Q. In your words, what does the first page cover?

7 A. I'm sorry. I just -- it's just how the funds from the
8 rents are distributed throughout to the landlord, and also for
9 the CAM. And it delineates between what the rent is and what
10 the CAM is, and then how the CAM is spent, and who spends it,
11 and to be in compliance with all the documents, I mean, as far
12 as CAM is concerned.

13 MR. ETRA: Let's go to look at the second page. Still
14 not in evidence.

15 BY MR. ETRA:

16 Q. Generally speaking -- generally speaking, what does the
17 second page show -- topic?

18 A. And this shows -- this basically shows the tenant, how they
19 pay to the landlord, and how it actually gets done in the real
20 world. Considering that I control all the entities as far as
21 the managing member, it shows exactly how that actually is
22 distributed in my world, in our administrative world of running
23 the properties.

24 Q. Okay. And the third, last, page, generally -- in the same
25 general way that you just did it for the other two, what does

1 this show?

2 A. This shows a chart where -- if the tenant is not paying and
3 you have shortfalls, it shows what the owner -- the majority
4 owner of the shopping center -- how they cover the shortfall,
5 where it gets put into in order to maintain the REA and be in
6 compliance with all lease terms and loan documents. So it
7 shows you how it actually gets into the property from an
8 equity/execution of the common area.

9 MR. ETRA: Defense offers Exhibit X-31.

10 THE COURT: Any further objection?

11 MS. JIMENEZ: Same objection.

12 THE COURT: Overruled. The exhibit will be admitted
13 into evidence, X-31.

14 (Defendant's Exhibit X-31 received into evidence.)

15 MR. ETRA: Could we start with the first page and
16 publish to the jury.

17 BY MR. ETRA:

18 Q. It's basically repetitive, but now we have it in front of
19 us. So could you describe -- first of all, could you
20 describe -- the title is Flow of CAM Rental Funds Per
21 Documents. Do you see that?

22 A. I do.

23 Q. Let's start with the basic concept of CAM rental funds.
24 Generally speaking, in your leases, is it typically broken down
25 in different ways, the lease payment?

1 A. Yes.

2 Q. In what way is it broken down?

3 A. It's broken down so you have base rent, and then -- there's
4 the gross rent, but you have the base rent and then you have
5 CAM, common area maintenance. So there's funds for that, then
6 there's funds for insurance, and there's funds for real estate
7 and taxes. And each one has a category that goes -- that's in
8 the leases.

9 Q. Is there a category for CAM --

10 A. Yes.

11 Q. -- typically?

12 Okay. And so -- and then it says: "Flow of CAM
13 Rental Funds Per Document." So could you take us through this
14 flowchart about how the flow is supposed to work if you just
15 follow the documents strictly?

16 MS. JIMENEZ: Time period, please.

17 MR. ETRA: This is generally when things are working
18 properly.

19 MS. JIMENEZ: He's testifying for the witness.

20 Objection. There's no time frame.

21 MR. ETRA: I'm sorry. I'll --

22 THE COURT: All right. Let's sharpen in terms of the
23 time frame, please.

24 MR. ETRA: Fair enough. I apologize, Your Honor. I
25 should be asking the witness.

1 BY MR. ETRA:

2 Q. Mr. Sheppard, what time period does this cover?

3 A. Well, it says: "REA." So -- and the REA is from 2011.

4 Whenever the REA is filed, that's how you're supposed to
5 operate the REA with the owners of the property. But this
6 particular document is showing Burlington, so it would be from
7 the time Burlington was there. That's how I look at it.

8 Q. What about the fact that HM Four is there? What does that
9 also tell you about time frame?

10 A. That time frame is from 2014, when HM Four became the --
11 was assigned the responsibility in the REA from HM Eight.

12 Q. All right. So with that explained, and -- by the way, is
13 this chart dependent on who the tenant is or is it more general
14 than that?

15 A. It doesn't matter who the tenant is. It's for all the
16 tenants, not just -- it's all the tenants in the shopping
17 center.

18 Q. Okay. So then, with that in mind, could you just explain
19 how the flow of funds is supposed to work as shown on the first
20 page or just your testimony.

21 A. If you look at the chart, it's -- where it says:
22 "Burlington," that's really the collection of all of the
23 tenants in the shopping center. And when they pay their rent,
24 they are -- they pay their contractual obligations with HM-UP.
25 And HM-UP is supposed to distribute the money for the CAM

1 portion only to HM Four on the top. And that -- that would
2 satisfy the REA where HM-UP pays HM Four for their advance
3 monies for the CAM charges.

4 Q. And what happens next after that per the documents?

5 A. Per the documents, then HM Four drops down and they pay
6 the -- HM Management. And then HM Management, they pay the
7 workers, they pay -- if they have individual workers that work
8 for them, they pay them or -- or -- and they pay like Waste
9 Management and, you know, companies like that.

10 Q. And then the work gets done, right?

11 A. Correct.

12 MR. ETRA: Let's go to the second page now.

13 BY MR. ETRA:

14 Q. This says: "Flow of CAM Rental Funds in Reality." So in
15 terms of how it actually worked with the flow of funds, what
16 was different from the documents?

17 A. Well, the difference is that I'm the managing member of HM
18 Four, the managing member of HM-UP, and HM Management. So the
19 tenants -- and HM Four is the 99 percent owner. HM Four owns
20 HM-UP. So they're the 99 percent owner of HM-UP. Right? So
21 that's connected because they're the majority owner.

22 So the tenants pay HM-UP. And because HM Four is the
23 99 percent owner, to go to there and all the way around is a
24 little bit -- doesn't make any sense in reality. So then it
25 skips from HM-UP, and it goes -- I'm sorry. It skips to HM

1 Four, and then it goes to HM Management. And then HM
2 Management, pursuant to an annual budget -- you have a budget
3 every year that's approved by the tenants and the banks, and
4 then they pay the bills for the workers, for electric, and
5 everything else that goes along with that.

6 MR. ETRA: All right. Now, let's go to the -- let's
7 go to the next page.

8 BY MR. ETRA:

9 Q. It says: "Flow of CAM Rental Funds When Shortfall." Could
10 you explain what's being shown here and what actually happens
11 in a shortfall?

12 A. A shortfall comes when a tenant -- for instance,
13 Burlington, when they weren't open, or other tenants aren't
14 paying, they're not paying rent, or something happens, there's
15 still -- no matter what, HM Four has the financial
16 responsibility pursuant to the REA to make sure they maintain
17 it, maintain the shopping center.

18 So what happens is, is that if the -- if a tenant's
19 not paying, then the owners of HM Four -- Eric Sheppard, and my
20 wife, Jennifer Sheppard, in TBE, joint ownership -- they
21 contribute the money from HM Four to HM-UP or to HM Management,
22 just to make sure that the -- everything is maintained -- I
23 mean the property maintenance and on -- this parcel is 20 --
24 about 20 acres. So all of that is maintained.

25 MR. ETRA: For the witness only, could we pull up

1 Exhibit X-16.

2 BY MR. ETRA:

3 Q. Do you see that, sir?

4 A. I do.

5 Q. Without going into the details, because it's not in
6 evidence, could you explain generally what X-16 is.

7 A. Yes. This is the budget. It's an annual budget that's
8 required by the bank and by tenants, by the -- it's 60 days
9 prior to the next year.

10 Q. And what time period is this budget for?

11 A. This is from January through December 2019.

12 Q. Is this the -- does this include the CAM?

13 A. Yes. It includes the CAM, insurance, taxes. And it's the
14 annual budget for -- so the owners of the properties have it.

15 MR. ETRA: Defense offers Exhibit X-16.

16 THE COURT: Is there any objection?

17 MS. JIMENEZ: Objection. Foundation. Where does it
18 come from? Is it a business record? Is it a bank record?

19 THE COURT: Lay the foundation as a business record or
20 the basis for the introduction.

21 BY MR. ETRA:

22 Q. Who creates and maintains this document?

23 A. The property management company is the one who creates the
24 document, and the developer, HM Four, is responsible to create
25 it. And they give it to the owners of the property for them to

1 approve. And then the owners give it to their banks, whichever
2 their banks may be, and they give it to their bank.

3 So it originally starts with the property management
4 company gives it to the owners. The owners then give it to the
5 banks. Everyone approves the annual budget. That budget now
6 becomes the budget for the year. And that is the -- the
7 document that says you cannot go past any of these line items
8 without approvals.

9 Q. So these companies that's listed here, who was the project
10 management company, which company?

11 A. This would be -- the project is HM Four as the REA. This
12 is what the REA person is supposed to have -- not person, the
13 company. So between HM Four and HM Management, they work
14 together to create the budget to present to the owners.

15 Q. And they created this?

16 A. Correct.

17 MR. ETRA: The Defense offers -- reoffers Exhibit
18 X-16.

19 MS. JIMENEZ: Same objection.

20 THE COURT: Overruled. It will be admitted as X-16
21 into evidence.

22 (Defendant's Exhibit X-16 received into evidence.)

23 BY MR. ETRA:

24 Q. Okay. So now that we're looking at it, if we could -- this
25 is the 2019 budget, and it's got -- it says on the top HM

1 Development Trails and TRU, right?

2 A. Correct.

3 Q. Because they own different properties?

4 A. They do.

5 Q. And this does include CAM?

6 A. I'm sorry?

7 Q. Does it include the common area maintenance budget?

8 A. Yes.

9 Q. If you look at the bottom right-hand corner, you see the
10 number of about 700,000. Do you see that?

11 A. I do.

12 Q. There was evidence in the HM Four EIDL application of cost
13 of goods sold being put there -- I think about \$250,000. Do
14 you recall seeing that?

15 MS. JIMENEZ: Objection. Leading.

16 THE COURT: Sustained.

17 BY MR. ETRA:

18 Q. Can you roughly work through for this what the CAM was
19 for -- that HM Four was responsible for based on this document?

20 A. I can.

21 Q. Would you please do that.

22 A. Okay. If you go down to the -- if you go down to the line
23 item, which is Property Taxes, because you have large tenants,
24 the property taxes are paid directly by the tenants. So that
25 would eliminate the \$232,000.

1 And then you have to eliminate -- not eliminate. Then
2 you have -- you have multiple owners. So you have HM
3 Development Alafaya Trails, LLC, you have HM-UP TRU, LLC, and
4 there's also a Darden. Darden is not on here because they get
5 a separate budget. And those -- they all take their -- they
6 take their portion. So it comes down to \$500,000. Then it's
7 50/50. And then that's where you get 250.

8 Q. Roughly?

9 A. I mean, 50 divided by two is 50 -- I'm sorry -- 250.
10 Sorry. Did I explain that well? I don't know. Sorry.

11 Q. Just -- okay. There's no question pending.

12 MR. ETRA: We could take this down.

13 BY MR. ETRA:

14 Q. I just want to cover the -- you mentioned the financial
15 documents for a loan that was securitized. Do you recall
16 saying that?

17 A. Yes.

18 Q. What loan were you referring to?

19 A. That was the first mortgage on the property.

20 Q. What's the lender for that?

21 A. Basis Capital.

22 Q. And is that the one that had these interest payments
23 throughout COVID?

24 A. Yes.

25 Q. What was the approximate annual interest payment for the

1 Basis loan?

2 A. I don't know the monthly payment. It was around 90. I pay
3 90 or 91,000 dollars per month.

4 Q. Let's talk about the Toys "R" Us bankruptcy and what
5 happened thereafter. So Toys "R" Us goes bankrupt. What's the
6 next step for you to resolve that?

7 A. They went bankrupt. And you go through -- they kept the
8 store for a while. It was one of the last stores to -- it was
9 one of the top stores in Florida, according to them.

10 And somewhere near the end of 2018, I believe, that's
11 when they like -- when they liquidated their whole company,
12 they got rid of all their assets, so they had to close the
13 store, and they closed the store. So that impact was about
14 \$1.2 million per year in income by them not paying. So
15 therefore there's a big hole in the financial model.

16 Q. What did you do to deal with that big hole in the financial
17 model?

18 A. We called our financial wealth advisers and said: "There's
19 a problem," and we were figuring out ways to fund the hole,
20 because you have to maintain the common area and you have to
21 maintain certain things. You have to pay the interest. So we
22 figured out a way to do that by funding it ourselves.

23 Q. What does that mean, "Funding it ourselves"?

24 A. You're coming out of pocket to actually -- you have to make
25 sure that the mortgage is maintained monthly, and then you have

1 to make sure -- that whole chart you showed of the common area,
2 there's no money coming in to pay for all that. So someone has
3 to pay for it; otherwise, you're in default of all your other
4 leases that are people that are still there.

5 Q. What are the challenges to finding a new tenant for that
6 space?

7 A. That's why I started with the small shopping center
8 business with 10,000 square feet. It's a 60,000-square-foot
9 building and it's unique. It's a Toys "R" Us. And it's hard
10 because there's only so many big buildings. And if you have to
11 divide the building, it's very costly to -- I'm boring
12 everybody, right? But it's costly, you know, to divide the
13 spaces. It's 24-foot high. It's a problem. So you want to
14 try to find one tenant for that building.

15 Q. What about having an anchor tenant? Was that important
16 too?

17 A. Yes. You don't want to have another tenant that comes and
18 goes. It doesn't look -- it's not great. So -- and it's very
19 costly to convert a building. So thank God there was a
20 Burlington down the street and the location is a very good
21 location. And so we were able to secure -- start negotiating
22 with Burlington in beginning of 2019. So...

23 MR. ETRA: For the witness only, put up -- please put
24 up -- I apologize. It's in evidence -- Government Exhibit 27.

25

1 BY MR. ETRA:

2 Q. Do you recognize that, sir?

3 A. I do.

4 Q. What is that?

5 A. This is the lease agreement between HM-UP Development
6 Alafaya Trails and Burlington Coat Factory.

7 Q. And this is what you were able to negotiate to resolve the
8 problem with the hole with Burlington -- hole with Toys "R" Us.
9 Excuse me.

10 A. Well, it didn't solve the problem. It was one step to
11 solving the problem because --

12 Q. Why didn't it solve the problem to sign the lease?

13 A. What?

14 Q. Why was it only one step to solving the problem?

15 A. Because it was a great step because you had the lease, but
16 now you actually -- as the landlord, you have to actually
17 construct the -- you got to completely gut the building of
18 60,000 square feet, take it down to concrete, and then
19 reconstruct this Burlington store.

20 Q. And the lease is dated late October 2019. Do you see that
21 on the right-hand side, upper --

22 A. I do.

23 Q. Okay. And generally speaking, how complex was -- what were
24 the nature of the specifications for this building, generally
25 speaking?

1 A. It was a turnkey build, where we had to build not only
2 the -- what they call -- not only just the walls and the
3 bathrooms and stuff, but we had to build actually like where
4 you check out, the little counters and stuff. We had to build
5 all that stuff as well. And then you had to do stuff outside
6 of the building, which makes it more complicated, because you
7 don't control the outside. So we had to build the outside of
8 the building, too, with the parking lots and all kinds of
9 stuff. So...

10 MR. ETRA: Go to Bates Number 31840.

11 BY MR. ETRA:

12 Q. Focus on "Landlord's Work" and the first paragraph there.
13 What does that provide in your words?

14 A. They will accept delivery of the space -- as long as you
15 pay for all the construction and you actually do all the
16 construction, they will take acceptance of the space and move
17 their store to your location.

18 MR. ETRA: Let's go to Page -- much further down --
19 31884.

20 BY MR. ETRA:

21 Q. What's on that page, sir?

22 A. This is the -- what they call landlord's work. So this is
23 what you have to do. And because they're national companies,
24 they have to have -- as you know, you go into every store, they
25 look the same. So you have to strictly -- I mean strictly --

1 abide by the exact detail of their plans so their store, you
2 know, the national company, in this case Burlington, they
3 maintain, you know, the integrity of their design on all their
4 stores.

5 MR. ETRA: For the witness obviously, M, as in Mary,
6 59.

7 BY MR. ETRA:

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. What is -- generally speaking, without giving the details
11 because it's not in evidence, what is this?

12 A. This is from Burlington and the architect, what they call a
13 spec, a prototypical spec for their remodeled stores.

14 Q. And was this provided by Burlington for your companies?

15 A. Yes. By Burlington and the architect that we hired,
16 CASCO -- oh, sorry.

17 Q. So was your architect that you hired involved in the
18 preparation of this document?

19 A. Yes.

20 Q. And did you ultimately receive it from Burlington as a
21 finished -- and do you ultimately receive it and use it as
22 specifications for the construction?

23 A. Yes.

24 Q. As part of your business?

25 A. Correct.

1 MR. ETRA: We offer -- oh. It's already in evidence,
2 apparently.

3 MS. JIMENEZ: What exhibit number is this, please?

4 THE COURT: Exhibit number, please.

5 MR. ETRA: M-59. I apologize. I didn't realize it
6 was in evidence.

7 BY MR. ETRA:

8 Q. How detailed, from your perspective, are these
9 specifications?

10 A. It is extremely detailed and -- very detailed.

11 MR. ETRA: Could we go through the first few pages.

12 BY MR. ETRA:

13 Q. Cover a lot of topics?

14 A. Yes.

15 MR. ETRA: Let's go through the first few pages after
16 this.

17 Let's go three or four more pages in.

18 BY MR. ETRA:

19 Q. Cover pretty much every area for the construction?

20 A. Well, it covers more than that, but --

21 Q. How so?

22 A. Well, there's not only construction, but it's how you
23 construct. It's a typical national -- I've built Walmart
24 stores as well. It's the same thing. It's not just
25 construction. It's how you have to act, what kind of workers

1 you have. I mean, it's a whole -- it's beyond the
2 construction. It's how you have to operate the business and
3 construct their store to do business because they're a public
4 company and they have expectations. And they try to put it in
5 this manual. It's like a manual.

6 MR. ETRA: Let's take this down.

7 BY MR. ETRA:

8 Q. What were the time requirement demands -- let me start
9 again.

10 What were the time obligations for your companies to
11 provide a finished product for Burlington to move in?

12 A. They were very, very tight, meaning --

13 Q. How so?

14 A. Because they were -- they were a store down the street, and
15 their lease was up. And the owner of the building was going to
16 build student housing, so they were evicting them. So they had
17 to be in -- I believe it was March, April. It was around April
18 2020. And we signed the lease on November 1st and we didn't
19 have our building permit yet. So it was a very, very intense
20 schedule for that size of building.

21 Q. And under the lease agreement, what were the consequences
22 of not meeting Burlington's deadline?

23 A. A liquidated damage of \$3,000 per day.

24 Q. Could they also terminate?

25 A. And they can terminate -- or they can terminate.

1 Q. Let's talk about Mr. Jeff Vasilas. Okay?

2 A. Okay.

3 Q. How did you first meet Mr. Vasilas?

4 A. I met him through the law firm representing me, I guess
5 representing him for something, and they introduced us.

6 Q. From your perspective, what was the purpose of the
7 introduction to Mr. Vasilas?

8 A. That he was an owner of a building in Miami, near Miami
9 Gardens Drive.

10 Q. King of Diamonds?

11 A. The King of Diamonds place.

12 Q. And what was the purpose of the meeting?

13 A. The purpose was for me to see if I had any interest in
14 buying the building because he was trying to sell it.

15 Q. And did you come to terms?

16 A. I did.

17 Q. So do you -- have you actually entered into a contract to
18 buy the building from the company --

19 MS. JIMENEZ: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. ETRA:

22 Q. How far did you get in terms of trying to buy the property?

23 A. We negotiated a contract and put a deposit down to acquire
24 from his company K-O-D-R-A N-Y-C or something like that.

25 Q. K-O-D for King of Diamonds?

1 A. I imagine. That was its name.

2 Q. What was your purpose -- what were you going to do with the
3 building if you got it? What was the purpose?

4 A. Twofold. One, it was a great location off the highway, and
5 I thought it would be a great place to have a billboard and put
6 a billboard there. And also -- so I was going to do a digital
7 billboard there, along with my other property down in Miami.
8 So I was looking at doing billboards on both of those
9 properties.

10 And then, secondly, was to go through the process of
11 Miami-Dade County to get to do affordable housing to do a
12 16-story affordable housing building right off the highway
13 overlooking towards the ocean. I thought it would be a great
14 project.

15 Q. Were you an owner of King of Diamonds?

16 A. No.

17 Q. Were you a partner of Mr. Vasilas in King of Diamonds?

18 A. I was not.

19 Q. Do you have any ownership interest in any adult
20 entertainment business?

21 A. I do not and never have.

22 Q. Do you have any desire to go into that business?

23 A. No. It's not my -- I'm in the development and construction
24 business. I'm not in that kind of business.

25 Q. Now, while waiting for the deal to -- did the deal ever

1 close?

2 A. No.

3 Q. Never got the land?

4 A. No.

5 Q. While waiting for it, did you get involved in something
6 called Mala, M-A-L-L-A-H [sic]?

7 A. M-A what?

8 Q. Mala?

9 A. Mala. Yes, I did. Not me, but the company.

10 Q. What company -- well, what was Mala?

11 A. King of Diamonds wasn't paying rent and they had issues.
12 They had issues with their lender. So he asked me did I have
13 any ideas.

14 Q. Who? You said "he."

15 A. Jeff Vasilas asked me if I had any ideas. And you know, he
16 just finished construction of the place. He just -- he
17 literally just built 40,000 square feet. And I said: "Why
18 don't you make it more of like an entertainment where it's like
19 for" -- because it's a Latin community in South Florida -- to
20 make -- have a concert series and do concert venues, and then
21 you can have parties and stuff like that. But do a concert
22 venue and bring singers, young, up-and-coming singers for that
23 kind of -- I think it's called reggaeton -- or reggaeton -- or
24 something like that, some kind of -- I thought that was a good
25 idea, he thought it was a good idea, and so that's -- to get

1 cash flow.

2 Q. Were you part of Mala?

3 A. I was part of the idea of Mala, and I put in some money
4 into it, but I also lent workers for him to set it up in the
5 proper manner.

6 Q. Could you identify any of the workers you recall working on
7 that. Vanessa Gonzalez?

8 A. Yeah. Vanessa Gonzalez was one of the workers, yeah.

9 Q. So eventually -- let me put for your eyes only Exhibit
10 X-29. Without describing in detail, because it's not in
11 evidence, could you describe generally what X-29 is?

12 A. It's an advertisement for the summer concert series to
13 open -- the grand opening on a certain date at that place.

14 Q. And by the way, I realized I misspelled the name Mala. How
15 did you spell Mala?

16 A. It's M-A-L-A.

17 Q. Okay. And is this -- so this is an advertisement of --
18 from the Mala company for a concert series?

19 A. Yes.

20 MR. ETRA: Your Honor, we offer X-29.

21 MS. JIMENEZ: Objection. Relevance.

22 THE COURT: Sustained.

23 MR. ETRA: Let's take it down.

24 BY MR. ETRA:

25 Q. Generally, did Mala have any performances?

1 A. Yes. Multiple.

2 Q. Do you recall the artists?

3 A. Oh, my God. Yes.

4 Q. Can you --

5 A. De la Ghetto was the first one July 12th. Then there was a
6 guy named Bad Bunny -- Bad Bunny. And then there was -- I
7 don't remember all their names. There was multiple -- there
8 was multiple performances.

9 MR. ETRA: Your Honor, I'd like to reoffer X-29. The
10 relevance is the 404(b) issue that is the main issue we had
11 discussed before trial that has come up in trial.

12 THE COURT: The objection was sustained, sir.

13 BY MR. ETRA:

14 Q. What happens with your deal and with King of Diamonds
15 generally?

16 A. It fell apart because I understand Mr. Vasilas had a
17 partner in New York. And I met with the partner, and I thought
18 it was both of them and I was unaware that there was a silent
19 partner that controlled everything at the end of the day. And
20 it just was so confusing and messy that I just -- I had too
21 many other things going on, so I had to walk away. It was too
22 complicated.

23 Q. So what happened? Did you continue to have any dealings or
24 contact with Mr. Vasilas after that?

25 A. I think at first no. For the first few months I was a

1 little -- I was a little upset, I think, just because it was a
2 waste of time and money. But then, you know, he came to me
3 after that couple of months and started talking to me in
4 2000 -- in the end of 2018, 2019, and he seemed like a
5 different person. And he started talking to me and calling me.
6 And we met a few times and he was just different. I felt like
7 a weight was lifted off his shoulders and he was acting like a
8 normal person, so I met with him.

