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1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this
3 date **APPELLANT'S APPENDIX** was filed electronically with the Clerk of the Nevada
4 Supreme Court, and therefore electronic service was made in accordance with the master
5 service list as follows:

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11 *Attorneys for Defendants*

12
13
14 DATED this 26th day May, 2014.
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19 
20 An employee of Hutchison & Steffen, LLC
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1 A Okay.

2 Q Are you there, sir?

3 A I have it, sir.

4 Q And this is a document that's entitled declaration of
5 Michael Kaplan; correct?

6 A Yes, sir.

7 Q All right. And it's several pages long. Page 5 --

8 A Okay.

9 Q -- the last page.

10 A Hang on. Yes, sir.

11 Q Is that your signature there, sir?

12 A Yes, sir.

13 Q Dated December 16, 2013; right?

14 A Yes, sir.

15 Q All right. So this -- did you prepare this
16 declaration?

17 A I don't think I prepared it. I mean, I may have
18 pointed out some of the issues when asked about, you know, the
19 declaration. But I didn't write this, if that's what you're
20 asking me. I mean, I --

21 Q Do you know who did?

22 A I'm sure someone in the law firm.

23 Q Okay. But -- but you read it thoroughly?

24 A I'm sure before signing it. I'm sure I read it, yes,
25 sir.

1 Q All right. And everything in that declaration is true
2 and accurate, is it not?

3 A I believe so. I haven't read the whole thing as we
4 sit here today. I would be happy to, but --

5 Q And it's all based on your personal knowledge?

6 A I believe so, but, you know, as I said, I haven't read
7 this for some time, but I believe it is. It's got my signature
8 on it.

9 Q And what you -- and by your declaration, you intended
10 it to convey at least in part what happened during your
11 encounter with Arash Dounel on October 6, 2011; correct?

12 A Yes, sir.

13 Q All right. Did you leave things out?

14 A Oh, I'm sure there are things that are not -- doesn't
15 have every single item in it. I'm sure of that without even
16 reading it right now.

17 Q But you were careful to read the declaration before
18 your signed it, though; right?

19 A You know, as I said, as I sit here I'm sure I did.

20 Q All right. And you want -- you want the Court to
21 believe everything in that declaration, don't you?

22 A I'm sorry?

23 Q You want the Court to believe everything in that
24 declaration, don't you?

25 A Yeah. I mean, you know, it's got my signature on it.

1 As I said, I can sit here and read the whole thing if you'd like
2 me to right now.

3 Q And you want the Court to believe everything that
4 you've testified in Court here today; correct?

5 A Yes, sir.

6 Q All right. Fair to say that you would like -- you
7 would like to see Lisa prevail in her lawsuit?

8 A I'd certainly like the Court to finally -- or somebody
9 to acknowledge that she did nothing wrong. That's the most
10 important thing, yes, sir.

11 Q So it's not important whether you win -- whether she
12 wins?

13 A You know, if you're asking me to comment on that, you
14 know, I think when I wrote the letter it is what can be done to
15 avoid all the legal expenses and costs that have been incurred
16 by both sides in this case, so trying to get to the bottom of
17 what Mr. Dounel said. And I don't know why I can't answer the
18 question of why nobody at Wells wanted to do that, so there has
19 to be --

20 Q Can you answer the question of whether you want Lisa
21 to win this lawsuit?

22 A Sure. I mean, obviously, if it's basically going to
23 once and for all going to have a Court agree that she did
24 nothing wrong, has not been in jail, no arrest warrants,
25 absolutely, sir.

1 Q You're angry at Wells Fargo, aren't you?

2 A You know, very.

3 Q And you're angry because the joint account was closed?

4 A I don't even think that bothered me as much as what

5 Mr. Dounel said that day. As I said, that day I went in there

6 it was not to discuss the account. I understand they can close

7 the account for any reason. I've been told that. You know,

8 that's a different story. Had he not said that what he said,

9 what it's caused me, you have no idea, sir. The pain between --

10 Q You have told us, sir.

11 A Okay.

12 Q And, again, it's not responsive to my question.

13 A I'm trying to. You said to me, you know, something

14 about that I don't like Wells Fargo or something.

15 Q No, I asked you if you were angry with Wells Fargo.

16 You said yes.

17 A I'm angry with what happened, yes, sir.

18 Q And you're angry that they closed the joint account.

19 A That's not the -- that's --

20 Q You're not angry they closed the joint account?

21 A That's a small miniscule percentage of why I'm upset.

22 Q Are you angry with Lisa for Wells Fargo's decision to

23 also close her business accounts?

24 A Am I angry at her?

25 Q No, with her, in conjunction with her.

1 A No.

2 Q Do you share her anger?

3 A You know, the closure of the accounts is one issue.
4 The separate issue is what was said by Dounel, what Chad Maze
5 conveyed to me. That's where it's upsetting. It's not the
6 closure per se. I mean, that's -- that's fine. If somebody --
7 you know, it's the old sign at the restaurant, we reserve the
8 right to refuse service. And that's fine if somebody doesn't
9 want to. I think it's kind of crazy to send out a letter, we're
10 closing, here's an 800 number to call, but by the -- by the way,
11 when you call we're not going to tell you anything. That makes
12 no sense.

13 Q You're angry with Mr. Dounel for what he said? That
14 -- that's where you're true anger lies; right?

15 A It's troubling. I don't know what the word is.
16 Anger, you know, is a tough word. I'm very upset because --

17 Q And so you're upset. Angry doesn't describe your
18 emotions?

19 A I don't know that angry describes it. I think very
20 upset and baffled. You know, he seemed to know exactly what he
21 was talking about. I mean, he sat there that day telling me
22 about all his background, his MBA, and all this crap. And the
23 bottom line as though he knew what he was saying, what he was
24 doing. And I believed him.

25 To this day, nobody from Wells Fargo has either said

1 he lied to you, Mr. Kaplan, don't listen to him. I don't know
2 why nobody ever came forward and said that. It would have been
3 so easy, unless there was some factual basis. I don't know. So
4 I don't know whether the word is angry or basically baffled and
5 probably upset that nobody at Wells Fargo either said, hey, the
6 man is an idiot, he doesn't know what he's saying, or this man,
7 you know, is right, Lisa has been in jail. All somebody had to
8 do was come forward and basically say something instead of just
9 leaving it.

10 And then to get to the point of Chad Maze at private
11 wealth saying we don't want to do business with Lisa after one
12 man saying she's been in jail, and then another senior guy says
13 this. I don't know if the word is anger, confused. I know I've
14 got a relationship that I value that's probably been screwed up
15 tremendously over this. And I don't think this law suit has
16 helped, you know, having to go through this crap. It's been
17 miserable. You know --

18 Q Whatever you feel, Mr. Kaplan --

19 A I'm just trying to explain it.

20 Q Whatever you feel, upset, to use your word, you
21 continue your banking relationship with Wells Fargo, don't you?

22 A Yes, sir.

23 Q To this day you still have money on deposit with Wells
24 Fargo, don't you?

25 A Yes, sir.

1 Q It isn't a small amount, either, is it?

2 A I don't know. The size is relative, but --

3 Q Would you characterize it as substantial?

4 A I'm sorry?

5 Q Would you characterize the balances as substantial?

6 A Well, it's balanced because it's one account. You
7 know, as I said earlier, I had been a client at Wells Fargo back
8 before their other acquisitions.

9 Q Your deposit in that account is so big that people at
10 Wells Fargo say, hey, you've got too much money it, we need to
11 set you up in some other accounts; right?

12 A They used to say that to me.

13 MR. KISTLER: I'm going to object --

14 BY MR. HAIRE:

15 Q They don't?

16 MR. KISTLER: -- as to -- as to time frame. I don't
17 know if he's relating back to October 2011 or the present date.

18 THE COURT: Oh, yeah, so since -- so since that time.
19 Okay. Mr. Haire, can you clarify.

20 BY MR. HAIRE:

21 Q In addition to the joint account that -- with Lisa at
22 Wells Fargo that was closed, you had at least another demand
23 deposit account at Wells Fargo just in your name, did you not?

24 A You characterize it as a demand deposit checking
25 account, a normal checking account.

1 Q I think they're the same thing, but I'll use your
2 word.

3 A Okay. I don't know.

4 Q A checking account.

5 MR. KISTLER: And, again, just so the record is clear,
6 we're referring to 2011, I think, by the tenor of the question.
7 BY MR. HAIRE:

8 Q I think my question was at the time, you know, in
9 addition to the joint account at the time it was closed, you had
10 a separate account with Wells Fargo?

11 A Yes, sir.

12 Q All right. And that -- and that was a substantial
13 account, was it not?

14 A I suppose.

15 Q When you go into the bank, Wells Fargo employees,
16 tellers, would say, oh, Mr. Kaplan, you have so much money in an
17 account, we should put -- we should move it into -- let's open
18 some other accounts for you.

19 A Yes, sir.

20 Q You testified to that today; correct?

21 A Yes, sir.

22 Q Okay. In fact, that's what happened on the day Mr.
23 Dounel made his statements that you find upsetting about Lisa;
24 right?

25 A Yes, sir.

1 Q You also described in your earlier testimony that you
2 don't understand why a bank would not want your money. Didn't
3 you -- didn't you essentially --

4 A Yes. Yes, sir.

5 Q -- testify to that?

6 A Absolutely.

7 Q All right. They don't want to reestablish that joint
8 account, and you couldn't understand why -- why they wouldn't
9 take your money; right?

10 A To this day I don't understand.

11 Q All right. And you don't understand that because any
12 bank would want your business; right?

13 A I would think so. I've never had a bank turn me down.

14 Q You're a millionaire, you can fund accounts three to
15 \$5 million. What bank wouldn't want that; right?

16 A Yes, sir. I would think, you know.

17 Q There certainly isn't anything that requires you to
18 keep money at Wells Fargo Bank, is there?

19 A No, sir.

20 Q You have banking relationships with several financial
21 institutions, do you not?

22 A Yes, sir.

23 Q You could have pulled all of your money out of Wells
24 Fargo the day they notified you they were closing your joint
25 account with Lisa, couldn't you?

1 A You know, if you're asking me to answer that, I guess
2 one can always do anything. But to understand me, I really
3 don't do that. I've been a customer of that bank for a lot of
4 years. I continue to do business. Yes, I do have other
5 financial --

6 Q I didn't ask you did you and I didn't ask you why you
7 didn't. I asked you -- I asked you if you agree you could have.

8 A I suppose, yes.

9 Q All right. You could have pulled all of your money
10 out of Wells Fargo the day you learned Wells Fargo was also
11 closing Lisa's separate business accounts, couldn't you?

12 A Yes, sir.

13 Q And you could have pulled all of your money out of
14 Wells Fargo the second Arash Dounel insinuated Lisa was mixed up
15 in criminal activity, couldn't you?

16 A I suppose so.

17 Q No doubt when Lisa found out what Mr. Dounel said, she
18 encouraged you to take your money out of Wells Fargo, didn't
19 she?

20 A I'm sure she probably did. I don't know the specific
21 conversation because it was other issues and what bank account,
22 you know. That day there were more pressing matters of the
23 comments then really as to what I did with my money.

24 Q You didn't then, you haven't now.

25 A That's correct, sir. Would you like to know why?

1 Q Let's talk about your encounter with Arash Dounel on
2 October 6, 2011. You went to Malibu Wells Fargo -- the Malibu
3 Wells Fargo branch to cash a check from another account you had
4 and still have at Wells Fargo; correct?

5 A No.

6 Q You went there to cash a check --

7 A Yes, sir.

8 Q -- on an account you had a Wells Fargo?

9 A No, sir.

10 Q Then -- but they looked up your account information at
11 the time that you cashed the check?

12 A I believe that's standard practice just to make sure
13 that if I cash a check it doesn't bounce and they're stuck, so
14 I'm sure that that's their standard. When you walk into Wells
15 Fargo, they want to see your driver's license and your check
16 cashing card.

17 Q Why would they do that if the account was drawn on
18 another bank?

19 A I don't know if I follow you.

20 Q You were trying to cash a check from another bank that
21 you do business with; right?

22 A No, sir.

23 Q What account were you seeking -- was this a
24 third-party check?

25 A Yeah, I don't think you heard my testimony that I --

1 or you weren't paying attention. My --

2 Q Well, it's really not that important, so I'm going to
3 let it go.

4 A Well, no, you asked and I just wanted to explain.

5 Q Let me just ask you this question. Was it a
6 third-party check that you were cashing?

7 A Yes, sir.

8 Q All right. You remember the visit because you and
9 Lisa were planning on attending the Glen Campbell concert that
10 evening; correct?

11 A Yes, sir.

12 Q You saw Glen Campbell that night at the Nokia Theater,
13 I think; right?

14 A That's correct.

15 Q In any event, you went into the Malibu branch and
16 approach the teller to cash your check?

17 A Yes, sir.

18 Q As had happened in the past, the teller noted that you
19 had a lot of money on deposit and encouraged you to open
20 additional accounts?

21 A Yes, sir.

22 Q In response, you told the teller that the request was
23 strange since Wells Fargo had recently closed one of your
24 accounts, that being the joint account with Lisa?

25 A Yes, sir.

1 Q After cashing your check, the teller summoned Mr.
2 Dounel; correct?

3 A Yes, sir. I should qualify. I don't know if it was
4 -- I think she may have summoned him simultaneously with cashing
5 my check. I think he was standing there with her when she gave
6 me back the cash.

7 Q You met Mr. Dounel at that time?

8 A Yes, sir.

9 Q You had never met him before?

10 A That's correct, sir.

11 Q Never spoke to him on the phone?

12 A Correct, sir.

13 Q Lisa had never met Mr. Dounel, either, so far as you
14 know?

15 A As far as I know, sir.

16 Q Lisa did not know Mr. Dounel from Adam, and Mr. Dounel
17 gave you no indication that he knew her?

18 A That's correct, sir.

19 Q Mr. Dounel approached you and wanted to help you?

20 A When you say he wanted to help me, I don't know if he
21 wanted to help me or was trying to hear me out because one of
22 his employees had asked me about opening another account. So I
23 don't know how to characterize it as helping because he suddenly
24 was soliciting me for more business. So I don't know helping me
25 or helping him.

1 Q Mr. Dounel approached you and indicated that he would
2 like to -- he wanted to help you, didn't he?

3 A As I said, I don't think he said I want to help you.
4 I think he brought me over to his desk after I told the problem
5 of why would you have me open another account if you don't want
6 to do business because you closed my joint account. So I don't
7 know if it was helping or basically you've got a customer to
8 teller and he's taking me over to his desk to basically talk to
9 me about what happened.

10 Q Mr. Dounel led you over to his desk; right?

11 A Yes, sir.

12 Q The two of you sat down?

13 A Yes, sir.

14 Q You explained to Mr. Dounel that Wells Fargo had
15 recently closed one of your accounts, the joint account with
16 Lisa; right?

17 A Yes, sir.

18 Q You told Mr. Dounel about Wells Fargo's joint account
19 closure letter?

20 A Yes, sir.

21 Q Mr. Dounel expressed to you that he wanted to help?

22 A I don't know if he said he wanted to help. He said
23 let me find out what happened, you know, I would be happy to
24 check as to what happened. I don't know if he used the word
25 help, but he said let me -- let me look into it.

1 Q Mr. Dounel asked you some background questions related
2 to your business and your banking relationships; correct?

3 A Yes, sir.

4 Q You gave Mr. Dounel information about your other bank
5 accounts, did you not?

6 A We talked about, you know, my business, what I do. I
7 mean -- and he told me, look, I'm also a financial planner, you
8 know, I do a lot of business with a lot of wealthy people and we
9 started talking for probably 15 minutes about everything.

10 Q And in that 15 minutes you talked with him about the
11 joint account that was closed, didn't you?

12 A Well, the joint account was the original reason
13 sitting down at his desk, sir.

14 Q The answer to my question is what, sir?

15 A Well, you said during that 15 minutes you talked about
16 the joint account. And I was just trying to clarify it that the
17 joint account closure was the first thing talking to him when I
18 sat down at his desk. It was subsequent that he talked to me
19 about -- I guess it may have been while we were waiting for Lisa
20 to send over the letter that we talked about, you know, where I
21 do business and, you know, how I made my money and life in
22 general.

23 Q Mr. Dounel was comfortable talking to you about your
24 accounts, wasn't he?

25 A Comfortable? I guess so, yes.

1 Q Mr. Dounel asked you if you had the joint account
2 closure letter with you?

3 A Yes, sir.

4 Q You told him that you did not have the letter?

5 A Yes, sir.

6 Q You told Mr. Dounel that Lisa probably has a copy of
7 the letter?

8 A Yes, sir.

9 Q Mr. Dounel suggested that the two of you call Lisa
10 about the joint account closure letter; correct?

11 A That, I can't tell you if he said the two of us call
12 or can you call. You know, I know what happened is I ended up,
13 I'm almost positive, just calling on my cell phone to get her.
14 I don't think I put her on speaker because of the cubicle where
15 his desk was.

16 Q Do you still have your declaration in front of you?

17 A Yes, sir. Well, if you'll tell me which page.

18 Q The page or exhibit? Page 2, page 2 of the
19 declaration.

20 A I have it, sir.

21 Q All right. In paragraph 14.

22 A Yes, sir.

23 Q Dounel and I then called Johnson and spoke with her.

24 A Yes, sir.

25 Q All right.

1 A And we basically did. I mean, I'm sitting at his desk
2 when I placed the call, so, yes, we did call her. And, yes,
3 Dounel did ask me -- you know, he asked -- it says he asked
4 Johnson, but the bottom line is I was talking to Johnson, so the
5 email -- so I don't know how to clarify it, but it's probably
6 sloppily written.

7 Q The three of you were on the phone at the same time?

8 A I don't believe it was. I believe it was just me and
9 Mr. -- Mr. -- and Lisa. Mr. Dounel was sitting across the desk,
10 and I believe I just had reached in, took out my cell phone, and
11 called Lisa on it and talked to her.

12 Q So paragraph 14 of your declaration is not intended to
13 suggest that the three of you spoke about the closure letter,
14 only --

15 A It's not. I mean, the bottom line is Dounel and I
16 were sitting there. You know, I called her. Dounel and I then
17 called Johnson and spoke with her, you know, whether it's
18 sloppily written, I can't answer, but I'm almost positive it was
19 just me calling her with him sitting at his desk.

20 Q You signed this after you carefully read it; right?

21 A Yes, sir. I didn't way it was crafted perfectly,
22 but --

23 Q Mr. Dounel asked Lisa to email him the joint account
24 closure letter; right?

25 A He did. Dounel looked at me and said, hey, can Lisa

1 email or -- I think he had asked -- there was a discussion about
2 fax, and I don't know if that worked for her up at the house, so
3 it gave me -- actually, what he did on his email, I said can you
4 write it down, and he handed me his card, I read to Lisa the
5 email address off his business card, and that's where she mailed
6 it.

7 Q Paragraph 14 of your declaration reads Dounel asked
8 Johnson to email him the closure letter --

9 A Yeah.

10 Q -- which Johnson agreed to do.

11 A Yeah.

12 Q That's a true statement; right?

13 A Dounel asked. Yeah, he asked me, but it's like asking
14 her because she was on the phone with me. If I've got somebody
15 on the phone call and I'm saying, hey, can you have it sent to
16 me, it's kind of the same thing. I mean, if you want to get
17 really precise, it's almost like what I said to you earlier
18 about the check. And you kept saying you went in to cash the
19 check out of your account and I said no, to cash a third-party,
20 my insurance refund check, but I did go there to cash a check.

21 Q What else did you and Mr. Dounel discuss after --
22 right after you got off the phone with Lisa?

23 A Well, right after she had said that she would get it
24 sent over. And I guess it took her a few minutes to either
25 locate it or get it over. But, you know, he talked to me about

1 my business, what I did for a living, my background.

2 Q Nothing about the closure letter?

3 A Not until the closure letter arrived.

4 Q Nothing about the joint account being closed?

5 A Well, you've got to understand, there was a few

6 minutes -- Lisa didn't have it ready to go. As soon as I hung

7 up from the phone, gee, I mean, that would be efficiency, but

8 I'm sure it took her a few minutes time to basically scan it

9 into her computer and to email it to Dounel.

10 Q She emailed it to Dounel.

11 A That's correct.

12 Q And so she had his email address?

13 A I gave it to her on the phone, sir, off his business

14 card.

15 Q After Mr. Dounel received the letter, he immediately

16 accessed his computer; is that right?

17 A Yes, sir.

18 Q You don't know what he was looking at, though?

19 A I couldn't tell you. I mean, as I said, it would be

20 like me sitting with the Judge's computer here. I can't see

21 what's on her screen, nor should I. But he --

22 Q You don't know what he was looking at, do you?

23 A I do know when he started asking me questions, sir.

24 Q You don't know what he was looking at because you

25 didn't see it yourself; correct?

1 A That's correct, sir, except he did ask me questions
2 about various checks.

3 Q You also did not know how much information Mr. Dounel
4 could access on his computer concerning the reasons for the
5 joint account being closed.

6 A That's correct.

7 Q He told you he had only a certain level of access to
8 account information, didn't he?

9 A No.

10 Q Before Mr. Dounel accessed his computer, you and he
11 did not discuss the closure letter or its contents?

12 A When you say before, I discussed it when I first sat
13 down with him.

14 Q No, no, no. Between the time he received it and the
15 time he accessed his computer.

16 A Well, he had his computer. When the email arrived
17 from Lisa he was staring at his computer. And then he
18 proceeded, he looked at it, obviously a couple -- a minute or
19 two went by while he's reading, which, you're right, I'm
20 presuming he read it, but he's staring at it or what I believe
21 is the email. And then he proceeds to ask me questions about
22 various checks. And you said I don't know that he had access to
23 anything, but the checks he asked me about --

24 Q My question --

25 A -- I knew --

1 Q -- sir, is did you, between the time that you received
2 the email and the time you witnessed him accessing his computer,
3 did he ask you or converse with you in any way about the closure
4 letter or its contents?

5 A Well, he did converse with me. I mean, you're trying
6 -- making it difficult to characterize exactly at what point,
7 but, yes, he did.

8 Q Between the time he got the letter and the time you
9 saw him access his computer, did you all discuss the closure
10 letter and what it said?

11 A I don't know specifically what it said. We discussed
12 that the -- there's the -- you must have the letter now that,
13 you know, Lisa had sent it, and then he read it.

14 Q He --

15 A So there was no reason for me to say, you know, do you
16 want to read it back to me, Mr. Dounel?

17 Q So he did not -- so what you're saying is he did not
18 tell you his interpretation of what the closure letter meant in
19 any way before he accessed his computer?

20 A He didn't interpret it if that's what you're asking.
21 I mean --

22 Q Well, did he say -- did he acknowledge that that
23 closure letter says the reasons are confidential, the bank's
24 review process is confidential?

25 A He did not comment on that. The next thing he starts

1 asking me questions about checks that were drawn on the account
2 that had to indicate to me he had access somewhere because he
3 wasn't pulling these checks and these payees out of the air. He
4 was giving me real people and real companies that I knew, and
5 real amounts that I knew Lisa had written checks to.

6 Q Did you think that was strange that he was doing that?

7 A Very strange.

8 Q That he was discussing with you transactions on that
9 account?

10 A I don't know if it -- you know, I suppose in hindsight
11 I think so, but at the time, no.

12 Q It was your account.

13 A I'm sorry?

14 Q It was your account.

15 A I understand. But he was asking me checks that I
16 didn't sign. And he didn't ask me, Mr. Kaplan, on such and such
17 date did you write a check to this person? He's asking me on
18 this date Lisa Johnson wrote a check to XYZ in this amount. Do
19 you know who that is? I said, yeah, it's her publicist, that's
20 this.

21 Q Now, did you think that you weren't entitled to that
22 information?

23 A I never gave it a thought.

24 Q So you would agree that Mr. Dounel should have felt
25 comfortable talking to you about the closure of the joint

1 account since he had talked with Lisa on the phone and she had
2 emailed him the account closure letter; right?

3 A As I said, I never really thought about it, but I
4 suppose, yeah.

5 Q You're a lawyer, an accomplished businessman. Would
6 that not suggest to you that Lisa had given essentially her
7 permission to you and Dounel to discuss the closure of the joint
8 account?

9 A I guess so. Although, you said I'm a lawyer, I should
10 know. If I can just -- during this whole legal process, two
11 years ago Lisa and I were out of the country. You guys were
12 doing discovery. And on the joint account to get certain
13 records, I had to track down a fax machine to sign -- they
14 already had something by Lisa, but they needed my signature for
15 your firm to release information.

16 Q I don't know what you're talking about. All right.
17 But I'm --

18 A Would you like me to explain?

19 Q But I'm certain it's not responsive to my question,
20 Mr. Kaplan. I apologize.

21 A Well, I thought it was because --

22 Q All right.

23 A -- you were saying --

24 Q Based upon your experience, do you think it would have
25 been unreasonable for Mr. Dounel to think that he had Lisa's

1 permission to talk about the joint account with you?

2 A No, I --

3 MR. KISTLER: I'm going to object to the question,
4 Your Honor. That calls for speculation.

5 THE COURT: Overruled.

6 THE WITNESS: I don't know that I thought about it.
7 It was -- you know, I was sitting at a banker's desk and --
8 BY MR. HAIRE:

9 Q Mr. Kaplan, as an accomplished businessman and lawyer,
10 you have no doubt put together many deals with representatives
11 of other businesses, haven't you?

12 A A certain amount, yes.

13 Q When others make deals with you, do they insist on you
14 proving your authority to make deals on behalf of your company?

15 A I'd say there have been instances where people have
16 asked that, yes, sir.

17 Q There's been instances where they haven't?

18 A Yes, sir.

19 Q And in each -- and in those instances did you always
20 ask the representative for the other party to prove to you that
21 they could make decisions on behalf of the business?

22 A Not always, but there is times that I've learned, man,
23 it's good thing to ask at times in deals, yes, sir.

24 Q It's common practice in business, is it not, sir, that
25 parties presume that their counterpart has authority to act on

1 behalf of the company and deals get done, don't they?

2 A I'm sorry?

3 Q In the instances where you're doing a deal with
4 another company, it's common practice, even in your experience,
5 that the parties will presume that their counterpart, the person
6 they're negotiating with, has authority to act on behalf of
7 their company or business.

8 A That's -- that's a fair statement, sir.

9 Q In other words, the counterpart in that negotiation is
10 presumed to have authority to bind the business because the
11 counterpart's authority is apparent from the circumstances;
12 right?

13 A I guess it's going to depend on the circumstances,
14 but, you know, I'm sure that happens an awful lot of times, yes,
15 sir.

16 Q Isn't that what Mr. Dounel did with you that day in
17 the Malibu branch? He recognized your authority?

18 A As I said, he asked me questions. I don't think I
19 ever argued that point. You know, I've always said here is what
20 happened. He basically asked me about checks. I've never
21 debated that with anyone. I've never questioned it. You know,
22 I -- I looked at him as the guy that was in charge of that bank.

23 Q And you never questioned his talking with you about
24 the joint account without Lisa present and without her express
25 permission. You never -- you never had a problem with that,

1 have you?

2 A I don't think I ever questioned it, no, sir.

3 Q Under -- under the circumstances of you asking Mr.
4 Dounel about the closed account, his talking with Lisa and her
5 emailing the closure letter, do you agree that it would have
6 been reasonable for Mr. Dounel to presume you had Lisa's
7 authority to inquire about the closed joint account on her
8 behalf?

9 A I wish I could tell you what went through Mr. Dounel's
10 mind. I really can't, and I don't know that that ever came up.
11 It was -- the only reason, as I said, that any of the issue with
12 him ever came up that day is when they wanted me to open another
13 account. So I don't know that we specifically ever discussed
14 can you talk about it. It was basically here is an account that
15 was under my social security number you guys just closed, why
16 are you asking me to open another account?

17 Q All right. Let's go back to the -- to your encounter
18 with Mr. Dounel.

19 A Okay.

20 Q Between the time -- strike that. At any time in your
21 discussion with Mr. Dounel, was there a discussion about the
22 possibilities for why Wells Fargo may have closed the account?

23 A Possibilities?

24 Q Yeah, did -- did Mr. Dounel say to you, you know, it
25 could have been this, it could have been that?

1 A No. He seemed more precise, and maybe after he told
2 me about his MBA over at Pepperdine and everything else, he
3 seemed more precise that it's like he was carefully looking at
4 something there. I can't tell you what he was looking at
5 because I couldn't view it.

6 Q Did you ask him about what the possibilities were for
7 why the -- the account was closed?

8 A No, I don't know if I ever said the possibilities. I
9 think my only comment was why was this account closed, and why
10 are you asking me to open another account if you closed my
11 account?

12 Q Okay. And you asked him that more than once, didn't
13 you? Why was the account closed?

14 A No, you've got to understand. I was brought over to
15 his desk. I did not have a lot of time that day. And I was
16 more how stupid is this that somebody closed my account, and now
17 you're telling me at your teller I should open another account.
18 It makes no sense.

19 Q Are you telling me -- are you telling us, Mr. Kaplan,
20 that without any preceded conversation about the closure letter
21 or its contents or any discussion about the joint account and
22 reasons for its closure, Mr. Dounel simply looked up from his
23 computer and blurted out that Lisa must have been in jail or
24 have arrest warrants?

25 A No, sir, that's not what I'm saying.

1 Q Did you understand Mr. Dounel to be making a statement
2 of fact about Lisa, that, in fact -- in fact, he believed Lisa
3 was a criminal and had -- or strike that, that Lisa had been in
4 jail and had arrest warrants?

5 A That's what he said to me. He didn't say I believe.
6 He basically, after he finished asking me the questions while he
7 was still looking at his computer, he made the statement that
8 Lisa has, excuse me, been in jail or currently has arrest
9 warrants out. And I said that's preposterous.

10 Q You agree with me that the statement that she -- that
11 Dounel made about her having spent time in jail is different
12 from a representation that she had been involved in criminal
13 activity? You would agree with me those are two different
14 things?

15 A No. I don't think you end up in jail unless you have
16 been involved in criminal activity, you know.

17 Q But you can be involved in criminal activity and not
18 go to jail, though; right?

19 A Yeah.

20 Q Well, which was it? Did Mr. Dounel tell you --

21 A He said she --

22 Q -- that she had --

23 A -- was in jail.

24 Q -- been in jail?

25 A He said she was in jail and/or had arrest warrants

1 out. He said those specifics. You know, he was pretty darn
2 clear. I mean, you've got to understand, this man had sat there
3 for a few minutes, told me a little bit about his background,
4 you know, his MBA. I looked at him, okay, he's a pretty
5 intelligent man. I don't have an MBA. He had an MBA and he's
6 sitting there telling me of these things. You know, I've got to
7 tell you, when he said it it's like my jaw dropped.

