

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,

January 9, 2024
9:01 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant.

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TRANSCRIPT OF TRIAL DAY 15
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

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ON BEHALF OF THE DEFENDANT: PAGE

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1 (Call to order of the Court, 9:01 a.m.)

2 THE COURT: Hi. Good morning to everyone.

3 Let me acknowledge the presence of the Defendant.

4 Are there any issues we need to address?

5 And Mr. Sheppard, if you want to come forward, sir.

6 On behalf of the Government, any issues to address?

7 MS. MARTINEZ: Nothing new at the moment, Your Honor.

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

9 MR. ETRA: Your Honor, could I just say -- I know

10 we're going to get Your Honor's rulings on the jury

11 instructions. If the Court's not aware, there is a new

12 Eleventh Circuit decision in January -- it sounds like the

13 Court's aware.

14 THE COURT: All right. And I did advise by five

15 o'clock today any additional instructions to be provided to the

16 Court.

17 MR. ETRA: Oh. Is it by five today?

18 THE COURT: Today's Tuesday.

19 MR. ETRA: Okay. I wasn't sure of the timing.

20 THE COURT: I think we anticipated that we would have

21 closing arguments on Wednesday.

22 MR. ETRA: We'll have it by five today.

23 THE COURT: Okay. All right, then.

24 Are there any issues we need to address?

25 MS. JIMENEZ: No, Your Honor.

1 THE COURT: On behalf of the Defendant?

2 MR. ETRA: No, Your Honor. Thank you.

3 THE COURT: All right. And I apologize for yesterday.
4 I'm not certain, since we had to leave the courthouse, if you
5 were able to get back and --

6 MR. ETRA: We were fine. Thank you so much, Judge.

7 THE COURT: All right, then.

8 Let's bring in the jury.

9 MS. WEINTRAUB: It was good exercise to walk ten
10 flights.

11 COURT SECURITY OFFICER: All rise for the jury.

12 (Before the Jury, 9:02 a.m.)

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

15 It is good to see you.

16 I apologize for yesterday's disruption, but we are
17 ready to get right back to work. And we'll continue with the
18 cross-examination of Mr. Sheppard.

19 MS. JIMENEZ: Thank you, Your Honor.

20 CROSS-EXAMINATION [CONTINUED]

21 BY MS. JIMENEZ:

22 Q. Mr. Sheppard, I want to ask you about the -- when I was
23 asking you yesterday about the Forms 941s for 2019 that were
24 not submitted to the IRS, or payments made to the IRS in 2019,
25 you talked about something that you found in the storage, and

1 you had testified on direct about this exhibit, which is Y-1.

2 MS. JIMENEZ: I just want to -- if we can go to the
3 ELMO, please.

4 BY MS. JIMENEZ:

5 Q. What you were referring to -- as we wait for the ELMO, what
6 you were referring to, Mr. Sheppard, were W-2s that were
7 provided to the three people who had been your employees at HM
8 Management, right, Jeanette Gonzalez, Vanessa Gonzalez, and
9 Elva Baluarte, the three W-2s for them?

10 A. I'm not sure -- I can't see it.

11 COURTROOM DEPUTY: Is it on?

12 MS. JIMENEZ: The power is on.

13 THE COURT: Yeah. Do we have -- I'm not showing my
14 screen. If we can see if that's on.

15 BY MS. JIMENEZ:

16 Q. So this is your exhibit, Y-1. For 2019 there was something
17 that was e-filed. And you're aware that W-2s get submitted to
18 the Social Security Administration, right?

19 A. I'm not. I don't know that.

20 Q. So these are your employer copies of W-2s for 2019. This
21 is your company's W-2 for the years -- and here's Elva
22 Baluarte, and there's one for Jeanette Gonzalez. It's blurry.

23 Okay. So three W-2s. And one for Vanessa Gonzalez,
24 right? This is from HM Management and Development, right? So
25 you're familiar with what a W-2 is, sir, right?

1 A. I'm familiar.

2 Q. So a W-2 is when you withhold from their wages -- the
3 employer, you, HM Management -- and then at the end of the year
4 you give them the W-2 so they can submit that to the IRS when
5 they file their taxes, right?

6 A. If you say so. I don't process it. But if you say
7 that's how -- I don't know technically how that goes. I know
8 what a W-2 is. I don't know technically how that --

9 Q. Correct. So, in 2019 you withhold wages, payroll taxes
10 from Jeanette Gonzalez, Vanessa Gonzalez, and Elva Baluarte,
11 gave them W-2s, and then those payments are supposed to go to
12 the IRS from the employer, right?

13 MR. ETRA: Objection. "You."

14 THE COURT: I'm sorry. What was the objection?

15 MR. ETRA: She's saying "you" personally. "You."

16 THE COURT: All right. The objection noted. It's
17 overruled.

18 BY MS. JIMENEZ:

19 Q. Right? Then your company, you, your company, takes those
20 payroll taxes and files them with the IRS, and that's what the
21 941s are supposed to reflect, correct?

22 A. I can't answer the question as far as technical -- what
23 you're asking me. My -- HM Management, Jeanette, in that
24 particular year, handles that stuff. So I can't tell you
25 exactly how it's supposed to work.

1 Q. I'm sorry that it's so technical, Mr. Sheppard. This is HM
2 Management, your company.

3 MR. ETRA: Objection, Your Honor. Move to strike the
4 comment.

5 THE COURT: Sustained.

6 BY MS. JIMENEZ:

7 Q. You're the employer, correct?

8 A. HM Management is the employer, correct.

9 Q. Right. So you take their taxes from their wages, and
10 you're supposed to file them with the IRS, and the employer's
11 portion as well, right? That's generally how it works?

12 A. That's my understanding.

13 Q. So these documents that you referenced are W-2s. They're
14 not 941s. We can agree about that, correct?

15 A. It says W-2s.

16 Q. Okay. I want to ask you an additional thing about the
17 SBA -- or the HM Four application that Jeff Graff submitted on
18 your behalf.

19 MR. ETRA: Objection to the comment because it's his
20 behalf. He's not able to answer that because it's not part of
21 the question.

22 THE COURT: Overruled.

23 MS. JIMENEZ: Can we show 50-7. Can we go back to
24 Trial Director.

25 Go to March 26th again, please.

1 All right. Here -- I'm sorry. Go -- I'm sorry.
2 That's March 25th. Go to March 26th.

3 BY MS. JIMENEZ:

4 Q. Okay. Here. Mr. Sheppard, you write to Jeff: "Attached
5 is the HM Four, LLC executed tax return." Do you see that?
6 And there's an attachment below --

7 MS. JIMENEZ: And Your Honor, I -- this was
8 Government's Exhibit 50-7. I had meant to move in the
9 attachments, which was the tax return that was provided -- can
10 you go back so we can show the Court the -- and I realized the
11 attachment was not put into evidence. I'd like to put that
12 into evidence.

13 BY MS. JIMENEZ:

14 Q. Mr. Sheppard, you provided --

15 THE COURT: Hold on. Hold on. Is there any
16 objection?

17 MR. ETRA: Yes. I don't know -- I haven't seen what
18 the prosecutor's talking about.

19 THE COURT: Well -- yeah. 50-7 was admitted into
20 evidence. If this was just inadvertent that it was reflected
21 that there was an attachment --

22 MS. JIMENEZ: I had broken them out separately, as
23 separate exhibits. 50-10 and 50-11 were tax returns, but I
24 know at least 50-10 was an attachment to this email, which is
25 the HM Four tax return.

1 THE COURT: The 2018 tax return?

2 MS. JIMENEZ: Right.

3 THE COURT: Is there any objection?

4 MR. ETRA: Yeah. I still haven't seen what it is. I
5 mean --

6 THE COURT: It's listed as 50-10, HM Four 2018 Tax
7 Return, which was reflected in the Exhibit 50-7. So it appears
8 to be an inadvertence on the part of the Government.

9 MR. ETRA: Sorry. If you just briefly...

10 (Pause in proceedings.)

11 MR. ETRA: Your Honor, I'm assuming that's what it's
12 supposed to be, so I don't want to delay the proceeding.

13 THE COURT: All right. Then admitted into evidence.
14 You may continue.

15 (Government's Exhibit 50-7 attachments received into
16 evidence.)

17 MS. JIMENEZ: All right. Thank you.

18 If we could just go back real quickly to March 25th,
19 the previous email.

20 BY MS. JIMENEZ:

21 Q. So here, Jeff Graff tells you, in Item 2: "You will also
22 need to mail a signed copy of the 2018 tax return for HM Four.
23 The copy I have is not signed." Do you see that?

24 A. I do.

25 Q. And then the next day, March 26th, you provide him --

1 MS. JIMENEZ: Go to March 26th --

2 BY MS. JIMENEZ:

3 Q. You provide him a signed copy of HM Four's tax return. Do
4 you see that? "Attached is the HM Four, LLC executed tax
5 return."

6 A. Well, I see the forwarded -- I forwarded a message. Yeah.
7 I see I forwarded a message that Jeanette sent to me and I
8 forwarded to Jeff Graff, and there's an attachment. I don't
9 see the attachment, but...

10 Q. Well, Jeanette's email is actually to Jeff Graff. It is
11 not to you, right?

12 A. I'm sorry. Say that again.

13 Q. Jeanette's email that's reflected on this document is to
14 Jeff Graff. Those are the tax returns she provides to him that
15 are unsigned, right?

16 A. Correct. But it looks like it says: "Forwarded message."
17 I don't know. I'm just reading what it said. "Forwarded
18 message" from Jeanette to Jeff, and my name's above it. So I
19 don't know what that means, but I'm just reading it.

20 MS. JIMENEZ: Can we show 50-10, please.

21 BY MS. JIMENEZ:

22 Q. All right. So this is the tax return that you provide to
23 Jeff Graff, right? This is the 2018 tax return for HM Four,
24 which is now signed by you, right?

25 A. Okay.

1 Q. It is not signed by Mr. Cupersmith. Do you see that?

2 A. Yes.

3 Q. So the copies that Mr. -- or the tax return that
4 Mr. Cupersmith provides to you is signed by Mr. Cupersmith,
5 right? The one he mails to you every year for every tax return
6 is signed by him, right?

7 MR. ETRA: Objection. I think she said two different
8 things about who signs it.

9 THE COURT: Let's break it down. Sustained.

10 BY MS. JIMENEZ:

11 Q. Mr. Cupersmith sends you tax returns every year that are
12 his originals, his signed originals, right?

13 A. Yes.

14 Q. This one is not his signed original. This is a copy, an
15 unsigned copy, correct?

16 A. I don't know what this particular is because Mr. Cupersmith
17 sends me signed copies, he sends me a copy, and then he sends
18 it through email as well. So there's three methods that are
19 sent and three different types of tax returns that he sends.
20 So I don't know specifically what this was in 2020.

21 Q. So you had a copy of this HM Four tax return that was
22 unsigned, you signed it, and then you provided it to Mr. Graff,
23 correct?

24 A. I have no idea about how this was processed. I mean --

25 Q. Well, you processed it right? You gave it to Mr. Graff.

1 A. That's -- I can't tell you sitting here what that is. It
2 looks like an email from Jeanette Gonzalez to Mr. Graff. I
3 don't know sitting here.

4 Q. Your email said to him that you were attaching the signed
5 tax return that you were providing to him, correct?

6 A. That's what it says.

7 Q. Okay.

8 MS. JIMENEZ: Let's go to --

9 BY MS. JIMENEZ:

10 Q. Let me ask you, you had also -- when Mr. Graff asked you to
11 execute these other forms, the 4506-T, do you remember that?

12 A. Yes.

13 MS. JIMENEZ: Can we show 50-8.

14 BY MS. JIMENEZ:

15 Q. And those 4506-Ts --

16 MS. JIMENEZ: If you could go down --

17 BY MS. JIMENEZ:

18 Q. -- you execute to give to the SBA, right?

19 A. Yes.

20 Q. So then the SBA can turn around to the IRS and get the
21 specific tax returns for the tax years that you authorized them
22 to get, right?

23 A. Correct.

24 MS. JIMENEZ: Okay. Can we go down.

25

1 BY MS. JIMENEZ:

2 Q. And you provided HM Four, and HM-UP Alafaya Trails, and
3 your personal 4506-T, correct --

4 A. Yes.

5 Q. -- to Mr. Graff? And those were --

6 MS. JIMENEZ: If we could go down to HM-UP --

7 BY MS. JIMENEZ:

8 Q. -- and those were for tax years 2015, 2016 and 2017,
9 correct?

10 A. That's what it says.

11 Q. And if the SBA is going to turn around to the IRS, those
12 tax returns at the IRS are going to have Mr. Cupersmith's
13 signature, correct?

14 A. I would -- I don't know. I don't know. I would assume so.

15 Q. Okay. All right.

16 Okay. Yesterday, when we broke --

17 MS. JIMENEZ: We can take that down --

18 BY MS. JIMENEZ:

19 Q. -- I was asking you about your communications with
20 Mr. Cupersmith's office in -- approximately in April of 2020.
21 And I --

22 MS. JIMENEZ: If we can go to the ELMO, please.

23 BY MS. JIMENEZ:

24 Q. So this Defense Exhibit Q-30 was a notice provided to you
25 March 23rd, 2020, for tax year 2018 that you had not filed your

1 1040 tax return, right?

2 A. That's what that says.

3 Q. The issue at that time was that you hadn't paid
4 Mr. Cupersmith's firm's earlier invoices for the previous year,
5 so they had not provided you -- I guess they hadn't prepared
6 the tax returns, right?

7 A. That's not true.

8 Q. That's not true?

9 A. That's not true, not that I recollect.

10 (Pause in proceedings.)

11 BY MS. JIMENEZ:

12 Q. Mr. Cupersmith's firm communicated with you in February of
13 2020 with an invoice -- or the current balance owed was
14 \$16,025 as of February 2020. Yes?

15 A. I can't answer any numbers because there was two balances.
16 One was for my ex-partner that I was paying his bills because
17 he didn't pay it, and then there was our other stuff. So there
18 was two different bills. One I was paying down another
19 person's bills and one was normal standard yearly payments.

20 MR. ETRA: Your Honor, could I have a continuing
21 objection to these lines of questions about other years' tax
22 returns or billing issue?

23 THE COURT: Certainly. You have a continuing
24 objection.

25 MR. ETRA: 403 and 404.

1 THE COURT: All right, then.

2 BY MS. JIMENEZ:

3 Q. All right. So then you communicate with him --

4 MS. JIMENEZ: Let me just not mix up here...

5 (Pause in proceedings.)

6 MS. JIMENEZ: Sorry. I just mixed this up.

7 BY MS. JIMENEZ:

8 Q. All right. Then -- all right. Then your Exhibit Q-25,
9 March 30th, down here, March --

10 MS. JIMENEZ: Where are we?

11 Okay. Here we go.

12 BY MS. JIMENEZ:

13 Q. March 30th: "Hi, Alex. Hope all is good and healthy.
14 Please let me know if you filed my personal 2018. I applied
15 for some government programs and they asked for tax returns.
16 If the 2018 is not on, they will not process the application,"
17 right?

18 And so -- and then the emails go on about them not
19 having the information to prepare the tax returns, right? Do
20 you remember?

21 A. I don't know that specific time frame, but...

22 Q. Right. So it says: "Nope" -- this is Alex responding:
23 "Nope. We have not. Still waiting on HM Management from
24 Jeanette. You will need to sign the return when it's
25 completed," right? So the company tax returns have to be

1 completed before your personal tax return can be done because
2 incomes and losses from your companies flow to your personal
3 tax return, right?

4 A. Typically, that's the way it works.

5 Q. Right. So then they -- you have Q-34, which is a month --
6 almost a month later, where you're setting up a conference
7 call, right? They're telling you they're going to call you the
8 next day around 10, right?

9 A. Yes.

10 Q. And your testimony is that that conversation had to do with
11 government loans, PPP loans?

12 A. Government loans. I don't -- I -- I don't know the exact
13 detail of the conversation, but that was the intent of the
14 conversation. That was the intent.

15 Q. Now, before April 22nd, April 21st, you sent an email to
16 Neal Cupersmith, right, the day before?

17 A. I don't know.

18 Q. And you were asking him -- same thing -- for the tax
19 returns, you're applying for those government loans.

20 MS. JIMENEZ: Can we just show the witness, since it's
21 not in evidence.

22 BY MS. JIMENEZ:

23 Q. 21 April 2020, from eric.sheppard10@gmail.com. That's your
24 email, correct?

25 A. Yes.

1 Q. To Neal Cupersmith. Do you see that?

2 A. I do.

3 Q. All right.

4 MS. JIMENEZ: Can we move this into evidence?

5 What's -- do we have an exhibit number?

6 THE WITNESS: I can't see the whole document.

7 THE COURT: What exhibit number?

8 MS. JIMENEZ: 81.

9 THE COURT: Is there any objection?

10 MS. WEINTRAUB: Judge, I haven't read the whole thing.
11 Can I just finish?

12 MR. ETRA: No objection, Your Honor.

13 THE COURT: All right. Admitted into evidence.

14 (Government's Exhibit 81 received into evidence.)

15 BY MS. JIMENEZ:

16 Q. So you follow up with them from the end of March, and: "As
17 we met a month ago and spoke of the urgency of my tax returns,
18 HM Management, K-1, CJUF for 2019, and Jennifer's return, we
19 agreed to get it done quickly," right?

20 A. That's what this email says.

21 Q. Right. That's what you wrote to him, right?

22 A. In this particular email. Not the one obviously before
23 that, but this email.

24 Q. And so you tell him that you missed the opportunity to get
25 funds from PPP due to no 2018 tax return.

1 A. Right. Because at the time I thought my personal tax
2 return was supposed to be filed. I didn't realize that it
3 wasn't required for a personal tax return to be filed. I
4 didn't realize this was just the company because it was a
5 brand-new program. So I was upset, but then I realized they
6 don't need my personal tax returns.

7 Q. Right. So you hadn't yet missed the opportunity, because,
8 I mean, you had a loan in process with PayPal at the time,
9 right, in April of 2020?

10 A. In April of 2020, yes. Correct.

11 Q. Right. And so that loan got funded May 1st of 2020,
12 correct, thereabout?

13 A. Yes.

14 Q. So you had not yet missed the opportunity. And then you go
15 on and you talk about it: "Up until today, I still don't have
16 my 2018 return and still cannot get the PPP money again
17 starting tomorrow," right?

18 A. I'm sorry. Say that again.

19 Q. Well, you said you still don't have your 2018 returns and
20 still cannot get the PPP money again starting tomorrow. I
21 don't know. That's what you said.

22 A. That's what that says. I don't know what that had to do
23 with it because the tax returns weren't required for the first
24 PPP. So I don't -- again, it was COVID. I had no idea what
25 was going on. It was -- I had no idea.

1 Q. Now, you were a limited partner of your companies, not a
2 general partner of your companies, correct?

3 A. I'm the managing member.

4 Q. And -- right. And you have limited liability companies.
5 You're not a general partner?

6 A. I'm not a what? A general partner?

7 Q. A general partner.

8 A. No. I think that I'm the managing member. That's the
9 structure. It depends on what company. I have a lot of
10 companies, but --

11 Q. Sure. So you say: "Not even" -- here: "Not even a letter
12 from a CPA that as general partner or manager that I withdrew
13 at least a hundred thousand as the managing member of the
14 entity to qualify for funds." Do you see that?

15 A. I see that.

16 Q. So you were aware at the time in April of 2020 that a
17 general partner of a partnership -- well, first of all, you
18 testified on direct that you did not draw a salary from your
19 companies, correct?

20 A. Correct.

21 Q. Which you -- the way you were compensated by your companies
22 was by way of distributions, right? You just took money out.
23 Those are distributions.

24 A. That's one form.

25 Q. Right. You did not report any net earnings on your

1 taxes -- on your company taxes because they were losses. You
2 had no net earnings.

3 A. When you say: "Net," we reported -- if there's an equity
4 distribution, or dividend, that would be -- that would be
5 reflected.

6 Q. Right.

7 A. If the net came out to a negative, it's a negative. But
8 yes, I reported that I had earnings from a distribution or
9 stuff like that as a managing member and owner.

10 Q. You're aware in April of 2020 that a general partner of a
11 partnership, which you were not, could claim up to a hundred
12 thousand dollars of their salary or net earnings for a PPP loan
13 application?

14 A. I don't know about a general partner. It says general
15 partner or manager -- it says manager. I'm the manager. So it
16 say general partner or manager. Again, I'm asking the
17 accountant for advice, what am I supposed to do, what's the
18 deal.

19 Q. Right. Right. Okay. So the next day, then, you set up a
20 conference call, or a call, and then you have a call -- you
21 have a call with Mr. Cupersmith and Mr. Zaslow, correct?

22 A. I remember having a call, yes.

23 Q. All right. So I just want it to be clear for this jury.
24 During that call, you asked them for advice regarding PPP loan
25 applications?

1 A. I believe that was our conversation. More about the
2 structure of the company, and the PPP loan, and whatever was
3 out in the market because it was brand new. I asked them about
4 it, yes.

5 Q. What did you ask them about it?

6 A. I can't tell you exactly the details of what I asked. That
7 was a long time ago. But I definitely asked them what you're
8 supposed to do.

9 Q. And you asked them whether you qualified for any PPP
10 loans -- I mean, they're preparing your tax returns every year,
11 correct?

12 A. Correct.

13 Q. So you asked them whether you qualified for any PPP loans?

14 A. Yes. I was asking -- again, I cannot tell you exactly the
15 specific conversation, but it was regarding the PPP loans with
16 the PayPal stuff.

17 Q. And they gave you advice that you could apply for PPP
18 loans, and that you qualify for PPP loans, and that you should
19 do it?

20 MR. ETRA: Objection. A compound question.

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

22 THE WITNESS: Again, simple. I called the
23 accountants, along with other people. I asked what am I
24 allowed to do with my company -- my company for that PPP loan.
25 That's all I asked.

1 BY MS. JIMENEZ:

2 Q. For the one that was in process with PayPal?

3 A. HM Management and Development. HM Management and
4 Development is the company that was -- I was talking about.
5 The applicant was HM-UP. And that conversation about HM-UP --
6 it should be HM Management. And that's when I reached out to
7 PayPal. I said: "Hey, I spoke to the accountant. It's not
8 supposed to be HM-UP. It's supposed to be HM Management." And
9 I didn't say that to PayPal, but I wrote them an email twice
10 and they never contacted me back. Because I wanted to change
11 my application, because even though people did work for HM-UP
12 and for CJUF, and other companies, it was HM Management that is
13 supposed to apply for the PPP loan.

14 Q. So you told the accountants that you had applied on behalf
15 of HM-UP for this PPP loan application, and their advice back
16 to you was: "No. You should have applied on behalf of HM
17 Management"? Is that what they told you?

18 A. Again, I don't know the exact conversation from four years
19 ago, but it was -- the only thing I remember talking about was
20 HM Management is the company that should apply for the -- the
21 PPP loan. That's my recollection, and --

22 Q. Because your other companies had no employees, right?

23 A. No. That's not -- that's -- that's not what they -- I
24 don't recall the conversation exactly, but that's not what the
25 conversation was about.

1 Q. So they told you that you needed to apply on behalf of HM
2 Management and they didn't explain to you why?

3 A. Again, you're asking me -- they told me HM Management.
4 That's why I filed a modified application to PayPal at the
5 time. And they explained that -- I always thought it was for
6 the -- to pay people -- 2020 was to pay people. So that's why
7 I asked them. And they said: "No. It's 2020 who you can pay
8 for your construction stuff for your construction job. That's
9 fine." But we're -- HM Management workers will go at HM-UP,
10 because, again, we were under construction. So HM Management
11 workers would go for HM-UP, who is doing the construction.
12 That was the simple conversation in the middle of a --

13 Q. And your accountants would know which of your companies had
14 actual employees, right?

15 A. I don't know what they would know or not know. They should
16 know how my business operates because we speak about my
17 business and how it operates.

18 Q. So did you tell them that you were applying on behalf of 80
19 employees?

20 A. I told them that: "Am I supposed to apply for workers in
21 2020?" And I was told that, no, it's 2019. And that's why
22 they said you had to adjust it from -- forget the 80 in 2020.
23 You had to adjust it to 11 in 2000 -- 11 or 15 -- I don't
24 remember the exact number -- for 2019, because the workers that
25 did work then, that's -- and that's what I modified and

1 resubmitted, 11 people.

2 Because I always thought the 2000 -- I thought the
3 program was for 2020 to keep people working, and that's what I
4 did, and that's what I paid. But they said: "No. You have to
5 use the data from 2019." Okay? "And you can't use your
6 workers in 2020 that you're paying. You have to use past
7 workers." That's why I -- excuse me. That's why I modified
8 the application and we submitted it to PayPal prior to May 1st,
9 on April 27th.

10 Q. And they referred to these people as workers, not
11 employees, correct? They referred to them as workers, not
12 employees?

13 A. Who is "they"?

14 Q. The accountants.

15 A. I don't know how they referred to them, ma'am. I'm sorry.
16 I don't know how they referred to them.

17 MS. JIMENEZ: Can we -- I thought I had your amended
18 application.

19 I'm sorry. What exhibit is that?

20 MR. CAVALLO: I have to look.

21 MS. JIMENEZ: Can you show me that exhibit, please.
22 Show the witness.

23 MR. ETRA: He's looking for the exhibit number.

24 MS. JIMENEZ: His amended -- oh. Hold on a second.

25 (Pause in proceedings.)

1 BY MS. JIMENEZ:

2 Q. All right. So you're talking about your Exhibit X -- well,
3 I wrote X-12, but it's your Exhibit X-12. This is supposed to
4 be from you to PayPal, right?

5 A. What, the exhibit -- the attachment, yes.

6 Q. So it says: "From HM Management to Eric Sheppard," but
7 that's supposed to be to PayPal?

8 A. This is our office. This is the internal server at the
9 office because it's not -- it's not -- today, I use a scanner
10 at my house. So this is Eric Sheppard in the copy machine --
11 if this is from the copy machine, when you scan in the copy
12 machine, that's what this is from. So it automatically -- this
13 is the printout that they all do.

14 Q. There's no record -- there's no record from PayPal that you
15 submitted this to them, right?

16 A. That's not -- I don't believe that's correct.

17 Q. There is? You have it? You have a record from PayPal that
18 you got that this was uploaded to their portal?

19 THE COURT: Ms. Jimenez, is X-12 in evidence?

20 MS. JIMENEZ: Yes. It's a Defense --

21 THE COURT: All right. Is it on the screens for all
22 the jurors?

23 Yeah. If we can place it on the screens.

24 Thank you.

25

1 BY MS. JIMENEZ:

2 Q. So this is -- right -- from HM Management and Development
3 to Eric Sheppard. So you didn't -- once it got uploaded to the
4 portal, you didn't get some kind of email notification you
5 successfully uploaded this?

6 A. I didn't upload it to the portal.

7 Q. Somebody else did?

8 A. Somebody in the office uploaded it to the portal.

9 Q. Who did that for you?

10 A. I don't recollect exactly. I'm not sure who did that --

11 Q. What office -- I'm sorry. What office --

12 MR. ETRA: Your Honor, she keeps cutting off the
13 witness.

14 THE COURT: Yes. If you'll just let the witness
15 complete his answer, please.

16 Have you completed your answer, sir?

17 THE WITNESS: No.

18 THE COURT: All right. Why don't you complete it.

19 THE WITNESS: Thank you.

20 My office in -- shut down sometime in June 2020.

21 People left in March out of the office, but all the files were
22 still there. So this was done and told someone to go to the
23 office building and scan it, and then send it, upload it. I
24 don't know how to upload it. So I always -- like I told Jeff
25 Graff to upload it. Upload it. That's it, and it was sent,

1 according to records you provided us.

2 BY MS. JIMENEZ:

3 Q. Who did you tell to go to the office to upload this to
4 PayPal?

5 A. I can't remember exactly who. I don't remember exactly
6 who. I'm trying to wrack my brain, but --

7 Q. So now your corrected version claims HM Management and
8 Development doing business as CJUF III Flagler.

9 A. That's what it says because I could not get a response from
10 PayPal. So I'm trying to get a response. I'm trying to show:
11 "Hey, this is what the application said. I'm confused. Can
12 someone call me?" That's why it says: "Check one" and I
13 wrote: "Eligible self-employed." I wrote: "LLC." So all
14 these things are being done. So I said: "Please call me so I
15 can give you the proper information." That's all I'm trying to
16 do.

17 Q. So first you get it wrong because you submit for HM-UP
18 Development Alafaya Trails doing business as HM Management,
19 correct?

20 A. Say it again.

21 Q. You first submitted as HM-UP doing business as HM
22 Management, which was correct. And then you got advice from
23 your accountants to make that correction to make it HM
24 Management, according to you, correct?

25 A. Correct.

1 Q. And then you go and you apply not on behalf of HM
2 Management but HM Management doing business as CJUF III
3 Flagler, which is a separate company, correct?

4 A. That's what this says, but that was not the intent. If you
5 want me to explain, I can explain. But that's not the intent
6 of what that is. It was -- this was to reflect the bank
7 statements that were sent. HM Management's bulk of the work in
8 2019 was doing for CJUF. So they were doing the work at CJUF
9 and the workers were working at the CJUF site.

10 In 2020 people moved to Orlando and started doing the
11 construction job in 2020 for HM-UP. So all this is saying is
12 HM Management is the name that I was told to use. And then
13 CJUF was in there to show the relationship that there was --
14 these -- they were the face of the project -- of the -- CJUF.
15 That's 2019.

16 Originally, when the first application -- I didn't
17 know. I thought 2020. The purpose of the loan was to give
18 money to people in 2020, all the workers. So that was my
19 mistake because I was doing it on a prompt and I didn't
20 understand it.

21 Q. Thank you.

22 So now you have 11 employees. And that's according to
23 the accountants, that HM Management has 11 employees, correct?

24 A. No. That's according to what I was told, that these are
25 the workers in 2000 -- the core workers in 2019, just the core

1 workers in 2019. Those are the people, is what I was told.

2 Q. By whom?

3 A. By Jeanette Gonzalez.

4 (Pause in proceedings.)

5 BY MS. JIMENEZ:

6 Q. All right. You also had Mr. Martin Joe Beirne apply for a
7 PPP loan for you? You gave him a package to give to his church
8 friend, who was a banker, to apply for a PPP loan; isn't that
9 right?

10 A. I did not give him a package to go do a PPP loan. That's
11 not -- that's not correct.

12 Q. So he never came back and let you know that you didn't
13 qualify for a PPP loan according to his banker? He never told
14 you that?

15 A. I don't recall any conversations -- not to say we haven't
16 spoken about PPP loans. But his banker -- it was about a
17 credit line, as I testified yesterday. I think that there was
18 a credit line in December, November for that. But a PPP loan,
19 he was aware of it, so I don't know if he had a conversation
20 about a PPP loan. He's aware because he's the one that
21 provided information with Jeff about the workers that were on
22 the site. So I might have spoken to him about it. I'm not
23 sure.

24 Q. Now, you've been a long-term client of what was SunTrust
25 Bank then, is now Truist, right?

1 A. Correct.

2 Q. You've had a lot of company bank accounts, personal bank
3 accounts with SunTrust Bank over the years, right?

4 A. I don't know about a lot, but I have multiple accounts
5 there.

6 Q. When COVID came around, you did not go to SunTrust Bank,
7 the bank who knew you, knew your companies the best, to apply
8 for a PPP loan through them?

9 A. That's not true.

10 Q. You went to them to apply for a PPP loan?

11 A. I went to the --

12 Q. And you didn't qualify?

13 A. Excuse me. I didn't hear the second part.

14 Q. You went and they told you you didn't qualify?

15 A. That's not true either.

16 Q. Well, you said you didn't go to them. You went to them?

17 A. I went to the branch manager, the gentleman that was here,
18 Mr. Heimdal, and I asked about how PPP loans -- "Are you guys
19 doing PPP loans," and we spoke about the PPP loans, and he gave
20 me his answer about the SBA loans with his bank.

21 Q. What was his answer?

22 A. His answer is that: "The branch in Bal Harbour does not do
23 that. You have to go through the main office. And it's on --
24 it's a mess. They got so many applications, so backed up.
25 It's a waste of time," is exactly what he said to me.

1 Q. And he didn't remember any of that when he testified,
2 right?

3 MR. ETRA: Objection, Your Honor. That misstates the
4 evidence. He wasn't even asked about that.

5 THE COURT: Overruled.

6 THE WITNESS: I didn't hear him say anything about it.
7 I didn't hear him say anything about -- about that -- what you
8 just said. That wasn't his testimony that I heard.

9 MS. JIMENEZ: All right. Can we show Exhibit 17-4.

10 BY MS. JIMENEZ:

11 Q. That's the application that you uploaded to the portal for
12 PayPal, right? April 15, 2020, applying for a PPP loan from
13 PayPal, correct?

14 A. It's not the -- I did a prompt. I don't know about an
15 application. That says: "Application Data." The application
16 was you just push the buttons and the prompts. It was on a
17 computer. This is, I guess, data.

18 Q. The portal -- you answered questions in the portal that you
19 submitted to PayPal?

20 A. Correct. I did.

21 Q. And the answers that you gave are reflected here in part:
22 "80 employees, HM-UP Development Alafaya Trails doing business
23 as HM Management." That was the mistake you're talking about,
24 right?

25 A. (No verbal response.)

1 Q. Yes?

2 MR. ETRA: Objection, Your Honor. It's a compound
3 question and it's confusing.

4 THE COURT: Sustained. Rephrase.

5 BY MS. JIMENEZ:

6 Q. This is the -- part of the information that you provided to
7 them, right?

8 A. I can't tell you exactly what I did on the portal, but it
9 looks similar. But I can't go through every single detail and
10 remember exactly what I pushed into the -- into the -- into the
11 thing, but...

12 Q. Well, the basic things were HM-UP Development Alafaya
13 Trails, doing business as HM Management, and 80 employees?

14 A. I remember that.

15 Q. Okay. And then 17-2 -- well, that's pretty much the same
16 information. But -- and that was done from your home, right,
17 your home computer?

18 MR. ETRA: Objection. Again, compound question.
19 Pretty much the same information and --

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

21 THE WITNESS: I'm sorry. What's the question?

22 BY MS. JIMENEZ:

23 Q. You answered the questions in the portal from your home
24 computer, correct?

25 A. At the time for the PayPal thing?

1 Q. Yes.

2 A. Yes. In PayPal, I was at my computer, correct.

3 Q. And if we go to 17-3, you entered -- at the top, for time
4 period, they gave you the option to select 2019, and you did
5 select 2019.

6 A. Correct.

7 Q. Okay. And you told them that in 2019 your employees had
8 received \$582,926 in salaries, wages, and commission, right?

9 A. That's what I plugged in, correct.

10 Q. And that you paid certain benefits to the employees, and
11 that the total payroll cost was \$703,006; is that right?

12 A. Correct.

13 Q. And you provided them bank records, right?

14 A. I personally didn't provide them. But yes, there was bank
15 records uploaded to their system. I didn't provide that, but
16 yes, there were.

17 Q. So you directed Jeanette Gonzalez to provide that?

18 A. Correct.

19 Q. And you know that those other uploads to PayPal, they
20 didn't capture an IP address for that, right?

21 A. I don't know that to be a fact. I don't know that.

22 Q. You didn't see that in any record you reviewed in this
23 case, right?

24 A. I don't know. I didn't really look at what IP address. I
25 didn't look at IP addresses for that.

1 Q. So you directed Jeanette Gonzalez to upload bank records
2 for CJUF Flagler?

3 A. No. That's not what occurred.

4 Q. You went into the portal in your home to apply, you
5 testified, correct?

6 A. Correct.

7 Q. So Jeanette Gonzalez, who was not in your home, would have
8 had to learn about this from you, correct?

9 A. She did. I called her.

10 Q. So then she would have uploaded bank records of a company
11 that you would have told her -- that you would have directed
12 her to, correct?

13 A. That's not correct.

14 Q. Jeanette Gonzalez decided which bank records to submit to
15 PayPal? Yes?

16 A. It's just the chronology. You're just missing a step. The
17 step was I asked -- I asked her -- there's two different parts
18 of the portal. The first part was done. You press submit and
19 you go to the second part. And it's just a total different
20 plat -- thing. And it said: "2019." I said: "Oh." And I
21 called her. She says -- I said: "Do you have the workers for
22 2019?" She said: "Yes. Let me look it up." She looked it
23 up. That's where the 582,000 came in.

24 And I said: "How much did you pay people in
25 insurance," and she said -- she has the numbers. I don't have

1 any of this stuff. And then she said that. I said: "Great."

2 And there's another section that says if you haven't
3 filed your tax returns in 2019, whatever -- you haven't filed
4 your tax returns you have to go and push -- just give us the
5 bank statements. I think it was bank statements and health
6 insurance whatever.

7 I said: "Do you have all that?"

8 "Yes."

9 "Great. Can you do me a favor and upload it, because
10 I don't know how to upload it."

11 "Sure."

12 And that was the extent of the whole conversation.

13 Q. And she knew exactly what companies' bank statements to
14 provide to PayPal?

15 A. Whatever those people that made up the 582 she said was --
16 she said she had it under control. That's what she does.
17 That's her department. I don't know what she does. Whatever
18 bank statements she used to pay those people as verification,
19 that's all she did: "Here's the verification of the people."

20 Q. So you testified a minute ago that when you first applied
21 you were under the impression that you could rely on 2020
22 numbers, right, because you had all these workers lined up for
23 the Burlington project in 2020, right?

24 A. That's partially correct.

25 Q. But this document that we're looking at, 17-3, that is when

1 you were answering the questions initially in the portal. The
2 very first time when you submitted the information, you clicked
3 on year January to December 2019, correct?

4 A. That's the only option I had. There was no 2020. So that
5 was the only option, and I was confused. That's why I called
6 them, and I go: "I don't understand." If it's from 2020, they
7 want me to pay all the workers, great.

8 They wanted to start 2019. I realized, okay, it's not
9 for 2020. It was for 2019. Again, I was confused. I didn't
10 know what this thing was. So that's why I called her because
11 she deals with it. "What does this mean?"

12 "Oh. You have to do 2019."

13 "Okay. What's the number? Can you tell me the
14 number," and I visualize it, and I typed the thing in, and
15 that's where the number came from. That there was no 2020
16 option, that's what got me confused.

17 Q. And so you're calculating, quote/unquote, workers for 2020
18 from your Burlington project, but you list -- you provide bank
19 statements for CJUF III Flagler and HM Management, right?

20 A. Whatever she paid the workers for, that's who we provided
21 the bank statements or uploaded the bank statements to those
22 PayPal people.

23 Q. All right.

24 MS. JIMENEZ: And then could we go to 17-8, please.

25

1 BY MS. JIMENEZ:

2 Q. This document -- I think you testified you never saw this
3 document before when you were in this case.

4 A. That is correct.

5 Q. So this document somehow made it into this loan file
6 unbeknownst to you; is that right?

7 A. Again, I told you my activity in this just now. That's all
8 I did with this whole process. So I really have never seen
9 this particular document, "Payroll Report for 2019."

10 Q. You have no idea who would have submitted this to the
11 portal on your behalf?

12 A. I'm assuming it was submitted to the portal because I don't
13 know. But if it was, it would have to be Jeanette because she
14 was the only other person at the initial stage that did it. I
15 don't remember -- as I said earlier -- the person from
16 before --

17 Q. So Jeanette took it upon herself to create this false
18 document, right? You agree it's a false document.

19 A. I don't know anything about the document. I can't say
20 whether it's false or not. I don't know if it's -- I can't say
21 if it's correct or not.