9 Q. You said: "Lost money." Did anyone owe you money from all
10 those dealings?

11 A. Yes.

12 Q. Who owed you money?

13 A. Jeff.

14 Q. You lent him money?

15 A. I lent him money -- well, I advanced money. I advanced
16 money by a loan for his -- for the deposits and stuff like that
17 to buy the building and that kind of stuff.

18 Q. You said: "Jeff." Which Jeff?

19 A. I'm sorry. Jeff Vasilas.

20 Q. No problem. Okay. So he comes back and he's dealing with
21 you. Did you start to do any work with him?

22 A. Yes.

23 Q. What was the first thing that you did with Mr. Vasilas with
24 respect to your real estate business?

25 A. He start -- he wanted to be in the real estate business.

1 And I understand but, like, he was construction. He wasn't
2 real estate. So I said -- I let him go start working on the
3 Flagler project in Miami with the people at a project because
4 he was a very hard worker. I mean, we worked very hard and he
5 had a lot of contacts with the subcontractors, and he was a guy
6 that worked hard and just knew a lot of people.

7 So I said: "Why don't you go down there?" We had a
8 build-out, a company called Blue Dental -- I don't know. It
9 was a dental office over on the Flagler site. So he worked on
10 that, and there was problems with the parking lot. He knew how
11 to fix problems and worked hard. He wasn't lazy.

12 Q. How did he do with the assignment you gave him on the
13 Flagler project?

14 A. He was great. He was a different person. And he was very
15 good at construction, facilitation, and getting things done,
16 very -- he was a little aggressive, but he's an aggressive guy.
17 But I'm more laid back, and he's very aggressive. So he did
18 his thing.

19 Q. All right. Now let's talk about Burlington. How was it
20 that Mr. Vasilas gets involved with the Burlington project?

21 A. In November we signed the lease. Originally I was working
22 with a general contractor who I knew and in an Orlando office.
23 And they were working on the plans and specs and -- meaning
24 they were what they call value engineering. They were going
25 through that and trying to get the approvals and plans to build

1 on a quick track.

2 And then Jeff came in my office one day, he saw the
3 plans, and he said: "Hey, what's that?" And I said: "It's
4 the Burlington." He goes: "Really? Oh, my God. I want to do
5 that." And he goes: "How can I get involved?" I said:
6 "Well, maybe you can bring some subs and the subs that you
7 worked with when you built the King of Diamonds. You can bring
8 some subs from the construction there, and give me a price, see
9 what it's going to cost."

10 And so he started, you know, late November, early
11 December 2019, and I said: "If the GC doesn't work out, then
12 we can do something together."

13 Q. And did he end up putting together a package for you or
14 budget at least?

15 A. Yes. He brought me -- he actually brought the actual sub
16 in my -- he brought the sub into the office. We went through a
17 bunch of numbers. And simultaneously there was demolition
18 going on at the property, so he went up there and he was
19 actually -- he actually was staying up there. You know, he was
20 staying up there somewhere, he told me, in Orlando.

21 And so he would go see the property and the
22 demolition. And Jeff Graff at the same time was working on it.
23 So between the both of them, that was November, December.

24 Q. What year?

25 A. 2019.

1 Q. Did you give Mr. Graff the opportunity to be the project
2 manager or project executive on the construction?

3 MS. JIMENEZ: Objection. Leading.

4 THE COURT: Overruled.

5 THE WITNESS: Yes. He was the original one. He was
6 the original project executive since 2015. So he was already
7 there but nothing was moving forward. So he was working with
8 Burlington. And then I gave him the opportunity -- I said:
9 "Do you want to go to Orlando and build this," and I gave him
10 that opportunity.

11 Q. And what was his response?

12 A. He said he doesn't want to go to Orlando and, you know, he
13 can't stay long in Orlando and be on the construction site.

14 Q. So what kind of financial arrangement did you make with
15 Mr. Vasilas for him to be -- well, at some point, do you
16 have -- what role did Mr. Vasilas ultimately have with the --
17 for Burlington?

18 A. He became the project executive of Burlington project, and
19 also project executive. He was also quasi -- he was
20 superintendent, project executive. And then there were some
21 other people that were along with him. And we ended up -- when
22 we ended up deciding to actually build the project ourselves
23 and self-perform it, instead of using the contractor, because
24 the contractor was -- it just didn't work out with this guy
25 because of the time -- the time frame, meaning when to deliver

1 the actual store was so compacted. I didn't want to trust the
2 contractor. Because the liquidated damages was 32 or 3,600,
3 some -- over \$3,000 a day, I didn't want to take the risk. So
4 I knew what Jeff can do, and that's why I put him as the
5 project executive.

6 Q. What was the financial arrangement you worked out with
7 Mr. Vasilas for him to have the role as project executive up in
8 Orlando?

9 A. He was an owner of a company -- a bunch of companies, and
10 he lost millions of dollars, according to him, in the King of
11 Diamonds. And he just wanted to -- he wanted -- he didn't
12 really have the money at the time, and he asked if I can pay
13 him a salary and then if he can buy out the job for less. I
14 said: "Look, I'll give you 50 percent of whatever -- the
15 savings that you can cause. But the most important thing, you
16 have to meet the deadline of May. Because if you don't, it's a
17 real -- it's a problem. They can terminate the lease. It's a
18 big problem." And so that's what we worked out.

19 Q. Did you offer any other incentives or opportunities for him
20 down the road for future work?

21 A. Well, it wasn't just him. I didn't let him just take a
22 60,000-square-foot building. There's another guy named Carlos
23 De Leon at Waterhouse Construction. So he's more like a
24 technician and engineer -- a technical guy. So I had him and
25 Jeff. I said: "Look" -- they recognized that I have the

1 relationships with the national tenants. And I said -- and we
2 have -- after this, we have the Chase Bank and we're working
3 with a bunch of other tenants that already had leases to build
4 Marshalls, HomeGoods, Ross Dress for Less --

5 Q. Is that phase 3?

6 A. Yeah. And Amazon. "And so you guys -- if you do well
7 here, you can build from 20 through 23 -- you can build all
8 these builds and you would be -- we'll build it, but you'll run
9 the construction company."

10 Q. Any other incentives for Mr. Vasilas with respect to
11 dealing with these national tenants?

12 A. Well, the incentive was that he would have the inside
13 track -- if he does it successfully, he would have the inside
14 track to build -- because national companies want -- whether
15 it's restaurants or whatever, they want to have a company that
16 actually can deliver. They don't like to reinvent the wheel
17 every time they build a building. They select preferred
18 contractors. So that's what we were trying to achieve.

19 Q. What about the loan you had with Mr. Vasilas? How was that
20 going to get worked out?

21 MS. JIMENEZ: Objection. Leading. What loan?

22 THE COURT: Sustained. Let's rephrase.

23 MR. ETRA: Sure.

24 BY MR. ETRA:

25 Q. What role, if any, did the loan -- the money that

1 Mr. Vasilas owed you, was that taken into account in your
2 financial arrangement in some way?

3 A. It wasn't part of my decision at all, I mean, about the
4 loan. It had nothing to do with the loan, as far as having him
5 work the construction. Because I saw what he did at King of
6 Diamonds. I thought it was really impressive. He had the sub
7 base. He had that guy Carlos.

8 So the loan had nothing to do with that part. But the
9 financial side of it, I told him in the 50 percent of savings,
10 if he was able to accomplish that, that I would write off a
11 portion -- I would write off the loan up to whatever savings
12 there were. "And then everything above that, you can have, you
13 know, the balance for yourself."

14 Q. When you hired Mr. Vasilas and gave him this
15 responsibility, did you trust him?

16 A. Yes.

17 Q. Why?

18 A. Because I just did. I don't know. You get the -- look, to
19 me, he was always a, you know, hardworking guy. When people
20 are hardworking people like that, you just -- there's something
21 about people that work really hard. I just trust that.

22 Because, you know, he had an interesting story and coming-up in
23 life, and I can relate to some of it. And I just felt that he
24 was being sincere.

25 Q. Did anyone else in the organization express concern about

1 your working -- about the responsibility you were giving to
2 Mr. Vasilas?

3 A. Yes.

4 Q. Who did?

5 A. Jeff Graff didn't particularly, you know, like his style.
6 I think Jeanette -- I mean, I don't know. People tell you some
7 things. Jeanette didn't like him so much, but she didn't --
8 Jeff Graff did not like him at all. And Jeanette was like --
9 she was in between. And I think that's about the people that I
10 talked to about it.

11 Q. Why were you comfortable giving him the responsibility
12 notwithstanding whatever concerns Mr. Graff or Jeanette
13 Gonzalez provided?

14 A. I think in life you just -- for me at least, I give
15 everybody an opportunity. I mean, I don't judge someone
16 because someone tells me something about someone. So whenever
17 I look at a person, a man, woman, or whatever, and if in my
18 heart I believe they're -- they may have had a bad break or
19 they need a second chance, because they all need it. I just
20 look at people that way. I say: "I believe this guy can do
21 something or not."

22 And I'm not going to take -- I know maybe -- well, I'm
23 sitting here -- it's not always correct. But for me, I like to
24 give people a chance based upon how I grew up. You know, it
25 was tough for me in my life. It was very tough. And I wanted

1 to make sure -- if I believe in someone and I think they
2 were -- I'm not going to listen to the noise, and I thought he
3 can do the job.

4 Q. So what was the plan for construction? Did you have a plan
5 for construction -- let me start again.

6 Did you have a plan with respect to which subs you
7 were using?

8 A. Yeah. I mean, every job, before you start the job, you
9 analyze and see -- like I said before, when -- my first job,
10 you know, the most important thing, you get the guy who's going
11 to run the job, who's in charge. That's the guy who is the
12 superintendent. That's the guy who he makes the thing -- he's
13 the glue. Then you have a guy who will do the details as far
14 as how many workers, how much time. You have to do a
15 construction schedule. You have to provide this to the
16 national tenant. You have to have a schedule. You have to
17 have the cost of the project. Every detail is pages of details
18 that someone has to put together.

19 Q. Who was involved in putting all that together for the
20 Burlington project?

21 A. Jeff Graff, Jeff Vasilas, Carlos De Leon, Vanessa Gonzalez.
22 They were all -- had their own role in the intricacies of
23 doing -- when you self-perform the work and bringing it
24 together.

25 Q. And what was the plan with respect to how many people would

1 be working on the site?

2 A. The plan was just take each specific trade -- this is in
3 January, right, before COVID. So it's like starting January
4 1st, HM-UP Development Alafaya Trails became the contractor to
5 construct this facility. In that time frame we had a
6 schedule -- option A was a normal list of all the workers that
7 we needed and also the third-party independent contractors we
8 needed. And B was an accelerated schedule to make sure how
9 much overtime we had to pay, how many workers had overtime to
10 deliver prior to the termination date.

11 Q. How many workers did you anticipate having when you started
12 the project?

13 A. We had jobs for 80 to a hundred people starting January.

14 MR. ETRA: Put up for the witness only, please,
15 Exhibit M, as in Mary, 60.

16 BY MR. ETRA:

17 Q. Please, just because it's not in evidence, could you take a
18 look at M-60 and tell me if you generally recognize the
19 document. We can go through the other pages if you want.

20 A. This is the -- what they call project kickoff call, and
21 just defining everyone's role, who's who, what they do, what
22 their, you know, participation is, meaning the tenants, the
23 owner, the contractor, all that kind of stuff.

24 Q. Was this the Project Kickoff Call List for this project?

25 A. Correct. It's called Store Number 425, Burlington Stores,

1 which is --

2 Q. And were your companies involved in putting this together
3 and working with Burlington to put it together?

4 A. Yes.

5 Q. Is this a business record of your company?

6 A. It's a business record of my company and also Burlington's.

7 MR. ETRA: Offer Exhibit M-60.

8 MS. JIMENEZ: Your Honor, I object. We were provided
9 this binder of exhibits for the case in chief. We have an M-60
10 which is not even in this binder, which goes to --

11 THE COURT: Is that correct?

12 MR. ETRA: They got this Friday night, right?

13 MR. CAVALLO: Yes.

14 MR. ETRA: And we gave it electronically Friday, over
15 the weekend.

16 MS. JIMENEZ: So this is Sunday, the night --

17 MS. MARTINEZ: One in the morning on Monday.

18 THE COURT: All right. Hold on. Was M-60 included in
19 the binder?

20 MR. CAVALLO: It should be, Your Honor. Yes.

21 THE COURT: Well, was it, Ms. Martinez or Ms. Jimenez?

22 MS. WEINTRAUB: Judge, could we have one of the
23 Government lawyers? They've both been objecting to different
24 things.

25 THE COURT: All right. Well, they're sharing a binder

1 so it's appropriate to share.

2 MS. WEINTRAUB: Are they sharing the examination?

3 THE COURT: No. Ms. Weintraub, let me address this
4 issue, please.

5 MR. CAVALLO: It's here, Your Honor. They're looking
6 at the wrong one.

7 THE COURT: All right. Is there any objection?

8 MS. JIMENEZ: Yes. Objection to foundation as a
9 business record.

10 THE COURT: Overruled. M-60 admitted into evidence.
11 (Defendant's Exhibit M-60 received into evidence.)

12 MR. ETRA: May we publish it, please?

13 THE COURT: You may.

14 BY MR. ETRA:

15 Q. This indicates a Kickoff Call List. It says: "March 2nd."
16 Do you see that?

17 A. I do.

18 Q. Is that March 2nd, 2020?

19 A. Yes, it is.

20 MR. ETRA: And if you go to "Contractor Information,"
21 could we blow that up.

22 BY MR. ETRA:

23 Q. What company name is listed as the contractor?

24 A. HM-UP Development.

25 Q. Was HM development the actual construction contractor on

1 this project?

2 A. Well, it is, but there's also Waterhouse Construction as
3 well, Carlos De Leon's company. So both companies are
4 involved, but the named company is HM-UP Development.

5 Q. And you see -- who is listed as the contact for HM-UP
6 Development on this deal?

7 A. Jeff Vasilas.

8 Q. Okay. And is that his phone number and his email?

9 A. That's -- the phone number, I believe, is the office phone
10 number because I think his phone number starts with a 312. But
11 the email is his email.

12 MR. ETRA: Okay. We could take that down, and let's
13 find Mr. De Leon on this. Take that blow-up down and look at
14 the middle email address.

15 BY MR. ETRA:

16 Q. Do you see Mr. De Leon's email, along with Mr. Vasilas's?

17 A. I do.

18 Q. So what business was HM-UP in during this time frame
19 heading into COVID?

20 A. Well, actually, starting in November 2019, and also through
21 2020, '21, HM-UP was in the construction business to build
22 these stores to self-perform the construction of these stores.

23 MR. ETRA: Could we go to Exhibit M-14, a video
24 already in evidence.

25 Could we play the video, please. And while we're

1 playing it, could you describe what you're seeing here.

2 (Video played, no sound.)

3 THE WITNESS: Yes. This was the old Toys "R" Us
4 store. Those are the offices that they had. And -- I'm sorry.
5 Those are the bathrooms. And then we were doing the demolition
6 of the 60,000-square-foot building. This shows just the walls,
7 but obviously there's a lot more demolition in the floors and
8 everything else.

9 BY MR. ETRA:

10 Q. And when was that done, approximately?

11 A. That was done through December -- like in December,
12 starting a little bit November, Thanksgiving, because I was
13 there with my wife and kids who had a basketball game. So we
14 had to go there to go check this out. I remember this. And
15 then it stopped around the end of December, right before we
16 pulled the permit for the actual -- the full construction
17 permit.

18 MR. ETRA: Could we put that down. And for the
19 witness only put up Exhibit X-22, and just flip through these
20 pictures for the witness so we can get this identified.

21 (Pause in proceedings.)

22 BY MR. ETRA:

23 Q. Mr. Sheppard, have you seen these pictures before?

24 A. I have.

25 Q. How did you get -- how did you get these pictures?

1 A. Jeff Vasilas sent me these pictures, and I believe Glenn
2 Sheppard sent me these pictures, some of the pictures.

3 Q. Were these pictures provided to you in the course of the
4 business of your HM-UP company?

5 A. Correct.

6 Q. Are they business records of HM-UP?

7 A. Yes, they are.

8 MR. ETRA: We offer --

9 BY MR. ETRA:

10 Q. And are they -- what are these pictures of generally?

11 A. They're -- generally they're the pictures of the -- when we
12 started converting the building to a Burlington from a Toys "R"
13 Us. They are construction from the various components, metal
14 studs, drywall --

15 Q. Approximate time period --

16 A. This is January.

17 Q. Of?

18 A. 2020.

19 MR. ETRA: Defense offers Exhibit X-22.

20 THE COURT: As a composite, any objection?

21 MS. JIMENEZ: Objection. The pictures are not a
22 business record.

23 THE COURT: Is that the basis?

24 MS. JIMENEZ: Yes.

25 THE COURT: Overruled. The exhibits as a composite,

1 X-22, admitted into evidence.

2 (Defendant's Exhibit X-22 received into evidence.)

3 THE COURT: Just let me know when it might be a good
4 time to give the jurors a lunch break.

5 MR. ETRA: Any time, Your Honor.

6 THE COURT: All right. Then, Ladies and Gentlemen,
7 this might be a good time. It's twelve o'clock. Let's take a
8 one-hour lunch recess, and I'll see you back here at one
9 o'clock.

10 COURT SECURITY OFFICER: All rise.

11 (Jury not present, 12:02 p.m.)

12 THE COURT: All right. Have a pleasant lunch and I'll
13 see you back here at one o'clock.

14 Same admonition, sir. Mr. Sheppard, the same
15 instruction I had provided that you are not to discuss your
16 anticipated testimony, the testimony of any individual, or any
17 aspect of the case still applies as you're on the witness
18 stand.

19 THE WITNESS: Can I go to lunch with my family or no?

20 THE COURT: Mr. Sheppard is asking if he can go to
21 lunch with his family. Certainly you may do so. That's the
22 only admonition the Court gave you.

23 Have a nice lunch.

24 MR. ETRA: Come back on time.

25 (Recess from 12:02 p.m. to 1:02 p.m.)

1 THE COURT: All right. Welcome back.

2 Mr. Sheppard, if you'll come on over here.

3 Both sides ready to continue?

4 MS. WEINTRAUB: Yes.

5 THE COURT: On behalf of the Government?

6 MS. MARTINEZ: Yes, Your Honor.

7 THE COURT: All right.

8 MS. WEINTRAUB: Judge, I am concerned about one
9 admonition the Court keeps giving, and I'm bringing it up
10 because I don't want to forget. I forgot it yesterday and
11 today already.

12 The Court has admonished Mr. Sheppard that he can't
13 discuss any aspect of this case. Our admonition has been that
14 he cannot discuss his testimony, and that's our ethical --
15 that's our understanding ethically. However, I disagree with
16 the Court, respectfully, with regard to not being able to
17 discuss other aspects of the case, and witnesses that are
18 coming, and strategies, and preparation of the rest of the
19 case. Because we're going to have two weeks, and to be frank,
20 I can't do it without my client.

21 THE COURT: Yes. And that admonition may change,
22 depending upon where we are with this witness. But that was
23 the lunch recess, and that was the admonition that was
24 appropriate.

25 MS. WEINTRAUB: Oh, okay. Okay. Of course.

1 THE COURT: All right. Ready to bring the jury in?

2 MS. WEINTRAUB: No problem. Thank you, Judge.

3 COURT SECURITY OFFICER: All rise for the jury,
4 please.

5 THE COURT: I do wish to remind you that we have a
6 matter at 4:30, so we are going to end at 4:30 today.

7 (Before the Jury, 1:03 p.m.)

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

10 Please be seated, everyone.

11 I trust you had a pleasant lunch, ready to get back to
12 work.

13 And we'll continue with the direct examination of
14 Mr. Sheppard.

15 MR. ETRA: Thank you, Your Honor.

16 BY MR. ETRA:

17 Q. Mr. Sheppard, we're still pre-COVID, and I want to switch
18 gears from Burlington to phase 3. Okay?

19 A. Yes.

20 Q. All right.

21 MR. ETRA: Put up on the screen for the witness only
22 the first page of two documents, M-56 and M-57.

23 BY MR. ETRA:

24 Q. Do you recognize -- let's -- what's in front of you as M-56
25 and M-57?

1 A. Yes.

2 Q. Without going into detail, because it's not in evidence,
3 generally speaking, what is it?

4 A. It was a Joint Venture Partner Memorandum.

5 Q. For what project?

6 A. For the Alafaya Trails Shoppes at Alafaya Orlando.

7 Q. And which part of that project?

8 A. This was for phase 3.

9 Q. And generally speaking, when you say: "Joint Venture
10 Memorandum," in plain terms what was the purpose of these
11 documents?

12 A. A couple people approached me about wanting to do a joint
13 venture on the phase 3 parcel. At the time I was buying out my
14 partner, so therefore I was putting information together --
15 standard operating business where you put together the package
16 and stuff of that nature for the joint venture.

17 Q. And essentially, is it a way to get funding?

18 A. It's a joint venture. It's a source of funding, but
19 there's also other ways as well.

20 Q. And essentially -- we're looking at two pages, but
21 essentially two large binders?

22 A. Correct.

23 MR. ETRA: Your Honor, offer 56 and 57 as a business
24 record.

25 THE COURT: Any objection?

1 MS. JIMENEZ: Objection. Relevance.

2 THE COURT: The Court finds it's marginally relevant.
3 The objection is overruled and it will be admitted into
4 evidence.

5 (Defendant's Exhibits M-56 and M-57 received into
6 evidence.)

7 MR. ETRA: If we could go on to 56 and look at the --
8 I have it as Page 13.

9 BY MR. ETRA:

10 Q. And I want to focus on the schedule there, Zoning/Permits.

11 A. Yes.

12 Q. Generally speaking, what information is there?

13 A. This is the development and approval schedule and the
14 different steps of the approvals from the government, and just
15 outlining, you know, what the steps are and when the approvals
16 are anticipated. But again, it's based upon the government
17 approvals, so just letting someone know what the process is to
18 actually go through to start construction.

19 Q. Does this chart help you put a time frame on these binders?

20 A. Yes.

21 Q. What time frame could you put on the binders based on this
22 chart here?

23 A. Based on the dates, it's '16 -- October-- I mean 2016.

24 Q. In other words, the first step had taken place of -- in
25 October of -- of October 2016, right?

1 A. Correct.

2 Q. But the rest of the steps had not taken place. Is that
3 fair to say?

4 A. Correct.

5 Q. Okay. And according to this, at least this time period,
6 when did you expect final -- finally being able to actually go
7 through the whole process and turn over the phase 3 buildings
8 to the tenants?

9 A. We were hoping February 2018.

10 Q. And who initially was working in Orlando with you to try to
11 get the zoning and all the permitting done?

12 A. Jeff Graff and Joe Beirne.

13 Q. Did they get the job done?

14 A. No.

15 Q. And who ultimately did you hire to help with the process?

16 A. For phase 3, myself -- I didn't hire myself, but I got
17 actively involved at a certain point to get this done.

18 Q. Anyone help you locally there?

19 A. Yes. There's a zoning lawyer, an engineer called
20 Kimley-Horn.

21 Q. What about Mercedes Fonseca? Was she involved?

22 MS. JIMENEZ: Objection. Leading.

23 THE COURT: Sustained.

24 BY MR. ETRA:

25 Q. Was anyone else involved at this point in helping you get

1 this done?

2 A. In that time frame, Mercedes was not involved. She was
3 involved with the Burlington permits, not with the other
4 permits, not this permit.

5 Q. Now, this was supposed to be -- supposed to be turned over
6 you thought by early February 2018. When did you finally get
7 approval for the whole phrase 3 project?

8 A. Not until January -- January 27th or 28th, 2020.

9 Q. Few months before -- little before COVID, correct?

10 A. Correct.

11 Q. Now, if you go to M-57, look at the first page.

12 MR. ETRA: And blow that up, please.

13 BY MR. ETRA:

14 Q. What was the status of getting leases in place at this time
15 in -- you know, late 2016 or so?

16 A. There was a lot of interest, and we had leases in place
17 with Marshalls, HomeGoods, which is owned by the same company
18 called T.J.Maxx, and we had -- Earth Fare is a grocery store
19 out of North Carolina, Crunch Fitness, Petco, Ross. And the
20 CareNow was for the outparcel. It was not for -- it was part
21 of phase 3 approvals, but it's not part of that parcel.

22 Q. And if you go to the second page -- I won't go through the
23 whole thing, but the second page of M-57, what do you have
24 there?