8 Q So you believed that he was making a statement of
9 fact, that, in fact, Lisa had been in jail or had outstanding
10 arrest warrants?

11 A Yes, sir.

12 Q Your declaration at paragraph 18 --

13 A Hang on, sir.

14 Q -- states that after Dounel looked at his computer he
15 stated to me that Johnson must have been in jail or had arrest
16 warrants.

17 A Correct, sir.

18 Q All right. Does the -- does the phrase "must have"
19 cause you to think that he had, in fact, information concerning
20 her being in jail or having arrest warrants?

21 A He didn't share with me what he saw on his computer,
22 but he seemed so emphatic about it. You know, I suppose I will
23 remember that pretty darn clear the more -- and the more I think
24 about it, but he was pretty darn sure, you know, after he
25 finished. And then to make comment to me that, look, I can't

1 tell you everything, but that's when he's telling me you should
2 hire the private investigator because you're a man of means.

3 You know, it was almost like he had already seen something on
4 his computer and here, I can't show it to you, but if you want
5 to go hire a private investigator, you'll find it out yourself.

6 Q His statement was Johnson must have been in jail or
7 have arrest warrants --

8 A Must have --

9 Q -- correct?

10 A He repeated it several times, sir. You're asking
11 me --

12 Q No, I'm asking you --

13 A I know you've got -- you got the -- you just read the
14 declaration --

15 Q Yeah.

16 A -- of what it says here. But as we went through it,
17 and I said to him, wait a second, I've known this lady for 10 or
18 11 years, whatever it was back then, and I said she hasn't been
19 in jail, she doesn't have arrest -- the occasional speeding
20 ticket, but I said she's never been in jail or have criminal --

21 Q You -- you told him that?

22 A Yes. And he said that's not what I'm seeing, you
23 know, if I were you, I'd hire a private investigator. You know,
24 you don't understand, this came up several times, as I imagine
25 it would if somebody said that to your wife or girlfriend, you

1 would be sitting there saying, what do you mean she's been in
2 jail?

3 Q All right. Mr. Kaplan, you just told us that he also
4 said that that's not what I'm seeing. That's the first time
5 you've ever said that, haven't you?

6 A Yeah.

7 Q Is in court today?

8 A Yep.

9 Q Even though you've provided the information necessary
10 for Lisa to respond to a written interrogatory --

11 A Because all --

12 Q -- in this case --

13 A -- I ever --

14 Q Let me finish. And even though you helped with the
15 part about what Mr. Dounel said in crafting the complaint -- you
16 provided that information; right?

17 A Yes, but --

18 Q And you drafted this declaration.

19 A No, I did not draft that.

20 Q Well, you -- you read it.

21 A I read it, absolutely.

22 Q You signed it.

23 A I signed it. I didn't say it has everything that
24 happened that day that occurred. You know, you guys start to
25 take my deposition and --

1 Q I'm not interested in your deposition.

2 A I understand. I'm merely trying to comment because
3 you're trying to take something out of context.

4 Q What I'm trying to understand is where you have ever
5 said prior to today that Mr. Dounel said that's not what I'm
6 seeing.

7 A Because --

8 Q In fact, you didn't even tell Mr. Kistler that.

9 A Nope. Nobody ever -- nobody from your side ever
10 wanted to really ask me --

11 Q You didn't tell Mr. Kistler that.

12 A I didn't discuss everything about the case, no. You
13 know, you asked me did I write this --

14 Q There's no --

15 A -- no, I didn't.

16 Q -- question, sir. Thank you.

17 THE COURT: Mr. Haire, we are about five minutes or so
18 from 5:00. It doesn't appear that we're going to finish Mr.
19 Kaplan's testimony today. Do -- do you --

20 MR. HAIRE: I agree with that. I'm happy to break.

21 THE COURT: Do you think you can, or you just -- no?
22 Okay. Given that, then, I guess we have -- are we scheduled to
23 start at 9:00 or 10:00?

24 THE CLERK: I believe 9:00.

25 THE COURT: We're scheduled to start at 9:00 in the

1 morning.

2 MR. HAIRE: I thought it was 9:00. 9:00.

3 THE COURT: All right. So we're scheduled to start
4 again at 9:00. Is this -- I think it's probably an appropriate
5 time.

6 Sorry, Mr. Kaplan, you have to come back tomorrow, but
7 I don't think we're going to finish tonight. And if we do have
8 all day tomorrow, is that going to be adequate to --

9 MR. HAIRE: I would --

10 MR. KISTLER: I'm sorry?

11 MR. HAIRE: -- like to say yes, but --

12 MR. KISTLER: I couldn't --

13 THE COURT: Is it -- is it going to interfere with the
14 timing or scheduling if we ask Mr. Kaplan to come back tomorrow
15 to finish his testimony?

16 MR. KISTLER: It's not going to do violence to what we
17 have planned, no, Your Honor.

18 THE COURT: Okay. So you still have adequate time if
19 we -- if we take our break now?

20 MR. KISTLER: One of us is falling off, either my ears
21 or --

22 THE COURT: Okay. Sorry. We would have adequate time
23 to finish if we take a break this evening and --

24 MR. KISTLER: Yes.

25 THE COURT: -- and bring the witness --

1 MR. KISTLER: Yes, Your Honor.

2 THE COURT: -- tomorrow?

3 MR. KISTLER: I fully expect we'll be done.

4 THE COURT: Mr. Kaplan, sorry to keep you coming back
5 tomorrow, but I just don't think we're going to finish tonight
6 at 5:00.

7 MR. KISTLER: I think we'll probably get tomorrow for
8 the case.

9 THE COURT: Okay. And, you know, you can leave
10 everything where it is because we don't have any -- anything in
11 here in the morning. We'll just be starting up first thing in
12 the morning, so you don't have to really pack anything up. The
13 marshal will lock the door. You'll be -- all your items will be
14 secured. But I think that's the best thing to do because I just
15 don't see that we can finish this evening. So we'll take a
16 break now, then, for our evening recess. We'll resume tomorrow
17 morning at 9:00 a.m. Is there any additional --

18 THE CLERK: I just -- yeah. Mr. Haire brought up 34,
19 41, and 28 and I need to know --

20 MR. HAIRE: I offer those exhibits at this time.

21 THE COURT: Okay. Any objection, Mr. Kistler, to the
22 exhibits? I think that --

23 MR. KISTLER: Well, Your Honor, I understand,
24 concerning 34, and I understand my argument may very well go to
25 weight.

1 THE COURT: Yeah.

2 MR. KISTLER: But 34 was a consumer account agreement.

3 THE COURT: He couldn't authenticate it, so I think it
4 might be authenticated by somebody from the bank, Mr. Haire.

5 MR. KISTLER: Well, what the witness said was I don't
6 remember seeing it. I don't know that this was the one that had
7 anything to do with my account.

8 THE COURT: Right. He said all he remembered --

9 MR. KISTLER: There's no -- there's no one --

10 THE COURT: -- was going out with the -- with the --

11 MR. KISTLER: -- from the bank that says this is the
12 -- this is it and this is --

13 THE COURT: I think it needs to be --

14 MR. KISTLER: - binding --

15 THE COURT: -- authenticated by somebody who can say
16 it was effective at the time.

17 MR. HAIRE: Except --

18 THE COURT: Yeah.

19 MR. HAIRE: -- it was stipulated to.

20 MR. KISTLER: Except what?

21 THE COURT: It was stipulated?

22 MR. HAIRE: It was stipulated to.

23 MR. KISTLER: Well, as a matter of -- it's a matter of
24 weight, then, Your Honor. If Your Honor wants to consider the
25 big fat document in the big fat binder.

1 THE COURT: Well, if it's stipulated, okay. I just --
2 I just thought your objection was that it -- since Mr. Kaplan
3 can't authenticate that he, in fact, received it when he opened
4 the joint account, then I just --

5 MR. HAIRE: I would ask that it be admitted.

6 THE COURT: Okay.

7 MR. HAIRE: If the Court would prefer that we have a
8 custodian testify to lay further foundation as to its
9 authentication, I'm happy to do that.

10 THE COURT: Okay. Is that your request, Mr. Kistler?

11 MR. KISTLER: Just to link up that document with his
12 account and that, in fact, Ms. Johnson and Mr. Kaplan were given
13 a copy of it. That's -- that's fine.

14 THE COURT: Well, I don't know that they would have
15 had to have been given a copy of it. I don't know.

16 MR. KISTLER: Or Your Honor can admit it subject to
17 the weight that Your Honor --

18 THE COURT: Okay. Let's do that.

19 MR. KISTLER: -- given my objection and given --

20 THE COURT: Well --

21 MR. KISTLER: -- the lack of authenticity, given the
22 lack of what it is --

23 THE COURT: We'll admit it as it's stipulated it's a
24 bank document, but we have no foundation connecting it to, in
25 fact, this transaction and that's what we're still going to

1 need.

2 MR. HAIRE: Well, is the Court then requesting
3 additional foundation for the document?

4 THE COURT: Yeah, I think that --

5 MR. HAIRE: But still admitting the document?

6 THE COURT: It's admitted. It is a Wells Fargo
7 document and it was in effect at the time. What -- the role it
8 has to the case, I guess, is the question. How is it connected
9 to the case.

10 MR. HAIRE: And I -- and I appreciate Mr. Kistler's
11 comments.

12 THE COURT: It is without question a business record
13 of Wells Fargo.

14 MR. HAIRE: Yeah, what -- what I'm --

15 MR. KISTLER: Exactly.

16 MR. HAIRE: And I think what needs --

17 MR. KISTLER: If counsel can show that it's relevant
18 to the case, then it should be given whatever weight the Court
19 deems appropriate.

20 THE COURT: Correct.

21 MR. HAIRE: That's what I was -- was getting to --

22 THE COURT: Correct.

23 MR. HAIRE: -- Your Honor. If we -- do we need to
24 have a custodian come in and say it's a business record --

25 THE COURT: No.

1 MR. HAIRE: -- and say it's related to this account,
2 or are you simply okay with the parties arguing the weight of
3 the testimony given the foundation that's been laid?

4 THE COURT: I think that it's probably the latter.
5 You know, if you want to bring somebody else in to say this is
6 how we handle these things and this is how it works, then that's
7 great. That's your case. I'm not going to tell you --

8 MR. HAIRE: Okay.

9 THE COURT: -- how to do your case. Right now I'm
10 simply saying it is unquestionably a business document of Wells
11 Fargo. It says right on there the date it was in effect. The
12 question is whether these -- these particular individuals can
13 say, yes, I got it when I opened my account. They don't seem to
14 be able to say that. I just figured that that's -- they -- they
15 haven't said they got it. At least Mr. Kaplan hasn't, so --

16 MR. HAIRE: I understand.

17 THE COURT: Okay. So I'm not telling you what to do,
18 I'm just saying that I think that your latter comment is the
19 correct one that it is admitted as it's unquestionably a
20 business record of Wells Fargo. Weight --

21 MR. HAIRE: But it may not --

22 THE COURT: -- will be something that counsel can
23 argue based on whatever else comes in through the trial.

24 MR. HAIRE: It may not be persuasive given the dearth
25 of information concerning its foundation.

1 THE COURT: Correct. It -- it -- so it's up to the
2 parties as to whatever else may come in later in the trial, may
3 or may not be more information about it. But it's in. Okay?
4 MR. KISTLER: I'm sorry, Your Honor.
5 THE COURT: So we'll see --
6 MR. KISTLER: The other --
7 THE COURT: -- everybody at 9:00 a.m.
8 MR. KISTLER: The other two exhibits were 28, we have
9 no objection to 28, and what was the other one?
10 THE CLERK: 41. I assume they're all stipulated to?
11 MR. KISTLER: No, it can't be 41. I think it was page
12 41. 41 is not an exhibit.
13 MR. HAIRE: Did you have --
14 MS. GARVIN: 30, 34, and 28.
15 MR. HAIRE: 30, 34, and 28. 28 is the declaration.
16 THE CLERK: Okay. I didn't get 30. I guess 41 might
17 have been a page out of --
18 MR. HAIRE: I don't think we have an Exhibit 41.
19 THE COURT: Yeah, 30 was the interrogatories. I don't
20 think we actually got to the interrogatories.
21 MR. HAIRE: No, and they're included as an exhibit
22 Your Honor. But -- and because there was an agreement to
23 stipulate I made reference to them.
24 THE COURT: Right.
25 MR. HAIRE: Normally I wouldn't do that.

1 THE COURT: Right. Yeah, so he didn't actually
2 testify about them. There was just a reference to them. He
3 wasn't asked anything on them.

4 THE CLERK: So just 28 and 34, then.

5 MR. HAIRE: Well, I'll --

6 MR. KISTLER: Well, 30 is -- 30 is a statement about a
7 party opponent, so, I mean, that's admissible.

8 THE COURT: Okay.

9 MR. KISTLER: I just didn't want us to -- you only --
10 you alluded to it, I think in -- you alluded to it saying did
11 you help in preparing the interrogatories.

12 MR. HAIRE: Right. Right. Right. So I'll -- I'll
13 offer that one, as well, based upon the stipulation.

14 MR. KISTLER: No objection.

15 THE COURT: Okay. All right. So they'll all be
16 admitted.

17 (Exhibits 28, 30, and 34 admitted)

18 THE CLERK: But not 41; right?

19 THE COURT: It was page 41.

20 THE CLERK: Okay.

21 THE COURT: Okay. All right. So then we're in recess
22 and we'll see everybody tomorrow at 9:00 a.m.

23 MR. HAIRE: Thank you, Your Honor.

24 (Proceedings adjourned at 5:01 p.m.)

25 * * * * *

ATTEST: I HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY
TRANSCRIBED THE AUDIO/VIDEO PROCEEDINGS IN THE ABOVE-ENTITLED
CASE TO THE BEST OF MY ABILITY.



JULIE POTTER
TRANSCRIBER

Allen D. Loomis

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LISA JOHNSON,

Plaintiff

VS.

WELLS FARGO BANK NATIONAL
ASSOCIATION,

Defendant

CASE NO. A655393

DEPT NO. XXVI

Transcript of
Proceedings

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 2

THURSDAY, FEBRUARY 6, 2014

APPEARANCES:

FOR THE PLAINTIFF:

JOSEPH S. KISTLER, ESQ.
TIMOTHY R. KOVAL, ESQ.

FOR THE DEFENDANT:

PAUL M. HAIRE, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 6, 2014, 9:03 A.M.

2 (Court was called to order)

3 THE COURT: Mr. Haire, you were doing your
4 cross-examination.

5 MR. HAIRE: That is correct, Your Honor, and thank
6 you.

7 CROSS-EXAMINATION (Continued)

8 BY MR. HAIRE:

9 Q Welcome back, Mr. Kaplan --

10 A Thank you.

11 Q -- this morning. Your testimony yesterday established
12 that between the date you and Lisa received the closure letters
13 in August 2011 and October 6, 2011, which was the date, of
14 course, that you had your meeting or met with Mr. Dounel, you
15 and Lisa contacted Wells Fargo several times in an effort to
16 find out why the account had been closed. Is that a fair
17 characterization of your testimony yesterday?

18 A I believe so.

19 Q Thank you. Then each time you made contact during
20 that time period, the Wells Fargo folks that you spoke to
21 refused to tell you why the accounts were closed, is that a fair
22 characterization of your testimony?

23 A I don't know if the word is refused, but nobody
24 provided any information, yes, sir.

25 Q They didn't tell you?

1 A No, sir.

2 Q You became frustrated at -- at that, is that fair?

3 A I suppose so.

4 Q You became upset, I think was your term yesterday.

5 A I'm not sure what -- I think frustrated and upset, so

6 I don't know which word was used yesterday.

7 Q And Lisa was frustrated and/or upset, was she not?

8 A I'm sure she was frustrated.

9 Q Was it in that time period that you reached out to

10 Richard Bryan for his help?

11 A I believe so.

12 Q Okay. He wasn't able to help you; correct?

13 A Well, he offered some suggestions to me.

14 Q All right. But, ultimately, he was not able to assist

15 you in -- in learning why the accounts had been closed, is that

16 a fair statement?

17 A I believe that he said he wanted to help me, but I

18 guess his firm represented Wells Fargo.

19 Q All right. Was it in that time period also that you

20 reached out to Mr. Martin at BNY Mellon for his assistance?

21 A I don't know the exact time frame, but I spoke to Bob

22 Martin about it. But, yes, Bob and I did discuss it.

23 Q All right. And then we got to your meeting with Mr.

24 Dounel on October 6, 2011, and you described for us yesterday

25 what transpired at that meeting. After your encounter with Mr.

1 Dounel you continued with your effort to get answers from Wells
2 Fargo Bank. You kept calling Wells Fargo Bank; right?

3 A I think it was a different context after that, sir.

4 Q I take it, then, the other -- that the other context
5 was now in relation to Mr. Dounel's statements about Lisa?

6 A Yes, sir.

7 Q Were you also not still inquiring about why the
8 accounts had been closed?

9 A I don't know that that was primary. I think that was
10 -- may had been a secondary to it, but I think my primary after
11 that was regarding what Dounel had said.

12 Q After your encounter with Mr. Dounel you continued
13 with your effort to get answers from -- I'm sorry, strike that
14 question. We know that because of Exhibit 17 -- do you have the
15 binders there in front of you?

16 A Yes, sir. Which one, sir?

17 Q Exhibit 17.

18 A Okay. I have it, sir.

19 Q This purports to be an October 12, 2011, message from
20 Kate Wright at Wells Fargo Bank responding to your call to
21 Cheryl Taylor of Wells Fargo Bank. Is that -- is that a fair
22 characterization?

23 A I believe so, yes.

24 Q Now, Exhibit 17 on our exhibit list has been
25 identified as an email. This is not an email, is it?

1 A No, it's a service I have for voicemail that
2 transcribes voicemails into an email format.

3 Q Handy. Would you agree with me that Exhibit 17 is the
4 first writing that we've seen in this case that actually
5 memorializes in writing some telephone contact between you and
6 Wells Fargo Bank?

7 A I think it's the first -- I can't even say for sure,
8 but obviously it's one where someone from Wells Fargo had called
9 me back and left me a voicemail. Yes, sir.

10 Q Sure. And yesterday we didn't look at any documents
11 that memorialized or acknowledged any phone -- phone
12 conversations with anybody at Wells Fargo up until this time; is
13 that correct?

14 A I don't believe so.

15 Q Do you have other writings that evidence telephone
16 conversations you had with folks at Wells Fargo between August
17 16, 2011, and October 12, 2011?

18 A I've got some papers with me. I'm not sure if they're
19 phone calls.

20 Q Let me just ask you this question, Mr. Kaplan, if I
21 may. Is what you have in your hand, was that turned over to
22 Lisa's lawyer?

23 A I don't believe so, sir.

24 Q Is there a reason why that was not turned over to
25 Lisa's lawyers?

1 A I think just I had so much materials I don't know that
2 everything was handed over to them, and I figured that you guys
3 would depose me and I'd bring everything to a deposition.

4 Q Did Lisa's lawyers ask you to give them everything you
5 had in writing that related to the events that happened between
6 August 16, 2011, and the time this lawsuit was filed in January
7 2012?

8 A I don't know if they, you know, phrased it in that
9 terminology, but I'm sure they asked me to provide what I had.
10 But I don't know if they ever said give me everything, but I'm
11 sure they asked for whatever I had.

12 Q And whatever you had included what you have there in
13 front of you?

14 A No, this did not -- after court yesterday I went back
15 through my computers last night and all my emails trying to go
16 over everything because I try to be as accurate as I can, and I
17 found other things that I don't believe they had -- I can't say
18 to a certainty that they're not in these binders, but I don't --

19 Q When you had your deposition taken earlier in this
20 case, you were asked to provide all the documents that you had
21 that related to this case to -- to Lisa's lawyers, were you not?

22 A No, I believe what I was asked by Mr. Fitts, something
23 to the effect do you have other memorializations, other things
24 of this, and I said I believe so. And Mr. Fitts asked me to put
25 information together to provide to him. And I think -- if

1 memory serves me, I believe I asked him in the deposition could
2 you write down for me, I don't have anything to take notes here
3 today at this depo, could you write down for me a list of
4 everything so that I don't miss anything, and I never heard back
5 from Mr. Fitts or Lisa's attorney on that.

6 Q Well, can you explain to us why -- how Mr. Fitts was
7 expected to give you a list of the things that you had when he
8 didn't know what they were?

9 A No, because he asked me for several things during the
10 deposition, and I asked -- I specifically on the record, I asked
11 could you write this down and I will get it to you? I think
12 they even had discussion as to whether it should go to Lisa's
13 counsel or directly to Mr. Fitts. And I think I even made the
14 comment to Mr. Fitts that he's welcome to contact me, I'm not
15 represented by counsel, and I said, you know, I'm listed in the
16 bar directory, my email, phone number, and everything, and he
17 was more than welcome to contact me and I would be happy to
18 provide whatever I had.

19 Q You didn't provide anything, though?

20 A No, I never -- I never heard from him, sir.

21 Q All right.

22 MR. HAIRE: Your Honor, at this time I'd offer Exhibit
23 17. I believe it's subject to a stipulation.

24 THE COURT: It's admitted.

25 (Exhibit 17 admitted)

1 BY MR. HAIRE:

2 Q All right. Mr. Ravenholt then enters the picture on
3 October 17, 2011, and he writes that letter to Wells Fargo Bank
4 on that date. And that -- a copy of that is Exhibit 18.

5 A Hang on, sir.

6 Q Yes, sir.

7 A And we -- we talked about this letter yesterday, but
8 we didn't talk about some things. In the first paragraph of
9 Exhibit 18 -- let me catch up. Mr. Ravenholt states that in
10 that second sentence we are requesting specific information as
11 to the reasons for the closures by the bank's risk assessment
12 division. Do you see that sentence?

13 A Yes, sir.

14 Q All right. The first sentence of the second paragraph
15 of Exhibit 18 is Mr. Ravenholt's suggestions, that's how I'll
16 characterize it and ask you if you agree, that if the issue with
17 the accounts is Lisa, then the proper method to handle the issue
18 is to preclude just Lisa from further association with the bank.
19 Now, would you agree with me that that's what that first
20 sentence says?

21 A It does, but if I -- if I could clarify something in
22 regard to Mr. Ravenholt's letter, I --

23 Q You know what, I would be happy to have you clarify
24 that upon your receipt of a question from Mr. Kistler.

25 A Okay.

1 Q The second paragraph then mentions the statements by
2 somebody at Wells Fargo, presumably Arash Dounel, about Lisa's
3 risk assessment issues and the suggestion that you hire a
4 private investigator. And we talked about that yesterday,
5 remember?

6 A Yes, sir.

7 Q All right. And then there is the last paragraph of
8 Exhibit 18. And follow along with me, if you would. It reads,
9 "The letters of closure and the conversations with bank
10 personnel may be considered defamation of Lisa Johnson to
11 unrelated third parties." Do you know what unrelated third
12 parties Mr. Ravenholt is referring to in this letter?

13 A I don't. And I guess it ties to what I was trying to
14 clarify as to my testimony yesterday about the letter. I did
15 not see this letter or even a draft from Mr. Ravenholt prior to
16 him sending it, and I did find correspondence that I've had with
17 him where I complained to him that he sent it out without my
18 review or approval.

19 Q The next sentence immediately after the words
20 defamation is mentioned reads, "We, therefore, are requesting
21 the reasoning behind your decision and clarification with
22 regards to Michael Kaplan's relationship with Wells Fargo."
23 That sentence is then followed by a mention of a defamation
24 suit. That's the term -- phrase that's used; is that correct?

25 A That's what it says, yes, sir.

1 Q And that is followed by, quote, "It is in both
2 parties' interest to provide this information at this time to
3 justify the Wells Fargo decision." Would you agree with me, Mr.
4 Kaplan, that the information that Mr. Ravenholt is referring to
5 is the information regarding the closure of the accounts?

6 A I believe so. I mean, it's a little bit vague, but I
7 believe that's what it's asking, yes, sir.

8 Q Mr. Kaplan, isn't it true that by October 17, 2011,
9 this -- the date of this letter, you had all come up with a
10 plan. And the plan was that if Wells Fargo Bank persisted in
11 not telling you and Lisa why the accounts were closed, you were
12 going to sue Wells Fargo for defamation?

13 A No, that's not true.

14 MR. HAIRE: Your Honor, I think Exhibit 18 has already
15 been admitted, but may I double check?

16 THE CLERK: Yes, it is.

17 MR. HAIRE: All right. Very good.

18 MR. KISTLER: It is in.

19 MR. HAIRE: Thank you.

20 BY MR. HAIRE:

21 Q But it's true Wells Fargo did not capitulate to Mr.
22 Ravenholt's request for information, fair statement?

23 A I don't know the word capitulate, but I don't think
24 they gave him any answers.

25 Q Yeah, they continued to refuse to disclose the reasons

1 for why the accounts were closed, didn't they? I can help you
2 here, if you would like. Let's go to Exhibit 18. We know this
3 because Kate Wright with Wells Fargo responded to Mr. Ravenholt
4 and that's -- that's our Exhibit 19, isn't it?

5 A Let's see.

6 MR. KISTLER: Exhibit 19.

7 MR. HAIRE: Did I say 19?

8 MR. KOVAL: The first time you said 18, the second
9 time you said 19.

10 MR. HAIRE: Already off to a poor start. My
11 apologies.

12 BY MR. HAIRE:

13 Q Exhibit 19.

14 A Yes, sir. I see it, sir.

15 Q All right. And -- and the letter states that to Mr.
16 -- the contents of this letter are to Mr. Ravenholt that Wells
17 Fargo's risk assessment is -- I think the term that's used in
18 here is confidential; correct?

19 A That's what it says, yes, sir.

20 MR. HAIRE: I believe Exhibit 19 has been offered and
21 admitted; is that correct?

22 THE CLERK: It is, yes.

23 MR. HAIRE: All right.

24 BY MR. HAIRE:

25 Q Next come your emails --

1 A Okay.

2 Q -- to Mr. Dounel between October 26, 2011, found at
3 Exhibits 20 and 21.

4 A Do you want me to turn to that, sir?

5 Q I would like for you to do so, thank you.

6 A Okay.

7 Q All right. And we talked about these yesterday to
8 some extent. These are the emails where an apology is
9 discussed; right?

10 A Yes, sir.

11 Q And as we discussed yesterday, your first email is the
12 one that gives us a clue about the nature of the apology. And
13 I'm referring now to LISAJ28, which is part of Exhibit 20.

14 A Okay. I'm looking at that, sir.

15 Q You indicate there at the bottom of that page that the
16 week previous Dounel called you and gave you an apology for his
17 comments about Lisa. Is that what that says, the first
18 sentence?

19 A Yes, sir.

20 Q All right. So Mr. Dounel did apologize to you.

21 A It says I offer an apology. And as I believe I
22 testified yesterday, I was rather terse with him on the call and
23 basically told him to put it in writing. And I did bring in the
24 document on that matter, too, if you'd like me to read what I --

25 Q Well, I'm -- I'm becoming more and more fascinated

1 about why you have documents with you today that may or may not
2 have been previously disclosed in this case. Is the document
3 that you're referring to, was that disclosed to Lisa's lawyers?

4 A No, sir.

5 Q So looking at Exhibit LISAJ28, do you deny based upon
6 that email to Mr. Dounel that he offered you an apology on the
7 telephone?

8 A He started to apologize for the comments and I kind of
9 cut him off, as I said yesterday, before he finished and told
10 him to put it in writing.

11 Q Yeah, you cut him off and said, no, essentially an
12 oral apology isn't going to do it. I want a written apology;
13 correct?

14 A I believe something to that effect. And as I said, I
15 have another email that I would be happy to read to you.

16 Q Why -- why did you want a written apology?

17 A I think since I had gone back to Lisa and told him
18 what was said, I kind of wanted to be able to say to her, look,
19 the man admitted he was wrong, I'm sorry about even questioning
20 you, and I think it was more having something as opposed to him
21 saying something on the phone that, you know, I couldn't go back
22 and say, here, Lisa. It's not like we were on a conference call
23 to where she could hear it firsthand. So it was more of, here,
24 the man is apologizing.

25 Q You didn't think that Lisa would believe you if you

1 told her that Mr. Dounel apologized?

2 A I think she kind of -- if I were her I still would
3 have questioned what exactly was said. After all of the things
4 I had said to her from him, I would probably say, look, you
5 questioned my background, you questioned me, I'd like to see
6 something where the man is basically saying he didn't mean it or
7 it was not true.

8 Q So --

9 A I think you would, too.

10 Q So the only legitimate apology is a written apology in
11 this instance; is that right?

12 A I think when he made it about somebody else, it would
13 have been very helpful to me to be able to sit down with Lisa
14 and say here's what the man -- you know, I told her at first
15 what the man had told me on October 6th.

16 Q And she believed you?

17 A That he said it?

18 Q Yes.

19 A I believe she -- well, put it this way, I don't know
20 whether it made a difference whether she believed me or not.
21 I'm still telling her things that, you know, she's saying, wait
22 a second, that's not true.

23 Q She believed you when you told her what Mr. Dounel
24 said?

25 A I believe so, yes, sir.

1 Q All right. But you felt like she may not believe you
2 if you were to tell her that Mr. Dounel apologized --

3 A No, I --

4 Q -- so you wanted a written apology?

5 A No, I don't know that she wouldn't have believed me,
6 but I think it would have been nice to be able to say, here, you
7 know, this is what the man is saying now, he's sorry and he
8 didn't mean it, here. I think it would have gone a long way,
9 you know, to basically calm things down between her and I. So
10 maybe it was also for me, too, to be able to show her that, hey,
11 here is what this man is saying.

12 Q It wasn't -- the reason you wanted a written apology
13 didn't have anything to do with you wanted a written
14 acknowledgement of Dounel's defamatory comments to aid in your
15 -- in a lawsuit for defamation against Wells Fargo? That wasn't
16 the reason, was it?

17 A No, sir.

18 MR. HAIRE: I believe Exhibits 20 and 21 have been
19 admitted.

20 THE COURT: Yes.

21 BY MR. HAIRE:

22 Q You didn't get a written apology from Mr. Dounel;
23 correct?

24 A Yeah, that's correct, sir.

25 Q And that's because he indicated to you in those

1 emails, Exhibits 20 and 21, that Wells Fargo management and its
2 legal department would not let him give you a written apology;
3 right?

4 A Yeah, it -- that's correct, although he kept asking me
5 things like where's my address, I'm ready to send it to you. So
6 it just got stranger and stranger.

7 Q You find out in that December 1, 2011, email from
8 Dounel that management and the legal department won't let him
9 send you a written apology; is that right?