22 Q. Well, you know what withholdings are. I think you told us
23 you know what withholdings are, and these people did not have
24 withholdings --

25 A. I don't think that's true.

1 Q. -- Maria, and Carlos Diaz, and Carlos Perez, and Joe
2 Beirne, and Glenn Sheppard. And the draws are not any
3 salaries -- the draws that are listed here for yourself and
4 Jeff Graff, they are not salaries.

5 MR. ETRA: Objection. Twelve questions in one.

6 THE COURT: Overruled. You may answer the question.

7 THE WITNESS: Which part you want me to start with
8 first? Which part of the question?

9 BY MS. JIMENEZ:

10 Q. Well, the draws for you and for Mr. Graff --

11 A. Okay. Again, I've never seen this. I looked at it -- if
12 you want me to look at the document, it says: "Draws." The
13 owners of companies that -- get draws, yes. Ninety-nine
14 thousand dollars, \$99,000, that's what it says.

15 Q. And somebody knew enough about this application process
16 that they knew that salaries, income, wages for any particular
17 individual is capped at a hundred thousand per person. In
18 other words, you cannot claim more than a hundred thousand per
19 person for a PPP loan application. Somebody knew enough to put
20 this on this document, correct?

21 A. I can't tell you what someone knew enough. But that's -- I
22 can't tell you how -- again, I didn't prepare it, so I can't
23 tell you what went into it or how it went into it. I can't
24 tell you that.

25 MS. JIMENEZ: Can we go to the ELMO, please.

1 BY MS. JIMENEZ:

2 Q. Your email with Mr. Cupersmith, you're telling him: "Not
3 even a letter from a CPA that as general partner or manager
4 that I withdrew at least a hundred thousand," correct?

5 MS. JIMENEZ: Can we go back to the --

6 BY MS. JIMENEZ:

7 Q. Somebody knew enough about this PPP application process in
8 April of 2020 to know that the amounts for each individual are
9 capped at a hundred thousand, correct?

10 A. Again, that's what it -- that's what it shows here on
11 the -- according to what you said on the 15th of April -- the
12 15th of April.

13 Q. Mr. Graff certainly had more than \$99,000 of income in
14 2019, correct?

15 A. I'm not -- I know he had more than \$99,000 in income. I'm
16 not sure from which entities he got paid.

17 Q. And you, Mr. Sheppard -- you drew more than \$99,000 from
18 your companies in 2019 certainly?

19 A. From my companies? There's multiple companies, so I don't
20 know which companies. I can't tell you what I withdrew or
21 didn't draw.

22 Q. Right. So this document is false. You agree?

23 A. I can't tell you -- when you say it's false, I don't even
24 know what the context of the document is. You say it's false.
25 It says a payroll report. I didn't draft it. I wasn't

1 involved with it. I don't know about it. So I can't tell you
2 if it's false or correct.

3 Q. So Jeanette Gonzalez took it upon herself to create this
4 document and generate withholding amounts for individuals,
5 withholding amounts that don't exist in her books for you to
6 submit, and she took it upon herself to submit it to PayPal,
7 correct?

8 A. I don't know the answer to your question, what she did or
9 didn't do. I can't answer for her what she did or didn't do.
10 I can't.

11 Q. And then, on May 1st, you were awarded a loan of \$146,000
12 and change from PayPal, correct?

13 A. The company was awarded the loan, not me personally.

14 Q. That was HM Management and Development, the company's bank
15 account that you provided for this loan application, correct?

16 A. Correct.

17 Q. That was your company, correct?

18 A. Correct.

19 Q. Jeanette Gonzalez -- after you learned -- well, after you
20 learned about this document that appeared in your loan file in
21 connection with this case -- Jeanette Gonzalez still works for
22 you today, correct?

23 A. She does.

24 (Pause in proceedings.)

25

1 BY MS. JIMENEZ:

2 Q. In 2021, you applied for forgiveness from PayPal for this
3 loan for the same company, HM-UP Development Alafaya Trails,
4 correct?

5 A. Correct.

6 (Pause in proceedings.)

7 MS. JIMENEZ: Can we go to 17-11, please.

8 Can we go to the DocuSign, the next page -- here. Up.

9 Okay. Here. Yeah. The bottom half.

10 BY MS. JIMENEZ:

11 Q. So the PayPal application was yours, this first one. And
12 you signed it when they provided you -- well, I'm sorry.

13 MS. JIMENEZ: Can we go back to the first page of
14 this.

15 BY MS. JIMENEZ:

16 Q. All right. So nothing's changed, of course. It still
17 says: "HM-UP Development Alafaya Trails, 80 employees," right?
18 You weren't able to effectuate that change?

19 A. This was the first -- that was not the modified
20 application. This was the first application. So yes, this was
21 the first application that says -- prior to my attempt to
22 modify it.

23 Q. Right. But it's provided to you May 1st --

24 MS. JIMENEZ: Now if we can go to the certification.
25

1 BY MS. JIMENEZ:

2 Q. So obviously you certify here: "I further certify that all
3 the information provided on this application and the
4 information provided in all supporting documents and forms is
5 true and accurate in all material respects," right? You
6 initialed it.

7 A. Correct.

8 Q. And then you --

9 MS. JIMENEZ: Can we show the -- oh. Does this
10 show --

11 BY MS. JIMENEZ:

12 Q. This was drawn on the device, right? So you drew the
13 signature on this document?

14 A. I don't remember how I signed it, but I think it was like
15 the DocuSign thing. They just push you to these little areas
16 where you're supposed to sign it.

17 MS. JIMENEZ: Can you go back out. Go down to the
18 next page.

19 BY MS. JIMENEZ:

20 Q. Okay. Here. Does it say -- it doesn't say. It doesn't
21 say -- but that is your signature, right, Mr. Sheppard?

22 A. My DocuSign. I executed this document, if that's what
23 you're asking.

24 Q. Okay. All right. And then PayPal sent you this document
25 to sign again a few months later. September 20th, 2020, you

1 DocuSign the same thing again, right? You certify that it was
2 true and accurate September 2020, and you DocuSigned it again,
3 right?

4 A. I don't recall -- I know it was sometime in September they
5 sent me something and said they wanted me to re-sign something.

6 MS. JIMENEZ: 17-13. Oh. Here it is. Here it is.

7 Can we go to his signature.

8 Here we are.

9 BY MS. JIMENEZ:

10 Q. So you took the trouble to actually draw your signature on
11 this DocuSign. It says: "Drawn on device."

12 A. I -- I -- if that's what it says. I don't know enough
13 about it, but that's what it says.

14 MS. JIMENEZ: Can we go to 17-13, please.

15 BY MS. JIMENEZ:

16 Q. So down to the signature --

17 MS. JIMENEZ: Can you scroll down.

18 BY MS. JIMENEZ:

19 Q. So you did it again. September 20th, 2020, they sent it to
20 you again and you DocuSigned it again a second time. Do you
21 see that?

22 A. I do.

23 Q. All right. Then in 2021 you apply for the forgiveness.

24 MS. JIMENEZ: Can we show 18-3.

25

1 BY MS. JIMENEZ:

2 Q. This was part of your forgiveness application. Do you see
3 that?

4 A. I do.

5 Q. You submitted that?

6 A. Did I personally submit it? No. But I've seen this
7 document before.

8 Q. So you didn't -- you didn't provide the column that says:
9 "Wages Paid" on here?

10 A. Did I personally? No. No. I --

11 Q. You didn't direct anyone else to do this?

12 A. To put: "Wages Paid"?

13 Q. Yeah.

14 A. No, I did not direct anyone to do that.

15 Q. Because this is false, right? You did not pay wages to
16 anyone -- certainly not from HM-UP Development Alafaya Trails?

17 A. That's not an accurate statement.

18 Q. What's not an accurate statement?

19 A. You just said that we didn't pay wages. I don't
20 understand.

21 Q. HM-UP Development Alafaya Trails paid no wages.

22 A. That's not true.

23 Q. So this is not a false document?

24 A. What do you mean a false -- again, I have to look at the
25 whole -- what you're showing me, if it's some new document. I

1 didn't prepare the document. I can't tell you what's false or
2 not but...

3 Q. Is this something else that showed up in your loan file now
4 for forgiveness so that you can obtain forgiveness for this
5 loan?

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

7 Q. Is this a document that appeared in your loan file -- well,
8 let me -- when is the first time that you saw this, in this
9 case?

10 A. No. I think I saw that at some point prior to the case
11 because I instructed them to -- to put the data together to get
12 forgiveness. So this was part of the forgiveness package.

13 Q. Who did you ask to put the data together for forgiveness?

14 A. Jeanette Gonzalez and Jeff Vasilas.

15 Q. So they put this together and they created this false
16 column of Wages Paid from HM-UP Development Alafaya Trails,
17 which paid no wages, right? They did that for you?

18 A. First of all, they didn't do that for me. Secondly, the --
19 Wages Paid is -- these are the people -- individual people that
20 got paid money from these companies. This is what they got
21 paid. So I don't know what you mean false. They waged -- they
22 worked, they got paid, and they -- they worked through COVID.
23 These are the people that got paid during COVID. So when you
24 say wages weren't paid, I don't understand what you mean by
25 that.

1 Q. You see Jeff Vasilas's name -- one, two, three, four, five,
2 six -- seven rows down. Jeff Vasales [sic], that's not his
3 last name, correct?

4 A. That's not his last name, correct.

5 Q. Right. So you think Mr. Vasilas is going to misspell his
6 own name?

7 A. I don't remember how Jeanette and him did this. But Jeff
8 Vasilas controlled the workers in 2020, so his data was very
9 important because he's the one who hired people, he was the one
10 who collected the payroll checks every week, and he's the one
11 that dealt with all that. So that's why he was involved with
12 Jeanette.

13 Q. But Jeanette keeps your ledgers and your books, and over
14 the years makes the payments to everyone, and she's going to
15 misspell Mr. Jeff Vasilas's name on here?

16 A. I can't tell you what she does, but she is the one that
17 does this with Jeff Vasilas. This is accounting stuff. This
18 is about the people that got paid, and these -- all these
19 people got paid.

20 Q. Martin Beirne?

21 A. Yes. Got paid.

22 Q. "Martin Beirn," B-E-I-R-N, and then "Martin Biern,"
23 B-I-E-R-N.

24 MS. JIMENEZ: Can we just go back.

25

1 BY MS. JIMENEZ:

2 Q. There's spelling mistakes all over this document.

3 A. What would -- this is COVID. This is when you have -- not
4 in an office. This is COVID. That is exactly what occurs when
5 people are trying to get stuff done. But they got it done.
6 People got paid and the building got built. This is tangible
7 evidence of everything that was done with these people. Would
8 you tell these people that they shouldn't have gotten paid?
9 Maybe that's what -- but these people got paid this money. It
10 didn't come out of the air.

11 Q. All right. So Jeanette Gonzalez prepared this, submitted
12 this on your behalf, and didn't tell you about it, correct?

13 MR. ETRA: Objection, Your Honor. It's compound and
14 it's not his testimony.

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

16 THE WITNESS: First of all, as I testified yesterday,
17 PayPal was -- asked me to do this. I gave it to her. I said:
18 "Can you please process this? I can't process it."

19 She said: "I can't process it because I have to deal
20 with Jeff. Jeff owes me all this information," back and forth,
21 as I testified yesterday, as everyone heard.

22 So her and Jeff -- she was involved from this thing
23 here, the document here. And then Jeff was involved with
24 providing all the data from Orlando that he had in his storage
25 or wherever. That's what happened. I mean, that's what

1 occurred. And yes, they did -- I told them that they need --
2 whatever is supposed to -- the government wants for the
3 forgiveness of the debt. So get them that, get the bank
4 statements, show them where the money came from, and that
5 everyone was paid. Great. That was the conversation. And
6 they ran with it. And I didn't think anything was wrong. I
7 thought the government would be happy that everyone got paid
8 during COVID. That's what I thought.

9 BY MS. JIMENEZ:

10 Q. And so Jeanette Gonzalez, who does your books, took it upon
11 herself to create a Wages column which was false, to submit it
12 on your behalf. And of course she didn't tell you that she was
13 doing anything --

14 MR. ETRA: Objection. Compound and misstates the
15 testimony.

16 THE COURT: Sustained on that ground.

17 BY MS. JIMENEZ:

18 Q. So she --

19 THE COURT: Rephrase.

20 BY MS. JIMENEZ:

21 Q. She changed the column to reflect wages --

22 MR. ETRA: Again --

23 BY MS. JIMENEZ:

24 Q. -- falsely for you, right?

25 MR. ETRA: Same objection. She's referring only to

1 Ms. Gonzalez, when he keeps saying Mr. Vasilas.

2 THE COURT: Overruled. The witness may answer the
3 question.

4 THE WITNESS: Again, I've explained this multiple
5 times. People that worked that were hired by Mr. --

6 BY MS. JIMENEZ:

7 Q. I just --

8 A. You asked me a question. I'm trying to answer it.

9 MS. JIMENEZ: I would ask that he answer the question
10 and then he can go on.

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

14 THE WITNESS: Sorry. Ask me again, please.

15 BY MS. JIMENEZ:

16 Q. Jeanette Gonzalez took this document and entered false --
17 falsely wages paid for people who were not being paid wages,
18 right, on your behalf?

19 A. No. That's not true.

20 Q. All right.

21 MS. JIMENEZ: We go back out -- can we go to the top
22 box.

23 BY MS. JIMENEZ:

24 Q. "Eric Sheppard Wages." You never got any wages,
25 Mr. Sheppard.

1 A. Okay. If that's what you say. I don't know if that's true
2 or not. I can't tell you that -- how she defines it. I don't
3 know. I didn't prepare it.

4 Q. You're unaware that you were not paid wages? You're
5 telling this jury you're unaware you were not paid wages?

6 A. Let me be clear. Salary, I did not get. How they defined
7 my dividends or distributions, that -- I don't know how this
8 was prepared. This -- this was just -- I don't know how they
9 prepared this document. This -- this money that you're seeing
10 here is \$483,000 of payments. So the loan amount is only
11 \$146,000. So I'm not sure why they even included all the
12 payments to everybody for \$483,000 that people were paid, not
13 just limit it to the \$146,000. I don't know why they did that.
14 But it's just -- to me, it looks like an overall payment of
15 everyone that was paid in that year in that time frame. It was
16 way more than \$146,000.

17 MS. JIMENEZ: Can we show 18-1.

18 BY MS. JIMENEZ:

19 Q. This is the initial submission to PayPal. For the
20 forgiveness application --

21 MS. JIMENEZ: Can we go to the signature.

22 BY MS. JIMENEZ:

23 Q. You submitted this, correct?

24 A. That's correct.

25 Q. All right.

1 THE COURT: Ms. Jimenez, just let me know when it
2 might be a good time to give the jurors a 10-minute recess.

3 MS. JIMENEZ: Sure, Your Honor. We can do that.

4 THE COURT: Is now a good time?

5 MS. JIMENEZ: Sure.

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

8 COURT SECURITY OFFICER: All rise for the jury.

9 (Jury not present, 10:15 a.m.)

10 THE COURT: Ms. Jimenez, how much longer do you
11 think -- it was my understanding we were going to finish today.
12 Not with the witness but finish with the case.

13 How much more time do you believe you have?

14 MS. JIMENEZ: Well, I'm not getting direct answers.

15 THE COURT: And how much more time do you think you
16 have?

17 MS. JIMENEZ: I have certainly the rest of the
18 morning.

19 THE COURT: You think you have the rest of the
20 morning?

21 MS. JIMENEZ: For sure. Yes.

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

23 MS. WEINTRAUB: Judge, can we find out who the
24 rebuttal witness is, please?

25 THE COURT: Well, I would anticipate that -- given

1 that, that there should be a witness available soon after lunch
2 on behalf of the Defendant.

3 MS. WEINTRAUB: No. No. No. We're asking who the
4 rebuttal witness is for tomorrow from the Government.

5 THE COURT: Well, did we get a lineup of the witnesses
6 on behalf of the Defendant for today?

7 MS. WEINTRAUB: We did do that, Judge.

8 THE COURT: All right. And that would include the two
9 experts?

10 MR. ETRA: Yes, Your Honor.

11 THE COURT: All right.

12 MR. ETRA: It includes the two experts.

13 THE COURT: All right. Ms. Jimenez, does the
14 Government know the rebuttal witness that it would be calling?

15 MS. MARTINEZ: Your Honor, may I just ask for the
16 Defense on the record to say who the witnesses are. Because
17 they changed them and gave them again this morning. This
18 morning we got new names.

19 MS. WEINTRAUB: We eliminated somebody to try and get
20 this done.

21 MR. ETRA: Gladly. Gladly. Robert Kallman, Glenn
22 Sheppard. The order may depend on -- of the two, you know,
23 logistics. Kerby Kleef and the two experts.

24 THE COURT: All right. And the rebuttal witness?

25 MS. JIMENEZ: I haven't made a final decision, Your

1 Honor.

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

4 (Recess from 10:18 a.m. to 10:32 a.m.)

5 THE COURT: All right. Both sides ready to continue?

6 MR. ETRA: Your Honor, briefly, the document that was
7 shown with Mr. Cupersmith, it had an NC Bates number. So we
8 didn't object because we assumed it was covered by the
9 certification. But I was informed after we didn't object that
10 we've never seen this document before, and we'd appreciate
11 being told if it's a new document. I was relying on -- that
12 this is something that was part of the package that was moved
13 in or subject to a prior certification.

14 MS. JIMENEZ: Well, we gave it a new number. I
15 received it yesterday from Mr. Cupersmith's office.

16 THE COURT: I'm sorry. You received it -- could we --
17 you received it yesterday?

18 MS. JIMENEZ: It's an impeachment document, Your
19 Honor. I received it yesterday.

20 THE COURT: All right. And the first time that this
21 was provided to the Defendant was?

22 MS. WEINTRAUB: When he was on the stand.

23 MS. JIMENEZ: When he was on the stand, yes.

24 THE COURT: All right.

25 MS. JIMENEZ: Well, I showed them -- I mean, I gave it

1 to them and then I asked him about it.

2 THE COURT: All right. So Mr. Etra, the Defense did
3 the same exact thing with their impeachment exhibits. The only
4 thing I request is that it be shown to counsel ahead of time,
5 so that any objection can be made to the Court before it's
6 shown to the witness.

7 MR. ETRA: And that, if it's a new document, I be
8 informed of that, because there's so many documents produced, I
9 see a Bates number, I assumed it was produced already.

10 THE COURT: All right.

11 MS. WEINTRAUB: See, the problem is it's Bates stamped
12 the way the others are with the NC, meaning Neal Cupersmith,
13 with the production that they gave us months ago. However, I
14 went back and looked --

15 (Court reporter interruption.)

16 MS. WEINTRAUB: So then I saw it's a new number.

17 THE COURT: Oh. All right.

18 MS. WEINTRAUB: So it's very misleading. I'd just
19 like to know when it's a new document, as opposed to --

20 THE COURT: All right. Well, that's certainly fair.
21 I think that would expedite the trial as well.

22 All right. Let's bring the jury back in.

23 MS. WEINTRAUB: Judge, for scheduling purposes, when
24 are we going to have a charge conference?

25 THE COURT: When we finish the trial.

1 (Before the Jury, 10:35 a.m.)

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

4 Please be seated, everyone.

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

6 MS. JIMENEZ: Thank you.

7 Could we show 18-3, please.

8 BY MS. JIMENEZ:

9 Q. Mr. Sheppard, Lindsey Vasilas is Jeff Vasilas's wife,
10 correct?

11 A. Correct.

12 Q. Can you -- she -- she did not work for you, correct?

13 A. She did not work for me, no.

14 Q. All right. And her name is not spelled "Vesilas,"
15 V-E-S-I-L-A-S, correct?

16 A. Correct.

17 Q. All right.

18 MS. JIMENEZ: All right. Can we go to 18-6.

19 Oh. I think I have the wrong...

20 BY MS. JIMENEZ:

21 Q. So the forgiveness application was approved, and your loan
22 for HM-UP Development Alafaya Trails was forgiven, right, from
23 the SBA?

24 A. Correct. Correct.

25 MS. JIMENEZ: Excuse me a moment.

1 (Pause in proceedings.)

2 MS. JIMENEZ: 18-5, please.

3 BY MS. JIMENEZ:

4 Q. All right. So you submitted it initially, the one I showed
5 you, that was dated February 5th, 2021, and then you executed
6 this, right, in May of 2021?

7 A. It was executed by DocuSign. I'm not sure who actually
8 executed the DocuSign, but yes, it was.

9 Q. Okay. So you don't know who did this? You don't know who
10 signed it?

11 A. I don't recollect who actually pushed the DocuSign for
12 the -- I guess they sent a different version, so I'm not sure.
13 I don't recollect sitting here right now like who actually
14 physically did it.

15 Q. It was done on your behalf, correct? And your loan was
16 forgiven. Your company's loan was forgiven?

17 MR. ETRA: Compound question.

18 THE COURT: Sustained.

19 BY MS. JIMENEZ:

20 Q. It was done on your behalf, correct?

21 A. Well, it was done on the company's behalf, what the
22 companies paid out to the workers. And that's what it was done
23 for, not on my personal behalf. It was done on the company's
24 behalf.

25 Q. And by this time in 2021, May of 2021, you still don't know

1 that PPP loans pertain to employees, not contractors, right?

2 A. People on the list, to me, they were employees. I don't --
3 contractors are contractors. They're third-party people, so I
4 believe that today as well.

5 Q. All right. Then going back to that first PayPal loan, the
6 summer of 2020, you went to Nationwide Lending Direct and you
7 worked with Ms. Nelly Palancar, correct?

8 A. I'm sorry. I was looking at this document. Is this not
9 about this document or --

10 Q. No. I'm sorry.

11 MS. JIMENEZ: We could take this down.

12 BY MS. JIMENEZ:

13 Q. So in summer of 2020, you went to Nationwide Lending Direct
14 and you started working with Nelly Palancar, right?

15 A. Nationwide Lending Direct contacted me and I spoke to
16 Daniel Sheps initially. And then I started -- he assigned
17 Nelly for his company at some point after our first meeting.

18 Q. And Mr. Sheps asked you to provide information about your
19 active businesses? That's what you testified to.

20 A. That he -- to provide what, active...

21 Q. Information about your active business. That's what you
22 said.

23 A. Correct. The active businesses -- no. And during that
24 period of time, yes.

25 Q. And you selected which companies were going to apply for

1 the SBA loans, right? These were for the Economic Injury
2 Disaster Loans?

3 A. I didn't select any. I didn't even know what an EIDL loan
4 was. He asked me what companies are doing -- that are -- I
5 gave him a list of companies that he chose and told me what
6 companies qualify.

7 Q. He told you which companies qualify?

8 A. Yes.

9 Q. All right.

10 MS. JIMENEZ: Can we show 23-1, please.

11 BY MS. JIMENEZ:

12 Q. All right. This is a chart of some of your companies. But
13 you -- Nelly Palancar helped you apply for HM Management and
14 Development, right, HM-UP Development Alafaya Trails, Sheppard
15 Flagler Holdings, and HM-UP Development Alafaya Trails TRU,
16 which is not on this chart.

17 MR. ETRA: Your Honor, may I have a continuing
18 objection on 404(b) on all these other loans --

19 THE COURT: I'll permit that.

20 MR. ETRA: And 403 as well.

21 BY MS. JIMENEZ:

22 Q. Yes, those are the four companies that Mr. Sheps decided
23 you were going to apply for, correct?

24 A. I think the initial was only three companies. I think it
25 was HM Six -- actually, HM Six, LLC, HM Management, and HM-UP.

1 And then after that I guess they thought to add these other
2 companies you mentioned. That was the first email that he
3 wrote, was HM Six, HM-UP, and HM Management.

4 Q. All right. Well, Ms. Nelly Palancar -- well, through the
5 portal -- well, you submitted applications through the
6 Nationwide portal that went to the SBA, right?

7 A. Which one?

8 Q. I should say -- let me ask you the question this way: You
9 answered questions in the Nationwide portal that went to the
10 SBA, right, that were submitted on July 24th, 2020?

11 A. I don't recall exactly how that -- I don't know if that's
12 correct or not. But I answered questions to Nationwide's
13 management, and they ended up reviewing it and then they did
14 whatever they did to the portal. They are the ones who
15 submitted the actual applications.

16 Q. All right.

17 MS. JIMENEZ: Can we show Exhibit 68 for a moment,
18 please.

19 BY MS. JIMENEZ:

20 Q. This is your message to Ms. Nelly Palancar on July 24th,
21 2020. Do you see that?

22 A. Yes.

23 Q. You wrote: "I tried to fill out the four applications
24 yesterday and submit them. Let me know if you received them
25 yet."

1 Answer: "I got it. Please look at my email about the
2 other owner on"...

3 MS. JIMENEZ: So let's go back to 23-1, please.

4 BY MS. JIMENEZ:

5 Q. So on or about July 24th, 2020, you, in the Nationwide
6 portal, submit four applications.

7 A. I can't give you the exact dates and how that happened. I
8 don't recollect exactly how they were submitted in the process.
9 I know there was some type of thing I had to fill out. I'm not
10 sure how that was done. That's what I remember. I remember --
11 that's it.

12 Q. All right. So Sheppard Flagler Holdings is an owner of an
13 owner of CJUF, right? Sheppard Flagler Holdings is your
14 50 percent share of HM Six, which owns CJUF Flagler, right?

15 A. Okay.

16 Q. Sheppard Flagler Holdings exists on paper, correct?

17 A. On paper?

18 Q. Yes.

19 A. Yes. There is a -- it is a -- it is a company that's
20 owned, yes.

21 Q. It doesn't have an office location. It doesn't pay
22 utilities. It doesn't have a phone line. It doesn't have
23 workers or employees. It is your ownership of HM Six and CJUF.

24 MR. ETRA: Objection. Compound.

25 THE COURT: Overruled.

1 MR. ETRA: Multiple compounds.

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

3 THE WITNESS: Sheppard Flagler Holdings is an LLC that
4 invests and provides equity into this project, along with other
5 things as well. So when you say it doesn't have -- that whole
6 list that you said, it does have an address. It operates out
7 of 12 -- at the time it operated out of 12000 Biscayne
8 Boulevard, just like all the other entities are registered.
9 There's like 40 entities, actually, that are registered to that
10 address at the time.

11 BY MS. JIMENEZ:

12 Q. And so Mr. Sheps gave you the advice to have -- to
13 submit -- what ended up being submitted to the SBA, an Economic
14 Injury Disaster Loan application on behalf of this company
15 owner of HM Six, owner of CJUF III Flagler, right? He told
16 you --

17 A. He gave me and told me exactly which companies that are
18 actively operating. Those actively operating companies
19 could -- I could call it apply for this EIDL loan. He's the
20 one who told me. I didn't even know about this program.

21 Q. All right.

22 MS. JIMENEZ: 64-1, please.

23 BY MS. JIMENEZ:

24 Q. This is the Nationwide application submission from
25 July 24th, 2020, for -- if you look at the entity -- I can't

1 see. There it is -- Sheppard Flagler Holdings, trade name HM
2 Six CJUF Flagler, right?

3 A. That's what it says.

4 Q. Sheppard Flagler Holdings is one entity, HM Six is a second
5 entity, CJUF III Flagler is a third entity, correct?

6 A. All three are separate entities, separate functions, yes.

7 Q. And you provided them, through the portal, the bank account
8 of -- the SunTrust bank account ending in 7571, which is HM
9 Management's bank account, right?

10 A. I have to go look through the whole entire document. You
11 have the whole document here. If you can just let me look at
12 it.

13 MS. JIMENEZ: Oh. Take that down and let's pull up
14 55 -- I don't know where it is on this document -- 55-1.

15 BY MS. JIMENEZ:

16 Q. That is the SBA version of what was submitted July 24th for
17 Sheppard Flagler Holdings. If we go down, and we see the bank
18 account submitted on that day --

19 MS. JIMENEZ: Okay. Here it is.

20 BY MS. JIMENEZ:

21 Q. -- July 24th, 2020, SunTrust Bank, 7571 is HM Management
22 and Development, correct?

23 A. If you say so. I'm assuming you're correct. If you know.
24 I don't know the exact account. But if you're saying it's HM
25 Management, that's an operating account. So many entities

1 operated out of there. So if you're saying those are the
2 numbers, those are the numbers. I don't know sitting here what
3 the numbers are.

4 Q. All right. And then, later on, you open a new bank account
5 for Sheppard Flagler Holdings?

6 A. Correct. That's my recollection. They told us that you
7 have to have separate bank accounts for each loan, separate
8 emails -- which they set up some emails for themselves. So
9 separate emails, separate bank accounts for each loan, they
10 said.

11 Q. That was -- the SBA told you that you needed an account for
12 this business because you didn't provide its own business
13 account because it didn't have one?

14 A. No. That was -- that was Nelly told me that you have to
15 have a separate bank account and separate email address for
16 each particular account -- for each particular business.
17 Because I'd rather just have HM Management. It's a lot simpler
18 that way. But if you have multiple businesses, you have to
19 have separate accounts, which I thought was strange, but okay.

20 Q. So you also applied for HM-UP Development Alafaya Trails
21 TRU, which also had no business activity, didn't have an
22 office, it didn't pay utilities, it didn't have employees,
23 right? It was a company that previously owned some land.

24 A. That's not true.

25 Q. It was transferred to Alafaya Trails for the shopping

1 center, right?

2 A. No. That's not true.

3 Q. Well, you provided Ms. Palancar a tax return for HM-UP
4 Development Alafaya Trails TRU that had no income. It had no
5 business activity, right?

6 A. I would have to see the year of the tax return.

7 Q. Okay. We'll get that.

8 Okay. Fair to say you weren't paying a light bill, or
9 a phone bill, or paying employees for Alafaya Trails TRU?

10 A. That's not true. It depends what year you say. Because
11 TRU owned Toys "R" Us. I mean, that's why it's called TRU,
12 like Toys "R" Us. And so through 2000 -- most of 2018, TRU was
13 there, and then it got consolidated. When TRU went bankrupt,
14 then it got -- that was the bankruptcy. I mean, then -- and
15 that's how it was operating. Prior to -- prior to --

16 Q. I'm sorry. It owned Toys "R" Us?

17 A. Yeah. That's the owner. The owner of Toys "R" Us -- HM-UP
18 TRU, LLC was the owner of Toys "R" Us. And when they went
19 under, everything got consolidated in HM-UP Development Alafaya
20 Trails, LLC. Then the TRU was the land out front where the
21 Chase and Starbucks is. They ended up taking that. And it was
22 a tax strategic -- done -- done for the loans and stuff like
23 that nature. That's how it was done.

24 Q. All right. So you also applied through Nationwide for HM
25 Management and Development, which did have an office, right?

1 A. They all had an office.

2 Q. At HM Management?

3 A. They all had an office at 12000 Biscayne Boulevard, and
4 that's --

5 Q. Which was HM Management's office, right?

6 MR. ETRA: Argumentative, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: A separate LLC is when a person owns
9 separate LLCs and they own multiple businesses. I'm the
10 manager. There's a specific office, and they operated out of
11 that office. That's why I keep telling everybody allocation.
12 You allocate for each specific project people's time as workers
13 that work on projects. That's why it's set up that way.

14 BY MS. JIMENEZ:

15 Q. And so you applied for HM Management and you gave Ms. Nelly
16 Palancar a tax return for HM Management.

17 MS. JIMENEZ: Can we look at 62-6, please.

18 MR. ETRA: Your Honor, it's -- move to strike the
19 comment that precedes: "Put up the document." It's not a
20 question.

21 THE COURT: It's not a question. But it may be a
22 preface to the next question. So to that extent, I'll permit
23 it.

24 MS. JIMENEZ: Can we put up 12-1 next to it, please,
25 the first page.

1 BY MS. JIMENEZ:

2 Q. So you gave Ms. Palancar a 2019 tax return for HM
3 Management -- HM Management and Development, correct?

4 A. That is incorrect. Are you talking about the first loan in
5 HM Management and Development for the EIDL loan?

6 Q. Yes.

7 A. That's incorrect. I didn't give her any tax return. There
8 was no tax return provided. She testified to that, there was
9 no tax return provided for the loan.

10 Q. Did you give this to her later in connection with the loan
11 increases, what we call the loan modifications? You gave this
12 to her later in 2021?

13 A. I have no idea what she received or didn't receive. You're
14 asking about the loan that got funded in July of 2000 --
15 August 2020, and she testified I never gave her a tax return.
16 The tax returns weren't completed and she never asked for a tax
17 return.

18 Q. She had a tax return in her loan files; do you agree?

19 A. I have no idea what she had in her loan file. I'm just
20 telling you --

21 Q. She had a tax return in her loan files for HM Management
22 and Development, LLC, for tax year 2019, which is the document
23 on your left, correct?

24 A. I have no idea what she has in her files. I could just
25 tell you that one hundred percent she did not get a tax return

1 for the first loan, and she even said that in her testimony.

2 There was never a tax return provided.

3 Q. That was not her testimony, but thank you.

4 A. Thank you.

5 Q. So on Line 9 of the tax return on the left --

6 MR. ETRA: Your Honor, the comment. Your Honor, move
7 to strike.

8 THE COURT: The motion is granted.

9 BY MS. JIMENEZ:

10 Q. The tax return on the left, Salaries and Wages, Line 9,
11 lists 670 -- I can't see -- \$678,410 in salaries and wages. Do
12 you see that?

13 A. I see what you were showing me. Yes.

14 Q. And the tax return for HM Management and Development that
15 was filed with the IRS listed \$134,811 of salaries and wages
16 for 2019. Do you see that?

17 A. I see that.

18 Q. Do you see that the signatures are similar but not the
19 same? Do you see that?

20 A. I see on the one on the left is not my signature
21 whatsoever. The one on the right is my signature, and this is
22 the one I filed on October 14th, 2020.

23 Q. Mr. Cupersmith's signatures are very similar, but they are
24 not exactly the same. If you see the -- if you could look at
25 the box of his signature, the one that's filed has his name

1 typed. Do you see that?

2 MR. ETRA: Objection, Your Honor. First asking to
3 identify someone else's signature, saying they are the same.
4 And there's the next question, which is compounded.

5 THE COURT: Sustained. Rephrase.

6 BY MS. JIMENEZ:

7 Q. Do you see Mr. Cupersmith's signature in the Document 12-1?

8 A. If you're saying it's Neal Cupersmith's signature, then I
9 don't know what to tell you. I don't know what his signature
10 is. I can just tell you on the left this is not my signature.
11 On the right this is my signature. So I don't know what this
12 document is that you're showing me.

13 Q. And if you look at Mr. Cupersmith's signature box, the left
14 one has his name typed and the right one does not, right?

15 A. I'm sorry? Oh. On the preparer signature side, you mean?

16 Q. Right. The signature box does not have his name typed. Do
17 you see that?

18 A. Okay. Yeah. I see that.

19 Q. But -- so you're unaware whether the tax return on the left
20 side ended up in Ms. Palancar's loan file for HM Management and
21 Development?

22 A. I'm very well aware that there was no tax 2019 given to
23 Mrs. -- to Nelly for the application for the July/August 2020.
24 I mean, there was no tax return provided.

25 Q. And then, in 2021, you applied for HM Management and for

1 HM-UP Development Alafaya Trails through Nelly Palancar for
2 loan increases, right?

3 A. No. She -- she -- let's be clear about her testimony. She
4 is very lovely and she's very nice, but she's aggressive and
5 she applied for an increase or something of that nature of the
6 loan that the government was providing. That's what I
7 recollect. But from my understanding, that never went through.
8 I'm just going off what I recall of the first loan that was
9 done and that was funded, and the only loan that was funded.
10 That's all I know.

11 Q. And in 2021 you provided her the tax return. You didn't
12 provide it to her in 2020. You provided it to her in 2021 for
13 the loan increase, correct?

14 A. I have no idea. I saw an email that Jeanette Gonzalez sent
15 with -- I think it was -- I want to say it was '17, '18, and
16 '19 tax returns to Nelly and I believe Daniel Sheps. That's
17 what I saw, '17, '18, and '19, if that's what you're referring
18 to.

19 Q. But the email was to you --

20 A. To me?

21 Q. Yes. The email was to you, right?

22 A. Right. And it showed that it got forwarded to them. But
23 that's what I recall. I mean, if you're -- anything other --
24 that's in her files -- I can't tell you --

25 Q. And you're familiar that when you forward a message,

1 anything that was below you can change, you can remove, you can
2 add? You're familiar with that feature, correct?

3 A. You can change the email? I don't understand what you're
4 saying. You can change your email?

5 Q. You don't understand?

6 A. You forward something to someone you can change the
7 forward? Okay. I don't know.

8 Q. You're unaware of that?

9 A. If you can explain to me specifically what you're saying.
10 Because I know you get an email, and you push forward, and the
11 attachment goes, and it goes. So when you say you can change
12 the forwarding part, I don't know why you're saying that.

13 Q. You're unaware that when you forward a message anything
14 that was received by you you could change about the message,
15 about the attachment, remove an attachment, add another
16 attachment, change anything about it? You're unaware of that?

17 A. I -- I mean, I guess you could do anything with that. But
18 I'm not aware you can do something to your computer -- I mean
19 email, but -- I don't know how that makes sense, but okay. If
20 you say that's what I'm aware of.

21 Q. Okay.

22 MS. JIMENEZ: Can we turn to the ELMO, please. This
23 is part of Exhibit 66, which was Alafaya Trails TRU. This is
24 Bates Stamp Number 033750.

25

1 BY MS. JIMENEZ:

2 Q. This went to Ms. Nelly Palancar from you.

3 A. Okay.

4 Q. And this is Alafaya Trails TRU. Gross Receipts, blank.

5 Salaries and Wages, blank. Everything blank. Schedule 8825

6 would show any rental income. And you've got some legal fees;

7 some taxes paid; and interest; gross rents, zero. That's TRU.

8 A. Correct.

9 Q. And Mr. Sheps decided that you were going to apply on
10 behalf of TRU for an Economic Injury Disaster Loan, correct?

11 A. Correct.

12 Q. And there was also an HM-UP Development Alafaya Trails
13 application, right?

14 A. Correct.

15 MS. JIMENEZ: Can we show 53-1.

16 BY MS. JIMENEZ:

17 Q. So that is what appeared at the SBA portal, same day,

18 July 24th, 2020, for HM-UP Development Alafaya Trails, right?

19 That's the information you provided to Ms. Nelly Palancar
20 through the Nationwide portal?

21 A. That's not correct.

22 Q. All right.

23 MS. JIMENEZ: Can we show 63-1.

24 BY MS. JIMENEZ:

25 Q. This is what you provided to the Nationwide portal that

1 then got forwarded to the SBA.

2 MS. JIMENEZ: Can we go down.

3 BY MS. JIMENEZ:

4 Q. You show gross revenues -- gross revenues for essentially
5 2019, right, minus one month. I guess it's 12 months shifted
6 over one month, \$2.1 million.