25 A. I'm sorry. It's the same page.

1 Q. But essentially -- we won't do it visually, but essentially
2 what's contained behind this page here in the binders?

3 A. What's contained -- I don't --

4 Q. Are the leases in the binders?

5 A. Oh, yes. The leases, the REAs, everything related to
6 the -- so someone could understand all the components of the
7 development and project and the contiguous lands next to it.

8 MR. ETRA: We can take this down.

9 BY MR. ETRA:

10 Q. You mentioned that CareNow was going to be an outparcel.
11 Did you say that?

12 A. Yes.

13 Q. This regulatory approval that didn't get done till late
14 January 2021, did it include the outparcels?

15 A. I think it was '20 and not '21.

16 Q. I'm sorry. You corrected me. Thank you.

17 Did it include the outparcels?

18 A. Yeah. The approval process was called the Land Use Plan
19 Amendment, that was approved. But the phase 1 and phase 2
20 outparcels were part of that approval.

21 Q. Heading into COVID, before COVID, what were the tenants for
22 the outparcels?

23 A. Chase Bank, and I forget the other tenant. It was -- oh.
24 It was CareNow. We moved CareNow to the other parcel -- moved
25 before COVID.

1 Q. Okay. So what was going to be in the other outparcel?

2 A. JPMorgan Chase.

3 Q. And?

4 A. And then we had a retail. It was either Starbucks Coffee
5 or the urgent care. But the urgent care backed out in January,
6 and so we replaced them with Starbucks.

7 Q. Okay. Why did you need regulatory approval for the
8 outparcels as part of this process? What was the issue?

9 A. The issue is, is that they were already in the market
10 across the street and you needed a drive-through. And the
11 drive-through is big to their business and we had to get
12 special permission to put drive-throughs in.

13 MR. ETRA: For the witness only, could we put up X-41.

14 BY MR. ETRA:

15 Q. Do you recognize X-41?

16 A. I do.

17 Q. What is it?

18 A. It's the JPMorgan Chase Bank lease.

19 Q. With?

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

21 Q. And for what location was that?

22 A. That was for Outparcel Lot 3.

23 Q. And was that before or after COVID?

24 A. Before.

25 MR. ETRA: Defense offers X-41.

1 MS. JIMENEZ: Could we see the signature? We've never
2 seen this.

3 (Pause in proceedings.)

4 THE COURT: Any objection?

5 MS. JIMENEZ: We're trying to locate the exhibit.

6 (Pause in proceedings.)

7 MS. JIMENEZ: No objection.

8 THE COURT: Admitted into evidence.

9 (Defendant's Exhibit X-41 received into evidence.)

10 MR. ETRA: May I publish it, please?

11 BY MR. ETRA:

12 Q. So is this the lease -- lease with Chase for the outparcel,
13 right?

14 A. Yes.

15 Q. And dated -- that's the date, March 10?

16 A. Yes.

17 Q. So as of March 10, and before COVID hit, what obligations
18 did your companies have under this lease with respect to
19 construction?

20 A. You're talking about when the lease is executed; is that
21 correct?

22 Q. Right.

23 A. We, as the landlord, are required to get approval from HM
24 Four who controls the master association. And then next to do
25 site work infrastructure, bring in what they call a

1 transformer, bring the transformer for electric for the
2 services, electrical, plumbing, sewer, do infrastructure, do
3 the parking lots, and also connect a road called Indianhead
4 Trail Road that the county -- a condition of the approval was
5 to build a new road for the county that connected the road of
6 our property to the adjacent property.

7 Q. Could you explain the Indian Trail Road, how that comes up
8 in the approval process or the requirement.

9 A. Orange County, when they approve a project -- or any
10 county -- there's always some type of conditions you have to
11 meet before you can get what they call a certificate of
12 occupancy. And part of that was to build a road adjacent that
13 connects my property compared to the other property. That's
14 what it was, which -- because we have the traffic light. We
15 have the traffic light. No one else did. So they wanted us to
16 have them -- give them access to the traffic light.

17 Q. Was that an obligation that you had before COVID?

18 A. Yes.

19 MR. ETRA: For the witness only, if we can split the
20 screen of X-27 and M -- X-27 and M, as in Mary, 61.

21 BY MR. ETRA:

22 Q. While we're waiting for the other document, do you
23 recognize X-27?

24 A. Yes. That was the part where we were finishing the road,
25 basically the end of the road, but the road started at -- on

1 the yellow lines.

2 MS. JIMENEZ: What road? What time frame? Can we
3 have a time frame for this, please?

4 BY MR. ETRA:

5 Q. Mr. Sheppard, what was the time frame of the work being
6 shown on X-27?

7 A. Which one?

8 Q. X-27.

9 A. Sometime in '21. I'm not sure exactly when -- later '21.
10 Later '21 -- 2021.

11 MR. ETRA: And could we just run through the pictures
12 for the witness on X-27.

13 MR. CAVALLO: There's only one picture for X-27.

14 MR. ETRA: All right. And if we can go back to the --
15 sorry.

16 BY MR. ETRA:

17 Q. M-61 again, generally, because it's not in evidence, what's
18 the picture there?

19 A. Did you say 61?

20 Q. Right. Sixty-one. It's the right side of your screen,
21 sir.

22 A. That's when the -- sorry.

23 Q. We're flipping through the pictures.

24 A. Oh. That's doing the underground drainage, because the
25 roadway, you have to go deeper with the drainage and cover it

1 with concrete so the pipes don't break. So that's what they're
2 doing, and they are forming the curbs.

3 MS. JIMENEZ: Objection. Relevance.

4 THE COURT: Sustained.

5 MR. ETRA: Your Honor, it's the work that was done.

6 THE COURT: Yeah, I know. I know what it is. The
7 objection is sustained on grounds of relevance.

8 MR. ETRA: Your Honor, we offer X-27 and M-61.

9 THE COURT: Is there any objection?

10 MS. JIMENEZ: Objection. Relevance.

11 THE COURT: Sustained.

12 BY MR. ETRA:

13 Q. Who did the work on the -- on this road?

14 A. Well, the only one that could do the work was HM Four, and
15 they hire the -- they hire HM Management and Development to do
16 the actual work. And then there's also other people involved
17 with that as well, other workers and companies.

18 Q. Do you recall the individuals?

19 A. Kerby Kleef, Mo Wimberly, Glenn Sheppard, Mercedes -- she
20 didn't do the work, but she did the permitting -- Mercedes
21 Fonseca.

22 Q. How about you?

23 A. Yeah. I was actually -- I actually was out there for a
24 little bit.

25 Q. Okay. Let's talk about COVID. COVID hits. What happens

1 to your office?

2 A. The office is -- everyone goes home and everyone's working
3 out of their house.

4 Q. Okay. Where did you work as of COVID -- what happened to
5 the office after COVID?

6 A. At what time period?

7 Q. By April -- by the beginning of April.

8 A. The beginning of April was just -- it was there, but no one
9 was in -- physically in the office.

10 Q. So where did you go to work?

11 A. I worked at -- from my home.

12 Q. And where did -- did Jeanette go work with you at home?

13 A. No.

14 Q. Where did Jeanette go?

15 A. She went to her home.

16 Q. And where did Mr. Graff go?

17 A. He only worked up until March 31. But actually he left
18 March 15th, so he wasn't in the office. He was working outside
19 the office from March 15th, when he was leaving the company.

20 Q. Let's talk about Burlington. COVID hits. What happens to
21 the Burlington project?

22 A. It's a problem, meaning it's --

23 Q. What happens to the work?

24 A. Everything comes to a screeching halt.

25 Q. Before we go further, why does it come to a screeching

1 halt?

2 A. Because there was a like a shutdown, a mandatory -- what do
3 you call it -- stay-at-home orders. You weren't allowed to do
4 anything. So the workers and the subcontractors of -- the
5 subcontractors informed us they couldn't continue operating, so
6 they took their workers off the site.

7 Q. Before we get further into how you dealt with that, what
8 happened -- what effect did COVID have with your other
9 properties?

10 A. My other properties -- the main property in Miami, we had
11 an issue where a lot of tenants other than Walmart and, you
12 know, Chick-fil-A, AT&T, and Comcast -- they were still paying
13 rent but the other larger tenants like LA Fitness and
14 Carrabba's, and all these tenants stopped paying rent.

15 Q. How about DICK'S in Orlando?

16 A. They stopped paying rent as well.

17 Q. And what happened with your phase 3 tenants? What was
18 going on with your phase 3 tenants when COVID hit?

19 A. I was informed that they don't know what's going on and
20 everything's on hold until they figure out what's going on with
21 the world, like everybody else in the world was doing, and
22 that's what was happening.

23 Q. What were you focusing your time on in the beginning of
24 COVID?

25 A. Beginning of COVID?

1 Q. Yeah.

2 A. My family.

3 Q. Workwise?

4 A. Oh, workwise. At first, workwise, I was worried about the
5 Miami project to work with the tenants to try to do agreements
6 with them because they all asked -- they weren't paying rent,
7 but they were all asking for a -- how do you call it -- like a
8 deferral rent, where they'll pay it a year from now or
9 something like that.

10 So I was negotiating with all those tenants, with LA
11 Fitness, and Carrabba's, Discovery, La-Z-Boy. All those
12 tenants, I was heavily involved with negotiating with their
13 real estate managers, directly with them, trying to work on
14 documents to figure out -- you know, what was reasonable. I
15 was meeting with my partner to make sure that he understood
16 what was going on with regards to the deferral of rents and
17 stuff to that nature.

18 And then, in Orlando, I was working on phase 3. I was
19 talking to all those tenants and the representatives. Because
20 most tenants, national tenants, they have preferred brokers
21 that represent them, and you call them and try to work out --
22 they all wanted to get extensions of their lease till like
23 2020 -- I think maybe '21 or '22.

24 So I was working with that. And I was also --
25 clearly, I was very, very, very focused also on the Burlington

1 because we had a deadline to meet before they can terminate our
2 liquidated damages. So that was very heavily intense with the
3 executive group at Burlington.

4 Q. What about -- were you also dealing with a potential sale
5 in Flagler?

6 A. Yes. We -- we had a sales contract for our project in
7 Flagler. And my partner and I, on a Friday we agreed to a
8 bunch of changes, and then on Monday the world just shut down,
9 and they backed out of that contract. So we were trying to
10 figure out that, what we were going to do next.

11 And then we were handing the management of the Flagler
12 project, the property management, to another company. So I was
13 working on that trying to hand the property manager to a local
14 company to manage the property for us. We were focused on
15 Orlando, so I didn't want to focus on Flagler, so we had a
16 property management company. And my partner and I agreed on a
17 management company.

18 Q. The things that you were describing now that you were
19 working on, what time period were you working on that?

20 A. From March -- middle of March -- I think it was like the
21 middle of March, March 12th, to -- until sometime May,
22 June-ish.

23 Q. Now, what was the -- did you come up with a solution to
24 deal with the fact that all the subs left in Burlington?

25 A. Yeah. I mean, the Orlando market was basically shut down

1 construction wise. And Jeff actually did a great job with a
2 couple other guys. And I went up there on March 30th or 31st,
3 around there, and we sat -- and workers actually that wanted to
4 work, like everyday tradesmen, they said they got fired from
5 their job -- not fired. It was not the subcontractors' fault,
6 but the world shut down, and they needed to work, and they
7 wanted to get paid on a weekly basis, can they come work for
8 us. And that's what I was told by Jeff.

9 So then I drove up there and I met with all -- a bunch
10 of people, and they wanted to know if I was going to continue
11 on with the project, even though the world came to an end and
12 everything stopped. And I said: "Yes. We're going to commit
13 to finish the project, like I always do," and --

14 MS. JIMENEZ: Objection. Can we just not have a
15 narrative answer every time?

16 THE COURT: Sustained.

17 THE WITNESS: I'm sorry. What does that mean?

18 BY MR. ETRA:

19 Q. Let me ask you this question, Mr. Sheppard: What was the
20 solution that you came up with?

21 A. Hired -- we hired the workers from the -- the
22 subcontractors' workers, they came to work for us.

23 Q. For whom?

24 A. For HM-UP Development Alafaya Trails, LLC, the contractor.

25 Q. What -- now, in COVID now, who was handling the checkbook

1 to pay workers and things like that?

2 A. I handled a certain amount of checks. Jeanette sent me a
3 bunch of checks from her house. Mary brought them to me so I
4 can pay the workers. So she sent it to me.

5 Q. And what was the system in place to pay workers? How did
6 you know who to write the checks to? How did that work?

7 A. I didn't know any of the new workers. I had no idea who
8 they were. But Jeff Vasilas, who was running the project and
9 who was hiring everybody, he was producing me -- I guess what
10 you call like a report every week of who we had to pay, as far
11 as workers, their names, their hours, and some information. So
12 he gave me that report.

13 Q. Showing you --

14 MR. ETRA: For the witness only, Exhibit X-10.

15 (Pause in proceedings.)

16 MR. ETRA: We have an issue with that exhibit. So let
17 me just put up -- M-11 is in evidence?

18 MR. CAVALLO: Yes.

19 MR. ETRA: If we could put up M-11, which is in
20 evidence, Mary-11.

21 If you could flip ahead, please, to -- no, not that
22 one.

23 Could we go a little lower.

24 BY MR. ETRA:

25 Q. Whose shoes are those?

1 A. Those are mine.

2 Q. All right. So let's look at the picture here. What
3 were you doing up --

4 MR. ETRA: If we could just get the regular picture.

5 BY MR. ETRA:

6 Q. When did this picture -- did you take this picture?

7 A. Yes.

8 Q. What was the time period in this -- that you took this
9 picture?

10 A. Either March 30th or March 31st, 2020. That's when I took
11 the picture.

12 Q. At the time you were trying to figure out a solution?

13 A. Well, I took the picture because my wife wanted to make
14 sure I was social distancing from everybody. So I wanted to
15 prove to her I was social distancing. But that's when we
16 started to figure out what laborers -- with those two gentlemen
17 by the door, about, you know, how do we get workers to come
18 work for us directly.

19 MR. ETRA: Go to the picture that shows the two
20 gentlemen at the door a little closer.

21 BY MR. ETRA:

22 Q. Do you -- do you recognize those individuals?

23 A. Yeah. The guy on the left, that's Brad Schleper -- not
24 Sheppard but Schleper. And the other guy was -- I forget this
25 guy's -- I don't remember his name.

1 Q. There was discussion -- well -- could we go back to the
2 picture with your feet in it, please. Can you identify any of
3 the people in that picture?

4 A. The guy in the blue shirt by the door is Jeff Vasilas and
5 the other guy is Bradley Schleper.

6 Q. I want to talk about funding at this point. Okay?

7 Generally, before COVID starts and you're doing
8 self-construction on HM-UP, what was the plan for funding?

9 A. We were self-funding -- meaning the entity, the members, my
10 wife, myself, we were funding the project on a monthly basis or
11 actually a weekly basis.

12 Q. And why not go to a bank to get a loan? I'm talking
13 pre-COVID.

14 A. Because there was already a loan in place. You can't go
15 get another loan on top of another loan. So there was a loan
16 in place. So we were providing funds because that's how you
17 had to do it.

18 Q. When you say: "Loan in place," you mean --

19 A. The permanent mortgage on the property. It prohibits you
20 from going and adding another loan to the property. You just
21 can't do that without the bank's permission, which we didn't --
22 we weren't going to do.

23 Q. That's the Basis loan?

24 A. The Basis loan.

25 Q. How large a loan -- what was the dollar amount on that

1 loan?

2 A. 20,590,000. That was done in 2016. Yeah.

3 Q. Before COVID did you ever apply for any government funding?

4 A. Never.

5 MR. ETRA: Take a step back and pull up Exhibit X-10.
6 For the witness only, please, X-10.

7 And I want to go a few more pages in and take a look
8 at them for the witness.

9 BY MR. ETRA:

10 Q. Do you recognize Exhibit X-10?

11 A. Yes.

12 MR. ETRA: And for the record, Your Honor, Exhibit
13 X-10 is Bates range Defense 323 to 930 and 1131 to 1180.

14 BY MR. ETRA:

15 Q. Generally speaking, what is X-10?

16 A. What's -- it looks like a report and a bunch of checks.

17 Q. Do you recognize the document?

18 A. Yes.

19 Q. Well, what is it?

20 A. Oh. It's the report that Mr. Vasilas provided to me to --
21 with the backup of the monthly report or whenever he gave the
22 report.

23 Q. Is it all of them or some of them?

24 A. No. No. Each -- no. He gave a lot of reports.

25 MR. ETRA: Your Honor, we offer X-10.

1 THE COURT: Any objection?

2 MS. JIMENEZ: Yes. It's not a business record.
3 Foundation.

4 THE COURT: You want to lay that foundation, please?

5 BY MR. ETRA:

6 Q. Tell me the process of getting these reports.

7 A. When we decided to -- we were always the contractor. But
8 then when the subs left, and we had to hire everybody, it
9 wasn't like sending a check to a company. Right? And then
10 when COVID hit, we actually hired these people -- or not we,
11 but Jeff hired these people to come work for the company.

12 So then we had to have actual reports so I could pay
13 the actual individuals. Because we were no longer paying a
14 company, we had to pay the individuals. So that was provided
15 to me, along with pictures, to show progression of what's going
16 on in the project. And we went through it and other businesses
17 when he came to my house, and -- in 2020. And that's where
18 this comes from. Well, it came from him to me to verify
19 everything.

20 Q. What's the time period of these reports generally?

21 A. As soon as we converted the people from their old company
22 to us, March 2020 through the end of the year.

23 Q. And during that time period, generally where was
24 Mr. Vasilas?

25 A. In 2020?

1 Q. Yeah.

2 A. He was in Orlando mostly.

3 Q. So how did this -- how did he communicate -- provide these
4 reports to you?

5 A. He was a little nuts. He would drive -- bring reports,
6 pick up checks, and drive right back the same day.

7 Q. Keep these records in the ordinary course of business at
8 HM-UP?

9 A. Yes. I have copies of them, and then he had -- in his
10 office up there and also in his storage place up there, he had
11 copies as well.

12 MR. ETRA: We offer -- Defense offers X-11 -- excuse
13 me -- X-10. I apologize.

14 THE COURT: Is there any objection?

15 (Court reporter interruption.)

16 MS. JIMENEZ: Foundation, business record, hearsay.

17 THE COURT: Overruled. It will be admitted into
18 evidence, X-10.

19 (Defendant's Exhibit X-10 received into evidence.)

20 MR. ETRA: Your Honor, may I publish it to the jury?

21 THE COURT: You may.

22 BY MR. ETRA:

23 Q. Mr. Sheppard, is this a typical business -- typical style
24 of business record in your firm as a developer?

25 A. No.

1 Q. Well, in what way is it not typical?

2 A. It's not typical because contractors, or us as a
3 contractor, we don't -- this format is not what we would use.
4 We use a more -- I don't want to say professional but more a --
5 an AIA type of contract -- payment method.

6 Q. Did you say -- did you say: "AIA"?

7 A. Uh-huh.

8 Q. Could you explain what that is.

9 A. It's just a form contract. I mean, what happens every
10 month, you get what they call -- like people give you progress
11 payment requests, and it's -- but it's all laid out, if there's
12 progression, how much you paid, how much is owed, and what's
13 been done. And it's a whole -- it's a -- it's like a form
14 that's a little bit more professional than this, but --

15 Q. Why were you willing to accept, say, a less professional
16 form of report from Mr. Vasilas?

17 A. Because the world was shut down, and it was terrible. So
18 like -- he was putting it together. I told him: "There's no
19 way I'm going to make any payroll payments unless I know who
20 I'm paying." And so that was the only choice I had. I mean,
21 we had to finish the job, and he was the guy.

22 Q. Now, in this case it says checks -- for this particular
23 page we're looking at, it's got the name Jeff Vasilas under
24 that column. And then on the right it's got "Dollars," and on
25 the right it's got "Notes." Can you explain what the request

1 from Mr. Vasilas was with respect to this part of the report.

2 A. Well, I've never done a payroll report. I've never

3 produced one before. So I didn't understand it. So I said:

4 "Look, you need to get me who you're paying, what's the gross
5 wage, show me what they're doing, and show me pictures."

6 And -- and at the beginning, I was explaining what these

7 particular people do and stuff like that and -- that kind of

8 stuff. So I told him: "You have to put that in a format. I'm

9 just not going to write a check to you blindly. That would be
10 crazy."

11 Q. Did you always -- did you write the check to the workers
12 individually or to Mr. Vasilas to pay the workers?

13 A. A mixture of both. Sometimes -- most of the time, it was
14 really just the workers directly, but sometimes he already
15 advanced their check if it was on a Friday and he couldn't get
16 back to Miami.

17 So if it was a Friday, he would advance the check, and
18 then I would pay him back. I didn't pay him back -- I would
19 reimburse him for doing that. And it was just strange times.
20 It was just weird. It was not normal.

21 Q. And you recall testimony about -- I think Mr. Beirne said
22 that he got a check from a Diamonds company. Do you recall
23 that?

24 A. I'm sorry?

25 Q. Do you recall testimony I think from Mr. Beirne that

1 said --

2 MS. JIMENEZ: Objection to the form of the question.

3 THE COURT: Sustained.

4 BY MR. ETRA:

5 Q. Did Mr. Vasilas have authority to write checks from his own
6 business in this process?

7 A. Yeah. I mean, he was -- it was understood he had authority
8 to do that and for me to reimburse him for payroll.

9 Q. Okay.

10 MR. ETRA: Let's take this down and go back to the
11 funding where we were before.

12 BY MR. ETRA:

13 Q. So before COVID, you're self-funding. In your -- prior to
14 COVID, had you ever requested or sought any government funding?

15 A. Prior to COVID?

16 Q. Correct.

17 A. Not that I'm aware of.

18 Q. Why not?

19 A. I just dealt with the private sector and just never thought
20 about it. I didn't even know there was government funding
21 available out there.

22 Q. I want to talk about the evidence about -- well, what
23 happened with the -- Mr. Graff's involvement in some kind of an
24 application for HM Four. Okay?

25 A. Yes.

1 Q. All right. Approximately when did that take place, to your
2 recollection?

3 A. Well, when he left, between March 15th and March 31st.

4 Q. So his final day -- his final day of employment or work was
5 when?

6 A. March 31st.

7 Q. So when you say he left, what happened in -- March 15th
8 with respect to leaving?

9 A. He was making a transition in careers to go work as
10 executive director of the temple so he asked me if he can go
11 make that transition and work out of their offices. And I
12 said: "It's not a problem as long as you keep in communication
13 if I need something."

14 Q. How did the subject of this potential loan application
15 first come up?

16 A. I called him about another matter about my business, and he
17 said he was very busy working on some government programs or
18 something.

19 Q. And how did that lead to a discussion of one of your
20 companies applying for government funding?

21 A. I asked him what the government program -- "What are you
22 working on," and he explained it kind of, sort of. I mean, I
23 didn't understand what he was talking about, but he says -- you
24 know, I asked if -- "Does that apply for what we're doing in
25 Orlando," and he said: "Yeah."

1 Q. And how did that -- where did those discussions go
2 ultimately?

3 A. I asked him -- he said he'll look into it. He'll see --

4 MS. JIMENEZ: Your Honor, all these questions are to
5 elicit hearsay. I object.

6 THE COURT: Sustained.

7 MR. ETRA: Your Honor, it's not for the truth of the
8 matter. It's for the information he received. We've heard
9 Mr. Graff testify --

10 THE COURT: I understand what we heard. The objection
11 is sustained.

12 MR. ETRA: Your Honor, may I sidebar? This is state
13 of mind. This is critical to the case.

14 THE COURT: The objection is sustained.

15 MR. ETRA: For the witness only, putting up -- could
16 we please put up Exhibit X-15.

17 BY MR. ETRA:

18 Q. Mr. Sheppard, do you recognize what's in front of you as
19 X-15?

20 A. (No verbal response.)

21 MR. ETRA: Could we --

22 BY MR. ETRA:

23 Q. Are you able to look at it the way it's presented at this
24 time?

25 A. Well, there's like a bunch of stuff going on here.

1 MR. ETRA: Why don't we take away that little box and
2 let the witness look at the document.

3 THE WITNESS: Yes. I see it.

4 BY MR. ETRA:

5 Q. Okay. Is this a correspondence between you and Mr. Graff
6 in late March of 2020?

7 A. Yes, it is.

8 Q. Is this pursuant to the business of your HM companies?

9 A. Some of them, yes.

10 Q. Or other companies?

11 A. Yes.

12 Q. Okay. Is it a business record of your companies?

13 A. Yes.

14 MR. ETRA: We offer X-15 with the attachments.

15 THE COURT: Is there -- are you seeking to introduce
16 it at this time?

17 MR. ETRA: Yes, Your Honor.

18 THE COURT: Is there any objection?

19 MS. JIMENEZ: I object. The attachment is not what's
20 being shown next to it. The attachment is something else.

21 MR. ETRA: It's the first page of the attachment, is
22 it not?

23 THE COURT: Hold on. It appears to be inconsistent
24 with what's listed on the first page of X-15. So are there
25 additional pages other than Bates 2309?