10 A I'm sorry. Which date, sir?

11 Q Well, I think it's December 1, 2011. Look at Exhibit
12 21, LISAJ45.

13 A That's correct. December 1, 2011.

14 Q And that email is the one I believe you testified to
15 yesterday where it caused you to become pretty exercised about
16 the whole situation. You were really ticked off, weren't you?

17 A I don't know if the word is ticked off, but it was
18 like if somebody says to you in several emails I'm going to send
19 you an apology and where shall I send it, I can send it priority
20 mail, asking me my address, even though I thought was strange
21 because my address is all over the Wells Fargo file. And I
22 provided my address here in Las Vegas. And then some time later
23 to get an email like that was rather perplexing, yes, sir.

24 Q Okay. So it was perplexing. Was it upsetting?

25 A I guess. I mean --

1 Q Was it angering to you?

2 A I don't know if the word is angered.

3 Q All right. And this is -- now, after this email
4 exchange with Mr. Dounel that, according to our exhibits,
5 concluded on December 1, 2011, that's when Chad Maze, Andy Noll,
6 and Rachel Romijn enter the picture; correct?

7 A I'm sorry?

8 Q We know that because we have the email traffic between
9 you and them at Exhibit 24.

10 A Do you want me to turn to that, sir?

11 Q I do. And as you're doing that --

12 MR. HAIRE: May I ask the Court if Exhibit 21 -- oh, I
13 already did. Never mind. It was admitted; correct?

14 THE COURT: Yes. Yes.

15 THE WITNESS: I'm looking at your exhibit, sir.

16 BY MR. HAIRE:

17 Q At 24; correct?

18 A Yes, sir.

19 Q These are the series of emails between you, Mr. Maze,
20 Mr. Noll, Ms. Romijn; correct?

21 A Yes, sir, but I don't believe that this is the first
22 time that I'd had discussions with Mr. Maze.

23 Q Well, this is the -- these are the first -- the emails
24 that relate to it.

25 A Oh, okay.

1 Q You may have had -- I think the emails even reference
2 a meeting --

3 A Yes, sir.

4 Q -- right? Did you speak with any of these individuals
5 on the telephone?

6 A Yes.

7 Q All right. Now, take a moment and read through those,
8 sir, and when you're finished, let me know. Because what I'm
9 going to ask you is what these communications relate to.

10 A Okay. I've read it, sir.

11 Q All right. Tell us what the nature of the
12 communications were. What was -- what were the three of you
13 discussing here?

14 A I believe there were discussions about the joint
15 account closure with Lisa and myself.

16 Q All right. Did you see any references in those emails
17 about Arash Dounel?

18 A Not in emails themselves. No, I believe that it was
19 discussed when I had lunch with Mr. Noll and Mr. Maze, but it's
20 not in these emails.

21 Q Did you see any reference in those emails to -- to
22 comment -- derogatory comments that may have been made about
23 Lisa, but Mr. Dounel's name is not mentioned in conjunction with
24 them?

25 A I'm just looking through. I don't know if they said

1 it. I mean, I can look at the November 16th from Andrew Noll,
2 you know, "Chad and I enjoyed meeting you. We're working on
3 clarifying the issue at hand and then we'll get back to you." I
4 know when I met with both gentlemen we did discuss what had
5 happened on October 6th and I had taken them through the bank
6 closure, going into the Wells Fargo branch on October 6th. So
7 he did not put it in the email if that's your question, sir.

8 Q Well, no, I have a slightly different question.

9 A Okay, sir.

10 Q What is the issue that he's referring to?

11 A The issue as I understood it was the combination of
12 the closure and the comment made by a Wells employee.

13 Q You'll agree that those emails do contain or suggest
14 that there was discussion about the closure of your account;
15 correct?

16 A Very much so. At the meeting I met with Mr. Noll and
17 Mr. Maze. You know, they both were wanting to have a banking
18 relationship with me in the private wealth department, so there
19 were a lot of discussions about trying to do business with me,
20 what my issues were, what would it take for them to basically
21 have me do an account with them.

22 Q And that's -- you would agree with me that that's
23 clear from those emails; correct?

24 A Yes, sir, I believe so.

25 Q Would you agree with me that discussions about Mr.

1 Dounel or what he said about Lisa are not clear from those
2 emails?

3 A That's correct. I don't believe that they
4 specifically put that in here. That's correct.

5 Q Yesterday you testified, if I recall correctly, that
6 Mr. Maze, Mr. Noll, and Ms. Romijn were not able to give you the
7 assistance that you expected or wanted; is that correct?

8 A Expected or wanted? They basically didn't give any
9 assistance.

10 Q Well, I think that's my point. You wanted them to
11 address the issues that you just described; right? You wanted
12 them to resolve those issues?

13 A Well, I think when you couple it with the closure of
14 the joint account and then what Mr. Dounel said, absolutely, I
15 was hoping somebody would give me some answers.

16 Q But they didn't.

17 A No, sir.

18 Q All right. Now, but they did tell you something,
19 didn't they, that you could open another account, you just
20 couldn't do it with Lisa on the account; right?

21 A That's correct.

22 Q Now, next it appears you reach out directly to Wells
23 Fargo's legal department, and that's when Jennifer Scafe comes
24 into the picture. And we know that based upon some emails
25 between you and Ms. Scafe at Exhibit 29.

1 A Okay. Let's see, 29?

2 Q Yes. Before -- and as you do that, I'll, again, ask

3 the Court as to Exhibit 24.

4 MR. HAIRE: Has that been admitted? If not, I offer

5 it.

6 THE CLERK: Yes, 24 has.

7 MR. HAIRE: All right. Very good.

8 THE WITNESS: I see it, sir.

9 BY MR. HAIRE:

10 Q Bear with me just a moment, sir. I have, for some

11 reason, removed that exhibit from my binder. All right. Ms.

12 Scafe is an attorney in-house with Wells Fargo; correct?

13 A That's my understanding, yes, sir.

14 Q All right. Now, according to Exhibit 29, which is two

15 pages, LISAJ9 and LISAJ10, you and Ms. Scafe agree to have a

16 telephone conference on December 15, 2011, at 2:00; correct?

17 A That's correct.

18 Q And you did speak to Ms. Scafe on that date, didn't

19 you?

20 A Yes.

21 Q All right. Did you discuss with her the same issues

22 that you just described to us relative to Mr. Maze, Mr. Noll,

23 and Ms. Romijn?

24 A I'm sure I talked about all of them, yes, sir.

25 Q And did you talk to -- including the closure of the

1 accounts?

2 A I think so, yes, sir.

3 Q All right. Is it fair to say that she was no help,
4 either?

5 A I believe I sent her a letter, as well.

6 Q You did. You did and we're going to talk about
7 that --

8 A Okay.

9 Q -- in a moment. What I want to find out from you, and
10 if you would just, if you haven't already, review those two
11 pages comprising Exhibit 29.

12 A I've read it, sir.

13 Q Do those emails mention anything about Arash Dounel?

14 A No, it just says, "Mr. Kaplan, I want to let you know
15 that I'm working on obtaining information internally so that I
16 can fully research your situation. And, thus, I'm afraid it
17 will be next week before I'll be able to get back to you.
18 Thanks for your patience."

19 Q And you agree with me those emails do not mention
20 anything about the statements that Mr. Dounel made about Lisa?

21 A It just says obtaining some information.

22 Q All right. You mentioned that you followed up your
23 conversation with Ms. Scafe on December -- Scafe -- Scafe on
24 December 15th via a letter, and that's Exhibit 25. Can you turn
25 there?

1 A Okay. Yes, sir.

2 MR. HAIRE: And, again, don't recall if Exhibit 29 has
3 been offered and admitted.

4 THE CLERK: No.

5 MR. HAIRE: If it is not --

6 MR. KISTLER: It hasn't been offered. I have no
7 objection, Your Honor.

8 THE COURT: Okay. It'll be admitted.

9 (Exhibit 29 admitted)

10 MR. HAIRE: Thank you.

11 BY MR. HAIRE:

12 Q So let's go to Exhibit 25 now.

13 A Okay.

14 Q The first sentence -- before we get to that, this is
15 dated December 16th, the day after your telephone conference
16 with Ms. Scafe; correct?

17 A That seems to be what it says, yes, sir.

18 Q It's addressed to her --

19 A Yes, sir.

20 Q -- right?

21 A Yes, sir.

22 Q And the second page, which is LISAJ2, that's your
23 signature at the end of the letter; correct?

24 A Absolutely.

25 Q It was copied to Mr. Maze and copied to Richard Bryan?

1 A That's correct.

2 Q And just in case some of us don't know, Richard Bryan

3 is a former United States Senator in Nevada; correct?

4 A Yes, and my former boss.

5 Q Would you just take a moment, it's kind of long, but

6 would you mind just reading through Exhibit 25 --

7 A Sure.

8 Q -- sir?

9 A [Witness complied]. I've read it, sir.

10 Q Would you agree with me, Mr. Kaplan, that this -- in

11 this letter you essentially raise four issues. One, Wells

12 Fargo's refusal to tell you why the accounts were closed, that's

13 -- that's mentioned in the letter, is it not?

14 A The closure of the account is mentioned, yes, sir.

15 Q The second issue is the things that Mr. Dounel said

16 about Lisa at the Malibu Ranch on October 16, 2011; correct?

17 A Yes, sir.

18 Q Third, for lack of a better term, the misinformation

19 you received about you opening a new account.

20 A I'm sorry, sir?

21 Q It's -- it's my word. I'm using the term

22 misinformation. It appears that as a result of this letter you

23 had been misled about whether you could open another account,

24 just you alone, at Wells Fargo.

25 A Me or Lisa, and/or Lisa, I guess, so both of us, but,

1 yes.

2 Q All right. And then lastly the fourth issue is that
3 because of a failure to remedy issues one through three, you
4 would have to bring a defamation action. Is that a fair
5 characterization?

6 A I don't know. It just -- you know, as I said, I was
7 not writing it, you know, with any type of legal policy. This
8 is part of having to bring a legal proceeding seeking for Well's
9 to meet a resolution of this matter.

10 Q Well, apparently you advised her in your telephone
11 conversation the day before that you would have to bring a
12 defamation action; right?

13 A Would you -- I advised her of a number of things. If
14 you'd like me to address them, I'd be happy to, sir.

15 Q I didn't ask you about all of them. I just asked you
16 about one. You advised her that you would have to bring a
17 defamation action. It's the last paragraph of your letter.

18 A I understand. I'm just saying that there was any
19 conjunction of a number of things when she and I spoke.

20 Q It was in conjunction with the fact that you had not
21 reached resolution on why the accounts were closed; right?

22 A As far as a legal action? No.

23 Q All right. So it only related to the fact that Mr.
24 Dounel had said those things, so that -- that was the only
25 reason you were going to have to bring a defamation action; is

1 that right?

2 A Well, I don't think I was ever going to bring a
3 defamation because I was not the one that got defamed.

4 Q You've lived with the person who got defamed for more
5 than 15 years; right?

6 A As of today, yes, sir.

7 Q All right.

8 A Well, no, that's not true. Not 15, but somewhere
9 less.

10 Q As of today? What I'm asking for is if I need to
11 congratulate you on some anniversary I would like to.

12 A No, I think it's about 13.

13 Q All right. Very well. Would you agree with me, Mr.
14 Kaplan, that Exhibit 25 is the first written account by you of
15 what Mr. Dounel specifically said about Lisa, that is that she
16 must have some type of criminal background and that she must
17 have arrest warrants outstanding?

18 A I think there were things earlier than that. I don't
19 know if they went to Wells, but there were earlier things.

20 Q There were earlier things. Are the earlier things up
21 there with you that haven't been turned over to counsel --

22 A Yeah, I --

23 Q -- is that what you're referring to?

24 A You know, I think I tried to go through to look,
25 emails and everything, to clarify some of the things from

1 yesterday, so, yes, sir.

2 Q And so you think that -- that you had mentioned --

- 3 A You know -- I'm sorry. Excuse me, sir. Go ahead.

4 Q Oh, I thought you were going to --

5 A I'm sorry. I didn't mean to interrupt you. I
6 apologize.

7 Q So you think there might be some documents that we
8 haven't looked at here today that contain documents or a letter,
9 correspondence, email, notes of a phone conversation where prior
10 to December 16, 2011, you told somebody at Wells Fargo Bank
11 about what Dounel said about Lisa, and specifically that she had
12 some time of criminal background or that she must have had
13 outstanding arrest warrants?

14 A I guess -- I'm sorry. I apologize. I think you asked
15 two things and I'm just trying to remember so I can answer it
16 properly. You asked --

17 Q I just want to find out if you have anything that --
18 that memorializes in writing any communication between October
19 6, 2011, and December 16, 2011, where you describe for somebody
20 at Wells Fargo what Mr. Dounel specifically said about Lisa.

21 A I believe there was some correspondence between myself
22 and Mr. Ravenholt on it.

23 Q All right. We don't have that, do we?

24 A I don't believe so, and probably because it was
25 another attorney probably. I don't know. I can't answer

1 because I don't know everything you guys have.

2 Q Why would -- if that's the case, sir, why would you be
3 writing a letter to Ms. Scafe and not your then attorney Mr.
4 Ravenholt? Isn't it true that you had discharged Mr. Ravenholt
5 by this time?

6 A No, I think Mr. Ravenholt had told me that he really
7 didn't want to go any further with Wells Fargo. Being a sole
8 practitioner, he was worried about it affecting his law
9 practice.

10 Q All right. So he's no longer in the picture by
11 December 16, 2011, is he?

12 A I believe that's correct, sir.

13 Q All right.

14 MR. HAIRE: Your Honor, has Exhibit 25 been offered
15 and admitted?

16 THE CLERK: Yes.

17 MR. HAIRE: Very well. Thank you.

18 BY MR. HAIRE:

19 Q Lisa made good on the defamation action that you
20 reference in Exhibit 25, didn't she?

21 A Made good on it? Yes, there was a lawsuit brought.
22 Correct.

23 Q So what was first threatened in -- my word, perhaps
24 not yours, but what was first threatened in Mr. Ravenholt's
25 letter from October 2011 finally came about a month or so later

1 after you sent this letter to Ms. Scafe; correct? She filed
2 suit?

3 A I guess that's the factual case of it. I guess nobody
4 addressed the issue, so I guess that's what happens.

5 Q Did you encourage Lisa to sue Wells Fargo Bank?

6 A Probably.

7 Q Did you encourage Lisa to sue Wells Fargo Bank?

8 A I said probably, yes.

9 Q If Wells Fargo had told you why the accounts were
10 closed, would you have still encouraged Lisa to sue the bank for
11 defamation?

12 A I think if nobody had apologized for what they said
13 because pretty serious comments -- and to this day I still don't
14 understand why nobody at Wells wanted to address it. So I would
15 imagine the answer is yes to, you know, to clear her record, if
16 you will.

17 Q But -- but you had received an apology.

18 A No, I hadn't.

19 Q It wasn't a written apology, but it was an apology.
20 Mr. Dounel gave you an apology.

21 A If I could tell you the circumstances surrounding why
22 he called, I have a communication here.

23 Q You have another communication that has not been
24 identified as an exhibit in this case?

25 A From -- between myself and Mr. Ravenholt, yes, sir.

1 Q Never mind. As soon as Mr. Dounel -- back to the
2 October 6th meeting. As soon as Mr. Dounel said that Lisa must
3 have been in jail or have outstanding warrants, you told him he
4 was mistaken. That was your testimony yesterday, wasn't it?

5 A That sounds pretty factual, yes, sir.

6 Q In fact, you put that in your declaration, which we
7 talked about yesterday, too, at paragraph 19. You told him that
8 he was mistaken; correct?

9 A Or had to be mistaken, something like that.

10 Q He had to be mistaken. At that time you didn't think
11 he was mistaken, you knew he was mistaken, didn't you?

12 A Well, you say knew. I never knew. To this day as I'm
13 sitting here I don't know, you know, to a certainty. I didn't
14 take his advice and go hire a private investigator, but --

15 Q Did you believe Mr. Dounel when he told you that Lisa
16 had been in jail or had outstanding arrest warrants?

17 A At first I was baffled. It's like it couldn't be.
18 Then the more I'm sitting at his desk, you know, it's like,
19 well, man, he's got something here, I don't know what he's
20 looking at, but he seems pretty damn sure, you know, maybe I'm
21 the naïve person. That's how I was feeling sitting at his desk.

22 Q So at that time when you were sitting at his desk, you
23 didn't know if Lisa had been in jail or had outstanding arrest
24 warrants?

25 A Well, when I first went in there, you know, she, you

1 know, in my mind had never had any problems. As I said
2 yesterday, a couple speeding tickets. Suddenly I have this
3 banker who I'm listening to who basically has a computer with I
4 don't know what kind of information and he's making statements.

5 Q It is fair to say that you didn't have any reason to
6 think he was telling you the truth?

7 A I didn't have any reason to believe he was telling me
8 the truth.

9 Q Because if you did that, then you would have been
10 believing Mr. Dounel over what you understood to be the
11 character of Lisa Johnson, would you agree with that?

12 A I would be believing him over Lisa?

13 Q Yeah.

14 A I'm not sure how to answer that because I didn't want
15 to believe him. It's like there's no way this could be true,
16 but I'm also -- somebody that's looking at a computer that I
17 have no idea what's on it.

18 Q You met Lisa Johnson in 1998 in New York City; right?

19 A That's correct, sir.

20 Q Over time you developed a close relationship with
21 Lisa, did you not?

22 A Yes, sir.

23 Q For more than 13 years you have lived with Lisa;
24 correct?

25 A That's correct, sir.

1 Q You're familiar with her character?
2 A Yes, sir.
3 Q More than that you are certain of her character, are
4 you not?
5 A I always thought I was, but, you know, when somebody
6 raises an issue like that it puts a doubt in your mind.
7 Q It puts a doubt in your mind that day that maybe Wells
8 Fargo knew something you didn't. And so you had a moment of
9 doubt, is that accurate?
10 A I had a moment of doubt that day, and then you couple
11 that with the comment from Chad Maze, and you basically say
12 what's going on?
13 Q All right. So you knew Lisa's character; right?
14 A Yes, sir.
15 Q And you knew her character was excellent?
16 A To -- to my knowledge, yes, sir.
17 Q And you even told Ms. Scafe that, if we turn to
18 Exhibit 25 again. This is your letter --
19 A Yes, sir.
20 Q -- to her. The last paragraph.
21 A Looking at the last paragraph, sir?
22 Q Yes.
23 A Okay.
24 Q Second sentence.
25 A Yep.

1 Q I'm appalled at the defamatory comments from your
2 agent toward Lisa Johnson, open parentheses, Lisa has an
3 outstanding background--

4 A Yes, sir.

5 Q -- contrary to the statements by your banker she has
6 never had any legal problems.

7 A That's correct.

8 Q All right. So certainly by December 16, 2011, you had
9 no reason to believe that Mr. Dounel was accurate in -- in
10 stating that Ms. -- that Lisa had been in prison, had a criminal
11 background, or any outstanding warrants.

12 A I had no reason -- I'm sorry. You know, when I wrote
13 it, this is what I always believed about Lisa to this very day.
14 However, there is still that doubt that Mr. Dounel put in my
15 mind, and then when you have Mr. Maze to my way of looking at it
16 kind of affirming it when he said having Lisa part of your
17 account is something that will not be accepted with this bank,
18 he basically put what Mr. Dounel said with what Mr. Maze said,
19 and you basically say, man, they seem to be saying the same darn
20 thing.

21 Q There's no equivocation in your statement to
22 Ms. Scafe --

23 A That's correct.

24 Q -- that Lisa has an outstanding background. You used
25 the superlative outstanding.

1 A Correct, and that's what I wrote her.

2 Q And you're not just that. You aren't just saying
3 that. You knew that.

4 A Well, I don't know it emphatically, because I don't
5 know what information Mr. Maze and Mr. Dounel had to -- all I
6 can talk to is what I know personally. I can't address what Mr.
7 Dounel and Mr. Maze to my knowledge to this day as I sit here on
8 this witness stand, there's still something that they both
9 looked at of why they made the statements they made.

10 Q You knew Lisa didn't have a criminal background,
11 didn't you?

12 A How could I know to a certainty, sir?

13 Q Well, here's what I'm suggesting, Mr. Kaplan. I'm
14 suggesting that what Mr. Maze told you and what Mr. Noll may
15 have told you, and even what Mr. Dounel told you apparently had
16 such an impact on you that you discounted whatever character you
17 had learned about Lisa Johnson in the 15 years you knew her.

18 A Yes, sir.

19 Q She is a good person; right?

20 A I always thought so, and that's why I was baffled when
21 Wells Fargo was taking the positions they did. I agree with
22 you, she's a good person. But I don't understand it. If she's
23 a good person, why would the man say this and why would Mr. Maze
24 and Mr. Noll say three or four million dollars, if she's any way
25 associated with it, this money is no good?

1 Q You knew on October 6, 2011, after you discussed what
2 Mr. Dounel had said about Lisa when you were discussing it with
3 Lisa, you knew right then that she had no criminal background
4 because she told you.

5 A She did tell me that. That's correct, sir.

6 Q You trusted her at that moment.

7 A Yes, sir.

8 Q You believed her.

9 A Yes, sir.

10 Q And it didn't matter to you what Mr. Dounel had
11 suggested. You knew he was wrong.

12 A It does matter to me, sir.

13 Q Well, you knew his statements about her were wrong on
14 October 6, 2011.

15 A I can't say that I knew because I still saw him
16 looking at a computer and he seemed awful certain of what he's
17 saying, and then I couple that with Mr. Maze and Mr. Noll. And
18 it's like, man, you start putting these together and you say
19 something is strange.

20 Q You believed Lisa when she told you that evening
21 before the Glen Campbell concert that she didn't -- she had
22 never been in -- had any run-ins with the law.

23 A Yes, I certainly wanted to, but there was still this
24 doubt implanted in my mind that's saying, gee, is there
25 something going back that I don't know about?

1 Q Well, then why didn't you just go ahead and hire the
2 private investigator?

3 A I guess it's not my personality. It would have felt
4 -- to me, that's kind of sneaking around on somebody. I don't
5 do that, you know.

6 Q Is it more your nature to believe a guy you never met,
7 Lisa never met, but was telling you that she had a criminal
8 background?

9 A When he first said it, I wanted to not believe him.
10 Then when I spoke to Mr. Noll and Mr. Maze and had lunch with
11 them, we had a nice hour and a half lunch one day, and I
12 discussed all this. And I had a lot of respect for them because
13 they were both recommended to me by Greg Morris who has been my
14 estate attorney for quite awhile and I have a lot of confidence
15 and faith in him. So I met these people, they seemed very
16 sincere. And to them tell me we can't take this money in an
17 account with you if Lisa is associated with it. Now, you could
18 that with what was said to you by Mr. Dounel, I think even you
19 would start to have some questions in your mind.

20 Q Do you still have questions in your mind?

21 A Probably in the back of my mind there's what the heck
22 -- why did this man say this?

23 Q No, no, no. Do you still have questions in your mind
24 about whether Lisa has a criminal background?

25 A I guess there's going to be some doubt because I can't

1 fathom a bank turning down a \$3 million account from somebody.
2 You know, I've worked hard all my life to earn what money I
3 have. Nobody has handed me anything. And to basically want to
4 have it to where I wanted to share it with somebody I live with
5 and have a bank following up from Mr. Dounel saying if Lisa
6 Johnson is associated with you on that account, we're not taking
7 your money, Mr. Kaplan.

8 Q She told you, "she" being Lisa, Lisa told you that
9 evening when you discussed what Mr. Dounel said that she had
10 never been involved in any criminal activity.

11 A That's correct, sir.

12 Q All right. And prior to that time in all the years
13 that you had known Lisa, all the time that you had spent
14 together and been around other people that knew both you and
15 she, you had never heard any rumors to suggest she was involved
16 in any criminal activity, had you?

17 A No, sir.

18 Q So there wasn't any reason for you to hire a private
19 investigator to corroborate or discount Mr. Dounel's statements?

20 A There wasn't any reason. You know, to me, you know,
21 it's almost like cheating if I hired a private investigator,
22 which I would never do. You know, it's like going behind
23 somebody's back. I don't spy on her emails and I don't listen
24 to her calls. You know, there's something kind of disgusting
25 about going out and hiring a private investigator.

1 Q Mr. Kaplan, would it matter to you if Lisa had a
2 criminal past?

3 A I suppose it would. I even believe that I had told
4 the Wells Fargo representative, it may have been Ms. Scafe,
5 that, you know, unfortunately, I have some time, I sold my
6 business, I have another business now in Hawaii, but I said I
7 may decide to run for politics. She is my significant other. I
8 don't want to run for politics and have somebody start throwing
9 stones and saying, hey, look at this.

10 I mean, I have a very common name, Michael Kaplan.
11 Over the years I've had people accuse me of being another
12 Michael Kaplan that's been a deadbeat, had criminal issues and
13 everything else, so I know what it's like, you know, to go
14 through that. And it was very upsetting, but I was always able
15 to say, wait, I'm an attorney, it ain't me, and I was always
16 able to straighten it out.

17 I know Lisa Johnson is a very common name. At the
18 same time, it probably could have gotten past Dounel, although
19 it was still upsetting. But then I couple that with Maze and
20 Noll, and it's like, man, Wells Fargo is singing the same song.

21 Q So if Lisa had a criminal background, that would have
22 been a deal-breaker for you; right?

23 A You know, that's a -- you know, a tough one to answer.
24 It would have been very -- I don't know what I would have done.

25 Q Well --

1 A If she stood up today and said, hey, I served five
2 years in prison, I don't know what -- I mean, I -- you know,
3 what a terrible situation to be put in.

4 Q I don't agree. What I'd like to know is if you'd kick
5 her to the curb, as it were.

6 A I don't think I -- you know, that's not my personality
7 to kick someone to the curb. Maybe that's attorney -- other
8 attorneys. I don't view myself that way. I think I'm a pretty
9 upstanding person that does not try to harm anyone.

10 Q Before you moved in with her, did you ask her if she
11 had a criminal past?

12 A No, sir.

13 Q When you told Lisa what Mr. Dounel had said to you,
14 you asked her -- you asked her about Mr. Dounel's accusations;
15 right? You testified --

16 A Yes, sir.

17 Q -- to that --

18 A Yes, sir.

19 Q -- yesterday? You asked her if they were true --

20 A Yes, sir.

21 Q -- am I right? And you asked her, I think your words
22 were what was going on.

23 A Word to that effect. I mean, I'm sure there were more
24 words.

25 Q And she responded by telling you that Mr. Dounel's

1 statements were outrageous.

2 A Yes, sir.

3 Q All right. She told you she had -- she had never had
4 any run-in with the law; right?

5 A Words to that effect, yes, sir.

6 Q But you weren't satisfied with that. You continued
7 and persisted with your questions; right? You asked her more
8 questions?

9 A Yes.

10 Q Like is there stuff I need to know about or worry
11 about, which is what you've testified again to today?

12 A Yes, sir.

13 Q Lisa got defensive and she reaffirmed to you at that
14 time that she had nothing to hide?

15 A That's correct.

16 Q Did you think she was lying?

17 A I didn't think she was, but there was that thing in
18 the back of my mind that was like, why would this man say that,
19 you know?

20 Q Did you call her a liar?

21 A I don't know that I used those words, no, sir.

22 Q Had Lisa ever lied to you before?

23 A I don't believe so.

24 Q So you didn't have any reason to think she was lying
25 to you then, did you?

1 A Not really, no, sir.

2 Q All right. Did you yell at Lisa during your

3 discussion about Dounel's comments?

4 A I'm sure it got heated, yes, sir.

5 Q You were yelling, she was yelling, both were yelling?

6 What do you mean by heated?

7 A I think I may have been upset, you know, because I had

8 been to a bank and had a man make these comments. I just

9 figured he was looking at everything. Whatever he was looking

10 at, to this day I don't know, but he seemed pretty sure of

11 something, so, you know, I'm sitting there questioning her.

12 It's not a fun conversation.

13 Q Did you threaten her in any way?

14 A I don't think I threatened. I'm sure my voice

15 probably got raised.

16 Q Well, did you say something like, hey, if I find out

17 this is true, we're done?

18 A I don't think I said something like that. I hope --

19 Q All right. Did you --

20 A I hope I didn't, anyway.

21 Q Did you humiliate her?

22 A That's a tough question because I'm sure my questions

23 probably were really uncomfortable, just as I'm sure this whole

24 case is right now, you know, to her. And it's -- you know, it's

25 been a tough situation, sir.

1 Q Were you ashamed of her?
2 A Was I ashamed of her? I don't know if that's a fair
3 statement.
4 Q Did you tell her you were ashamed of her?
5 A I don't believe so.
6 Q You gave Lisa the benefit of the doubt during that
7 conversation, didn't you?
8 A Absolutely.
9 Q All right.
10 A I tried anyway. I'm not sure if it came out that way.
11 I tried.
12 Q You would never tell Lisa that you were ashamed of
13 her, would you?
14 A I don't think so.
15 Q You've always held Lisa in high regard; correct?
16 A Yes. Yes, sir.
17 Q You trusted her then, and you trust her now, don't
18 you?
19 A I've trusted her with my life, yes, sir.
20 Q She knows you trust her, doesn't she?
21 A I hope so.
22 Q Well, she knows now, at least, that for a brief moment
23 you doubted her, though, because of what Mr. Dounel said.
24 A As I said to you, it was not just Mr. Dounel. Mr.
25 Maze and Noll kind of reaffirmed it.

1 Q So for a moment you doubted her, didn't you?

2 A On that day, and then when Noll and Maze acted the way
3 they did, you put it all together and, man, it does not leave
4 you feeling great.

5 Q When you told Lisa about Mr. Dounel's comments, did
6 she ever tell you that you should not have ever discussed the
7 joint account closure with Mr. Dounel?

8 A I don't believe so, no, sir.

9 Q Was she upset that you had talked with Mr. Dounel
10 about the joint account closure?

11 A I don't believe so, no, sir.

12 Q Before you went into the Malibu branch on October 6,
13 2011, did Lisa ever tell you that you are not to talk with
14 anyone at Wells Fargo about the closure of the joint account
15 unless she gave you her express permission to do so?

16 A No, sir.

17 Q Do you intend to remain boyfriend and girlfriend with
18 Lisa for as long as she will have you?

19 A I hope so. I don't know.

20 Q Mr. Dounel's comments never caused you to think about
21 terminating your relationship with Lisa, did they?

22 A I don't know. They caused some issues as soon as I
23 said -- I couple it with what happened, whether it was 30 days
24 or 45 days later with Wells Fargo, and it's like they're all
25 singing the same song.