7 A. Okay. Okay.

8 MS. JIMENEZ: 2019 Alafaya Trails tax return, 13-2,
9 Schedule 8825. Can you go down six pages.

10 There.

11 Go back.

12 BY MS. JIMENEZ:

13 Q. Gross rents for 2019 \$1.4 million?

14 A. Okay.

15 Q. Right.

16 A. Okay.

17 Q. So Ms. Nelly Palancar dealt only with you, Mr. Sheppard,
18 right?

19 A. I'm sorry?

20 Q. Not with Jeff Vasilas?

21 A. No. She dealt with me.

22 Q. Right.

23 MS. JIMENEZ: And 63-1 -- let's go back to 63-1.

24 BY MS. JIMENEZ:

25 Q. All right. So the business...

1 MS. JIMENEZ: I'm sorry. Go down.

2 Okay. Can we just highlight the middle.

3 BY MS. JIMENEZ:

4 Q. Okay. HM-UP Development Alafaya Trails. You tell

5 Ms. Nelly Palancar: "Detailed business activity. The company
6 manages and owns real estate buildings." Do you see that?

7 A. Where?

8 Correct.

9 Q. All right. Then you also provide Ms. Nelly Palancar profit
10 and loss statements for HM-UP Development Alafaya Trails,
11 right?

12 A. I don't know.

13 Q. All right.

14 MS. JIMENEZ: Can we show Exhibit 67. Page 24,
15 please.

16 MR. ETRA: Is this in evidence, Aimee?

17 MS. JIMENEZ: Yes.

18 BY MS. JIMENEZ:

19 Q. Okay. Ms. Jeanette Gonzalez provides to you: "Please find
20 attached the profit and loss for the following time frame,
21 2019, 2020" -- I'm sorry -- "2020 first quarter, 2020 second
22 quarter," right?

23 A. That's what it says.

24 Q. Okay.

25 MS. JIMENEZ: Go back.

1 BY MS. JIMENEZ:

2 Q. Then, six days later, you forward a message to Ms. Nelly
3 Palancar, right? Do you see that, August 27th, 2020?

4 A. Okay. Yeah. I see that. I forwarded that message.

5 Q. All right. So this is what ended up in Ms. Nelly
6 Palancar's file.

7 MS. JIMENEZ: Can we show 63-2, please.

8 BY MS. JIMENEZ:

9 Q. 2019 gross profits for HM-UP Development Alafaya Trails.

10 A. Okay.

11 Q. I'm sorry?

12 A. What's the question?

13 Q. Yes. I'm sorry.

14 MS. JIMENEZ: Could we go back to the email, Exhibit
15 67, Page 24.

16 BY MS. JIMENEZ:

17 Q. Okay. Ms. Jeanette Gonzalez's email to you from
18 August 21st, 2020, where she attaches those three schedules.
19 She says to you: "Let me know if you need any changes made."
20 Do you see that?

21 A. Yes.

22 Q. You didn't ask her to make any changes, right?

23 A. I just -- whatever I received, I just forwarded it to her,
24 from my recollection. I mean, I don't remember exactly what I
25 did. So I'm not even sure of the context of this whole entire

1 message stream, what it's actually for. So I can't tell you if
2 I did or didn't, but I don't recollect talking to her about
3 anything --

4 Q. I mean, the profit and loss statements are what they are,
5 don't you think so?

6 MR. ETRA: Objection. The question is -- form --
7 makes no sense.

8 THE COURT: Overruled. The witness can answer the
9 question if he agrees.

10 THE WITNESS: First of all, the profit and losses
11 aren't "are what they are." There's called an accrual method
12 in accounting where people may owe you money and it accrues.
13 It can be accruing for a year, two years, three years. So
14 that's the accrual method. Then there's the cash method. It
15 depends what you use. So -- when it comes to tenants, things
16 of that nature. So tenants that owe you money, it will reflect
17 differently. And so there is definitely a different method.
18 It's not that simple.

19 BY MS. JIMENEZ:

20 Q. So you didn't ask her: "Can you change it from the accrual
21 method to the cash method?"

22 A. At this particular -- in August, I don't recollect, but the
23 original application that you showed that Nationwide had their
24 internal thing was July 20-something, in July. So this is over
25 a month later, so I don't know what this is about. But the

1 information you showed me earlier on the other screen was from
2 July, so I don't know why she would even be given this
3 information, but...

4 Q. All right. So you forward something six days later to
5 Ms. Nelly Palancar. Do you see that?

6 A. I see that.

7 Q. All right.

8 MS. JIMENEZ: So now let's go to 63-2, which is
9 Ms. Nelly Palancar's profit and loss statement for 2019.

10 All right. And can we show -- can you put this on one
11 side, please. Can we show Exhibit 30-6 from Mr. Cupersmith's
12 records.

13 BY MS. JIMENEZ:

14 Q. So in -- really, around the same time, in the fall of 2020,
15 when Mr. Cupersmith's office is preparing your tax returns for
16 HM-UP -- HM-UP Development Alafaya Trails, and Ms. Jeanette
17 Gonzalez submits to his office the records, including profit
18 and loss statements for 2019, she provides to him different
19 figures, right? The 2019 -- she provides him different
20 figures, correct?

21 A. I can tell you that the -- her internal work compared to
22 what she provided here are different -- different numbers and
23 different in a lot of ways. There's income and expenses.
24 There's a lot of different things.

25 Q. So the profit and loss statement provided to

1 Mr. Cupersmith's office, the numbers are smaller on the right,
2 but it has total income and gross profits of 1,414,576, and
3 that 2019 tax return for HM-UP Development Alafaya Trails is
4 prepared and finalized in October of 2020, correct, thereabout?

5 A. October 2020, approximately.

6 Q. So approximately, close in time, Ms. Jeanette Gonzalez is
7 giving Mr. Cupersmith's office a profit and loss statement for
8 2019 with different figures than the one that gets provided to
9 Ms. Nelly Palancar, correct?

10 A. That's correct, from what you're showing here. That's what
11 it looks like, what you're showing. But they usually are
12 different figures as you go through the year and how you do
13 your books with journal entries and stuff like that, from my
14 understanding, but --

15 Q. All right.

16 MS. JIMENEZ: And then if we can show Exhibit 63-3 and
17 63-4.

18 BY MS. JIMENEZ:

19 Q. These are the first quarter 2020 and second quarter 2020
20 that you provide Ms. Nelly Palancar.

21 A. That I provided her or did it come from someone else?
22 Because I wouldn't --

23 Q. They were part of the email chain that you forwarded,
24 correct?

25 A. Okay.

1 Q. So you tell Ms. Palancar that first quarter 2020 HM-UP
2 Development Alafaya Trails had gross profits of \$576,000,
3 right? And that -- do you see that on the left?

4 A. That's what Jeanette's -- that document says. So I --

5 Q. And then you tell Ms. Palancar that second quarter 2020 no
6 rent was collected, zero, for this company. None of your
7 tenants at the Shoppes at Alafaya paid rent second quarter
8 2020.

9 A. Well, it doesn't say that. It says rent -- I don't know
10 why it says that. I don't -- I don't know.

11 Q. So for an Economic Injury Disaster Loan, you need to have
12 an economic injury, correct?

13 A. Oh, yeah. And we certainly did. That's for sure.

14 Q. That sure looks like an economic injury when you've got no
15 rent collected second quarter 2020, correct?

16 A. There's definitely an economic injury when there's no rent
17 collected. That's correct.

18 MS. JIMENEZ: Can we show Exhibit 41-16, please.

19 BY MS. JIMENEZ:

20 Q. All right. This is a summary of your company's bank
21 records that was provided by the forensic accountant at the FBI
22 who examined the accounts for HM-UP Development Alafaya Trails.
23 Do you see 2020 first quarter?

24 A. I do.

25 Q. That's a different amount, right? Do you see second

1 quarter 2020 -- more importantly, second quarter 2020, \$310,346
2 collected of rent by HM-UP Development Alafaya Trails? That
3 was in your bank accounts.

4 A. Well, I don't know. I heard that guy speak, and I don't
5 know what he was saying, but --

6 MR. ETRA: Your Honor, it's a document that -- the
7 objection is that it's not a document he saw before -- he saw,
8 except that it was shown in court.

9 THE COURT: Overruled. He can answer that way.

10 THE WITNESS: Again, it was shown in court of what the
11 guy said, and clearly I didn't understand what he was saying.
12 But I can't tell you what that represents as far as whether
13 it's deferral money. Again, deferral is different than
14 actually collected, but -- whether it was tax money. I don't
15 know what was going into that account in 2000 -- how this is
16 written here in 2020. I can't tell you. I'm sure Mr. Bouchner
17 will tell you, but I can't tell you how he classified it.

18 BY MS. JIMENEZ:

19 Q. And then, overall for 2020, bank records -- the bank
20 records that Mr. Hysa reviewed from the FBI was a little bit
21 more than -- the total amount was a little bit more than rents
22 collected in 2019 for HM-UP Development Alafaya Trails. Do you
23 see that?

24 A. Again, you keep saying: "Rent collected." I don't know.

25 Q. Received into the bank account.

1 A. Again, I do not know when you say: "Rent." Because
2 there's multiple accounts, I don't know if it was money for
3 construction, I don't know if it was rent. I mean, there's a
4 lot of different variables that go into it. So if you want to
5 show me the record, I'll go through it. But I don't know what
6 he represented the money to be between the million four,
7 forty-seven, and million four thirty-two that you just
8 described.

9 Q. You did not apply through Nationwide Lending Direct on
10 behalf of HM Six, LLC, correct?

11 A. I don't recollect HM Six, LLC. I know that was on the
12 first part of it. I'm not sure how that was applied. I don't
13 remember exactly.

14 Q. You applied on behalf of Sheppard Flagler Holdings, which
15 is 50 percent owner of HM Six, correct?

16 A. Sheppard Flagler Holdings is a 50 percent of HM Six,
17 correct.

18 Q. You applied on behalf of Sheppard Flagler Holdings with a
19 trade name, as we saw, of HM Six/CJUF III Flagler, right?

20 A. Again, did not apply. I didn't do the application.
21 Nationwide did the application. So if you're saying that's
22 what they wrote, then that's what they wrote.

23 Q. And -- I'm sorry -- the text message on July 24th from you
24 to Nelly Palancar telling her you had applied for the four --
25 resubmitted the four applications, that was your text message,

1 right?

2 A. That was a text message, and I also recollect looking at
3 some of the text messages after her --

4 Q. I'm sorry?

5 A. -- after her testimony that specifically said that: "I
6 don't understand how to work your portal," and "Can you help
7 me?" I don't see that text message on what you provided, but
8 that's a text message that I saw. So I'm not sure that meant
9 the application to become a client of their firm. I don't
10 know. I have to look at the whole stream of text messages.

11 Q. So you did not apply for HM Six through Nationwide Lending
12 Direct?

13 A. I thought I did, but I don't know. I mean, the initial
14 email was only three, HM Management, HM-UP, and HM Six. That
15 was the original thing with Daniel Sheps. That's what he told
16 me that -- and he gave me the exact numbers that we spoke
17 about. We put the numbers in there, and that's the email that
18 I haven't seen in the chain yet. The owner of the company, who
19 I was dealing with, he's the one that gave me the companies.
20 So Nelly is just a processor -- not just. She's a processor.
21 But that's what I recollect.

22 Q. And you also did not apply on behalf of HM Four, which is
23 99 percent owner of HM-UP Development Alafaya Trails -- you did
24 not apply for HM Four through Nationwide Lending Direct,
25 correct?

1 A. No. That, I did not. I did that -- I did -- well, first
2 initially Jeff Graff started that for some other program. But
3 I'm the one who provided -- me personally -- HM Four, LLC. I
4 did that application. I did that application and I did the
5 PayPal first loan application. Those are the two applications
6 that I personally did.

7 Q. All right. So HM Six is, as we saw, hundred percent
8 owner -- was hundred percent owner of CJUF III Flagler, which
9 owns or owned the shopping center -- the Fontainebleau shopping
10 center in Westchester, Miami, correct?

11 A. On West Flagler Street, yes.

12 MS. JIMENEZ: Could you put up 23-1.

13 BY MS. JIMENEZ:

14 Q. Okay. So here on the right side -- and so you owned CJUF
15 III Flagler through HM Six up to Sheppard Flagler Holdings,
16 50 percent, and then the other 50 percent was owned by Mr. Leon
17 Wildstein, correct?

18 A. No. It was owned by Wildstein Investments. Leon
19 Wildstein -- I mean, technically Wildstein Investments.

20 Q. Wildstein Investments owned by Leon Wildstein?

21 A. I'm assuming he owns it. I don't know if he does, but I
22 assume that's who owns it.

23 Q. And you applied for an EIDL on behalf of HM Six directly to
24 the SBA portal, correct?

25 A. I recall applying -- there was one initially back in --

1 earlier than that. I remember applying for HM Six earlier with
2 Mr. Wildstein. I remember that. I remember getting all his
3 information, his IDs, and everything, and all that.

4 And then there was one later that -- I don't even know
5 what time it was, but that was later in 2020, where they said:
6 "It's already been applied for so you can't apply for it again.
7 It's already been applied for." So there was two times. There
8 was one some time in -- I don't know if it was April, May,
9 somewhere in that general area. I don't remember the date.
10 And then there was one later, which I was told that because one
11 was already applied for you can't apply for the second one.
12 That's what I recall.

13 Q. You applied on September 5th, 2020, to the SBA portal on
14 behalf of HM Six, and you identified yourself as a hundred
15 percent owner of HM Six. Do you recall that?

16 A. Of HM Six?

17 Q. Yes. Correct.

18 A. I don't recollect. Again, I don't recollect because there
19 was three different parts. One in the beginning, then --

20 Q. I just --

21 A. -- Daniel Sheps in September -- but you're asking --

22 MS. JIMENEZ: Your Honor, I need the witness to answer
23 my question and then he could explain.

24 BY MS. JIMENEZ:

25 Q. You applied in September of 2020 to the SBA for an Economic

1 Injury Disaster Loan on behalf of HM Six as a hundred
2 percent owner of HM Six, sir. Yes or no?

3 MR. ETRA: Objection.

4 THE WITNESS: I do not know the answer to your
5 question. I can't answer it. I'm trying to recollect, and
6 sitting here and remember four years ago what I did during
7 COVID in June, or whatever dates you're saying. How am I
8 supposed to remember what I did in September or any date in
9 2020 or last week? I'm trying to understand that. That's all
10 I'm trying to do.

11 MS. JIMENEZ: Can we show Exhibit 57-1, please.

12 BY MS. JIMENEZ:

13 Q. All right. So at the very top, the name of the applicant
14 is HM Six --

15 MS. JIMENEZ: Can we show the top right corner,
16 please.

17 BY MS. JIMENEZ:

18 Q. -- which was submitted from your home, your IP address at
19 home.

20 A. Okay. If you say so.

21 MS. JIMENEZ: All right. Can we go back out.

22 MR. ETRA: Your Honor, I object. I believe on 404(b)
23 grounds they weren't doing this loan. I'm very confused.

24 THE COURT: The objection is overruled. You may
25 continue with your cross-examination.

1 MS. JIMENEZ: Can we highlight the middle, the middle
2 box.

3 BY MS. JIMENEZ:

4 Q. September 5th, 2020, HM Six, now trade name is reversed.
5 Sheppard Flagler Holdings. Do you see that?

6 A. (No verbal response.)

7 Q. And you submit numbers, amounts, large amounts, 4.8 million
8 gross revenues, cost of goods sold, rental, lost rents due to
9 the disaster -- do you see that -- business location, your
10 office, HM Management, correct?

11 A. Where? You're going so fast.

12 Q. 12000?

13 A. Okay. Yeah, okay.

14 Q. Nine employees?

15 A. Okay.

16 MS. JIMENEZ: And then can we go back out?

17 Go down.

18 BY MS. JIMENEZ:

19 Q. Owners. Let's talk about the owners. "Eric Sheppard, one
20 hundred percent." Do you see that, sir?

21 A. Yeah, I do.

22 Q. Mr. Leon Wildstein, as we mentioned earlier, had sued you.
23 You were in a lawsuit defending yourself for -- he was seeking
24 millions of dollars from you, correct?

25 A. That's what he was -- that's what he claimed.

1 Q. That you owed him, right?

2 A. No.

3 Q. He claimed that you owed him millions of dollars that you
4 had diverted, correct?

5 A. He claimed -- that's what his allegations were, but that
6 was not the final results of the case. It was actually the
7 opposite, where he diverted millions of dollars. And you can
8 just go look at the record yourself that he actually wrote a
9 check, and it was according to the judge that he had to write a
10 big check to me because he actually stole money from me. So if
11 you want to go through the whole case, let's go through the
12 whole case.

13 Q. You ultimately settled that litigation with him where you
14 paid him money?

15 A. No, I did not. I didn't pay him a nickel. He paid me, if
16 you want to see the transcript.

17 Q. Right. And so you're applying here for HM Six as a hundred
18 percent owner seeking to cut out Mr. Wildstein, correct?

19 A. And there's no reason to cut out Mr. Wildstein.

20 Mr. Wildstein gave me -- first of all, this says: "Sheppard
21 Flagler Holdings" on it, and it says: "HM Six." So I don't
22 even know how that was filed like that. It should be Flagler
23 Holdings. He has an ownership in Flagler Holdings. Okay?

24 But secondly, I don't need to cut Mr. Wildstein out.

25 Okay?

1 Q. Because you were keeping him apprised of all of this,
2 correct, in the middle of your lawsuit?

3 A. Yes. He specifically is asking me: "Oh. What's going on?
4 What's going on? What's going on?" And meanwhile, he stole
5 close to \$7 million from me. Yes, that's correct. He stole \$7
6 million. And the judge ordered him to put money into escrow,
7 and then the money got paid to me because he stole money from
8 me. That's the record.

9 So I don't know what you're looking at, but that's
10 exactly what happened. So when I see something like this -- he
11 gave me his ID, he did this -- I told him: "You're not an
12 American citizen. That's the problem. You have to be an
13 American citizen," and he's from Canada. And that's what
14 happened. So I don't know --

15 Q. And then you used the same bank account --

16 MS. JIMENEZ: If we go down.

17 BY MS. JIMENEZ:

18 Q. You used --

19 MS. JIMENEZ: Can we show the bank account, please.

20 BY MS. JIMENEZ:

21 Q. You used the same bank account. HM Management and
22 Development SunTrust Bank account ending at 7571. Right? Do
23 you see that?

24 A. Correct.

25 Q. That is not CJUF III Flagler or HM Six. This is HM

1 Management's bank account, correct?

2 A. That's correct. The operating account for HM Management
3 and for the entities, correct.

4 Q. Now, later you opened an account for HM Six because it
5 didn't have one. This was -- HM Six was an owner company,
6 correct? It didn't have its own office, didn't pay utilities,
7 it didn't have a phone number, right?

8 MR. ETRA: Your Honor --

9 BY MS. JIMENEZ:

10 Q. It owned --

11 MR. ETRA: Multiple questions. Compound.

12 MS. JIMENEZ: No. It's one question.

13 THE COURT: It's one question. The objection is
14 overruled.

15 THE WITNESS: HM Six is a separate LLC, and it is a
16 company that files tax returns and has an active business. So
17 I don't know what you mean by it didn't have an address, it
18 didn't have this -- again -- I'll say it again, so we're
19 clear -- I'll say it to the jury -- HM Management is an
20 operating company. There's all LLCs that own assets in
21 different states, in Florida and everywhere. HM Six is one of
22 them. And you have an operating account as a conduit. Doesn't
23 own any of the assets. It's a conduit where it pays people,
24 workers, and allocations for workers and other parts go there.
25 And they go to the same office. That's why you have

1 15 file cabinets of each company, with a plethora of files from
2 here to over there for one job, for one company. And that's
3 how it's set up.

4 And I understand you keep asking me the same question,
5 but if someone works in HM Six, someone works in HM-UP, a
6 worker works for 50 hours a year, they get allocated personal
7 time. You say: "You work for this company. You get allocated
8 for this," and that's how it's set up. These confusing
9 questions -- I'm confused as to whether -- I'm confused. But
10 that's how it runs in my business. It's completely different
11 from what's been asked here.

12 BY MS. JIMENEZ:

13 Q. Mr. Sheppard, HM Six is a shell company, right? It doesn't
14 have its own operations. It doesn't have -- it owns CJUF III
15 Flagler, which has a shopping center, right? HM Six is a shell
16 company, correct?

17 A. It's a shell company to -- maybe to you. But in the real
18 world it's not a shell company. It's a -- it's a company with
19 assets. How can you say HM Six is a shell company? When you
20 invest equity into HM Six, then it goes to CJUF.

21 CJUF is a separate entity that owns a piece of real
22 estate, which has to be owned by somebody. That's how it
23 works. I mean, when you say: "Shell company" -- when you sell
24 the property, HM Six reports to the IRS. It shows capital
25 gains and they pay big taxes on the gains they receive. So

1 it's not a shell company. CJUF doesn't --

2 Q. Mr. Sheppard, remember the deposition that you gave
3 February 26th, 2019, when Mr. Wildstein had sued you and your
4 companies? Correct? You remember?

5 A. I recall you showing me -- I remember it was like a
6 three-day deposition about HM Six and all these companies.

7 MS. JIMENEZ: Can you show the witness what will be
8 Government's Exhibit 79-4, please. Just the witness.

9 BY MS. JIMENEZ:

10 Q. All right. So that's the first page of the deposition.
11 Let me take you to Page 72 --

12 MS. JIMENEZ: Let's go to Page 72.

13 BY MS. JIMENEZ:

14 Q. There were questions about HM Management having an
15 agreement -- HM Management having an agreement with HM Six.
16 And even though CJUF III Flagler owned the land, there was a
17 management agreement with HM Six, but you explained that that's
18 the way it was set up, but that HM Six was just a shell
19 company.

20 Page 72 you're asked the question, on Line 6: "What
21 do you mean developer of record to develop the project?"

22 And you gave this answer: "When you go in to develop
23 a project, you can't go and say HM Six, LLC, who is the
24 single-purpose entity that has zero track record, zero anything
25 to actually hire architects and hire engineers and all that;

1 therefore, the developer of record, HM Management and
2 Development, wanted to build a 33-acre, 235,000-square-foot
3 front. There has to be a developer. You can't. HM Six is
4 nothing. It's a shell company."

5 That's what you said in that deposition, Mr. Sheppard.
6 That was in 2019 before you had this problem.

7 A. Well, I'll respond to what you just said, first of all, to
8 the jury --

9 Q. But let me just -- my question is: You said that, correct,
10 under oath February 26th, 2019? Correct?

11 A. If that's what they said I said under oath, that's what I
12 said, and I can explain exactly what that exactly means, the
13 words. Because there is a 500-page document, but you have to
14 understand the context and what it means, and I'll explain
15 that.

16 What that means is, is that, on this particular
17 project, this was a Walmart and all these big national
18 companies. And if you took this, which she provides, and you
19 put the actual loan documents from the lender that provided \$49
20 million, what it says and was always required is that HM Six is
21 the owner, okay, with assets, a single-purpose entity that owns
22 this real estate, okay -- or equity in the real estate.

23 What this means -- exactly what this means is, is
24 correct. It's a single-purpose entity, set up for the
25 acquisition and development and construction of this property.

1 But a lender in no shape or form will ever give you money,
2 unless it's a company that's been in business for many, many
3 years, that has the expertise, the infrastructure, and the
4 knowledge. And the loan document specifically says that HM
5 Management and Eric Sheppard as the managing member only can
6 never be replaced to construct and develop the real estate.
7 And that's what that means. It means that, yes, there is a
8 company, HM Six. Yes, they have substantial assets, but they
9 are not qualified for the construction of a significant project
10 because it was formed for this entity.

11 Secondly, once you finish, HM Management and
12 Development Company, a non-owner of the property, by contract
13 has to manage the property and provide all the workers for the
14 property, in this case, HM Six and CJUF. So HM Management is
15 the one who supplies the workers. That's what the confusion is
16 here. Exactly how you said the question is the problem because
17 understanding is very important.

18 Q. Okay.

19 A. That's how it works.

20 MS. JIMENEZ: I'd like to publish -- I mean I'd like
21 to admit Government Exhibit 79-4 and publish --

22 THE COURT: Hold on. Exhibit 69 or 79?

23 MS. JIMENEZ: 79-4.

24 THE COURT: All right. Is there any objection?

25 MR. ETRA: Your Honor, our main objection is we're way

1 beyond the scope of the Indictment on this one.

2 MS. JIMENEZ: September 5th, 2020.

3 THE COURT: Is that the sole basis, is relevance?

4 MR. ETRA: Yes.

5 THE COURT: All right. Overruled.

6 Exhibit 79-4 admitted into evidence.

7 (Government's Exhibit 79-4 received into evidence.)

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

9 BY MS. JIMENEZ:

10 Q. Right? So HM Six is nothing. It's a shell company, is
11 what you said at the time.

12 All right. Now, you also applied for HM Four. That
13 was done by you as well, correct?

14 A. HM Four was submitted by myself, correct.

15 Q. HM Four is 99 percent owner of HM-UP Development Alafaya
16 Trails, right?

17 A. Correct.

18 Q. You had just gotten an Economic Injury Disaster Loan for
19 HM-UP Development Alafaya Trails through Nationwide Lending
20 Direct?

21 A. Correct.

22 Q. Now, separately, on your own, October 22nd, 2020, you apply
23 on behalf of the owner of HM-UP Development Alafaya Trails for
24 its own Economic Injury Disaster Loan, correct?

25 A. Well, I applied for HM Four for the other function and

1 their other business, not for the ownership of the 99 percent
2 of HM-UP. This was specifically -- HM Four was applying for
3 their other obligations and their business that they have.
4 That's what was applied for, the purpose.

5 Q. You've signed off on HM Four's tax returns year after year,
6 correct?

7 A. I execute the tax forms, yes -- I mean the signature.

8 Q. The only income actually lost that it reports is HM-UP
9 Development Alafaya Trails' income or loss, which happens to be
10 a net loss, right? That's the only thing it reports. It's for
11 HM-UP, correct? Do we need to show that to the jury?

12 A. Are you asking me the question to answer or...

13 Q. Is that right? Does it only report for HM-UP?

14 A. No.

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

16 All right. So October 22nd, HM-UP -- I'm sorry -- HM
17 Four --

18 MS. JIMENEZ: Can we show 58-6.

19 BY MS. JIMENEZ:

20 Q. That is the portal. That is your home IP. So you applied
21 for that October 22nd. And October 22nd you opened a bank
22 account for HM Four, correct?

23 A. Correct.

24 Q. It did not have a bank account?

25 A. It did not.

1 Q. Okay. And you created hmfourmanager@gmail.com a few days
2 before -- a couple days before, correct?

3 A. That's correct, an email and the bank account for the
4 company, for the filing.

5 Q. And you applied --

6 MS. JIMENEZ: Okay. Let's go back.

7 Let's go down for a minute.

8 BY MS. JIMENEZ:

9 Q. And you applied as the owner -- 80 percent owner Jennifer
10 Sheppard, right?

11 A. That's not what I applied. I applied Jennifer Sheppard,
12 Eric Sheppard tenancy by the entireties. It's a form of
13 ownership. So it says Jennifer Sheppard, but tenancy by the
14 entireties is how it was applied for.

15 Q. You listed in the portal Jennifer Sheppard 80 percent
16 owner, correct?

17 A. She's the 80 percent owner as tenancy by the entireties,
18 which is a form of ownership with me, Eric Sheppard, correct.

19 Q. All right. And then this is October 22nd, 2020. Jennifer
20 Sheppard 80 percent owner --

21 MS. JIMENEZ: If we could show for a moment Exhibit
22 57.

23 Exhibit 57. Do I have the wrong number?

24 No. I'm sorry -- oh, you don't have it?

25 (Pause in proceedings.)

1 MS. JIMENEZ: I'm sorry, Your Honor. One moment.

2 THE COURT: All right.

3 (Pause in proceedings.)

4 MS. JIMENEZ: All right. Give me a second.

5 (Pause in proceedings.)

6 MS. JIMENEZ: All right.

7 (Pause in proceedings.)

8 MS. JIMENEZ: All right. I thought we had designated
9 it as a separate exhibit. It is part of Exhibit 57.

10 If we can go to the ELMO for a moment.

11 BY MS. JIMENEZ:

12 Q. This is Bates Stamp Number 31075. October 21st, 2020, the
13 SBA responds to you regarding the HM Six application, and they
14 deny the application: "We are unable to offer you an Economic
15 Injury Disaster Loan for the reasons described below:
16 Unverifiable information." Do you see that?

17 A. I do.

18 Q. Then it says: "During the loan underwriting process, there
19 were one or more items that were reviewed that caused the SBA
20 to question the validity of certain information you submitted
21 as part of your application." Do you see that?

22 A. I see that.

23 Q. That's October 21st, 2020.

24 A. Okay.

25 Q. October 22nd, 2020, Jennifer Sheppard, 80 percent owner of

1 HM Four, is the applicant to the SBA. Do you see that? You're
2 aware, right?

3 A. I'm aware of what? I don't understand --

4 Q. That Jennifer Sheppard was now the applicant. Although you
5 have told this jury that it was you -- that it was actually
6 you, right?

7 A. I don't know -- I'm going to say it again. On
8 October 22nd, that was the date HM Four, under what -- their
9 business, I, Eric Sheppard, applied on behalf of the company as
10 the managing member of the company that I am. And I own the
11 company with Jennifer Sheppard and Eric Sheppard, tenancy by
12 the entirety. It's a form of ownership. When a married couple
13 owns something, it's called tenancy by the entirety. It's a
14 joint ownership. That's how it's structured. That's what was
15 applied for. That's what it was with the SBA. That's what was
16 applied for.

17 MS. JIMENEZ: Can we show 58-6, the intake.

18 BY MS. JIMENEZ:

19 Q. Application. And you know on the intake application for
20 these SBA EIDL loans you have to identify everyone who is at
21 least a 20 percent owner, right?

22 A. Correct.

23 MS. JIMENEZ: I'm sorry. Could we go back to the...

24 BY MS. JIMENEZ:

25 Q. So she's 80 percent owner and no one else is listed, right?

1 MS. JIMENEZ: So then if we go to 58-7. Do we have
2 that?

3 BY MS. JIMENEZ:

4 Q. These are the notes from the SBA --

5 MS. JIMENEZ: Down to October 29th, please.

6 Keep going.

7 October 29th, 2020. I'm sorry.

8 Keep going. October 29.

9 Okay. So the next page.

10 BY MS. JIMENEZ:

11 Q. So Item 4: "Please provide the original date of your
12 ownership of the business." And then Item 6 -- I'm sorry --

13 "On your application, you indicated that you own 80 percent of
14 HM Four. Who is" -- "Who are the other owners? Please provide
15 ownership percentage and contact information." Right?

16 A. That's what it says, yeah.

17 Q. And so then, you as -- acting as Jennifer Sheppard, you
18 oblige?

19 A. Acting as her? She's my wife. What do you mean "acting
20 like her"? I -- again, 80 percent is owned by Eric Sheppard
21 and Jennifer Sheppard, tenancy by the entirety, as I tried to
22 explain to the SBA representative.

23 Q. So you do provide a response to this.

24 MS. JIMENEZ: So let's go to 58-11.

25 This is the blurry version.

1 I actually have a -- I have a -- I have a non-blurry
2 version from the SBA notes. And this is Exhibit 58-4 -- oh,
3 this is -- is the jury able to see this?

4 BY MS. JIMENEZ:

5 Q. Okay. So you say: "The other owner of HM Four is Eric
6 Sheppard, my husband, as an individual, and his ownership is
7 15 percent." So -- and then you've got JES Alafaya Holdings as
8 five percent owner. As 15 percent owner, you don't have to be
9 listed on the application, correct?

10 A. Can you please stop moving it around. You're moving it,
11 and I'm trying to read it. If you can just keep it in one --
12 I'm sorry. I'm just --

13 Q. Oh. Item 6. It just doesn't all fit on the...

14 A. All right. Now I can see it. Thank you.

15 Q. All right. So under 20 percent, you don't have to be
16 listed on the application, correct?

17 A. That's what you're telling me. I was describing the full
18 ownership group. But I think I did like a -- I think I did
19 a -- like a chart from the origination of 2011 HM Four, all the
20 way through this date. I gave it to him, this guy. I was
21 trying to explain in as much detail as possible how it's
22 structured, the timeline. There's a timeline I gave to the SBA
23 on top of this somewhere.

24 Q. Right. And you said: "Since January 1, 2020, my ownership
25 position increased for this particular company and decreased in

1 a non-related entity," right? And then you said -- well, you
2 said, speaking as Jennifer Sheppard, the -- "Although this is
3 mostly my business, my husband does own other non-related
4 businesses and is authorized to speak about this matter, as he
5 handles the taxes and certain business functions for me."

6 So Mr. Sheppard, this is HM Four.

7 A. Correct.

8 Q. You, speaking as Jennifer Sheppard, are saying that you own
9 non-related entities?

10 A. Correct.

11 Q. What about HM-UP Development Alafaya Trails? Wouldn't that
12 be a related entity?

13 A. I don't understand your question. You asked me do I own --
14 the non-related businesses. Yeah, I own non-related
15 businesses. I own HM Management and Development. It's a
16 non-related business. Eric Sheppard owns -- Jennifer Sheppard
17 is not the owner of HM Management. I am the owner of HM
18 Management business. So that's a non-related business.

19 Q. Okay. But there are also related businesses that aren't
20 mentioned here, right?

21 A. Related businesses? What do you mean by that?

22 Q. Well, HM-UP Development Alafaya Trails is the company that
23 HM Four owns. It's a related business.

24 A. It's a 99 percent managing member of HM-UP.

25 Q. All right. And you now, speaking again as Jennifer

1 Sheppard, say you're being authorized to speak about this
2 matter, "as he," being you, "handles the taxes and certain
3 business functions for me."

4 So Mr. Sheppard, now speaking as Jennifer Sheppard,
5 talking about you, are saying -- right? I mean --

6 A. Well, that's not what occurred. That's not what occurred.
7 What occurred is --

8 Q. I'm sorry. You're saying -- referring to yourself --

9 MR. ETRA: Your Honor, he's trying to answer the
10 question because there's so many questions. So when she
11 pauses, he tries to answer. And that's the problem --

12 MS. JIMENEZ: So let me --

13 THE COURT: All right. Hold on. The objection is
14 sustained. And perhaps we can just sharpen our question a bit,
15 Ms. Jimenez.

16 BY MS. JIMENEZ:

17 Q. So you handle the taxes and business functions of HM Four,
18 according to you posing as your wife?

19 A. That me, posing? First of all, don't say: "Posing as my
20 wife." Let's be clear. There was a conference call between
21 the SBA, myself. I spoke to this gentleman, and I explained to
22 him what tenancy by the entirety was, and he said: "Okay.
23 Then I need to speak with Mrs. Sheppard as well."

24 I said: "Okay. Let's get Mrs. Sheppard on the
25 phone." My wife and I -- Jennifer Sheppard, sitting right

1 there -- we both got on the phone together. And he says:

2 "Well, if you own it together that means you have to -- she has
3 to acknowledge that she's approving this transaction." I said:
4 "Great." That's what occurred.

5 So when you said: "Posing for her," I'm not posing
6 for her. We were both on the phone call together. And then my
7 wife -- I am the managing member of HM Four, managing member.
8 That means I am responsible to be that. My wife is an owner,
9 but she doesn't run the business. I do. So I'm responding for
10 her in that manner, as she told me to, as he -- actually, he
11 told me to: "She needs to verify and approve this." That's
12 what occurred.

13 I mean, I didn't pose as my wife. I've been married
14 for 22 years. That's a little weird. Maybe -- I can read the
15 writing. It's kind of weird, the way it's written, but I'm
16 trying to do stuff for my wife. She's not going to answer
17 these questions. She doesn't know how to answer the questions.

18 Q. And you handle the taxes for your business?

19 A. For all my -- well, the accountants handle the taxes, but I
20 sign the taxes. I'm the managing member of all these entities.
21 There's 40 entities.

22 Q. And then you sign off on this email: "Do you have any
23 questions I cannot answer? I'm not sure if I missed anything.
24 If I have, you can email me back." And then: "Thank you once
25 again for being so kind" -- and this is blurry. Okay.

1 "Sincerely, Jennifer Sheppard."

2 A. Correct. Again, he spoke to her. I was on the phone, and
3 I'm -- my wife is there. I'm saying: "Here" -- that's how she
4 talks. I mean, she talks better than me. She says: "Be
5 kind" -- "thank you for being so kind to me." That's how she
6 speaks. I wouldn't personally say that. I would say: "Thank
7 you" -- I might say something differently. That's how she
8 speaks.

9 So I'm writing it, and it's her. Because that's what
10 he asked for. He wants to know what is tenancy by the
11 entireties. And I thought it's common knowledge. Maybe people
12 don't know it, but that's a form of ownership. You can go to
13 the K-1 tax returns. It will show it. It will show exactly
14 who owns it. Eric Sheppard and Jennifer Sheppard, tenancy by
15 the entireties. It says it on the tax return, which the guy
16 has.

17 Q. So it --

18 MS. JIMENEZ: Can we go to Exhibit 14, please.

19 And Exhibit 14 and Exhibit 32.

20 BY MS. JIMENEZ:

21 Q. Exhibit 14 is the 2019 filed tax return for HM Four.

22 Exhibit 32 is Mr. Cupersmith's copy of the 2020 tax return for
23 HM Four.

24 MS. JIMENEZ: Can we --

25

1 BY MS. JIMENEZ:

2 Q. And the 2020 copy of HM Four is prepared -- if you could
3 see the exhibit on the right side, Mr. Sheppard, Exhibit 32.
4 It has the date that Mr. Cupersmith would have signed it and
5 sent it to you. Do you see that, October 4th, 2021?

6 A. Okay.

7 Q. And then the filed -- I'm sorry. The filed copy on the
8 left side, which was the 2019 return, was October 20 -- I'm
9 sorry -- October 6. And you signed it October 14th, 2020, for
10 the 2019 tax return, right? Do you see that?

11 A. I see that.

12 Q. Okay.

13 MS. JIMENEZ: Could we go to the back -- the K-1s.

14 BY MS. JIMENEZ:

15 Q. October 14th, 2020 is a week, about, before you submitted
16 this application, October 22nd, 2020, right?

17 A. (No verbal response.)

18 Q. And you were just signing that tax return.

19 MS. JIMENEZ: Could we go down to the end, please.

20 BY MS. JIMENEZ:

21 Q. So HM Four -- okay. So this is common owned 48 percent in
22 2019.

23 MS. JIMENEZ: And then go up -- I'm sorry. Stay on
24 the left.

25

1 BY MS. JIMENEZ:

2 Q. And your wife, in 2019, owned 52 percent, right?

3 A. Eric and Jennifer, tenants by entireties, is what it says.

4 Q. Fifty-two percent?

5 A. Correct.

6 Q. Then 2020 --

7 MS. JIMENEZ: Go down to the bottom, which is -- the
8 one on the right is the 2020 return, which would have been
9 prepared in 2021.

10 Okay. Stop.

11 BY MS. JIMENEZ:

12 Q. The tax return for tax year 2020, prepared in 2021, shows
13 no change regarding the ownership of this company -- let me
14 finish, please. You see 48 percent for Mr. Kallman?