1 MR. ETRA: Yes, Your Honor. It goes for several
2 pages.

3 THE COURT: Okay.

4 (Pause in proceedings.)

5 MR. ETRA: Is that the end?

6 THE COURT: Any further objection?

7 MS. JIMENEZ: No, Your Honor.

8 THE COURT: X-15, with the attachments, is admitted
9 into evidence.

10 (Defendant's Exhibit X-15 received into evidence.)

11 MR. ETRA: And just put up the first page at the
12 moment only.

13 BY MR. ETRA:

14 Q. Why are you sending these materials to Mr. Graff on
15 March 25, 2020?

16 A. Because he asked me for them, and I was sending it to him
17 to -- he needed -- and he was going to upload them into a
18 system.

19 Q. Did you tell Mr. Graff that HM Four had to be the company
20 that would apply?

21 A. No.

22 Q. Did -- what, if anything, did you say to Mr. Graff about
23 what company should apply?

24 A. I wrote and -- he told me who should apply. I didn't
25 really know. But I sent HM-UP Development Alafaya Trails's tax

1 return. And then the owners of that company -- I sent their
2 information as well for this 4506-T thing.

3 Q. Why did you send the HM-UP tax return to Mr. Graff at this
4 time?

5 A. Because that's who I thought was applying for this
6 particular -- I didn't actually know what I was applying for
7 because I didn't understand what it was, but he said that's
8 what it was.

9 Q. Okay. Now, do you see the page on the screen?

10 A. Yes.

11 MR. ETRA: If we can go to the page after that too, so
12 he can --

13 BY MR. ETRA:

14 Q. What is that?

15 A. That's the tax return for 2018 for HM-UP Development
16 Alafaya Trails, LLC.

17 Q. Okay. Who chose what company to apply for the -- that
18 loan, whatever it is that Mr. Graff was applying for?

19 A. Jeff Graff.

20 Q. Did you care whether it was HM-UP -- at that point, HM-UP
21 or HM Four applying?

22 A. I just took direction. I had no idea what this program
23 was, and I took his direction because he was heavily involved
24 with it for the -- for the temple. So I figured he knew what
25 company made sense.

1 Q. Did you ever see an application filled out from Mr. Graff
2 that indicated a hundred employees?

3 A. No.

4 Q. The one that was shown in court?

5 A. No.

6 Q. At the time, how many workers did you think there would be
7 at Burlington?

8 A. Well, from the beginning in January through then and on,
9 between 80 to a hundred workers to build a 60,000-square-foot
10 building.

11 Q. Do you have any recollection of discussing with Mr. Graff
12 the number of workers or employees in connection with the loan?

13 A. There was -- we never discussed about employees.

14 Q. And was Mr. Graff involved in those early discussions --
15 planning discussions for number of workers or employees?

16 A. I don't know what that means. What do you mean? What time
17 frame?

18 Q. Earlier, when you sat down and mapped out how many workers
19 were going --

20 A. Yeah. November, December, January 2019 to '20, yes, him
21 and others were involved with that discussion to -- again, on
22 every other job you have to know how many workers are going to
23 be working on the job.

24 Q. Did Mr. Graff ever tell you that HM Four was not eligible?

25 A. No.

1 Q. Did he ever tell you any of the other companies weren't
2 eligible?

3 A. When you say: "Other companies," what do you mean by that?

4 Q. Like HM-UP, say?

5 A. No.

6 Q. If he had told you they were not eligible, what would you
7 have done?

8 A. I would have just continued on funding and moving on with
9 the project.

10 MR. ETRA: Your Honor, I'd like to put up a document
11 in evidence. We have it as Q-25. I believe it's in evidence.
12 It's Q-25, Your Honor.

13 THE COURT: All right.

14 MR. ETRA: Let's go back a few -- let's go back a few
15 pages to the bottom of it.

16 Yeah, the last part.

17 BY MR. ETRA:

18 Q. Do you see the last email in the chain?

19 A. Yes.

20 Q. Did you send that email on March 30th to Alex Zaslow?

21 A. Yes.

22 Q. And did you indicate to him that you applied for some
23 government programs, the way it says like that?

24 A. Yes.

25 Q. And did you get a response from Mr. Zaslow, to your

1 recollection?

2 A. Did I get a response?

3 Q. Yeah. Let me rephrase the question. Did he ever get back
4 to you to say: "You can't do this. You don't have W-2
5 employees," or "You're not eligible for PPP program" or
6 anything like that?

7 A. No.

8 MS. JIMENEZ: I'm sorry. Can you identify the exhibit
9 number, please.

10 THE COURT: Q-25.

11 MS. JIMENEZ: Q-25.

12 BY MR. ETRA:

13 Q. And what was Mr. Zaslow -- where did Mr. Zaslow work at
14 that time?

15 A. Neal Cupersmith's office.

16 Q. Throughout the PPP loan process, Mr. Sheppard --

17 MR. ETRA: We could take this down.

18 BY MR. ETRA:

19 Q. Throughout the PPP loan process, did you ever see any --
20 were you -- did you ever see anything that told you that it's
21 only for W-2 -- that payroll is only W-2 payroll and not 1099ed
22 workers?

23 A. No.

24 Q. Did anyone ever tell you that?

25 A. No.

1 Q. If they had told you that, what would you have done?

2 A. If it didn't qualify, I wouldn't apply and I would just go
3 on continuing doing what I was doing.

4 Q. How would you do that?

5 A. I would just continue funding the project as we started in
6 January. We already committed to the project, so we just
7 continued on.

8 Q. Where would you get the money?

9 A. We would -- we had the money available, and we would just
10 write the check to do that. I mean...

11 Q. I want to talk about the first PPP loan with PayPal.

12 A. Okay.

13 Q. How did -- to your recollection, how did that process
14 start?

15 A. It started because somehow I had a PayPal account and there
16 was a small bill or something due. And I went online and
17 looked, and there was -- something popped up on the PayPal
18 account and said: "We now have PPP loans," "PayPal," or
19 something.

20 Q. And what happened next?

21 A. I pushed the little button in the box -- I mean on the
22 computer -- and it transferred me over to this PayPal
23 section -- I mean PPP section.

24 Q. And what happened next?

25 A. I pushed another box and went to LoanBuilder -- I think

1 it's called LoanBuilder -- and pushed that. And then all of a
2 sudden these prompts came up.

3 Q. Do you recall seeing prompts when the PayPal witness was on
4 the stand?

5 A. I do.

6 Q. Does it seem like those are prompts that you were looking
7 at at the time?

8 A. I mean, I don't -- I knew they were prompts. I can't tell
9 you exactly what it looked like. It looked similar to it, but
10 I don't -- it was a long -- three years ago but looked similar.

11 Q. Who was the human being that was actually filling out those
12 prompts on the first PPP loan with PayPal?

13 A. Myself.

14 Q. And I want to ask you just a few questions about those.
15 Okay?

16 A. Okay.

17 Q. Do you recall seeing that there was a d/b/a for HM
18 Management? Do you recall that?

19 A. I do.

20 Q. Okay. Did you type that in?

21 A. Yes.

22 Q. Do you know what a d/b/a is?

23 A. Yes.

24 Q. And is HM Management really a d/b/a?

25 A. No.

1 Q. So why did you put that in there?

2 A. Because I wasn't -- because HM Management and HM-UP were
3 involved with the project. I didn't -- and there was -- I had
4 to put it somewhere, and there was nowhere else to put it. So
5 I was trying to get advice, like is it HM Management or HM-UP
6 because they're both on the same project doing different
7 things. So I didn't know, so I put it -- I just -- so --
8 because there was nowhere else to put it. There was no other
9 section.

10 Q. Why not go to a place where they say: "Anything else you
11 want to ask us?" Did they have one of those?

12 A. No. There was -- I mean, I'm not great with computers, but
13 I didn't see anything that I can just type in: "Hey, can you
14 call me" or something like that. There was nothing like that.

15 Q. Before COVID, did you ever apply for a loan through an
16 automated process with a portal like this before?

17 A. No.

18 Q. I want to talk about the industry that you picked,
19 construction. Why did you pick that industry?

20 A. It said: "Pick what you're doing," and we were actively
21 doing construction, so I picked construction. That was one of
22 the options they had.

23 Q. I want to talk about the number of employees. Why did you
24 put 80, eight zero, there?

25 A. Because in 2020 we were constructing a building, and there

1 was -- it was approximately 80 employees. But when you're in
2 construction, it varies from month to month. So it was hard to
3 tell. So I put 80 because that was the total. And some months
4 it's 70, sometimes it's 40. It moves, but I just put 80
5 because on our -- on our spreadsheet it said 80 workers.

6 Q. On your planning documents?

7 A. On the planning documents. Because we took over
8 everybody's workers, so I said 80. So I pushed 80.

9 Q. When you were typing in the PayPal portal, and it asked
10 about employees, what time period in your mind were you
11 responding to?

12 A. I thought the whole thing was intended for 2020 because
13 you're supposed to be getting it to pay the workers in 2020.
14 So I just thought it was 2020.

15 Q. What about the fact that -- what about the issue of W-2
16 versus 1099? At what part of -- did that go into your thinking
17 at all when you were typing in 80 for employees?

18 A. Not for a second. I don't think about that kind of stuff.

19 Q. Why?

20 A. It's just not -- again, it's employees. They're working on
21 the project. Jeff was converting these people. So I just
22 think about employees that are working directly for us, so
23 that's what I looked at.

24 Q. I want to talk about the next series of prompts after you
25 fill out all information and there's a place to fill in the

1 payroll period and the dollar amounts. Do you recall that?

2 A. I do.

3 Q. Okay. And you recall seeing that earlier, a while ago in
4 the case?

5 A. I do.

6 Q. Okay. When you filled that -- do you recall what you
7 picked for time period for the payroll calculation?

8 A. Well, first I pushed "Submit" for the first part. It's
9 like one of those video games where you go to the next level
10 thing, like a Mario Bros. And so I submitted that, and then
11 another thing pops up. And then it says all these questions
12 about actual physical payroll or what time period or something.
13 And that's when I looked at that payroll time period or
14 something.

15 Q. And do you recall -- and we could put it on the screen, if
16 you want me to, but do you recall what time period you picked?

17 A. Yes. It was -- the only one you can pick was 2019.

18 Q. And do you recall putting in the dollars in response to the
19 prompts on that page?

20 A. Yes.

21 Q. Where did you get the information to put in the dollars in
22 response to the prompts on that page?

23 A. I called Jeanette and I said: "In 2019 -- can you give me
24 the employees for 2019? What's the number," and she told me
25 what the number was, and I just typed it while she was talking

1 to me.

2 Q. Now, they ask for proof -- how are you going to
3 substantiate the payroll, I should say. We saw you clicked the
4 bank records. Did you upload bank records to PayPal?

5 A. Me personally?

6 Q. You, sir, personally.

7 A. No. I couldn't do that.

8 Q. So do you recall who you spoke to about uploading the
9 documents?

10 A. I don't remember exactly who I speak to. I don't know if
11 it was Jeanette, it was Jeff, it was Mary. Somebody who knew
12 how to upload something. I don't exactly know which particular
13 person, just someone who had the -- the physical bank
14 statements and I think it was also the health insurance -- the
15 health insurance payments for the -- 2019. So whoever had
16 those documents, to gather those things and upload it into
17 the -- into the thing, in the air, or the portal -- or yeah,
18 portal.

19 Q. When you say: "Jeff," which Jeff are you referring to?

20 A. At that point, it would be Jeff Vasilas, not Jeff Graff.
21 It would be Jeff Vasilas, Mary Ataca that was here, or
22 Jeanette.

23 Q. And generally speaking, with respect to getting assistance
24 for the first PayPal loan, who did you speak to for help
25 generally?

1 A. I'm sorry. Repeat the question.

2 Q. In terms of getting assistance generally for the first
3 PayPal loan application process, who did you speak to to get
4 help? Who do you recall speaking to?

5 A. Well, I spoke to Neal Cupersmith, Alex Zaslow, and I was
6 taking information from what Jeff Graff told me.

7 Q. In terms of helping you get information and give it to
8 PayPal, who did you speak to?

9 A. Oh. Again, I spoke to Jeff, Jeanette, and that's it.

10 Q. What was Jeff's reaction to being asked to help on the PPP
11 loan?

12 MS. JIMENEZ: Objection. Calls for hearsay.

13 THE COURT: Overruled.

14 THE WITNESS: His reaction is like he always does.

15 "Okay. Where do I go? Where do I go? Okay. Great. Great.
16 Great. Great." I mean, like he's a very aggressive guy. He
17 looks to do things. He was, you know --

18 MR. ETRA: I'd like to put up -- please put up in
19 evidence Government Exhibit 17-10. I want to focus in on the
20 language in the information part towards the top.

21 BY MR. ETRA:

22 Q. Let me ask you generally, Mr. Sheppard, what was it like
23 communicating with PayPal -- let me take a step back and not
24 look at the screen, if you don't mind for a minute.

25 What was it like communicating with PayPal on this

1 loan?

2 A. I mean, I can't blame them a hundred percent, but it was
3 very, very difficult. But again, I'm not -- might be user
4 error from a computer standpoint, but it was impossible.

5 They'd say: "Reset. Reset. Log out. Reset." It was very
6 difficult. There was no one to talk to, no one to speak to.
7 It was just a very strange -- you know, maybe it's an age
8 thing. But I just -- it was very strange. They never respond.
9 You call -- I mean, not call. I mean you type stuff in there.
10 They don't call you back or email you back. It was terrible.
11 I really didn't enjoy it.

12 Q. You see the note here? "I'm the owner of multiple
13 companies, so I need to change the application to reflect
14 self-employment" -- excuse me -- "to reflect self-employed with
15 employees, and the LLC needs to be changed. How do I do this?"

16 Did you write that?

17 A. Yes, I did.

18 Q. And the date on this is -- it's February 22 -- sorry --
19 April 22 of 2020. Does that sound about right?

20 A. That's what it says.

21 Q. I want to focus on: "The LLC needs to be changed." Why
22 did you think the -- why did you write that about the LLC
23 needed to be changed?

24 A. Because when I was back in the portal part, you couldn't go
25 like back. Like, you were doing the front part, where they do

1 the payroll number accounts, and you couldn't go back to go
2 change anything.

3 So when I saw the 2019, then I realized that, oh,
4 geez, that's really HM Management and there's not 88 people.
5 There's 11 to 15 -- I don't know the exact number, but there's
6 X amount of people. Because they didn't want the information
7 going forward for 2020, which I thought that's what the whole
8 program was for, to pay people in 2020.

9 So I had to go -- so I wanted to -- that's why I wrote
10 HM-UP and the d/b/a for HM Management because I was confused.
11 So I figured it out, spoke to some people, and they said: "No.
12 You have to put it for HM Management because that was 2019 --
13 those people are from 2019." And that's why I wrote them, so I
14 can somehow change it, because you couldn't change it inside
15 the thing, the portal thing.

16 Q. I want to ask about something slightly different, if you
17 don't mind me keeping it on the screen. I want to talk about
18 the payroll report that, according to PayPal, was submitted in
19 this time frame of -- for this application, where it has a
20 column for withholdings. Do you recall seeing that document in
21 this case?

22 A. I do.

23 Q. Did you recognize the document?

24 A. I recognized it because I saw it in the case in '22 and
25 '23. That's when I recognized the -- by looking at it a lot of

1 times, that's why I recognize it now.

2 Q. Meaning after you were arrested?

3 A. After, yeah.

4 Q. Did you prepare that document?

5 A. No.

6 Q. Did you ask anyone to prepare that?

7 A. No.

8 Q. Do you know how it got created or uploaded?

9 A. Again, I never saw it until that moment in time when all
10 this happened. That's my first time I saw it.

11 Q. Okay. Staying on this -- let's go to the next -- next
12 communication here. Did you get a response to that note?

13 A. No.

14 Q. Okay. I want to go to the -- we're now April 23rd, and you
15 write -- well, did you write this: "I needed to add more
16 documentation from my CPA to the submittal, but the site will
17 not let me. Thank you"? Did you write that?

18 A. Yes.

19 Q. Did you get a response to that?

20 A. No.

21 Q. Do you recall seeing -- do you recall the evidence earlier
22 about a conference call --

23 MS. JIMENEZ: Objection.

24 THE COURT: I'm sorry. The basis?

25 MS. JIMENEZ: Leading. Asking -- it was leading, Your

1 Honor.

2 THE COURT: Sustained.

3 BY MR. ETRA:

4 Q. Okay. Did you have -- did you speak to the accountants
5 around this time period?

6 A. Yes.

7 Q. What do you recall about that?

8 A. I recall they emailed -- we emailed back and forth about
9 setting a time to call because I'm trying to get guidance about
10 this application. And we set up a phone call and had a phone
11 call regarding that on the -- I believe it was the 22nd or
12 23rd. I don't remember which date.

13 Q. And what do you recall about the discussion with the
14 accountant about -- as reflected here -- or about this?

15 A. I don't remember all the conversation --

16 MS. JIMENEZ: It calls for hearsay.

17 THE WITNESS: Oh. I'm sorry.

18 MS. JIMENEZ: That's what he's doing.

19 MR. ETRA: Your Honor, it's advice -- they asked why
20 he didn't call the accountant. So what advice he got is state
21 of mind --

22 THE COURT: Yeah. The objection is overruled. I'll
23 allow it.

24 THE WITNESS: I asked him about the 2019 compared to
25 2020, and that's when they said: "You have to use 2019

1 workers." And he said: "You can get" -- "Jeanette knows all
2 about this stuff," and I said: "Okay." And he also said
3 from a -- how do you call it -- an LLC, he was telling me that
4 it really should be HM Management.

5 MS. JIMENEZ: Can we identify who -- who he is talking
6 about?

7 THE WITNESS: I'm sorry. I apologize. Neal
8 Cupersmith and Alex Zaslow were on the phone, and they
9 specifically told me: "You can't use" -- "HM-UP is 2020. Like
10 I told you before, it's 2019. You have to use those people
11 from then," and that was the end of the conversation. And that
12 was it, I mean, from my -- that's what I recollect of this
13 particular moment here.

14 BY MR. ETRA:

15 Q. At any point in the conversation, did either CPA tell you:
16 "Eric, what are you talking about? You don't have W-2. You
17 shouldn't be doing this"?

18 A. No.

19 Q. Had they told you that, what would you have done?

20 A. If my accountants told me that it was W-2, then I would
21 just have gone back to my normal business.

22 MR. ETRA: I'd like to put up for -- put on the screen
23 Exhibit C-14 in evidence.

24 This is a Salesforce from April 27th, and the subject
25 is: "Open opportunity already exists with" --

1 MS. JIMENEZ: Sorry. What Government exhibit is
2 this -- Government number?

3 MR. ETRA: I don't know. It's our C-14.

4 Do you know, Chris?

5 THE COURT: Let's identify the exhibit number, please.

6 MR. CAVALLLO: Your Honor, the -- pursuant to the
7 Government's exhibit list, 17 -- Government's Exhibit 17 is all
8 PayPal records. I haven't identified it within there, but
9 that's all PayPal records.

10 THE COURT: May I see the Bates stamp, please?

11 MR. ETRA: First page is 338, and the last page --
12 could we get to it -- 341 is the last page.

13 THE COURT: All right.

14 MR. ETRA: May I proceed?

15 THE COURT: Yes, of course.

16 BY MR. ETRA:

17 Q. Okay. Reading from the screen, from the page, on
18 April 27th the system says: "Open opportunity already exists
19 with email," and it's got "eric.sheppard10@gmail.com." Do you
20 see that?

21 A. I do.

22 Q. By the way, what is your regular most-used email?

23 A. Eric.sheppard10@gmail.com.

24 Q. Did you do anything beyond the -- did you get a response to
25 the second message we saw that came after you spoke to the CPA?

1 A. No.

2 Q. Okay. What did you do next to try to communicate with
3 PayPal?

4 A. Since I didn't get anything back, I just had somebody do
5 the application the proper way, and based upon not 2020 but
6 2019, and to submit it to PayPal and attempt to make sure that
7 they had the information that I was advised that I should
8 provide them.

9 MR. ETRA: For the witness only, can we please put up
10 Exhibit X-12.

11 Could we put the first and second page next to each
12 other, please.

13 BY MR. ETRA:

14 Q. Do you recognize Exhibit X-12?

15 A. I do.

16 Q. And generally, without getting into the details because
17 it's not in evidence, what is X-12?

18 A. This is the -- the PayPal application adjustment filed in
19 April 27th, 2020.

20 Q. Was this done at your direction?

21 A. Yes.

22 Q. Was this done to submit to PayPal as part of the business
23 of your HM companies?

24 A. Yes.

25 Q. And was it kept and maintained by the business?

1 A. Yes.

2 MR. ETRA: The Defense offers Exhibit X-12.

3 THE COURT: Any objection?

4 MS. JIMENEZ: This would be a PayPal business record,
5 not a Defendant's business record, so yes, I object.

6 THE COURT: Is this -- I'm not quite understanding the
7 qualifier. What would be the basis of any objection? This is
8 the Defendant's X-12 into evidence. Is there any objection?

9 MS. JIMENEZ: Yes. Objection. Business record.

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

12 (Defendant's Exhibit X-12 received into evidence.)

13 MR. ETRA: Could we look at the page on the left.

14 MS. JIMENEZ: What is the number? I'm sorry.

15 THE COURT: X-12.

16 BY MR. ETRA:

17 Q. Mr. Sheppard, if we can look on the left side of the
18 screen, what is that?

19 A. This is the -- the -- or from -- it's the document that --
20 scanned, forwarded to the PayPal people.

21 Q. Where is the scanning going on on the left side? Could you
22 please explain. From where to where? Where is it going?

23 A. It goes -- I'm not sure exactly how to describe it. But
24 it's in the -- it's the actual physical office of -- at 12000
25 Biscayne Boulevard. It is the system where it gets put into

1 the PayPal portal.

2 Q. Okay. Is this the correct -- the application you submitted
3 to PayPal?

4 A. Yes.

5 Q. Okay. And who physically uploaded it into the portal?

6 A. I'm not sure who specifically did it, but it would probably
7 only be the people I mentioned before -- actually, one other
8 person. It would be Vanessa, Jeanette, Mary, or Jeff.

9 Q. After April, when we say "Jeff," we mean...

10 A. Jeff Vasilas. Sorry.

11 Q. That's okay. You're not doing anything wrong.

12 All right. And who actually physically found the
13 application and typed in on the computer on the PDF?

14 A. Someone -- one of them who actually does -- knows how to
15 work the computer like that, and -- one of those people.

16 Q. Now, if you look at number of employees, it says: "11."
17 Why did you direct that it have 11 there?

18 A. Because the accountants told me that it was in 2019, even
19 though it's for 2020 people you're paying. But they told me it
20 was for 2019. You have to use the numbers from then. And
21 that's why -- like I told you before, that was why it was
22 adjusted to the proper core people of the business.

23 Q. And if we look at the business legal name left and then up?

24 MR. ETRA: You can highlight that, please.

25

1 BY MR. ETRA:

2 Q. What business legal name did you direct put there as the
3 actual applicant?

4 A. I told them to put CJUF III Flagler, because it goes
5 through the same process where the -- HM Management is
6 providing workers for self -- self-performing workers work at
7 the Flagler project along with something at HM-UP. So again, I
8 was confused. That's -- I wanted to get someone to call me and
9 say: "Hey" to make sure it's done properly, and there was
10 nowhere else to put the information.

11 MR. ETRA: Let's go to the middle of the page.
12 There's a Question 3. If we can blow that up.

13 BY MR. ETRA:

14 Q. All right. Do you see here it's asking about -- in its own
15 way, something about common management or affiliates? Do you
16 see that?