1 Q Not quite my question --
2 A I'm sorry.
3 Q -- Mr. Kaplan.
4 A I'm sorry.
5 Q Mr. Dounel's comments never caused you to think about
6 terminating your relationship with Lisa, did they?
7 A Man, it kind of puts some questions in my mind, so I
8 really don't know if I could answer that.
9 Q So you -- you may have terminated your relationship
10 with Lisa over what Mr. Dounel said about her?
11 A I don't know that terminating is a good word. I think
12 it gave me, like, what am I doing, why is this man saying this?
13 Q Would you have left Lisa based upon what Mr. Dounel
14 said about her?
15 A I don't think so, no, sir.
16 Q I'm -- I'm going to apologize in advance for -- for
17 these questions. I don't want to presume anything, and,
18 therefore, I have to ask some preliminary questions. You and
19 Lisa sleep together, don't you?
20 A Yes, sir.
21 Q All right. Did Mr. Dounel's comments ever cause you
22 to sleep apart from Lisa?
23 A I'm sure it put a lot of strain on the relationship,
24 yes, sir.
25 Q Did she ever sleep in another room on the couch, or

1 vice versa, you doing that through this whole affair?

2 A I don't know about another room, but it certainly
3 caused times of her to pull away from me in bed.

4 Q Cause you to -- caused her to pull away from you?

5 A Yes, sir.

6 Q Is that because she didn't feel that you were trusting
7 her or believing her when you said -- when she said I don't have
8 a criminal background?

9 A That could very well be the case, sir.

10 Q Mr. Duonel's comments never caused you to not express
11 love and appreciation to Lisa, did they?

12 A I don't think so.

13 Q His comments never caused you to not want to be
14 intimate with Lisa, did they?

15 A I don't believe so, no, sir.

16 Q Fair to say that your relationship with Lisa is not
17 strained today as a result of Mr. Dounel's comments?

18 A That's not fair to say, sir.

19 Q So there's still some doubt?

20 A There's still some strain going through all of this,
21 yes, sir.

22 Q And the strain is caused because you don't -- you
23 still don't full believe Lisa?

24 A No, I don't know that that's necessarily. I think
25 it's a combination of this whole legal proceeding, of what it's

1 done to us over this whole thing. It's been a nightmare. You
2 know, this is not easy on either of us. It's a terrible
3 situation that Wells Fargo has put us in.

4 Q Did Mr. Dounel's comments about Lisa, in your mind,
5 sully her reputation with you?

6 A It caused some doubt, yes, sir.

7 Q You testified earlier, essentially, that her
8 reputation with you was excellent --

9 A Yes, sir.

10 Q -- for 13 plus years.

11 A Yes, sir.

12 Q And now Mr. Dounel says a couple of things about her
13 and that reputation isn't what it used to be, is that what
14 you're telling us?

15 A It puts a doubt on a man, who you trust as a banker,
16 looks at records and makes the statements he made.

17 Q You don't have any plans to leave Lisa without a
18 financial safety net, do you?

19 A I would hope not.

20 Q You would hope that you don't have any plans to leave
21 her without a financial safety net?

22 A Well, you know, it's -- it's not my plans to do that.
23 As I said, this has been a terrible situation, both staring with
24 Mr. Dounel -- you know, if Mr. Nolls and Mr. Maze had not done
25 what they did --

1 Q Mr. Kaplan --

2 A -- and said, fine, Mr. Kaplan --

3 Q -- I'm sorry. You've told us all about what they've
4 said.

5 A I'm just trying to explain.

6 Q I apologize for cutting you off, but as you sit here
7 today you don't have any plans to not provide financially for
8 Lisa, do you?

9 A No, sir.

10 Q All right. And, in fact, you testified yesterday that
11 it was your intention to set up a joint account with Wells Fargo
12 Bank that would be funded with, I don't know, three, four, five
13 million dollars so that she could have access to that account in
14 the event something happened to you; right?

15 A Yes, so let Wells Fargo just open it, and we can all
16 be out of here today.

17 Q Is there something -- what's stopping you from doing
18 that at some other bank? You have a relationship with other
19 banks.

20 A I guess two things. Number one, I don't go to a lot
21 of banks, you know. I may have a lot of assets, but I'm kind
22 of, maybe in that respect I'm old-fashioned or conservative.
23 You know, as I said in my deposition with Mr. Fitts, I deal with
24 three institutions and none of them -- they may be banks for
25 legal purposes, but none of them, to me, are like a Wells Fargo

1 where you've got ATMs, you've got all the branches, and so, no,
2 I guess I could have done anything, but I didn't see why I
3 couldn't open with the bank that I've been dealing with for over
4 35 years.

5 Q You couldn't understand it, but what you do understand
6 and know now is that Lisa has been able to open accounts at
7 Chase Bank; right?

8 A She had to open, yes.

9 Q There weren't any problems with her opening that --
10 those accounts?

11 A To my knowledge, no, sir.

12 Q All right. Anything that would -- anything preventing
13 you from going to Chase Bank, a very large bank, lots of ATMs,
14 lots of branches, and setting up an account with three to four
15 million dollars so Lisa could have access to that in the event
16 something happened to you?

17 A Probably just where I do banking. I don't like to
18 jump around. I don't move around in jobs or careers. I'm kind
19 of consistent and I've been dealing with Wells Fargo, First
20 National Bank, and First Interstate. And it's like I just
21 wanted to have my accounts with the same bank.

22 Q Yeah, and you've got a similar long-term relationship
23 with BNY Mellon; right?

24 A They're a bank, but to me they handle assets for me,
25 they handle bonds and stocks. I don't treat them as a bank.

1 There's not branches everywhere to go into, so I don't treat
2 them in the same way.

3 Q Now, what you were contemplating was creating a
4 checking account; right?

5 A Some type of money market account, yes, sir.

6 Q Now, you could do that with BNY Mellon; right?

7 A To me it does not rate the same, so it's -- I wouldn't
8 do it with them.

9 Q Would your answer be the same relative to Charles
10 Schwab, which you also have an account with?

11 A I have an account with Charles Schwab that I consider
12 a brokerage account. I know they try to call themselves a bank,
13 but it's not -- to me, they're just not the same.

14 Q Mr. Kaplan, finally, you have no personal knowledge of
15 Mr. Dounel making the statements about Lisa's criminal activity
16 to anyone other than you, do you?

17 A I can't -- as I sit here today, I can't say who he
18 spoke to. No, sir.

19 Q So the answer to my question is, no, you do not have
20 any personal knowledge about Mr. Dounel making the statements
21 about Lisa to anybody but you.

22 A That's all I can address today, yes, sir.

23 Q The answer to my question is yes?

24 A Yes.

25 Q No, you have no such information?

1 A That's correct, sir.

2 Q All right. Thank you, Mr. Kaplan.

3 THE COURT: Any redirect, Mr. Kistler?

4 MR. KISTLER: Very brief -- very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. KISTLER:

7 Q Mr. Kaplan, Mr. Haire asked you a series of questions
8 concerning Exhibits 18 and 19. I'd ask for you to refer to
9 them.

10 A I'm sorry. You want me to turn to 18 and 19, sir?

11 Q Yes, please.

12 A Okay.

13 Q And you identified Exhibit 18 as a letter that you
14 caused to be written by Mr. Ravenholt, a lawyer, to the bank; is
15 that right?

16 A Yes, sir.

17 Q And this letter is dated October 17, 2011?

18 A Yes, sir.

19 Q And that's approximately 10, 11 days after the time
20 that you met with Mr. Dounel; is that right?

21 A Yes, sir.

22 Q And in the last paragraph we have defamation of Lisa
23 Johnson drawn out to the bank's attention; is that right?

24 A Yes, sir.

25 Q Defamation -- defamation of Lisa Johnson called out to

1 the bank's attention.

2 A Yes, sir.

3 Q I tried to circle it and I ran out of ink. And in
4 response to that, if we look at Exhibit 19.

5 A Okay. I see it on the screen here, but, okay, I'm
6 still here.

7 Q Exhibit 19, a letter by the Western Mountain District
8 Manager of Wells Fargo Bank -- Vice President. I'm sorry, Vice
9 President of the Western Mountain District Manager responding to
10 Mr. Ravenholt's letter saying the bank had defamed, that the
11 bank employee had defamed Lisa Johnson.

12 A Yes, sir.

13 Q And the remark was we have handled this situation
14 appropriately. Defamation of Lisa Johnson, Wells Fargo, we have
15 handled this situation appropriately. Has anyone from Wells
16 Fargo ever told you that Mr. Dounel didn't defame Lisa Johnson?

17 A I'm sorry, sir?

18 Q That Mr. Dounel didn't defame Lisa Johnson?

19 A No, nobody has ever --

20 Q Has anyone from Wells Fargo ever told you that
21 whatever Mr. Dounel said is not the position of Wells Fargo Bank
22 NA?

23 A No, sir.

24 Q Has every -- at every turn, has the bank in its
25 interactions with you following October 6, 2011, stepped back

1 from backing up their employee and your claims of defamation by
2 that employee?

3 A Have they -- have they -- I'm sorry.

4 Q Have they backed him up?

5 A Nobody has said anything to the contrary, sir.

6 Q And has the bank's actions throughout, including this
7 litigation, only enhanced your uncertainty about Lisa Johnson
8 and the defamatory statements made by Mr. Dounel?

9 A It's made it more difficult.

10 Q Have the defamatory statements by Mr. Dounel and the
11 bank's refusal to do anything other than back those statements
12 up affected your relationship with Lisa Johnson?

13 A Yes.

14 Q And has that, in turn, affected Lisa as far as you can
15 tell?

16 A Yes.

17 MR. KISTLER: Your Honor, I have no further questions.

18 THE COURT: Okay.

19 Anything further, Mr. Haire?

20 MR. HAIRE: Maybe just two or three questions, Your
21 Honor. It'll be very brief.

22 RECROSS-EXAMINATION

23 BY MR. HAIRE:

24 Q In response to the remarks about what was said to you
25 as per the Ravenholt letter, isn't it possible that Wells Fargo

1 Bank simply chose to believe Mr. Dounel over you?

2 A I'm not sure I understand.

3 Q Isn't it possible that they --

4 MR. KISTLER: Your Honor, I'm going to object to this
5 as being an improper hypothetical. And the reason it's an
6 improper hypothetical is that's part of the problem with the
7 letter from the bank. They didn't say we've looked into this
8 and we --

9 THE COURT: Okay.

10 MR. KISTLER: I object to the question as an improper
11 hypothetical.

12 BY MR. HAIRE:

13 Q You never --

14 THE COURT: Restate your -- restate your objection.
15 I'm going to overrule it. It's speculative. He can answer if
16 he -- if he can.

17 BY MR. HAIRE:

18 Q Did you, in response to their silence on that issue,
19 did you send them a letter or did Mr. Ravenholt send them a
20 letter saying, hey, what about this stuff we said about what Mr.
21 Dounel says about Lisa, what's your response to that? Anybody
22 ever send them a letter asking for a direct response to that
23 issue?

24 A I think that was discussed with Mr. Maze and Mr. Noll
25 when I lunch with them about what had happened and that --

1 that's when they said they were going to check into things and
2 then get back to me.

3 Q: You think that's when you had a conversation?

4 A Yes, sir.

5 Q Thank you.

6 THE COURT: Anything further? Mr. Kaplan is excused?
7 Is Mr. Kaplan excused?

8 MR. HAIRE: Oh, yes. Yes, Your Honor.

9 THE COURT: Okay. Mr. Kaplan, thank you for your
10 time.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: All right. So I guess the question is, I
13 don't know if he's planning on staying, so if there's no
14 intention to call him any further, you know, you did invoke the
15 exclusionary rule, is he -- can he remain in the courtroom, do
16 you prefer that? I mean --

17 MR. HAIRE: My preference would be, Your Honor, to
18 invoke the rule with the recognition that my understanding of
19 the rule is that it -- it extends to discussions with the
20 witness outside the courtroom about what the witness has
21 testified to.

22 THE COURT: Excuse me?

23 MR. HAIRE: Does the -- is -- does the exclusionary
24 rule, sequestration rule, require that there can be no
25 conversations during the testimony of, for example, Lisa

1 Johnson, and we take a break, is counsel allowed to talk with
2 Mr. Kaplan?

3 MR. KISTLER: Your Honor, that's not the purpose of
4 the exclusionary rule. The purpose of the exclusionary rule,
5 obviously, is to prevent --

6 THE COURT: Is that a witness not be influenced by
7 what he --

8 MR. KISTLER: Yes, Your Honor.

9 THE COURT: -- hears on the stand in his own
10 testimony.

11 MR. KISTLER: Here, Your Honor, the plaintiff has
12 heard all of the testimony. So it would be inappropriate if, in
13 fact, Ms. Johnson had not heard the testimony, for me to tell
14 her as another outside of the courtroom what that witness said
15 if, in fact, she had been excluded from hearing his testimony.
16 So --

17 THE COURT: Certainly. And to the extent, then, that
18 Mr. Haire is simply entitled to ask of a witness, not a client,
19 of a witness what -- did you talk to the party's attorney,
20 though, he can ask that.

21 MR. KISTLER: Sure.

22 THE COURT: But here's the -- here is the concern, I
23 guess, that Mr. Haire is raising, is in the event he wanted to
24 know did Mr. Kistler tell you, Ms. Johnson, the client,
25 something that he asked Mr. Kaplan, your communications with Mr.

1 Kaplan aren't privileged, but your communications with Ms.
2 Johnson are.

3 MR. HAIRE: And, therefore, they would be cloaked in
4 the privilege.

5 THE COURT: So I guess that's his concern.

6 MR. KISTLER: I still don't understand, Your Honor.

7 THE COURT: Okay.

8 MR. KISTLER: Because Ms. Johnson heard the testimony.

9 THE COURT: Correct.

10 MR. KISTLER: The exclusionary rule prohibits me from
11 talking with someone that had been excluded from the courtroom
12 about any courtroom testimony. That's what it prohibits.

13 THE COURT: Uh-huh.

14 MR. KISTLER: And so, you know, if, in theory, Mr.
15 Haire had said that he wanted Mr. Kaplan subject to recall and
16 that Ms. Johnson were to take the stand next, and if Mr. Kaplan
17 were outside of the courtroom --

18 THE COURT: And, see, that's --

19 MR. KISTLER: -- then clearly I couldn't talk with
20 Mr. --

21 THE COURT: -- that's my question. Is Mr. Kaplan --
22 is anybody intending to recall Mr. Kaplan either in rebuttal, or
23 if they wish to call him in their case in chief such that he
24 would be excluded from the courtroom at this time. That's my
25 question.

1 MR. KISTLER: Yes, Your Honor. And my understanding
2 was that you asked the question was he released, and the answer
3 was yes. Now, if Mr. Haire says he wants him subject to recall,
4 then I guess he could --

5 THE COURT: Uh-huh.

6 MR. KISTLER: -- invoke the exclusionary rule.

7 THE COURT: Yeah, so that's my question. At this
8 point in time, just so Mr. Kaplan knows, thank you, Mr. Kaplan,
9 you're done, you can sit in the courtroom now because nobody is
10 going to recall you, or, Mr. Kaplan, we may need to recall you
11 at a later time, you're going to have to wait outside. That's
12 what I want.

13 MR. KISTLER: I don't plan on recalling him.

14 MR. HAIRE: And I reserve the right to call him. I
15 don't know what --

16 THE COURT: Okay.

17 MR. HAIRE: -- Lisa Johnson is going to testify to --

18 THE COURT: All right.

19 MR. HAIRE: -- so I'd like to invoke the rule.

20 THE COURT: All right. Okay. So, then, Mr. Kaplan
21 may be recalled at a later time, so Mr. Kaplan would need to
22 remain outside the courtroom. Got it. All right.

23 MR. KISTLER: The confusion was that counsel said that
24 he -- yes, he was released, and that would imply that he wasn't
25 going to recall him. If he plans on or if he wants to keep the

1 option open to recall Mr. Kaplan later in his case, then, yes,
2 the exclusionary rule could be invoked.

3 THE COURT: Okay. All right. So that's -- we're
4 going to assume that Mr. Kaplan may be recalled at a later time
5 to testify in -- in either -- in rebuttal or in Mr. Haire's
6 case.

7 So, Mr. Kaplan, you're going to have to remain outside
8 the courtroom because you may be recalled.

9 At this point in time, we're going to take just a
10 short recess until -- maybe five, ten minutes.

11 MR. KISTLER: Happy to, Your Honor.

12 THE COURT: Ten?

13 MR. HAIRE: Thank you.

14 THE COURT: Okay. All right. So we will resume at
15 10:30. Okay.

16 (Court recessed at 10:19 a.m., until 10:35 a.m.)

17 MR. KISTLER: What I would ask since Mr. Haire has
18 invoked the exclusionary rule for Mr. Kaplan, can we have Mr.
19 Kaplan on a, say, one-hour telephone recall in case he doesn't
20 want to avail himself to the many amenities of the Region
21 Justice Center while he is cooling his heels outside --

22 THE COURT: Uh-huh.

23 MR. KISTLER: -- this courtroom? So that's what we
24 would ask, where if Mr. Haire could tell me if he wants him --

25 THE COURT: He's not -- is he under subpoena, Mr.

1 Haire? I mean --
2 MR. HAIRE: I'm sorry?
3 THE COURT: Is he under subpoena?
4 MR. HAIRE: He is not.
5 THE COURT: So then it would be in his -- he would be
6 accommodating the Court in coming back, so --
7 MR. HAIRE: That is correct.
8 THE COURT: Yeah, so certainly I think that would be a
9 reasonable thing to request.
10 MR. HAIRE: If they were willing to make him
11 available. I realize I can't compel them --
12 THE COURT: Uh-huh.
13 MR. HAIRE: -- to do that, but I certainly have no
14 problem with what Mr. Kistler suggested.
15 THE COURT: Okay. That's certainly agreeable. If you
16 need to --
17 MR. KISTLER: If Mr. Koval could leave the courtroom.
18 THE COURT: Absolutely. Absolutely. To let him know
19 that. Yeah, just get his phone number and if we need him we'll
20 call him. So and I guess just the only thing, Mr. Kistler, is I
21 do have a luncheon to go to. I hope I don't inconvenience the
22 parties too much. If we could break at about -- well, in about
23 an hour and then come back at a quarter after.
24 MR. KISTLER: Your Honor, 11:30 is my typical lunch
25 time.

1 THE COURT: Perfect. We're all in agreement, then.

2 Okay.

3 MR. KISTLER: As Mr. Koval will tell you.

4 THE COURT: Let's go. Let's -- then we'll do it. All
5 right. So then we will call your next witness.

6 MR. KISTLER: Your Honor, at this time we would call
7 Lisa Johnson to the stand.

8 THE COURT: Okay. And Ms. Johnson, I'll just remind
9 you the same thing I told Mr. Kaplan, and that is watch out for
10 that lift.

11 MS. JOHNSON: The lift, okay.

12 THE COURT: You have to kind of pull the chair over
13 the edge of that where it lifts up and down. It's crazy.

14 MS. JOHNSON: Okay.

15 LISA JOHNSON, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Thank you. Please have a seat. And state
17 and spell your name for the record.

18 THE WITNESS: Lisa Johnson, L-I-S-A, S for Suzanne,
19 Johnson, J-O-H-N-S-O-N.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION

22 BY MR. KISTLER:

23 Q Ms. Johnson, I'd ask if you could speak loudly enough
24 so I can hear you, and I'm not going to admit that I'm -- there
25 are certain frequencies that I do not hear as well as I used to.

1 But if you speak loudly enough for me to hear you, then
2 certainly Judge Sturman will be able to hear your testimony --

3 A Sure.

4 Q -- as well. Ms. Johnson, what's your present county of
5 residence?

6 A County?

7 Q Yes.

8 A Clark County here in Las Vegas.

9 Q What I'd like to do initially is for the Court to get
10 to know you a little bit better, so if you could tell us a
11 little bit about your background. Where were you born, where
12 were you raised? Can you give us kind of a thumbnail sketch of
13 where you started and how you ended up here --

14 A Sure.

15 Q -- just, you know, where you've lived and what you've
16 done.

17 A I was born in Corning, California, and six months
18 after I was born my parents moved to Hollywood and I grew up
19 there until I was seven. And then they are Canadian, so they
20 moved back to Canada.

21 Q What part of Canada?

22 A Slave Lake, Alberta. It's a very small town in
23 Northern Canada. And I lived in Canada in three different
24 places in Canada until I was 23. And because I am a dual
25 citizenship, you know, being born in California, I grew up

1 thinking someday I'm going to move back to the hottest place I
2 can find. And I ended up moving back to the United States to
3 Florida in 1986. And I've lived in the United States since then
4 in various places.

5 I went to college in Florida, and I studied
6 photography. And I ended up working in a photo lab for a few
7 years that was a company that we didn't even have a sign on our
8 building because all of the work that we did was for aerospace
9 companies being in Melbourne, Florida, just 30 minutes south of
10 Cape Canaveral. And so my client -- our clients were Grumman
11 Aerospace, NASA, General Electric, these types of companies.

12 And because the -- the work that we did was for -- it
13 as basically Grumman Aerospace, I had a private clearance to
14 work for them, work with -- handle their material. So I had a
15 secret clearance for a number of years.

16 Q I'm sorry. Say that again? You had a secret security
17 clearance?

18 A They required that all employees of our photo lab have
19 a secret clearance. That's what they call it. There are
20 certain levels of secret clearances within the government, but I
21 had to have one to handle their film materials because it was
22 sensitive material. And --

23 Q And during what period of time did you have this --

24 A The clearance?

25 Q Yes.

1 A It was for the entire duration that I worked for
2 Atlantic Photo Technologies, and that was approximately two --
3 two years, I believe, two to three years. 1987 to 1989, I
4 believe, 1990. Yeah, probably two and a half years.

5 Q Okay. And that -- did that require a background check
6 if you know?

7 A Oh, yes, a very extensive background check. I had to
8 tell them where I had lived for the past ten years, all the jobs
9 that I had had, a very extensive background check, yes.

10 Q Okay. So after, say, 1990, I think you were telling
11 us how you had done these different jobs. What happened after
12 1990?

13 A Well, I became good friends with my Kodak rep at the
14 photo lab because we used a lot of materials that warranted a
15 visit by the Kodak rep, and she ended up helping me to get a job
16 with the Eastman Kodak Company. So I was hired by them in 1990,
17 and I moved to Rochester, New York. And from there, Kodak
18 transferred me to several places around the USA working as a
19 technical sales representative.

20 So I -- I lived in New York for a short time, and then
21 Houston, Texas. And then I left the company, actually, for a
22 year, and I traveled around the -- the world, actually, for one
23 year. Then I went back one year later with Kodak. They hired
24 me back, which is actually very unusual that they did hire me
25 back. So I -- my performance must have been pretty good that

1 they brought me back.

2 And they sent me to Memphis, Tennessee, and from there
3 I went to New York City. And in New York I met Michael, and
4 after a year and a half of a long distance relationship, I had
5 said to my superiors if there was ever an opening in Las Vegas I
6 would be interested because that's where my boyfriend lives and
7 I've been commuting. And within six months an opportunity
8 became available in Las Vegas, and I moved to Vegas with Kodak.

9 Q When was that?

10 A That's how I got here. That was in 2000, the year
11 2000 I moved here.

12 Q Okay. And when you moved to Las Vegas, did you -- did
13 you get to know Mr. Kaplan better? Did you guys -- without
14 going into the gory details, can you tell me how that --

15 A Sure.

16 Q -- progressed?

17 A When I first moved here he offered me to move in with
18 him. And I said, no, I think that the best thing would be for
19 us to live in the same town for one year. So I got my own
20 apartment and that way we could get to know each other better
21 living in the same town, which I thought was smart to do, and
22 that's what we did. And then after one year's time we did move
23 in together.

24 Q What's your educational background?

25 A I have 12th grade and some college. I never finished

1 college because I -- I got a great opportunity to work for
2 Atlantic Photo Technologies and then Kodak hired me. So I
3 didn't finish.

4 Q Would you characterize yourself as a professional
5 photographer?

6 A I would, yes.

7 Q And what -- what kind -- have you continued in that
8 industry or that area since coming to Las Vegas?

9 A Oh, yes. Uh-huh.

10 Q Are you a published author?

11 A I am.

12 Q And can you tell Judge Sturman a little bit about your
13 publication and what it is and how it's doing?

14 A Sure. When I moved to -- when I started living
15 Memphis, Tennessee, I actually started dating the guitar player
16 at church. And my father, being a musician, told me I was never
17 allowed to date musicians. And so I called my dad and I'm like,
18 dad, I'm dating a guitar player, but he is the guitar player at
19 church and he owns a vintage guitar store. And my dad said, oh,
20 well, that makes a difference because he owns a business. Hey,
21 if he ever gets in a Gibson mandolin, I've always wanted one,
22 let me know.

23 And within two weeks Hank got in a 1917 mint condition
24 mandolin. And so I said, hey, I'd like to buy that for my dad,
25 how much? And he said you can't afford it. But at the time I

1 was photographing objects in black and white and hand coloring
2 them and he loved my work. And he said if you photograph some
3 guitars for me the way you do that and make me a piece, I'll
4 trade you for the mandolin. So I said done deal. So I
5 photographed some guitars for him, and I literally for the first
6 time in my life fell in love with my imagery.

7 And shortly thereafter Kodak transferred me to New
8 York City. And so I thought I may as well make this my niche.
9 Let me try this. Let me -- while I'm working for Kodak, I'm
10 going to on the side have this project of photographing guitars.
11 And so Les Paul was very available. He played two sets every
12 Monday night at The Iridium. I went down there, I got to meet
13 him, I asked if I could photograph his guitar. I showed him my
14 art pictures. He loved them. He said yes. And I did not stop
15 photographing famous guitars since.

16 So that was 27 years ago, and in October of 2013, I
17 had the honor of actually being able to publish my first book
18 and write my first book called 108 Rock Star Guitars. The
19 forward was written by Les Paul as I developed a relationship
20 with him over those 17 years. And he wrote it for me in 2009
21 just prior to his passing away. And the book has the guitars of
22 Eric Clapton, Jimmy Page, Jeff Beck, all of the majors are in
23 this book. So I'm very pleased about that.

24 Q Well, now, I tried to order that book in November of
25 2013 from Amazon.com and it was sold out. How has --

1 A It's a --
2 Q -- the book been doing?
3 A -- best seller. They can't keep it in Amazon. It's
4 sold out. It was backordered 856 copies over the holidays.
5 Q Fortunately, they were able to fill my order.
6 A Uh-huh. I know. I was happy about that.
7 Q Ms. Johnson, you said that you -- you and Michael
8 Kaplan moved in together sometime in 2000?
9 A '01.
10 Q 2001.
11 A 2001 we moved in together.
12 Q And have you lived -- you and Mr. Kaplan have lived
13 together as a couple, cohabitating since that period of time?
14 A Yes, for the most part. Yeah.
15 Q And you have up to and through today's date?
16 A Yes.
17 Q Now, there were certain allegations, defamatory
18 allegation in our view, that were made by Mr. Arash Dounel
19 operating within the scope and course of his employment with
20 Wells Fargo concerning your alleged criminal activity, criminal
21 arrest, i.e., that you had spent time in jail, that you had
22 outstanding warrants against you, things of that nature. Have
23 you ever been criminally arrested in your life?
24 A No, absolutely not.
25 Q Now, you have had a couple of speeding tickets; right?

1 A I have.

2 Q Okay. And were those serious, major, minor, did you
3 lose your license, anything like that?

4 A I've never lost my license or have any kind of issue
5 with the law.

6 Q Other than a couple of minor speeding tickets, have
7 you ever been criminally investigated to your knowledge?

8 A No.

9 Q Have you ever spent any time in jail?

10 A No.

11 Q Have there ever been any criminal warrants issued for
12 your arrest to your knowledge?

13 A No.

14 Q Has anyone other than Mr. Dounel ever claimed that you
15 were a criminal?

16 A No.

17 Q Now, Mr. Arash Dounel, the Wells Fargo employee that
18 made these statements to Mr. Kaplan, have you ever met him?

19 A No.

20 Q Now, in fairness, Mr. Dounel was deposed in my office.
21 Were you present at the deposition?

22 A Oh, yes, he was. I did meet him that time.

23 Q Okay. Prior to that time had you ever met Mr. Dounel
24 in your life?

25 A No.

1 Q Do you know whether or not Mr. Dounel ran in the same
2 social circles as you did?

3 A No.

4 Q Do you know whether or not Mr. Dounel had any
5 information prior to October 2011 where he could formulate a
6 personal opinion concerning your law abidingness or anything
7 like that?

8 A No.

9 Q Is it fair to say that your life and Mr. Dounel's
10 never intersected until that fateful day on October 6, 2011?

11 A That is correct.

12 Q Have you ever heard of a company called Guitarfile,
13 LLC?

14 A Yes, that's my company.

15 Q And what is Guitarfile, LLC?

16 A That is my company and it my -- the LLC that I formed
17 to work under for -- to establish my business photographing
18 guitars and creating publications and products --

19 Q Okay.

20 A -- around guitars specifically.

21 Q If you could tell the Court, approximately when did
22 you form Guitarfile, LLC, if you -- if you know?

23 A I believe the current one is 2009. It actually had
24 been formed prior to that, but I also had two yoga studios and I
25 was -- it was kind of -- my bookkeeper was saying, you know

1 what, you're not really working on this full time, it's kind of
2 a -- it could be looked at as a hobby. So she advised me to
3 close it at that time. So I think I originally had formed it in
4 maybe 2004 or '05 or something like that. So I took her advise
5 and I closed it, but then when I sold my yoga studios and
6 decided I had enough material to begin working on the book full
7 time to get it published, I then reestablished it, and I believe
8 that was in 2009.

9 Q Now, you mentioned a couple of yoga studios. What's
10 your connection with yoga studios or yoga?

11 A Well, after ten years working for Eastman Kodak, in
12 2002 I left the company. As most everyone knows, you know,
13 Kodak has been going through a lot of financial issues and has
14 recently filed bankruptcy. We all saw the writing on the wall.
15 And I had an opportunity to go to a yoga teacher training and I
16 decided to do that and I became a yoga teacher. And after
17 graduation from that I opened a yoga studio in Las Vegas. And
18 then I think a year and a half later I opened a second yoga
19 studio in Las Vegas and I had those until 2008.

20 Q I'm sorry, what was the last thing you said?

21 A I had -- I opened a second yoga studio, and then I had
22 those studios until 2008, and I closed one and I sold one.

23 Q Are you -- do you still practice?

24 A I still practice yoga. I am still a teacher. This
25 last year I've taken some time away from teaching because the

1 intensity level of putting a book together is quite high, so
2 I've just taken a bit of a break.

3 Q Well, I've never done any yoga exercises in my life,
4 but I understand that in addition to the physicality of yoga,
5 there are certain other traits of yoga masters or concepts that
6 are taught in yoga.