15 A. Correct.

16 Q. And then you go up and there's 52 percent for you and your
17 wife?

18 A. Correct.

19 MS. JIMENEZ: Go up one more.

20 BY MS. JIMENEZ:

21 Q. Fifty-two percent. Stayed the same, correct?

22 A. Correct.

23 Q. And --

24 MS. JIMENEZ: Okay. So if we can -- you can leave
25 Exhibit 14 -- go to the first page of Exhibit 14.

1 Okay. And then pull up Exhibit 58-6, the intake
2 application.

3 Oh. I'm sorry. We don't have it? 58-6?

4 Okay. If we can focus on the middle here, 58-6.

5 BY MS. JIMENEZ:

6 Q. All right. So you report gross revenues 950,000 for the 12
7 years prior to January 2020, right? So --

8 A. Twelve years or --

9 Q. What did I say, 12 years? Twelve months.

10 A. Yeah.

11 Q. Roughly 2019. And then cost of goods sold 250,000, lost
12 rents 450,000?

13 A. Correct.

14 Q. You report this October 22nd, 2020, right?

15 A. I'm sorry?

16 Q. You reported this -- you did this in the portal
17 October 22nd, 2020?

18 A. Okay.

19 MS. JIMENEZ: And then go back.

20 BY MS. JIMENEZ:

21 Q. The tax return for that year, for the year that's
22 essentially the 12 months before January 2020 -- the tax return
23 for 2019 shows for HM Four, that you signed a week earlier --
24 eight days earlier, zero gross receipts, zero cost of goods
25 sold, right?

1 A. Correct.

2 MS. JIMENEZ: And if we go to the Schedule 8825.

3 Go down -- oh. This doesn't -- go down to -- keep
4 going.

5 BY MS. JIMENEZ:

6 Q. 8825 Schedule for HM Four for tax year 2019, signed
7 October 14th, 2020, no rental income for HM Four. And what you
8 report at the bottom is the loss that flowed to HM Four as
9 99 percent owner of HM-UP Development Alafaya Trails. Do you
10 see that at the bottom?

11 A. I see that.

12 Q. No income or loss from any other company?

13 A. That's not true. That's not how it works, but I see -- I'm
14 just agreeing with you that that's what I see. But that's not
15 how this -- that works.

16 Q. You didn't correct your accountant?

17 A. I didn't correct my accountant?

18 Q. You signed under penalty of perjury. You didn't correct
19 your accountant?

20 A. I wouldn't know how to correct my accountant. But that's
21 not how this was filed because, again, it's part of -- HM Four
22 owns 99 percent. So there's -- it's more complicated than
23 that, how the accountant does it, from what they've explained
24 to me, and it wouldn't show up on this particular sheet of
25 paper here.

1 HM Four has multiple activities. So that's why it
2 doesn't show it here. It gets shown on a different -- it gets
3 shown on the HM-UP tax return. HM Four, there it gets shown on
4 the HM-UP tax return, but then you have to take out certain
5 things with the obligations of HM Four, and you're not seeing
6 it on this particular tax form. It's supposed to be on the
7 HM-UP tax form.

8 Q. Okay. So October -- I'm sorry -- November 4 --

9 THE COURT: Ms. Jimenez, do you want the jury to see
10 this?

11 MS. JIMENEZ: Oh, are they not seeing this?

12 MS. MARTINEZ: Oh, my goodness.

13 THE COURT: It's important to advise: "It's in
14 evidence. Please publish to the jury."

15 MS. JIMENEZ: I'm sorry.

16 THE COURT: All right. So if we can show that to the
17 jury, please.

18 MS. JIMENEZ: Could we go to the table.

19 All right. Could we go to the first page real quick
20 of the tax return.

21 BY MS. JIMENEZ:

22 Q. All right. So this is the filed 2019 tax return that you
23 signed October 14th, 2020, that shows no gross receipts, no
24 cost of goods sold.

25 MS. JIMENEZ: And then if we can go back down to

1 schedule 8825.

2 Okay. Here.

3 BY MS. JIMENEZ:

4 Q. No rental income and the only thing reported on this
5 Schedule of Income and Expenses for this business is the loss
6 attributed to HM Four as 99 percent owner of HM-UP Development
7 Alafaya Trails, correct?

8 A. That's correct.

9 Q. On the right side, 58-6 --

10 MS. JIMENEZ: If we could highlight the middle.

11 BY MS. JIMENEZ:

12 Q. -- eight days later, you told the SBA that HM Four had
13 gross revenues of 950,000, cost of goods sold of 250,000, lost
14 rents of 150,000, right?

15 A. Correct.

16 Q. And that, too, was under penalty of perjury, correct?

17 A. That's correct.

18 Q. Okay.

19 MS. JIMENEZ: Could we show 58-4.

20 THE COURT: Ms. Jimenez, I know you stated that you
21 needed until the lunch hour for your cross-examination. It is
22 12:05. Can you advise the Court how much more time you need so
23 we can plan accordingly.

24 MS. JIMENEZ: I need some more time.

25 THE COURT: Yes. How much time do you need?

1 MS. JIMENEZ: Probably two hours.

2 THE COURT: Is there a reason why you need an
3 additional two hours for your cross-examination?

4 MS. JIMENEZ: I'm trying to get answers to my
5 questions, yes.

6 THE COURT: All right. Let's continue until 12:15 and
7 then we'll take our one-hour recess for lunch.

8 MS. JIMENEZ: All right. 58-13, please.

9 BY MS. JIMENEZ:

10 Q. All right. This is the management agreement that was
11 submitted, along with the MattressOne lease, to show HM Four
12 had business operations, correct?

13 A. That was -- yes, I guess. It was submitted. That's what I
14 recall.

15 Q. Right. And it lists -- the first page lists HM Four as an
16 owner and HM Eight as a manager. Do you see that?

17 A. I see that.

18 MS. JIMENEZ: If we can go to the signature page, the
19 last page.

20 BY MS. JIMENEZ:

21 Q. Now we've got HM Eight as the owner and HM Four as the
22 manager. Is that a mistake?

23 A. It looks like a mistake. I mean, it looks like a mistake
24 to me.

25 Q. HM Four was the owner and HM Eight would have been the

1 manager, correct?

2 A. That's what it looks like -- well, yes.

3 Q. So HM Eight had management responsibilities for this
4 company HM Four, right?

5 A. I'm sorry. Say that again.

6 Q. HM Eight. HM Eight had manager responsibilities for HM
7 Four?

8 A. No. That's not -- this document is based upon the REA of
9 the common area of the property. It's a recorded document in
10 Orange County. This -- HM Eight was the original owner of the
11 property, and then it sold it to HM-UP Development, and then HM
12 Four LLC became the 99 percent owner. And then, therefore -- I
13 don't know when this happened, but that's when HM Four became
14 legally responsible -- HM-UP assigned to HM Four to run the
15 common area of the maintenance because they became the 99
16 percent owner of the property.

17 Q. Okay. So you agree with me that this document -- this
18 signature block has the companies reversed. HM Four is the
19 owner. HM Eight is the manager, right?

20 A. Without reading the whole document, first blush, looking at
21 the front page, that's what it looks like. Someone messed up
22 their -- supposed to be the reverse order.

23 Q. All right. So the other document you provided to show HM
24 Four had business operations was that Mattress1One lease,
25 right?

1 A. That's correct.

2 Q. All right. So the lease, the original lease that was
3 signed 2012 for five years, you testified that there was no --
4 there was actually no lease extension, right?

5 A. There was not -- to the best of my knowledge -- there was
6 no lease extension, from my knowledge.

7 Q. So then in 2017, 2018, Mattress1One continued to remain at
8 that location without a lease?

9 A. I don't know. I can't tell you. I don't know what the
10 lease term is. I don't know what you're basing that off of,
11 when the lease expired. I'm not sure exact -- the date that
12 this expired.

13 Q. Five-year lease with no extension, a lease that started
14 roughly 2012, or shortly thereafter, when they occupied the
15 premises, right?

16 A. I don't know when the construction -- I didn't sign the
17 lease. The guy who was running my company at the time signed
18 it, again, as the owner. He signed the lease with them. I
19 don't know when they finished the building, building out the
20 space. But once rent came in that's when it starts.

21 Q. So after five years there was not a lease and they were
22 just there paying rent without a lease, right? Because you're
23 saying the extension did not kick in.

24 A. Correct. That's my understanding, that it was a -- they
25 were basically a holdover while we negotiated a relocation to

1 the outparcel building at the property.

2 Q. From about 2017, 2018?

3 A. I believe that's the right dates.

4 Q. So then, in May of 2020, in the height of COVID, you
5 decided you're going to kick them out, right?

6 A. First of all, that's the way you described that. That's
7 not what I was thinking, but -- it wasn't really on my radar
8 screen. But in 2019 someone said they were having financial
9 troubles. They stopped paying rent for a long time -- not
10 stopped paying. They were paying here or there.

11 So what happened was FedEx came, and FedEx was down
12 the street. And they were going to relocate, so I wanted to
13 get them out prior to COVID. And I wanted them just to leave,
14 and they would not leave. Now, this is prior to COVID. And
15 they weren't paying rent, and I said: "Jeff, you're up there.
16 Please deal with this and just get them out of here," and
17 that's what I was trying to do. Then they said they didn't
18 want to leave. That's what occurred. So --

19 Q. And Mr. Vasilas was dealing with a representative of
20 Mattress1One, right, not Mr. Maged Salem who was not at that
21 location, right?

22 A. I have no idea who he was dealing with. I think he was
23 dealing with the store manager and he was dealing with also --
24 he was in the corporate -- he used to -- this is what he told
25 me. He was at the corporate office all the time trying to

1 collect rent from them.

2 Q. And then Mr. Vasilas negotiated something -- in May of
3 2020, negotiated some sort of lease or lease terms with
4 Mattress1One; is that right?

5 A. Sometime May 2020, correct.

6 (Pause in proceedings.)

7 BY MS. JIMENEZ:

8 Q. All right. And then you renegotiate a lease or lease terms
9 in 2020 with Mattress1One, or Pacific MS doing business as
10 Mattress1One, right -- Pacific MS Management doing business as
11 Mattress1One?

12 A. That ended up being the tenant in May. That wasn't the
13 tenant before. The tenant was SOS Furniture prior to that.

14 Q. Right. But it was still doing business as Mattress1One,
15 correct?

16 A. I guess. I assume they were doing business as
17 Mattress1One. I didn't -- the Mattress1One was on the
18 building.

19 Q. And that lease -- the lease payments continued to be made
20 to HM-UP Development Alafaya Trails all the way to the end,
21 correct?

22 A. Which lease payments are you talking about? Are you
23 talking the new lease or the old lease?

24 Q. Mattress1One -- old lease and new lease -- old lease and
25 new lease terms.

1 A. Yeah. The old lease and new lease, I believe they paid
2 it -- I believe I saw the checks were made to HM-UP Development
3 from Pacific Management. The new lease's tenant Pacific
4 Management started paying HM-UP or something.

5 Q. So this lease that you provided to the SBA that shows HM
6 Four -- nobody told Mattress1One that it was HM Four starting
7 sometime in 2020?

8 MR. ETRA: Objection, Your Honor. You can ask about
9 what he knows.

10 THE COURT: Overruled.

11 THE WITNESS: The lease negotiation was not -- Jeff
12 was handling the lease negotiation with them. However, he did
13 contact me regarding this new lease, that he wanted to do a
14 very short-term, six-month lease -- or they wanted to do it.

15 So they signed a lease under HM Four. So they say
16 they didn't know about it. I just don't understand. Of course
17 they know about it. And the reason why HM Four was there is
18 because of them, not because of us.

19 THE COURT: Would this be a good time for us to take
20 our lunch recess?

21 MS. JIMENEZ: Sure, Your Honor.

22 THE COURT: All right. Ladies and Gentlemen, we're
23 going to take a one-hour recess for lunch. I'll see you back
24 here at 1:15.

25 COURT SECURITY OFFICER: All rise.

1 (Jury not present, 12:16 p.m.)

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

3 Ms. Jimenez, I'm at a loss as to why you need an
4 additional two hours when you represented to the Court this
5 morning that you would be done by the noon hour. You have had
6 over seven hours of cross-examination.

7 MS. JIMENEZ: Your Honor, the witness testified on
8 direct for a day and a half. And from the Government's view,
9 he testified -- he lied, and lied, and lied repeatedly to this
10 jury over the course of a day and a half. I am entitled to
11 cross-examine him about all of the lies he has told this jury.

12 THE COURT: I'm not saying that the Government is not
13 entitled to a cross-examination. You've had seven hours of
14 that. But some of your questions are in the form of a
15 discovery deposition as opposed to cross-examination.

16 So I'm asking you realistically, because, quite
17 frankly, yesterday there was a representation that we would be
18 done with the testimony today. Today. I now have shuffled
19 cases where I have a full calendar on Thursday and a full
20 calendar on Friday. This jury needs time to deliberate. And
21 the time that was devoted was for them to deliberate on
22 Wednesday, Thursday, and Friday. So I'm asking you,
23 Ms. Jimenez: How much more time do you need?

24 And perhaps during this lunch recess you should take
25 some time with your colleagues and figure out what questions

1 you need to ask in a very short way, so that you can get the
2 answers that you need, so that we can get this witness off the
3 stand and move to the other witnesses that need to come into
4 this courtroom.

5 MS. JIMENEZ: Fair enough, Your Honor. I would also
6 ask that the witness be directed to answer the questions and
7 not just ramble on about other issues.

8 THE COURT: The witness is answering the questions,
9 Ms. Jimenez. Your questions are so compounded that it's very
10 difficult for this Court to continue to say: "The question
11 calls for a yes-or-no response" when your question has many
12 subparts.

13 MS. JIMENEZ: Fair enough, Your Honor.

14 THE COURT: All right. We'll take a lunch recess.
15 I'll see you back here at 1:15.

16 MR. ETRA: Briefly, scheduling-wise, we have
17 Mr. Kallman here. He's from New York. He came in for the
18 weekend and Monday and Tuesday. He's getting here around -- I
19 don't know -- this afternoon. In light of where this is going,
20 I'm concerned that we'll finish today without being able to get
21 Mr. Kallman on and off the stand, and I'm asking if we can take
22 him out of turn to make sure we can get him on and off and out
23 of here.

24 MS. WEINTRAUB: He has a flight tonight.

25 THE COURT: How much time for this witness is needed

1 for his testimony?

2 MR. ETRA: The direct is 40 minutes, maybe an hour --
3 maybe an hour at most.

4 MS. WEINTRAUB: He's a partner. He's a partner,
5 Judge.

6 MR. ETRA: Closer to 40 minutes.

7 MS. WEINTRAUB: But you know, we brought him here
8 because we wanted to be ready to go. There's no prejudice in
9 taking him out of turn.

10 THE COURT: There's certainly no prejudice, but we're
11 in the middle of the cross-examination of the Defendant.
12 Perhaps Ms. Jimenez can look at the questions that she needs to
13 ask during the lunch hour, so that we can get this witness on
14 and off so we can get to the other witnesses.

15 Quite frankly, I'm not going to, at this point during
16 a cross-examination, allow a witness to come out of turn. I
17 think if we get to the point where it's perhaps more than 30
18 minutes into it, then I think, Ms. Jimenez, in fairness to
19 those witnesses who have traveled out of town, then perhaps
20 we'll have to reconsider because we only have until five
21 o'clock today.

22 So let me ask the parties to confer and realistically
23 find out how much time is needed for these witnesses, which
24 would include the direct, cross, and the redirect, so we can
25 accommodate these witnesses and get Mr. Sheppard off the stand.

1 All right. Can we do that during the lunch hour?

2 MR. ETRA: Yes, Your Honor.

3 THE COURT: Ms. Jimenez?

4 MS. JIMENEZ: Yes, Your Honor.

5 THE COURT: All right. I'll see you back here at
6 1:15.

7 (Recess from 12:20 p.m. to 1:16 p.m.)

8 (Call to order of the Court, 1:17 p.m.)

9 THE COURT: All right. Welcome back. I hope everyone
10 had a nice lunch.

11 Both sides ready to proceed?

12 MS. JIMENEZ: Yes, Your Honor.

13 MR. ETRA: Your Honor, I just have to get --

14 THE COURT: Let's make sure we have all our jurors
15 before we bring them in.

16 Thanks.

17 (Pause in proceedings.)

18 THE COURT: Okay. Both sides ready to continue?

19 MS. JIMENEZ: Yes, Your Honor.

20 MR. ETRA: Yes, Your Honor.

21 COURT SECURITY OFFICER: All rise for the jury.

22 (Before the Jury, 1:17 p.m.)

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

25 Please be seated, everyone.

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

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

4 BY MS. JIMENEZ:

5 Q. All right. Mr. Sheppard -- all right. The Mattress1One
6 lease -- one moment.

7 (Pause in proceedings.)

8 BY MS. JIMENEZ:

9 Q. Okay. Mr. Sheppard, you -- in May of 2020 you were
10 communicating with Mr. Vasilas, who was in Orlando, right?

11 A. Correct.

12 Q. And you wanted him to negotiate new lease terms with
13 Mattress1One, right?

14 A. Partially correct.

15 Q. And you're aware that in connection with this case we've
16 provided you the communications between you and Mr. Vasilas
17 that were removed from his phone?

18 MS. WEINTRAUB: Objection, Your Honor. Those are the
19 9,000 pages that we got. He doesn't have them and we have not
20 read them.

21 THE COURT: All right.

22 MS. WEINTRAUB: And we just got them.

23 THE COURT: Whether he's aware. Overruled.

24 BY MS. JIMENEZ:

25 Q. Yes, you're aware?

1 A. I'm aware. Yes. We received pages on Thursday or Friday
2 of this last week.

3 Q. And they were communications -- email and text
4 communications between you and Mr. Vasilas, right?

5 A. I have no idea what they consisted of. I know it's
6 something about his phone. That's all I know.

7 Q. And there were -- we provided you the communications we
8 were able to obtain between Mr. Vasilas and Ms. Jeanette
9 Gonzalez, too, right?

10 A. That's what I've been told.

11 Q. Now, on May 17, 2020, you asked Mr. Vasilas to send you the
12 name of the new tenant for Mattress1One, right?

13 A. (No verbal response.)

14 Q. You communicated -- well, yes?

15 A. I don't know what specific date you're talking about. But
16 there was a point where he asked me -- he told me they wanted
17 to change the tenant's name from SOS Furniture to Pacific
18 something, Pacific Management or something like that.

19 Q. Right. And he provided you Pacific MS Management, same
20 address, new lease name, right?

21 A. Yeah. For the new lease, that they wanted to change the
22 name of their company to -- from SOS Furniture, they wanted to
23 change it to Pacific Management.

24 Q. Then the next day, on May 18, 2020, you at
25 eric.sheppard10@gmail.com emailed Mr. Vasilas's email, right,

1 at solutionz100@yahoo.com?

2 A. Yes. I emailed him. He was going to Orlando, so I emailed
3 him -- I think he wanted a lease. And so I emailed him the
4 form lease that Mattress1One originally had -- not originally.
5 Their form lease. So I emailed it to him.

6 MS. JIMENEZ: Could we show the witness Government's
7 Exhibit 80-1.

8 BY MS. JIMENEZ:

9 Q. Can you see this?

10 A. I can't see anything. Oh, yeah. Now I can see it.

11 Q. Okay. So May 18, 2020, from your email address to Jeff
12 Vasilas's email address. Do you see that?

13 A. Correct.

14 Q. This is an email you sent to him, correct?

15 A. Correct.

16 MR. ETRA: I object, Your Honor. It's not a business
17 record. It's not something he's ever seen, and there's no
18 authentication. I mean, we don't know what this is and there's
19 no -- and he's --

20 THE COURT: This is just being shown to the witness,
21 correct?

22 MR. ETRA: Yes.

23 MS. JIMENEZ: Right.

24 THE COURT: Overruled. Let's continue.

25

1 MS. JIMENEZ: Yes. So it's an email from him --

2 BY MS. JIMENEZ:

3 Q. -- to Mr. Vasilas, correct?

4 A. Yes.

5 Q. So -- and in this email you have an attachment. It says:
6 "Attachment." Yes?

7 A. There's an attachment. Yes.

8 Q. And there's an attachment name; isn't that right?

9 A. So -- yes.

10 Q. And it relates to the lease, the Pacific Mattress1One
11 lease, yes?

12 A. Correct.

13 MR. ETRA: Objection.

14 MS. JIMENEZ: I'd like to move Government's
15 Exhibit 80-1 into evidence.

16 MR. ETRA: Objection. We don't know what it is --

17 THE COURT: Overruled. The witness has identified the
18 exhibit. Is there any further objection?

19 MR. ETRA: Respectfully, I don't think he's identified
20 the exhibit. He just answered the questions put to him.

21 THE COURT: Identifying the exhibit. The objection is
22 overruled. What's the number?

23 MS. JIMENEZ: 80-1.

24 THE COURT: Will be admitted into evidence. You may
25 publish.

1 (Government's Exhibit 80-1 received into evidence.)

2 BY MS. JIMENEZ:

3 Q. All right. So May 18th, 2020 --

4 MS. WEINTRAUB: Judge, can we find out where this
5 document -- it's an extraction. It's done by an expert. Where
6 did this come from? Who did this?

7 THE COURT: Once again, you'll have an -- first of
8 all, this was provided to the Defense. The Court --

9 MS. WEINTRAUB: No, it was not, Your Honor.

10 THE COURT: This is part of the exhibits, correct,
11 that were part of the forensic examination?

12 MS. WEINTRAUB: No, Your Honor.

13 MS. JIMENEZ: Yes.

14 THE COURT: The objection is overruled. Let's
15 continue.

16 BY MS. JIMENEZ:

17 Q. And so from you, Eric Sheppard, to Mr. Jeff Vasilas, you've
18 obtained the name of Mattress1One. And your attachment to him
19 is "Pacific MS-HM-UP lease." Do you see that?

20 A. I do.

21 Q. The file is empty, unfortunately. There's no attachment.

22 MS. WEINTRAUB: Objection.

23 BY MS. JIMENEZ:

24 Q. Here, do you see that there's no attachment?

25 THE COURT: Overruled.

1 THE WITNESS: I don't know if you're saying
2 computer-wise "empty file" -- that's what that means -- I don't
3 understand what that means. But if it's empty, it's empty. I
4 don't know what that means.

5 BY MS. JIMENEZ:

6 Q. But on that day you sent Mr. Vasilas a draft lease between
7 Pacific MS Mattress1One and HM-UP, right? HM-UP is HM-UP
8 Development Alafaya Trails, correct?

9 A. This lease that was sent was the form -- the national
10 tenant Mattress1One has a form lease. So I sent the form lease
11 that Mattress1One provided to me for -- when we were
12 negotiating the outparcels I mentioned before. So the form
13 lease that Mattress1One had -- it's their lease. It's not my
14 lease because national tenants have their own lease. I sent
15 their lease that they had to him on his way to his meeting with
16 the owners of Mattress1One in Orlando so they would have the
17 lease in front of them for his meeting with Mattress1One for
18 the new lease. Correct.

19 Q. All right. So you agree that HM-UP is HM-UP Development
20 Alafaya Trails. Yes?

21 A. I agree HM-UP is HM-UP Alafaya Trails, yes.

22 Q. And you agree that HM-UP is not HM Four, correct?

23 A. (No verbal response.)

24 Q. Yes?

25 A. Yes. It's not HM Four.

1 Q. An email from you to Mr. Vasilas is something you could
2 have and you could show this jury, correct -- that email?

3 A. That particular email?

4 Q. That particular email with that particular attachment.

5 MR. ETRA: Objection, Your Honor.

6 MS. JIMENEZ: Correct?

7 MR. ETRA: Fifth Amendment.

8 THE COURT: The objection is sustained.

9 BY MS. JIMENEZ:

10 Q. Now, Exhibit --

11 MS. JIMENEZ: If we can go to the --

12 BY MS. JIMENEZ:

13 Q. So at some point around that time a lease was renewed or
14 new lease terms were agreed upon, correct?

15 A. Correct. Well, specifically on the 22nd of May it was
16 agreed upon. On the 22nd of May is my recollection of the
17 actual date.

18 Q. And Mr. Vasilas was in Orlando, correct?

19 A. He was in their offices on that day.

20 Q. And he got someone to sign the lease, correct?

21 A. I don't know what he did. But he notified that it was
22 executed, and the modified terms were -- of payment were
23 delivered on that date, the 22nd.

24 Q. Now, that was executed in Orlando, correct?

25 A. That's correct. I guess it was executed. He's the one who

1 had the lease. I can't tell you where he -- I assume it was in
2 the office of their company. That's what he told me. That's
3 what he showed me.

4 MS. JIMENEZ: Could we show 58-1, please.

5 Oh. I'm sorry. Could we do the table. I'm sorry.

6 BY MS. JIMENEZ:

7 Q. 58-1. This is the lease that was submitted with the HM
8 Four application by Jennifer/you, right?

9 A. This was submitted by me and on behalf of HM Four.

10 Q. All right.

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

12 BY MS. JIMENEZ:

13 Q. Now, it's got Jennifer Sheppard as a witness and
14 Mr. Vasilas as a witness, right?

15 A. That's what it shows.

16 Q. Now, Ms. Sheppard -- Jennifer Sheppard was not a witness to
17 anything, correct?

18 A. I don't know how to answer that question. Was she a
19 witness to anything?

20 Q. She was not a witness to anything relating to this lease,
21 correct?

22 A. I have no idea if she was. I have no idea if she was or
23 not. Her name's up there.

24 Q. And your name is on here as well, correct?

25 A. That's correct.

1 Q. You signed this lease?

2 A. I don't recollect signing the lease, but there's my name on
3 there.

4 Q. And Mr. Maged Salem would have signed this lease with his
5 name misspelled, correct?

6 A. I wasn't there. I can't tell you what he would sign or
7 wouldn't sign. I didn't prepare -- from the 18th to the 20th,
8 when this was signed, I wasn't there. I couldn't tell you
9 what -- one's on the 18th and one's on the 20th so on two
10 separate dates. The signatures of the landlords is on the 18th
11 and the tenant is on the 20th because there was a lot of
12 negotiation going back and forth when they changed the name of
13 their company.

14 Q. All right. And then also submitted with the HM Four
15 application --

16 MS. JIMENEZ: You can take this down --

17 BY MS. JIMENEZ:

18 Q. -- was the letter from the SunTrust Bank banker,
19 Mr. Heimdal Barrios, correct?

20 A. Correct.

21 Q. That letter was dated November 11th, 2020, correct?

22 A. I don't -- it's not in front of me, but I don't know what
23 date it was dated.

24 Q. That -- the -- did you go to the -- you went to the bank
25 and you got the letter from him the day he prepared it?

1 A. I believe it was on the 12th that -- I believe it was on
2 the 12th. It was supposed to be on a Friday, but the bank was
3 closed because of COVID. They would close off and on all the
4 time. And then I believe it was on the 12th of November that I
5 went and got the letter, not the 11th.

6 Q. All right. But the -- the letter was prepared on the 11th,
7 right?

8 A. I have no idea when he prepared it.

9 MS. JIMENEZ: 58-3, Arianna.

10 BY MS. JIMENEZ:

11 Q. The letter is dated November 11th, 2020. So you spoke to
12 Mr. Barrios on that day?

13 A. I don't know when I spoke to Mr. -- Mr. Barrios in 2020. I
14 don't know.

15 Q. But he prepared a letter on November 11, and he signed this
16 letter on November 11, correct?

17 A. I can't tell you when he signed the letter because I wasn't
18 physically sitting next to him when he signed it. I picked it
19 up on the 12th. Again, the bank was open, closed, open,
20 closed, because of COVID. So I recall on the 12th -- I never
21 looked at the date -- I just picked up the letter at his bank,
22 correct.

23 Q. You picked up the letter on the 12th, the letter that would
24 have been this letter, the signed letter, right?

25 A. Correct.

1 Q. That he prepared the previous day, right?

2 A. I don't know when he prepared it. I asked him for it on
3 Thursday or Friday of the week before. Friday the bank was
4 closed, he said, because of COVID. Somebody had COVID, so they
5 said they'll reopen the following week and come in then. I
6 spoke to him quite often, so...

7 Q. You weren't aware that the previous day was the federal
8 holiday, right?

9 A. What do you mean: "The previous day"?

10 Q. That November 11th, the day before you were at the bank,
11 was the holiday, the day that he dated the letter, right?

12 A. I couldn't tell you what holiday -- what day a holiday was
13 in 2020. I have no idea what the holiday was.

14 Q. So then the letter was submitted to the SBA to satisfy
15 their request for bank verification, right -- bank account
16 verification?

17 A. Well, it was submitted, but it didn't -- it got -- the SBA
18 didn't want that. They wanted the actual bank account. They
19 didn't accept this letter. They just wanted the actual bank
20 statement and a bank account. So they discarded the letter and
21 said: "We need a bank statement to verify that there's an
22 actual account. This doesn't do it for us." So I had to go
23 back and get the account information.

24 Q. All right. And -- all right. So on November 17, Exhibit
25 58-4, you, as Jennifer Sheppard, wrote an email to the SBA

1 providing a partial bank statement, right?

2 A. I don't know what I wrote.

3 Q. Well, let me come back to this.

4 A. November 17th, I see it -- 2020, I see it -- that I -- that
5 I apologize for the misunderstanding. I thought he wanted a
6 bank account. So I sent the letter. That wasn't sufficient,
7 so I was apologizing for sending the letter. Because normally
8 in my business you send a reference letter from a bank.
9 Whenever you have a construction loan, you send a reference
10 letter. They didn't want that. So I'm apologizing.

11 Q. Right. You thought the banker's letter would suffice,
12 correct?

13 A. Normally -- I mean, that's normal standard operating
14 procedure. You get a bank letter.

15 MS. JIMENEZ: Can we show Exhibit 58-5.

16 BY MS. JIMENEZ:

17 Q. So this is the statement that you provided to the bank to
18 satisfy their request about the bank account, right?

19 A. I mean -- yes. It looks like it.

20 Q. And you made an initial deposit November 12 of \$80, right?

21 A. (No verbal response.)

22 Q. An otherwise empty account, right?

23 A. I don't know what you're saying. I made a deposit of \$80,
24 you said?

25 Q. Yes.

1 A. That's what it says. There's \$80, yeah. It's a new
2 account.

3 Q. And then, before requesting the bank statement, you
4 deposited, on November 16, another \$60,000 that came from the
5 HM-UP Development Alafaya Trails account, correct?

6 A. I'm not sure where it came from. But there's a deposit of
7 \$60,000, correct.

8 Q. And then right after you made that deposit of 60,000, and
9 you obtained this statement to provide to the SBA, you withdrew
10 \$50,000 back out of the HM Four account, correct?

11 A. Yes. To pay something, I had to move it, yes, correct.

12 Q. So -- and the money that came in here was from the HM-UP
13 Development Alafaya Trails?

14 A. Yes. Because -- correct. HM-UP -- hold on a second.

15 Yeah. Because this is HM Four. So HM Four owns --
16 actually, that's why it would be HM-UP. I'm assuming it's
17 HM-UP because HM Four is the owner of HM-UP.

18 Q. All right.

19 MS. JIMENEZ: Now can we go to 58-4.

20 Can you expand the paragraph so it's not so hard to
21 read.

22 BY MS. JIMENEZ:

23 Q. So you, as Jennifer Sheppard, told the SBA, in the middle
24 of the paragraph: "This account" -- "this account is used for
25 ACH or wires to fund either the payroll account and vendor

1 account for the work that is ongoing," right? Do you see that?

2 A. I see it.

3 Q. This is an account that was just opened, Mr. Sheppard,
4 correct?

5 A. It's an account that's just opened, correct.

6 Q. And an account from which you withdrew the very same day
7 50,000 of the 60,000 you had deposited, correct?

8 A. Looking at it here, it's looking like this is a stupid
9 statement, because I think I clearly confused HM-UP -- it's the
10 same -- HM-UP and HM Four. So I think I miswrote that. It
11 looks kind of silly when it's written this way. But HM Four is
12 a 99 percent owner of HM-UP, so I think I just might have -- I
13 don't know what I was thinking. But it just appears to be that
14 I confused HM-UP with HM Four. That's what it looks like,
15 because HM-UP is what was paying these things. HM Four was
16 just being opened for the new account, as per their request.

17 Q. This loan was funded, correct?

18 A. This loan?

19 Q. Yes.

20 A. Correct.

21 Q. All right. Then, in January 2021, you returned to applying
22 for PPP loans on behalf of your businesses, correct?

23 A. My businesses applied for it. I personally didn't return
24 to do that, but my businesses did.

25 Q. That was done by Jeanette Gonzalez and Jeff Vasilas on your

1 behalf?

2 A. The loan was done by Jeff Vasilas. And the -- they worked
3 as far as gathering the information for the loan forgiveness
4 and for the -- for the new -- I don't know what they call it --
5 increase or second round or whatever you want to call it.

6 Q. What did they tell you they were doing?

7 A. Not they. I think Jeff was telling me he was -- he was --
8 he would take over and do the PPP. He had experience with it
9 and he understood it. But Jeanette was giving him the
10 information from what she had, and he was taking his
11 information with the workers that he had, and they were kind of
12 putting it together, is my understanding. And so that was my
13 involvement because that's the time I was sick. So that's -- I
14 was kind of out of trying to do things at that particular
15 moment in time.

16 Q. And Mr. Sheppard, you're looking well. So congratulations.
17 It looks like you've recovered fully. Yes?

18 MR. ETRA: Your Honor --

19 THE WITNESS: Not really. Not really.

20 MR. ETRA: -- not relevant.

21 THE COURT: The objection is sustained.

22 BY MS. JIMENEZ:

23 Q. There was a PPP loan, second loan application, submitted to
24 PayPal January 19th, 2021, correct?

25 A. I'm sorry. Say that again.

1 Q. January 19th, 2021, there was a second PayPal application
2 submitted for HM-UP Development Alafaya Trails, correct?

3 A. I'm not sure exactly what date the second round was
4 submitted -- the date.

5 MS. JIMENEZ: Could we show 19-3, please.

6 Go to the next page.

7 19-2. I'm sorry.

8 BY MS. JIMENEZ:

9 Q. This was the PayPal application second round --

10 MS. JIMENEZ: Go to the next page, so we can provide
11 the date.

12 Keep going, please. January -- here.

13 BY MS. JIMENEZ:

14 Q. See that: "Application Submitted Date"?

15 A. I see it.

16 Q. And that was done out of your house, Mr. Sheppard.

17 A. Okay.

18 Q. But it wasn't done by you, right?

19 A. It was not.

20 Q. And that same day there was an application to HM
21 Management -- I'm sorry -- for HM Management to a different
22 bank, to Cross River Bank, correct?

23 A. That's correct.

24 Q. And you know from this case that the documents submitted to
25 PayPal and to Cross River Bank contained a number of false tax

1 documents, yes?

2 A. I'm not -- to which bank you said, Cross River Bank?

3 Q. Yes.

4 A. I don't know what was submitted on January 19th, 2021. I
5 did see a lot of documents that I was -- we've talked about.
6 So I don't know what specifically was submitted on this
7 particular date, but I did see some Cross River Bank stuff to
8 the case. That's kind of strange.

9 Q. And you know from Cross River Bank that you had to log into
10 the portal, and answer the questions, and upload all the
11 documents together because everything had to be submitted
12 together all at once. Yes?

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

14 MS. JIMENEZ: Can we show 21-2, please.

15 BY MS. JIMENEZ:

16 Q. This is a January 19th, 2021 --

17 MS. JIMENEZ: If we can go down.

18 BY MS. JIMENEZ:

19 Q. This is HM Management to Cross River Bank. Do you see
20 that?

21 A. Correct.

22 Q. That's the same day, right?

23 A. Yes.

24 Q. Somebody decided that they were not going to apply to
25 PayPal for both, right?

1 A. Well --

2 MR. ETRA: I don't -- personal knowledge.

3 THE COURT: If the witness knows. Overruled.

4 THE WITNESS: I know that they were splitting up the
5 HM-UP and the HM Management, is what he explained to me that's
6 the requirement. And I had no problem with it, and that's how
7 it was supposed to be filed. It was supposed to be split. It
8 can't be the same application.

9 BY MS. JIMENEZ:

10 Q. All right. Now, on February 11 there were those -- with
11 respect to -- going back to the PayPal loan application from
12 January 2021 for HM-UP Development Alafaya Trails, you know
13 that on February 11, 2021, there were these Forms 941 provided
14 to PayPal, right?

15 A. I don't know what was provided to PayPal, and -- on
16 February 11th, 2021, I don't know what was actually provided to
17 them.

18 Q. And your attorneys put in this exhibit on your behalf from
19 February 11, 2021 --

20 MS. JIMENEZ: I'm sorry. One moment, please.

21 (Pause in proceedings.)

22 MS. JIMENEZ: All right. If we can go to the ELMO,
23 please.

24 BY MS. JIMENEZ:

25 Q. This is a part of your P-1 Defense Exhibit,

1 February 11th, 2021. That's your email address, correct?

2 A. Correct.

3 Q. And you told PayPal: "I received the 941s from 2020 from
4 our accounting department and submitted them to the portal,"
5 right? That's what you wrote.

6 A. Well, I didn't write that. But that's what I see here,
7 correct.

8 Q. Somebody else wrote that for you?

9 A. Again, I didn't handle this specific -- these second round
10 loans, as I testified earlier multiple times. I didn't handle
11 this. Jeff handled it. I was involved when he asked me
12 questions, and that's my involvement with it.

13 Q. And on this document PayPal is telling you what they want:
14 "Please provide Forms 941," and then the business tax return,
15 which in your case would be a 1065, right?

16 A. The tax return is a 1065, yes.

17 Q. And the Forms 941, which is Taxable Medicare Wages and
18 Payroll, right?

19 A. That's what it says, yes.

20 Q. And then the false 941s that we've seen were submitted on
21 that day to PayPal, correct?

22 A. I don't know when they were submitted because I didn't
23 submit them. So I don't know when they were submitted, but I
24 did see those -- what you're talking about, those 940s or 41s,
25 whichever they are.

1 Q. All right.

2 MS. JIMENEZ: Could we show 19-7.

3 (Pause in proceedings.)

4 MS. JIMENEZ: I'm sorry. It's 19-8.

5 Okay. Can we go down to the last one. It's quarter
6 one.

7 BY MS. JIMENEZ:

8 Q. Some of these were submitted -- some of these were
9 submitted with handwriting, not typed, correct?

10 A. I mean, that's what I've been shown.

11 Q. And --

12 MS. JIMENEZ: Go to the quarter one, the last one.

13 BY MS. JIMENEZ:

14 Q. Okay. Starting with quarter one here. Just show you this.
15 So a couple of them -- several of them were submitted with
16 handwriting. They were hand filled in. They were not typed.
17 Do you see that?

18 A. I do see that, yes.

19 Q. And this is your handwriting, Mr. Sheppard, correct?

20 A. Does not look like my handwriting.

21 MS. JIMENEZ: Go to the next page.

22 BY MS. JIMENEZ:

23 Q. That is your handwriting, Mr. Sheppard, yes?

24 A. That doesn't look like -- I mean, my name's not even
25 spelled correctly, but that's a little strange.

1 Q. Is that your handwriting?

2 A. Doesn't look like my handwriting, I mean, from what I'm
3 looking at right this second.

4 Q. It does not look like your handwriting?

5 MS. WEINTRAUB: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: What part of the screen are you talking
8 about because --

9 BY MS. JIMENEZ:

10 Q. All of it.

11 A. All of it?

12 Q. Yes.

13 A. No. You can take Part 5, which is the signature, and my
14 name is not spelled like that. So it's a wrong spelling.
15 Again, my handwriting is -- you know, it's not that far off,
16 but it's not this.