17 A. I do.

18 Q. And it's checked --

19 MR. ETRA: Thank you.

20 BY MR. ETRA:

21 Q. It's checked "Yes," correct?

22 A. Yes.

23 Q. And it refers to the --

24 MS. JIMENEZ: Objection. Can we not lead? Leading.

25 THE COURT: Leading. Sustained.

1 BY MR. ETRA:

2 Q. Which box is checked for affiliates?

3 A. "Yes."

4 Q. And is there any indication here about -- well, I'll just
5 read it. It says: "If yes, list all such businesses and
6 describe relationship on a separate sheet identified as
7 Addendum A." Do you see that?

8 A. Yes.

9 MR. ETRA: Let's go to the last page of the document.
10 Let's blow that up.

11 BY MR. ETRA:

12 Q. It says: "Exhibit A, Common Ownership and Management," and
13 it lists HM Management and Development, CJUF Flagler, and
14 HM-UP, correct?

15 A. Yes.

16 Q. Why did you direct that this be created?

17 A. Just to explain the -- you know, the common -- it says:
18 "Managing all three companies." So I just wanted to make sure
19 that they understand and to communicate to make sure I was
20 doing it the right, proper way. And to the best of my
21 knowledge, they wanted to know, and I dictated it and they
22 typed it out, and that's what it looks like.

23 Q. Now, from your understanding, once this was uploaded, what
24 was your understanding as to whether you had communicated the
25 affiliate information to PayPal?

1 A. It's part -- they have it. They have the information, so I
2 assume they keep it and store it.

3 Q. What was your understanding about whether that information
4 was communicated to the Small Business Administration?

5 A. I can't tell you what I thought. I mean, between their
6 relationship, I just thought that PayPal is part of the SBA, as
7 far as it's an SBA program. So I thought they communicate
8 together somehow.

9 MR. ETRA: Let's go to the signature block on the --
10 let's go to the bottom there.

11 BY MR. ETRA:

12 Q. Do you recall whether you signed that document?

13 A. I did.

14 Q. Going --

15 MR. ETRA: You could take that down now.

16 BY MR. ETRA:

17 Q. Now, at some point, do you get an email or a notification
18 for a DocuSign, for what we now know is the formal application?

19 A. Yes.

20 Q. Was it you the person that opened it and pressed the
21 DocuSign?

22 A. Yes. I received it. Well, my email box received it.

23 Q. And -- well, did you open it? Are you the human being that
24 actually pressed on the DocuSign?

25 A. Yes.

1 Q. What do you remember reviewing or noticing about the
2 application when you DocuSigned it?

3 A. Can you be more specific? Like, what I viewed?

4 Q. I'll ask it differently. Did you read any of it?

5 A. Yes.

6 Q. What did you read?

7 A. I looked at the -- the monthly number -- the monthly
8 payroll number, and I went through the certifications because
9 it takes you to a place for you to sign. You have to like push
10 the button to sign -- you don't sign it, I guess. You -- I
11 don't know how you do it. You push the button or you do
12 something with the DocuSign. And looked at those specific
13 certifications that were saying: "Hey, this is what you" --
14 "This is this. This is that." And there was like, I don't
15 know, eight, 10, something like that, certifications.

16 And then there was the -- then there's like a
17 signature block or a signature part. And it drops you -- it
18 just keeps moving, moving, moving. And then it goes down to
19 the bottom, and then you push that. And then it says:
20 "Complete," or something like that, and you send it.

21 Q. Did you believe that you had provided accurate information
22 in good faith?

23 A. Did I provide the accurate information? Yes, I do.

24 Q. Do you have any reason to believe there was any information
25 that was incorrect?

1 A. From what I knew of a program that just started and
2 reading, I thought that that would be -- everything was
3 accurate.

4 Q. I want to segue -- I want to move us forward, but I got to
5 talk about what's going on on the business side, and let's go
6 back to the business. What is going on -- now we're in
7 COVID -- I want to set the time frame. Post-COVID, you know,
8 towards, say, November or so. We're in 2020. Okay?

9 A. Yeah.

10 Q. What's going on with phase 3?

11 A. In November 2020?

12 Q. In that period. In that period from the beginning of COVID
13 through November 2020.

14 A. Well, we started doing a little bit of some site work on
15 the property, meaning with some trees and in the common area of
16 the phase 3. It was kind of actually phase 1, phase 2
17 property, but we were just starting to clear trees and start
18 getting ready to start doing some type of construction in the
19 area to move things along.

20 Q. What was your relationship between that work and those
21 leases for phase 3?

22 A. The leases were still in flux at the time because tenants
23 were extending it out. But I was negotiating with Amazon
24 Fresh, Amazon Markets, the new concept. So the leases -- I was
25 negotiating with them. So I started to do some construction.

1 Q. Did that need to get done before you could start eventually
2 with the leases, build up the buildings?

3 A. Yeah, because it's muck. It's not like, I mean, you have
4 to go down 20 feet, but you have to do these -- you have to go
5 and do probes and stuff like that to figure how deep the muck
6 is and all that stuff. So we started that process, and it's --
7 that kind of site work takes, you know, six to eight months
8 because it's a very -- it's dangerous and it's also --

9 MS. JIMENEZ: Objection. Relevance.

10 THE COURT: Overruled. You may continue.

11 MR. ETRA: Sorry?

12 THE WITNESS: What do I do?

13 MR. ETRA: Did Your Honor rule?

14 THE COURT: Yes. I said: "Overruled."

15 You may continue.

16 THE WITNESS: So in the common area section, you have
17 to do all that to prepare the site and move the site work
18 ahead.

19 BY MR. ETRA:

20 Q. By the way, going back to the PPP money that came in on the
21 PayPal, how did you use that money?

22 A. Well, I contributed money as well, and -- but
23 simultaneously we paid one hundred percent -- one hundred
24 percent of the dollars went to a worker on the jobsite who did
25 construction or other things; one hundred percent, every

1 dollar, every nickel.

2 MR. ETRA: For the witness only, please, we can
3 show -- or at least put on the beginning of X-26, which is a
4 short video.

5 Why don't we just freeze it for the moment and ask the
6 witness.

7 BY MR. ETRA:

8 Q. Do you recognize this video?

9 A. Yes.

10 Q. And in broad terms, what is the video?

11 A. This was in the common area between the phase 3 owner and
12 the phase 1, 2 owner, the common area. And this was a
13 machinery that got eaten by the muck, meaning sucked in by the
14 muck. And this was the people trying to get it out --

15 MS. JIMENEZ: Just -- objection. Relevance.

16 THE COURT: Sustained.

17 BY MR. ETRA:

18 Q. Who was involved in trying to clean up the muck and do the
19 horizontal construction -- well, what time period is this, by
20 the way?

21 A. This was, I would say, about end of June, July 2020. And
22 this was Jeff Vasilas doing the common area where HM Four is in
23 control of and doing the actual physical work because it's a
24 common area. And he --

25 Q. What happened? What happened? What was the issue?

1 A. He didn't hire somebody. He tried to operate the machinery
2 himself and caused a major problem on the site because he's
3 operating machinery himself. And this is just a video showing
4 what he did and trying to fix the issue how he would fix the
5 issue.

6 Q. And did -- the video that's on the screen, that's not in
7 evidence, did you --

8 THE COURT: Mr. Etra -- yes, the jurors are in need of
9 a break. Let's go ahead and take a 10-minute recess.

10 MR. ETRA: Thank you, Your Honor.

11 COURT SECURITY OFFICER: All rise.

12 (Jury not present, 2:24 p.m.)

13 THE COURT: All right. If we could take that all off
14 the screen. I think it's still on the screens.

15 We're on a 10-minute recess.

16 MR. ETRA: Your Honor, could I be heard on a
17 proffer on the prior --

18 THE COURT: On which issue, sir?

19 MR. ETRA: The prior pictures on the roadwork and the
20 video here, which I'm going to still make my record at some
21 point. Obviously, if Your Honor orders me to move on, I will.
22 But this is -- they got the government money, and this is what
23 the government money is for. And he's getting more government
24 money because he's got to pay for these things.

25 So this is what -- the Government has said we're

1 misusing government money, and we're showing what we used the
2 government money for. It's a core part of our defense. And we
3 can actually prove it with pictures and videos that the jurors
4 can follow relatively easily, and we think it's core defense
5 evidence, and we'd like to show it to the jury.

6 MS. JIMENEZ: He said that he used the government
7 money one hundred percent to pay his workers. That's fine. I
8 mean, this video is a waste of time. It doesn't add anything.
9 It's irrelevant. It's somebody operating a tractor.

10 THE COURT: I agree in terms of the video. The
11 testimony as to how he might have used those loan proceeds,
12 certainly he can testify to that, but I believe that this video
13 is extraneous and irrelevant.

14 MR. ETRA: Your Honor, also, I believe Mr. Vasilas is
15 in the video too. I'd like him to be able to identify that
16 Mr. Vasilas is there --

17 THE COURT: But what would be the import of
18 identifying an individual for the jury? Why is that important
19 to this case?

20 MR. ETRA: Because the Government views this as a
21 document case and we view this as a human case. And we have a
22 right to put on our defense and show exactly what's going on.
23 It's not -- respectfully, it's not peripheral. It's the
24 reality of what life was like. And it's our job as lawyers to
25 bring this to bear for our client, and we should be able to

1 show the jury exactly what was going on through actual video,
2 contemporaneous evidence. It's the government loans -- and I
3 think it's entirely appropriate.

4 THE COURT: And you can certainly ask with regard to
5 the loan proceeds.

6 All right. Your record has been made. I'll see you
7 back here in 10 minutes.

8 MS. WEINTRAUB: Judge, also, I just want the Court to
9 remember that the Government was arguing that a jewelry expense
10 from June 4th, the same week that this video was taken -- that
11 was relevant but this is not, and we object.

12 THE COURT: And again, that was with reference to an
13 exhibit and with regard to a summary -- again, the record has
14 been laid. The Court is ruling on the objections as they are
15 presented, and I'll see you back here in 10 minutes.

16 (Recess from 2:27 p.m. to 2:42 p.m.)

17 THE COURT: All right. Welcome back.

18 I do intend to let the jury know that for January 8th
19 and 9th that we will proceed at nine a.m. and conclude at five
20 p.m. I do wish to advise you that on Tuesday, January 9th, I
21 do have a calendar call. So our lunch will be extended from
22 12:30 to two so I can address that in the courtroom.

23 MS. WEINTRAUB: Judge, do we have the 10th as well
24 for --

25 THE COURT: Well, we have the --

1 MS. WEINTRAUB: -- closings? I'm not sure -- I'm just
2 seeing the way this is going, and -- like everything in this
3 case, and I'm just asking the Court.

4 THE COURT: Well -- so are you advising that -- well,
5 let me ask you: How much more time do you need with the direct
6 examination of Mr. Sheppard, Mr. Etra?

7 MR. ETRA: I'd be surprised -- I'd be pleasantly
8 surprised if we finished by 4:30, which is when we're breaking
9 today.

10 THE COURT: All right. So how many days do you
11 anticipate that you're going to need to present your witnesses?

12 MS. WEINTRAUB: I think probably a full day. And then
13 I think that closings --

14 THE COURT: Well, this was -- what I had anticipated
15 was the full day. So you're saying another full day?

16 MS. WEINTRAUB: Mr. Etra, I think -- do you disagree?
17 Oh. He doesn't disagree. He's saying worse.

18 THE COURT: All right. So realistically, because it's
19 only fair to this jury --

20 MS. WEINTRAUB: That's why I'm bringing it up.

21 THE COURT: So how much time do you think you're going
22 to need to complete all of the Defendant's witnesses?

23 MS. WEINTRAUB: I think that we will need another full
24 day, but that does not take into consideration cross of the
25 Defendant, obviously.

1 So I think that it will be -- I think that we'll take
2 the 8th and the 9th. Right? That's what I think. That's the
3 worst-case scenario. Then we would need a day to do closings
4 and jury instructions. That's why I asked if the Court was
5 available on the 10th.

6 MS. MARTINEZ: And then deliberations.

7 MS. WEINTRAUB: Yeah, but we don't need the Court for
8 that.

9 THE COURT: Well, for now, I'm going to tell them the
10 8th and the 9th, since I'm not quite sure on our end with the
11 10th. So --

12 MS. WEINTRAUB: Okay.

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

14 COURT SECURITY OFFICER: Remain standing for the jury.
15 (Before the Jury, 2:44 p.m.)

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

18 Please be seated, everyone.

19 And we'll continue with the direct examination.

20 MR. ETRA: Thank you, Your Honor.

21 Put up for the witness only X-37.

22 BY MR. ETRA:

23 Q. Mr. Sheppard, take a moment to review that and tell me if
24 you recognize that.

25 (Pause in proceedings.)

1 THE WITNESS: Yeah.

2 BY MR. ETRA:

3 Q. Okay. Is this a communication from you to Burlington and
4 others early on March 18th or so about moving forward?

5 A. Yes.

6 Q. Is this an email sent in the ordinary course of the
7 business of the HM-UP company?

8 A. Yes.

9 MR. ETRA: Your Honor, we offer X-37 as a business
10 record.

11 MS. JIMENEZ: It's an email from the Defendant. It's
12 hearsay. Object.

13 THE COURT: Overruled. X-37 will be admitted into
14 evidence.

15 (Defendant's Exhibit X-37 received into evidence.)

16 BY MR. ETRA:

17 Q. Mr. Sheppard, who are you emailing here?

18 A. I'm emailing the executive of construction real estate and
19 the project manager for Burlington. That's the Burlington
20 side, and then to -- copying Mr. Vasilas.

21 Q. And what -- generally, what are you trying to -- why are
22 you including Mr. Vasilas on this?

23 A. Because it's regarding the -- the Burlington construction
24 because of COVID and everything happening. So I'm trying to
25 explain that -- what's going on with everything that I've been

1 trying to work on and the business between us and Burlington.

2 Q. Was there a specific issue with the vendors?

3 A. Yes. There was vendors that they -- normally, with
4 national companies, you have to use specific vendors. And they
5 were -- I was trying to explain my -- with everything going on,
6 this is the issues I had with the vendors.

7 Q. You mean suppliers, essentially?

8 A. I'm sorry -- well, vendors/suppliers. It's kind of the
9 same thing.

10 MR. ETRA: Your Honor, I neglected to cover something
11 else. So let's put this only -- if we could put this only for
12 the witness and go to the attachment after. It's already only
13 to the witness. I neglected to cover that.

14 BY MR. ETRA:

15 Q. Do you recognize the attachment to the email?

16 A. Yes. This is the project schedule for the Burlington
17 build-out for us from a construction standpoint given to the
18 tenant.

19 Q. Is this also a business record from this time period?

20 A. Yes.

21 Q. Of HM-UP?

22 A. Yes.

23 Q. And was it attached to the email to Burlington and
24 Mr. Vasilas?

25 A. Yes.

1 MR. ETRA: Your Honor, this is really part of --

2 THE COURT: Of X-37?

3 MR. ETRA: Yeah. I should have covered it before.

4 THE COURT: It will be admitted into evidence.

5 MR. ETRA: Thank you, Your Honor.

6 (Attachment to Defendant's Exhibit X-37 received into
7 evidence.)

8 BY MR. ETRA:

9 Q. What was the time frame in March 18th when you thought for
10 your planning purposes that you would have the building ready
11 for the -- for the tenant to move in -- for Burlington to move
12 in.

13 A. What was my what?

14 Q. What was your time frame when you thought at this point --
15 when you thought Burlington would be ready?

16 A. Oh. I was still trying to shoot for the May -- the
17 May date and -- May 27th, 2020. We were trying to. But again,
18 that was just when COVID was starting, so there was so many
19 unknowns at this particular moment. I was doing my best effort
20 to give them what our plan was.

21 MR. ETRA: If we could take this down. And for the
22 witness only, please, can we show the witness X-20.

23 BY MR. ETRA:

24 Q. And since this is not in evidence, could you take a look at
25 it and tell me if you recognize X-20.

1 A. It's an email from me to a Burlington construction manager
2 and copying our construction partner on this job.

3 Q. When you say: "Construction partner," what do you mean?

4 A. The person on the email is the person that was paid to
5 supervise and also provide expertise from a technical
6 construction compliance with the plans, codes, and all that
7 kind of stuff.

8 Q. Was this an email you sent in the ordinary course of
9 HM-UP's business in connection with the Burlington project?

10 A. Yes.

11 MR. ETRA: Your Honor, we offer X-20.

12 MS. JIMENEZ: Same objection.

13 THE COURT: On grounds of?

14 MS. JIMENEZ: Hearsay. It's not a business record.

15 THE COURT: Overruled. It will be admitted into
16 evidence.

17 (Defendant's Exhibit X-20 received into evidence.)

18 BY MR. ETRA:

19 Q. And let's go through this email. It's -- in the first
20 paragraph you say: "Yes, work is going on; however, we are
21 figuring out schedules for people to be in the building at the
22 same time because of the current crisis." What was the issue
23 with having people at the same time -- people in the building
24 at the same time?

25 A. It was very important in construction to have staging. I

1 mean, have -- trades working with each other. But Orange
2 County limited the people allowed inside the building, and then
3 you had to social distance with each other between workers.
4 Like one worker would stand here, another 15, 20 feet away. It
5 was very complicated to get work done when workers can't stand
6 next to each other.

7 MR. ETRA: Let's highlight the second sentence,
8 please, and second only.

9 BY MR. ETRA:

10 Q. And the second sentence says: "The people at Orange
11 County" -- excuse me -- you're right -- "has instructed us that
12 we cannot have large amounts of employees in the building at
13 once."

14 I want to focus on the word "employees." Who are you
15 referring to when you said: "Employees" -- "large amounts of
16 employees"?

17 A. The people that we hired directly to come work for us to
18 build the building -- to -- to continue building the building.

19 Q. At the time, did you know if they were W-2 employees or
20 technically 1099ed independent contractors?

21 A. I had no idea what they were.

22 Q. So why do you use the word "employees"?

23 A. Because we -- Jeff went ahead, hired these people to come
24 work for us because the other people laid them off. So we
25 hired them because they were already on the job, so they became

1 our employees. So he had a deal with people that were working,
2 as far as --

3 Q. This is March 23rd, 2020, right?

4 A. Yes.

5 Q. Had you even heard of the PPP program at this time?

6 A. No.

7 MR. ETRA: Let's go to -- for the witness only,
8 please -- Exhibit X-23.

9 BY MR. ETRA:

10 Q. By the way, do you know if PPP even existed
11 March 23rd, 2020?

12 A. I didn't even know what it was at that time, so I wouldn't
13 be...

14 MR. ETRA: Could we just click for the witness only
15 through Exhibit 23, sufficient for the witness to be asked
16 questions. This document is not in evidence.

17 MS. JIMENEZ: Your Honor, I object. This is
18 cumulative about the Burlington worksite.

19 THE COURT: Let me look at the extent of the
20 photographs.

21 BY MR. ETRA:

22 Q. If I could ask the witness while we're looking: What time
23 period is covered by these photographs?

24 A. It was between March through -- 2022 through about
25 October looks like -- well, the end of October -- October 2022.

1 I'm sorry. 2020.

2 Q. You meant 2020, not 2022?

3 A. Yeah. I'm sorry. October '20 -- October 2020.

4 Q. And what is the -- generally, what's being depicted here in
5 the most general way because it's not in evidence?

6 A. It's the progression of work from the COVID -- COVID
7 situation through the end of October, until we received the TCO
8 on the building in October 2020.

9 Q. TCO is what?

10 A. The temporary certificate of occupancy, so they can open
11 the store to the public.

12 MR. ETRA: Your Honor, Defense offers Exhibit --
13 excuse me -- Exhibit X-23.

14 THE COURT: As a composite. Is there any objection?

15 MS. JIMENEZ: Yes. It's cumulative of other things
16 we've seen over and over again.

17 THE COURT: And the Court has reviewed the
18 photographs, and I find that there are many that are not
19 cumulative. The objection is noted. It's overruled. It will
20 be admitted as a composite exhibit.

21 (Defendant's Exhibit X-23 received into evidence.)

22 MR. ETRA: If we can look at the first page.

23 BY MR. ETRA:

24 Q. What are we seeing here, sir?

25 A. This is the brand-new lights that we had to bring in, that

1 we purchased and installed. Not we, but the electrical worker
2 installing lights.

3 Q. Were there any particular challenges in particular with
4 respect to the electricians and that trade in this project?

5 A. Yes, because the original electrician was a company and
6 they were from Pompano Beach, Florida. And they -- for COVID,
7 they decided they didn't want to go to Orlando anymore. So
8 therefore, we had to find individual electricians for 60,000
9 square feet and to install 600 lights. So we had to find
10 electricians to hire that wanted to work.

11 MR. ETRA: And could we jump to Page D-2390.

12 Let's actually stop. Let's go back to that one there.
13 I apologize.

14 Let's stop here at 406.

15 BY MR. ETRA:

16 Q. What are we seeing here?

17 A. Again, trying to social distance everybody, which is crazy,
18 but the inlays of the flooring, something called a shooter.
19 And then the white tiles there, you had to do that throughout
20 the whole sales floor area. It was about 40,000 square feet of
21 laying that, and also social distancing at the same time and
22 having limited -- it was back and forth with the amount of
23 people you were allowed to have in the building. So it was
24 very hard to do that.

25 MR. ETRA: Can we jump to 2390.

1 BY MR. ETRA:

2 Q. What are we seeing there?

3 A. Burlington specced out a -- they were making their district
4 office here. So part of the deal was we had to build all these
5 offices for their district office for the Burlington
6 operations. And this is the ceiling HVAC ductwork and putting
7 in the drop-in ceilings for the offices.

8 MR. ETRA: And if we jump to Page 2404.

9 BY MR. ETRA:

10 Q. What kind of lighting was required for this job?

11 A. I don't know what you mean by that.

12 Q. Well, let me ask you this: Generally, what do you see
13 being done here?

14 A. Well, again, this is a portion. This is one-half of the
15 store. There is another half. But that is what they're doing.
16 Again, they're doing the inset lays of material there, the
17 worker is. And then where that red -- if you look at the wall
18 on the side, the red, that's the entrance to the district
19 offices. And then they're -- they're running low voltage as
20 well because low voltage is different than the electric, so low
21 voltage for the cameras for the store and stuff of that nature.
22 That's a whole different -- you have to run all these conduits
23 all the way to the back of the store for connections. It's
24 like a hundred thousand linear feet of conduits.

25 MR. ETRA: Go to 2418, please.

1 BY MR. ETRA:

2 Q. What do we see here, Mr. Sheppard -- sorry. What do we see
3 here, Mr. Sheppard?

4 A. These are the checkout areas and all the cabinetry work
5 that we had to construct and build and install.

6 Q. Do you recall which individuals were involved in that part
7 of it?

8 A. Yes. Carlos De Leon had, or has, a place here in Miami
9 where he does a lot of this work, as far as cabinetry work. So
10 he was the one who installed -- or his team is the one that
11 installed the cabinetry work and produced it.

12 MR. ETRA: Let's go to the last page, 2424.

13 BY MR. ETRA:

14 Q. Why are -- what's going on outside during this time period
15 with respect to the -- outside the four walls for Burlington
16 with respect to this work?

17 A. Outside the four walls, this is in the common area. So
18 this was the common area that -- we had to redo all the common
19 area for the whole site, as required by the lease, and put in
20 all new islands. We had to run new electrical poles,
21 connections. And then, as you see the parking lot, the parking
22 lot's not finished so we had to redo I think about 12 acres of
23 parking, about 600 spaces. But that's in the common area.
24 It's not -- you know, it's not part of the HM-UP job.

25 Q. Well, whose job is it to work common area?

1 MS. JIMENEZ: Objection. Relevance.

2 THE COURT: Sustained.

3 MR. ETRA: Your Honor, this is one of the companies in
4 the loans at issue.

5 THE COURT: All right. Then let's -- why don't we
6 just narrow the question then, with regard to the loan.

7 MR. ETRA: Sure.

8 BY MR. ETRA:

9 Q. With respect to the loans for HM Four, was there any
10 connection between that and the common work --

11 A. Yes.

12 Q. -- common area? What was the connection?

13 A. The connection there was that we were in charge of the REA.
14 And the REA is the one that has to do all the -- only one that
15 can do and approve the site improvements and alterations to the
16 existing landscaping, parking lots, and common area -- common
17 area only.