7 A Yes.

8 Q What are some of the other traits in -- in yoga
9 training when you're the practitioner?

10 A Well, hatha of yoga, which is the common term most
11 people know about yoga is the physical aspect of yoga. So that
12 would be what we call the asanas or the -- or the poses,
13 practicing of poses, so going to a class and doing the -- going
14 through the physical activity of it. But the eight-fold path of
15 yoga is what we study as yogis, and there are eight folds.
16 Hatha yoga is one of eight folds and there are seven others.
17 And so we study yoga philosophy and, of course, we practice
18 non-judgment, non-attachment, non-reaction, among a variety of
19 many other things. But, you know, we live for truth, die for
20 truth, we learn to stand in our truth. Satyagraha is what it
21 means, stand in your truth. And we -- we practice to live in a
22 loving, kind way in non-judgment and non-attachment and
23 non-reaction.

24 Q Well, now, you -- when you took the stand you were
25 administered the oath that you promise to tell the truth, the

1 whole truth, and nothing but the truth. Have you lived that as
2 part of your yoga training and expertise even prior to this
3 morning?

4 A I'm not a perfect human being, but I certainly live by
5 and practice these things to the very best of my ability, yes.

6 Q And you promise to tell the truth here today?

7 A I promise.

8 Q Ma'am, if you could refer your attention to Exhibit 1
9 in the -- I'll call it the slender binder. We're not going to
10 talk about skinny and fat. We're going to talk about slender
11 and -- and I'll come up with a different word. I don't think
12 we're going to refer to the -- to the other binder. Did there
13 come a point in time when you opened accounts at Wells Fargo
14 Bank for Guitarfile, LLC?

15 A Yes, I did.

16 Q Okay. And can you tell us what Exhibit 1 is?

17 A This is a business account application for a bank
18 account.

19 Q Okay. Now, there's -- my understanding, and even
20 though this is leading, my understanding, correct me if I'm
21 wrong, that there were really two different accounts that you
22 had established, two different main accounts that you had
23 established for Guitarfile, LLC. What's referenced here in
24 Exhibit 1 is business account application, is that one of the
25 accounts?

1 A Yes, it is.

2 Q Okay. And what was the other account?

3 A It was a joint account that I had with Michael.

4 Q Okay. And was there a second Guitarfile, LLC account?

5 A There was a Guitarfile credit card, business card
6 account.

7 Q So is it okay, then, for the -- what's referenced in
8 Exhibit 1, can we just call that the Guitarfile business
9 account?

10 A Okay. Sure.

11 Q Is that all right?

12 A Uh-huh.

13 MR. KISTLER: And then, Your Honor, the application
14 for the Visa credit card account for Guitarfile don't really
15 have it, but we know there's no dispute that that was in
16 existence, as well. Can we refer to that account as the
17 Guitarfile Visa account or credit card account? Let's say
18 Guitarfile credit card account.

19 THE WITNESS: I think this business account
20 application is a checkmark. It says new deposits, accounts, and
21 business credit card. So it's the same one, the same account.
22 BY MR. KISTLER:

23 Q It may be the same one?

24 A It's one and the same application.

25 Q But we approached it as -- or it was approached by the

1 bank as two different accounts; is that right?

2 A Correct. Yeah.

3 Q A business account for Guitarfile and a credit card
4 account for Guitarfile; is that right?

5 A Yes.

6 Q And then I believe you alluded to or started to
7 testify about a joint account that you had with Michael Kaplan.

8 A Yes.

9 Q Okay. Can you refer your attention to Exhibit 2,
10 which has already been admitted into evidence?

11 A Yes.

12 Q Can you tell the Court what you understand this to be?

13 A Well, this is a consumer account application for Wells
14 Fargo for a money market checking account.

15 Q And you understood -- well, what was your
16 understanding of -- strike that. Did you have any understanding
17 concerning ownership of this account?

18 A Well, according to this document it's a Michael Kaplan
19 account only.

20 Q Okay. But you were an authorized signatory on this
21 account?

22 A Well, on this first page 0001, Michael is the only
23 signatory.

24 Q Okay. But if you look on the second page of this
25 exhibit, the --

1 A The second page, yes, I am on this one.

2 Q Okay. And so, in fact, in the lower left-hand

3 quadrant, WFB0002 of Exhibit 2, your signature appears?

4 A It does, yes.

5 Q As a signator or a signer on this account; is that --

6 A Correct. Yes.

7 Q Now, did there come a point in time -- a point in time

8 when Wells Fargo Bank closed these accounts, the three that we

9 talked about?

10 A Yes.

11 Q If I could refer your attention to Exhibit 4, please.

12 Do you have that in front of you?

13 A Yes, I do.

14 Q For the record, I will identify this document as

15 purporting to be a letter from Wells Fargo dated August 18,

16 2011, addressed to Guitarfile, LLC operating account, signed by

17 the prevention contact center. Does that adequately, at least

18 facially identify this document?

19 A Yes, it does.

20 Q Okay. And Exhibit 4, was that one of the closure

21 letters that was received from Wells Fargo?

22 A Yes, it is.

23 Q Okay. And do you know what account this refers to?

24 A This is the -- my Guitarfile business checking

25 account.

1 Q Okay, ma'am, referring your attention to Exhibit 5,
2 another letter from Wells Fargo, this one dated August 15, 2011,
3 addressed to Guitarfile, LLC, Lisa Johnson, signed, sincerely,
4 Wells Fargo Bank NA Business Direct. Did I correctly identify
5 that document for the record?

6 A Yes.

7 Q Okay. And do you know what this document is?

8 A This is a letter indicating an account closure of my
9 Visa business card, my business checking, my business credit
10 card.

11 Q Okay. And then finally referring your attention to
12 Exhibit 6. Exhibit 6 purports to be a letter from Wells Fargo
13 dated August 18, 2011, addressed to Michael Kaplan, Lisa
14 Johnson, again, purportedly signed for on behalf or by
15 prevention contact center. Can you tell the Court what this
16 document is?

17 A Yes, this is a letter that says they're closing my --
18 our, Michael's and my joint account in which he's the primary
19 holder of the account.

20 Q Now, do you know when you received -- strike that.
21 Did you receive these three letters?

22 A Yes, I did.

23 Q And do you know when you received the three letters?

24 A Yeah, it was later in September because I was away. I
25 was actually in New York for a time, so I got them in September.

1 Q Ma'am, if you can refer your attention to Exhibit 7.
2 Can you tell the Court what this document is?

3 A Yes. I happened to be in Los Angeles, and I went into
4 a different Wells Fargo bank branch, in Beverly Hills, actually.
5 And I went in to pay my business credit card. I think it must
6 have been because I had been traveling, I like to pay my bills
7 on time or early. And so it was --- must have been due and I
8 went in there to pay that, which I did. And -- oh, yeah, excuse
9 me. I'm sorry. This is a different thing.

10 I had already been into that bank. I had already been
11 in and had a transaction at the bank. I think it was for
12 checks. And then I went online to pay my business card, which I
13 don't usually do, but it was -- there was a tight timeline
14 because I had been traveling. So I went online to pay my
15 business credit card and it showed there that the -- a card had
16 been cancelled and I didn't have any idea why.

17 And I had just been at that bank in Beverly Hills.
18 And he was such a nice man, the guy that I worked with, the
19 banker, and I thought let me just contact him because I -- he --
20 I didn't really have a personal banker that I had had a
21 relationship with in Las Vegas. So he seemed interested in my
22 company, in fact, 108 Rock Star Guitars, he was asking me a lot
23 of questions about that. So I emailed him because he had given
24 me his business card, and so I emailed him and said, hey, any
25 idea why my credit card would have been closed without notice?

1 Q And the email that you sent, is that -- is that --

2 A That's the email that I'm looking at. I had emailed
3 him asking for his help to find out what happened, why my credit
4 card was closed.

5 Q Now, this email was dated September 22, 2011 --

6 A Yes.

7 Q -- is that right?

8 A Yes, it is.

9 Q Does the date of this email help you in determining
10 when you first saw these closure letters that you refer to?

11 A Yes, it does.

12 Q Okay. And how does this help or hinder, can you tell
13 the Court?

14 A Because actually -- it helps because it's interesting
15 the date is September 22nd, which is the exact same date that I
16 had written a check to my new publicist, Jeff Albright. It was
17 date the exact same day, September 22nd, and the -- the letters
18 from the bank about the closure of my credit card, of my
19 checking accounts, said that my accounts would be closed as of
20 September 22nd.

21 Q All right. You alluded to a discussion or a
22 conversation with Jeff Albright?

23 A Yes.

24 Q Okay. Can you refer your attention to Exhibit 11.

25 A Oh, yeah.

1 Q Okay. And, again, what is Exhibit 11?

2 A Yeah. This is an email that I wrote to him because I
3 had a very new working relationship with him. And because I had
4 written the check that I owed him for his invoice on September
5 22nd and the bank said that as of September 22nd my accounts
6 would be closed, I felt compelled that I needed to write to him
7 and say, hey, the check I sent you, there might be an issue. I
8 need to send you a new check, can you please destroy this. And
9 I explained to him what was going on.

10 Q And if you can refer your attention to Exhibit 12,
11 please.

12 A yes.

13 Q Now, what is Exhibit 12?

14 A This is the check that I wrote to Jeff Albright on
15 September 22, 2011.

16 Q Now, when you saw the -- so -- so when do you believe
17 that you first saw these closure letters?

18 A I saw them sometime in September.

19 Q Okay. And when you saw them, what was your reaction?

20 A I was astounded. I'm like, what? Why did they close
21 my accounts? It's saying risk assessment here. What's -- what
22 is this about?

23 Q Did you have a history of bouncing checks on any of
24 these --

25 A No.

1 Q -- and of these accounts? Overdrafts, overdrawing?

2 A No. I was very concerned.

3 Q Now, did you make any contact with -- with the bank
4 from the time that you received the closure letters there in
5 September, during the month of September did you try to figure
6 out what -- what was going on?

7 A Actually, Michael made contact with the bank because
8 the account, the one account that was closed, he was the primary
9 signator, so he made the calls --

10 Q Okay.

11 A -- to the bank.

12 Q If I could refer your attention to Exhibit 9, please,
13 specifically the second page of that exhibit. That's LISAJ0084.

14 A Yes.

15 Q Can you tell us what that page represents?

16 A Yes, I had emailed that banking representative that I
17 referred to earlier in Beverly Hills. When I had emailed him
18 about if he knew anything about why they would have closed my
19 credit card, and then I'm realizing they -- they're closing not
20 only that credit card, they're closing that account and my
21 personal checking account, my joint account with Michael. And
22 so I emailed him. I'm really outraged. My accounts are in
23 order. I don't understand. Why are they closing -- is some
24 kind of fraud happening? Is this a mistaken identity? Is my
25 identity being stolen? Why -- if it says risk assessment,

1 shouldn't I be the first person to know if there is a problem
2 with my account or if I'm at risk or something? Like, can you
3 help me? What's going on?

4 Q So these emails, at least on the second page, were all
5 written on September 26, 2011?

6 A Yes, and the -- and the gentleman, his name is Ramy
7 Zaki, he's writing back. He does not know what's going on. He
8 was told that I was going to be sent a letter explaining the
9 reasons why that credit card was closed out. He could provide
10 me the contact number, but, again, he hates to be the bearer of
11 bad news, but he can't tell me anything and he's very sorry,
12 that he wishes he knew what was going on.

13 Q And that was Mr. Zaki at Wells Fargo Bank?

14 A That's correct, in Los Angeles.

15 Q Now, Ms. Johnson, I'd like to now go forward in time
16 to October 6, 2011.

17 A Yes.

18 Q And Mr. Kaplan on October 6, 2011, was the -- the date
19 that he visited the Malibu branch of Wells Fargo Bank. Do you
20 remember the morning hours of October 6, 2011?

21 A The morning hours? I can't say I remember exactly. I
22 was working.

23 Q Did you know that Mr. Kaplan was going to the Wells
24 Fargo branch at Malibu prior to the time that he went there?

25 A No, I did not. No.

1 Q Okay. What was your focus regarding that day, or if
2 you had a focus.

3 A I was working at my desk. I very intensely had been
4 working on editing and writing my book. So I was never --
5 Michael and I, we do our own things during the day. You know,
6 he does his thing, I do mine. So he was gone. I didn't know
7 where he was.

8 Q Okay. If there was an allegation made that you told
9 Michael to go down to Wells Fargo and look into the closure of
10 your accounts on October 6, 2011, what would be your response to
11 that allegation?

12 A No, I did not ask him to go to the bank on October 6th
13 to check into the allegations.

14 Q If there was an allegation that you asked Michael as
15 you're returning to go down and intercede with the bank on your
16 behalf as your agent, how would you respond to that allegation?

17 A No, I did not. Michael -- it was also his own -- his
18 account, so I think he had every right to, on his own, go make
19 inquiries. I did not know he was doing that.

20 Q Okay. To your knowledge, has Michael ever acted as
21 your agent in any transaction?

22 A I'd say no.

23 Q Now, did you hear from -- when did you first determine
24 or when did you first discover that Michael was at the Malibu
25 branch of Wells Fargo Bank on October 6, 2011?

1 A When he called me from the bank and he was sitting
2 with Mr. Dounel.

3 Q Okay. Can you tell me -- tell Her Honor how that call
4 went.

5 A He called and he said, hey, I'm sitting here at the
6 bank and do you happen to have that closure letter for our joint
7 account? He'd like to see it. And I said, yes, I can get that.
8 And he said can you email it to him? And I said sure. And he
9 gave me the email address. And I can't remember, actually,
10 right now if it was an email or a fax, but I think it was an
11 email and I scanned it and I sent it over right away. And he
12 said thank you, and that was it.

13 Q Did you talk with Mr. Dounel during that telephone
14 call?

15 A I did not.

16 Q Now, I asked you a question about have you ever met
17 Mr. Dounel prior to the time that you met him at his deposition,
18 perhaps a year after these events. Had you ever spoken with Mr.
19 Dounel prior to that time?

20 A No.

21 Q Okay. So you didn't talk to him on the phone on
22 October 6, 2011?

23 A No.

24 Q Did you see Mr. Kaplan later that day after he had
25 been at the Malibu branch of Wells Fargo Bank?

1 A Yes, I did.

2 Q Okay. And approximately when was that?

3 A It was in the afternoon sometime, probably between
4 1:00 and 2:00 time frame, or 3:00, somewhere.

5 Q Did a conversation occur between you and Mr. Kaplan
6 regarding Mr. Kaplan's visit at the Malibu branch of Wells
7 Fargo?

8 A Yes.

9 Q If you would tell the Court how that conversation
10 went.

11 A He came home and he said you wouldn't believe what
12 they -- what this guy said at the bank. And I said what do you
13 -- what? And he said this guy at the bank said that you must
14 have warrants out for your arrest, you must have some kind of
15 criminal activity, and that I was a man of means and I should
16 hire a private investigator to find out what's going on with
17 you. What's going on with you? Is there something that I don't
18 know? What's going on?

19 And I was shocked. I was -- I was like I have no
20 idea. Why would he say something like that about me? I have
21 never had any trouble with the law. I have -- I pay my bills on
22 time, I work hard, I pay my taxes. Why would he say something
23 like that to me about -- to Michael, to my partner? I was
24 horrified. Michael was very upset. He was very angry.

25 Q Was he angry at you?

1 A He was questioning, you know, what -- is there
2 something in your past that I don't know about, that you didn't
3 tell me? What do I need to know? And he had this doubt and it
4 was very, very upsetting to me. I remember our dog was there.
5 And whenever we have an argument, she gets -- she would bet
6 upset and she would bark. And I remember her -- her doing that
7 because the -- there was an intensity of it going on because
8 this was the first that Michael had heard anything like that.

9 We received these letters and he's like what's this?
10 And I'm like I have no idea. And then he goes to the bank for
11 something completely unrelated and the banker is telling him
12 something like this. So he was really looking at me sideways
13 and it was very, very upsetting to me because at that time we
14 had been together for 13 years. And he's my sole provider, I
15 don't have a job, and I felt very vulnerable and hurt and
16 confused that first -- they're adding insult to injury. First
17 they closed my account saying there's some kind of risk
18 assessment with me and they won't tell me why.

19 So the bank is allowed to know something about me
20 that's terrible, but I'm not allowed to know as a citizen, a
21 good law-abiding citizen. They get to know something about me,
22 I don't get to know. I don't get an opportunity to fix whatever
23 issue that there might be. And then they -- they say these
24 terrible things, they slander me to my sole provider, putting me
25 in a pretty vulnerable situation. I was horrified and I still

1 am horrified.

2 Q Have the statements from Mr. -- that Mr. Dounel made
3 to Mr. Kaplan -- since the time, since October 6, 2011, have
4 those come up between you and Mr. Kaplan?

5 A Yes, it has.

6 Q Can you tell the Court how those discussions have
7 gone?

8 A Well, I mean, it's kind of an everyday conversation in
9 our household because this has been ongoing now for two years.
10 So it's a constant inquiry like why can't the bank just look
11 into our -- my file and see is this the correct Lisa Johnson
12 that we have here? That's all I've really been asking. Can you
13 double check your files? Like maybe you've got the wrong person
14 here or maybe my identity is being stolen.

15 But, you know, these conversations with Michael we
16 have -- when we get -- every couple has arguments. He tends to
17 be the type that he'll drag up stuff from previous things that
18 have happened, and he'll say I'm not the one who's got, you
19 know, a bank investigating me, or, you know, I'm not the one,
20 you know, that someone is saying weird stuff about. It's very
21 hurtful.

22 I mean, Michael loves me and I know that he wants to
23 believe me, but truthfully he is a man of means and he's worked
24 really hard for his money and I respect that. I don't expect
25 him to hand over \$3 million to me and -- and worry that there

1 could be something wrong and that money could be lost or taken
2 from me or that there's something weird in my background, or
3 that I'm going to squander that money.

4 You know, so it's a bone of contention because I don't
5 feel protected after 15 years of being with him. We're not
6 married. And I don't feel protected. I mean, Nevada -- the
7 state of Nevada doesn't even recognize common law marriage. So
8 I don't feel like I have any protection, which is why over the
9 years I've said to him, you know, you really need to put some
10 money aside for me because if something ever happens to you, I
11 need to be able to cover our mortgages. My name isn't even on
12 our home here in -- in Las Vegas. And it's been a real source
13 of contention.

14 And now because of this situation, Michael wants, and
15 I want more than anyone, to see this thing cleared out. I want
16 my name cleared so that Michael would feel comfortable in giving
17 -- setting up an account for me. But until it's -- until it's
18 fixed, if I -- if I were the money man, I wouldn't be putting \$3
19 million into a bank account until something like this was
20 resolved. So I'm harmed by that. I'm still sitting in a
21 vulnerable situation.

22 Q Now, setting up an account for you for \$3 million, is
23 that something that you had -- you and Michael had had
24 discussions about prior to October 6th?

25 A Yes, we've been talking about it for a very long time.

1 Q Had that issue been resolved or nearly resolved prior
2 to October 6, 2011?

3 A Had it been resolved? No, we didn't --

4 Q No, I mean, had he made -- had he said, okay, we're
5 going to do it?

6 A He had been telling me that he had been speaking with
7 his banker about setting it up, so, yes, he was in the process.

8 Q Okay. And then as a result of the discussion that he
9 had with Mr. Dounel on October 6, 2011, did those discussions
10 cease?

11 A Yes, they did.

12 Q Has Mr. Kaplan told you of any connection between the
13 cessation of those discussions and the comments on October 6th?

14 A No, not really. I mean, he hasn't come right out and
15 said I'm not doing that until this is resolved, but he has not
16 taken the action to do it, so, you know, he's not.

17 Q Has he accused you of being a criminal?

18 A No.

19 Q You personal feelings based on your interaction with
20 Mr. Kaplan, given Mr. Dounel's statements on October 6, 2011,
21 how would you describe those for the Court?

22 A I'm sorry. Can you repeat?

23 Q As a result of the October 6, 2011, comments made to
24 Mr. Kaplan, and your interaction with Mr. Kaplan on a personal
25 level, how would you describe your -- your feelings?

1 A It's strained. We have -- our relationship has been
2 strained by this for sure. I feel -- I feel a distance because
3 I -- I can feel his -- the small doubt in the back of his head
4 that there's something on my record, in my name somewhere,
5 somehow, that has not been clarified or corrected. And Michael
6 is a very principled man. He -- it's true what he said earlier,
7 you know, he's had ideals of running for office. And you know
8 what happens when people run for office. They try to dig up
9 dirt on everybody. Michael has got his clean, clean record, and
10 so do I. And I don't want -- he doesn't want -- wouldn't want
11 to be with me if I had something in my record that could damage
12 him.

13 And -- and, truthfully, I'm trying to put a business
14 together here that I may need to have lines of credit, and I'm
15 worried. That's why I'm fighting for this, because I'm worried
16 that down the line I'm going to have issues with my bank or
17 other bankers trying to get lines of credit to do what I need to
18 do.

19 Q Do you feel like you've been sullied as a result of
20 this process?

21 A I don't know what sullied means. I'm sorry.

22 Q Belittled, demeaned?

23 A Yes, I do feel that way. Yeah. Uh-huh. It's been --
24 I've been disrespected. I've done nothing wrong. My accounts
25 were in order with the bank. Then another bank employee says

1 terrible things about me to my partner. I've been extremely
2 disrespected. I've never had anything wrong with this bank.
3 I've held decent -- decent account deposits. I have no idea why
4 they've done this to me, and why their other employee slandered
5 me to someone, to the most important person in my life.

6 You know, and how has it affected my -- you asked how
7 has it affected my relationship. We have -- we have two homes.
8 One is in Las Vegas and one is in Malibu. And quite frankly, I
9 spend more time over there than he does for -- for -- just to
10 have space is where it's at.

11 Q Now, Ms. Johnson, litigation was filed as a result of
12 the defamation or the claim of defamation, as well as
13 declaratory relief action. There was testimony from Mr. Kaplan
14 that he has loaned you the money to finance that litigation.
15 Did you hear that testimony?

16 A I did, yes.

17 Q Is that truthful testimony?

18 A Yes, it is.

19 Q How much -- do you have an understanding of how much
20 have been incurred in attorney's fees and costs approximately
21 and how much you owe Mr. Kaplan for those expenses?

22 A Oh, yes. He keeps me up to date.

23 Q What do you mean? What do mean by that?

24 A Well, he -- when the -- when the bills come in, he's
25 explaining, oh, here's another for \$11,000 to pay. So, yes,

1 I --

2 Q Those darn lawyers are billing.

3 A Yes.

4 Q Do you have an understanding of the overall amount of
5 what's been billed and paid in this case?

6 A Yes, I do.

7 Q And how much has that been?

8 A To my knowledge it's approximately \$85,000 spent right
9 now, but there's more -- more of this trial hasn't even been
10 included, so it's going to be over \$100,000, I'm sure.

11 MR. KISTLER: One second, Your Honor.

12 Your Honor, I'll pass the witness. Thank you.

13 THE COURT: All right.

14 MR. HAIRE: Your Honor, remembering what you said
15 earlier, would it be more preferable for the Court to break now?

16 THE COURT: Well, I -- I have a schedule, so, I mean,
17 it's not my schedule. It's somebody else's schedule. So I -- I
18 mean, we could, but I -- I can't -- we can't resume until about,
19 what, 20 after 1:00. So, I mean, it would be a two-hour break.
20 If that's agreeable, I don't have a problem.

21 MR. HAIRE: I'm sorry. Maybe I misunderstood you
22 earlier. I thought you had said you probably needed to leave by
23 11:30.

24 THE COURT: 11:40.

25 MR. HAIRE: Oh, 11:40. Okay.

1 THE COURT: But, you know, we can certainly break now.
2 It's just -- that only gives you like 10 or 15 minutes.

3 MR. HAIRE: No, that's fine. I'm happy to get
4 started.

5 THE COURT: Okay.

6 CROSS-EXAMINATION

7 BY MR. HAIRE:

8 Q May I call you Lisa?

9 A Sure.

10 Q Thank you. You mentioned on your direct examination
11 that you did not feel like Wells Fargo Bank was truly looking
12 into the situation, and that -- and that you -- that as a result
13 you did not feel like you were getting the information that you
14 -- you wanted from them. Is that an accurate statement?

15 A I don't feel that they are looking into the situation.
16 That is correct.

17 Q But they have told you that they've looked into the
18 situation. They've looked at -- they've told you that orally
19 and in writing, haven't they?

20 A I don't believe that they have looked into the
21 situation.

22 Q Even though they've told you that they have and that
23 they stand by their review of the situation, you don't believe
24 that they've actually done it?

25 A Correct.

1 Q Okay. Fair to say that you have spoken with Michael
2 about every single detail about everything that's happened that
3 relates to this case?

4 A Yes.

5 Q And by every single detail, does that include his
6 meeting with Mr. Dounel on October 6, 2011?

7 A Yes.

8 Q There's been testimony in this case that -- that you
9 and Mr. Kaplan spend your time between here and Malibu; correct?

10 A Correct.

11 Q Mr. Kaplan, I think, describes the Malibu property as
12 a vacation property.

13 A Yes.

14 Q Do you know the square footage of the Malibu property?

15 A I do.

16 Q I'm sorry?

17 A Yes, I do.

18 Q What is it?

19 A 6,000 square feet.

20 Q All right. Does it overlook the ocean?

21 A It does.

22 Q It's a nice home?

23 A It's beautiful.

24 Q And you co-own it with Mr. Kaplan, don't you?

25 A I'm -- I'm on the -- on the lease, yeah -- on the

1 deed, yes, I am.

2 Q Well, you co-own the property with him; right?

3 A Well, I didn't pay for it, but, yes, my name is on the
4 deed.

5 Q All right. You refer to Mr. Kaplan as your common law
6 partner; right?

7 A Yes.

8 Q Would it be fair to say that you consider yourself
9 everything but legally married to Mr. Kaplan? In other words,
10 you live together like a married couple, you just don't have a
11 license that says so.

12 A We're not married. I call him my -- when I'm not in a
13 formal situation, I call him my boyfriend. When I'm in a formal
14 situation, I'll call him my partner. I'm only referring to him
15 as my common law because we're here in a formal situation. I
16 have never referred to him as my husband. There's a feeling
17 inside of me that I -- we are committed, definitely committed,
18 but there's always been this feeling of insecurity in me because
19 we've not been married.

20 Q Does that mean you would like to be married?

21 A Yes.

22 Q You've been married before; right?

23 A Briefly. Months.

24 Q And is your relationship with Mr. Kaplan any different
25 in terms of the nature and extent of your relationship from that

1 that you had when you were married to Mr. Hoagland?

2 A It's quite different.

3 Q I take it that Michael is a much nicer man?

4 A No, not necessarily.

5 Q All right. Mr. Hoagland was a nice man?

6 A Yes, he was.

7 Q You were divorced?

8 A Yes.

9 Q Why?

10 MR. KISTLER: Objection, Your Honor. This is -- this
11 is irrelevant, and it's oppressive testimony. Why were you
12 divorced from your former husband?

13 THE COURT: Uh-huh. Okay. Well --

14 MR. HAIRE: May I respond --

15 THE COURT: Sure.

16 MR. HAIRE: -- Your Honor? The witness has testified
17 that her relationship with Michael Kaplan is different from the
18 married relationship that she had with Mr. Hoagland. And the
19 relationship that they have and the strain on their relationship
20 is very relevant.

21 THE COURT: Okay. And so the relationship with her
22 former husband is related to her relationship with Mr. Kaplan?

23 MR. HAIRE: I would like to know -- that's fair, Your
24 Honor.

25 MR. KISTLER: It's easy, Your Honor. I can ask one

1 question.

2 Were you ever defamed -- was your former husband ever
3 the recipient of a defamatory statement by you?

4 THE WITNESS: No.

5 MR. KISTLER: Given that, there's no relevancy to this
6 line of questioning, Your Honor.

7 THE COURT: Okay. So, Mr. Haire --

8 MR. HAIRE: Your Honor, I'm going to abandon the line
9 of questioning.

10 THE COURT: All right. Thank you.

11 BY MR. HAIRE:

12 Q It's true, Lisa, is it not, that Guitarfile has not
13 experienced any financial losses as a result of the things Mr.
14 Dounel allegedly said about you?

15 A Not as of yet.

16 Q And you personally have not lost any money as a result
17 of the things that Mr. Dounel allegedly said, have you?

18 A Not as of yet.

19 Q Mr. Kaplan is a source of income for you; correct?

20 A Correct.

21 Q He used to be your sole source of income, but now you
22 published a book and you are deriving income from book sales,
23 are you not?

24 A Correct.

25 Q Does that money go into your Guitarfile account at

1 Chase Bank?

2 A Yes, it does.

3 Q Does Michael have access to that account?

4 A No, he does not.

5 Q Like Mr. Kistler, I have -- I have never engaged in
6 yoga. That's probably obvious. Nevertheless, tell me more
7 about your yoga teachings and principles. I think you mentioned
8 that you have a mantra of sorts, live for truth, die for truth.
9 What does that mean?

10 A It's something that my yoga guru teaches us, that you
11 stand in your truth. Satyagraha, it means the same thing, stand
12 in your truth, meaning live for truth, die for truth.

13 Q And when you stand and live in that truth, is that
14 supposed to have some affect upon you and how you live your
15 life?

16 A Yes, it is.

17 Q Tell me how.

18 A That you would always be authentic with your word,
19 that you speak the truth.

20 Q And does that authenticity with which you live your
21 life, does that bring you peace?

22 A It brings strength.

23 Q It doesn't bring you peace?

24 A For me primarily it brings strength and many other
25 things, as well. But strength would be the primary thing that

1 it gets me.

2 Q Does it allow you to be calm?

3 A It does, yeah.

4 Q So without your yoga, you wouldn't be as calm as you
5 might otherwise be?

6 A Yoga has provided me many tools to cope with difficult
7 situations, so, yes, that would be correct.

8 Q Now, would it be fair to say that yoga, if I were
9 engaged in it, that I would feel -- I would feel a lot of
10 serenity in my life, would I not?

11 A Possibly. It depends on the individual.

12 Q Well, that's one of the goals of yoga, isn't it, in
13 terms of -- as well as its physical advantages?

14 A The goal of yoga is to attain self-realization.

15 Q What does that mean?

16 A You should start to practice yoga.

17 Q I should. I agree with you. But what would
18 self-realization be?

19 A It means that you become self-realized, self-aware,
20 conscious of your actions with yourself and others.

21 Q Self-aware means that when you encounter a situation,
22 you're aware of your response to it; correct?

23 A Yes.

24 Q And -- and you have the ability in that self-awareness
25 to choose your response to it, you're aware that you have that

1 power to choose your response; correct?

2 A Yes, we all do.

3 Q And yoga teaches you that the -- the response that you
4 make should be one that's -- that is not judgmental, for
5 example.