17 Q. Mr. Sheppard -- is it your handwriting on this page,
18 including your signature, Mr. Sheppard?

19 A. It's not.

20 MR. ETRA: Objection, Your Honor. Asked and answered.
21 Argumentative.

22 THE COURT: Overruled.

23 THE WITNESS: It's not my handwriting, what I'm
24 looking at. This document doesn't look like my handwriting.

25

1 BY MS. JIMENEZ:

2 Q. And then part of Exhibit P-1 you --

3 MS. JIMENEZ: I'm sorry. If we can come back to the
4 ELMO.

5 BY MS. JIMENEZ:

6 Q. You provide -- your exhibit was that you provided HM Four
7 tax returns, the parent, not the partner. It asked for tax
8 returns of both partners. Do you see that?

9 A. I see that, yes.

10 Q. And then you provide the parent or owner, which is HM Four.
11 Do you see that? That's your exhibit.

12 A. I'm sorry. Can you repeat that? You're confusing me.
13 Which tax return are you talking about? It says: "HM Four and
14 HM Eight tax returns." Is that what you asked me?

15 Q. Yes. You provided those?

16 A. I didn't provide them. But yes, that's what it says, HM
17 Four and HM Eight, correct.

18 Q. And then you wrote to PayPal another email from your email
19 account --

20 MS. JIMENEZ: If we could just show the witness this.
21 It's not in evidence.

22 BY MS. JIMENEZ:

23 Q. February 22nd you followed up with them.

24 Eric.sheppard10@gmail.com, that's your email, correct?

25 A. That's one of my emails, correct.

1 Q. It's your main email, yes?

2 A. It depends what it's for. But it's a default email. It's
3 a main email. It's a default email. So when you say:

4 "Email," there's multiple emails, so I'm not sure which one.

5 But that, I use, eric.sheppard10@gmail.com, that's correct.

6 Q. And to the same individual you've been communicating with
7 at PayPal, Satpall Gill?

8 A. I don't know who Satpall Gill is. So when you say:

9 "Communicate with him," I see it on my email, but I don't know
10 Satpall Gill. I refused to deal with PayPal from the first
11 experience. So I don't know who Satpall Gill is.

12 Q. So this email was to follow up on the information -- the
13 information you had been providing, correct?

14 A. This email states that this is a follow-up of the -- the
15 one you showed me before on the 16th, the tax returns, to see
16 if they received the tax returns on the 16th or 17th, whatever
17 date that was, is what it says.

18 Q. All right. It's sent from your email account, correct?

19 A. It is.

20 MS. JIMENEZ: I'd like to move this document.

21 THE COURT: What's the number?

22 MS. JIMENEZ: Eighty-two.

23 MR. ETRA: Your Honor, we object. There's no
24 foundation of business records.

25 MS. JIMENEZ: It's the Defendant's communication.

1 THE COURT: Is that the basis of the objection, no
2 foundation?

3 MR. ETRA: It hasn't been admitted. It came later
4 after the PayPal witness testified.

5 THE COURT: Overruled. Eighty-two admitted into
6 evidence. You may publish.

7 (Government's Exhibit 82 received into evidence.)

8 BY MS. JIMENEZ:

9 Q. So on this day, from your email account,
10 February 22nd, 2021, following up: "I was just following up to
11 make sure you received my email with the other 1065s you
12 requested."

13 So the person who's writing this email for you,
14 Mr. Sheppard, is aware that there were tax returns submitted,
15 and then the other tax returns that you provided for HM Four
16 and HM Eight, correct?

17 A. I don't understand your question. Other -- other -- you
18 say HM -- I don't know what you're -- other 1065 this is
19 referring to. I don't -- I don't know if that's HM Four or HM
20 Eight that you're talking about or some other type of tax
21 returns.

22 Q. February 15th, previously, false 2019 tax return for HM-UP
23 Development Alafaya Trails made it into the PayPal account.
24 Are you aware of that?

25 A. I'm not aware of that at all.

1 Q. All right. But someone on your behalf -- who was writing
2 on your behalf, or from your email account unbeknownst to you,
3 is aware that there was a 1065 and that you provided -- or from
4 your account other 1065s were provided. Yes?

5 A. That's -- I mean, I reviewed it for this case, but that's
6 not what that shows. It doesn't show any -- it shows an
7 attachment of HM Four and HM Eight tax returns. It has
8 nothing. Those are the only two tax returns that are on the
9 email on the attachment. So I don't know why you say that --
10 I'm not sure what you're saying.

11 I mean, referring to the February 16th email, when I
12 reviewed this for my testimony, I looked through it and looked
13 at it, and it says: "HM Four and HM Eight." That's the only
14 tax returns -- and some other information. Those were the only
15 two tax returns that were submitted on the email.

16 Q. Right. So the person who is using your email account and
17 communicating with PayPal unbeknownst to you, is aware that
18 there was another 1065 tax return submitted to PayPal, and that
19 they refer to the other -- now the other 1065s you requested?

20 A. I just don't -- I'm not understanding when you say:
21 "Other." It always -- what I have read, it says the portal is
22 like full, and that's all I know. And then the tax returns are
23 in that email that you just showed me, and that's all I know
24 of. So when you say: "Other," I really don't know. I'm
25 sorry. I don't know what that would even mean.

1 Q. All right. And then you're aware that another false tax
2 return was submitted on February 26th, 2021, for tax year 2020,
3 correct, for HM-UP Development Alafaya Trails?

4 A. I'm aware in this case that I saw the tax return for 2020
5 as you described.

6 Q. Submitted February 26th?

7 A. I don't know what date it was submitted, but I did see
8 multiple tax returns that were just for 2020.

9 Q. And you were here when the PayPal witness indicated that
10 the 2020 tax return was submitted to them February 26th, 2021.
11 Yes?

12 A. That's what they said. I mean, I know they said it was
13 submitted. I just don't know what date.

14 Q. And then before February 26th, 2021, you were in Orlando,
15 or Lakeland, for your daughter's basketball tournament, state
16 championship, right?

17 A. Well, the semifinals.

18 Q. Semifinals. I thought she won the championship.

19 A. She did. But you have to play the semifinals. And then,
20 if you win that, you go to the finals. And they won that.

21 Q. They won the finals, right?

22 A. That's correct.

23 Q. So you showed -- you showed the jury a photograph from
24 February 24th, 2021. Was that the finals?

25 A. No, semifinals.

1 Q. So February 24, 2021, you took a picture of that event,
2 correct?

3 A. Yes.

4 Q. Then your daughter makes it to the finals?

5 A. Correct.

6 Q. Which is later?

7 A. Correct.

8 Q. But you don't have a picture to show this jury?

9 A. I don't have a picture of the finals. Okay. If you say
10 so. I don't know if that's correct. I have a lot of pictures
11 and videos, and I'm very proud of her. I took videos,
12 pictures.

13 Q. Was it after February 24th, 2021?

14 A. Yes. February 24th was the semifinals, and then the finals
15 was thereafter, and they beat -- I don't remember who they
16 beat. And she won her fourth state championship, and I'm very
17 proud of her and the team.

18 Q. That February 26th tax return submitted on your behalf,
19 that was -- you're telling this jury that wasn't done by you,
20 correct?

21 A. That was not done by me.

22 MS. JIMENEZ: Could we show 19-13.

23 BY MS. JIMENEZ:

24 Q. That's the tax return we're talking about, right?

25 A. If that's what you're implying to, that's the tax return

1 that I looked at. That is not my signature. And first of all,
2 it's 2020. That's impossible because my tax returns in 2020
3 aren't done until the end of the year. So that's impossible
4 for me to do a tax return. It doesn't make sense.

5 Q. Right. Now, you'll agree with me, Mr. Sheppard, that you
6 don't always sign the same way, correct?

7 A. I've never seen how I sign, but I'm sure it's not exactly
8 the same. So I've never really actually analyzed my signature.

9 Q. Right. It's not always the same, correct?

10 A. The same exact signature -- I'm sure it's a little
11 different sometimes. I've never analyzed it, though.

12 Q. Now, despite Mr. Vasilas's best efforts, this application
13 was denied, correct?

14 A. (No verbal response.)

15 Q. The PayPal application was denied, correct?

16 A. I believe -- I believe it was. Yes.

17 MS. JIMENEZ: 19-18. Can we show 19-18.

18 Sorry. 19-19.

19 Go to Page 4.

20 BY MS. JIMENEZ:

21 Q. March 6th --

22 MS. JIMENEZ: Can you go to the bottom email.

23 BY MS. JIMENEZ:

24 Q. March 6th, your application is denied. You must have seen
25 that, correct?

1 A. I must have -- I don't have access to the -- this
2 Salesforce thing. You mean a letter or something of that
3 nature? But this is like the -- I guess this is like their
4 internal system or something.

5 Q. Their portal, correct? They told you: "We don't do
6 business with this industry type," correct?

7 A. I didn't get anything on a portal. When I reviewed this, I
8 saw that it was denied because of a credit or something like
9 that, and they give you an opportunity to repair your credit.
10 So that's what I recall.

11 Q. You didn't see this line at all. You saw the other part of
12 the email?

13 A. I understand. I've seen this because I've reviewed it for
14 this case. I've gone through all these, the whole entire
15 chain. I've seen all these things and I read them all.

16 Q. And then, on your behalf, March 11, the same application
17 information was submitted to ACAP SME Northeast Bank. You're
18 aware of that, right?

19 A. I'm sorry. What date did you say?

20 Q. March 11, 2021.

21 A. I was not aware at the time it was submitted to whoever
22 this source -- Loan Source -- ACAP Loan Source. But I am now
23 aware of that, and so, yes, I'm aware of it.

24 Q. So -- and on March 11 --

25 MS. JIMENEZ: If we go to Document 20-11.

1 BY MS. JIMENEZ:

2 Q. -- the same tax return was submitted now to ACAP SME
3 Northeast Bank. And if you look at the business code, the
4 business code was changed. It was just handwritten in, right?

5 A. It is. I saw it.

6 Q. To reflect construction, right?

7 A. I don't know what it reflects. But I can see it's
8 handwritten, and I've saw it during this whole case. I've seen
9 that on the signature and the whole tax return. Looks like a
10 mess to me.

11 Q. Right. Now, you -- and you are aware obviously that this
12 document was false and it was forged, right?

13 A. Yes. I'm very well aware that someone forged my name and
14 according to Neal, his name, because it doesn't even look like
15 Neal's signature. So they both look off.

16 Q. Right.

17 MS. JIMENEZ: Going to Page 9 for a moment -- Page 9
18 of this document.

19 BY MS. JIMENEZ:

20 Q. The wages were entered falsely, right? And the gross rents
21 were entered falsely, right?

22 A. Well, the whole thing looks false. There's a whole bunch
23 of dots everywhere and the whole thing looks off to me.

24 Q. Right. Right.

25 MS. JIMENEZ: And could we show 20-9, please.

1 BY MS. JIMENEZ:

2 Q. Same quarter, 941, 2020 tax form. The 941, first quarter
3 that I showed you in the other exhibit, was handwritten. Now
4 it's typed. Do you see that?

5 A. Yeah.

6 Q. All right. So this application was successful, right?

7 A. Which one, this 941?

8 Q. The application submitted to ACAP SME. And you testified
9 that you DocuSigned this?

10 A. Yeah. I think on the 25th of March I received an email or
11 something to DocuSign it -- in the morning on the 25th of March
12 to DocuSign this thing.

13 MR. ETRA: I object to this on the screen while he's
14 talking about a different document.

15 THE WITNESS: Oh. I'm sorry.

16 THE COURT: It's noted.

17 MS. JIMENEZ: Okay. Let me show you Exhibit 20-12 and
18 20-14, please.

19 And 20-12, if you can go up to the signature.

20 Here. Stop.

21 And then 20-14.

22 Keep going.

23 All right. Here. So -- actually, keep going and it
24 will show the date that he referenced.

25 Keep going.

1 Okay. Here.

2 BY MS. JIMENEZ:

3 Q. So ACAP SME -- or actually, at this point, Northeast Bank
4 sent you the application to DocuSign on March 12th, which you
5 DocuSigned, correct?

6 A. I'm sorry. Which side am I looking at?

7 Q. Exhibit --

8 A. The left side?

9 Q. The left side. Yes.

10 A. It's just not marked with the exhibit on the thing, so --
11 okay. Left side?

12 Q. Yes. Exhibit --

13 MS. JIMENEZ: Just for the record, it's Exhibit 20-12.

14 BY MS. JIMENEZ:

15 Q. They first sent it to you March 12th?

16 A. Okay.

17 Q. And you DocuSigned that. Yes?

18 A. It says DocuSigned, correct.

19 Q. And then on -- then, after the loan was approved, they sent
20 it back to you and you DocuSigned it again, and that's where
21 you reference that it was sent to you on the 17th and signed on
22 the 25th, right?

23 A. Correct.

24 Q. And also, on March 12th, 2021, you submitted a second
25 application to Cross River Bank on behalf of HM Management?

1 A. I didn't submit anything to Cross River Bank -- an
2 application.

3 Q. So you DocuSigned this on March 12th, but you didn't send
4 the submission to Cross River Bank on March 12th?

5 A. I'm not aware of me sending anything to Cross River Bank.

6 MS. WEINTRAUB: Can we show Exhibit 22-1, please.

7 You can take these down.

8 BY MS. JIMENEZ:

9 Q. March 12th, 2021, do you see that?

10 A. I do.

11 Q. All right.

12 MS. JIMENEZ: Can we go down.

13 Okay. Stop.

14 BY MS. JIMENEZ:

15 Q. This is the application to Cross River Bank for HM
16 Management doing business as Construction Service X. Do you
17 see that?

18 A. I see it.

19 Q. Your same email account?

20 A. What's the email?

21 Q. Eric.sheppard10@gmail.com.

22 A. Okay. I see that. I see there's another email, yes,
23 management or something.

24 Q. Right. Attributed to you as well?

25 A. Yeah. It's --

1 Q. And with this Cross River application on March 12th, Cross
2 River required you to upload all of the documents and submit it
3 together -- all together in one -- in one submission?

4 A. I have no idea. I did not submit it, so I can't tell you
5 how he submitted or -- but --

6 Q. Whoever submitted it on your behalf provided a false Form
7 940 for HM Management, correct?

8 A. I'm not looking at it, but I know there was -- as everyone
9 saw, there was false documents, a 940 and 941. If you're
10 saying it's for this also, then that's what it is. I don't --
11 I didn't see it, so I don't know.

12 Q. And they also uploaded at the same time a false 2021 tax
13 return for HM Management -- false and forged, right? You saw
14 that?

15 A. I saw that. Yes, I did.

16 Q. Then later, March 25th --

17 MS. JIMENEZ: If we can -- I'm sorry. If we can show
18 Exhibit 22-6, please.

19 Go down.

20 BY MS. JIMENEZ:

21 Q. -- this loan was approved, sent to you to DocuSign.

22 MS. JIMENEZ: Can you go down, please.

23 BY MS. JIMENEZ:

24 Q. This is the HM Management and Development doing business as
25 Construction Service X, right?

1 A. I see that, yes.

2 Q. Okay.

3 MS. JIMENEZ: Go to the signature page.

4 BY MS. JIMENEZ:

5 Q. March 25th, same day as the HM-UP Alafaya Trails
6 application that was approved by Northeast Bank and you
7 DocuSigned for Northeast Bank -- you DocuSigned the Cross River
8 Bank application as well. Did I -- yes. The HM Management
9 Cross River Bank application, right?

10 A. That's correct. On the 25th there was two applications
11 that came -- or of DocuSigns, and I signed one in the morning
12 and one I think in the afternoon or something. That's what I
13 recall.

14 Q. All right. Let me turn to something else.

15 The -- those documents that Mr. Graff spoke about,
16 where he indicated you had forged his name --

17 A. Mr. Graff?

18 Q. Mr. Graff. Remember Mr. Graff?

19 A. Okay.

20 Q. Jeff Graff?

21 MS. WEINTRAUB: Judge, I object and I believe that
22 came down to one document.

23 THE COURT: All right.

24 MS. WEINTRAUB: And it was the --

25 THE COURT: All right. You may continue with the

1 question. Overruled.

2 MS. JIMENEZ: Yes. If we could show Exhibit 50-1,
3 please.

4 BY MS. JIMENEZ:

5 Q. This is the engagement letter for this company -- for this
6 firm, law firm, to process a visa application on behalf of
7 someone you knew, right?

8 MR. ETRA: Your Honor, could we get a continuing
9 objection on this line --

10 THE COURT: Overruled.

11 MR. ETRA: I was asking for a continuing objection.
12 May I have one?

13 THE COURT: Certainly. You may have it.

14 BY MS. JIMENEZ:

15 Q. Mr. Graff testified that you -- that that was your
16 handwriting.

17 A. I don't know what he testified. It's -- it's an engagement
18 letter with a law firm -- our law firm that we use. So I'm not
19 sure like who signed that. That's -- I don't even know what
20 that says. It says: "Jefe." I don't know. I can't read what
21 it is -- on 5/10/18.

22 Q. And you -- you engaged this law firm, correct, on behalf of
23 HM Management? Right? It was you?

24 A. What time frame? Because they've been our lawyer since
25 2007. So which -- are you talking about this specific time or

1 a time before that? When? Because each matter gets a
2 different engagement letter.

3 Q. May 8th, 2018, you engaged this law firm on behalf of HM
4 Management to process --

5 A. I recall engaging the HM Management -- HM Management
6 engaged the Foley Lardner law firm for this matter. That's
7 correct.

8 MS. JIMENEZ: Can we show Exhibit 50-4.

9 Can we show --

10 BY MS. JIMENEZ:

11 Q. This is the law firm writing to Mr. Graff March 7th, 2019,
12 the following year.

13 A. Correct.

14 Q. So just the second sentence of this email: "As seen from
15 the provided 2018 email correspondence between us and
16 Mr. Sheppard, Ms. Ahumada, and Ms. Jeanette Gonzalez of HM
17 Management, you were always portrayed as the authorized
18 representative of the petitioning employer. The representation
19 is made under penalty of perjury."

20 So you communicated with the law firm and you
21 represented yourself as the person in charge of this visa
22 application, correct?

23 A. I don't even know what that means. I represented what?
24 The company hired this law firm. But what do you mean I
25 represented? I don't understand what you're saying. Can you

1 repeat that question?

2 Q. You communicated with this law firm and you represented
3 yourself to them as the authorized representative of HM
4 Management involved in this matter, correct?

5 A. I represented as a 98 percent owner and authority for HM
6 Management and Development. That's what I did, and that's
7 what -- that's all I did. I mean, I communicated with them
8 initially, but then after that I did not.

9 Q. And, in 2018, Jeff Vasilas was not working for you yet, or
10 was he?

11 A. He was actively involved in this -- in this whole thing
12 called Mala. And we had the property under contract to
13 purchase the property at the King of Diamonds. My company was
14 buying the King of Diamonds -- not the business but the real
15 estate. And he was actively involved, yes, a hundred percent.

16 Q. All right. He wasn't involved with this engagement letter,
17 correct?

18 A. No.

19 Q. All right. In 2021, first part of 2021, you were receiving
20 treatment for your illness; is that right?

21 A. The first part. I don't remember exactly which specific
22 days, but in '21, correct.

23 Q. And you would have been immunocompromised at that time if
24 you're receiving treatment. Yes?

25 A. Well, getting into radiation, you have to be very careful

1 and -- about getting, you know, COVID, and having -- you know,
2 that's what he said, yes.

3 Q. But Mr. Jeff Vasilas was parked inside your house, correct?

4 A. That's correct.

5 Q. You testified that when Mr. Vasilas -- Mr. Vasilas was
6 mostly in Orlando in 2020. And then end of 2020 he came back
7 and was living in Miami, 163rd, 164th Street, you said?

8 A. Yeah. I believe that's where he lived. There, and also I
9 think he had a place in Fort Lauderdale maybe. I'm not sure
10 exactly. I know he was at 164th Street, but someone else said
11 he was in Fort Lauderdale at some other time as well.

12 Q. He had a lease --

13 MS. JIMENEZ: Just give me a moment.

14 (Pause in proceedings.)

15 BY MS. JIMENEZ:

16 Q. He was leasing an apartment, starting November 2020, at
17 1919 Southeast 10th Avenue in Fort Lauderdale; is that right?

18 A. I don't know where his -- I've never been to his apartment.
19 But I know he was -- he was -- like I said, he had a place in
20 Fort Lauderdale. He had a place in 164th Street. I know he
21 was getting evicted or something like that, he told me, sent me
22 a lease of eviction, or something like that. I'm not sure.

23 Q. You don't have any reason to doubt that he was living -- he
24 had rented a place in Fort Lauderdale. Yes?

25 MS. WEINTRAUB: Objection. Is counsel testifying?

1 THE COURT: It's cross-examination. Overruled. If
2 the witness knows.

3 THE WITNESS: I have no idea what his arrangement was
4 in Fort Lauderdale. All I know is I remember a lease in 164th
5 Street, or something like that, because he was having problems
6 he didn't pay his rent during COVID or something like that.

7 BY MS. JIMENEZ:

8 Q. And, in 2021, Mr. Vasilas was working on that very
9 extensive Burlington Coat Factory punch list, right?

10 A. He was, amongst other things.

11 THE COURT: Ms. Jimenez, the jurors are in need of a
12 break.

13 So we're going to take a 10-minute recess, Ladies and
14 Gentlemen.

15 COURT SECURITY OFFICER: All rise for the jury.

16 (Jury not present, 2:22 p.m.)

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

18 MS. WEINTRAUB: Judge, should I get a witness here?

19 It's --

20 THE COURT: Well, Ms. Jimenez has represented that she
21 needed two hours. And we are, at this point, close to -- given
22 the 15 minutes before we took the break. And so we're -- now
23 we're an hour. So you have roughly 40 minutes left. So yes, I
24 would have a witness ready right after your redirect.

25 MS. WEINTRAUB: Thank you.

1 (Recess from 2:23 p.m. to 2:37 p.m.)

2 THE COURT: All right. Both sides ready to continue?

3 MS. JIMENEZ: Yes.

4 MR. ETRA: Yes, Your Honor.

5 THE COURT: Okay.

6 (Before the Jury, 2:37 p.m.)

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

9 Please be seated.

10 And we'll continue cross-examination.

11 MS. JIMENEZ: Yes.

12 BY MS. JIMENEZ:

13 Q. Mr. Sheppard, it's true that Mr. Vasilas needed -- needed
14 permission to get past the gate to have access to your home,
15 right?

16 A. That he needed permission?

17 Q. He needed -- he didn't have unfettered access to your home
18 past the gate, right?

19 A. In which year?

20 Q. 2020, 2021.

21 A. 2020, no. I mean, he had to have the access in 2021. He
22 had the access in 2021 when he moved back to South Florida
23 because he was there quite often.

24 Q. I think you testified on direct that Jeanette Gonzalez
25 could access your phone remotely. Was that your testimony?

1 A. I don't believe so. She could access my computer, not my
2 phone.

3 Q. She could access your computer. From her home she could
4 access your computer?

5 A. Remotely she can -- well, my computer. She could access
6 my -- my -- how did you call it -- my mail accounts. And what
7 I think I said is the computer guy, he could access remotely
8 where it was like a remote thing. I don't know how that --
9 they do it, but they -- I always have problems with the
10 computer, so the guy comes on and he does whatever on the
11 computer from a remote access.

12 Q. All right. You showed the jury part of -- some documents
13 related to the rental -- some rental equipment by Jeff Vasilas
14 on behalf of HM-UP Development Alafaya Trails. Do you recall
15 that?

16 A. I don't -- I recall -- I recall companies looking at it.
17 I'm not sure what companies he's talking about.

18 Q. This is your Exhibit 47, I believe. Hold on. It's your
19 X-47 --

20 MS. JIMENEZ: Could we go to the ELMO.

21 BY MS. JIMENEZ:

22 Q. -- this Herc rental application, right?

23 A. Yes.

24 Q. Was pointed out that Mr. -- so Mr. Vasilas was working --

25 MS. JIMENEZ: And let me just show the date. Oops.

1 BY MS. JIMENEZ:

2 Q. June 2020, Mr. Vasilas is in Orlando working on your
3 Burlington conversion, right?

4 A. The Burlington build-out, yes. He was back and forth, but
5 yes.

6 Q. Mostly in Orlando?

7 MR. ETRA: Your Honor, I was only allowed to put two
8 pages into evidence, and I don't think this is one of them.

9 THE COURT: All right. Is this document in evidence?

10 MS. JIMENEZ: The complaint was not allowed. But --

11 MS. WEINTRAUB: This wasn't either.

12 MR. ETRA: I only -- to my recollection, only two
13 pages, the personal guaranty and the one where Mr. Vasilas
14 signs as owner. Those are the two pages that Your Honor -- I
15 established that Your Honor let me put into evidence.

16 THE COURT: All right. So these are additional pages?

17 MS. JIMENEZ: Additional pages.

18 THE COURT: All right.

19 MS. JIMENEZ: I'd like to move in the page before the
20 guaranty, which is the next page.

21 THE COURT: The one page before the guaranty, is that
22 what you're seeking to introduce?

23 MS. JIMENEZ: Right.

24 THE COURT: Any objection?

25 MR. ETRA: No, Your Honor.

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

3 (Defendant's Exhibit X-47, page before the guaranty,
4 received into evidence.)

5 BY MS. JIMENEZ:

6 Q. So Mr. Vasilas filled out this application, right?

7 A. I don't know who filled it out.

8 Q. But it was suggested he doesn't know the address -- he
9 doesn't know how to spell the company and he doesn't know the
10 address, which is 12000 Biscayne Boulevard, right?

11 A. I don't know what you mean "suggested." I don't -- you
12 asked me if he filled this out. I have no idea who filled this
13 application out.

14 Q. Okay. Okay. With his signature, right, Jeffrey Vasilas,
15 somebody did? And then the personal guaranty, again, company
16 correct address, it's got personal information of yours, right?
17 Your Social Security number, your driver's license, right?

18 A. Correct.

19 Q. So those are things that you would have provided
20 Mr. Vasilas, who's in Orlando working for your company on your
21 behalf, correct?

22 A. I don't -- that I provided it to him? Is that what you're
23 asking me?

24 Q. Yes.

25 A. Does he have my driver's license? Yes. Does he have other

1 information of mine? Yes.

2 Q. Did you provide him your Social Security number and your
3 driver's license so that he could rent this equipment with this
4 guaranty?

5 A. No. I had no idea who this company was. They weren't one
6 of the approved vendors on the site. So that's the whole
7 point. I didn't know who they were.

8 MS. JIMENEZ: Mr. Etra, is this page, the next page,
9 in? So just if we could -- the page after the guaranty, which
10 is listed as Exhibit B -- so --

11 MR. ETRA: Your Honor, I think -- I don't have a
12 problem with admitting this into evidence, but we just have to
13 put it into evidence, which --

14 THE COURT: This is not the additional page? Now
15 there's another page?

16 MS. JIMENEZ: I'm sorry, Your Honor. Yes. The page
17 before the guaranty has been admitted. And then this is the
18 page after the guaranty.

19 THE COURT: Is there any objection?

20 MR. ETRA: None, Your Honor.

21 THE COURT: All right. Then that will be admitted as
22 well.

23 (Defendant's Exhibit X-47, page after guaranty,
24 received into evidence.)

25

1 BY MS. JIMENEZ:

2 Q. So this is the page, Mr. Sheppard, a rental contract
3 prepared by Herc Rentals, right? Do you see this?

4 A. I see the -- I see the document, Rental Contract.

5 Q. Right. And this entity is the one that misspelled HM-UP
6 Development and listed 1200 instead of 12000, correct?

7 A. I have no idea. I didn't prepare the document.

8 Q. So -- and this is rental of a pump, and this -- and some
9 other things that are in these documents. So your testimony is
10 that Mr. Vasilas, working in Orlando on your behalf for HM-UP
11 Development Alafaya Trails, isn't authorized to rent equipment
12 to do work at the site?

13 A. He's authorized to do -- to rent -- to apply for -- you
14 know, for -- to get equipment for this site for what he was
15 there for. That's the Burlington. You don't use a pump,
16 whatever this is -- a pump. You don't use that inside of a
17 building. This is an exterior -- for some exterior work. This
18 has nothing to do with the inside of the building of
19 Burlington.

20 Q. You showed this jury a lot of pictures of roads and work
21 outside, didn't you?

22 A. I did.

23 Q. So if something breaks, Mr. Vasilas wasn't authorized to
24 buy replacement equipment on your behalf?

25 A. I don't -- what do you mean "if something breaks"? I don't

1 understand what that means. Like what?

2 Q. If some piece of equipment, like a pump, breaks, or a
3 forklift breaks, and a replacement piece needs to be acquired,
4 he doesn't have authorization from you to acquire it?

5 A. He has authorization to -- for a -- for Sunbelt and Ahern.
6 And if the equipment breaks, they come and fix it. And there's
7 insurance if something happens to the machinery that the
8 company that you have a contract with that's been preapproved
9 for the job budget. That's what you deal with.

10 This particular situation has nothing to do with what
11 you're talking about. This is something completely outside the
12 actual building facility. So that's -- if he came to me, yes,
13 I would look at it. But he never explained to me who the
14 company was.

15 (Pause in proceedings.)

16 BY MS. JIMENEZ:

17 Q. All right. So there was also a suggestion -- well, a
18 question to you when you testified that equipment rental or --
19 equipment rental -- the address that needs to be indicated for
20 Alafaya Trails would be 1250 North Alafaya Trail, right?

21 A. Correct.

22 Q. Not some other address?

23 A. For the jobsite it's 1250 North Alafaya Trail, correct.

24 Q. These pages are not marked, but this is another page that
25 I'm showing you.

1 MS. JIMENEZ: I believe there's no objection to moving
2 it in --

3 THE COURT: All right. So this is a third page to the
4 guaranty that the Government is seeking to introduce. Is there
5 any objection?

6 MR. ETRA: Not if it's identified, Your Honor.

7 MS. JIMENEZ: Let me -- and it's got RA number --
8 well, I don't know if that's -- this one -- has a start date of
9 7/31/20.

10 MR. ETRA: Your Honor, could I just say on the record
11 it's -- one, two -- three pages before the one Mr. Vasilas
12 signs as owner.

13 THE COURT: All right. So three pages before.

14 (Defendant's Exhibit X-47, three pages before Jeff
15 Vasilas signs as owner, received into evidence.)

16 THE COURT: And just a reminder, Ms. Jimenez, that you
17 have about 10 minutes of the additional two hours you asked
18 for.

19 BY MS. JIMENEZ:

20 Q. And you see the address, correct?

21 A. I do.

22 Q. All right. Now, with regard to Mr. Jeff Vasilas,
23 February 26th, 2021, Mr. Vasilas was in Orlando, correct?

24 A. I can't answer that question. I'm not sure where he was.

25 Q. Mr. Vasilas was in Orlando telling you that he needed to

1 charge \$750 on your AmEx for a faulty backflow device for
2 Burlington domestic water system, right?

3 A. That would not be a -- I can't tell you -- I recall him
4 asking me to use my credit card, but not the fact -- if I was
5 in Orlando -- I was in Orlando at that time, so I don't know
6 why he would text me if we were in the same city. So I don't
7 believe he was in Orlando. I believe I was telling him all the
8 problems with the site and he was trying to fix it.

9 From the Toys "R" Us -- not the Toys "R" Us. At the
10 Burlington store there was an issue. There was a bunch of
11 issues on the project that I was relaying to him, and he was
12 texting me, from light poles down. All kinds of stuff was
13 going on on the site that I was not happy with, so he kept on
14 trying to fix it when I kept on calling him.

15 Q. And he sent you a picture of the faulty item, right?

16 A. He sent me a picture? I don't know what he sent me.

17 Q. Then the following day, February 27th, he sends you a
18 message -- February 27th, 2021, that: "The irrigation is
19 fixed. I'll finish the pavers and gate Monday," and that he
20 "left papers for you on chair in garage. Backflow at Burlington
21 is fixed. Got new one. All Burlington parking lot lights are
22 now up, and I paid Carlos" -- meaning Carlos Granda, right?

23 A. What you're reading -- now I know what you're talking
24 about. That's a text message that he sent that the gate at my
25 house that he was working on he got fixed, and he fixed

1 something else at my house. He was leaving papers in my garage
2 and he fixed the gate on the 27th, saying that he was in my
3 house, and he was leaving the house, and he'll fix the rest on
4 Monday because I was in Orlando. That's exactly what I told
5 you.

6 Q. So -- right. So on the 27th he's leaving you papers in
7 your garage, right, Mr. Sheppard? If he has -- right? Yes?

8 A. That's what it says. It says that he's leaving my house
9 and --

10 Q. Well, he didn't say he's leaving your house.

11 MR. ETRA: Can he finish the answer, please.

12 THE COURT: Did the witness finish his answer?

13 THE WITNESS: From what you just read to me -- and I'm
14 familiar with the text -- it specifically says that the gate
15 has been fixed and the pavers, meaning the pavers in my house.
16 There's no pavers on a commercial shopping center. There's no
17 gate at the shopping center. The gate company -- he fixed --
18 it was getting fixed, and it was done. And he also left the
19 papers so when I get back to the house I can review it. That's
20 why he left it there. Otherwise he would have given it to me
21 if I was in the house. That's what he was telling me.

22 BY MS. JIMENEZ:

23 Q. So he told you that he was leaving it for you in your
24 garage, Mr. Sheppard. And so my question to you is: If he's
25 leaving papers for you in your garage, but he has unfettered

1 access and he works out of your home office, why is he not
2 leaving you papers in your home office instead of leaving them
3 out in the garage?

4 A. I will tell you why. It's embarrassing, but I will tell
5 you. My office is kind of a mess, and it's very -- there's a
6 lot of papers everywhere. So he always left stuff in the
7 garage. If you were at my house, the garage -- there's a door
8 there that goes directly into the house that's open. So he
9 leaves it inside the garage because that's the first place I
10 look. There's a table right there -- a table there, and he
11 leaves papers there for me to read. Whatever it is -- not him.
12 Everyone leaves business papers. They don't like to mix it in
13 my office because it was a mess. That's what it was.

14 Q. You recognize these messages, correct?

15 A. I recognize these what?

16 Q. You recognize these messages that I'm referring to,
17 correct?

18 MR. ETRA: Judge, it's not fair because they're not on
19 the screen. So...

20 THE COURT: Well, they've been on the screen to show
21 the witness, correct?

22 THE WITNESS: I haven't seen anything.

23 MS. JIMENEZ: He hasn't seen anything because he
24 recognized the messages. He's aware of them.

25 THE COURT: Why don't you show him the messages and

1 then he can answer the question.

2 MS. JIMENEZ: Sure.

3 BY MS. JIMENEZ:

4 Q. So February 26th, between you and Jeff Vasilas, you
5 recognize this phone number, correct?

6 A. I do.

7 Q. And: "Need to charge 750 on your AmEx for a faulty
8 backflow device for Burlington domestic water system." That's
9 what he tells you on February 26th, right?

10 A. This keeps moving. Yes. That's what he tells me.

11 Q. All right. And he sends you a picture of this thing with
12 shooting water, correct?

13 A. Yes. Because the person that fixes that kind of
14 contraption went out there to check it. And then he's saying:
15 "Hey, I have to buy this thing, \$750." He doesn't install it.
16 There's actually a subcontractor that does that work, and he
17 sends me the picture so I can -- so he can tell me what it is,
18 why he's spending \$750. He doesn't do that work.

19 Q. Right. Then the following day his message tells you he
20 left the paper -- the following day is the 27th when he's back
21 from Orlando, right?

22 A. I'm sorry. Say that again.

23 Q. February 27th, he's back from Orlando, correct?

24 A. He wasn't in Orlando. He was at my house. I was in
25 Orlando. Okay?

1 Q. But let me just -- you recognize these messages, correct?

2 A. I can't see. You keep going up and down.

3 Q. Okay. Right here.

4 A. Okay.

5 MS. JIMENEZ: I'd like to move Government Exhibit 80-2
6 into evidence, Your Honor.

7 THE COURT: Is there any objection?

8 MR. ETRA: No, Your Honor.

9 THE COURT: Admitted into evidence.

10 (Government's Exhibit 80-2 received into evidence.)

11 BY MS. JIMENEZ:

12 Q. All right. March 12th -- March 12th, you DocuSign the --
13 you DocuSign the Northeast Bank loan application and you submit
14 the Cross River Bank loan application with a false 940 and a
15 false 1020 -- 2020, for HM Management, correct?

16 A. I didn't submit that. So that's what you're saying, but I
17 didn't submit that.

18 Q. March 12th, 2021, Mr. Vasilas is in Orlando sending you
19 pictures of the Mattress1One store, that they're finally
20 shutting it down and taking down the Mattress1One sign,
21 correct?

22 A. I have no idea.

23 Q. Can I show you this? March 12th, 2021, between now you and
24 Mr. Jeff Vasilas. Do you see that?

25 MR. ETRA: Hang on. Is this in evidence?

1 MS. JIMENEZ: Sorry. No. No. I'm sorry. It's not
2 supposed to be shown to the jury.

3 (Pause in proceedings.)

4 BY MS. JIMENEZ:

5 Q. Right. So March 12th, 2020 [sic], that's what -- you had
6 this communication between the two of you, right? Do you see
7 that?

8 A. That's what it says.

9 Q. And then there are pictures. See: "Mattress1One
10 attachments." "Mattress1One being taken down." You remember
11 seeing those pictures?

12 A. Ma'am, you're taking it as a -- and going like this. You
13 have to keep it for a second so I can understand the pictures.
14 I don't know what pictures you're talking about. I can't see
15 it because it's going so fast.

16 MS. WEINTRAUB: I don't know what you're showing him,
17 either.

18 BY MS. JIMENEZ:

19 Q. Right. You see "Mattress1One"?

20 THE COURT: What is it that you're -- if you can
21 identify the exhibit that you're showing you the witness.

22 MS. JIMENEZ: Well, this will be 80-3, Your Honor. It
23 is a message --

24 THE COURT: All right. So 80-3 is what you're showing
25 the witness. Now let's show the witness so he can see it.

1 BY MS. JIMENEZ:

2 Q. And it says -- the message is: "Call me." And then
3 Mr. Vasilas sends you these pictures.

4 A. Again, you're showing -- okay. I don't know. I don't know
5 if it's the -- if you're blurring it. I just cannot -- I see
6 it says: "C-S-L-L-L-L me." But the pictures, I can't see it.
7 I don't know if it's the screen. The mag -- however you say
8 it -- the magnifying thing. But I just...

9 Q. So on March 12th, 2021, the Mattress1One store is closing
10 and the Mattress1One sign is coming down, correct?

11 A. I have zero idea about what Mattress1One was doing in March
12 of 2021.

13 Q. And then sometime that summer Mr. Vasilas becomes sick,
14 correct?

15 A. Sometime in July. Late July.

16 Q. July. And he's still working from the hospital in July for
17 you, right?

18 A. I have no idea what he's doing in July of -- July of 2021.
19 I don't know what he was doing. I was more concerned about his
20 health and him living rather than dying.

21 Q. And he's sending you messages from the hospital, correct?

22 A. That's correct.

23 Q. And his last message to you, Mr. Sheppard, was July 14th,
24 2021, correct?

25 A. I can't tell you when his last message was to me. I really

1 don't know what date.

2 Q. On that day he sends you a message that says --

3 MS. JIMENEZ: Get the message.

4 BY MS. JIMENEZ:

5 Q. He says that: "My lungs have collapsed. I'm scared, Bud."
6 That's what he writes to you. Do you remember that message?