18 MR. ETRA: Could we take this down and only for the
19 witness, please, put up X-42 next to X-43, please. And then
20 for both, would --

21 BY MR. ETRA:

22 Q. First of all, have you had a chance to look at the first
23 page?

24 A. Yes.

25 Q. And would you look at the last page, and then I'll ask you

1 appropriate questions for something not in evidence yet. Last
2 page of both, please.

3 MR. ETRA: Okay. Now let's go to the first page.

4 BY MR. ETRA:

5 Q. Start with, on the left, do you recognize X-42?

6 A. Yes.

7 Q. What is X-42?

8 A. It's the Second Amendment to the lease with Burlington.

9 Q. And was it executed?

10 A. Yes.

11 Q. And then what's the difference between X-42 and X-43?

12 A. One's redacted, one's not.

13 Q. Okay.

14 MR. ETRA: Your Honor, we offer X-42 and X-43.

15 THE COURT: Is there any objection?

16 MS. JIMENEZ: No objection.

17 THE COURT: Admitted into evidence.

18 (Defendant's Exhibits X-42 and X-43 received into
19 evidence.)

20 BY MR. ETRA:

21 Q. So let's talk about what happened when you were done
22 with -- getting to the point where Burlington could move in.
23 Did that happen in October -- what happened in October? What
24 happened in November?

25 A. The beginning of October, they started moving their --

1 doing training inside there. But it was not open to the public
2 until other parts of the property were open -- I'm sorry --
3 finished. And October -- at some point at the end of the month
4 of October, a temporary certificate of occupancy allowing them
5 to actually open to the public and open their store, that
6 occurred then prior to the CO.

7 Q. Now, when we talked about the Burlington lease at the
8 beginning, we talked about the deadline for delivery and the
9 penalties for being late. Do you recall that?

10 A. Yes.

11 Q. How did that ultimately get resolved when they moved in?

12 A. It got resolved by the communications with them. And they
13 decided that the liquidated damage provision was -- they
14 weren't going to waive off of that because it was late despite
15 having -- despite the COVID and the pandemic in the world, they
16 exercised that, and that's what happened, unfortunately.

17 Q. And what is X-42?

18 A. I'm sorry. What?

19 Q. So what is this document on the left, X-42?

20 A. This is the document you have to -- when you do something
21 like this, you have to amend the lease and describe the terms
22 and conditions. And then that's what that was describing.

23 MR. ETRA: And if we look on the right-hand side
24 without the redactions. Could you just highlight the language
25 that would be redacted at the bottom.

1 THE WITNESS: "Landlord shall pay amount of
2 \$1,166,000, the settlement amount for liquidated damages."

3 BY MR. ETRA:

4 Q. So that was the outcome of being late?

5 A. Unfortunately, yes.

6 Q. And nevertheless, what was your assessment of --

7 MR. ETRA: We could take this down.

8 BY MR. ETRA:

9 Q. What was your assessment of Mr. Vasilas's performance when
10 he was able to deliver this in October, November?

11 A. I thought he did a great job under the conditions. I mean,
12 I don't think anybody -- you know, he personally and all the
13 hard work and every single worker that was on that jobsite
14 risked their life during COVID and -- to feed their families.
15 And he did what he could. And I mean, I wasn't happy that it
16 was late, but there was nothing you could do. Just -- the
17 world changed. He did a great job. At that point, I thought
18 he was -- he did a great job.

19 Q. How did you feel about your decision to take a chance on
20 him?

21 A. Well, I -- at that time, I think I was -- made the right
22 decision. Compared to what people thought I should or should
23 not have done, I thought I did the right thing.

24 Q. And what effect, if any, did that have on the trust and
25 faith you had in him?

1 A. I mean, he got a 60,000-square-foot building open. It was
2 great. I mean, to me, he was like a rock star. So I was like:
3 "This is great." Did I doubt that he could actually do it? I
4 was worried. But he did it somehow.

5 MR. ETRA: For the witness only, could we please put
6 up Exhibit X-13 on the left side and X-34 on the right side.

7 I want to take down X-34. I want to do one at a time.
8 It's going to make it too complicated.

9 BY MR. ETRA:

10 Q. Sir, do you recognize the document on your screen as
11 X-13 -- the document on your screen that is Defendant's X-13?

12 A. Yes.

13 Q. What is X-13?

14 A. This is the -- when you get a TC on a building, the
15 national tenants provide you a punch list of items to correct.

16 Q. Correct what?

17 A. Correct -- it's something -- punch list means to go through
18 items that they don't think are done correctly, it's not
19 installed pursuant to the plans and specs, or something's off,
20 every little detail of the building. So before they -- before
21 they let you off the liability of doing any more construction,
22 this is a necessary part.

23 Q. So was the work done for HM-UP when you hand over the keys
24 to Burlington?

25 A. No.

1 Q. And did you use and rely upon this punch list in the
2 ordinary course -- did you receive this punch list in the
3 course of the business of HM-UP?

4 A. Yes.

5 Q. And did you use it in the course of your business for
6 HM-UP?

7 A. HM-UP used this to -- based upon the lease agreement, yes.

8 MR. ETRA: We offer Exhibit X-13 as a business record.

9 THE COURT: Any objection?

10 MS. JIMENEZ: No objection.

11 THE COURT: Admitted into evidence.

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

13 MR. ETRA: If we could just look at the whole first
14 page and maybe the second page as well.

15 BY MR. ETRA:

16 Q. How detailed was this punch list?

17 A. It was very detailed.

18 Q. How significant or insignificant were some of the items?

19 A. I mean, some were -- I thought were insignificant. A
20 bathroom that the holder was -- it was three feet -- it was
21 like 12 inches off. You have to move it. And then there was
22 significant stuff that there was damage in areas. But as the
23 contractor, you're responsible to, you know, fix these things.
24 That's what the contractor does.

25 MR. ETRA: Could we take that down and for the witness

1 only, please, put up Exhibit X-34.

2 BY MR. ETRA:

3 Q. Could you take a look at X-34, please. It's not in
4 evidence, so just read it and let me know when I can ask you a
5 question about it.

6 A. Yeah. I read it.

7 Q. Okay. Generally speaking, is this a communication between
8 your company -- are these communications between Burlington and
9 your company HM-UP with respect to the punch list?

10 A. Yes.

11 Q. As part of the business activity and business records of
12 HM-UP?

13 A. Yes.

14 MR. ETRA: Your Honor, Defense offers Exhibit X-34.

15 THE COURT: Any objection?

16 MS. JIMENEZ: Hearsay. Relevance.

17 THE COURT: Overruled. Admitted into evidence.

18 (Defendant's Exhibit X-34 received into evidence.)

19 BY MR. ETRA:

20 Q. How long did it take you to finish the punch list?

21 A. I personally did not do the punch list, but --

22 Q. HM-UP.

23 A. HM-UP. It was a 55-page punch list. So it took quite some
24 time and -- quite some time.

25 Q. As shown here, Mr. -- I don't know how to pronounce it. It

1 starts with a P. Do you know who that is?

2 A. I do not.

3 Q. Well, let's go to the email above that. Mr. Valentine, do
4 you recognize that name?

5 A. Yeah. He was the project manager for construction for
6 Burlington, who I know.

7 Q. You mean working on the Burlington side?

8 A. Correct. He's the representative of Burlington. He worked
9 for the Burlington company.

10 Q. And he's writing this on June 14th, 2021, right?

11 A. Correct.

12 Q. And he writes: "Would you provide an update for the items
13 noted below for Orlando Burlington Store 425. Thanks."

14 Do you see that?

15 A. Yes.

16 Q. Which store was Orlando Burlington Store 425?

17 A. The one at 1250 North Alafaya Trail, the property we've
18 been talking about.

19 Q. So as of mid-June 2021, was the punch list -- were the
20 punch list items completed?

21 A. No.

22 Q. Do you recall when they were?

23 A. I don't remember. I was really not involved with the punch
24 list. That was really in Jeff's world, not mine. Because I've
25 already moved on from this.

1 Q. All right. Let's put this down and go back to the funding
2 issues and talk about Nationwide and the EIDL loans. Okay?

3 A. Yeah.

4 Q. How did you first come to deal with Nationwide for these --
5 for the EIDL loan applications?

6 A. Prior to COVID, I was speaking with Daniel Sheps, who I
7 guess is the owner of Nationwide, and he was trying to do
8 financing for some of the phase 3 project. And so that's how I
9 originally met the Nationwide Lending people.

10 Q. Phase 3 didn't yet -- have a mortgage lender yet, like a
11 secured lender, right?

12 A. There was no secured lender, no.

13 Q. And how did the subject -- well, how did it come to these
14 general discussions -- how did the subject -- let me start
15 again.

16 When did you start to talk to Nationwide about EIDL
17 loans?

18 A. I'm not exactly sure, but I would say somewhere around
19 June, July -- June, July somewhere -- maybe July of 2020.

20 Q. And do you recall how the subject came up?

21 A. He -- yes, I do. That, I do. He called and we were
22 speaking about -- I said: "The tenants are on hold for phase
23 3. I'm not sure we're doing it because of everything that's
24 going on in the world." And he says: "Well, do you have any
25 other companies that are actively still doing business and

1 doing construction or whatever" -- I mean -- whatever -- I mean
2 "some type of business?" And I said: "Yeah." And he said --

3 MS. JIMENEZ: Your Honor, I object to the continuation
4 of his answer. It's hearsay.

5 MR. ETRA: It's not for the truth of the matter.

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

7 THE WITNESS: He said: "Just give me the list of some
8 properties that are actively just doing business because
9 there's this program that we offer with the government that you
10 get a loan and you can -- it's like a 30- or 35-year loan," or
11 something like that, "and reasonable interest rates, and
12 they're looking to help companies," you know, "through the
13 pandemic."

14 BY MR. ETRA:

15 Q. When that was said to you by Mr. Sheps, did you
16 understand -- did you know what loan program he was talking
17 about?

18 A. No idea.

19 Q. Did you know if that was just a Nationwide program versus
20 something anyone could have clicked on the Internet to find?

21 A. I don't understand the question.

22 Q. In other words, was it presented as a government loan
23 program or a Nationwide government loan program?

24 A. It was represented that Nationwide was like a platform for
25 the SBA loan program, and it had nothing to do with the PPP

1 loan so it was just a separate program.

2 MR. ETRA: For the witness only, can we please put up
3 exhibit -- actually, this is in evidence, from Government
4 Exhibit 67, Bates Number 34296 in evidence.

5 BY MR. ETRA:

6 Q. Focus on the middle of that email from Mr. Sheps. Did
7 you -- it's a little hard to read -- follow it, but were you on
8 this email from Mr. Sheps on July 14?

9 A. Yeah. The 12:43 p.m. email from Mr. Sheps to me.

10 Q. Are you?

11 A. Am I what?

12 Q. Did that email go to you?

13 A. Yes.

14 Q. Okay. What are you -- how did this email come about,
15 with -- that talks about HM Management 1.5 million, HM-UP
16 Development Outfit two million, and HM Six five million? How
17 did that -- what led to that email?

18 A. He asked me what companies are involved with -- that were
19 active businesses with regards to -- I told him about the
20 construction, obviously, in Burlington, and he asked what
21 the -- what the approximate gross revenues were for those
22 companies. And he was writing to me telling me -- what we
23 talked about, basically. He said the numbers there.

24 Q. How did you determine which companies to talk to him about?

25 A. Well, he asked about a bunch of companies, and -- and I

1 guess he wrote me about these particular ones. But we talked
2 about multiple companies, and he was trying to explain to me,
3 you know, how it works, and I didn't understand it. I was --
4 so I just gave him the answers to certain companies and that
5 was it.

6 Q. Throughout dealing with Nationwide, did either Mr. Sheps or
7 Nelly Palancar indicate to you that your companies were not
8 eligible?

9 A. No.

10 Q. What did you understand your role and Nationwide's role to
11 be in this process of working with Nationwide?

12 A. I'm sorry? My role and Nationwide's role?

13 Q. Right. What were you doing and what was Nationwide doing?

14 A. Oh.

15 Q. What did you understand their role to be?

16 A. Oh, okay. My role -- or their role was the representative
17 with the -- they were dealing with the SBA in some shape or
18 form, and I was to provide information to them so they can
19 review it and tell me what I qualify for. And then I just give
20 him the information and they were forwarding it to it. And for
21 that, I would have to pay a success fee of I think it was like
22 7,000 or 7,500 dollars or something like that, and that was --
23 that was it.

24 Q. Were you getting advice from Nationwide?

25 A. Well, they gave me advice of what I qualified for -- which

1 companies qualified. I mean, of all the companies I have, they
2 said about four companies, three companies -- I'm not sure the
3 exact amount, but they told me which company qualifies and
4 which don't.

5 Q. Who actually filled -- did you think you did anything wrong
6 in working with Nationwide?

7 A. No.

8 MR. ETRA: For the witness only, please, Exhibit X-44.

9 BY MR. ETRA:

10 Q. Please take a moment and tell me if you recognize the
11 document.

12 A. Yeah. I remember this.

13 Q. Generally speaking, what is this document?

14 A. This is communication to the SBA portal service.

15 Q. From?

16 A. From me, eric.sheppard10@gmail.com.

17 Q. Do you recall there being an issue with the processing of
18 the HM-UP EIDL loan that Nationwide assisted with?

19 A. Yes.

20 Q. Okay. And did you write to SBA about that loan at this
21 time?

22 A. Yes.

23 Q. Was that done in the course of the business of HM-UP?

24 A. Yes.

25 MR. ETRA: Your Honor, Defense offers Exhibit X-44 as

1 a business record.

2 THE COURT: Is there any objection?

3 MS. JIMENEZ: No objection.

4 What number is it again, please?

5 MR. ETRA: X-44.

6 THE COURT: Admitted into evidence.

7 (Defendant's Exhibit X-44 received into evidence.)

8 BY MR. ETRA:

9 Q. Do you recall discussion about these different email
10 addresses that Nationwide Lending Direct came up with for each
11 application?

12 A. Yes.

13 Q. And what was your -- what was that like working that way
14 with Nationwide?

15 A. Again, I didn't understand the program, and they were the
16 experts. So they were telling me that -- I didn't understand
17 why they couldn't use my email. And they said: "You can't.
18 You have to use a separate email for each application," and
19 they would set up the -- and they set up a bunch of -- they set
20 up emails, like this RS, or ES, SFH, all kinds of emails --

21 Q. Sorry. Keep going. I didn't mean to cut you off.

22 A. That's fine.

23 Q. And who controlled those emails?

24 A. They did.

25 Q. And here, why are you writing through your Sheppard 10 --

1 sorry -- eric.sheppard10@gmail.com. Why are you writing from
2 that email to the SBA?

3 A. Because Nelly asked me to. She said: "You have to tell
4 them." Because there was so much confusion with that portal,
5 it was impossible. It was -- all she did was tell me how bad
6 it was, and I was -- you know, I didn't know enough about it.
7 So I said: "Okay. Do you want me to write an email? What do
8 you want me to write?" And she told me because her email was
9 having a problem with their portal and Social Security numbers
10 were wrong. All kinds of stuff was wrong. And so she asked me
11 to write them and, you know, see if I can change it to my email
12 or some other email.

13 Q. Were you trying to hide your involvement from the SBA?

14 A. No.

15 Q. Okay.

16 MR. ETRA: Take that down.

17 BY MR. ETRA:

18 Q. Let's talk about the HM Four EIDL application. Okay?

19 A. Yes.

20 Q. Okay. Did you use Nationwide for that?

21 A. No.

22 Q. Why not?

23 A. Well, because they are charging \$7,500, and I realized that
24 the SBA program is open to everybody that has a business, and I
25 don't really need them to go, you know, apply. I knew that you

1 had to have a separate email, you had to have a separate bank
2 account, and you had a -- I knew what she told me. It wasn't
3 complicated, so I'd rather just do it myself at that point.

4 Q. So how did you go about applying for the -- for HM Four for
5 the EIDL loan?

6 A. I just went online to the SBA portal and typed in
7 information. And I thought after the PayPal thing I would
8 never do that again, to try to use the computer to type
9 information, but I did. The SBA portal is a little easier than
10 PayPal, but -- so that's what I did.

11 Q. So who was the human being that was inputting information
12 into the SBA portal for the HM Four loan application?

13 A. I was.

14 Q. Did you open a new bank account for that?

15 A. I did.

16 Q. Why?

17 A. I didn't want to, but I had to because I had to -- based
18 upon what Nelly and everyone was telling me, that I had to have
19 a separate email and separate bank account in order for them to
20 verify the business.

21 Q. And you got to my second point. Did you open an email
22 separately just for this application?

23 A. Yes. I opened up the HM Four Gmail account and I opened up
24 the SunTrust Bank account so I would comply with -- because I
25 didn't want to get in the same problems with that email you

1 showed me before with the email address and this address, and
2 everything was all messed up. So that's why I did that.

3 Q. Why not use your Sheppard Gmail for your HM Four
4 application? Please explain.

5 A. Twofold. One is, in the PayPal -- it was already used in
6 the PayPal, eric.sheppard10. And then, for this, they said:
7 "You have to use" -- you know, "Whatever that company the loan
8 is for, you have to use a separate email and separate bank
9 account."

10 Q. You said "they said."

11 A. I'm sorry.

12 Q. Who said?

13 A. Twofold. One, that's what Nelly explained to me from
14 Nationwide. She said that's the way it works. And two, when
15 we were on the phone -- she used to call me all the time and
16 put me on the phone with the SBA when she was talking with
17 them, that I would give permission for her to speak to them.
18 And when we were speaking to them about this email problem,
19 they were explaining to me you're supposed to have a separate
20 email for each application, and that's what the SBA
21 representative actually said to me. So I remembered that and I
22 said: "Okay." That's why I did that.

23 MR. ETRA: Could we put on the screen -- this is in
24 evidence. It's from Government Exhibit 58, Bates Number 31143.

25

1 BY MR. ETRA:

2 Q. Mr. Sheppard, do you recognize this document?

3 A. I do.

4 Q. First of all, before I ask how it came about, I just want
5 to go through the language in the letter. Okay?

6 A. Yes.

7 Q. The first sentence says: "Eric Sheppard and Jennifer
8 Sheppard are valued customers of SunTrust Bank." Do you see
9 that?

10 A. I do.

11 Q. I can't speak for "valued" for the -- we can't speak of
12 value for someone else, but were both of you, you and Jennifer,
13 individual account holders at SunTrust?

14 A. We both had our own individual account. Plus we had a
15 house account there as well just in our names. And then we
16 had -- then there was also business accounts, multiple business
17 accounts at SunTrust Bank.

18 Q. All right. And the next sentence says: "The account HM
19 Four, LLC is in good standing at this time." So I guess I'll
20 ask you: To your knowledge, was that account in good standing
21 at the time?

22 A. At the time of this letter it was because we just opened up
23 the account just recently. So it was -- according to him, it
24 was in good standing.

25 Q. Next sentence: "They," meaning you and Jennifer, "are

1 members and owners of HM Four, LLC." I'll stop there. Was
2 that statement true?

3 A. Yes.

4 Q. And in what way were you and Jennifer members and owners of
5 HM Four, LLC?

6 A. We are member -- we own it -- what they call tenancy by the
7 entireties, and it's a joint ownership between a husband and
8 wife who have been married for over 20 years. And so we own
9 the entity together as tenancy by the entirety -- a portion of
10 the entity as tenancy by the entireties.

11 Q. And then the next part of that sentence: "And have been
12 clients of SunTrust for over 10 years," referring to you and
13 Jennifer, obviously. Is it true that -- or not, that you and
14 your wife were clients of SunTrust for over 10 years?

15 A. Yes. We were over-10-year customers with SunTrust.

16 Q. All right. Then it goes on to say: "Can be reached for
17 questions."

18 Let me take a step back now. Do you know Mr. Barrios?

19 A. I know him.

20 Q. How do you know him?

21 A. He's the branch manager at the Bal Harbour branch in -- of
22 SunTrust.

23 Q. Did you meet with him from time to time to deal with your
24 various banking needs?

25 A. Yes. I've met with him on multiple occasions -- on a lot

1 of occasions, inside and outside of the bank.

2 Q. What do you mean "inside and outside the bank"?

3 A. Well, his job at SunTrust, but I've also gone to lunch with
4 him outside of the bank as well -- I mean in his capacity at
5 SunTrust Bank, outside the building, for lunch and stuff like
6 that.

7 Q. What was the -- how did this letter come about?

8 A. Typically, in my business, you get reference letters from
9 banks when you do loans, construction loans. So I just thought
10 it would be -- they asked me questions, meaning -- "they" --
11 the government asked me questions if I can provide them
12 information regarding the bank accounts. And I thought it
13 would be simple just to get a regular reference letter from all
14 of the deposits I've had for the years that Mr. Barrios was
15 there.

16 Q. How specifically, I mean as a matter of logistics and
17 mechanics, did this letter come about?

18 A. Well, it was COVID, and the bank was shut -- that
19 particular branch was shut down a lot. They had a big COVID
20 problem at that particular branch. So I touched base with him
21 the week before this and said: "Hey, can you get this for me,"
22 and a bunch of other things. And he said: "We're closed right
23 now on that Friday because of COVID, but you can come in on the
24 following week." I said: "Sure." I said: "I'll come in."
25 And he asked me what I wanted, and he told me: "Don't worry.

1 I'll take care of it."

2 Q. And what happened?

3 A. I went over there -- I don't know -- I don't know. I think
4 it was 12th -- the 12th of November. And he already had
5 everything done. And I said: "Great." And he opened -- he
6 physically opened the door with the little key, because people
7 weren't in -- he opened the door with the key. I walked into
8 his office, like I always do, and he gave me this. And then
9 he -- and that was it. And he said: "I'm going to email you a
10 copy of this, and see -- if anything is wrong with this letter,
11 let me know," and that was the end of the conversation, and
12 that was it.

13 Q. Did he explain why he was emailing it to you at all where
14 there weren't any logistical issues?

15 A. Well, he said in case he was going to leave town or -- he
16 was leaving town, or I don't remember the exact story. But he
17 was leaving town, so he just wanted me to have a copy of the
18 letter, and if I -- if I had any problems with it. And I --
19 you know, I looked at it. There was no problems with it. So
20 it was fine.

21 Q. Did you sign this name?

22 A. Did I sign it? No.

23 Q. Did you have any reason to believe that this was not an
24 accurate signature from Mr. Barrios?

25 A. I have no idea what his signature is. I've never seen him

1 sign anything, so I assume it was his signature.

2 Q. Because it was located in what and given to you how?

3 A. It was given to me in an envelope. I walked in the bank,
4 he gave it to me, and we talked. I mean, I live literally
5 across the street. It was literally like a minute-and-a-half
6 drive. So I talked to him all the time. So it wasn't -- I
7 mean, I knew the guy. It wasn't -- I heard him testify. I
8 knew the guy. I mean, I know him.

9 Q. From your perspective, given your dealings with bankers, do
10 you have any concern that he wouldn't sign a letter like this?

11 A. I just -- there would be no concern. I mean, it's a
12 reference letter. I mean, I deposit a significant amount of
13 money in the bank every year, and I don't understand. It's a
14 reference letter.

15 MR. ETRA: I'd like to please put this down and put
16 in -- in evidence Exhibit M, as in Mary, 19.

17 BY MR. ETRA:

18 Q. Do you recognize M-19?

19 A. I do.

20 Q. And the attachment?

21 A. I do.

22 Q. Could you explain what it is.

23 A. It is the letter -- oh, wait. M-19. I'm sorry. It is the
24 email that he sent me on November 12th, 2020.

25 Q. And then on the right-hand side is the attachment?

1 A. Correct.

2 Q. Okay.

3 MR. ETRA: We can put that down.

4 BY MR. ETRA:

5 Q. I want to talk about Mattress1One and Mr. Maged Salem and
6 those issues.

7 MR. ETRA: Could we put up the original lease, GX-25.
8 I have it as GX-25.

9 BY MR. ETRA:

10 Q. Do you recognize GX-25?

11 A. I do.

12 Q. What is GX-25?

13 A. This is the original lease of SOS Furniture and HM-UP
14 Development Alafaya Trails, LLC.

15 Q. And what was -- how long -- what was the term of the lease?

16 A. I'm not sure. I have to look at the...

17 Q. That's all right.

18 MR. ETRA: Let's go to -- we'll take a look at what's
19 Page 2 for the initial term.

20 THE WITNESS: Yes.

21 BY MR. ETRA:

22 Q. What was that term of the lease?

23 A. Five years.

24 Q. And did the lease expire at some point in or about 2017 or
25 '18?

1 A. Yes.

2 Q. When I say that because -- when -- under these leases, even
3 though you sign it on a certain date, when does the term
4 actually start?