6 A Well, the idea is that you don't respond. It's
7 non-reaction.

8 Q Non-reaction meaning you just let it -- let it go from
9 your system, is that a fair -- fair characterization?

10 A If you don't attach to a situation, if you don't judge
11 it, then there's no reason to react.

12 Q Okay. Thank you. I know a lot more about that now.
13 You have faced stressful times in your life, have you not?

14 A Sure.

15 Q And you have faced stressful situations in your life
16 since becoming an adherent to yoga; correct?

17 A An adherent? You mean a student?

18 Q Student. Thank you. Yes.

19 A Have I been subjected to stresses --

20 Q Yes.

21 A -- since then?

22 Q Yes.

23 A Yes, of course.

24 Q All right. Are you a yogi, by the way?

25 A I'm a yogini is the female term. A yogini would be

1 the female term.

2 Q I'm learning things by the moment. You are a yogini.

3 A Yes.

4 Q All right. Does that mean that you have attained some
5 level of competence in the practice of yoga?

6 A Well, it takes a lifetime, but I have studied and I do
7 have a practice, a daily practice of yoga.

8 Q And who bestows upon you this title of yogini?

9 A My teacher.

10 Q All right. When were you determined to have been a
11 yogini?

12 A 2002.

13 Q All right. Can you obtain any future levels of yogini
14 or yoga competence qualification?

15 A Well, yes. You can -- in your studies you can retain
16 higher levels of -- of -- like there's -- in India there's
17 sannyasins and you see gurus, the swamis, and these are people
18 that have proven and studied to certain levels or have been
19 ordained within ashrams to have certain statuses.

20 Q So is that -- would that be like analogous to like
21 degrees of a black belt in a martial art?

22 A No.

23 Q No? Totally different?

24 A I would say, yes.

25 Q Okay.

1 A I don't know anything about black belts or anything --

2 Q Okay.

3 A -- about martial arts.

4 Q In view of all of your -- your yoga training and so
5 forth, would it be fair to say that in -- in the face of or in
6 the wake of Michael telling you about Mr. Dounel's comments that
7 your yogini instincts and teachings kicked in?

8 A I'm sorry? what is the question?

9 Q In the face of -- when -- when Michael told you that
10 -- about Mr. Dounel's statements about you on October 6, 2011,
11 did you practice your yoga at that moment? Not the exercises,
12 but that self-awareness, that self-realization that you just
13 described for us?

14 A I try to practice it 100 percent of the time, but it
15 -- sometimes we -- we don't. I said earlier I'm not a perfect
16 human being, so it's a practice. It's not something I have
17 perfected.

18 Q So in that -- you agree that was a stressful moment
19 for you?

20 A It was a stressful moment, yes.

21 Q But in that stressful moment, you couldn't -- whatever
22 -- no matter how hard you tried, you couldn't make that
23 self-realization thing work?

24 A I expressed myself fully to Michael that day.

25 Q Is that part of the self-realization exercise?

1 A To be honest, it was such a long time ago, I can't
2 remember in that moment if I was thinking, oh, I need to
3 practice my yoga right now. I was upset and I expressed myself
4 to him.

5 Q Well, your -- your yoga teachings, have those become
6 instinctual over the -- for over the many years that you --

7 A Not necessarily. It's a practice.

8 Q All right. You find -- you find solace, though,
9 generally in your yoga philosophy?

10 A I do.

11 Q You -- after Michael's statements to you, were you
12 able to regain your ability to self-realize and begin to control
13 -- control the stress that was being imposed on you by Mr.
14 Dounel's statements?

15 A First of all, I have not retained a level of
16 self-realization as of yet. It's a life-long practice.

17 Q Did you try?

18 A Yoga tools --

19 Q Did you try?

20 A -- did help me to gain composure and my calm, yes.

21 Q All right. So is it fair to say that your -- your
22 stress has reduced over time because you've been able to bring
23 to bear your yoga techniques.

24 A No, I have been at a very high level of stress for the
25 last two years.

1 Q And yoga is not touching it?

2 A It has definitely helped me, yes. I take time when I
3 meditate and it does bring my stress level down, but I am
4 stressed on a daily basis.

5 Q Lisa, did Michael need your permission to ask Mr.
6 Dounel about the joint account?

7 A No, he did not need my permission.

8 Q Up to that point you knew he had made some calls to
9 Wells Fargo trying to find out why the joint account was closed;
10 right?

11 A Yes, I did know that --

12 Q Did he ask --

13 A -- he made some calls.

14 Q -- you for your permission to do that?

15 A No, he did not. He did not need my permission. The
16 account was primarily his.

17 Q What if the account wasn't primarily his? Would you
18 have required him to give -- have your permission to make an
19 inquiry on your behalf?

20 MR. KISTLER: I'm going to object to the form of the
21 question, Your Honor. It's an improper hypothetical of a lay
22 witness. What if the account was not primarily his.

23 THE COURT: Overruled. I don't think it's a
24 hypothetical question. I don't think it's a hypothetical
25 question. I think it's speculative, but I don't think it's a

1 hypothetical. She can answer if she can.

2 BY MR. HAIRE:

3 Q Do you remember the question?

4 A No, tell me again. I'm sorry. I think you said if

5 the account was not in Michael's name would he have to have my

6 permission to access my account?

7 Q Yes.

8 A Yes, of course he would have to ask my permission.

9 Q He was your attorney; right?

10 A I don't call him my attorney per se.

11 Q Well, that's what you told us in your deposition;

12 right?

13 A In this particular case he's not my attorney.

14 Q He's your financial advisor, though; right?

15 A No, he's not my financial advisor. He does advise me

16 sometimes, but I -- I have -- I have my own financial advisor.

17 I talk to -- because Michael is my partner I speak to him about

18 financial things and he can give me advice, but he's not my

19 financial advisor per se.

20 MR. HAIRE: Your Honor, I see the time.

21 THE COURT: Uh-huh.

22 MR. HAIRE: Shall we break now?

23 THE COURT: Okay. We will return at 1:15, 1:20.

24 MR. HAIRE: All right. Thank you.

25 THE COURT: All right. Thanks very much. We'll be in

1 recess over lunch. See you after 1:00.

2 THE WITNESS: Can I leave my things here?

3 THE COURT: Absolutely. You can leave everything
4 there. We'll be locked, so --

5 THE WITNESS: Okay.

6 (Court recessed at 11:42 a.m., until 1:31 p.m.)

7 MR. HAIRE: Yes, Your Honor. Thank you.

8 BY MR. HAIRE:

9 Q Now, Lisa, when we last left off, if I remember
10 correctly, you had indicated that Michael was not your attorney;
11 is that right?

12 A Correct.

13 Q And he was not your financial --

14 A He's not my attorney for this case.

15 Q For this case. And he's not your financial advisor?

16 A Not per se, not my official.

17 Q Okay.

18 MR. HAIRE: Your Honor, at this time I believe Ms.
19 Denman has the original deposition transcript for Ms. Johnson.
20 I'd ask that it be published.

21 THE COURT: All right.

22 MR. HAIRE: And, Your Honor, I also have a copy for
23 you to follow along because it's [inaudible].

24 THE COURT: Okay.

25 MR. HAIRE: May I approach?

1 THE COURT: Sure.

2 MR. HAIRE: Thank you.

3 THE CLERK: Am I publishing, Your Honor?

4 THE COURT: Yes, we're publishing.

5 THE CLERK: Do you need to see this copy?

6 MR. HAIRE: I think the witness will. I do not need

7 to see the copy. I always like that handed to the witness.

8 THE CLERK: Okay.

9 Ron, this needs to go to the witness.

10 THE MARSHAL: Okay.

11 BY MR. HAIRE:

12 Q Lisa, you have in front of you a transcript of the

13 deposition that was taken of you on August 29, 2013. You

14 remember this event?

15 A I do.

16 Q You were placed under oath to tell the truth?

17 A Yes.

18 Q You made every attempt to tell the attorneys that were

19 involved in your deposition that truth?

20 A Yes.

21 Q All right. Can you turn to page 85.

22 A Okay.

23 Q And we need to go start with about line 5. We'll skip

24 the first sentence that begins on line 4, but that says:

25 "But have you had any type of financial advisor give

1 you advice as to what will be required with respect
2 for a line of credit for your book and the
3 merchandise?"

4 Your answer, "Within Wells Fargo Bank, no."

5 Question, "How about any other financial institution?"

6 Answer, "I mean, my financial advisor is my partner,
7 Michael Kaplan."

8 Now, did something occur between your deposition and
9 now that would cause you to no longer believe that he is your
10 financial advisor?

11 A No.

12 Q All right. Turn with me now to page 72.

13 A Okay.

14 Q I actually have to start on page 71. There was a
15 question posed to you that begins on line 23 on page 71.

16 "Did you contact anybody at the bank after Mr. Kaplan
17 told you of what happened?

18 Now, it appears that what this is referring to is what
19 happened at Mr. Dounel's office on October 16, 2011, would you
20 agree with that?

21 A I don't know. I haven't read this whole page.

22 Q All right. Well, we can back up a little further. On
23 line 20 there's a question.

24 "Did you call Mr. Dounel up and talk to him?"

25 Answer, "No, I did not call Mr. Dounel."

1 And then the question I just read, "Did you contact
2 anybody at the bank after Mr. Kaplan told you of what
3 happened?"
4 Your answer, "Repetitively we contacted the bank."
5 Now to go to page 72.
6 "Michael also acts as my attorney, so he has full
7 authority to check on my accounts. And, yes, after
8 that we made several more calls back to Wells Fargo
9 Bank."
10 So while Mr. Kaplan is not your attorney for this
11 case, he is your attorney, it appears?
12 A Well, I guess, yeah. He's actually representing me
13 right now in another case, so -- but he's not my attorney on
14 this case.
15 Q I understand. But -- and more -- more to the point,
16 in addition to your attorney on occasion, "he has full authority
17 to check on my accounts." What were you referring to? What
18 accounts were you referring to?
19 A Well, I guess because the question I was being asked,
20 if I can refer to page 71 again, the questions kind of -- I
21 don't even know why I would have answered that based on this
22 question:
23 "Did you contact anybody at the bank after Mr. Kaplan
24 told you what happened?"
25 "Repetitively we contacted the bank. Michael also

1 acts as my attorney, so he has full authority to check
2 on my accounts."

3 That's just a statement that I made.. He is -- he does
4 act as my attorney if I need one, and he does have full
5 authority to check if he wants. I trust him.

6 Q And that --

7 A But the bank account was his primary account, so he
8 had full authorization to check on that account because it was
9 his.

10 Q And he -- he didn't need your permission to check on
11 an account that you were perhaps a secondary signer on?

12 A It was his primary account so, no, he did not need my
13 permission.

14 Q Do you consider yourself a joint owner of the joint
15 account that we've been talking about in this case?

16 A Owner? I never would refer to a bank account as
17 something I owned, but I considered myself a joint partner in
18 the account. It's a joint account so, yes, a co --

19 Q Okay.

20 A -- partner on the account.

21 Q While we're on the subject, let me direct your
22 attention to Exhibit 2, page 2 of Exhibit 2. Frankly, I don't
23 recall if Mr. Kistler asked you any questions regarding this,
24 but this is the customer -- consumer account application for the
25 joint account as we've been referring to it throughout this

1 trial; correct?

2 A I believe so, yes.

3 Q All right. And with Mr. Kaplan, you will recall that
4 I asked him what that -- what those relationship denominations
5 meant over there relative to you. Meaning, if we go across from
6 your -- your name, oh, maybe a couple of inches from the top of
7 that document, we would see these letters, SEC JNTOR. Do you
8 see those?

9 A I do.

10 Q And your signature there next to it?

11 A Yes.

12 Q All right.

13 MR. HAIRE: Can I have the Elmo, please?

14 BY MR. HAIRE:

15 Q When you were added to this account, were you given
16 anything from the bank that explained what the terms and
17 conditions were?

18 A I do not recall being given any -- any exceptional --
19 or the documentations that you presented yesterday, I was not
20 given that for sure.

21 Q All right. You signed Exhibit 2, that's your
22 signature at the very bottom; correct?

23 A Yes.

24 Q All right. Let me -- I have no idea whether this is
25 showing up correctly.

1 A Well, it's upside down.

2 Q These things are always a little tricky. What I want
3 to direct your attention to, Lisa, is what's there at the
4 bottom. And I'm going to try to blow this up because my old
5 eyes can't read it. Yours probably can. But right above your
6 signature and what appears to be Michael's signature, there is
7 some really fine print. And you see where I've put that red
8 star looking thing?

9 A Yes.

10 Q Right next to that it reads, "I have received a copy
11 of the applicable account agreement and privacy brochure and
12 agree to be bound by them." Did I read that correctly?

13 A I'm even having difficulty reading on here, so I'll
14 take your word for it.

15 Q Here we go. "I have a received a copy of the
16 applicable account agreement." Do you see it now?

17 A I do.

18 Q All right. So by your signature you would agree with
19 me that you acknowledge receipt of some customer account
20 agreement; correct?

21 A I don't recall receiving anything. I did sign it. I
22 didn't read the small print at the time of signature or
23 thereafter. I did not receive a comprehensive package as in
24 Exhibit 34 that you brought up yesterday.

25 Q You know for a fact you did not receive anything --

1 A I know for --
2 Q -- that looked --
3 A -- a fact --
4 Q -- like that exhibit?
5 A -- I did not receive that Exhibit 34 yesterday.
6 Q Let me now turn to your declaration. This is Exhibit
7 27. Now, I don't think anybody is either -- I don't think I
8 have nor Mr. Kistler have referred to this exhibit yet. But at
9 page 3 of Exhibit 27, is that the date and signature -- your
10 signature and the date that you signed this declaration?
11 A Yes, it is.
12 Q Do you believe everything in this declaration is true
13 and accurate?
14 A I have not read it recently, but if I signed it, I
15 must have wrote it and agreed to it.
16 Q All right. Now, this declaration refers to a few
17 things that you did not do. For example, let's look at
18 paragraph 11 at the top of page 2. You stated there I did not,
19 number one, go with Kaplan to the Malibu branch that day. That
20 day was October 6, 2011; right?
21 A Correct.
22 Q Second, I did not ask Kaplan to go to the Malibu
23 branch. Third, I did not ask any Malibu branch employees why
24 Wells Fargo closed my accounts, or, four, I did not request that
25 Kaplan ask any Malibu branch employees why Wells Fargo closed my

1 accounts. If we skip down to paragraph 15, we have your
2 affirmation that you also didn't do something else. You did not
3 request that Kaplan ask Dounel why Wells Fargo closed
4 Kaplan's --

5 A I'm sorry. I'm lost where you are here.

6 Q Paragraph 15.

7 A You mean line 15 or where it says 17 next to it?

8 Q No. The paragraph that's numbered 15 on page 2.

9 A Okay. And then it has the number 17, later that day
10 Dounel, is that the sentence?

11 Q No. Did I keep -- do I -- am I saying 17?

12 A No, you're saying 15, and next to 15, if you go over
13 half an inch, it says Number 17, later the same day.

14 Q Look for the number 15 two paragraphs above.

15 A Okay. Next to No. 9. Okay. Got it.

16 Q I did not request that Kaplan ask Dounel why Wells
17 Fargo closed Kaplan's and my joint account, or -- it says her,
18 but that probably means my two Guitarfile, LLC accounts; right?

19 A Right.

20 Q And Kaplan never stated to me that he would make any
21 inquiries to Dounel on my behalf or otherwise take any action on
22 my behalf at the Malibu branch. I read that correctly, I hope.
23 Those are true statements as contained in this declaration;
24 correct?

25 A Yeah. I believe so, yes.

1 Q All right. Let me direct your attention now to your
2 understanding of what happened at the meeting with Mr. Dounel.
3 And to do this, I'd like to begin at page 66 of your deposition.
4 And at line 6 it reads, "Were you present in the
5 Malibu branch on or about October 6, 2011, when this
6 conversation took place?"
7 Your answer was, "No."
8 Line 10, "Okay. But you said there was a time when
9 you were asked to send a copy of the closure notices
10 to Mr. Dounel when Michael was there."
11 Answer, "That's correct."
12 Question, "Can you tell me how that unfolded?"
13 Answer, "I believe Michael called me from the bank and
14 he said can you please email that letter to this email
15 Arash Dounel, and I did."
16 Question, "Okay. So were you in Las Vegas or where
17 were you when that call came?"
18 Answer, "I was in Malibu."
19 So you had the closure letters with you in Malibu;
20 correct?
21 A Yes.
22 Q They were sent to your Las Vegas home, though --
23 A Yes.
24 Q -- were they not? So you had brought them with you to
25 Malibu?

1 A I had been away. So I believe Michael had been to Las
2 Vegas and brought our mail back to Malibu.

3 Q Okay. Line 21, again on page 66.

4 "So you were aware that Michael was then at the branch
5 and there was some type of discussion between Michael
6 and Mr. Dounel regarding the account closures?"

7 Answer, "That's correct."

8 A Yeah, when he called me from the bank I became aware
9 that he was at the bank, yes.

10 Q Okay. Now we're at page 67 at the top.

11 Question, "And Michael was making this inquiry on both
12 your behalf and his; is that right?"

13 Answer, "That's correct."

14 Question, "Okay, and he -- he had your authority to do
15 so?"

16 Answer, "Yes, it's also his account so he has the
17 authority to check it himself."

18 So having read that, would you agree with me that he
19 -- he was making the inquiry about the joint account on both his
20 behalf and yours?

21 A Yes.

22 Q That's what you said there; right?

23 A Yes.

24 Q Okay. If we go down to -- I guess go to page 68 now.
25 Do you remember, before we talk about what's transcribed there,

1 do you remember Michael testifying yesterday, I believe it was,
2 that you never spoke to Mr. Dounel?

3 A Yes.

4 Q Was that accurate testimony?

5 A I believe so, yeah.

6 Q Let's look at page 68, line 5.

7 Question, "Did you speak with Mr. Dounel on the
8 telephone at all?"

9 Answer, "You know, I think I did. I think Michael put
10 him on the phone and he gave me his email, so I took
11 the email down."

12 Question, "Do you recall anything else about that
13 telephone call?"

14 Answer, "No."

15 Question, "But it was your understanding that Mr.
16 Dounel was trying to look into the reason why the
17 account had been closed?"

18 Answer, "Yes."

19 All right. And that -- is that truthful testimony?

20 A You know, it happened so long ago. When that -- when
21 I was deposed, the word think is in there. I actually don't
22 recall speaking to Mr. Dounel.

23 Q So now here at trial you think you may not have spoken
24 to Mr. Dounel, is that --

25 A I'm pretty sure I did not speak to Mr. Dounel.

1 Q Okay. All right. I want to -- when Mr. Kistler was
2 asking you some questions, he talked about -- you talked about
3 Ramy -- is it Zaki?

4 A Yes.

5 Q Okay. And we have some email exchanges between you
6 and Mr. Zaki at Exhibits 9 and 10. Do these -- these email
7 exchanges occur in September 2011; right?

8 A Yes.

9 Q All right. You reached out to Mr. Zaki to assist with
10 you wanting to find out why your accounts had been closed;
11 right?

12 A Right.

13 Q What is Mr. Zaki's position with Wells Fargo?

14 A I don't recall what his position was, but he was one
15 of the guys that sits at your desk that you can speak to about
16 your account.

17 Q When you go into --

18 A He's not a teller. He's a banker.

19 Q Okay. So when you go into a branch, this would be
20 some -- he's not behind the bulletproof glass or whatever. He
21 has a desk --

22 A That's correct.

23 Q -- or a cubicle or something?

24 A Uh-huh.

25 Q All right. And according to these emails, Mr. Zaki

1 wanted to try to help you; is that right?

2 A Yes, he did, but he couldn't.

3 Q He couldn't; right?

4 A He could not.

5 Q Yeah. If we look at Exhibit 9, first page, LISAJ84 is
6 the Bates number. Halfway down we have the September 26th email
7 from him to you that begins, Hello Lisa. Do you see that?

8 A Yes.

9 Q All right. The second paragraph of that email states,
10 "The best that I can do is provide you with a contact number
11 that you can reach out at your convenience. This may be
12 different from the number being mailed out to you, but I believe
13 they may be of assistance. I am very sorry to see what is
14 happening, but they couldn't provide me with specific details in
15 regards to the whole situation." Who is the "we" that -- or,
16 excuse me, "they" that he is referring to in that email?

17 A But "they" -- I'm very sorry to see what is happening,
18 but "they" couldn't provide me?

19 Q Yes.

20 A Well, you'd have to ask Mr. Zaki, wouldn't you? I
21 don't know who "they" is. I'm assuming it's "they", people
22 within Wells Fargo Bank.

23 Q It's also safe to assume that Mr. Zaki wasn't able to
24 personally obtain that -- that information.

25 A Very clearly he was not able to.

1 Q Right. The guy who sits at the desk when you come
2 into the branch, he wasn't, apparently, able to access the
3 information that he wanted, namely the closure of the account.

4 A Yeah. Apparently, no one at Wells Fargo was able to
5 access the information regarding my account.

6 Q At least not Mr. Zaki?

7 A At least not everyone that I've spoken to has been
8 able to access the information regarding my account.

9 Q Okay.

10 A Including Mr. Zaki.

11 Q You -- you responded to questions from Mr. Kistler
12 about whether Michael had ever been or served as your agent. Do
13 you remember those questions?

14 A Repeat? Sorry.

15 Q Well, I wrote down that Mr. Kistler had asked you
16 questions about whether Michael had ever been your agent.

17 A No, he's never been an agent of any kind.

18 Q Tell me what an agent is.

19 A I don't know what he's referring to. I don't know. I
20 don't know. I have a literary agent. Michael is not my agent.

21 Q Well, your answer to Mr. Kistler's question was, no,
22 he's never served as my agent.

23 A No.

24 Q Okay. By that you were -- you thought Mr. Kistler was
25 asking you whether Michael had ever served as your literary

1 agent?

2 A No, I don't think that's what Mr. Kistler was asking
3 me.

4 Q Yeah, I don't think so, either. And so back to my
5 question, what's an agent in the manner in which Mr. Kistler
6 asked you?

7 A I'm not sure what he meant.

8 Q But you're sure Michael was never one of those?

9 A Michael is not an agent of mine. He's not an agent.
10 That's -- he's not an agent of any kind to anyone.

11 Q Do you recognize the term agent as a legal term of
12 art?

13 A I don't.

14 Q Okay.

15 MR. HAIRE: If I could have just the Court's
16 indulgence for a moment.

17 THE COURT: Sure.

18 BY MR. HAIRE:

19 Q All right. Let's go back to your -- well, let me ask
20 you this. Did you -- did you give Michael authority, your
21 authority, to access or obtain information about the joint
22 account from Mr. Dounel?

23 A We keep telling you that Mr. Kaplan was the primary on
24 the account, so, no, I did not need to nor did I give him
25 information to access the account.

1 Q That's what your declaration says too; right?

2 A I don't know. I'm not sure what the declaration says.

3 Q Let's go to page 69 of your deposition. Now, you'll
4 recall first from our discussion from page 68 that this -- this
5 testimony relates to Michael's meeting with Mr. Dounel. Page
6 69, line 3.

7 Question, "Okay, and so you knew Michael was there
8 trying to find out for himself and on your behalf why
9 the joint account was closed?"

10 Your answer, "Yes."

11 Question, "And Michael, you had given Michael your
12 authority to find out for me?"

13 Is that -- should that -- did you recognize the term
14 "me" to be you in that question when you responded, "Yeah"?

15 A I'm not really clear what this is saying here. And
16 Michael -- it's almost like they're talking to Michael but it's
17 not. They're saying --

18 Q Well, this is your deposition, so maybe what I can --

19 A You're saying Lisa -- basically, Lisa, you had given
20 Michael your authority to figure out for you. Is that a typo in
21 the deposition?

22 Q No. I have no reason to think so, unless you do.

23 A Well, it's a question. The question was coming from
24 Mr. Fitts, so was he talking about himself?

25 Q You answered the question. So it said -- the question

1 says, "And Michael, you had given Michael your authority to find
2 out for me?" Your answer was, "Yeah." What question were you
3 responding to?

4 A I'm not clear on this question because I -- I -- he's
5 saying for me. So for Mr. Fitts?

6 Q Well, that -- that's my question. Did you understand
7 that question to mean --

8 A I may not --

9 Q -- you?

10 A -- have understood the question at that time. I don't
11 know. It's not --

12 Q Did you tell Mr. Fitts that you didn't understand his
13 question before you answered, "Yeah"?

14 A I didn't. It was a little while ago, so I don't know
15 why it looks like there's a spelling error in here, then. But
16 Michael -- the bottom line is Michael does have the authority to
17 check on that account.

18 Q More than that --

19 A So if I --

20 Q -- he had --

21 A -- understood his question as --

22 Q -- he had your authority that day to talk about the
23 account with Mr. Dounel.

24 A When he called me and made me aware that he was at the
25 bank, he had, of course, my full authority. I didn't know he

1 was at the bank until he called me.

2 Q And he had your authority before Mr. Dounel said to
3 Michael you've been in -- you, Lisa, have been in jail and have
4 outstanding warrants; correct?

5 A He -- when he was making phone calls to all the
6 entities and phone numbers, millions of phone numbers that we
7 were given to call and were ran in circles with, yes, he had my
8 authority to make those phone calls, if that's what you mean.

9 Q No, what I mean is Dounel, the meeting with Dounel.
10 That's all we're talking about is you agreed and gave him your
11 authority at that time to talk about the account with Mr.
12 Dounel.

13 A When Michael called me and said I'm at Wells Fargo
14 Bank and I'm sitting here with this Mr. Dounel, do you have the
15 bank closure letter, I said yes. At no time did I say, Michael,
16 you now have my authority to check into this. He had the
17 authority already. He is the primary account holder. So he
18 didn't ask me for my authority, I didn't give him the authority,
19 he already has the authority.

20 Q All right. Let's go to page -- let me ask you this
21 question. Do you believe that -- that when you denied having
22 any kind of criminal past or outstanding warrants that Michael
23 believed you?

24 A He -- he was doubtful.

25 Q He expressed his doubts to you?

1 A I felt his doubts. His questioning of me led me to
2 believe that he doubted, yes.

3 Q Go to page 73 of your deposition, please.

4 A Okay.

5 Q I will represent to you that at the beginning -- at
6 the top of page 73 that you are -- and if you'd like, we're
7 happy to go back a page or two, but this discussion has -- or
8 this part of your deposition relates to that discussion you and
9 Michael had about what Mr. Dounel had accused you of. And this
10 conversation happened before you went to the Glen Campbell
11 concert on October 6, 2011; right?

12 A I'm sorry?

13 Q Your conversation with Michael about what Mr. Dounel
14 said took place before you both went to the Glen Campbell
15 concert; right?

16 A Yes, it did.

17 Q Okay. Beginning of that page, line 2 on page 73, you
18 state as part of your answer, "You know, Michael was upset. He
19 was making statements like, you know, is there stuff I need to
20 know about or worry about, you know, putting me a little bit on
21 the defense. And I'm having to say him, hey, you know, like I
22 have nothing -- I have nothing to hide." He testified to that
23 either yesterday or today; right?

24 A Right.

25 Q And you testified to that today; right?

1 A Uh-huh.

2 Q Yes?

3 A Yes.

4 Q Line 8, your answer continues.

5 "So, no, this guy has really offended me and it has

6 affected" -- I think that is a typo -- "by life" -- it

7 probably should be my life -- "and really do not

8 appreciate him slandering me like that and causing

9 issues with my relationship. So, yeah, a lot of

10 things were said, a lot of things were discussed, and

11 it's an ongoing discussion in my home --"

12 Then follows the beginning of a question, "Do you --"

13 Answer is the completion of your previous response,

14 "-- to this day."

15 So you have an ongoing discussion in your home to this

16 day.

17 Question at line 16, "Do you believe Michael believed

18 you?"

19 Answer, "Yes, I do."

20 But now having sat through the trial and listened to

21 Michael's testimony about what he doubted or did not doubt, you

22 now believe that he has -- he had some doubts at that time?

23 A On October 6th when we had the discussion in our home

24 immediately following his return from the bank, Michael had

25 doubts. And he led me -- he said things to me that led me to

1 believe that he doubted and he wondered did I have something
2 that I didn't tell him. Today I believe that Michael does
3 believe me. He is standing behind me, and that's evidence that
4 he does believe me. So when I took this deposition two years
5 after the fact, I'm answer that question, yes, I do believe that
6 he believes me. At that moment, October 6th, Michael had
7 doubts.

8 Q Do you believe that Michael believed Mr. Dounel when
9 he accused you of having a criminal past?

10 A Mr. Dounel put major doubts in Michael's mind.
11 Michael came home to check me -- in with me about it.

12 Q So do you -- is it your testimony that you believe
13 Michael believed that those statements either were true or might
14 be true?

15 A He believed they might be true.

16 Q All right. Let's go to page 74 in your deposition,
17 line 14.

18 This question begins with the word okay, followed by,
19 "Do you believe that Michael believed then Arash
20 Dounel's comments?"

21 Your answer, "I think he was highly offended by Arash
22 Dounel's comments."

23 Question, "Because he didn't believe they were true?"

24 Answer, "Yes."

25 Question, "Yes, what? I'm sorry."

1 Answer, "I don't believe he thought they were true.

2 He was highly offended by the comments."

3 "All right."

4 Answer, "He knows my character."

5 So at least in August of 2013 you did not believe that
6 Michael believed Mr. Dounel's comments; right?

7 A Michael had doubts in his mind. I wasn't asked -- I
8 answered that, but Michael had doubts in his mind. And when I'm
9 being asked today questions in a different way, I'm telling the
10 answer that Michael had doubts.

11 Q When Michael -- you knew that Arash Dounel had
12 apologized for -- had apparently apologized for the comments he
13 made about you.

14 A No, I didn't know that he had made an apology.

15 Q You didn't know --

16 A Michael had said that he had called to make an
17 apology. I don't know. I wasn't on the call. I didn't hear
18 the call. I don't know that an apology was actually made.

19 Q Okay. Go to page 75 of your deposition. Before we
20 talk about your deposition, was it you -- did you also want Mr.
21 Dounel to apologize for the statements that he had made?

22 A Yes.

23 Q Michael wanted that, as well?

24 A Yes.

25 Q All right. But he didn't give you an apology?

1 A No.

2 Q Let's look at line 24 of page 75. I'm sorry, 22.

3 Only for the sake of completeness am I going to read the
4 question that begins on that line, but it's your answer that I'm
5 interested in. Line 22.

6 "Or was it on the phone just between Mr. Dounel and
7 Michael?"