7 A. I do.

8 Q. And he sends you a picture of himself?

9 THE COURT: I didn't hear. What did you say,
10 Ms. Weintraub?

11 MS. WEINTRAUB: Can we see the text that she's reading
12 from?

13 MS. JIMENEZ: I don't have time to find it.

14 THE COURT: Well, in -- professional courtesy would
15 require that you show that to counsel. So let's take the time
16 to show that to counsel.

17 MS. JIMENEZ: He remembers the message.

18 Here it is.

19 BY MS. JIMENEZ:

20 Q. Do you remember this message? Right? You ask him if he's
21 feeling better?

22 A. It's blurry. I can't see it.

23 Q. Sorry. He says -- "You feeling any better?"

24 A. Okay.

25 Q. He says: "My lungs have collapsed."

1 A. Okay.

2 Q. Do you see that?

3 A. I do.

4 Q. Then he writes -- what does he write?

5 A. He says: "I am scared, Bud."

6 Q. "Bud," right?

7 A. Yes.

8 MS. JIMENEZ: Can I move this in as Government's
9 Exhibit 80-4?

10 MR. ETRA: With the --

11 THE COURT: Is there any objection?

12 MR. ETRA: Is that with the picture, Aimee?

13 MS. JIMENEZ: I'm not going to --

14 THE COURT: 80-4, the three messages?

15 MR. ETRA: No objection.

16 THE COURT: All right. Admitted into evidence.

17 (Government's Exhibit 80-4 received into evidence.)

18 BY MS. JIMENEZ:

19 Q. And he sends you a picture, correct, of himself, with
20 oxygen on his face, right?

21 A. That's correct.

22 Q. And his last message to you, Mr. Sheppard --

23 MS. MARTINEZ: It needs to be published. Did you want
24 to publish?

25

1 BY MS. JIMENEZ:

2 Q. He says: "My lungs have collapsed," right? So in his last
3 message, he's referring to you as his buddy, right? You're his
4 buddy.

5 A. I don't know if it's his last message. I can't tell you
6 that. But this message says: "Bud," yes.

7 Q. That's -- you're his buddy, right?

8 A. Yes. I was friends with him.

9 Q. Which is ironic because your buddy is committing all this
10 fraud behind your back and not telling you, right?

11 A. Clearly.

12 Q. And he's committing all this fraud and not letting you know
13 and all that money is going to your account, Mr. Sheppard,
14 right?

15 A. Oh, my God. Okay. It went to the business. And I'm sure
16 Scott Bouchner will show you where the money went when he gets
17 up here and shows the jury.

18 Q. And you know that Mr. Vasilas cannot come here and testify
19 to this jury, right?

20 MR. ETRA: Objection, Your Honor.

21 BY MS. JIMENEZ:

22 Q. You know that?

23 THE COURT: Overruled. If he knows.

24 THE WITNESS: Listen, I know he can't come here. He
25 passed away, and it was very tough for me at the time.

1 Clearly, after seeing everything by evidence and factual
2 information, it's shocking and upsetting to me. So it's a
3 mixed emotion for me because --

4 BY MS. JIMENEZ:

5 Q. Mr. Sheppard --

6 A. -- when you see actual evidence of what's happened here,
7 it's clear as day. And so that I'm -- I'm disturbed beyond --
8 and trying to ruin my reputation and family -- by the evidence.
9 Not about hearsay, evidence. That's upsetting. But it is
10 mixed emotions because I did really -- he was my friend. He
11 really was. So...

12 MS. JIMENEZ: Your Honor, I'd like to move in the
13 March 12th exchange with the Mattress1One photographs.

14 THE COURT: What's the exhibit number?

15 MS. JIMENEZ: 80-3.

16 MR. ETRA: I object. He wasn't able to -- I don't
17 even -- they're blurry. They're not clear. He couldn't answer
18 the question about them.

19 THE COURT: Which one was it? Was it just the picture
20 of Mattress1One? I'm not quite sure which exhibit that was.

21 MS. JIMENEZ: It was a text message with photographs
22 of Mattress1One attached.

23 THE COURT: I don't think it was properly identified.
24 If you want to introduce it, let's properly identify it with
25 the witness.

1 BY MS. JIMENEZ:

2 Q. March 12th, 2021, you have a message from Mr. Vasilas to
3 call you, right? You see that?

4 A. I see. It says: "C-S-L-L me."

5 Q. Right. Misspelled "call." Yes?

6 A. Correct.

7 MS. WEINTRAUB: He doesn't recognize or understand the
8 document. So she's reading from the document and asking a --

9 THE COURT: The objection is sustained.

10 Ms. Jimenez, let's give the witness an opportunity to
11 identify the document, labeled -- I'm sorry. What's the
12 exhibit?

13 MS. JIMENEZ: 80-3.

14 THE COURT: 80-3. All right.

15 MR. ETRA: Your Honor, our version of the Cellebrite
16 report shows that this text message was done a different day
17 and didn't attach any documents. We're just seeing different
18 things from the material produced by the Government. It says:
19 "Call me," "C-S-L-L" --

20 THE COURT: All right. Then let's identify it page by
21 page. If you want to introduce it into evidence, let's do it
22 correctly, Ms. Jimenez.

23 BY MS. JIMENEZ:

24 Q. March -- this message is dated March 12th, 2021, right?

25 A. That's what it says. I don't know.

1 Q. It's from Jeff Vasilas to you, correct?

2 A. That's what this piece of paper says.

3 Q. And he's -- he writes: "C-S-L-L-L-L-L me."

4 MS. WEINTRAUB: Judge, it's hearsay. Objection.

5 THE COURT: On that ground, overruled.

6 THE WITNESS: That's what it says.

7 BY MS. JIMENEZ:

8 Q. And on that day, Mr. Sheppard, Mr. Vasilas was telling you
9 and showing you pictures of Mattress1One and the store sign
10 coming down, correct?

11 A. I have no idea. I haven't seen anything and I haven't
12 reviewed anything.

13 Q. Let me show you these pictures. You would have seen these
14 pictures, which -- see that location?

15 A. I see two palm trees.

16 Q. Right.

17 A. And some white thing with -- brown.

18 Q. And then the sign?

19 A. I see a -- I don't even know it -- it says:
20 "Mattress1One," but there's not even the full M, and I -- okay.

21 Q. You see the wall?

22 A. I see a wall.

23 Q. A storefront?

24 A. I see a storefront. It's very dark. It looks like it's
25 nighttime, and it looks like there's somebody up on the --

1 taking some "SS" off a building.

2 Q. "SS" being "mattress"?

3 A. If you're asking me what the actual picture looks like, I
4 don't know what the picture looks like.

5 Q. And there's a number one next to it?

6 A. I'm sorry?

7 Q. And then there's a letter one next to it?

8 A. I'm sorry. Can you point it out to me? I can't see.

9 Q. Right here.

10 A. I see a blue thing. I mean, if it's one, then it's one. I
11 just -- I see like a --

12 Q. You see a blue thing?

13 A. Yeah.

14 Q. Okay.

15 THE COURT: And Ms. Jimenez, it's two hours now.

16 BY MS. JIMENEZ:

17 Q. So -- so you saw those pictures, correct?

18 A. I just saw those pictures. Correct.

19 Q. You saw them at the time, correct?

20 A. I can't tell you what I saw at that particular time. I
21 just saw --

22 MS. JIMENEZ: Your Honor -- I'd like to move Exhibit
23 80-3 into evidence, Your Honor.

24 MR. ETRA: Your Honor, objection. No foundation.

25 THE COURT: Sustained.

1 MS. JIMENEZ: I have about five more minutes.

2 THE COURT: All right.

3 MS. JIMENEZ: Thank you.

4 BY MS. JIMENEZ:

5 Q. Very briefly, Mr. Sheppard, after March of 2020, at the end
6 of April and beginning of May of 2021, you worked with -- well,
7 at the end of March -- I'm sorry. In the end of April of 2021,
8 you worked with Ms. Nelly Palancar again for those loan
9 increases for HM Management and HM-UP, correct?

10 A. I responded to her -- I remember responding to her. She
11 kept calling and calling and calling. But I worked with her on
12 multiple things, other financing. And there were loan
13 increases, but I was concentrated on the financing with her on
14 the phase 3 at that time, I recall.

15 MS. JIMENEZ: Could we show 62-7.

16 BY MS. JIMENEZ:

17 Q. This is HM Management Resolution and Certification that you
18 provided to Nationwide and that was submitted to the SBA,
19 correct?

20 MS. MARTINEZ: Did you want to publish that?

21 MS. JIMENEZ: I do want to publish that.

22 THE COURT: It's in evidence. You may.

23 MS. JIMENEZ: Yes.

24 THE WITNESS: I'm not sure what this is.

25

1 BY MS. JIMENEZ:

2 Q. It was in Ms. Nelly Palancar's files and it was in the SBA
3 file. Yes?

4 A. I don't know what it was or I'm not sure what it was.

5 Q. And you're listing your wife Jennifer Sheppard as a manager
6 of HM Management, right?

7 A. I would never list my wife as manager. First of all, all
8 the fonts are different. It's all -- I don't even know -- it's
9 completely different. But I would never put my wife as manager
10 of H -- or any company, let alone HM Management.

11 Q. And that is not Jeanette Gonzalez's signature, correct?

12 A. It does not look like Jeanette Gonzalez's signature.

13 Q. And this document is dated September 25th, 2021, correct?

14 A. That's what it says. I never --

15 Q. That is after Mr. Jeff Vasilas has passed away, correct?

16 A. That's correct.

17 MS. JIMENEZ: Could we go to the next page. Is there
18 another page?

19 Second page.

20 Okay. Then 62-5.

21 Second page.

22 BY MS. JIMENEZ:

23 Q. And you submitted this as well, but I want to go on to
24 HM-UP. There was a similar one for HM-UP, 63-5.

25 HM-UP Development Alafaya Trails, you're the managing

1 member and Jennifer Sheppard 10 percent member. Do you see
2 that?

3 A. I see it.

4 Q. And that is not Jeanette Gonzalez's signature either,
5 correct?

6 A. Doesn't look like Jeanette Gonzalez's.

7 Q. And this is dated September 22nd, 2021, correct?

8 A. That's what it's dated.

9 Q. That's after Mr. Jeff Vasilas has passed away?

10 A. Correct.

11 Q. These documents were provided to Nationwide, and they were
12 provided to the SBA for your loan increases for HM Management
13 and HM-UP Development Alafaya Trails, correct?

14 A. What loan -- I don't even know -- what are you talk -- it
15 says \$1.5 million. I don't understand. It says principal
16 amount of the loan \$1.5 million. It doesn't make sense.

17 Q. It's your document.

18 A. It's my document?

19 Q. Yeah.

20 A. Okay. I don't know what to tell you. I'm looking at it.
21 I don't recall it. I don't know what it is.

22 Q. Now, for the other PPP loans, Mr. Sheppard, besides the
23 first PayPal loan, you did not apply for forgiveness for those
24 loans, correct?

25 A. Forgiveness for 2021 HM Management, HM-UP?

1 Q. That's right.

2 A. Correct.

3 Q. That's because you did not spend those funds as those funds
4 were supposed to be spent, correct?

5 A. That's completely false.

6 Q. So you'd rather pay the loan back with interest instead of
7 having it forgiven and not having to pay it back at all,
8 correct?

9 A. Frankly, I never thought about it. I was a little too busy
10 to be -- I didn't even think about the forgiveness. And
11 then -- it wasn't part of my thought process. But the money
12 was spent exactly what it was supposed to be spent for, and so
13 I didn't think about forgiveness.

14 Q. You have no concern about money?

15 A. Of course I have a concern about money. I'm concerned
16 about money every single day. You know, I came from nothing.
17 I came from like \$1,500 in my whole entire life savings.
18 That's what I started from. So when you say I'm not concerned
19 about money, that's clearly an inaccurate statement of who I
20 am. Everyone knows I care about trying to support my family.
21 So when you say that, that's really not even close to being
22 true.

23 Q. But you'd rather pay the loan back instead of having it
24 forgiven?

25 MR. ETRA: Asked and answered.

1 THE COURT: Overruled.

2 THE WITNESS: In July 2022 -- I didn't think about it
3 prior to that, but July 2022, when I was -- what you guys
4 allegedly charged me for, these alleged allegations, at that
5 moment in time, it was not very high on my list to worry about
6 loan forgiveness from what you guys charged. So yes, it was
7 not in my mind set.

8 BY MS. JIMENEZ:

9 Q. The loans for HM-UP and for HM Management were disbursed to
10 you at the end of March of 2021. You had a year and three
11 months before the FBI came knocking -- a year and four months.
12 And you never once thought about applying for forgiveness for
13 those loans, correct?

14 A. I never -- I never thought about forgiveness. Just like I
15 didn't forget about the first one. I just -- I wasn't -- I
16 just didn't concentrate on it. I was trying to work and do my
17 job. That's all I'm trying to do. I'm not -- if I thought
18 about it, maybe I would have done it, but I didn't think about.
19 It wasn't really anything but that.

20 MS. JIMENEZ: That's all I have, Your Honor.

21 THE COURT: All right. Redirect.

22 REDIRECT EXAMINATION

23 BY MR. ETRA:

24 Q. Mr. Sheppard, I'm putting on from one of the last things we
25 covered -- you covered -- I think it's 80-3.

1 MS. JIMENEZ: I think it's 80-4.

2 MR. ETRA: 80-3. And this had to do with leaving
3 papers in the garage. And if I could use the ELMO, Your Honor?

4 THE COURT: All right.

5 BY MR. ETRA:

6 Q. What does this tell you about where -- what does this show
7 about where Mr. Vasilas was on February 26th and --
8 February 26th?

9 A. This is showing that he was at my house.

10 Q. How does it show that?

11 A. It's pretty clear. It says: "I will finish the pavers and
12 the gate Monday," meaning he was working on it and he's going
13 to finish it when he gets back on Monday. So therefore he left
14 the papers for me on my chair in the garage. And then he --
15 and that's my house. There's no garage in Orlando. It's my
16 house. And the pavers and gate, based upon what you already
17 put in evidence -- the contract for the gate people to do it at
18 this specific time, so I know that's my house. And on top of
19 it, it says: "The backflow at Burlington is fixed and all
20 parking lot lights are now up, and I paid Carlos."

21 Q. How was Mr. Vasilas able to provide you information about
22 Burlington if he's sitting in your house?

23 A. Very simple. There's people on site at Burlington. It's
24 just he calls and he gets information. That simple.

25 Q. How is it possible for this photograph -- is this

1 photograph from Burlington or from your house?

2 A. I can't see the full -- I can't see the full photograph,
3 but I can tell you I was in Orlando. I was at this specific
4 area. I'm the one who told you -- if you go through all the
5 text messages, I said: "Hey, why are the lights out at
6 nighttime in the shopping center?" And I communicated that. I
7 said: "The lights are out. There's problems with that. The
8 irrigation is all messed up."

9 And I showed him the thing at the Burlington. There
10 was a problem with their doors. And I was constantly -- and he
11 was freaking out because he was in Miami at my house and I'm at
12 my daughter's basketball stuff, and he's freaking out because
13 I'm a little bit perturbed that all of this is happening when I
14 just randomly go up there to the shopping center. So I was a
15 little -- maybe a little upset.

16 So he was freaking out, and he was trying to get stuff
17 done, and he was calling everybody, and he was trying to show
18 me: "Hey, I'm taking care of it. I'm taking care of it."
19 That's exactly what happened. I see it a hundred percent.

20 Q. Mr. Sheppard, going back earlier to your -- earlier in your
21 testimony, the prosecutor asked you if you know if Ms. Jeanette
22 Gonzalez spoke to the Government after she got a lawyer. Do
23 you remember her asking you about that?

24 A. I do.

25 Q. Do you know for a fact that she did speak to the Government

1 after she got a lawyer?

2 A. It's my understanding that she did.

3 Q. You talked about -- you were asked about money from other
4 sources in the event that you were not able to get the loans
5 that we've talked about in this case. What are those other
6 sources?

7 A. Well, other sources -- try to go into the marketplace,
8 which wasn't available at the time, or do stuff with my wife
9 and I, or go to my family or my partner or whoever. If I
10 needed extra money, that's what I would be doing. I would be
11 doing whatever I can to save the project. That's what I would
12 be doing.

13 MR. ETRA: I just need a moment, Your Honor.

14 THE COURT: All right.

15 (Pause in proceedings.)

16 BY MR. ETRA:

17 Q. You testified about payroll reports you received from
18 Mr. Vasilas. Do you recall that?

19 A. Yes.

20 Q. And you used colorful language about that, correct?

21 A. I don't remember how colorful my language was, but --

22 MR. ETRA: Put up the Vasilas reports.

23 Could we go to the next page.

24 BY MR. ETRA:

25 Q. Are these the reports you're referring to?

1 A. Yes.

2 Q. And is this typical for how you run your business?

3 A. No.

4 MS. JIMENEZ: Objection. This is outside the scope of
5 cross-examination.

6 MR. ETRA: He testified about the Vasilas reports.

7 THE COURT: Overruled.

8 THE WITNESS: This is not how you run a construction
9 job -- kind of report.

10 BY MR. ETRA:

11 Q. Why did you allow these reports to go on the way they did?

12 A. I had no other choice. It was during COVID, and he was the
13 only person that was -- would go up there and build this job
14 during COVID. It was -- so it was very unusual. But I -- I
15 just did the best I can with what he was giving me. This is
16 clearly not even close to how you run a job.

17 Q. You used the term "third-party contractor" some time ago in
18 the cross-examination. Do you recall that?

19 A. Yes.

20 Q. What do you mean by "third-party contractor"?

21 A. A third party is someone who's doing construction or any
22 type of work on your -- on the jobsite, and is not -- it's not
23 your company. It's someone else's company and has their own
24 workers and their own people, and that's what I mean. They are
25 not taking direction from us. They're not coming at a certain

1 time. They're working for another company, and we can't really
2 say anything to their workers. That's what third-party, to me,
3 independent contractors means.

4 Q. At some point in the cross-examination yesterday, you were
5 shown some portions of your deposition transcript from a
6 litigation in February of 2019. Do you recall that?

7 A. I do.

8 Q. And just very briefly, what was the subject matter of that
9 litigation?

10 A. The subject matter was I had a partner in a deal where I
11 didn't have many partners, but this partner sued me as managing
12 member based upon some construction issues that he thought --
13 I'm not sure exactly what his lawsuit was about. But he
14 basically -- he was suing me as the managing member about some
15 construction issues and of -- so that's what that deposition
16 was about.

17 Q. Okay. I want to ask you a little more about the outcome,
18 but first I want to talk about the deposition a little more.
19 Prior to that deposition, had you been deposed, meaning had
20 your testimony been taken in depositions in civil cases before
21 that?

22 A. Yes.

23 Q. And from your experience before that deposition, what
24 happens in a civil case if you show up unprepared to answer the
25 other side's questions?

1 A. You can't. You have to prepare for whatever subject
2 matter. You prepare. And you have to understand the subject,
3 what it's about, and you have to study and then show up as a
4 knowledgeable person, as a representative.

5 Q. Could you just show up off the street and answer the
6 questions based on what's on top of your head?

7 A. No.

8 Q. And what -- generally, what subject matter did it cover in
9 terms of developments and years to your recollection?

10 A. I'm sorry. Say that again.

11 Q. The litigation -- what was the subject matter to the best
12 that you can recall? What development did it talk about and
13 what years were you dealing with?

14 A. It was -- it was actually the project at -- in the Doral
15 area on 92nd, a Walmart center that I found and built and
16 developed, and it was about that particular asset. And it was
17 I think '17, '18, '19. And then it finally resolved in '22.
18 And ended '21, '22 --

19 Q. Do you recall the excerpts you were shown talked about
20 workers or classifications for 2016? Do you recall that
21 generally from the other day?

22 A. I recall 2016.

23 Q. And what did you do before the deposition so -- to prepare
24 yourself to answer questions about that -- that development in
25 Doral with respect to the status of workers in 2016? What did

1 you do to prepare for that deposition?

2 A. I met with the people in charge of the litigation. I met
3 with the people in the office to understand about the workers
4 and how they were paying workers and stuff of that nature, to
5 understand my -- what they were trying to talk about.

6 Q. And why did you have to do that? Why couldn't you just go
7 in and say: "Well, I know this stuff already"?

8 A. Because I don't deal -- and I've been saying that. I don't
9 deal with that stuff. So I went in, I learned about it, I went
10 to a deposition, and that's what I did. I mean, it's 2016, but
11 that's what I did.

12 Q. Putting up on the screen -- putting up on the screen
13 Exhibit X-20 in evidence. And do you see the date there, sir?

14 A. March 23rd, 2021.

15 Q. And who's the author of that email?

16 A. Me.

17 MS. JIMENEZ: What exhibit is this? I'm sorry.

18 THE COURT: I'm sorry. Did you want to know the
19 exhibit number?

20 MS. JIMENEZ: Yes. I'm sorry.

21 MR. ETRA: I'm sorry. X-20. My apologies.

22 BY MR. ETRA:

23 Q. And let's -- and generally speaking, what was going on in
24 your world on March 23, 2020?

25 A. Trying to figure -- COVID, the pandemic, and trying to

1 figure out how to get this job restarted, and rehired, and
2 dealing with all of the problems going around in the world, and
3 with the job, and also obviously my personal life and my family
4 at home.

5 Q. And how did you refer to the workers that you were hiring
6 or rehiring at that time?

7 A. They were employees. We were retaining people and we were
8 also rehiring people from other companies that got laid off.

9 Q. And were you focused on whether they are classified as W-2
10 or 1099?

11 A. No. Just --

12 Q. When you wrote this email in COVID, were you thinking about
13 your February 2019 deposition and the preparation you did to
14 talk about workers in 2016?

15 A. I was not thinking about my 2016 working experience. I was
16 dialed in with this and trying to figure this out in 2020.

17 Q. Same question as you were applying in the PayPal portal.
18 Are you thinking about the prep you did for that trial so you
19 can be ready to answer those questions?

20 A. No. I just -- I don't think about how someone's been
21 identified as a -- as our employee that's working for us. I
22 don't look at that.

23 Q. What was your state of mind in March of 2020 about how
24 you -- the term you used for your workers, whether they're 1099
25 or W-2?

1 A. To me, they were employees, the workers. And we were
2 trying to fill jobs that were abandoned, not because of the
3 workers but because of the companies. So I'm just worried
4 about how do we get people back in here and what's the rules
5 and regulations with the county, so we follow that, and that's
6 what I'm working on.

7 Q. And you mentioned the dispute was with your partner. Who
8 was the partner?

9 A. His name was Leon Wildstein.

10 Q. And he sued you?

11 A. He sued me at that time. Correct.

12 Q. And what was the outcome of that case?

13 A. I sued him and -- for theft, fraud. And he -- because he
14 diverted about -- according to the calculations, close to \$7
15 million over a few years.

16 Q. How was he able to do that?

17 A. He put in -- the property manager we both agreed upon -- it
18 was supposed to be a third party. It wasn't a third party. It
19 was someone he knew, and they refused to send checks to my
20 entities for a few years. And then, when he finally -- the
21 judge finally granted relief and made him deposit two and a
22 half million dollars into an account, and then it was settled
23 from there.

24 Q. And was it a contentious litigation?

25 A. Yeah.

1 Q. Bad blood?

2 A. Yes.

3 Q. And during the litigation did Mr. Wildstein threaten you
4 with a federal investigation?

5 A. Yes, he did.

6 Q. What did he say?

7 A. He -- under deposition, he said that he --

8 MS. JIMENEZ: Objection. Hearsay.

9 THE COURT: Sustained.

10 BY MR. ETRA:

11 Q. In the course of these proceedings, have you witnessed
12 anyone associated with Mr. Wildstein meeting with the
13 prosecution team?

14 MS. JIMENEZ: Objection.

15 THE COURT: Basis?

16 MS. JIMENEZ: Leading.

17 THE COURT: Sustained. Rephrase.

18 BY MR. ETRA:

19 Q. Who, if anyone, do you recall meeting with the prosecution
20 in the course of the various proceedings in this criminal case?

21 A. Who do I meet with?

22 Q. Who do you recall seeing the prosecution meet with in the
23 course of this criminal case?

24 A. My understanding, he is Mr. Wildstein's legal counsel.

25 Q. And do you see that individual in the courtroom today?

1 A. Yes. He's all the way in the back. He's been here every
2 day and -- he's been here every day. He represents
3 Mr. Wildstein and I believe the grandson who was part of that
4 whole fiasco.

5 MR. ETRA: Take this down. Let's put up those two
6 emails, the Cupersmith emails.

7 Putting up X-30.

8 MR. CAVALLO: Q-25 and Q-34.

9 MR. ETRA: Your Honor -- sorry -- on the screen is
10 Q-25 and Q-30, although we can't see --

11 MR. CAVALLO: Q-34, Your Honor.

12 THE COURT: Thank you.

13 MR. ETRA: Sorry. Q-25 and Q-34 are both on the
14 screen. And if we could go to Q-25 at the bottom, Chris.

15 BY MR. ETRA:

16 Q. Sir, you were asked about your communications with
17 Mr. Cupersmith's firm about programs and PPP. Do you recall
18 that?

19 A. Yes.

20 Q. Okay. And when Mr. Cupersmith testified, do you recall
21 what he said about whether you had ever spoken to him about
22 this or his firm?

23 A. I remember his testimony, yes.

24 Q. What did he say?

25 A. He said that he never had any conversations or he never had

1 any communications with me regarding these government loans.

2 Q. And while -- whatever your memory is, whatever it is you do
3 and don't remember -- well, did you, in fact, have
4 conversations with him?

5 A. I did.

6 Q. And whatever the memory of that was, did he ever tell
7 you --

8 MS. JIMENEZ: Objection. Leading.

9 THE COURT: Sustained.

10 BY MR. ETRA:

11 Q. Did he say anything relating to any limitations with
12 respect to W-2?

13 A. No.

14 Q. Either for the payroll for 2019 or the use of money for
15 2020?

16 A. He never told me anything contrary to -- that would be any
17 issue with the --

18 Q. I want to change the subject of Ms. Gonzalez potentially
19 uploading bank statements or other documents. Okay, sir?

20 A. Yes.

21 Q. Do you know who uploaded -- physically uploaded the bank
22 statements for the PayPal first application?

23 A. Yes.

24 Q. Sorry?

25 A. Uploaded the first bank statements, you said?

1 Q. Yes.

2 A. Yes.

3 Q. Who did that?

4 A. Jeanette did.

5 Q. And do you know if she used it directly or had someone else
6 do it?

7 A. I don't remember sitting here how that happened. But at
8 that time, she uploaded it, like I testified earlier.

9 Q. And do you know if Mr. Vasilas was involved in assisting
10 that process?

11 A. He was involved because of the construction. Again, I
12 thought everything was in 2020 you're supposed to pay people.
13 So he was involved with the workers, the amount of workers,
14 because it was on ongoing construction project in Orlando in
15 2020. So he was involved with that. So he was talking with
16 her about that. That was the extent that I believe he was
17 involved.

18 Q. Do you know if Mary Ataca was involved in assisting in that
19 process?

20 A. Mary Ataca? Oh, Mary.

21 Q. Do I have the right last name?

22 A. Yeah. I know her as Mary.

23 Q. Sorry.

24 A. Is she involved with what process?

25 Q. Assisting with uploading -- just generally assisting with

1 uploading documents.

2 A. I don't recall what -- I remember specifically from -- that
3 the office itself -- someone had to go to -- physically to the
4 office during this time frame because it was a little tough. I
5 don't remember exactly who it was, but someone had to go to the
6 office and do that because it's on the office system and I
7 didn't have a scanner at my house. And I wouldn't know how to
8 scan at that time anyways. But I didn't have a scanner at my
9 house, so someone went to the office to actually put it into
10 the system, the network, and sent that off.

11 Q. I'm going to follow up on that shortly.

12 MR. ETRA: Could we put up Exhibit 17-8.

13 BY MR. ETRA:

14 Q. Sir, do you know who prepared this?

15 A. No.

16 Q. Do you know if Mr. Vasilas was involved?

17 A. I don't know.

18 Q. If you saw it, would you have known that it was false?

19 A. No.

20 Q. Would you have known that it -- would you have known if
21 there was withholding for these individuals?

22 A. No.

23 Q. Would you have known if there was some business reason why
24 the draw was 99,000 for you and for Mr. Graff?

25 A. No.

1 MR. ETRA: Take that down.

2 BY MR. ETRA:

3 Q. I want to talk a little bit more about Ms. Gonzalez. You
4 said she's still working for you today; is that right?

5 A. Yes.

6 Q. Do you know for a fact whether she did something wrong?

7 A. I don't know for a fact either way, something wrong or
8 something right. But to right now, I don't know anything so
9 far.

10 Q. Do you know what her intent was to the extent that he was
11 involved in working with Mr. Vasilas or otherwise?

12 A. Her intent?

13 Q. Yeah. Do you know what her intent may have been if she was
14 involved?

15 A. I have no idea what her intent would be.

16 Q. Why would your company pay for a lawyer for her if she may
17 have played some kind of a role in this?

18 A. Because I was charged with these things. And when -- I'm
19 starting to realize in America that if you're charged with
20 something you have to have a lawyer because the Government -- I
21 mean, if you don't have a lawyer to protect yourself, as far as
22 explaining things to you -- it's important because if you don't
23 have the resources it's really a problem. And that's why --
24 not only her, but all of the company people, they don't have
25 the resources.

1 So I said to them: "Listen, here's counsel. This is
2 what I've been charged with. And I don't know what this means.
3 I think it's nonsense, but they think it isn't. So I'm going
4 to pay for the lawyers so you have enough -- you have competent
5 legal counsel that can help. But I'm not involved with your
6 legal counsel. All I did was pay for it. I'm not part of that
7 process."

8 MR. ETRA: Putting up Exhibit 17-11 in evidence.
9 And -- actually, the whole bottom part, please.

10 BY MR. ETRA:

11 Q. This is the -- just to direct you, if you see the date,
12 this is the certification page of the DocuSign for the first
13 PayPal loan. Do you recognize that or should I show you other
14 pages?

15 A. I see it, yeah.

16 Q. You see it? Okay. And you were asked about the
17 sentence -- the second-to-last bullet point: "I further
18 certify that the information provided in this application and
19 the information provided in all supporting documents and forms
20 is true and accurate in all material respects." Do you see
21 that?

22 A. I do.

23 Q. I want to look at the top line that leads into that.

24 "The authorized representative of the applicant must
25 certify in good faith to all the below by initialing next to

1 each one." Do you see that?

2 A. Yes.

3 Q. Did you certify in good faith to these certifications?

4 A. I did.

5 Q. Did you believe that the materials provided -- did you
6 believe they were accurate or you thought they were fraudulent?

7 A. I would believe they were accurate. I wouldn't --

8 Q. And in terms of --

9 MR. ETRA: And if we just jump back to the third
10 bullet point.

11 BY MR. ETRA:

12 Q. When it says: "The funds will be used to retain workers,"
13 what did you understand that to mean?

14 A. That the funds that was provided would be able to retain
15 existing workers that work for the company and whoever the
16 workers are that you're going to keep them on your -- on your
17 company.

18 MR. ETRA: Put up Exhibit -- no. I don't want to do
19 that. The -- we could take this down.

20 BY MR. ETRA:

21 Q. The Government showed you or reviewed with you tax
22 returns -- and I can put them up, if you want me to, and I'm
23 happy to do that if you want me to -- for the HM-UP TRU, TRU
24 entity. Do you recall being shown that by the prosecutors?

25 A. Yes.

1 Q. And I think she pointed out that -- and correct me if I'm
2 wrong --

3 MS. JIMENEZ: Is this cross-examination?

4 MR. ETRA: I'll put it on the screen.

5 THE COURT: All right. Let's go ahead and do that.

6 MR. ETRA: Let's use 16-6. The Bates number is, I
7 believe -- while you're looking, I'll see if I can ask
8 questions that are not objectionable.

9 BY MR. ETRA:

10 Q. Mr. Sheppard --

11 A. Yes.

12 Q. -- do you recall generally the questioning about the tax
13 returns for HM-UP TRU?

14 A. Yes.

15 Q. And generally what do you recall about that questioning --
16 or do you?

17 A. I mean, we talked about that there was -- I don't know.

18 There was no income or something of that nature, that she was
19 showing me a bunch of pages in a tax return, that there was no
20 activity in the company or something like that.

21 Q. And to your knowledge, did your company provide that
22 return, that tax return from TRU, HM-UP TRU, to Nationwide?

23 A. I believe it did.

24 Q. Well, why would you provide a tax return to Nationwide
25 which showed no income or zeros where maybe there were supposed

1 to be numbers?

2 A. I mean, I just provided what they asked me for. I provided
3 to it -- I never had a thought process about it. It was being
4 transparent, gave them a tax return --

5 Q. Did you think you were trying to hide -- were you trying to
6 hide from Nationwide any tax information about the companies
7 that were applying?

8 A. No. Whatever they asked me to do -- they're a third party.
9 You ask me for information, here it is. That's all it was. I
10 mean, that's -- they asked. I gave it to them.

11 MR. ETRA: I'm putting up on the screen Exhibit 61 on
12 one side -- well, the first page of 61, and then later on on
13 the other side of 61. If we could just blow up the middle part
14 of --

15 BY MR. ETRA:

16 Q. Well, first of all, can you tell -- did you DocuSign this
17 document? Can you see that or do you want me to pull up the
18 DocuSign?

19 MR. ETRA: Why don't we pull that up. It's hard to
20 read.

21 THE WITNESS: Okay.

22 MR. ETRA: And let's look at the -- pull out the --
23 pull that down. And maybe we should just look at this document
24 because it's hard to -- small print. Maybe we'll do this one
25 first and make it bigger if you can, at least the middle part.

1 BY MR. ETRA:

2 Q. And tell me if you recognize --

3 MS. JIMENEZ: Your Honor, I object. This is outside
4 the scope of cross-examination.

5 MR. ETRA: Your Honor, it deals with the relationship
6 with Nationwide, of which there were probably two hours of
7 cross-examination.

8 THE COURT: The objection is overruled.

9 BY MR. ETRA:

10 Q. Mr. Sheppard, do you recognize this document?

11 A. Yes.

12 Q. What do you recognize this document to be?

13 A. This is a Nationwide service document.

14 Q. Did you fill this out as part -- to start to work with
15 Nationwide?

16 A. I don't recall if I filled it out, but I remember the
17 document. It was like a DocuSign thing.

18 Q. And you see where it says that they are providing advisory
19 services and evaluation and review, which is a few bullet
20 points down. Do you see that?

21 A. I do.

22 Q. What did you understand Nationwide's role to be when
23 working with them?

24 A. I thought they were -- they lent -- they set themselves to
25 be the representative of the SBA for these kind of loan

1 programs that we were talking about, the EIDL loans, which I
2 wasn't familiar with until they called me.

3 Q. What, if anything, do you understand about their -- what,
4 if anything, was represented to you about their expertise in
5 this area?

6 A. They said this is what they do, and they have this program,
7 and they would look at all my stuff and see what I qualified
8 for. And I said: "Okay," and they gave me advice. And then
9 they asked me for information, I gave them the information.

10 Q. Did you rely on them?

11 A. Yeah.

12 MR. ETRA: Let's go to the next page, which is the
13 loan -- well, it's -- the initials are LOA, Loan Authorization
14 Form.

15 BY MR. ETRA:

16 Q. Take a moment to look at that, please.

17 A. (Witness complies.)

18 Okay.

19 Q. Do you recognize that document?

20 A. Yes.

21 Q. What is this document?

22 A. It's a loan authorization form that was DocuSigned on
23 7/21/20.

24 Q. According to this, who was the one who was actually
25 applying for the loans?

1 MR. ETRA: Pull out the first paragraph.

2 THE WITNESS: HM Management and Development.

3 BY MR. ETRA:

4 Q. Well, HM Management and Development -- what does it say
5 about the relationship -- what HM Management and Development
6 was doing with Nationwide, what they were authorizing
7 Nationwide...

8 A. It's basically giving them permission to have Nationwide
9 Lending Direct -- authorizing them -- of HM Management and any
10 other owned entities by myself and affiliates for them to apply
11 for -- on my behalf any loan for me -- for me for 90 days.

12 Q. And if we go to the next paragraph, let's talk about what
13 your company's role -- what your role was going to be. What
14 was your role supposed to be there, because you were signing
15 it.

16 A. It's saying that I would like -- just giving me -- just
17 telling me that I'm going to assist in the applications and to
18 include me as the contact person of recording -- of record,
19 assisting in any loan application.

20 Q. I think you'll -- when the prosecutor was questioning you,
21 I think you said you dealt with Nelly Palancar. Did you give
22 that testimony?

23 A. Correct.

24 Q. Did anyone else in your organization deal with
25 Ms. Palancar?

1 A. Jeanette Gonzalez.

2 MR. ETRA: Why don't we take this down.

3 BY MR. ETRA:

4 Q. I think you mentioned in your cross-examination testimony
5 an email from Mr. Sheps. So I'm putting up the email at the
6 top part, and tell me if that's what you were referring to.

7 MR. CAVALLO: This is in evidence as Government's 67.

8 THE COURT: All right. Thank you.

9 THE WITNESS: This is the email that I referred to
10 that -- from -- between Daniel and myself.

11 BY MR. ETRA:

12 Q. And very briefly, what was the significance of this email?

13 A. It basically was the -- the email with regards -- with
14 Daniel -- after he called me to tell me and pitched me this
15 thing about this EIDL program, that was what he came up with as
16 far as my businesses that -- initially that he thought would be
17 good for this type of loan.

18 Q. I want to change the topic to the HM Four application and
19 the issue of ownership. Okay?

20 A. Sure.

21 Q. All right. You testified about confusion with the SBA
22 about tenancy by the entirety. Do you recall testifying to
23 that?

24 A. I do.

25 Q. And do you recall the in-court testimony about that?

1 A. Yes.

2 Q. What was the in-court testimony about that?

3 A. That the gentleman -- I think he's from Texas -- who was in
4 charge of the SBA -- I'm not sure exactly his title, but he was
5 like the head guy, as he said, in a certain department of the
6 SBA. I remember you asking him: "Do you know what tenants by
7 the entirety actually is," and he said he had no idea.

8 MS. JIMENEZ: Objection, Your Honor. Hearsay. I
9 apologize.

10 THE COURT: Overruled.

11 BY MR. ETRA:

12 Q. Is that consistent with dealing with the SBA when you were
13 in COVID, the various things you were dealing with?

14 A. That was very consistent with the gentleman I was dealing
15 with for the -- HM Four. I was trying to explain to him the --
16 what it meant and how it relates to Eric and Jennifer Sheppard
17 together. As a married couple, you own something together,
18 like -- you know.

19 Q. Did you have any reason, when you were applying for the HM
20 Four loan, to hide either your ownership interest or
21 Mr. Kallman's being involved? Did you have any reason to do
22 that?

23 A. Absolutely not.

24 Q. Do you recall the Government showed you a document about a
25 rejection of some kind during the course of these questions?

1 A. Yes.

2 Q. Okay. I'm going to show you some other documents.

3 MR. ETRA: Could we pull up side by side the EIDL
4 application for HM-UP and HM Management. Well, I probably
5 should do them one at a time because the print is small.

6 MR. CAVALLLO: Which one first?

7 MR. ETRA: Let's start with HM-UP -- no -- HM
8 Management. Sorry. HM Management.

9 BY MR. ETRA:

10 Q. Now, you personally didn't fill this out, right?

11 A. HM Management, no.

12 Q. Right. But you provided -- you understood it came from
13 discussions with Nationwide, right?

14 A. Correct.

15 Q. And did you disclose ownership interest to Nationwide?

16 A. Yes.

17 Q. And if we look at the owner -- well, first of all, if we
18 look at the address, which is Line 20, what address is there?