5 A. It starts when you finish construction and give delivery to
6 the tenant.

7 Q. Okay. And I'm not finding the language that was on the
8 screen when Mr. Salem testified, but do you recall looking at
9 the language when he testified about extensions?

10 A. Yes.

11 Q. You recall that it required written notice?

12 MS. JIMENEZ: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. ETRA:

15 Q. Did you ever get -- was this lease ever extended?

16 A. This particular lease?

17 Q. Yes.

18 A. Not to my knowledge.

19 Q. Did you ever receive written notice of an extension?

20 A. I personally would not receive it. The administration
21 department in the office would receive it. But according to
22 the file that I reviewed, there was no extension.

23 MR. ETRA: Could we go to Page 10 of the lease.

24 Could you blow up the bottom which says: "Term
25 Extension Options."

1 BY MR. ETRA:

2 Q. Do you see where it indicates that -- first of all:

3 "Provided the tenant is not in an uncured default." Do you see
4 that?

5 A. Where are you reading that?

6 Q. The beginning of what's highlighted. So in other words, to
7 get an extension, do you need to be not in default?

8 A. Correct.

9 Q. Was -- in or about 2018 and '19, was Mattress1One in
10 default?

11 A. Sitting here without it in front of me, I can't tell you.
12 I know they were in default many times. I just don't -- can't
13 give you exact, you know, actual month or date. But there was
14 a point in time they became in default often, monetary default.

15 Q. And the highlighted language says: "Such options shall be
16 exercisable by tenant giving written notice to landlord of its
17 intention to exercise the same," and it gives a deadline.

18 To your knowledge, did your companies ever receive
19 written notice from the tenant -- I say Mattress1One, but it's
20 really SOS -- for seeking an extension?

21 A. To my knowledge, after reviewing the communication in the
22 file, they never provided any type of extension.

23 Q. When is the first time you heard anyone from -- I'm just
24 going to say Mattress1One without the companies -- ever suggest
25 they had an extension on this original lease?

1 A. When he testified. I'm not sure what date he testified.
2 Whatever date I heard him testify.

3 MR. ETRA: Go to the next page, Page 11.

4 BY MR. ETRA:

5 Q. Referring to Paragraph 4 in Paragraph 402, could you very
6 generally explain what's going on there with respect to the
7 rent, the differences.

8 A. Yes.

9 MR. ETRA: Could you put them both up at the same
10 time, 401 and 402.

11 BY MR. ETRA:

12 Q. Could you explain the difference between these two
13 paragraphs.

14 A. Yes. One is the -- it separates how the rent is supposed
15 to be divided. One -- a portion is for the minimum base rent,
16 which is the base rent. And then there's additional rent,
17 which is the common area maintenance expenses, and the real
18 estate taxes and insurance, which is -- when you combine them,
19 it's called gross rent. But then when you separate it, it just
20 separates what's common area and what's minimum base.

21 MR. ETRA: Let's take this down. And for the witness
22 only, please, Exhibit M, as in Mary, 88.

23 And if we can look at the last page as well. It's a
24 three-page document. If you can put up the first and last
25 page.

1 BY MR. ETRA:

2 Q. Sir, do you recognize generally what Exhibit M, as in Mary,
3 88 is?

4 A. Yes.

5 Q. Generally speaking, what is it?

6 A. It is called a Tenant Estoppel Certificate.

7 Q. And generally speaking, what is a Tenant Estoppel
8 Certificate?

9 A. It's required by lenders for financing. It's also required
10 within the lease agreement that this be provided by the tenant
11 to the landlord and to the lenders, that you're promising and
12 swearing that this is exactly the relationship as far as rent,
13 how much you're paying, where the lease term is, and all of
14 that. And it's a very important document for financing for the
15 lender.

16 Q. Is this a business record of your companies?

17 A. It is.

18 MR. ETRA: Your Honor, we offer Exhibit M-88.

19 MS. JIMENEZ: No objection.

20 THE COURT: All right. Admitted into evidence.

21 (Defendant's Exhibit M-88 received into evidence.)

22 BY MR. ETRA:

23 Q. Could we just focus on the last page --

24 A. Yes.

25 Q. -- the signature, according to his testimony, of Mr. Salem.

1 A. Sure.

2 Q. Okay. And you see the language where he's writing: "The
3 undersigned," and then it says, second line, "hereby affirms to
4 lender and its successors, and/or signs and agrees with
5 lender" -- and it has more language -- "to be bound by tenant's
6 statements and agreements set forth herein above." Do you see
7 that?

8 A. I do.

9 Q. In the context of a Tenant Estoppel letter, what does that
10 mean?

11 A. It's -- you're basically -- not basically. The tenant is
12 signing a document guaranteeing that the -- that this
13 particular lease document is collateral for the loan on the
14 real estate. So therefore everything you're saying is true and
15 correct and we're relying on your saying that it's true and
16 correct.

17 Q. Is this page a stand-alone document, separate -- this
18 guarantor page, separate from the rest of the letter?

19 A. No.

20 Q. Why not?

21 A. Because that's the way it works. In this particular
22 instance, there's three pages. And you have someone from the
23 company, there's a tenant, and then there's a guarantor, and
24 that's how it works.

25 Q. Well, the tenant space we saw is blank. So is it still

1 stand-alone or not?

2 A. The tenant is not the issue in this estoppel. It's
3 guarantor for the company so the company can -- that is a
4 guarantor for the company, which is Mr. Salem, and it runs
5 together.

6 Q. Do you see Mr. Salem's initials on the bottom of this page?
7 These pages?

8 A. No.

9 Q. Okay.

10 MR. ETRA: Could we put that down and put up Exhibit
11 58 that is in evidence.

12 I think it's a cover email and then the first -- oh.
13 Maybe it's not a cover email. That's the wrong document.

14 Could we put next to that the attachment.

15 BY MR. ETRA:

16 Q. Okay. Do you recognize -- these are select pages, but I
17 can go to any page you want. Do you recognize Exhibit 58?

18 A. I do.

19 MR. ETRA: Why don't we take down the cover email and
20 just put up the first page of the lease agreement.

21 BY MR. ETRA:

22 Q. What led to this draft and revisions of a potential new
23 lease agreement with -- here it's still SOS Furniture?

24 A. SOS Furniture was in the building where DICK'S Sporting
25 Goods is at, and they wanted to have a more high-profile

1 location and an outparcel. Where -- now, where JPMorgan Chase
2 is presently. And they wanted to do a new lease for a
3 freestanding building. And it's the time they were actually
4 paying rent on time every month and they were a good tenant, so
5 this was a negotiation on their lease, their form lease.

6 Q. The original lease we looked at, whose form was that?

7 A. The original one?

8 Q. Yeah. The one we looked at before.

9 A. I'd have to look at it again.

10 MR. ETRA: Let's put up next to it -- next to this
11 exhibit Government Exhibit 25.

12 BY MR. ETRA:

13 Q. So the one on the right which is the original exhibit,
14 which is Government's Exhibit 25, whose -- is that a form of
15 some kind?

16 A. Yes. That's a form of my company. Of my -- the landlord.

17 Q. And then the one on the left, is that your form or is that
18 the national tenant's form?

19 A. That's the national tenant's form.

20 Q. How does it work? Do you use your form or the national
21 tenant's form?

22 A. Mostly the national tenant's form because if you have a lot
23 of stores and you have a lot of landlords, they didn't want to
24 have to negotiate every single lease with the landlord's forms.
25 The standard is that national companies use their form on their

1 system because they don't want to negotiate every lease over
2 and over again.

3 Q. So it's your form unless the national tenant says
4 otherwise?

5 A. Correct. But my form was done by Mr. Scott Fish. So it
6 was -- I mean, I didn't even sign that form.

7 Q. Okay. So the form on the left, who suggested -- which side
8 came up with that first draft of this form?

9 A. Mattress1One.

10 Q. All right.

11 MR. ETRA: Let's take that down.

12 BY MR. ETRA:

13 Q. Tell me about Mattress1One -- or I guess SOS paying or not
14 paying in 2018, 2019, and into COVID.

15 A. Tell you about what? I don't understand.

16 Q. Were they paying regularly or not?

17 A. No.

18 Q. And what was the -- when they were supposed to pay, what
19 was the monthly rent, approximately, under the original lease?

20 A. Oh. I don't know off the top of my head. But from the
21 research, and what I saw the other day in his testimony, it
22 looked like it was \$11,000 a month.

23 Q. Okay. So did you give any directions to Mr. Vasilas with
24 respect to -- and when COVID hits, what, if any -- what's your
25 plan to deal with this tenant that's not paying? What's

1 your -- what are you trying to do?

2 A. Well, before COVID hit, we were trying to evict him and get
3 him out of the space because he wasn't paying rent and he had
4 close to \$70,000 that he owed in back rent. So before even
5 COVID started we were trying to get rid of him.

6 Q. And then, after COVID started, what was your plan to do
7 with that spot, with that place?

8 A. Started to negotiate with FedEx because they were across
9 the street. And FedEx, Starbucks, and Chase were all across
10 the street in another shopping center, and I was able to get
11 them to move to this spot. So I was going to put -- try to get
12 the guy out -- he wouldn't leave -- but get him out and build a
13 FedEx store.

14 Q. So now we're in COVID and you have Mr. Vasilas in Orlando.
15 Did you give him any directions with respect to dealing with
16 Mattress1One?

17 A. Yeah. I said: "Just try to find a solution to get the guy
18 out because he doesn't have a lease, and he needs to get out,
19 and he's not paying rent. The lease is expired. You have to
20 get him out so we can do the FedEx. Because FedEx had a very
21 short window where they can get out of their store, and I was
22 trying to rush him to get Mattress1One out.

23 MR. ETRA: For the witness only, with no volume,
24 please. For the witness only put up Exhibit X-45.

25 And could you play it with no volume briefly before I

1 ask the witness some questions.

2 (Video played, no sound.)

3 MR. ETRA: Why don't we stop there.

4 BY MR. ETRA:

5 Q. Again, this is not in evidence, so I'm just going to ask
6 you very generally, do you recognize Exhibit 45?

7 A. I do.

8 Q. And generally speaking, did you receive Exhibit 45 from
9 someone?

10 A. Yes. Jeff Vasilas sent this video to me on May 12th, 2020.

11 Q. Was it in connection with his duties -- well, was it in
12 response -- was it in connection with your directions to him on
13 work -- trying to figure out how to get Mattress1One out?

14 A. I did not direct him to do this video or what I just saw,
15 but what I did direct him to do was to work out something
16 reasonable and legal to get him out of the space. And he's not
17 really a real estate person or understands real estate so he
18 did this video.

19 Q. Well, I don't want to say more without it being in
20 evidence.

21 A. I'm sorry.

22 Q. But did you receive this from Mr. Vasilas in connection
23 with his duties as HM-UP, even if he didn't follow your
24 directions the way you would have liked?

25 A. Correct.

1 MR. ETRA: Your Honor, we offer Exhibit 45 as a
2 business record.

3 THE COURT: Any objection?

4 MS. JIMENEZ: No objection.

5 THE COURT: Admitted into evidence.

6 (Defendant's Exhibit X-45 received into evidence.)

7 MR. ETRA: May I publish and play it?

8 THE COURT: You may.

9 MR. ETRA: With the sound, please.

10 (Video:)

11 "MR. VASILAS: Today, Tuesday, May 12th. I, Jeff
12 Vasilas" --

13 MS. JIMENEZ: The sound is hearsay.

14 (Video stopped.)

15 MR. ETRA: I'm sorry?

16 MS. JIMENEZ: What is this? First, it's --

17 THE COURT: I'm sorry?

18 MS. JIMENEZ: We haven't heard what the sound is.

19 MS. MARTINEZ: We had no idea --

20 MS. WEINTRAUB: Judge, they have a copy of it.

21 THE COURT: All right. Then perhaps you could publish
22 it without the sound, and you can ask the -- Mr. Sheppard
23 questions with regard to what's taking place in the video.

24 MR. ETRA: Fair enough. Why don't we do that for now.

25 (Pause in proceedings.)

1 MR. ETRA: I will do that, Your Honor.

2 Thank you.

3 Could you do that please, Brian, without the sound.

4 Let's start with the beginning. Well, I guess we've
5 been doing that.

6 (Video played, no sound.)

7 MR. ETRA: I think we could stop the video now, if
8 that's okay.

9 BY MR. ETRA:

10 Q. Mr. Sheppard, who's the person whose reflection you're
11 seeing in the glass?

12 A. Jeff Vasilas is the person who recorded this video and was
13 the person shooting this video.

14 Q. And whose voice is heard on this?

15 A. Jeff Vasilas. He identifies himself -- his voice and then
16 he says who he is and what he's doing, and that's what the
17 video was.

18 Q. Did you tell him to lock up the doors?

19 MS. JIMENEZ: Objection. Hearsay.

20 MR. ETRA: Direction, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: No. In fact, I told him: "Jeff, I know
23 you're aggressive in trying to get things -- do it your way,
24 but this is -- you need to go back to the guy's office and
25 unlock the door. That's just not -- even though the guy is

1 trespassing, you just can't do that. It's not part of like the
2 law. You need to take the locks down immediately and go up to
3 the office and sit there as long as you want, figure it out."
4 That's what I said. I said: "That's crazy."

5 MR. ETRA: Let me take this down and put up in
6 evidence Exhibit M, as in Mary, 33 -- no. I have the wrong
7 doc.

8 I apologize, Your Honor. M, as in Mary, 35.
9 BY MR. ETRA:

10 Q. And do you recognize --

11 MR. ETRA: Well, let's put on the last page as well.
12 Sorry. The last -- yeah.

13 Let's now go back to the first page. Pull up the
14 first part, please.

15 BY MR. ETRA:

16 Q. Do you recognize this document?

17 A. I do.

18 Q. All right. How -- to your knowledge -- from your -- based
19 on your knowledge, involvement, how did this new lease come
20 about?

21 A. After that video you showed on May 12th, I guess he upset
22 somebody over there, and whoever the person is from
23 Mattress1One, the corporate office down the street, and they
24 said: "Okay. We" -- Jeff said they wanted to negotiate a new
25 lease, and that's where this came about.

1 Q. What direction specifically did you give Mr. Vasilas for
2 the -- to do the new lease?

3 A. I said: "I need to have a specific time frame, six months.
4 Extend it for six months. That's" -- not extend it. "Do a new
5 lease for six months, and that's it," because I have to put --
6 I have to start construction on the FedEx store and I want it
7 point A to point B. And because the guy is so in arrears, that
8 I said: "Look, I want upfront money towards this lease. And
9 if you do that, I will forget all the money that he owes and
10 we'll be done with each other; 'you go your way, we go our
11 way,' and that's it."

12 MR. ETRA: Let's go to Page -- second page of the
13 lease. Let's focus on the lease term and the rent.

14 BY MR. ETRA:

15 Q. What exactly was the -- well, first of all, what was the
16 business reason that you wanted a new lease -- a short-term
17 lease for a tenant that was beyond its lease?

18 A. I didn't want any attachment with the old lease because the
19 guy was a little bit unscrupulous from the way he was acting.
20 So I wanted something that was new, clean, and well-defined.
21 Meaning, if he didn't do what you're supposed to there's
22 provisions that would say: "You have to leave immediately."

23 Q. And let's focus on the economic terms. What was the
24 business decision -- essentially, what was the pitch through
25 this lease why this would be advantageous for a tenant to sign

1 from your perspective?

2 A. What do you mean "advantageous"?

3 Q. Approximately, how much was owed by the tenant at this
4 time?

5 A. It was close to 70,000 dollars, 68 to 70, somewhere in that
6 general area.

7 Q. Why did you only ask for 22,800 up front?

8 A. That had nothing to do with the prior -- it was very clear.

9 "From May 18th, 2020, the day, to June 30th, you are to pay
10 \$22,800." It had nothing to do with the past. I was -- if he
11 executed this lease, I would just -- we wouldn't sue SOS
12 Furniture. We wouldn't get involved with that. And the courts
13 were closed. You know, you couldn't evict people. There was a
14 moratorium on evicting people. So I told him: "May 18th to
15 June 30 pay up front."

16 Q. And what incentive in terms of the -- were you offering in
17 terms of the following of the monthly rent thereafter?

18 A. I wasn't offering. He said: "Can I take the original rent
19 and reduce it by three or four thousand a month?" And I said:
20 "Okay. That's fine," and I reduced it per his
21 request/proposal.

22 Q. Well, to be clear, who were you communicating with at this
23 time?

24 A. I'm sorry. I was communicating with Jeff, because I don't
25 even know these people. Jeff to talk to the guy at

1 Mattress1One, whoever the guy was at Mattress1One.

2 Q. Do you have any recollection of meeting Mr. Salem, the
3 individual who was on the stand?

4 A. I never heard his name, seen the guy my whole entire life.

5 Q. Do you have any memory of speaking to that individual?

6 A. Never spoke to him. The guy that was here, Mr. Salem, I've
7 never spoken to him in my life.

8 Q. So your dealings during COVID with this tenant was through
9 whom?

10 A. Through Jeff Vasilas. And also actually Joe Beirne,
11 because Joe Beirne was friends with the manager of the store.
12 This guy Rich Bank or Rich --

13 MR. ETRA: All right. Now let's go to the first page,
14 the very top, the identification of the parties to the lease.

15 BY MR. ETRA:

16 Q. Okay. Now, the tenant in the original lease was what?

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

18 Q. I'm asking about the tenant.

19 A. I'm sorry. I'm just tired. The tenant is Pacific MS
20 Management, Inc.

21 Q. Is in the original lease, who was the tenant?

22 A. SOS Furniture.

23 Q. Now, here, who was the tenant?

24 A. Pacific MS Management, Inc.

25 Q. Between you -- from your -- why did Pacific -- why is that

1 person -- why is that new entity here?

2 A. Because they are the ones who requested to -- they said
3 part of the lease they wanted to change the name of the tenant
4 to the specific company Pacific MS Management -- meaning --
5 "they" meaning Mattress1One demanded it be changed.

6 Q. Now, as a landlord, did that raise any concerns in your
7 mind having this new tenant for -- as the real tenant, as the
8 entity, for Mattress1One?

9 A. Yes.

10 Q. What concerns did that raise in your mind?

11 A. When you have a national tenant, with a lot of stores,
12 called a corporate lease. So you get the whole corporation --
13 if it defaults, the whole corporation you can go after. And
14 considering they haven't been paying rent, they owe all this
15 money, and all of a sudden they change it to a name called
16 Pacific Management, where I asked them: "Do you have any
17 financials," they say: "No," you don't know what it is. You
18 don't even know who owns the company. I mean, I have no idea
19 what the tenant is. So that was definitely -- is a very big
20 red flag for anybody.

21 Q. So did that have any impact on your thinking of who the
22 landlord should be?

23 A. Absolutely.

24 Q. Why?

25 A. Because HM-UP -- HM-UP Development Alafaya Trails, LLC is a

1 borrower on a \$20 million loan with a lender during COVID,
2 mayhem happening. The last thing I want to do is enter into an
3 agreement with some random company I have done no due
4 diligence, they won't give me any information. So the owner of
5 HM-UP 99 percent is HM Four, LLC, and they were also in charge
6 of all the common area. So I said: "Okay. Then if you want
7 to put Pacific Management, then we're going to put HM Four."

8 Q. What specifically was the concern with having HM-UP as the
9 landlord, given the circumstances of Pacific Management and the
10 history with this borrower?

11 A. Because I didn't want them to sue me -- not me, the
12 company -- and with litigation where the courts are closed, and
13 then it's a default of my loan with the lender for just a
14 3,000-square-foot tenant within a 140,000-square-foot shopping
15 center. I did not want to have that aggravation and be in
16 default of my mortgage.

17 Q. Was there any business justification to use -- instead of
18 HM-UP, which was on the mortgage, to use HM Four instead?

19 A. Yes.

20 Q. What was the legitimate -- what was the business
21 justification?

22 A. As we talked before, HM Four takes care of all the common
23 area. And in the REA HM Four has the legal right to collect
24 all money owed to it by either the owners of each property
25 and/or their tenants. But I controlled the companies, so HM

1 Four doesn't -- I don't have to foreclose. I can assess a lien
2 against that company.

3 So that's why HM Four was very important, because they
4 are in charge of the REA. In order to collect the money that's
5 owed, that's the mechanism. Instead of suing -- I can't sue
6 myself, that -- to go sue MattressOne or Pacific MS
7 Management. So that's why I went with a direct relationship
8 between HM Four and Pacific MS. And I told Jeff to explain
9 this to this guy, and my understanding, they agreed to that.

10 Q. What was your understanding about whether this lease was
11 executed?

12 A. I was informed by Mr. Vasilas that the guy --

13 MS. JIMENEZ: Hearsay. Object.

14 MR. ETRA: Your Honor, it's for state of mind, not for
15 the truth of the matter asserted, in terms of what his intent
16 was with respect to this lease.

17 THE COURT: The objection is overruled. I'll allow
18 it.

19 BY MR. ETRA:

20 Q. You want me to re-ask the question?

21 A. Yeah. I forgot what the question was.

22 Q. What was your understanding with respect to whether this
23 lease was executed?

24 A. My understanding, it was executed.

25 Q. Based on information from whom?

1 A. Based upon a text message from Mr. Vasilas that said:
2 "Lease done and lease signed, executed." Then he had a check
3 for the -- that was required for this lease agreement of
4 \$22,800 that -- the guy cut a check from -- the check was
5 actually not from SOS Furniture or Mattress1One. It was
6 actually from this Pacific Management, Inc. So I see:
7 "Pacific Management." I see 22,800 in the text message, and
8 I'm like: "Okay. Great. Go deposit it."

9 Q. You heard Mr. Salem's testimony about whether he signed
10 this document, correct? Did you hear that?

11 A. I did.

12 Q. Do you have personal knowledge whether he signed this
13 document or not?

14 A. I have no idea. I don't know the man.

15 Q. Did you have any reason to believe when you were submitting
16 this -- submitting this lease to the SBA that the signature
17 might be forged?

18 A. No.

19 Q. If you believed the signature was forged, would you have
20 submitted it to the SBA?

21 A. I would have never submitted it to the SBA or anybody for
22 that matter.

23 MR. ETRA: If we go to Exhibit 39-10 in evidence.

24 BY MR. ETRA:

25 Q. So the first document is a check in the amount of 11,479

1 June of 2019. Is that the approximate amount of the monthly
2 rent under the original lease?

3 A. To the best of my knowledge, yes.

4 MR. ETRA: Could we turn to the next document, please.

5 BY MR. ETRA:

6 Q. This is a check made -- from Pacific MS Management, made
7 out to HM-UP for 22,800, on May 22nd, 2020. Do you see that?

8 A. Yes.

9 Q. You were seeing an image of that at the time?

10 A. An image, yes.

11 Q. Okay. Now, the name of the payee, I think it's called, the
12 pay to the order of, is HM-UP Development. Do you see that?

13 A. Yes.

14 Q. Did you notice at the time whether it was written to --
15 that it was written to HM-UP and not to HM Four?

16 A. No. I just looked at the dollar amount, and I remember
17 looking at the memo section. And then -- that was what I
18 looked at. I looked at it briefly. I didn't really look at it
19 that much. I had a lot of things going on at that time.

20 Q. Nevertheless -- nevertheless, if you had seen the "HM-UP,"
21 would you have given the check back?

22 A. No.

23 Q. Why not?

24 A. Well, because this guy actually, you know, paid the money
25 up front. And HM-UP would have to just forward the check to HM

1 Four anyhow. I mean, it's just the way -- that's the way it's
2 structured. I mean, it's -- HM Four owned HM-UP.

3 Q. Is there any other document besides the new lease that you
4 looked at pursuant to which Pacific MS Management would make a
5 check out for 22,800 in this time period to one of your
6 companies?

7 A. I've researched the file up and down to see if there's any
8 other document in the world. And there's no other document in
9 the world that describes that terms and that specific tenant,
10 Pacific MS Management. I've never seen another document like
11 that.

12 MR. ETRA: Let's go to the next check, please.

13 BY MR. ETRA:

14 Q. This is from Pacific MS Management to HM-UP in the amount
15 of \$8,480, in July of 2020. Do you see that?

16 A. I do.

17 Q. Other than -- is that an amount consistent with the new
18 lease?

19 A. Yes.

20 Q. After the first payment of the reduced rent, right?

21 A. Correct.

22 Q. Is there any other document that you have seen pursuant to
23 which Pacific MS Management would be paying one of your
24 companies \$8,000 or so in July of 2020?