8 Answer, "Michael spoke with Mr. Dounel on the phone.

9 Mr. Dounel apologized to Michael for the comments that
10 he made about me on the phone."

11 So today you don't believe Mr. Dounel every made an
12 apology to you or to -- or, excuse me, to Michael?

13 A I don't know. I wasn't on the call. At the time of
14 this deposition I thought maybe Mr. Dounel had apologized to
15 Michael. I don't know. To be honest, I don't know.

16 Q Well, you thought he did then, but now you don't think
17 he did?

18 A I don't know is the answer.

19 Q Michael told you that the oral apology from Mr. Dounel
20 wasn't going to cut it, didn't he? He wanted a written
21 apology --

22 A Yes.

23 Q -- right?

24 A Yeah.

25 Q Did you want a written apology?

1 A Yes.

2 Q Oral apology, had Mr. Dounel actually spoken to you
3 and give you an oral apology, that would not have sufficed?

4 A No, it would not have.

5 Q All right. After your account was closed at Wells
6 Fargo, you opened accounts at -- at -- at least one account at
7 Chase Bank; right?

8 A Yes.

9 Q Didn't have any problems opening that account, did
10 you?

11 A No.

12 Q They didn't ask you any questions about whether you've
13 ever had an account closed by another bank, did they?

14 A No.

15 Q All right. You didn't volunteer that information, did
16 you?

17 A No.

18 Q Other than Wells Fargo, has any other bank closed an
19 account of yours?

20 A I don't have any other accounts open anywhere to be
21 closed.

22 Q All right. Have you -- since the Wells Fargo closed
23 your account, have you applied for any lines of credit in
24 relation to Guitarfile?

25 A Not as of yet, no.

1 Q All right. Do you intend to?

2 A Potentially, yes.

3 Q All right. But you haven't yet. Is -- is there a
4 reason why you have not moved forward with applying for lines of
5 credit since that was one of your concerns, that this might
6 cause a problem for you getting lines of credit?

7 A Your question is?

8 Q My question is is there a reason why you have not
9 sought lines of credit from --

10 A I'm not ready to. I had to publish my book first. It
11 just was published in October of 2013.

12 Q Okay. And Mr. Kistler -- and you confirmed for us
13 your book is doing really well.

14 A Very well, yes.

15 Q Okay. So you are earning money from the sale of your
16 book, no doubt?

17 A Yes, I am.

18 Q Good. And is the money from that account going into
19 your Chase bank account?

20 A Yes.

21 Q Does Michael have access to your Chase account?

22 A No.

23 Q So as we sit -- as we sit and stand here today, you
24 don't know whether this event with Wells Fargo closing your
25 accounts will adversely affect your ability to give credit in

1 the future, do you?

2 A It's very unsettling to think that a large bank that
3 has a lot of power has put what I view as a black mark on my
4 name and it put -- has put fear in me that when I do go to
5 approach a bank or an institution for a substantial amount of
6 money that this could be brought up. I do not wish to see that
7 happen, and that's why it's important to me to have Wells Fargo
8 Bank resolve this issue because I have done nothing wrong. My
9 banking practices are clean, and there's no reason for them to
10 have assigned a risk assessment to my account. They're causing
11 me harm.

12 Q But they --

13 A They're causing me potential fear of not being able to
14 proceed in my life.

15 Q Potential fear that you won't be able to obtain
16 credit.

17 A I have fear now that tomorrow I could go ask for a
18 million dollar line of credit and because of this I will be
19 refused.

20 Q Do you remember in your deposition Mr. Fitts asking
21 you about the damages that you have incurred as a result of Mr.
22 Dounel's statements?

23 A Vaguely, yes, I remember him asking questions
24 regarding -- yeah.

25 Q Well, let me see if I can refresh your memory a little

1 bit more. You brought with you some notes that listed your
2 damages. You remember that?

3 A Yes.

4 Q Yeah. And you listed them in order of priority for
5 Mr. Fitts, did you not?

6 A When he asked me, I had them randomly written down,
7 and then he insisted that I give him my notes, and I prioritized
8 them for him at that time.

9 Q Okay.

10 A Yes.

11 Q And by prioritize, you meant going from the worst
12 damages to the least damages that you felt --

13 A I put what was most important to me versus --

14 Q All right. The first one was that you had been
15 slandered and defamed; right?

16 A Right. I can't remember the order. I don't have them
17 in front of me, so --

18 Q All right. Do you have any reason to doubt my -- I
19 mean, we can spend time going through the deposition transcript
20 if you'd like --

21 A Whatever you'd like.

22 Q -- but you actually delineated them, number one,
23 number two, so forth.

24 A Yeah, the best I could. Yeah.

25 Q Beginning at page 111 of your deposition, if you'd

1 like to turn to page 111 just to have that handy in case I
2 misrepresent something, but let me ask you this. So you -- you
3 claim that you were slandered and defamed. What did you -- how
4 does that relate to your damages? In other words, what do you
5 mean that you've been injured?

6 A I think you know what slander means. I mean, somebody
7 had hurt my character. He's -- it's my -- my name, my
8 reputation, my ability to proceed in life because somebody, the
9 bank, a huge banking institution, a billion dollar banking
10 institution has singled out one little individual who has no
11 money and is saying terrible things about me. So that's
12 damaging to me.

13 Q Okay. You said damaging to your reputation. Your
14 reputation among -- to who, with whom?

15 A To the world, everyone in the world.

16 Q To the world. All right. Are you -- do you have any
17 reason to think that Mr. Dounel made those statements about you
18 that he made to Michael in October 2011 to anybody else?

19 A They're frivolous, unconscious comments that he made
20 to someone that's very important to my livelihood.

21 Q Okay. So if Michael is the only one who heard those
22 comments, it would be your reputation with him that you would be
23 concerned with?

24 A I don't know that Dounel didn't say those comments to
25 anyone else.

1 Q That's right. You don't. And we don't have any
2 evidence in this case that he has, do we?

3 A I don't know. But he did say those things to my
4 partner, and that was damaging to me.

5 Q He did. So if your reputation has been -- if Michael
6 is the only one that hears the comments and you're worried about
7 damage to your reputation, the only person who heard them would
8 be Michael, so it's your reputation with him that was damaged.

9 A It's certainly damage to my reputation within Wells
10 Fargo Bank.

11 Q With Mr. Dounel. Do you have any evidence to suggest
12 that Mr. Dounel shared his -- his comments with anybody else at
13 Wells Fargo Bank?

14 A If that's something that he thought about me, then
15 that was damaging to me within the bank. And all of the backup
16 statements from Wells Fargo Bank saying that they acted
17 appropriately confirms his statements made to me. So those
18 other people involved in Wells Fargo Bank, several now because
19 we've made so many phone calls to so many people that so many
20 people know about the statements Mr. Dounel made about me.

21 Q That's right. They probably do. Have you told other
22 people what -- about what Mr. -- outside of this litigation,
23 have you told anybody what Mr. Dounel said about you?

24 A I'm a very private person. I speak with my attorney.
25 With Michael primarily is who I discuss it with. I may have

1 with a girlfriend, you know, emotionally. I've been very upset
2 about the whole thing, so I may have discussed it with a
3 girlfriend.

4 Q Okay. How about Michael, has he talked about -- has
5 he told other people about what Mr. Dounel said about you?

6 A Not to my knowledge. I mean, he's spoken with all of
7 these people at Wells Fargo Bank. He's spoken with -- with me
8 primarily. And amongst some of our friends we may have
9 discussed it. I mean, with his bank, Bob Martin, trying to get
10 to the bottom of things. Primarily he's spoken to people that
11 we are -- that we've asked or gone to to try to get help to
12 resolve the issue.

13 Q So would you agree with me that any harm to your
14 reputation that resulted from Mr. Dounel's comments about you
15 has resulted from either you or Michael repeating to others what
16 Mr. Dounel said?

17 A Quite honestly, in fighting for your name, the whole
18 thing has escalated to a point where I'm very fearful that this
19 is going to create even more problems for me within the bank
20 because now I'm in litigation with the bank, that they're going
21 to blacklist me for other things. So, yes, I have legitimate
22 damages.

23 Q My question was a little different and I apologize for
24 not being very clear. My question is if other people know about
25 what Mr. Dounel said, isn't it true that those other people

1 would have learned about it from either you or Mr. Kaplan?

2 A I don't know. I don't know who else Mr. Dounel has
3 spoken with, or anyone within Wells Fargo Bank, I don't know who
4 they have spoken with, either.

5 Q But -- but you do know that you may have spoken to a
6 girlfriend; right?

7 A I may have, yeah.

8 Q And you may have. And you also know that Michael
9 talked about Mr. Dounel's comments to other people, too; right?

10 A Not a tremendous amount of other people, just
11 specifically within Wells Fargo Bank, our attorney, my attorney.

12 Q Bob Martin?

13 A His banker, yes, to try to get help. To Chad Maze,
14 also a member of Wells Fargo Bank at the time.

15 Q Your second element of damages was the stress and
16 strain on your 15-year relationship with Michael. You agree
17 with that statement; right?

18 A Yes, I do.

19 Q And you've testified at length about that. Number
20 three from your deposition states that you had to hire a lawyer
21 and that's part of your damages.

22 A Yes, that's correct.

23 Q All right. And -- and what did you -- what did you
24 have to hire a lawyer for?

25 A Isn't that obvious? Because I need to get this

1 situation corrected with Wells Fargo Bank. I've done nothing
2 wrong. Wells Fargo Bank will not tell me what is wrong with my
3 account. They've got information, apparently, about me that
4 they're hiding behind the Patriot Act that's for terrorists,
5 like lumping me into maybe I'm doing terrorist activity or
6 something. They're making me feel that way. I'm fearful. So I
7 have to fight for my rights as a citizen of the United States of
8 America. Correct the situation, please. I've done nothing
9 wrong. That's why I had to hire an attorney.

10 Q Is that -- I'm sorry. Were you finished with your
11 answer?

12 A Yes.

13 Q Okay. Noticeably absent from your answer was I needed
14 to hire a lawyer to sue because I was defamed by Mr. Dounel.

15 A It's all in the same -- same category.

16 Q Oh, okay.

17 A I'm not -- not saying that. You have all of the
18 reasons there. It's all been stated.

19 Q The fourth element of damages that you referred to in
20 your deposition had to do with Michael having plans or having
21 agreed to set up some kind of account where if something were to
22 happen to him you would not be left financial -- adversely
23 financially impacted; right?

24 A I'm sorry? I'm not clear on your question. Are you
25 asking questions or are you making statements you want me to

1 agree to?

2 Q The latter.

3 A Okay. Proceed with your question, then, because I
4 don't understand.

5 Q Sure. I probably wasn't -- it probably wasn't clear.

6 A It probably wasn't clear.

7 Q Mr. -- you have testified that Michael had planned to
8 open an account, a joint account with you that -- that it had
9 you -- if he were to pass away or something happened to him, you
10 would have access to it so that you could pay your bills; right?

11 A If something happens to Michael and this account is
12 not set up, I'm worried that I won't have the funds necessary to
13 pay for our monthly -- even one month of our bills. That's
14 correct. Is that what you're saying?

15 Q Yeah. Yeah.

16 A Yeah.

17 Q Well, I'm just trying to confirm that that's what your
18 testimony was earlier that -- because as I understood Michael's
19 testimony, he wanted to open that account with Wells Fargo, but
20 he couldn't because they wouldn't allow you to be on the
21 account.

22 A That's correct.

23 Q And the purpose of that account was to house three to
24 \$5 million so that if something happened to him you would be
25 financially secure.

1 A That's right.

2 Q All right. Michael has not opened that account at any
3 other financial institution, has he?

4 A No.

5 Q Is that because you -- he thinks that -- or he's still
6 doubtful that you told him the truth about having financial --
7 or a criminal background?

8 A Well, as I stated earlier, it's a lot of money of
9 Michael's that he's worked very hard for. And he, I'm sure,
10 would have a much more higher comfort level of establishing that
11 account when this matter has been cleared.

12 Q Why don't you just -- why don't you just tell Michael,
13 say, hey, why don't we just open that account at Chase? They
14 opened accounts for me.

15 A Michael is the one in charge of that situation or that
16 decision. He only banks with Wells Fargo Bank, so that's the
17 bank where --

18 Q My -- my question is have you ever asked him to -- to
19 do that at another bank.

20 A I have, actually, and his answer is the same as he
21 gave you, that he only banks with Wells Fargo Bank, he's had a
22 banking relationship with them for 25 or 30 years, he's not
23 going to switch his bank account. It's convenient to have the
24 same account so your -- your -- all your funds are there and not
25 having to switch from one bank to another bank, checks being

1 held for a certain number of days for them to clear, that kind
2 of thing.

3 Q Even though some guy in the Malibu branch defames the
4 love of his life, he's not leaving Wells Fargo Bank? Is that
5 what you're telling me?

6 A Yeah, that's right. He's not leaving Wells Fargo
7 Bank. He has not left Wells Fargo Bank through all of this. He
8 is loyal to the bank.

9 Q The purpose of that account was to make sure that you
10 were financially taken care of; right?

11 A Right.

12 Q Okay.

13 A And that our household accounts can be paid should
14 something happen to him.

15 Q Yeah, you were worried that you wouldn't be left with
16 anything; right?

17 A No, it wasn't that. I know that I'm going to be left
18 with something, but I -- that something may not be accessible
19 right away. My issue has always been if something should happen
20 to you, I know that there is a trust set up, but I don't know
21 how long it's going to take to get funds from the trust. If
22 bills come in, I need to have access to an account.

23 Q All right. You've already told us that you're on the
24 -- on the deed for the Malibu house; right?

25 A Right.

1 Q That 6,000 square foot house on the water of Malibu;
2 right?
3 A It's not on the water, but --
4 Q Well, you can see the water.
5 A -- it is in Malibu. Uh-huh.
6 Q Okay. And you just mentioned a trust. Michael does
7 have a trust, doesn't he?
8 A Uh-huh. He does.
9 Q And it's your understanding that you will inherit 50
10 percent of his estate pursuant to that trust?
11 A That's what he's told me, yes.
12 Q Okay. You don't have any reason to doubt Michael, do
13 you?
14 A Well, he hasn't, you know, given me any proof of that,
15 so, you know, I have a small doubt, but I do believe him.
16 Q Have you asked him for proof?
17 A I have.
18 Q And he hasn't given you proof?
19 A No.
20 Q Have you asked him why he won't give you proof?
21 A I haven't pressed him on the issue.
22 Q But you trust him that he'll stand by his word that
23 you're entitled to 50 percent of his --
24 A Yeah.
25 Q -- estate? Okay.

1 A Things change, though. You don't know what's going to
2 happen with the economy or what happens, so --

3 Q Things do change, like defamatory comments being made
4 about you. Has Mr. Kaplan removed you as a beneficiary of his
5 trust?

6 A I'm not aware of that if he has or has not.

7 Q Okay. The fifth element or the fifth matter of
8 damages that you mentioned in your deposition was that it
9 relates to those lines of credit in conjunction with launching a
10 product line to accompany the publication of your guitar
11 photography book; right?

12 A Right.

13 Q And we've talked about that. Your last element was
14 you were -- the embarrassment that you felt by having to
15 disclose the closure of your Wells Fargo account to your
16 publicist; right?

17 A Yes.

18 Q I'm sorry. Who is your publicist again?

19 A Jeff Albright.

20 Q Jeff Albright. All right. And you couldn't just tell
21 Mr. Albright, hey, I've got send you another -- a check from a
22 different account? You had to tell him, no, Wells Fargo closed
23 my account, you need to know that. Is that -- is that what you
24 did?

25 A I told him exactly what happened.

1 Q Exactly what happened. You told him that Mr. Dounel
2 said ugly things about me?

3 A I did not get into that. I don't believe I got into
4 that.

5 Q You didn't mention that. Okay. But you mentioned
6 that Wells Fargo had closed your Guitarfile accounts?

7 A Yes, I did. I think so. If you'd like to look at
8 that email I gave to him, that might help me to remember
9 exactly.

10 Q Well, I think you do remember. We don't need to look
11 at the email.

12 A You're asking me --

13 Q You've got --

14 A -- for specific --

15 Q -- a memory of it.

16 A You're asking me for specific words, so I can't
17 remember specifically.

18 Q Well, the gist of it was that you were -- you wanted
19 him to know that the Wells Fargo account has been closed.

20 A Yeah, I explained to him that they closed my accounts
21 for no reason, I believe.

22 Q Do you agree with me that you didn't have to tell him
23 that?

24 A Well, I tell the truth, so I told him the truth of
25 what happened because I didn't want him to think that I was

1 flake.

2 Q That's a right. You live by the truth and you die by
3 the truth.

4 A I do, yes.

5 Q Yeah. Just a couple more questions, Lisa. Do you
6 believe Mr. Dounel was trying to hurt you when he made those
7 alleged statements about you?

8 A I do.

9 Q How do you know that?

10 A Why would anyone say something like that about someone
11 that they did not know? It's a really unconscious frivolous
12 thing to say about someone you don't know to someone that's very
13 significant to you. So that's what -- it was very hurtful to
14 me. Why would you say that if you weren't trying to hurt
15 someone?

16 Q Any other reasons that you believe Mr. Dounel was
17 trying to hurt you, somebody he had never met, only had maybe
18 talked to on the phone briefly? He was trying to hurt you
19 intentionally? He wanted to hurt you, is that what you're
20 saying?

21 A Yeah.

22 Q Okay. Any other reasons that you haven't already told
23 us about why you think that?

24 A I haven't really thought about it. I mean, he -- you
25 don't make statements like that about people that you don't

1 know. He has no evidence whatsoever that any of those things
2 were true, so why would he say that if he wasn't trying to hurt
3 me? Obviously that's hurtful to say that to someone.

4 Q Thank you, Lisa. I appreciate it.

5 MR. HAIRE: Pass the witness.

6 THE COURT: Mr. Kistler, want to do your
7 cross-examination, you want a break? I think we've only been
8 going about an hour.

9 MR. KISTLER: Your Honor, I have no further
10 questioning of --

11 THE COURT: Okay.

12 MR. KISTLER: -- Ms. Johnson. Your Honor, I would ask
13 for the admission of the following exhibits.

14 THE COURT: Okay.

15 MR. KISTLER: 1, 4, 5. I think 6 was already
16 admitted.

17 THE COURT: Yes.

18 MR. KISTLER: If not, then 6, 7, 11, 12, and 9. And,
19 Your Honor, I believe that counsel discussed Exhibit 27, which
20 was Ms. Johnson's declaration. Given that he asked specific
21 questions concerning that exhibit, that exhibit should come in,
22 as well. So it's not really -- I would ask for the admission of
23 that exhibit, at least at this point limited to the scope of his
24 questions of that exhibit. I understand it's not a statement of
25 a party opponent because she is my client so it would be

1 inappropriate to ask for its admission totally based on those
2 grounds. However, since he did ask specific questions of the
3 declaration, I would ask the admission of the declaration
4 regarding those areas that she spoke about concerning the
5 declaration.

6 THE COURT: All right.

7 MR. HAIRE: I have no opposition to the admission of
8 the entire document. Could I ask that someone repeat to me what
9 exhibits have been offered or were just offered?

10 THE COURT: The ones just offered, or do you want to
11 go over the list as it is --

12 MR. KISTLER: I will, Your Honor.

13 THE COURT: - up until -- up until --

14 MR. KISTLER: What I said was 1, 4, 5, 6, but I think
15 6 was already entered, 7, 11, 12, and 9. I think that was my
16 ordering.

17 THE COURT: And 27.

18 MR. KISTLER: And 27, which was discussed on
19 cross-examination by Mr. Haire.

20 MR. HAIRE: Did you say 9?

21 MR. KISTLER: I did.

22 THE COURT: Yes.

23 MR. HAIRE: All right. And then 27.

24 MR. KISTLER: 27 is the declaration that you inquired.

25 MR. HAIRE: Gotcha. Gotcha.

1 THE COURT: Is there anything else that you wanted in,
2 Mr. Haire?

3 MR. HAIRE: Forgive me, Your Honor. How about --
4 there seems to be a series of -- of emails between Lisa Johnson
5 and Ramy Zaki. Those are -- those comprise Exhibit 7, 8, 9, and
6 10.

7 THE COURT: So you're moving 8 and 10 in addition?

8 MR. HAIRE: Yeah. Yes, Your Honor.

9 THE COURT: All right.

10 MR. KISTLER: No objection.

11 (Exhibits 1, 4-5, 7-12, and 27 admitted)

12 THE COURT: And --

13 MR. HAIRE: And if you'll give me a moment.

14 THE COURT: Sure.

15 MR. HAIRE: Exhibit 22, which may be redundant in some
16 respects or duplicative, but I would offer 22.

17 THE COURT: 22.

18 MR. HAIRE: And since we are on -- that's it for now,
19 Your Honor.

20 THE COURT: Perhaps we can have the clerk just --

21 MR. HAIRE: Do them all.

22 THE COURT: -- read off the complete list of --

23 MR. HAIRE: Okay.

24 THE COURT: -- what's admitted to this point so you're
25 not --

1 MR. HAIRE: Fair enough, Your Honor. Mr. Dounel is
2 not a resident of Nevada.

3 THE COURT: Uh-huh.

4 MR. HAIRE: He is no longer employed at Wells Fargo
5 Bank. He's outside the Court's jurisdiction. I would offer his
6 deposition transcript, which is identified as Exhibit 26. But I
7 think there's probably just a placeholder there and --

8 THE COURT: No, it's here. We've got it.

9 MR. HAIRE: A copy?

10 THE COURT: Yeah.

11 MR. HAIRE: Okay. That's fine. That's fine, unless
12 counsel wants the original substituted for that exhibit.

13 MR. KISTLER: Your Honor, I thought we were still on
14 my case.

15 THE COURT: You are.

16 MR. HAIRE: But she asked for all of them now.

17 MR. KISTLER: Oh, did you?

18 THE COURT: Yeah, I -- I was going to -- I said we
19 would discuss now everything that's been admitted. The clerk
20 will tell you what we've got a record of having been admitted.

21 We're not yet to 26 -- okay. So, Ms. Clerk, if you
22 could just tell us what we have so far a record of having been
23 admitted.

24 THE CLERK: Including the ones that were just on?

25 THE COURT: Yes.

1 THE CLERK: Okay. 1, 2, 4, 5, 6, 7, 8, 9, 10, 13 --
2 THE COURT: I have 11. 11, I think -- Mr. Kistler,
3 wasn't that on your list of --
4 THE CLERK: Oh, yes, it was.
5 THE COURT: Yes, 11.
6 THE CLERK: Okay. 11, 13, 14 --
7 THE COURT: 12. 12, yeah, that's the check.
8 The check was in, Mr. Kistler? You wanted it in?
9 MR. KISTLER: Yes, Your Honor.
10 THE COURT: Yeah, we discussed it.
11 MR. KISTLER: I listed that as 11, 12, and 9. Those
12 were the last three.
13 THE COURT: Okay. Perfect. Okay. Thanks.
14 THE CLERK: Okay. 14, and then we jump to 17, 18, 19,
15 20, 21, jump to 23, 24, 25, 28, 29, 30, 34.
16 MR. KISTLER: 27.
17 THE CLERK: That's the last one.
18 THE COURT: And 27, Mr. Kistler did offer.
19 And I believe, Mr. Haire, you did not raise an
20 objection?
21 MR. HAIRE: I did not raise an objection. I -- I'm
22 compelled to talk about this Exhibit 26, though, because I
23 understood the Court's directive to be any exhibits that you
24 guys want in, let's hear about them now. Did I misunderstand
25 the Court?

1 THE COURT: Well, I didn't necessarily say in the
2 entire case. I just want to know is there anything else that
3 you wanted in at this point.

4 MR. HAIRE: Oh. I'm sorry. Then I did misunderstand.

5 THE COURT: So -- and we can then talk about it if
6 there's anything further that -- but Mr. Kistler has raised a
7 valid point, which is he has not yet rested his case.

8 MR. KISTLER: Correct.

9 THE COURT: So he may -- if you want Mr. Dounel's
10 deposition transcript in your case in chief, Mr. Haire, that
11 might be the appropriate time to raise it because then Mr.
12 Kistler --

13 MR. KISTLER: You have read my mind, Your Honor.

14 THE COURT: Okay. All right. So at this point in
15 time, then, where we are as of now, do we have all the exhibits
16 that any -- either side has discussed with witnesses so far
17 admitted?

18 MR. KISTLER: As long as the record is clear
19 concerning 27 and 27 is in.

20 THE COURT: 27 is in, yes. Uh-huh.

21 MR. KISTLER: Then, no, Your Honor. We have no
22 further exhibits. We would ask for the Court to take judicial
23 notice of the following pleadings in this case, or a portion of
24 pleading.

25 THE COURT: Okay.

1 MR. KISTLER: And I must apologize. I don't -- do not
2 have the date of the pleading, but I would ask for the Court to
3 take judicial notice of the Wells Fargo Bank's answer in this
4 case, specifically their allegation as an affirmative defense of
5 truthfulness of Mr. Dounel's statement.

6 THE COURT: Okay. Let me get to the right screen and
7 I'll tell you so we have a record and we can -- then we can
8 discuss what it is. Okay. That's the answer to the original
9 complaint.

10 MR. KISTLER: The answer to the -- I think there's
11 only one complaint in this case.

12 THE COURT: So that's dated April 6, 2012, answer to
13 complaint by Wells Fargo, and specifically affirmative defense.

14 MR. HAIRE: It's actually subsumed, Your Honor, in an
15 affirmative defense that is longer than just that.

16 THE COURT: Uh-huh.

17 MR. KISTLER: 26, Your Honor. It's affirmative
18 defense 26.

19 THE COURT: Okay. All right.

20 MR. HAIRE: And, Your Honor --

21 THE COURT: Yeah.

22 MR. HAIRE: -- pardon the interruption, but since
23 we're on this subject I would simply place on the record as per
24 the joint pretrial memorandum, the truth defense was abandoned
25 prior to trial.

1 THE COURT: Okay.

2 MR. KISTLER: Your Honor, that's the second document
3 that I would ask for Your Honor to take judicial notice of, and
4 that is the joint pretrial memorandum, which I believe was filed
5 the 4th -- I'm sorry, the 4th of February 2014, i.e., before
6 trial, that the joint pretrial memorandum filed February 4,
7 2014, abandoned -- Wells Fargo abandoned the defense that they
8 alleged that Your Honor took judicial notice of in their
9 counterclaim. So the day before trial they abandoned that
10 defense.

11 THE COURT: Okay. Anything else that -- are those the
12 two documents you wish judicial notice be taken of? Anything
13 else?

14 MR. KISTLER: No, Your Honor.

15 THE COURT: Okay. Is -- is Ms. Johnson --

16 MR. HAIRE: Excused.

17 THE COURT: -- excused? She no longer needs to remain
18 on the stand, or do you have anything further for her at this
19 time?

20 MR. KISTLER: She is excused. She can resume her
21 position --

22 THE COURT: All right.

23 MR. KISTLER: -- at the counsel's table.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: You may step down. You're no longer on

1 the stand.

2 Okay. So then we've gone over exhibits to date, to
3 this point in the trial, and the Court notes the request for
4 judicial notice of the two documents, the affirmative defense
5 contained in Wells Fargo's answer, and the fact that in the
6 pretrial memorandum filed the day before trial they abandoned
7 that -- that specific defense. All right. Anything further or
8 is this a good moment for a break?

9 MR. KISTLER: Your Honor, what I'd like to do is take
10 a break for about ten minutes at this point.

11 THE COURT: Sure.

12 MR. KISTLER: I believe that I will probably rest, but
13 I'd like to --

14 THE COURT: Go over things.

15 MR. KISTLER: -- check on that --

16 THE COURT: Sure.

17 MR. KISTLER: -- before do that.

18 THE COURT: Absolutely.

19 MR. KISTLER: So if we can have ten minutes.

20 THE COURT: All right.

21 MR. HAIRE: Before we do that, Your Honor, may I just
22 simply place something on the record?

23 THE COURT: Sure.

24 MR. HAIRE: In response to Mr. Kistler's indication
25 that the joint pretrial memo that the Court, I presume, is

1 taking judicial notice of reflects the abandonment of the truth
2 of affirmative defense the day before trial, I would simply
3 remind the Court and have placed on the record that notification
4 was made to the Court of Wells Fargo Bank's intention to abandon
5 that defense at -- at the time of the summary judgment motion in
6 this case. And that's all I have.

7 THE COURT: That is my recollection.

8 MR. KISTLER: Your Honor, I believe the -- the
9 pleadings -- I believe the summary judgment hearing occurred,
10 what, three weeks before trial?

11 THE COURT: Yes.

12 MR. KISTLER: And Mr. Haire did allude to the intent
13 of the bank to abandon the defense of truthfulness of Mr.
14 Dounel's statement either at the hearing three weeks before the
15 trial date or -- and it --

16 THE COURT: Yeah.

17 MR. KISTLER: -- was replied --

18 THE COURT: It was January 10th.

19 MR. KISTLER: Yes, Your Honor. So -- but that event
20 did not occur until the day before trial.

21 THE COURT: Okay. All right. Good enough. All
22 right. Well, then, we'll take a break. And you want to just
23 resume at -- I don't know, do you need more --

24 MR. KISTLER: A quarter 'til?

25 THE COURT: A quarter -- okay, ten 'til.

1 MR. KISTLER: Ten 'til.

2 THE COURT: We'll be in recess until ten 'til. All
3 right. We're in recess. Thank you.

4 (Court recessed at 2:38 p.m., until 3:02 p.m.)

5 MR. KISTLER: Your Honor, I would also ask that the
6 Court take judicial notice of footnote 2 on page 8 of the joint
7 pretrial memorandum. I'm sorry, footnote 1. Footnote 1 on
8 page --

9 THE COURT: Joint pretrial memorandum, footnote --

10 MR. KISTLER: Actually, 1 and 2 are identical.
11 Footnote 1 and footnote 2 that's on a pages 7 and 8 of the joint
12 pretrial memorandum that was filed the day before trial. Your
13 Honor, specifically footnotes 1 and 2 read Arash Dounel is
14 longer an employee at WFB. He also resides outside the
15 jurisdiction in California. Accordingly, WFB cannot and will
16 not guarantee his attendance at trial. Neither WFB nor its
17 counsel can or will accept service of a trial subpoena
18 compelling Dounel's attendance at trial.

19 And I would ask that the Court take judicial notice
20 that the plaintiff was first informed of this set of
21 circumstances the day before trial pursuant to this footnote.
22 That being said, Your Honor, we would ask for the Court to
23 consider the deposition transcript of Arash Dounel, the direct
24 examination that I performed, I believe, in October of 2012. He
25 was deposed one time.

1 I would note that such a critical witness, a Wells
2 Fargo employee, I did not take that deposition to preserve his
3 trial testimony, but rather I took the deposition for discovery.
4 However, given this footnote, apparently Mr. Dounel is not going
5 to be present in court where the Court can observe his demeanor
6 in testifying about the very serious matters that this case has
7 -- has brought forth.