19 A. 180 Bal Cross Drive.

20 Q. Okay. And if we look at the alternate business phone,
21 which is Line 26, what phone number is there?

22 A. 582-5529, which is my phone number.

23 Q. And the Bal Cross Drive is the home?

24 A. Correct.

25 Q. And if we go to the owner information --

1 MR. ETRA: Just go to the next page. You'll see it
2 right there. It was just coming up.

3 BY MR. ETRA:

4 Q. -- whose name is identified as the owner?

5 MR. ETRA: If we just go one line above that.

6 The line before that.

7 No. No.

8 Yes. Bottom.

9 THE WITNESS: Eric Sheppard.

10 BY MR. ETRA:

11 Q. Okay. Did you have any concern when you filled this out
12 about disclosing yourself as the owner of HM Management?

13 A. I did not.

14 Q. And now let's -- and this loan was approved, right?

15 A. Correct.

16 Q. Any reason to think the SBA had anything against Eric
17 Sheppard?

18 A. I didn't think they would.

19 MR. ETRA: And let's go to the HM-UP application now.

20 MR. CAVALLO: That document was in evidence as part of
21 the Government 51, and this one is part of the Government 53.

22 THE COURT: Thank you.

23 BY MR. ETRA:

24 Q. And again, this came together the way the other one came
25 together, right, the HM Management?

1 A. Yes. It was set up by them with their email addresses and
2 stuff.

3 Q. And if we look at the alternate business phone, whose
4 number is there, Line 26?

5 A. That's my phone number.

6 Q. Okay. And if we go to the owner information, you see --
7 who's the first owner identified?

8 A. Eric Sheppard.

9 MR. ETRA: If we go further down, let's see the next
10 owner.

11 BY MR. ETRA:

12 Q. Who is the next owner identified?

13 A. Robert Kallman.

14 Q. And this got approved, right?

15 A. Correct.

16 Q. And that's all before -- was that before or after you
17 applied for HM Four?

18 A. It was before.

19 Q. So going into the HM Four application, did you have any
20 reason to believe that Mr. -- you, Mr. Sheppard, couldn't be on
21 multiple applications?

22 A. No.

23 Q. Did you have reason to believe there's something wrong with
24 Mr. Kallman being --

25 MS. JIMENEZ: Objection. Leading.

1 THE COURT: Sustained.

2 BY MR. ETRA:

3 Q. Heading to the HM Four application, what was your
4 understanding as to whether you're not -- you can have yourself
5 or Mr. Kallman on an additional application?

6 A. It's not an issue if they are separate businesses.

7 MR. ETRA: And let's go to the EIDL application for HM
8 Four, which I think is 58-6.

9 BY MR. ETRA:

10 Q. And this one -- I think you testified you filled this out,
11 right?

12 A. Yes.

13 Q. And were you trying to hide your involvement?

14 A. No.

15 Q. Let's look at the address given. Let's look at -- what
16 address did you put down?

17 A. Same one, 180 Bal Cross Drive.

18 Q. And what alternate number did you put down?

19 A. Same. 582-5529.

20 Q. If we look at the owner -- I know it's not you, but let's
21 look at the owner information. Same last name?

22 A. Yes.

23 MR. ETRA: If we take this down.

24 Could we put up the HM Four/HM Eight Management
25 Agreement. Actually, let's start with the REA.

1 The REA is on the screen. Exhibit Number...

2 MR. CAVALLLO: It's Defense Exhibit M-50.

3 BY MR. ETRA:

4 Q. What is HM Eight's role, according to the -- at least as of
5 the REA?

6 A. They are the developer of the -- the developer.

7 Q. Okay.

8 MR. ETRA: Now let's put up the HM Four/HM Eight
9 Management Agreement.

10 BY MR. ETRA:

11 Q. I think you testified about some confusion in the drafting
12 between the owner and manager. Do you recall that?

13 A. I do.

14 Q. Okay.

15 A. I do.

16 MR. ETRA: Let's go to the signature block.

17 BY MR. ETRA:

18 Q. What is indicated in the signature block about who's the
19 owner and who's the manager?

20 A. It says the owner is HM Eight and then the manager is HM
21 Four.

22 Q. And in what way is the -- is that accurate or is that not
23 accurate?

24 A. It's the reverse. It's -- it's HM Eight is the manager, HM
25 Four is the owner.

1 Q. I thought the REA allows HM Eight to delegate its duties to
2 HM Four.

3 MS. JIMENEZ: Objection. Leading.

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

5 THE WITNESS: The REA allows for HM -- HM Eight to
6 give to HM Four, or whoever they want to, to assign the rights
7 and the obligations to a different company.

8 BY MR. ETRA:

9 Q. And who was the manager under this agreement?

10 A. Under this agreement?

11 Q. Yeah.

12 A. It says HM Four.

13 Q. Okay.

14 MR. ETRA: And could we go to the --

15 BY MR. ETRA:

16 Q. Could you just explain the relationship with the REA and
17 this agreement, please.

18 A. This agreement basically is just to -- because HM Four is
19 now the 99 percent owner. HM Eight in 2011 was the hundred
20 percent owner. So when HM Eight, LLC became a hundred to one
21 percent, and HM Four became the 99 percent owner, they have the
22 majority. So therefore they're being assigned the duty and the
23 obligations because of their vested interests to be the company
24 in charge of this agreement.

25 Q. Which company was assigned the management duty and

1 responsibility?

2 A. HM Eight assigned it to HM Four.

3 Q. All right.

4 MR. ETRA: Could we put up the CAM.

5 (Pause in proceedings.)

6 BY MR. ETRA:

7 Q. While I'm waiting for the next document, I want to talk
8 about the issue of -- for the EIDL loans, whether the companies
9 did worse in COVID -- whether they suffered injury in COVID,
10 that topic.

11 Let's start with HM Management. Did HM Management do
12 better or worse in COVID?

13 A. They did worse.

14 Q. How about HM-UP?

15 A. HM-UP did poorly.

16 Q. And I want to look at the dollar numbers here. What we
17 have on the screen -- I think it's 58-6. It's the EIDL
18 application for HM Four, and I want to focus on the numbers.

19 The gross revenues -- let's start with the -- Item
20 16 -- no. Let's start -- Item 16 -- take a step back.

21 Let's start with 14, "Gross Revenues for the 12 Months
22 Prior to Disaster." The number there is 950. Do you see that?

23 A. Correct.

24 Q. Do you have any recollection as to what formula or not you
25 used to get that number?

1 A. Yes.

2 Q. Please tell us what you recall.

3 A. It's the year before. It was the income that HM Four
4 generated from the rent, and their net portion of it goes to HM
5 Four. So after interest and all that, that was income. So
6 that was where that income number comes from.

7 Q. And the next item, Cost of Goods Sold, do you have a
8 general recollection of where you got that number --

9 A. Yes.

10 Q. -- 250? Where did you get that number from?

11 A. HM Four, from a budget standpoint, there is -- with the
12 owners, is that -- I would have to see a budget, but there's an
13 annual budget -- I think I testified about this before. But
14 there's an annual budget for the property, and HM Four carries
15 out those obligations, and each owner has their specific
16 contributions. There's multiple owners on the property, not
17 one owner. There's multiple owners.

18 So they're -- in a nutshell, if it was \$500,000
19 approximately, and you divide it by two, one owner to the other
20 owner, it's \$250,000.

21 MR. ETRA: What exhibit is this?

22 MR. CAVALLO: This is X-16 in evidence.

23 BY MR. ETRA:

24 Q. Is this the document you've referring to?

25 A. Correct.

1 Q. Can you describe very briefly.

2 MS. JIMENEZ: Objection, Your Honor. This document
3 was not introduced into evidence before.

4 MR. ETRA: Yes, it was.

5 THE COURT: What's the exhibit number, please?

6 MS. JIMENEZ: It's outside the scope of
7 cross-examination.

8 THE COURT: What's the exhibit number, please?

9 MR. CAVALLO: This is X-16.

10 THE COURT: The objection is overruled. You may
11 continue.

12 BY MR. ETRA:

13 Q. Sorry. Is this the -- this document relate to what you
14 were just testifying to?

15 A. Correct.

16 Q. Could you explain very briefly how it does.

17 A. Yes. If you look on the -- if you go to the -- to make it
18 simple for timing purposes, you go to the total column over
19 there, it's \$706,000. You take out the property taxes because
20 the property taxes are paid directly from the tenants, and then
21 the rest are the expenses on the property. And then you have
22 multiple owners. And then you take the owners -- and HM Four's
23 specific obligation is 250.

24 So if you take 706,000, you subtract 232, it gives you
25 the number, and then you split that with the multiple owners --

1 the two owners, and that's how you get to 250. It's just math.

2 MR. ETRA: Let's go back to the EIDL application we
3 were looking at which is 58-6.

4 BY MR. ETRA:

5 Q. And I want to focus on the rental -- sorry. Rental
6 Properties, Lost Rents Due Disaster of 450. Do you see that?

7 A. Correct.

8 Q. Do you have any recollection of how you came up with that
9 number?

10 A. Yes.

11 Q. What's your best recollection of how you came up with that
12 number?

13 A. This number came from -- as we discussed, that the
14 Burlington Coat Factory was supposed to be done on -- by the
15 end of April. So if you take the months that it was supposed
16 to be done, and when COVID hit -- as we've been discussed for a
17 long time now, for 13 days, that the construction was delayed
18 because of the impact of COVID and all the regulations by the
19 government, and the workers, everything everyone's talked
20 about, those months from when the rent would have started got
21 delayed until the end of October 2020.

22 So if you add the hundred thousand dollars per month,
23 that was your impact, based upon direct impact because of
24 COVID, which doesn't even include the liquidated damages. So
25 it was probably actually -- it's actually more. But just on

1 rent alone, that's it.

2 Q. On the Herc issue, could you just explain -- generally
3 speaking, what authority did Mr. Vasilas have to sign up with
4 vendors and do credit applications? What was the scope of his
5 authority?

6 A. His authority was to go try to find approved vendors that
7 he would provide to us. That was the authority. However, in
8 no shape or form ever, ever, never, would he or anybody have
9 the right to sign my name as a guarantor for an obligation for
10 me as an individual. Nobody. That's just crazy.

11 But for the company itself, yes, he was out there
12 trying to find vendors. But not for a guaranty of a loan.
13 That's just -- not a loan, a loan or an obligation. Nobody has
14 the right to do that.

15 Q. What, if any, reporting requirements did he have to you in
16 selecting and signing up a vendor? How did that work?

17 A. It was based upon a budget. And usually him and Jeanette
18 could communicate about applications, and then she would send
19 him over documents that she needed, whether it be a tax return
20 or whatever she sent him for the company, not for me
21 personally. For the company. And there was a pre-budget, and
22 all this was in the budget, and that's what he was -- but he
23 was pretty good communicating. He would pretty much tell me
24 what he was doing.

25 Q. Did you have to approve the vendors or not?

1 A. I'm sorry? Did I have to approve what?

2 Q. Did you have to approve the various vendors or not?

3 A. I mean, I don't know about approve. We spoke a lot. So we
4 just maybe discussed it. But yes, if it's outside the people
5 that we already established who are the vendors for the
6 project, because they were already in place -- if it's outside
7 that, then of course I'd have to approve it. If it's not
8 outside that, then that'd be different.

9 Q. And which equipment vendors were inside what you had
10 budgeted and approved?

11 A. Sunbelt and Ahern Rentals are the two vending -- vendors
12 for construction equipment.

13 Q. And did you ever -- did you ever authorize Mr. Vasilas to
14 represent himself as the owner of any of your businesses?

15 A. No. As an owner, no.

16 THE COURT: Ladies and Gentlemen, how we doing? Is
17 anyone in need of a short break?

18 All right. Let's go ahead and take a 10-minute
19 recess, please.

20 (Jury not present, 4:05 p.m.)

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

22 (Recess from 4:06 p.m. to 4:15 p.m.)

23 THE COURT: All right. Both sides ready to proceed?

24 MR. ETRA: Defense is ready.

25 THE COURT: How much more do you have on this

1 redirect?

2 MR. ETRA: Five minutes. I really have three topics.
3 Should be really quick.

4 THE COURT: And you have your next witness ready to
5 go?

6 MR. ETRA: Ready to go.

7 THE COURT: All right. Let's bring in the jury,
8 please.

9 (Before the Jury, 4:15 p.m.)

10 THE COURT: All right. We are missing one juror.

11 MR. ETRA: Probably in the bathroom.

12 THE COURT: Did we check in the vestibule? If we can
13 check in this area.

14 COURT SECURITY OFFICER: I did already, ma'am.

15 THE COURT: All right. Thank you.

16 (Pause in proceedings.)

17 THE COURT: All right. Welcome back, Ladies and
18 Gentlemen. Please be seated, everyone.

19 Let's continue.

20 MR. ETRA: Thank you, Your Honor.

21 BY MR. ETRA:

22 Q. Mr. Sheppard, you were shown in cross some type of a
23 computer report or printout reflecting a lease or -- between --
24 or a draft lease between Pacific Management and HM-UP. Do you
25 recall being shown something along those lines?

1 A. Yes.

2 Q. How did that -- how and why did that turn into the HM Four
3 lease?

4 A. I'm sorry. How did it turn into the HM Four lease?

5 Q. Yes.

6 A. When the negotiation was going on for the new lease for a
7 short-term six-month lease, they would not provide us the
8 financial statements of the new company Pacific Management.
9 And that was a problem because we knew SOS Furniture, but we
10 didn't know who Pacific Management was.

11 So during the negotiations, that's when we shifted it
12 to HM Four because we couldn't get the financial information.

13 Q. And the short reason why that is relates to the shifting it
14 to HM Four.

15 A. I thought it was very strange that a national company would
16 change their tenant from SOS Furniture to Pacific Management.
17 That was very strange for a national company. So obviously
18 there was something wrong. We wanted to see the financials.
19 They wouldn't give us the financials. So we change -- I said:
20 "Okay. Fine. Then we're going to put HM Four as the
21 landlord," and whatever this Pacific Management is.

22 Q. What was the business reason to switch them over -- that
23 reason or others -- what was the issue with keeping it with
24 HM-UP?

25 A. They were -- we just wanted them out and they wouldn't

1 leave. So I just did not want to get into litigation with
2 HM-UP because I have a \$20 million loan in HM-UP's name. HM
3 Four owns it, and HM Four is responsible for all the common
4 area. And since they haven't been paying rent for a long time,
5 they owed approximately \$70,000, I'm like: "Listen, you're not
6 going to sue me during COVID" -- not me but HM-UP. "If you're
7 going to put this false" -- I don't know about false -- "this
8 company who I have no idea who they are, okay, but HM Four is
9 in charge of all the common area which you are delinquent
10 with."

11 So HM Four, the 99 percent owner of HM-UP, that's how
12 the decision came about to avoid any type of litigation that
13 this guy has shown that he was, you know, capable of.

14 Q. What was the concern with having HM-UP and -- what would
15 happen to the Basis loan -- what was your concern about what
16 would happen to the Basis loan if there was litigation with
17 HM-UP with this entity?

18 A. For a 3,000-square-foot tenant, they would default us.
19 Again, they would default us for that. If there's
20 litigation -- it's a mess when you get sued. And you have to
21 notify the lender. Then the lender gets involved. For a
22 3,000-square-foot tenant, for six months, it wasn't worth the
23 headache, especially because the courts were closed at that
24 time as well. There was a moratorium -- not closed -- a
25 moratorium on -- you couldn't evict people and stuff like that,

1 so...

2 Q. You gave some testimony about HM Four and HM Management. I
3 just want to get it clear. With respect to how they were
4 managed and run, were they related or not related?

5 A. HM Four and HM Management?

6 Q. Yes.

7 A. Related.

8 MR. ETRA: Could we put up the bank letter and the
9 email that sent the bank letter side by side.

10 (Pause in proceedings.)

11 MR. ETRA: Let's start with the -- start with the
12 email that's on the screen.

13 Chris, what documents are these?

14 MR. CAVALLO: This is G-4, which is identical to --
15 and is in evidence under Government's 58.

16 THE COURT: All right. Thank you.

17 MR. ETRA: And G-7 which is evident on the screen.

18 MR. CAVALLO: Which is also in evidence as
19 Government's 58.

20 BY MR. ETRA:

21 Q. Let's first look at the last line of this letter, where
22 Mr. Barrios writes: "If you have any additional questions or
23 concerns, I could be reached at (305)868-2644."

24 MR. ETRA: Can we highlight that.

25

1 BY MR. ETRA:

2 Q. Mr. Sheppard, did you have any concerns about submitting
3 this letter to the SBA, where Mr. Barrios said he could be
4 reached with a phone call to his office?

5 A. Nope.

6 Q. Now, let's go to the email from you or -- you know, from
7 you to Mr. Blakeley. You write: "Attached is a letter sent to
8 me from the manager of SunTrust Bank confirming the HM Four
9 business account."

10 And then let's focus on the last sentence: "He
11 mentioned that he received a lot of requests of account
12 verification from the SBA due to fraud, and if anyone has any
13 questions they can contact him." Why did you write that
14 sentence?

15 A. Because that's what he said. I wanted to make sure that
16 the SBA -- if they wanted to verify anything, call him. Here's
17 his -- he gave you his phone number, and you can contact him.
18 Contact him directly. If you have any questions whatsoever,
19 call the guy directly.

20 Q. Were you concerned they might call him?

21 A. Was I concerned? No. I hoped they'd call him and see that
22 I'm a good customer. That'd be a great thing.

23 MR. ETRA: No further questions, Your Honor.

24 THE COURT: All right. Mr. Sheppard, you may go ahead
25 and have a seat.

1 And the Defendant's next witness, please.

2 MR. ETRA: Defendant calls Robert Kallman.

3 (Pause in proceedings.)

4 THE COURT: All right. Good afternoon, sir.

5 If you'll step forward.

6 Sir, if you'll remain standing. Raise your right hand
7 to be placed under oath.

8 ROBERT KALLMAN, DEFENSE WITNESS, SWORN

9 COURTROOM DEPUTY: Thank you. Have a seat.

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

12 THE WITNESS: Robert Kallman.

13 R-O-B-E-R-T K-A-L-L-M-A-N.

14 THE COURT: Thank you.

15 MR. ETRA: May I proceed?

16 THE COURT: Yes.

17 DIRECT EXAMINATION

18 BY MR. ETRA:

19 Q. Sir, where were you born?

20 A. Brooklyn, New York.

21 Q. What part of the country do you live in?

22 A. I live in Long Island, New York.

23 Q. Generally speaking, what do you do for a living, sir?

24 A. I'm in the wholesale book distribution business. We're the
25 second largest distributor in the country.

1 Q. Can you describe generally -- just very generally the
2 nature of your business.

3 A. We have a stocking warehouse where we receive books from
4 the publishers. We stock them, and then we ship on a daily
5 basis to customers such as Amazon, Barnes & Noble, all the
6 national retailers, and we do a lot of CDF direct ship to home.

7 Q. Do you know Mr. Sheppard?

8 A. Yes, I do.

9 Q. How long have you known him?

10 A. Approximately 24 years.

11 Q. Have you ever invested with him?

12 A. Yes.

13 Q. How long ago did you start investing with him?

14 A. Probably about 18, 19 years ago.

15 Q. Are you still an investor with him?

16 A. Yes, I am.

17 Q. In real estate?

18 A. Yes, sir.

19 Q. Okay. Approximately how many investments have you had over
20 the years with Mr. Sheppard ballpark?

21 A. Probably four to five.

22 Q. In what states, if you can recall some of them?

23 A. Some of the states -- one was in Arizona, Maryland,
24 Florida, several other states.

25 Q. Does your investment include the Shoppes at Alafaya in

1 Orlando?

2 A. Yes, it does.

3 Q. In the course of your -- all your investing with
4 Mr. Sheppard, did you have any times you couldn't work out any
5 kind of situation with him if something came up?

6 A. No. Everything was always worked out amicably.

7 Q. Are you familiar generally with how Mr. Sheppard runs his
8 real estate and construction business?

9 A. I have a general understanding.

10 Q. How do you know?

11 A. I've been in his company numerous times, in the office at
12 meetings, discussed, you know, at great length on the phone the
13 business, and I've, you know, seen him operate over the years.

14 Q. Did you ever deal with Jeanette Gonzalez?

15 A. Yes, I have.

16 Q. On what kind of matters?

17 A. Jeanette, I would say, is a bookkeeper. She keeps the
18 books and records. You go to her -- you need a lease abstract,
19 anything of that nature, she's -- you know, books all the
20 expenses, if you want to know if a tenant paid rent, so on and
21 so forth.

22 Q. Why not ask Mr. Sheppard about those kinds of questions?

23 A. That's not what Mr. Sheppard really gets involved in.

24 Q. When Mr. Graff was working at the companies, what did
25 Mr. Graff -- well, did you ever have any contact with

1 Mr. Graff?

2 A. Yes, I did.

3 Q. Let's start on the development side. Did you ever have any
4 contact with Mr. Graff on the development side?

5 A. Very limited. I never myself took Mr. Graff to be a
6 developer.

7 Q. Did he bring in any deals?

8 A. He would present once in a while a deal, and they were not
9 something that you would want to put your money into.

10 Q. Did he present any deals that came to fruition?

11 A. No.

12 Q. What about -- are you familiar with the Arundale [sic]
13 deal?

14 A. Arundel.

15 Q. Arundel. I always get that wrong. I apologize.

16 Were you involved in that deal?

17 A. Yes.

18 Q. Who brought in that deal?

19 A. I believe two gentlemen. One was the name of Gordon, and
20 the other gentlemen's name I think was Leach or Lech, or
21 something like that.

22 Q. Did Mr. Graff bring in that deal?

23 A. No, he did not.

24 Q. Was he given some equity interest nevertheless at some
25 point?

1 A. It wound up that Eric gave him, you know, 10 percent.

2 Q. Were you -- did you have a different view of that?

3 A. I absolutely had a different view.

4 Q. Why?

5 A. I didn't think Mr. Graff was deserving of any percentage of
6 the deal.

7 Q. And was there a dispute at the end about whether he would
8 get any of that?

9 A. I bought that deal out myself at the end. And as Mr. Graff
10 had the 10 percent interest, I had to deal with that.

11 Q. Was there a problem -- did you object to him getting paid?

12 A. Yes, I did.

13 Q. Why?

14 A. The reason I objected to him getting paid is because when
15 he was, you know, allegedly in charge of, you know, the
16 accounting, and making sure that, you know, the taxes got paid
17 or anything else, so on and so forth, he neglected -- there was
18 a deadline that he missed and didn't file something, and didn't
19 pay something on time, and it wound up costing us about
20 \$50,000, and I was very upset about that. You know, I
21 expressed that to Eric.

22 And when it came time to straighten out with Mr. Graff
23 for the 10 percent, I didn't feel that it was right that I had
24 to give him any type of compensation when he cost us \$50,000,
25 just because of his, you know, carelessness, and why should

1 that come out of my pocket.

2 Q. And what happened in the end?

3 A. What happened in the end, Eric called me up and he
4 advocated for Jeff to just, you know: "Come on, just let's
5 settle it up and everybody will move along," you know, "and
6 give him something."

7 Q. What about on the accounting side or the back-office side?
8 Did you deal with Mr. Graff on that side?

9 A. Yes.

10 Q. And generally speaking, how was he on the accounting or
11 back-office side of the house?

12 A. Jeff, I felt, was fairly competent. I mean, he was
13 supposedly -- I never saw a certificate, but supposedly he was
14 a CPA. And I was always able to speak to him about any type of
15 accounting matters, and he was, you know, knowledgeable enough.

16 Q. Why didn't you speak to Mr. Sheppard about those accounting
17 matters?

18 A. Eric, I really -- you wouldn't get too much of an answer.
19 Jeff or Jeanette is who I would go to to get that type of
20 information if I needed it.

21 Q. Were you ever present with Mr. Sheppard when he spoke
22 either in person or on the phone to Ms. Gonzalez and Mr. Graff?

23 A. Yes.

24 Q. Did you observe -- did it appear that Mr. Sheppard was
25 relying on them?

1 A. He would call them up for specific information, and they
2 would give it to him.

3 Q. Did you observe Mr. Sheppard's ability or not with
4 technology?

5 A. Yes.

6 Q. What did you observe?

7 A. I would say, to explain it, he's probably technically
8 challenged to a certain degree.

9 MR. ETRA: Putting on the screen photos from -- well,
10 putting on the screen photographs in evidence as Q-1.

11 BY MR. ETRA:

12 Q. First of all, do you recognize the first page -- the first
13 photograph?

14 A. Yes.

15 Q. What is that?

16 A. The office.

17 Q. Which office? What part of -- where was the office located
18 that you're looking at?

19 A. It depends during what time frame because we had several
20 different locations.

21 Q. Okay. Let's go through the various pictures and see if you
22 recognize the location from the picture.

23 A. I believe that was 12000 Biscayne.

24 Q. And let's just run through the -- do you recognize this
25 scene, the third picture here?

1 A. Yes.

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

3 BY MR. ETRA:

4 Q. Do you recognize this room?

5 A. Conference room.

6 Q. That's the conference room. And to what extent did --

7 MR. ETRA: Let's go to the next picture. And then
8 let's go -- just hit all of the pictures.

9 Stop there.

10 BY MR. ETRA:

11 Q. To what extent did this -- did the office at 12000 Biscayne
12 look like this condition or not look like this condition?

13 A. It generally always looked like that condition. There was
14 just stacks and stacks of papers around, much more so in the
15 conference room and on Eric's desk.

16 Q. It was typical?

17 A. Atypical.

18 Q. It was typical or not typical?

19 A. It was typical.

20 Q. Okay. I want to talk about the Orlando project and the
21 work that got done in COVID. Well, even before COVID, I want
22 to talk about the work from Toys "R" Us to Burlington. Are you
23 generally familiar with that topic?

24 A. Yes.

25 Q. Okay. Were you ever at that project when it was being

1 built?

2 A. Yes.

3 Q. Who did you -- who, if anyone, appeared to be in charge?

4 A. At the time, Jeff -- I believe Jeff was running the
5 construction there.

6 Q. When you say: "Jeff," which Jeff?

7 A. Jeff Vasilas.

8 MS. MARTINEZ: Objection, Your Honor. Just vagueness
9 as to time period.

10 THE COURT: Yeah. Let's --

11 BY MR. ETRA:

12 Q. When is it that you first saw Jeff Vasilas, that you were
13 present that you saw Jeff Vasilas?

14 A. Prior to COVID.

15 Q. Sorry?

16 A. I think it was prior to COVID.

17 Q. Okay. And whose decision was it to hire and use Jeff
18 Vasilas for the role that he played there?

19 A. Eric's.

20 Q. What was your take on that decision?

21 A. I wasn't a huge proponent of Mr. Vasilas.

22 Q. Why?

23 A. I found the guy to be not as -- I would have rather had
24 what I would call maybe more of a professional-type person at
25 that time.

1 Q. Do you have any sense of the person also, aside from that?

2 A. I'm sorry. Repeat that.

3 Q. Do you have any sense of the person, the character
4 besides --

5 MS. MARTINEZ: Objection. Speculation.

6 THE COURT: If the witness knows. Overruled. I'll
7 allow it. You may answer the question.

8 THE WITNESS: Thank you. I don't think -- in my
9 opinion, Jeff was too --

10 MS. MARTINEZ: Objection. No foundation as to that
11 opinion, Your Honor.

12 THE COURT: Overruled.

13 BY MR. ETRA:

14 Q. You can answer.

15 A. Jeff was not what I would consider to be an industry
16 professional.

17 Q. Did you express any of your concerns to Mr. Sheppard at
18 that time?

19 A. I had mentioned it.

20 Q. And what was Mr. Sheppard's response?

21 A. He was -- he was there. He was diligently trying to get
22 the job done. And then, when COVID hit, there really was, you
23 know, no other option. He was the only one there working,
24 willing to be there and to keep the crew going.

25 Q. And what -- sorry. And then when Burlington got done and

1 they got moved in, and they started to pay rent, what was your
2 sense of Vasilas at that point?

3 A. Well, my sense of Vasilas at that point, I was like: "Okay
4 this is great. He did finish. He got us a TCO," which was
5 very, very important. He did finish up the construction. It
6 wasn't -- at that point I said: "Okay. You know, he did do
7 what he was supposed to do." It was many months later that I
8 found out, you know, problems were arising --

9 MS. MARTINEZ: Objection. No foundation as to a
10 non-hearsay --

11 THE COURT: Sustained.

12 BY MR. ETRA:

13 Q. Did you learn about problems later on and after the job got
14 done?

15 A. Yes, I did.

16 MS. MARTINEZ: Objection, Your Honor. It calls for
17 hearsay.

18 THE COURT: Sustained.

19 BY MR. ETRA:

20 Q. How did you learn about problems?

21 MS. MARTINEZ: Objection. Calls for hearsay.

22 THE COURT: As to how he learned, overruled.

23 THE WITNESS: The way we learned about it is because
24 now we were starting to get lawsuits and people were coming --
25 filing liens on the job. And we knew that Jeff didn't --

1 although he did get the job done -- yes, he finished the job.
2 We got Burlington in. They started paying rent. Now you start
3 to get the -- oh, the glazier wasn't paid. This guy wasn't
4 paid. The equipment rental place wasn't paid. And I said to
5 Eric at the time: "How does this happen?"

6 And then we realized that Jeff didn't put the correct
7 addresses, so the notices didn't go to our office. Had they
8 come to our office, we would have dealt with it in a timely
9 manner, and that's not what happened.

10 BY MR. ETRA:

11 Q. I've put on the screen a document that's already in
12 evidence. Herc Rentals, was that one of the vendors you
13 learned about later on?

14 A. Yes.

15 Q. And do you see the address in the top middle?

16 A. That's incorrect. That's not our business address at the
17 time.

18 MR. ETRA: You could take that down.

19 BY MR. ETRA:

20 Q. I want to talk about your ownership interest in the Alafaya
21 project. Okay?

22 A. Fine.

23 Q. Generally speaking, before COVID, what percentage interest
24 did you -- well, did you have an entity that you -- through
25 which you owned interest in Alafaya?

1 A. Yes.

2 Q. What was that called?

3 A. WAPD Holdings.

4 Q. And prior to COVID, what percentage interest did you have
5 in some of the -- in parts of Alafaya Trails?

6 A. Forty-eight percent.

7 Q. And the -- what -- did that change at some point?

8 A. I had had discussions with Eric as we were pouring and
9 pouring more money and more money into the project. I wasn't
10 too happy about it, and I had indicated to him that I didn't
11 mean to put any more money into that side of the project. Eric
12 stepped up with his own money --

13 (Court reporter interruption.)

14 THE WITNESS: Eric stepped up at that point and put in
15 his -- you know, a substantial amount of his own capital. And
16 we had had conversations about me potentially stepping back
17 from the main piece in Alafaya. And I had decided at that
18 point -- we owned the two pieces that we called the
19 outparcels --

20 BY MR. ETRA:

21 Q. Do you mean -- is that where Chase and Starbucks --

22 A. Yeah. Where the Chase is currently and Starbucks is under
23 construction -- that I might transfer my interest. We would
24 work something out where I would take the outparcels and he
25 would remain with the main piece of property, something very

1 similar we had done in the past in Arundel and Hanover.

2 Q. Was that your understanding that that was the understanding
3 at some point in time between you and Mr. Sheppard with respect
4 to Orlando?

5 A. Yes --

6 MS. MARTINEZ: Objection. Vague. I'd like to know a
7 time period.

8 THE COURT: If we can sharpen it up, please.

9 BY MR. ETRA:

10 Q. What time frame are we talking about when these discussions
11 were taking place?

12 A. These discussions took place right like before going into
13 COVID.

14 Q. And at some point, what -- did anything take place later
15 with respect to ownership interest?

16 A. Yes. After Eric and I had had these conversations, and I
17 was funding a hundred percent of the debt service on the two
18 outparcels, after we got Burlington in, and things were
19 starting to turn around, it looked like it was, you know, going
20 to work out over a period of time. I saw a path to recover,
21 you know, capital. Then we had decided, well, we'll just, you
22 know, leave it the way it is, which it had been.

23 Q. Do you know what -- what CAM is? Sorry?

24 A. Common area maintenance.

25 MR. ETRA: Sorry, Your Honor.

1 BY MR. ETRA:

2 Q. Generally speaking, do you know what that is?

3 A. Yes, I do.

4 Q. Briefly, what is it?

5 A. CAM is all the expenses, everything outside the tenant's
6 demised property, for instance, the walkways, the parking lot,
7 the garbage areas, the lighting in the parking lot. Anything
8 that encompasses -- that is not the tenant's actual demised
9 property itself.

10 Q. Do you know what an REA is?

11 A. Yes, I do.

12 Q. And generally speaking, what is the function of an REA?

13 A. The REA is the master document that governs the rules and
14 regulations of the project. It's a very important document.
15 It lays out what the tenants can and cannot do. It lays out
16 the scope of the common area, the control, and what happens in
17 the overall project and the overall -- and building of the --

18 Q. Did HM Four have any operational responsibilities at the
19 project?

20 A. HM Four Management basically ran the CAM.

21 Q. Okay.

22 MR. ETRA: Put up the HM Four Operating Agreement.

23 BY MR. ETRA:

24 Q. Sir, are you familiar generally with this document?

25 A. Yes.

1 Q. And generally, what, if anything, was HM Four's
2 responsibility under this agreement?

3 A. HM Four -- HM Four Manager would be responsible basically
4 for the CAM. And at certain points, HM Management -- well, it
5 goes back -- it's slightly confusing because all of the
6 companies are named HM. So I forget sometimes what the actual
7 pecking order is.

8 Q. Did you ever speak to Mr. Sheppard about the way he names
9 the companies?

10 A. Yes.

11 Q. What was the complaint?

12 A. I'd like different names, so it would be a lot easier to
13 differentiate when we had conversations. Even when I spoke
14 with my own attorneys, it would become a little arduous.

15 Q. When COVID hit, did it have any impact on you, sir?

16 A. Yeah. It had a very bad impact on myself personally and
17 prejudicially. I wound up, at the end of March 2020, becoming
18 very, very ill. I was in my house for seven, eight days. And
19 then I wound up in the hospital -- in North Shore Hospital for
20 three days. Finally got out of there, and then I was home on
21 and off probably for two months, almost died.

22 Q. And did you have to -- what was your -- outside of your
23 health -- the health scare and your health, what was your main
24 focus in COVID?

25 A. My main business.

1 Q. The book business?

2 A. The book distribution business.

3 Q. At some point did you have any conversations with
4 Mr. Sheppard about his applying for loans for these HM
5 companies?

6 A. He had mentioned it to me at one point, yes.

7 Q. And what did you tell him, if anything?

8 A. I said to him: "Eric, there's a lot of programs out
9 there." My own company applied -- although that was not easy,
10 we applied for loans. A lot of my friends that owned
11 businesses that I know, everybody was applying for a --

12 Q. Did you apply from your regular bank?

13 A. My regular bank is Wells Fargo. And yeah, you were
14 supposed to go to your regular bank. The problem was, is that
15 Wells Fargo wound up in a very, very bad position with the
16 PPE [sic] program. They were supposed to take care of their
17 customers and --

18 MS. MARTINEZ: Objection. Relevance.

19 THE COURT: Sustained.

20 BY MR. ETRA:

21 Q. You weren't able to -- you went to your regular bank and
22 they said they can't do it. Is that fair to say?

23 A. I got a call from my --

24 MS. MARTINEZ: Objection. Leading.

25 THE COURT: Sustained.

1 BY MR. ETRA:

2 Q. What happened with your -- with your -- what was the
3 outcome of going to your regular bank for PPP?

4 A. I received a phone call one night in my house at eight
5 o'clock --

6 MS. MARTINEZ: Objection. Hearsay.

7 THE COURT: Sustained.

8 BY MR. ETRA:

9 Q. Were you able to get the loan from your regular bank, yes
10 or no?

11 A. No.

12 Q. Okay. What did you have to do to get a PPP loan?

13 A. After Wells Fargo fell flat with the problems they had,
14 which was documented -- it was in the news -- I actually called
15 my neighbor where my business is, Vincent. He sits on a board
16 of a local community bank in town. I told him my situation,
17 and he was nice enough to put me in touch with the president of
18 that bank and we were able to fill out the forms and get the
19 loan through them.

20 Q. What about using one of those loan portals that these
21 Fintech companies were using?

22 MS. MARTINEZ: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. ETRA:

25 Q. Did you try to do that?

1 A. Yes.

2 Q. And what happened?

3 MS. MARTINEZ: Objection. Relevance.

4 THE COURT: The objection was sustained.

5 MR. ETRA: Sorry, Your Honor.

6 Your Honor, the relevance is that briefly they asked
7 Mr. Sheppard why he didn't go to his regular bank.

8 THE COURT: I've already ruled, Mr. Etra.

9 BY MR. ETRA:

10 Q. At some point during COVID did you learn from your dealings
11 with Mr. Sheppard that he was not as on his game as he usually
12 was?

13 A. Yes. Unfortunately, a short time after -- I speak to Eric
14 on a regular basis. And at one point -- he just he didn't
15 sound right for about two weeks. And we were having
16 conversation, I just flat out said to him -- I said: "Listen,
17 man. Something's up. You know, what's the matter? You know,
18 tell me what it is. We're friends and I'll try and help you."
19 And he wound up on the phone and he unfortunately told me he
20 had cancer. And then, you know, I was obviously very concerned
21 and upset. He wound up having a surgery and radiation, you
22 know, which went on for a period of time. At which time, you
23 know, I don't really think he was on top of his game.

24 Q. How long did that go on for about?

25 A. Several months.

1 MS. MARTINEZ: Objection. Time period.

2 THE COURT: In terms of "several months"?

3 MS. MARTINEZ: Well, no just dates.

4 THE COURT: Let's sharpen the question.

5 MS. MARTINEZ: Vagueness as to the date.

6 BY MR. ETRA:

7 Q. Do you recall the general time frame of when that took
8 place?

9 A. It was after COVID, after I was out of the hospital and
10 everything, and I was already back at work, some time there. I
11 don't remember -- I don't have the exact date on my calendar.

12 MR. ETRA: May I have a moment to confer with counsel?

13 THE COURT: Certainly.

14 (Pause in proceedings.)

15 MR. ETRA: No further questions, Your Honor.

16 THE COURT: All right. Cross-examination.

17 MS. MARTINEZ: Your Honor, it's going to be more than
18 10 minutes.

19 THE COURT: Well, then let's use the 10 minutes that
20 you have.

21 How much time do you think you're going to need,
22 Ms. Martinez?

23 MS. MARTINEZ: If everybody could hang around, I'd be
24 done by 5:30, but I do need a little bit of time.

25 No. Your direct --

1 THE COURT: All right. Let's get started here.

2 MS. MARTINEZ: Your direct was almost an hour.

3 (Pause in proceedings.)

4 CROSS-EXAMINATION

5 BY MS. MARTINEZ:

6 Q. Good afternoon, Mr. Kallman.

7 A. Good afternoon.

8 Q. I'm going to show you an exhibit, just to show you
9 companies that you have an interest in.

10 A. Uh-huh.

11 MS. MARTINEZ: Could I -- could you put up 23-1.

12 COURTROOM DEPUTY: Is this only for the witness?

13 MS. MARTINEZ: No. No. This is 23-1 in evidence.

14 It's coming.

15 (Pause in proceedings.)