25 A. No.

1 Q. Now, Mr. Salem pointed out, if you look at the bottom in
2 the memo line, the handwriting is "month-to-month." Do you see
3 that?

4 A. I do.

5 Q. At the time these checks came in, did you even see these
6 checks?

7 A. I don't get any of the checks. It goes to either Jeff or
8 the PO box, or Jeanette.

9 Q. Had you seen the "month-to-month," would you have said:
10 "Sorry, Mr. Salem. I'm not taking your check"?

11 A. If I saw it -- I didn't see it so, I mean, I can't tell you
12 what I would have done because I didn't see it.

13 Q. How is it that you saw the \$22,000 check but not the \$8,000
14 check?

15 A. Because he text it to me, and called me, and told me that
16 he accomplished his goal of getting him to execute a lease and
17 get the check, and now we can start with FedEx to start the
18 plans, because we had a six-month -- a defined period of six
19 months. So that's how I looked at the 22,800 check.

20 Q. All right.

21 MR. ETRA: We could take this down, please.

22 BY MR. ETRA:

23 Q. We're focusing on the fact that Jennifer is listed in the
24 HM Four EIDL application as owner. Could we focus on that for
25 a moment?

1 A. Sure.

2 Q. Were you trying to hide your involvement from the SBA in
3 connection with that whole loan?

4 A. No.

5 Q. And briefly, why in the -- in the context of the time, why
6 did you put down Jennifer as owner?

7 A. Because she is my wife and she's an owner.

8 Q. What was your -- when you think of HM Four, is there any --
9 sorry. What about -- sorry. Let me start over again.

10 MR. ETRA: Could we put up for the witness only
11 Exhibit X-21.

12 Put up the whole -- for the whole screen, please.

13 BY MR. ETRA:

14 Q. Do you recognize Exhibit X-21?

15 A. I do.

16 Q. Generally speaking, what is X-21?

17 A. This is the original operating agreement of HM Four.

18 Q. And does it disclose -- I'm just going to ask the question.
19 Please answer yes or no without answering further. Does it
20 disclose the original ownership interest of HM Four?

21 A. Yes.

22 MR. ETRA: Your Honor, Defense offers X-21.

23 MS. JIMENEZ: Objection. No date, no nothing.

24 THE COURT: Is this the only page or is there more to
25 it?

1 MR. ETRA: Well, there's more to it --

2 THE COURT: Where is the entire document?

3 MR. ETRA: Okay. Let me go through the entire one.

4 Your Honor, the top of the first page has a date of June -- I
5 don't want to say it on the record if you don't want me to.

6 THE COURT: Yeah. I see the date. Is there any other
7 basis for the objection?

8 MS. JIMENEZ: Relevance.

9 THE COURT: Overruled. X-21, the entire exhibit, will
10 be admitted into evidence.

11 (Defendant's Exhibit X-21 received into evidence.)

12 MR. ETRA: Put the first page up, just -- only,
13 please. And could you blow up the bottom of it.

14 BY MR. ETRA:

15 Q. Originally what was the percentage breakdown ownership of
16 HM Four?

17 A. Jennifer Sheppard owned 95 percent and myself, Eric
18 Sheppard, owned five percent.

19 Q. Okay. And in general, what was -- in your mind what was
20 the purpose of HM Four with respect to your world?

21 A. My world. My world was to have my wife have an asset for
22 her nest egg for her and my children to make sure that they had
23 something -- back in 2011, to make sure that they were provided
24 for if something happened and -- to me. So that's why she has
25 the 95 percent.

1 Q. And originally -- what was HM Four set up for originally
2 when it was first set up in 2011?

3 A. It was acquiring interest in a shopping center in Maryland.

4 Q. At some point -- when did it become -- have an interest in
5 Orlando, approximately?

6 A. Sometime late 2012.

7 Q. Okay. Now, at some point, did Mr. Robert Kallman become
8 part owner of HM Four?

9 A. Yes.

10 Q. And just very briefly, who is Mr. Robert Kallman?
11 K-A-L-L-M-A-N.

12 A. He's a dear friend of Jennifer and I and our daughter. And
13 their family were friends, and he's from New York. And he
14 became partner in the HM Four entity around 2015 maybe.

15 Q. And generally, with respect to all these loans that we now
16 know to be EIDL loans, did you hide the involvement of
17 Mr. Kallman and yourself generally in the other loan
18 applications?

19 A. No, I did not.

20 Q. And the tax returns show that Sheppard is 52 percent and
21 Kallman is under an entity as 48 percent --

22 MS. JIMENEZ: Objection. Leading.

23 THE COURT: Sustained.

24 BY MR. ETRA:

25 Q. At some point, was there an ownership interest split

1 between Sheppard on the one side and Kallman on the other?

2 A. Yes.

3 Q. And what was the split when he got involved?

4 A. It was 52 percent Jennifer Sheppard and Eric Sheppard
5 tenancy by the entireties joint ownership, and the other side
6 was Mr. Kallman.

7 Q. Now, why, when you applied for the EIDL loan, did you not
8 disclose Mr. Kallman as a 48 percent owner on that particular
9 loan -- for HM Four, I should say -- for HM Four?

10 A. Well, he was disclosed on HM-UP.

11 Q. Right.

12 A. But that was a little earlier with Nationwide. He was not
13 disclosed in HM Four because of -- the capital structure, at
14 the exact -- that month of November, that's where the entity
15 stood in 2020, in November 2020.

16 Q. Could you explain generally what you're referring to by
17 capital structure, and just put it in plain clear terms what
18 was going on.

19 A. As I stated before, when you start the construction
20 project, you have a budget. And this was approximately
21 \$2.78 million. And when you're not taking a loan, you're
22 funding it yourself, you go to the partner and you say:
23 "Mr. 48 percent, this is your portion. Fifty-two percent is
24 your portion." And that's what I did with Mr. Kallman as the
25 managing member. I asked -- just -- he chose that he did not

1 want to put up any money for any of the construction.

2 So as -- what is standard, from January to the month
3 of November, when they got the TCO of the Burlington Coat
4 Factory, my family provided the capital to do all this and he
5 did not. So he got -- his ownership interest got reduced
6 because we put up 98 percent and he put up two percent. So
7 that's why -- you know, they asked me a question. I'm being
8 technical. This is where we stand. At that particular
9 juncture in time, that's where we stand.

10 Q. Was that your thinking at the time?

11 A. Yeah.

12 Q. And did that change thereafter with respect to Mr. Kallman
13 and the equity?

14 A. Yes. Because we have another entity with him, and he put
15 money up in the other entity, which is HM-UP Development
16 Alafaya Trails TRU. So at that time that -- he'd get a little
17 bit more interest there. And here, in this particular place,
18 in HM Four, we -- we -- we -- we worked out an arrangement that
19 he put money up and then he would get back his interest. I
20 wasn't going to take it from him. It's just technically that's
21 how it's supposed to work. So that worked out some time in
22 2021 maybe.

23 Q. The HM Four EIDL application, for employees you put down
24 three. My question is: Why did you do that?

25 A. Well, that's how -- that's how many workers that are in our

1 business, because there's multiple companies. I don't work
2 with the other companies. But all the different companies --
3 if someone's working here in Miami, and they go on work in
4 Orlando, and they're working on the common area, they get
5 allocated from accountants -- in our accounting thing, they get
6 allocated for that job. And we have different partners in
7 projects. Like in the Miami project, we have a different
8 partner. So there's allocation of their time for that job.
9 There's allocation of time for this job.

10 So there has to be allocations. And that's what that
11 means. It means it's an allocation of a worker's time for that
12 particular year. So that's why you have three.

13 Q. Okay.

14 MR. ETRA: Could we put up -- sorry.

15 BY MR. ETRA:

16 Q. I want to change the topic to November 2020. The project
17 is basically done subject to the punch list -- the Burlington.
18 Okay. Are you with me?

19 A. I'm with you.

20 Q. Okay. Now, at this point in time, where is Jeff Vasilas
21 physically?

22 A. In November?

23 Q. November and thereafter.

24 A. November, December he got the TCO and he came back to Miami
25 and moved back here. Still went to Orlando periodically, but

1 he was based here now.

2 Q. Generally speaking, where was his home, meaning what
3 neighborhood?

4 A. 163rd Street, 164th Street.

5 Q. In Miami?

6 A. In Miami.

7 Q. Where was his office in your companies in November and
8 thereafter in COVID -- November 2020 and thereafter in COVID?

9 A. His office was at my house. Because, in COVID, we closed
10 the offices, my home became -- became the office, and him with
11 some others would work out of my house. And that's where he
12 started sometime in November.

13 MR. ETRA: For the witness only, please, can we put up
14 Exhibit X-9.

15 BY MR. ETRA:

16 Q. Do you recognize Exhibit X-9?

17 A. I do.

18 Q. Is that a fair and accurate portrayal -- depiction, I
19 should say of your home office in or about November of 2020?

20 A. That is.

21 MR. ETRA: Defense offers Exhibit X-9.

22 THE COURT: Any objection?

23 MS. JIMENEZ: No objection.

24 THE COURT: Admitted into evidence.

25 (Defendant's Exhibit X-9 received into evidence.)

1 BY MR. ETRA:

2 Q. Mr. Sheppard, could you explain what we're seeing in X-9.

3 A. This is a clean version of my office in my house.

4 Q. And where did you typically sit in your home office during
5 COVID, when you were sitting versus walking around with your
6 phone?

7 A. I sit in this section over here.

8 Q. And where did Mr. Vasilas sit?

9 A. He sits at that conference room table that was in my old
10 office -- at the office on 12000 Biscayne Boulevard. That's
11 that conference table. He sits at the conference table there.

12 Q. Is that the one you can see the side of the computer?

13 A. Correct.

14 Q. Is that the home computer that you used in -- for your
15 business?

16 A. Correct.

17 Q. Okay. And is there any part of your -- did your home
18 office -- was your home office limited to this part of the
19 house we're looking at here?

20 A. During the time periods from the time we left the office
21 building to about October, somewhere in October 2020, very
22 infrequently. We'd try not to let people in the house because
23 of the COVID. But then it -- my wife allowed for other people
24 to come and work out of there, so it expanded a little bit into
25 the other parts of the house.

1 Q. Okay.

2 A. The downstairs part.

3 Q. What type of hours did Mr. Vasilas keep at the home office?

4 A. He -- he came and go -- he works a lot, and he came and
5 went when he -- sometimes in the morning but mostly -- mostly
6 in the afternoon, late night. He's like a late-night kind of
7 guy from his prior business career.

8 Q. Did Mr. -- sorry?

9 A. No. My bad. Go ahead.

10 Q. Did Mr. Vasilas have a way of getting into your house
11 without you assisting him?

12 A. Yes.

13 Q. How so?

14 A. Well, not just him. Everybody. Where we lived, there's --
15 our doors are normally always open pretty much. And there's
16 also a garage where you put -- do the clicker, and it opens the
17 garage and you can access through the garage as well.

18 Q. And is there a -- do you live in a gated community?

19 A. It's a gated community.

20 Q. How did Mr. Vasilas get past -- how could Mr. Vasilas get
21 past the guard?

22 A. Mr. Vasilas can get past the guard. But he's also on the
23 list. He's on the list. He's on the list.

24 Q. Did Mr. Vasilas have authority to come and go in your home
25 office as he pleased?

1 A. Yes.

2 Q. Was -- were you always present when Mr. Vasilas was in your
3 home office?

4 A. No.

5 Q. Staying now in December of 2020, how were you feeling in
6 terms of your ability to manage your business in terms of
7 physically?

8 A. I was not great.

9 Q. Not great. And did you go and see some doctors?

10 A. Yes.

11 Q. Did you ultimately get a diagnosis?

12 A. Yes.

13 Q. What diagnosis did you get?

14 A. That I had cancer.

15 Q. And when approximately did you get that diagnosis?

16 A. In December.

17 Q. What part of December?

18 A. The latter part.

19 Q. Did you have any surgery?

20 A. Yes.

21 Q. When did you have the surgery?

22 A. In January 2021.

23 Q. Approximately when in January did you have the surgery?

24 A. January -- I don't know the exact date. January 5th, 7th,
25 somewhere in that general area.

1 Q. And after surgery, did you have any treatment?

2 A. Yes. I had some radiation done for -- for about three
3 months in 2021.

4 Q. And in terms of your ability to focus on your job in the
5 first few months of 2021, was there any impact from what you
6 have just described?

7 A. I mean...

8 Q. Sorry?

9 A. Yes.

10 Q. And how -- could you please, in your own words, describe
11 the impact.

12 A. It's -- it's a life-changing thing.

13 Q. And but -- in terms of your ability to focus, I mean, your
14 attention to detail, I want to ask you -- I don't want to use
15 words. I want to ask you, sir. Describe the impact it had in
16 terms of when you were focusing -- when you were thinking about
17 your job, what impact, if any, did all these things have on
18 your functioning at work?

19 A. I was distracted, and I was, you know, concerned, and I was
20 unable to focus. You know, you're a little bit tired. And
21 it's just -- it's hard to focus laser -- I'm a pretty energetic
22 person usually. And you know, it takes a lot out of you. It
23 just changes your focus because you can't sit there and read
24 documents or you can't -- you know, I used to talk on the phone
25 a lot. So it's hard to focus like that.

1 Q. How did you get by in your job if you were impaired in the
2 way you say?

3 A. I mean, I've been doing it for a very long time. So from a
4 brain capacity, you know, I'm able to understand. It's not
5 like I'm learning something new, but it's just the energy
6 level. I was able to do that and rely on other people to help
7 me and step in. So that wasn't really important. I had some
8 people that helped me in the business.

9 Q. Who were they?

10 A. Jeanette, Jeff Vasilas. I think Mary was a very big help.
11 She's very nice to me and helped me.

12 MR. ETRA: Your Honor, we're at a point where it's
13 close to 4:30, and we're at the end of the topic. So maybe
14 now --

15 THE COURT: All right. Certainly.

16 All right. Ladies and Gentlemen, as you know, given
17 your schedule, we will pick up after the new year on
18 January 8th, January 9th, and perhaps January 10th. I know
19 that Liz has spoken with each of you. Each day we will proceed
20 at nine a.m. and we'll conclude at five p.m.

21 Please remember that as you leave the building, and
22 before we see you on Monday, as well as any time that you are
23 before this Court, you are not to discuss this case with
24 anyone, nor permit anyone to speak with you. Everything
25 learned about the case is learned in this courtroom.

1 I would ask that you place your juror notebooks in the
2 jury room. The jury room will remain locked and will be open
3 on January 8th when you arrive in the morning.

4 I do want to wish each of you a happy holiday and a
5 happy, healthy, and meaningful new year, and I will see each of
6 you here on Monday morning, January 8th, 2024, at nine a.m.

7 Take good care.

8 COURT SECURITY OFFICER: All rise.

9 (Jury not present, 4:28 p.m.)

10 THE COURT: All right. Mr. Sheppard, you can go ahead
11 and sit with your counsel.

12 Let me make clear that you are not to discuss your
13 anticipated testimony; however, in order to certainly assist in
14 your defense, you are permitted to speak with your attorneys
15 and prepare for the continuing trial.

16 MS. JIMENEZ: Your Honor, I think this is a pointless
17 request, given the representations that they've made regarding
18 witnesses, but we would ask what witnesses they expect to call
19 after Mr. Sheppard.

20 THE COURT: Ms. Weintraub?

21 MS. WEINTRAUB: We expect to call Mr. Kallman, Glenn
22 Sheppard, Vanessa Gonzalez. We don't know about --

23 THE COURT: All right. Everyone can have a seat,
24 since there are a couple matters I do need to go over.

25 All right. Kallman, Sheppard, Gonzalez.

1 MS. WEINTRAUB: There are two Gonzalezes. And Kerby
2 Kleef. That's who I would expect -- and Mercedes Fonseca.
3 Those will be the Defense witnesses that we will call -- and
4 Scott Bouchner. Those will be the Defense witnesses that we
5 will call. We will be scrambling because a couple of them are
6 out-of-town people. Whoever can get here in those two days,
7 we'll put them on in that order. They are not long witnesses,
8 except perhaps Scott Bouchner.

9 THE COURT: All right. I do want to discuss that,
10 recall, one of our jurors is attending the trial of her
11 sister-in-law [sic] who was a victim of a DUI. Liz has been
12 checking the state court docket. It is specially set for
13 January 4th. So to the extent that it does proceed on January
14 4th, Liz will reach out to each of you, since, as we know, that
15 juror wants to be present during the course of that trial, and
16 we will not know until the trial begins as to when it will end.

17 To the extent that the trial does continue into the
18 week of January 8th, have the parties considered whether they
19 would stipulate to a jury consisting of 11 members?

20 MS. WEINTRAUB: We have not -- we have not discussed
21 it among the Defense team, but I can tell the Court pretty
22 candidly that I would not willingly agree to that.

23 THE COURT: All right. Well, has the Government made
24 a decision?

25 MS. JIMENEZ: We haven't made a decision, Your Honor.

1 THE COURT: All right. Well, it requires an
2 agreement --

3 MS. JIMENEZ: We would certainly like to conclude the
4 trial.

5 THE COURT: Certainly. So Liz will be in contact with
6 you on January 4th to the extent that she has information as to
7 whether the trial has actually begun. And we will address it
8 on January 8th in the courtroom with regard to the continuation
9 of the trial.

10 To the extent that the parties do not stipulate, then
11 we would need to work on alternate dates to continue the trial
12 after the state court trial is concluded.

13 MS. JIMENEZ: I can represent to the Court that we
14 would be willing to proceed with 11 jurors. So it's up to
15 them.

16 THE COURT: Okay. Couple of housekeeping matters.
17 There are many exhibits that have been introduced into evidence
18 that contain a separate exhibit number. But as Mr. Cavallo has
19 advised the Court, they are part and parcel and the
20 representation is that they are part of the Government's
21 exhibit. However, the jurors' notes may reflect, for example,
22 an item of M-35 that may be part of the Government's exhibits.

23 So I am going to require the parties to confer during
24 this period of time so that the individual exhibit that bears a
25 different letter and/or number is alongside the Government's

1 exhibit. For example, if it's Government's 28 but it's also
2 M-35, then it should be reflected that way on the exhibit list,
3 and a narrative or a brief description of what the exhibit is,
4 Government's 35 and then Defendant's -- or Government's 28 and
5 then the Defendant's 35, so that it's on one exhibit list.

6 I have tasked the Government with preparing that
7 exhibit list, as well as having all of the exhibits uploaded,
8 but it is a huge burden for the Government to bear when there
9 have been many Defense exhibits that have been introduced with
10 the representation that they are part of the Government's
11 exhibits. So I'm going to require the parties to confer and
12 work together on that list.

13 MS. WEINTRAUB: Of course, Your Honor.

14 MR. CAVALLLO: No problem, Your Honor.

15 THE COURT: Are there any items that we need to
16 address before I see you on Monday, January 8th?

17 MS. MARTINEZ: I just have a clarification question.
18 Ms. Weintraub said Vanessa Gonzalez, and it's just not clear
19 from her statement because -- then she repeated: "There's two
20 Gonzalezes." So I just wanted to ask: Is Jeanette Gonzalez
21 still on their list?

22 MS. WEINTRAUB: She's still on the list. And from
23 your -- from your communication, after you asked me if she's
24 taking the Fifth Amendment, it's clear that you conferred
25 immunity upon her, correct? So she can't take the Fifth. Yes?

1 I just want to make sure that's your position.

2 MS. MARTINEZ: I'm not handling that matter. I'll
3 leave that to Ms. Jimenez.

4 MS. JIMENEZ: So yes. My only concern is if this
5 witness is going to attempt to take the Fifth at any point or
6 on cross-examination. And so I want to be advised of that so
7 that I can file a motion with the Court because the Court would
8 then be required to order her to answer the question. And if I
9 need to take that step, I want to know ahead of time. That's
10 all.

11 MS. WEINTRAUB: Well, if she has immunity, then she's
12 not going to take the Fifth. I mean, I don't understand.

13 THE COURT: All right. Well, has it been represented
14 to you, Ms. Weintraub, that she will not testify absent
15 immunity and that she will assert her Fifth Amendment
16 privilege?

17 MS. WEINTRAUB: I didn't ask, actually. I don't want
18 to misrepresent what's going on. I did not ask. But I assume
19 that's accurate.

20 THE COURT: All right. Then that needs to be answered
21 and the witness needs to be questioned. It's certainly a waste
22 to bring her in if she's going to assert her Fifth Amendment
23 privilege. But if she's granted immunity, then it may be a
24 different --

25 MS. WEINTRAUB: We got an email from the Government

1 Sunday that they did confer immunity.

2 MS. JIMENEZ: So Your Honor, just so that -- I mean,
3 it's an unusual sort of process. But we obtained authorization
4 from the Department of Justice to confer immunity upon this
5 individual whom we had subpoenaed before the grand jury. Her
6 counsel represented to us that, beyond her name, she would
7 assert the Fifth Amendment privilege. We obtained that
8 authorization from the Department of Justice, then turned to
9 her counsel, who said she would come.

10 So what the statute requires is that I seek an order
11 from the Court that compels her to testify. I did not seek
12 that order because then, when I told her counsel, she came to
13 the grand jury and she answered questions. And so I raise it
14 now because there is not an order in place. And the way that I
15 read the statute, I suppose, technically she could still, you
16 know, attempt to assert her privilege either on direct or my
17 concern is on cross-examination.

18 MS. WEINTRAUB: Correct.

19 MS. JIMENEZ: And so if I need to file a motion with
20 the Court to get that order, that's -- and that's why I'm
21 asking the question.

22 THE COURT: Well --

23 MS. WEINTRAUB: It was our understanding she had
24 immunity. It is now my understanding she does not have
25 statutory immunity.

1 THE COURT: To the extent --

2 MS. WEINTRAUB: And Dan Rashbaum represents her. I
3 mean, they should be speaking.

4 THE COURT: To the extent that she was granted
5 immunity, why don't you submit a proposed order to the Court,
6 and I'll be more than happy to sign that.

7 Okay. Are there any other issues that we need to
8 address?

9 MS. WEINTRAUB: Yes, Your Honor. And I apologize.
10 It's my fault, but I'll really blame my client. His son has a
11 basketball tournament in Atlanta next week -- Atlanta and
12 Orlando. And I did not submit a motion and order for him to
13 travel to go there with his family. I would ask to have the
14 Court grant it, and I will submit an order by morning or by
15 this evening.

16 THE COURT: Is there any objection to that?

17 MS. JIMENEZ: No. No objection. I'd like to know how
18 long. I mean, and he needs to -- and he needs to get
19 permission from or check in with the Probation officer as well.
20 It's not --

21 THE COURT: Yes. Mr. Sheppard --

22 MS. WEINTRAUB: Of course he'll notify her.

23 THE COURT: Mr. Sheppard is permitted to travel
24 outside the district. He just needs to provide an itinerary to
25 his pretrial officer before he travels.

1 MS. WEINTRAUB: Of course.

2 THE COURT: All right. Is there anything further?

3 MS. WEINTRAUB: No, Your Honor.

4 THE COURT: Okay. All right. Take the time that you
5 need. We don't need the courtroom this evening.

6 Happy and Healthy New Year, a nice holiday. And I'll
7 see you on January 8th, although Liz will be communicating with
8 you in the interim.

9 MS. WEINTRAUB: Thank you, Judge.

10 Judge, the conference room, can we leave --

11 THE COURT: Yes. You can certainly leave your items
12 in the conference room.

13 MS. WEINTRAUB: Great. Thank you, Judge.

14 THE COURT: Okay.

15 (Proceedings adjourned at 4:39 p.m.)
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2 UNITED STATES OF AMERICA)

3 ss:

4 SOUTHERN DISTRICT OF FLORIDA)

5 C E R T I F I C A T E

6 I, Yvette Hernandez, Certified Shorthand Reporter in
7 and for the United States District Court for the Southern
8 District of Florida, do hereby certify that I was present at,
9 and reported in machine shorthand, the proceedings had the 19th
10 day of December, 2023, in the above-mentioned court; and that
11 the foregoing transcript is a true, correct, and complete
12 transcript of my stenographic notes.

13 I further certify that this transcript contains pages
14 1 - 258.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Miami, Florida, this 25th day of February, 2025.

17
18 /s/Yvette Hernandez
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