16 BY MS. MARTINEZ:

17 Q. Mr. Kallman?

18 A. Yes.

19 Q. This has already been admitted into evidence. I'm going to
20 ask you to look at the left side of the screen for a moment.

21 A. Okay.

22 Q. Do you see your name on the upper left corner?

23 A. Yes, I do.

24 Q. Okay. So that's correct, right, WAPD Holdings --

25 A. Yes.

1 Q. -- meaning you, Robert Kallman, owns 48 percent of HM Four
2 LLC? Is that right?

3 A. Yes.

4 Q. And HM Four, LLC owns 99 percent of HM-UP Development
5 Alafaya Trails, LLC, correct?

6 A. I believe so. There was changes after, you know, certain
7 refinancings. But I believe that to be correct.

8 Q. Well -- right. So the company that you own 48 percent of
9 is HM Four. And then HM Four owns HM-UP Development Alafaya
10 Trails; is that right?

11 A. What time period is this from?

12 Q. This is during the time period of COVID, 2019, 2020, 2021.

13 A. (No verbal response.)

14 Q. Just focus on the ones that you own.

15 A. WAPD Holdings is -- you're correct it is mine. I own
16 48 percent. I just want to make sure. It looks to be correct.

17 Q. Right. So you own a company, WAPD Holdings, which is owned
18 by you. That company owns 48 percent of HM Four, correct? And
19 HM Four then owns HM-UP Development Alafaya Trails, correct?

20 A. I believe so.

21 Q. And then HM-UP Development Alafaya Trails has the ownership
22 of the Orlando shopping center, correct?

23 A. Yes.

24 Q. In addition to what we have in Exhibit 23-1, there's
25 another company, HM-UP Development Alafaya Trails TRU. You

1 have an interest in that company as well, correct?

2 A. I believe that was the company that had the Toys "R" Us
3 when it was up and being leased.

4 Q. And that's part of your investment?

5 A. It should be. Yes.

6 Q. Meaning money that you have given to Mr. Sheppard to
7 participate in business with him, correct?

8 A. Yes.

9 Q. Now, as part of your investment, the two of you have taken
10 a large loan on this property, correct? On the Orlando
11 property, correct? Multimillion-dollar loan?

12 A. Yes. There was a loan on the property.

13 Q. And you are responsible for that loan together with
14 Mr. Sheppard, correct?

15 A. Yes.

16 Q. Now, this company, HM-UP Development Alafaya Trails, does
17 not have any employees, correct -- no W-2 employees?

18 A. I don't know that to be correct.

19 Q. Do you -- you have no familiarity -- you yourself at
20 Bookazine, your book distributor company --

21 A. Yes.

22 Q. You have W-2 employees, correct?

23 A. I have W-2 employees -- I believe we have some -- I have
24 offices in India. I have offices in the UK. I'm not exactly
25 sure -- I have a CFO. I have an accounting staff. I'm not

1 exactly sure how everybody is classified, as to when you're
2 saying I only have W-2 employees. I don't know if that's
3 correct.

4 Q. Do you have anybody in your Bookazine company, that is a
5 global company -- do you have anybody from whom you withhold
6 income taxes, Social Security, and Medicare?

7 A. I'm sure we do.

8 Q. Okay. So these are W-2 employees, correct?

9 A. That would be a W-2 employee.

10 Q. As you sit here right now, you don't have any idea whether
11 your company HM-UP Development Alafaya Trails, a company that
12 you have an interest in -- whether or not it has W-2 employees?
13 You don't know?

14 A. We have employees. I'm not exactly sure. I wasn't
15 involved with the accounting or the payroll, so I couldn't tell
16 you with certainty.

17 MS. MARTINEZ: Could you bring this one down and bring
18 up 16-1.

19 BY MS. MARTINEZ:

20 Q. I'm showing you what's been admitted into evidence as
21 Government's Exhibit 16-1. It's a document from the Florida
22 Department of Revenue, indicating whether there's any reporting
23 of employees with respect to several companies. Do you see
24 there that HM-UP Development Alafaya Trails -- there are no
25 records showing that it has employees?

1 MR. ETRA: Your Honor -- beyond the scope, Your Honor.

2 THE COURT: Overruled.

3 THE WITNESS: Are you referring to the last one on the
4 page?

5 BY MS. MARTINEZ:

6 Q. No. I'm referring to --

7 MS. MARTINEZ: In the middle of the document -- could
8 you highlight the two Alafaya TRU and Alafaya Trails.

9 THE WITNESS: Okay. I got it.

10 BY MS. MARTINEZ:

11 Q. Okay. So you see there that the Florida Department of
12 Revenue doesn't have any record of employees for these
13 companies?

14 A. It just says that: "Above business is registered to file
15 reemployment assistance tax with the department."

16 Q. Right.

17 MR. ETRA: Your Honor, I object, because -- based on
18 what Your Honor said earlier, as being shown a document he's
19 never seen before, I'm objecting on that ground.

20 MS. MARTINEZ: Your Honor, I could explain.

21 THE COURT: All right. Hold on. The objection is
22 sustained with regard to a document that he's never seen. If
23 you want to ask a question about this entity you may certainly
24 do so.

25

1 MS. MARTINEZ: Could you zoom back out for one second.

2 BY MS. MARTINEZ:

3 Q. With respect --

4 MR. ETRA: Your Honor, she's not --

5 THE COURT: Let's take the document off the screen,
6 please.

7 MS. MARTINEZ: Take the document down.

8 BY MS. MARTINEZ:

9 Q. With respect to HM Four, the company that WAPD Holdings --
10 your company owns HM Four. With respect to HM Four, HM Four
11 has no employees; isn't that correct?

12 A. I don't know that to be true.

13 Q. Do you know anything about your company HM Four?

14 A. Yes, I do. I know that the CAM, the general maintenance,
15 we have employees. There's people doing stuff. So --

16 Q. Do you have -- do you know -- in fact, it has no W-2
17 employees. Isn't that true?

18 A. I don't know that to be true.

19 Q. So you're just not aware of the business of your company?

20 MR. ETRA: Objection, Your Honor. Argumentative.

21 THE COURT: Sustained.

22 MS. MARTINEZ: Your Honor, I'd like to show the
23 witness the documents in evidence that show that this company
24 has no employees.

25 THE COURT: He's already stated that he doesn't know.

1 BY MS. MARTINEZ:

2 Q. During -- during the time period after COVID began, you and
3 Mr. Sheppard sought out a personal loan of \$600,000 from One
4 Florida Bank. Do you recall that?

5 A. I recall the loan from One Florida Bank.

6 Q. And you recall signing for it, correct?

7 A. Yes.

8 Q. And you recall that that was at a variable interest rate,
9 and it was a very short-term loan initially. It was only for a
10 few months. You recall that?

11 A. I recall that, and it was extended.

12 Q. And you recall that it was at a market variable rate?

13 MR. ETRA: Your Honor, objection. Relevance.

14 THE COURT: Sustained.

15 MS. MARTINEZ: Your Honor, funds from this loan --

16 THE COURT: The objection was sustained.

17 BY MS. MARTINEZ:

18 Q. You have an interest in having this loan paid back,
19 correct?

20 A. Which loan are you referring to?

21 Q. The loan to One Florida Bank -- I'm sorry. The personal
22 line that you and Mr. Eric Sheppard obtained for \$600,000 in
23 early 2020. You have an interest in that \$600,000 getting
24 paid, correct?

25 A. I have an interest in any of our loans being paid.

1 MS. MARTINEZ: Could I go to ELMO for one second.

2 This is from Exhibit 47. The Bates label is 034041,
3 and the date is April 21, 2020.

4 BY MS. MARTINEZ:

5 Q. Do you recognize this document, Mr. Kallman?

6 A. It looks familiar.

7 Q. Well, it states that it's from Eric Sheppard and Robert
8 Kallman to the president of One Florida Bank, correct?

9 A. Yes.

10 Q. And it's the justification and request that both you and
11 Mr. Sheppard give for the \$600,000 loan, correct?

12 A. It appears to be.

13 Q. You're familiar with the document that you submitted to
14 request for the loan, correct?

15 MR. ETRA: Annie, are you sure this is in evidence?

16 MS. MARTINEZ: Of course. It's Exhibit 47. It's the
17 One Florida Bank loan records.

18 THE WITNESS: I'm familiar with the One Florida loan.

19 BY MS. MARTINEZ:

20 Q. In it -- in it it states the purpose of the loan. And in

21 it it states -- see if I can make it -- that: "Although the
22 borrower" -- see right here. See if I can make say it right

23 here: "Although the borrowers have cash available in other

24 businesses and personally, it would be prudent during the

25 current economic shutdown to manage and navigate existing cash

1 reserves through a second and third quarter to be fluid when
2 needed. The current request of a small amount, compared to the
3 combined borrowers' net worth and personal signatures, creates
4 an opportunity to establish a relationship with One Florida
5 Bank, and the line would resolve timing constraint caused by
6 Orange County."

7 You remember that as your justification for the
8 purpose of the loan?

9 MR. ETRA: Objection, Your Honor. Beyond the scope
10 and relevance.

11 THE COURT: All right. The objection is overruled.
12 And let me have the witness answer the question and then we'll
13 adjourn for the evening.

14 MR. ETRA: Your Honor, is there any way to --

15 THE COURT: The jurors cannot stay. They were already
16 asked.

17 Ladies and Gentlemen, is there anyone that can stay
18 perhaps for another 10 minutes?

19 Yeah. I think -- is there anyone who is not able to
20 stay?

21 All right. Ms. Martinez, do you think we can finish
22 your cross-examination?

23 MS. MARTINEZ: I -- it's not that it's going to be
24 long, Your Honor, but this defendant [sic] has an interest in
25 four --

1 THE COURT: I understand. I'm just asking the
2 question that calls for a yes-or-no response.

3 MS. MARTINEZ: No, I don't think so. I don't think I
4 can do that.

5 THE COURT: All right. Then, at this point, Ladies
6 and Gentlemen, we will -- why don't we have the witness answer
7 this question that's pending.

8 Do you recall the question, Mr. Kallman?

9 THE WITNESS: No, I don't.

10 THE COURT: What's the question, Ms. Martinez, with
11 regard to this exhibit?

12 MS. MARTINEZ: Did I have a question pending? I don't
13 think so. No.

14 MS. JIMENEZ: Yes, you did.

15 MS. MARTINEZ: I did?

16 THE COURT: All right. Then why don't we start anew
17 tomorrow, Ladies and Gentlemen. We will adjourn for the
18 evening.

19 Please remember that as you leave the building you are
20 not to discuss this case with anyone, nor permit anyone to
21 speak with you. Everything learned about this case is learned
22 within the courtroom.

23 If you'll place your juror notebooks in the jury room,
24 and I will see you tomorrow morning at nine a.m.

25 Have a pleasant evening.

1 COURT SECURITY OFFICER: All rise.

2 (Jury not present, 5:05 p.m.)

3 THE COURT: All right. Mr. Kallman, you are not to
4 discuss your anticipated testimony, the testimony of any
5 individual, or any aspect of the case, since you are on the
6 witness stand.

7 I'll see you tomorrow morning at nine a.m. All right,
8 sir?

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Have a pleasant evening.

11 If the parties will remain in the courtroom, so we can
12 discuss scheduling.

13 And you may have a seat.

14 The parties had represented to this Court that we
15 would be done with testimony today, we would proceed with a
16 charge conference, and then closing arguments tomorrow. It's
17 obvious that that is not taking place. I am placing you on
18 notice right now that I have a trial that was expected to begin
19 next week. I have motions that have to be argued and I have
20 sentencings on Friday. So we are attempting to move the
21 motions to Tuesday, since Monday is a legal holiday, but I
22 cannot give you Friday. I can't.

23 It was anticipated by this Court that even though the
24 jury was available on Friday, that they would be deliberating.
25 So I'm advising you that if the case cannot be completed and in

1 the jury's hands by Thursday, then we are going to need to
2 bring the jury back at a later time after I have this other
3 trial that has already been scheduled. So I'm just letting you
4 know.

5 We are on now, what, day 16 of a seven- to 10-day
6 trial? And every time that the parties have made
7 representations, they fall. They're just -- they're not true.
8 You haven't been true to yourself, you haven't been true to the
9 Court with regard to this case, and I'm very frustrated with
10 the pace.

11 With regard to Mr. Kallman, Ms. Martinez, how much
12 more time do you think you're going to need with this witness?

13 MS. MARTINEZ: Your Honor, it could be 30 to 45
14 minutes. I hope it's less, but I don't want to underestimate.

15 THE COURT: And who is the next witness, Mr. Etra?

16 MR. ETRA: Your Honor, we have Mr. Kleef. I'm not
17 sure if he's the next, but he's -- I'll just go through my
18 witness list, Your Honor.

19 (Court reporter interruption.)

20 THE COURT: Well, who's the next witness after
21 Mr. Kallman?

22 MR. ETRA: John Jorgensen. We expect his direct to be
23 20 minutes or less, a very minor slight expert on metadata,
24 which is not rocket science.

25 MS. MARTINEZ: This is a late notified expert, and we

1 do move to exclude this expert.

2 THE COURT: And the next witness?

3 MR. ETRA: Kerby Kleef, a worker. We expect that to
4 be 10 minutes or less.

5 THE COURT: And the next witness?

6 MR. ETRA: Glenn Sheppard. We expect it to be half an
7 hour.

8 THE COURT: And the next witness?

9 MR. ETRA: Mr. Bouchner, our last witness, one and a
10 half -- hopefully, one and a half hours.

11 THE COURT: All right. I've already apprised you, and
12 we'll see where we are tomorrow. And then we'll look at the
13 jurors' schedules following the completion of this next trial.

14 MS. WEINTRAUB: Judge --

15 THE COURT: I don't have the schedule, but I believe
16 that it's -- here it is. It would be after February 8th.

17 MS. WEINTRAUB: Judge, we don't have any alternates.
18 I just want to respectfully --

19 THE COURT: I understand that. And that's why I would
20 have hoped that the parties would have been consistent with the
21 representations that they have been making.

22 MS. WEINTRAUB: Judge, I never could have examined
23 [sic] two full days of cross-examination. I've never seen
24 cross-examination like that for two days, but whatever. We
25 expect obviously to finish our case shortly tomorrow, certainly

1 by one, two o'clock.

2 Is the Court going to start closings? Are we going to
3 have a charge conference now or in the morning? Is the Court
4 going to order them to tell -- yesterday, they said they might
5 have one rebuttal witness for 15 minutes --

6 THE COURT: I can't have a charge conference unless
7 the case is completed. It's premature.

8 MS. WEINTRAUB: Okay.

9 THE COURT: So I have advised you that by today or
10 this evening that I should have received any special
11 instructions.

12 MS. WEINTRAUB: You will.

13 THE COURT: The Government has already represented
14 that there's rebuttal evidence. So at this point, even with
15 the direct examination that you're giving the Court, that's
16 three and a half hours.

17 MS. WEINTRAUB: Right. We could be done by one
18 o'clock, I think.

19 THE COURT: Well, that's with the direct examination.
20 That's not with any cross-examination.

21 MS. WEINTRAUB: One of the witnesses is literally less
22 than 10 minutes. I mean, these -- I can't imagine any cross of
23 more than the direct. I mean, it's just absurd.

24 But with that said, I think the Government said
25 yesterday their rebuttal, if they call this one witness, would

1 be 15 minutes. Then today they said they don't know about
2 rebuttal, but surely they must know because they have to make
3 arrangements to have a witness here tomorrow. So we'd like to
4 know who that is.

5 THE COURT: Is the Government aware of the witness it
6 will call in rebuttal?

7 MS. JIMENEZ: Yes, Your Honor.

8 THE COURT: And who is that witness?

9 MS. JIMENEZ: Mr. Alex Zaslow.

10 MS. WEINTRAUB: Judge, I don't think that that's --
11 you know, I'm very happy they are calling him. They should
12 have called him in their case in chief. I don't believe
13 without a proffer that that should be allowed as rebuttal.
14 Rebuttal to what?

15 THE COURT: I don't know what the witness is going to
16 say. And at this point in time, it's premature to make any
17 argument that -- the Defendant hasn't rested its case -- to
18 even know whether this is true rebuttal. So I'm not going to
19 entertain an argument that really has no weight at this point.

20 So at this point, we will hope that we will be done
21 with all of the testimony tomorrow, and we'll have a charge
22 conference tomorrow evening after the close of the case.

23 MS. WEINTRAUB: And are we going to close on Thursday?

24 THE COURT: And then I would hope that we would have
25 Thursday for instructions on the law, and then closing

1 arguments, and allow the jury to begin their deliberations.

2 But I am placing you on notice that if we can't do that, if we
3 can't use Thursday for closing arguments, I can't give you
4 Friday. I can't give it to you.

5 MS. WEINTRAUB: But if we do, why can't the jury come
6 back --

7 THE COURT: The jury can come back. I can work while
8 the jury is deliberating on Friday. My intention was to give
9 the jury Wednesday, Thursday, and Friday to deliberate to the
10 extent that they needed it. Now we're getting to a point where
11 my hope is that we can present it on Thursday to the jury. But
12 if we can't, I'm just letting you know. It's just a reality in
13 terms of our schedule.

14 So at this point, I would hope I would have special
15 instructions. I'll work on those this evening. And let's work
16 on sharpening our questions so we can get the witnesses on and
17 off the stand on a case that should have been done weeks ago,
18 quite frankly.

19 All right. Is there anything further that we need to
20 address at this time? On behalf of the Government?

21 MS. JIMENEZ: No, Your Honor.

22 THE COURT: On behalf of the Defendant?

23 MR. ETRA: No, Your Honor.

24 MS. JIMENEZ: I'm sorry. We do, Your Honor.

25 MS. MARTINEZ: Your Honor -- Your Honor -- Your Honor,

1 on Sunday they noticed for the first time -- Sunday evening,
2 for the first time, an expert that they propose to testify
3 tomorrow. Even that notice that they gave doesn't even provide
4 a basis. We have had -- just this morning we obtained a copy
5 for someone to review of what it is that he's going to be --
6 that he is --

7 THE COURT: Which witness is this?

8 MS. MARTINEZ: Jorgensen.

9 THE COURT: All right. With regard to Mr. Jorgensen,
10 when was he first retained and when did you first advise the
11 Government?

12 MS. WEINTRAUB: I retained him. He was retained on
13 Friday, Your Honor, after -- he was retained on Friday by me,
14 and that was after reviewing and conferring with my colleagues
15 about the allegations and accusations that were unexpectedly
16 thrown at us, that we -- somehow that our client manipulated or
17 modified the Barrios bank letter. That's all he's going to
18 testify about, is that Word document or the bank letter that
19 they said -- you know, asked all those questions on redirect:
20 "Could it be modified," "Could that document be changed on a
21 computer," "Do you know that?" So that's why we have a late
22 disclosure. I apologize to the Court, but it was unexpected
23 and only in light of the accusations made by the Government.

24 MS. MARTINEZ: Your Honor, as I stand here now, I
25 still don't have a notice. The basis was one sentence that

1 said he's relying on having reviewed it and his experience.
2 Does not say anything -- and it's a forensic analysis --
3 nothing. So that's just -- I think under the Eleventh Circuit
4 case law, which I previously cited to the Court, there's --
5 it's -- hands-on, that should be excluded.

6 THE COURT: All right. In terms of Mr. Jorgenson's
7 testimony, I do believe that the Defendant needs to give a more
8 sufficient notification with regard to the parameters of his
9 testimony and the basis of his testimony.

10 MR. CAVALLO: Your Honor, I -- honestly, I don't know
11 what else we could say than what we put in the report. What
12 this expert would say is: "I obtained a native" -- what's in
13 evidence is a PDF version of the email. "I obtained a native
14 version of the email. I checked the metadata and it says X, Y,
15 and Z." It's probably ten minutes of testimony.

16 There's no other basis beyond: "I'm an expert in data
17 review. I obtained the native version of the document. I
18 reviewed the native version of the document. Based on my years
19 of experience, here's what the metadata shows." There's no
20 other basis that I could think of.

21 MS. WEINTRAUB: We gave them all the cases that he's
22 testified in. We gave them his CV.

23 MS. MARTINEZ: Your Honor, part of the problem here is
24 that clearly Mr. Cavallo does not have sufficient experience
25 with respect to forensic analysis of computers.

1 THE COURT: Mr. Jorgensen?

2 MS. MARTINEZ: No. Both of them.

3 THE COURT: Hold on. Hold on. Why are we talking
4 about the attorney as opposed to the witness?

5 MS. MARTINEZ: Well, I apologize for doing that. But
6 I mean that he means no harm by the argument that he's making.
7 However, Mr. Jorgensen, if you look at his resume, his
8 bachelor's degree is in chemical engineering. He has not had
9 any of the type of forensic training that you're supposed to
10 have for this type of review, number one -- no. I am speaking.

11 Number two, there is no way that you can just have
12 some email forwarded in the manner that they have provided it
13 without doing a proper extraction from the original place,
14 being able to verify that they're looking at an authentic,
15 well-preserved digital document, to then be able to then begin
16 the analysis. And even as we speak, we don't have the normal
17 materials that we would use. Normally, if you're going to be
18 analyzing an email, you need to have a proper extraction, you
19 need to know when was it obtained --

20 THE COURT: Well -- but what you're arguing,
21 Ms. Martinez, is not the late notice. You're arguing with
22 regard to the qualifications of this expert.

23 MS. MARTINEZ: That's correct.

24 THE COURT: I'm looking at Docket Entry 172, which is
25 the Notice of Intent to Utilize the Expert Testimony, and I'm

1 looking at -- and this is with regard to Mr. Bouchner. Now,
2 with regard to Mr. Jorgensen -- where is the information with
3 regard to Jorgensen?

4 MR. CAVALLO: It would have been filed on Sunday, Your
5 Honor.

6 THE COURT: So now you're moving to strike the witness
7 because the witness is not qualified.

8 MS. MARTINEZ: I am adding to that. But Your Honor,
9 to begin with, this is evidence that they have had the entirety
10 from the day that the Defendant was indicted. This is an email
11 that the Defendant had in his own computer. They chose never
12 to provide it in reciprocal discovery. Then they put it into
13 evidence. Then they had a break over holidays for two weeks.
14 They waited until Sunday night, just before we came back, to
15 provide a partial notice. And only this morning did we obtain
16 a copy, digital -- as opposed to just forwarding something
17 that's incomplete, a digital copy that then we had to rush to
18 the FBI to take a look at.

19 So my number one argument is timeliness. But I am
20 adding to it that there is no basis in the notice. It doesn't
21 have any of the normal steps that you would have in a forensic
22 analysis.

23 THE COURT: Well, that would go to the weight to be
24 given to the expert's testimony as opposed to its
25 admissibility. Because I'm looking at the qualifications.

1 He's been qualified. He's testified as an expert witness.

2 With regard to the lateness, I do want to address that
3 as to why the Defendant waited until Sunday evening to provide
4 notification with regard to Mr. Jorgensen.

5 MS. WEINTRAUB: Judge, that's on me. And there were
6 three reasons why. The main reason was we were a little busy
7 trying to figure out how to read these 9,000 pages and asking
8 the Government to cooperate with us, which they refused and
9 wouldn't even return emails to us. We have been working 14-
10 16-hour days, I can assure the Court.

11 I resent the accusation to Mr. Cavallo, and expect an
12 apology, because on the record I don't want to see a 2255
13 later. Thank you. And I will also state to the Court it was
14 my decision in rereading the transcripts and getting ready for
15 Monday with the Court after the break, and we're sitting here
16 saying: "Why do we keep letting the Government do this? They
17 did this with Cupersmith. They did this with the pictures."
18 Anything they don't like that we introduce, we're fabricating
19 evidence, we're falsifying documents.

20 Well, this is something I can do something about, and
21 I want to spank them in front of the jury, and I am entitled to
22 do so. And that's why there was a late notice. I could have
23 never expected to be accused of something like this. And the
24 witness on the witness stand was asked these questions before
25 the jury, and that was on the day that we broke.

1 THE COURT: And this is solely with regard to
2 Mr. Barrios's letter?

3 MS. WEINTRAUB: I beg your pardon?

4 THE COURT: Is this solely with regard to
5 Mr. Barrios's letter?

6 MS. WEINTRAUB: Solely. Nine questions about the
7 letter and that's it. He is very -- Mr. Jorgensen is a very
8 qualified expert. They can voir dire him on his
9 qualifications. He worked for the NSA for six years overseas
10 as an officer. This man has top secret clearance in our United
11 States Government. This is not somebody who's a chemical
12 engineer looking at biology. This is somebody who is very
13 qualified to explain what he did and how he did it.

14 And if they want to get an expert to rebut, that you
15 need to extract whatever, let them go get it. We are confident
16 in our Daubert disclosure and his qualifications. And I think
17 that is perfectly sufficient for the lateness because he was
18 the last witness that testified before we broke.

19 MS. MARTINEZ: Your Honor, I previously cited an
20 Eleventh Circuit case -- I forget the name. I think it was
21 Caldwell -- where someone had provided -- the Defense had
22 provided an expert notice I believe just a few days before
23 trial. And in that case, the Eleventh Circuit had no qualms
24 about affirming the district court saying that it was unfair to
25 the Government to do that kind of late notice.

1 I do believe that it's just -- right. And as
2 Ms. Jimenez is reminding me, that Rule 16 has been amended so
3 that you don't have this kind of lateness and that you have
4 fulsome, complete -- more complete disclosure.

5 MS. WEINTRAUB: Judge, this is their own conduct.
6 This has nothing to do --

7 THE COURT: Well, I don't know if that's their own
8 conduct. I'm looking at the Superseding Indictment, and Count
9 11 specifically speaks of the letter electronically submitted
10 to the SBA. So what was it that was presented by way of the
11 testimony that would somewhat justify the late notice on behalf
12 of the Defendant? The Defendant was well aware that Count 11,
13 the aggravated identity theft, relates to the name, signature,
14 and title of Heimdal Barrios used on a falsified bank letter
15 electronically submitted to the SBA in support of HM Four's
16 application.

17 MR. CAVALLO: It's not that letter, Your Honor.

18 THE COURT: That's what I was asking. Which letter is
19 it?

20 MR. CAVALLO: No. It's not -- if you remember, Your
21 Honor, when Mr. Barrios testified on cross-examination, he was
22 shown an email that he sent at heimdal.barrios@suntrust to
23 Mr. Sheppard with a Word .docm attachment. And we showed him
24 on cross-examination that that email was sent from him to
25 Mr. Sheppard. And then the attachment, when you open it, is

1 the exact letter, with a spacing issue, unsigned. And he --
2 and on redirect he said: "I would never send a letter
3 unsigned. I wouldn't do this. I wouldn't do that. It would
4 be my practice to only send a signed PDF."

5 So this expert is going to testify that the metadata
6 shows this was last modified by Mr. Barrios, the Word
7 attachment. It was created by Mr. Barrios. It was created at
8 SunTrust. And then on the metadata of the email, it was sent
9 by SunTrust's server to Mr. Sheppard, and that there is no
10 indication anywhere in the metadata it was ever altered in any
11 way by Mr. Sheppard or anyone besides Mr. Barrios.

12 MS. WEINTRAUB: And so we were on notice, Your Honor,
13 from the Superseding Indictment that they were going to claim
14 fraud or forgery, but we were not on notice that they were
15 going to claim at all that it was modified -- that the email
16 was modified.

17 MS. MARTINEZ: I just want to clarify --

18 THE COURT: All right. I see the distinction.

19 MS. MARTINEZ: But I do want to clarify that
20 Ms. Weintraub keeps misunderstanding the point that I made
21 during my direct and redirect of that witness. The only point
22 that I made, Your Honor, is that when you have a Word document,
23 a Word document that -- Mr. Eric Sheppard for the first time
24 gave us during the case, during that witness, presented an
25 email that he had received, and it was a Word document.

1 And all that I did was to say: "Well, Word documents
2 are not PDFs." Word documents -- if Mr. Sheppard had received
3 a Word document, it could be then, you know, changed -- not in
4 any kind of malicious way, but just that it could be changed.
5 And in fact, then I showed the witness that the final letter
6 that was submitted to the SBA was formatted differently, had a
7 paragraph that had been joined. So, in fact, it had been a
8 Word document that had been changed and then later signed.

9 THE COURT: But don't you believe, given that
10 testimony from Mr. Barrios, and in asking those questions, and
11 eliciting that testimony that, in fairness, if in fact,
12 Mr. Barrios gave an answer, that it would be appropriate to
13 respond by showing that that metadata from the docm is not
14 consistent with his testimony?

15 MS. MARTINEZ: The -- no. No. No. Mr. Heimdal
16 Barrios simply said: "I do not recall doing that." He -- that
17 is all he said, and all he said was that: "If I had sent
18 something, it would have been a PDF and it would have been
19 signed."

20 THE COURT: That's right. But with regard to -- it's
21 not just the letter itself. It's the electronic format and
22 whether, in fact, his testimony was consistent with the -- I
23 guess the metadata from the docm. That is somewhat separate
24 from the allegation in Count 11, which would justify or at
25 least lend support to providing some type of testimony to rebut

1 that. So to that extent, I can see that the -- there is
2 justification for the lateness.

3 The second part with regard to the qualifications, it
4 appears that -- that based on that limited testimony that this
5 witness is giving, based on what the Court is reading, that he
6 seems somewhat qualified to be able to render an opinion. So
7 I'm failing to see why the Court would not permit that because
8 the jury has now been left with the impression that there might
9 have been some -- some manipulation, so to speak, with regard
10 to that letter.

11 MR. CAVALLO: Your Honor, I would just add for the
12 record, because I believe it's different than what's been
13 represented, Page 113 of the transcript, Mr. Barrios said:
14 "Based on the processes, I would not send an unsigned letter"
15 -- meaning the Word version -- "I may sign it and send it, but
16 I definitely wouldn't send it blank."

17 MS. MARTINEZ: Your Honor, let me supplement my
18 request. At a minimum, I need to have a basis. But there's
19 only one line that was provided literally -- I'm relying on my
20 experience, and I'm just letting the Court know -- I think the
21 Court is familiar with forensic reports -- there's a
22 step-by-step process that is done. You make sure that you have
23 a preserved document, that you have extracted it properly, and
24 you say what possibilities could there have been for alteration
25 and that there isn't and why.

1 And all that we have is something, honestly, that any
2 of us could do ourselves. We wouldn't need an expert for that.
3 You just click, you look, and it has a name of someone, and
4 that doesn't even require an expert. So I don't have an expert
5 basis. So at a minimum, I would need that.

6 THE COURT: Well, what is it that you need other than
7 what's been provided?

8 MS. MARTINEZ: Your Honor, under Rule 16, as amended
9 just recently, as the Court knows, they need to provide a
10 statement of all the opinions and the basis for the opinions.
11 I'm just saying like right now there is nothing. It's just:
12 "I reviewed it and I'm relying on my experience." There's
13 nothing about why. "I've looked at the header. I went to the
14 original computer. I know for a fact that," you know, "there
15 are no tools in the universe that could alter a metadata. I
16 know for a fact that this person was sitting there. I know for
17 a fact that he's the one" -- I mean, it just says nothing,
18 nothing, zero. So I'm going to hear it for the first time, and
19 that's not fair.

20 MR. CAVALLO: Your Honor, whether or not he did an
21 extraction, whether his review was proper, whether he followed
22 the steps he's supposed to follow, that's all cross. That goes
23 to the weight of his opinion.

24 MS. MARTINEZ: That is not -- under the rules -- no.

25 THE COURT: Well, it really goes to the prong of

1 helpfulness to this jury. What testimony is he going to give
2 that would allow him to even -- I mean, has he -- what type of
3 investigation has he done and what notice has been provided in
4 terms of what his examination revealed? Like, what is going to
5 be the actual opinion?

6 MR. CAVALLLO: So his opinion, Your Honor, is: "I
7 received from counsel" --

8 THE COURT: Are you reading from something, because
9 I'm looking at the docket. Where would the Government have
10 been placed on notice with regard to his expert opinion?

11 MR. CAVALLLO: Sure, Your Honor. This is the notice --
12 and I'm finding the docket entry. Your Honor, it's Docket
13 Entry 173, and there's a section near the bottom, the basis for
14 opinions.

15 MS. MARTINEZ: And everyone can see it says nothing.

16 MR. CAVALLLO: They're based on his "review of the
17 native Barrios email in message format, which contains the
18 native Barrios attachment and docm format. Mr. Jorgensen
19 received this document from Defense counsel. Defendant is
20 producing the native Barrios email to the Government
21 contemporaneous with the filing of this notice." He's also --
22 above that, it says in the same set of paragraphs, relying on
23 his experience. So he's --

24 THE COURT: But did he actually examine any computers?

25 MR. CAVALLLO: No. No. What he did is -- he will

1 testify: "I do not always do an extraction," that if there is
2 a native version of a document that has retained all of its
3 metadata, an extraction is not always necessary.

4 THE COURT: And where is the metadata? Was that part
5 of the letter?

6 MR. CAVALLO: Yeah. It's within -- so if you open it
7 natively, like, you know, the Outlook will open the email
8 instead of it being a PDF. And there's ways to navigate
9 through the Outlook file to then review the metadata. You need
10 an expert to be able to testify to that for the jury to find it
11 credible. I mean, you can't have someone else be doing that.

12 MS. MARTINEZ: Your Honor, this is the problem with
13 the expert that they've chosen, that has no criminal
14 experience -- improper --

15 THE COURT: But that goes to the weight to be given --
16 and you'll have a great cross-examination. But with regard to
17 the basis of his opinion, I'm looking at the notice. And if
18 that's all he's going to testify to, is to inform the jury that
19 a docm file is a macro-formatted Microsoft Word document
20 typically used -- I mean, in other words, if that's what he's
21 going to testify to, and he has the qualifications, then there
22 isn't any basis for this Court to strike the witness's
23 testimony.

24 Right now, I can see that it was brought up in
25 Mr. Barrios's testimony. Actually, the Court made note at the

1 time that it did appear that that was -- that that was somewhat
2 of the claim, that there was a manipulation of the data, and I
3 think that it's appropriate for the Defendant to be able to
4 call this witness with regard to his very narrow issue.

5 MS. MARTINEZ: Your Honor, the amended rules just --
6 they should supplement at a minimum what they are providing.
7 The rules were amended so that you explain. And there is just
8 no explanation to just stand there and say -- so I'm going to
9 hear all the explanation only on cross of how it is -- you
10 know, how it is that he would know something? And again, you
11 cannot do any proper analysis with something that just was
12 forwarded to you by counsel.

13 THE COURT: And again, I don't know if you can or you
14 can't, or if he's just looking at what's set forth in the body
15 of the letter, but I believe that with regard to the disclosure
16 of his expert testimony, he's provided those opinions -- a
17 complete statement of the opinions that will be provided, his
18 qualifications, and a list of other cases. I mean, that's
19 specifically set forth in Rule 16. So at -- what is it that's
20 deficient by way of this disclosure?

21 MS. MARTINEZ: Your Honor, the -- Rule 16 requires now
22 a more fulsome statement. It requires a full statement of his
23 opinions and the basis. He doesn't say: "What is metadata?
24 What did I look at? What do you have to look at?" He doesn't
25 say anything.

1 So what I'm saying, I guess, is if the Court is going
2 to allow it on this basis, then his testimony should be limited
3 to the four corners of what he is saying there, just: "I just
4 relied on my experience, Ladies and Gentlemen of the Jury.
5 That's how I know." Because that's all I'm getting, and that
6 is wrong under the rules, especially the amended rules.

7 MR. CAVALLO: Your Honor, if I could just respond to
8 that as well. We provided some demonstrative aids this morning
9 that we would like to use with him which show on them the
10 actual -- the metadata, so where he went to as far as inside
11 the native documents to review the metadata. And again, I
12 mean --

13 MS. MARTINEZ: Put that in writing. I don't --

14 MR. CAVALLO: So that's -- I mean, I believe his
15 notice is complete, and I don't think there's anything more he
16 could add. And to the extent they're saying they don't know
17 where the metadata is, it's -- pictures of it are literally the
18 demonstrative aids.

19 THE COURT: All right. So with regard to -- here's
20 what I am going to require: I am going to require that there
21 be some representation that his testimony is limited to the
22 four corners of these documents -- is that correct? He hasn't
23 done any type of forensic evaluation of any computers?

24 MR. CAVALLO: Correct.

25 MS. WEINTRAUB: Correct.

1 MR. CAVALLO: Absolutely. His testimony is limited to
2 the four corners of this native document and its native
3 attachment, and there is nothing he plans to say beyond what is
4 in this report.

5 MS. MARTINEZ: Well, Your Honor, he's going to explain
6 those demonstratives, and I am entitled to have in writing what
7 the explanation is of those demonstratives. He's -- during
8 court, while I'm here with witnesses, Mr. Cavallo has forwarded
9 to me some images. I need something in writing to tell me what
10 he's going to say about those images.

11 THE COURT: Well, what he's going to say are basically
12 four points.

13 MR. CAVALLO: Correct, Your Honor.

14 THE COURT: That's what his -- I mean, I'm looking
15 at -- that's what his testimony is. There's four points that
16 are set forth in ECF 173.

17 MS. MARTINEZ: He's going to describe something about
18 those images, Your Honor --

19 THE COURT: You know what? And the Court will hold
20 the Defendant and Mr. Jorgensen to these four points, based on
21 the review of the letter.

22 MR. CAVALLO: Correct, Your Honor. A hundred percent.
23 He's going to testify as to exactly what is in those four
24 points. He's not going to say anything beyond the --

25 THE COURT: All right. Then to that extent, the

1 Court's going to permit it.

2 Is there anything else that we need to address before
3 we adjourn?

4 MS. WEINTRAUB: I just want a clarification --
5 (Court reporter interruption.)

6 MS. WEINTRAUB: Okay. I'm sorry, Yvette.

7 I just want a clarification. If we're done with
8 testimony, are we expected to be ready to close tomorrow or are
9 we going to plan on closing Thursday?

10 THE COURT: No. My hope is that we will use Thursday
11 for the instructions to the jury in the morning and then the
12 closing arguments.

13 MS. WEINTRAUB: I didn't know -- it is the Court's
14 practice to instruct first?

15 THE COURT: Yes.

16 All right. So we'll use tomorrow for our charge
17 conference. So I would hope that -- and let me just give
18 you -- I don't know if you've submitted your -- are there any
19 additional special instructions that have not been submitted?

20 MS. WEINTRAUB: There are. I was going to ask the
21 Court -- I need an hour. It's really --

22 THE COURT: Yeah. Why don't we say by 8:30 tonight.

23 MS. WEINTRAUB: Yes, ma'am.

24 THE COURT: All right. Is there anything further on
25 behalf of either party? On behalf of the Government?

1 MS. JIMENEZ: No, Your Honor.

2 THE COURT: On behalf of the Defendant?

3 MS. WEINTRAUB: No, Judge.

4 THE COURT: All right. Have a pleasant evening.

5 I'll see you tomorrow morning at nine a.m.

6 MS. WEINTRAUB: Thank you.

7 (Proceedings adjourned at 5:39 p.m.)

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1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at,
8 and reported in machine shorthand, the proceedings had the 9th
9 day of January, 2024, in the above-mentioned court; and that
10 the foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 282.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida, this 25th day of February, 2025.

16
17 /s/Yvette Hernandez
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