8 So I would offer Mr. Dounel's direct examination of
9 the deposition taken, I believe the original is with the clerk,
10 as a statement made by a party opponent or a statement made by
11 an agent of the party, an employee of a party, and that would be
12 Mr. Dounel. Mr. Dounel, at the time that I took the deposition
13 for discovery purposes, confirmed that he was a Wells Fargo
14 employee at the time that the statements were made, and also
15 confirmed at the time that the deposition was taken that he was
16 a Wells Fargo employee at that time.

17 My understanding is that, not to jump ahead, that
18 after I rest my learned opponent will offer the examination of
19 Stewart Fitts -- or that Stewart Fitts, the bank's lawyer, made
20 of Mr. Dounel at the time of the taking of the deposition.
21 Again, I was not -- I was not informed that that was a
22 memorialization of his trial testimony at the time, and I would
23 note the extensive objections that I made to Mr. Fitts's
24 examination of Mr. Dounel primarily based on leading and
25 primarily based on leading questions to the critical important

1 questions that Mr. Dounel would have been posed if, in fact, he
2 testified here in front of Your Honor.

3 Finally, again, to jump -- slightly jump ahead, my
4 understanding is that the defendant will be calling one witness
5 this afternoon. We anticipate the witness will be short. I
6 think that it would be beneficial to the Court to review Mr.
7 Dounel's transcript, whichever portions of the transcript Your
8 Honor believes is appropriate prior to the time that we argue
9 the case.

10 And so what I would suggest with the statement that I
11 made concerning the judicial notice of the joint pretrial
12 memorandum footnote 1, which I assume the Court grants, as well
13 as my offer of the direct examination of Mr. Dounel, I will rest
14 given that. Counsel for Wells Fargo and I are not familiar with
15 the Court's position concerning deposition testimony read into
16 the record in a -- in a bench trial. We certainly do not oppose
17 the Court reviewing the transcript, reading the transcript to
18 herself rather than going through the question and answers here
19 in open court.

20 So what we would suggest is that I rest, and I will
21 rest at this time. Mr. Haire will put on his case. I do not
22 anticipate rebuttal to his case. That we break for the day,
23 that the Court can familiarize herself with Mr. Dounel's
24 testimony, again, the -- the appropriate portions of Mr.
25 Dounel's testimony, and that we come back tomorrow and argue the

1 case.

2 THE COURT: Well, okay. Now, because it had been
3 marked, as Mr. Haire indicated, although typically depositions
4 are marked as exhibits, nevertheless the reason to read them
5 into the record is you have a record if you need it on appeal,
6 for example. But as an alternative, I certainly have no
7 objection to admitting as Exhibit 26, as it was marked prior to
8 trial, the deposition of Mr. Dounel and the Court will read it
9 so that it doesn't have to be -- somebody doesn't have to sit on
10 the stand and actually read it into the record.

11 MR. KISTLER: Or, Your Honor --

12 THE COURT: That way it'll be part of the record.

13 MR. KISTLER: Or the record could certainly be noted
14 that in lieu of reading the deposition into the record, the
15 entire deposition transcript will be part of the record as the
16 Court read it, read the deposition --

17 THE COURT: Uh-huh.

18 MR. KISTLER: -- by herself.

19 THE COURT: Okay.

20 MR. KISTLER: Whatever the Court would prefer in that
21 respect.

22 THE COURT: All right. Mr. Haire, your thoughts on
23 that. It is, as I indicated, it was tentatively marked for
24 purposes of identification as Exhibit 26.

25 MR. HAIRE: No objection, Your Honor, to anything Mr.

1 Kistler said. However, I would like to think that we won't get
2 that far because I would ask the Court to entertain a 50(a)
3 motion---

4 THE COURT: Okay.

5 MR. HAIRE: -- at this time because this is a bench
6 trial. My 50(a) motion is based in large part upon the civil
7 trial memorandum that's been filed in this case, which I would
8 incorporate by reference. But nevertheless, I would like an
9 opportunity to argue.

10 THE COURT: Okay.

11 MR. HAIRE: What Mr. Dounel has to say is irrelevant.
12 The evidence that's been presented in this case so far is
13 insufficient and inadequate as a matter of law to substantiate a
14 claim first for defamation. As we've pointed out throughout the
15 course of this case, the elements of a defamation cause of
16 action require proof that a false and defamatory statement
17 concerning the plaintiff was made.

18 We would argue that the statement considered --
19 assuming it was even made, and for this purpose I will -- I will
20 make the assumption that Mr. Dounel did make -- did make the
21 comments. So if those statements were made, Wells Fargo Bank
22 would argue that they're not defamatory, that the qualifying
23 language associated with those statements, namely the must, must
24 be, must have, would not lead a reasonable person to believe
25 that Mr. Dounel was making a statement of existing fact.

1 The nature and context of Mr. Dounel's statements
2 confirmed they were but statements of his evaluated opinion made
3 in response to Mr. Kaplan's inquiry about a closed account, and
4 this was an effort to offer possibilities for why the account
5 may have been closed. The -- so, in fact, the phrases,
6 therefore, evidence and Mr. Dounel's lack of factual
7 information, which in turn led to his offering the evaluative
8 opinion, as I just discussed.

9 The second element of defamation, Your Honor, relates
10 to there must be a proof of an unprivileged publication of the
11 statement made to a third person. I'd like to take those in
12 reverse order. First, the statements attributed to Mr. Dounel
13 were not made to a third person. The Court is well aware that
14 defamatory statements made only to the person alleging
15 defamation are not actionable.

16 The support for these -- the legal support as required
17 by Rule 58 is, of course, set forth in the trial brief.
18 Similarly, publication of a defamatory statement to an agent of
19 the plaintiff who is acting on plaintiff's behest and on her
20 behalf is tantamount to a publication to the plaintiff herself
21 and, therefore, renders the statements non-actionable as a
22 defamation claim.

23 Here, the evidence from plaintiffs themselves support
24 that an agency and authority relationship existed as between the
25 three parties involved on October 6, 2011. First of all, Ms.

1 Johnson admits, certainly, in her deposition testimony that she
2 had authority -- or Mr. Kaplan had her authority to discuss the
3 joint account.

4 Her deposition testimony taken, of course, some months
5 before today's proceeding states -- clearly states that she
6 admits that she gave Kaplan, Mr. Kaplan, authority to discuss
7 the account on her behalf. Second of all -- so there's an
8 express authority and permission granted to Mr. Kaplan to
9 discuss the joint account at the time.

10 Second of all, there is, again, by plaintiff's
11 evidence authority for the prospect or the notion that this is
12 -- that there was implied authority bestowed upon Mr. Kaplan and
13 that by virtue of both -- of that implied authority Mr. Dounel
14 acted appropriately based upon the apparent authority given to
15 -- that Mr. Kaplan exuded when he discussed these accounts.

16 Lisa accorded the implication of the authority and
17 agency, of course, is a function of Ms. Johnson actually
18 speaking to at least one person present at the -- at the
19 meeting, and her agreement to -- to email the account agreement,
20 or, excuse me, the closure letter to Mr. Dounel, thereby
21 evidencing to Mr. Dounel that he was authorized to discuss the
22 account with -- with Mr. Kaplan. Under the circumstances, Mr.
23 Dounel's statements were made as if made to Ms. Johnson herself
24 and not to any third person as required to make out a defamation
25 claim.

1 Next, the statements were -- were privileged. Nevada
2 recognizes a common interest privilege. It applies in this case
3 to protect Mr. Dounel's statements because the communications
4 were made in response to Johnson's inquiries through her agent
5 Mr. Kaplan, wherein then Mr. Johnson consented to, authorized,
6 invited, or procured the statements, which statements involved
7 the subject matter in which the parties all had a common
8 interest, namely the joint account.

9 The only way for Ms. Johnson, of course, the plaintiff
10 to rebut the privilege is to prove that Mr. Dounel acted with
11 actual malice. The record is insufficient to establish proof of
12 actual malice, such as to overcome the common interest
13 privilege. Therefore, based upon there being no publication to
14 a third person and no -- no evidence to controvert the
15 privileged nature of the communication under Nevada law,
16 plaintiff's claim for defamation fails.

17 Next, Your Honor, is the element -- is plaintiff's
18 claim for punitive damages. Punitive damages in this case are
19 awarded -- can't -- may be awarded as against Wells Fargo Bank,
20 Mr. Dounel's employer, only upon proof pursuant to NRS 42.007 of
21 essentially Wells Fargo Bank's complicity with Mr. Dounel's
22 statements. Proof that the officer, director, or managing agent
23 of Wells Fargo Bank who was expressly authorized to direct or
24 ratify Mr. Dounel's conduct on behalf of the corporation must be
25 demonstrated and proven before Wells Fargo Bank can be held

1 accountable or liable for punitive damages. Wells Fargo Bank
2 would submit that insufficient evidence had been presented to
3 warrant an award of punitive damages in this case.

4 Finally, Your Honor, there are -- there is, as I
5 stated at the outset of this trial, a claim for declaratory
6 relief. You may recall from our summary judgment hearing that
7 declaratory relief was not dismissed at the time because the
8 Court appreciated two elements to that claim for relief. The
9 first being plaintiff seeking an order to compel Wells Fargo
10 Bank to disclose the reasons why it closed Ms. Johnson's
11 accounts. The Court has already determined as a matter of law
12 that that will not and cannot happen in this case.

13 The Court then allowed the -- the claim to survive to
14 trial based upon the following language as contained in the
15 complaint, which, of course, is a matter of record in this case.
16 Paragraph 46 on page 6 of the complaint states Johnson is
17 entitled to a declaration by this Court that Wells Fargo must
18 provide Johnson a detailed explanation as to why the bank
19 decided to close her accounts. That has already been discussed
20 and that is not relief that is available to the plaintiffs via
21 this trial.

22 Second of all, the plaintiff, pursuant to paragraph 46
23 of the complaint, seeks an order or the Court compelling Wells
24 Fargo to explain why alleged Ms. Johnson was or is involved in
25 criminal activities because there is no actionable claim for

1 defamation. That issue is moot. And because there is a denial
2 that the -- that the statements are actionable is defamation.
3 There is no reason to compel Wells Fargo to explain why it --
4 why its employee allegedly made defamatory statements about the
5 plaintiff.

6 So, again, Your Honor, based upon these arguments, as
7 well as those contained in the trial brief filed in this case,
8 Wells Fargo Bank would move for dismissal of the case pursuant
9 to NRCP 50(a). Thank you.

10 THE COURT: Okay.

11 Mr. Kistler.

12 MR. KISTLER: Oh, what a world we live in. Your
13 Honor, we appreciate Mr. Haire stating that for purposes of the
14 motion he will assume argument that the false defamatory
15 statement was made. In fact, as Your Honor will review the
16 evidence before it, including the direct examination of Mr.
17 Dounel, Mr. Dounel does not deny that he made the false
18 defamatory statements. In fact, what he says is I don't recall
19 what I said to Mr. Kaplan. At best what Mr. Dounel said was
20 that doesn't sound like something I may have said.

21 Your Honor, the -- the evidence that -- that
22 defamatory statements were made or the statements alleged by --
23 as testified to by Mr. Kaplan were made is overwhelming in this
24 case. And there is no credible evidence that has been presented
25 or cross-examination which could warrant a delusion of Mr.

1 Kaplan's testimony concerning exactly what happened. So they
2 are defamatory. They were stated by Mr. Kaplan, not to be
3 evaluated, but rather these statements of fact made by Mr.
4 Dounel after he reviewed his computer screen.

5 Concerning Mr. Dounel -- or Mr. Haire's argument
6 concerning a common interest privilege that somehow attaches to
7 this case, that's just simply not a fact in this case. Your
8 Honor, the case that's cited, I believe, is *Bank of America*
9 *Nevada versus Bourdeau*. It's not cited in the trial brief of
10 Mr. Haire's. I would cite it to the Court now. It's 982 P.2d
11 474 at 476, a 1999 case. And the statement of the case is a
12 qualified or conditional privilege exists where a defamatory is
13 made in good faith on any subject matter in which a person
14 communicating has an interest or in reference to etcetera,
15 etcetera, etcetera.

16 As Your Honor will find in Mr. Dounel's deposition,
17 Mr. Dounel admits that he has no evidence and had no evidence of
18 any criminal misconduct on behalf of Ms. Johnson at the time
19 that the statement was made on October 6, 2011. That's an
20 admission in his direct examination that I elicited from him.
21 So, therefore, there isn't a good faith basis for ever getting
22 past the first prong of a -- the common interest, the so-called
23 common interest privilege as cited by Mr. Haire.

24 Your Honor, the case goes on and says if the common
25 interest privilege exists, as it does not in this case

1 admittedly by Mr. Dounel in his deposition, then the burden is
2 shifted of the plaintiff that shows that the privilege is abused
3 by bad faith, malice, spite, ill will, or some other wrongful
4 motivation, and without belief and the statements probably
5 truth.

6 Well, since there was no evidence of criminal
7 misconduct at the time that Mr. Dounel made the statements,
8 admitted by Mr. Dounel, and there's been no evidence of criminal
9 conduct whatsoever, there is no belief that the -- no possible
10 belief that the statement is true. You heard testimony from the
11 victim of the defamatory statement that the statements had to be
12 made in bad faith or with spite because you simply don't make a
13 statement like that without intending to injury someone.

14 We think the facts of this case and the circumstances
15 presented by this case show overwhelmingly, even if Your Honor
16 gets past the first prong of the common interest privilege, that
17 the statements were made in bad faith without any belief in the
18 statements' probable truth.

19 Your Honor, concerning the punitive damage respondeat
20 superior defense that's been raised on your NRS 42.007, Your
21 Honor, the lead case is *Countrywide Home Loans versus*
22 *Thitchener*, T-H-I-T-C-H-E-N-E-R, 192 P.3d 243, a 2008 case,
23 Nevada Supreme Court. And it sets forth the elements of NRS
24 42.007. And we note that the -- the prongs of NRS 42.007 are
25 not in the conjunctive. They are in the either/or proposition.

1 The employer had advanced knowledge that the employee
2 was unfit for the purposes of employment and employed the
3 employee with a conscious disregard, the employer expressly
4 authorized or ratified the wrongful act, the employer is guilty,
5 personally guilty, of oppression, fraud or malice, express or
6 implied.

7 Your Honor, we presented evidence of 42.007 (b) and
8 (c) in our view. Your Honor, we have repeated statements made
9 by Wells Fargo Bank. When confronted with the defamation claim
10 of -- of Ms. Johnson that ratified that claim. For example, if
11 you look at Exhibit 18 and 19, those are the two exhibits that I
12 drew circles on that showed up on the Elmo. A statement made
13 Kate Write who was the Vice President or is the Vice President
14 or Western Mountain District Manager, for example, says despite
15 the defamation of Lisa Johnson the bank has acted appropriately.

16 Seldom will you see any employer that will say I
17 hereby formerly ratify the slander per se comments made by our
18 employee. You'll almost never find that. In this particular
19 case, Your Honor, what you have is you have the bank time after
20 time after time either embracing the truthfulness of the
21 statements made by their own employee to include alleging the
22 truthfulness throughout this litigation, all the way up to the
23 day before trial.

24 You have documents that do not distance itself from
25 any of the defamatory statements that their employee Mr. Dounel

1 made. You have, for example, the -- you know, Wells Fargo Bank
2 could easily, at any point in this -- in this case, and before
3 this case, could easily have said we don't agree with what you
4 characterize as Mr. Dounel's statements, but Mr. Dounel does not
5 speak for and behalf of Wells Fargo Bank NA, and they didn't do
6 that.

7 And that, Your Honor, brings me to the last point, and
8 that is Mr. Haire's position that while they can't be compelled
9 to disclose why they want to close the account, Your Honor, this
10 is -- this is a -- this is a defamation case and a dec relief
11 case. The defamation case could have been defended by the bank
12 without disclosing any internal information by the bank.

13 For example, Your Honor, if, in fact, the bank,
14 consistent with its affirmative defense of truthfulness, have
15 evidence that Mr. Dounel admits now, as you'll see in his
16 deposition transcript, if they had evidence that Ms. Johnson had
17 any criminal history, any criminal background, anything
18 concerning going to jail or going to warrants, they easily,
19 easily could have produced those documents which would have been
20 matters of public record to show, in fact, that their statements
21 were truthful. They made no effort to do so.

22 In fact, what they did is they embraced the statements
23 as I've argued previously throughout the exhibits, including
24 Exhibits 18 and 19. They also easily could have said, well,
25 whatever Mr. Dounel said concerning Ms. Johnson, he was wrong.

1 And that was never done, either, in this case at any point in
2 time and there's no evidence that it ever was. That would not
3 do violence to their claim, the bank's claim of a privilege .
4 existing where they don't have to -- if they claim the
5 privilege, they don't have to divulge the reasons for the
6 closure of an account.

7 And then finally and most easily, Your Honor, as I've
8 said, the bank could have, but did not at any point in time, and
9 the evidence is totally and completely consistent and you've
10 seen nothing to the contrary, distance themselves from whatever
11 Mr. Dounel said by simply stating we -- whatever Mr. Dounel
12 said, that did not express the position of Wells Fargo Bank NA.

13 That would have done no violence whatsoever to their
14 claim of privilege under the Bank Secrecy Act, nor violated no
15 -- no other federal laws. They didn't do that. They didn't do
16 that. There is no evidence that they did that. And if, in
17 fact, they wish to -- if, in fact, they wish to not embrace
18 their agent's defamatory statements, they should have done that.
19 And, again, that would not have done violence to their claims of
20 privilege under either the Bank Secrecy Act or the Patriot Act.

21 Now, Your Honor, what I'd like to -- what I'd like for
22 the Court to go back and recall, and that is the arguments were
23 made to you by the bank concerning the discovery issue and the
24 resolution of the discovery issue. It came up before Your Honor
25 on a -- on a discovery dispute. And the ruling of the -- or the

1 recommendation of the discovery commissioner and the ruling of
2 the Court was that the bank cannot be compelled to disclose the
3 reasons for them closing the account.

4 And, in fact, Your Honor treated that and the
5 discovery commissioner treated that as a matter of privilege and
6 required a privilege law concerning whatever documents they had
7 in their position that they were claiming a privilege over. And
8 privilege law was, in fact, produced.

9 Your Honor, they can't be compelled, but neither were
10 they forced to elect to exercise their claimed privilege for not
11 releasing records, and they did claim that privilege. And as a
12 result of claiming that privilege, they are now faced with, in
13 fact, a case that they cannot defend because, one, they have no
14 evidence that could result in the successful defense of the
15 case, and, two, they chose their bed by claiming the privilege
16 and they must sleep in it.

17 Your Honor, to the extent necessary, we would ask that
18 the Court admit the amendment of the declaratory relief request
19 for relief to state that there was no evidence presented at
20 trial and there was not -- there was no evidence presented at
21 trial, that the accounts were closed as a result of any criminal
22 conduct by Ms. Johnson.

23 In short, Your Honor, the motion for -- for under NRCP
24 50(a) should be denied. Does Your Honor have any questions
25 concerning our position?

1 THE COURT: No, thank you.

2 MR. KISTLER: Oh, Your Honor, I'm sorry. One last
3 thing. Concerning the agency issue.

4 THE COURT: Right.

5 MR. KISTLER: Your Honor, the evidence is absolutely
6 crystal clear that there was no agency, no agency involved, much
7 less agency known to the bank. And, critically, Your Honor, you
8 will see no evidence whatsoever that Mr. Dounel thought he was
9 speaking to Ms. Johnson's agent at any time on October 6, 2011,
10 or thereafter.

11 So the initial factual predicate of I understood this
12 was her agent, I spoke to him as an agent, he looked like he had
13 the authority, none of that is present in this case. So it's an
14 interesting effort to try to generate a defense where no defense
15 exists, but there is no defense concerning agency here.

16 The evidence is absolutely crystal clear that Mr.
17 Kaplan went to the bank on his own accord on the -- on the early
18 afternoon of October 6, 2011. That he addressed Mr. Dounel on
19 his own accord as the primary owner of the joint account, that
20 Mr. Dounel in all respects treated him as it was his. And, in
21 fact, if you look at the deposition transcript on my direct
22 examination, you'll see that Mr. Dounel refers to discussing
23 his, Mr. Kaplan's account.

24 There is no claim by the individual that sadly did not
25 appear and makes my cross-examination before Your Honor that he

1 treated Mr. Kaplan as a de facto or thought that Mr. Kaplan was
2 a de facto agent of Ms. Kaplan at any point in time when the
3 defamatory statements were made. That being said, I'll sit
4 down.

5 THE COURT: Thank you.

6 Mr. Haire.

7 MR. HAIRE: Thank you, Your Honor. I don't -- the
8 Court is well aware that it is sitting as the trier of fact in
9 this case. Having said that, plaintiff's argument are relative
10 to 42.007 which requires express authorization or ratification.
11 It is essentially to suggest that silence is a way to derive
12 express ratification. Or stated slightly differently, that as
13 long as somebody -- as long as the employer either tacitly or by
14 implication or by not countering hearsay statements about what
15 transpired between one of its employees and one of its customers
16 at the Malibu branch is sufficient ratification for purposes of
17 abrogating the statute, I'll submit to you that that is a --
18 it's a stretch, Your Honor. I'll just leave it at that.

19 I would also add, while we're on the subject of
20 punitive damages, as the Court sitting as a trier of fact, we
21 would submit to the Court that there has been insufficient
22 evidence presented of Mr. Dounel's actual malice as required in
23 the 42.005. As to the declaratory relief that Mr. Kistler talks
24 about, to grant that relief, Your Honor, would be tantamount to
25 compelling Wells Fargo Bank to violate federal law, which this

1 Court has already recognized grants to financial institutions a
2 shield from -- from disclosing why or why an account was not
3 closed.

4 Lastly, on the issue of the third party -- the
5 publication to third person element of a claim for defamation,
6 we'd urge the Court to adopt the reasoning of the cases that are
7 cited in the brief. There's a host of them. The *Ning Yang*
8 case, the *30 River Court East Urban Renewal Company* case, the
9 *DelValle* case, the *Kirk Jewelers* case, the *Beck* case, *McDaniel*
10 *Crescent Motors* case, the *Mims versus Metropolitan Life*
11 *Insurance Company* case, which was actually mentioned in a Nevada
12 case, but the statement from the *Mims* case that is alluded to in
13 the Nevada case does not bear on the argument that I would urge
14 the Court to adopt or to accept.

15 Let me just tell you that I think what counsel is
16 doing here is he has interposed way more requirement than are
17 necessary for the Court to determine that Mr. Kaplan was an
18 agent of -- of Ms. Johnson at the time the alleged defamatory
19 statements were made. And to illustrate this, let me just place
20 on the record and make the Court aware of the *Mims* case, for
21 example, Fifth Circuit case.

22 In *Mims* the plaintiff was fired from his job. He
23 believed his firing related to his refusal to make a campaign
24 contribution to a candidate that a chain letter sent out by the
25 plaintiff's supervisor to all the workers encouraged them to do.

1 After he was fired, the plaintiff contacted a senator who was a
2 friend of his and asked him to look into the situation.

3 The court notes in its opinion, with the plaintiff's
4 knowledge and approval, the senator friend made an inquiry to
5 the president of the company employer. The president replied
6 that the plaintiff's firing had nothing to do with the campaign
7 contribution, rather plaintiff was fired because he was
8 inefficient and his performance was unsatisfactory. Plaintiff
9 sued his employer claiming the president's statements to the
10 senator friend were defamatory.

11 The court granted summary judgment, holding that the
12 senator acted at the plaintiff's request, with his approval, and
13 was, therefore, virtually the plaintiff's alter ego. The
14 employer's response was made through the senator through whom
15 the inquiry came. Because the senator was acting as the
16 plaintiff's alter ego, or perhaps to use the parlance of our
17 case, agency, the court held there was no publication of the
18 alleged defamatory material to a third person. In other words,
19 the senator did not qualify as a third person.

20 We urge the Court to adopt a similar reasoning in this
21 case and to ignore the machinations of the plaintiff in this
22 case seeking to impose all kinds of -- of he said -- he knew
23 this and needed to know that and had to know that. The *Mims*
24 case and the others, they don't address that. It's simply if
25 you -- if you have an agent make an inquiry on your behalf,

1 you're not a third person. It's as if the plaintiff himself is
2 sitting there and you can't defame the plaintiff, therefore, the
3 defamation claim should be dismissed in this case, as well.
4 Thank you, Your Honor.

5 THE COURT: Okay. Thanks. Well, at this point I am
6 going to deny the motion. I think the plaintiff has provided
7 sufficient information to at least go forward with her burden of
8 proof. And what's significant for me, page 51 of Mr. Dounel's
9 deposition where he specifically is asked can you tell me as you
10 sit here today that you are certain that you did not say that in
11 the meeting, "that" being that Ms. Johnson must have some type
12 of criminal background? His answer is sitting here today I can
13 tell you I believe that I would not say that about anyone.

14 He doesn't deny it. I don't know. Nobody is here to
15 tell me that it didn't happen. And the other legal issues, I
16 mean, I'll take a look at them. It's an interesting question
17 for me as to whether you can have defamation in a situation
18 where you have these joint owners of an account. There has been
19 some change in Nevada. The intra-corporate defamation cases are
20 interesting where up until about ten years ago or more they --
21 the Court -- they changed in the *Simpson* case, they adopted the
22 Restatement Second of Torts and said we're not necessarily
23 saying that you can't have defamation within the corporation.

24 You might be able to if you're required to look at
25 them under the restatement. I'll take a look at it. I mean,

1 for me, that -- that's a problem in the case. Mr. Kaplan was
2 the owner of the account, had the right to inquire about it
3 whether or not Ms. Johnson authorized him to do so. The
4 question is does that then privilege the communication as to the
5 way it's been made, for purposes of this motion we assume it's
6 been made, about some type of criminal background.

7 The other concern I have about the motion is the
8 argument that it wasn't a statement of fact because it was
9 couched to the terms of must, there must be something there. To
10 me, that isn't sufficient to make it not a statement of fact.
11 You know, it's kind of hard to state that in -- it's a double
12 negative.

13 But simply saying must to me doesn't take it over the
14 realm of a statement of fact. But I do think that there are --
15 there are a couple of questions that I have, and I'll take a
16 look at some of these cases that have been cited before we
17 finish up tomorrow, but at this point in time I'm not going to
18 dismiss the case.

19 Although, I do have a question about the declaratory
20 relief, I mean, we didn't really discuss that. Mr. Haire raised
21 that to the extent that Mr. Kistler has made an oral motion
22 because I think as pled the request is probably to compel Wells
23 Fargo Bank to tell why it alleged Ms. Johnson was -- had a
24 record of criminal activity or however it's termed, I think the
25 oral amendment was that there is no evidence that the bank

1 account was closed as a result of criminal conduct by Ms.
2 Johnson. So I don't know if that was -- if that's even
3 appropriate for declaratory relief.

4 It's a hard one, as I've -- as we've said before.
5 There's no -- that the Court can compel the bank to disclose
6 because certain information may have a privilege, so -- and they
7 don't have to disclose. So I guess that's a question, again,
8 another one of these double negatives.

9 If they have a privilege to not have to disclose
10 certain information by entering the declaration that's been
11 requested by the oral amendment, am I violating that privilege
12 and protection that they have, that there's no evidence -- well,
13 I guess the careful phrasing that Mr. Kistler used, if there's
14 no evidence presented at trial to establish that the bank
15 account was closed as a result of criminal activity. So we've
16 got that on the table. I'll take a look at it. Like I said,
17 I'm not sure how much I can -- how much I can do with any -- any
18 kind of declaration like that.

19 All right. So, Mr. Haire, do you have a witness?

20 MR. HAIRE: I do, Your Honor. Defendant calls Sue
21 Garvin. Now, Your Honor, before Ms. Garvin's testimony here, we
22 had a discussion yesterday before we broke about the account
23 agreement.

24 THE COURT: Right.

25 MR. HAIRE: You may recall that.

1 THE COURT: Uh-huh.

2 MR. HAIRE: And my intention is to lay the foundation
3 for that here. But Mr. Kistler did ask me what the scope of her
4 testimony would be and I want to be fair. I did tell him that
5 we were going to -- I was going to put her on for the purpose of
6 establishing a foundation for that. What I didn't tell him and
7 need to give him an opportunity, I feel like, to address is
8 you'll recall also that Mr. Kaplan testified yesterday that --
9 and I -- I alleged that we were all hearing it for the first
10 time, that somehow based upon his computer words to the effect
11 that, well, that's not what it shows here on my computer. You
12 may remember that testimony.

13 THE COURT: Uh-huh.

14 MR. HAIRE: I -- I would like to have Ms. Garvin
15 address questions related to that issue, but I won't without Mr.
16 Kistler first having an opportunity to -- to be heard on that,
17 if at all, only because I didn't tell him that before.

18 MR. KISTLER: Your Honor, this -- this witness is not
19 listed on the -- the pretrial memo as being a testifying
20 witness. I agreed with Mr. Haire that if the witness had
21 relevant information to discuss concerning Exhibit 36 I would
22 permit that, but apparently now they want to go well beyond
23 that.

24 So and this other topic about what's on a computer
25 screen in October 2011, this witness was never identified at any

1 point in time. To be clear on who the witness was identified in
2 16.1 identifications, but was not listed as a witness at trial.
3 So I have no objection to her testifying concerning whatever she
4 -- the foundation for Exhibit 36, but I would object to her
5 testimony in all other respects.

6 THE COURT: Okay. All right. I'll allow it.

7 MR. HAIRE: Thank you, Your Honor.

8 SUSAN GARVIN, DEFENSE WITNESS, SWORN

9 THE CLERK: Please be seated and state and spell your
10 name for the record.

11 THE WITNESS: Susan Garvin; S-U-S-A-N G-A-R-V, as in
12 Victor, I-N.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. HAIRE:

16 Q Ms. Garvin, you work for Wells Fargo Bank; correct?

17 A Yes.

18 Q What's your job with Wells Fargo?

19 A Market support consultant.

20 Q What does that -- what does that mean? What do you
21 do?

22 A A lot of people ask that. I actually -- Southern
23 Nevada is divided into seven districts. I have one district
24 that consists of 11 branches with Wells Fargo. And I go out and
25 I support them, I'll make sure they're ready for their audits, I

1 give them training, I'll let them know any fraud scams that are
2 going on. Anything they need help with, they call me.

3 Q All right... Do you supervise people?

4 A No.

5 Q All right. How long have you been with Wells Fargo
6 Bank?

7 A 19 years.

8 Q And in that 19 years have you always been the person
9 or possessed the title that you just described for us?

10 A No.

11 Q What have you done with Wells Fargo Bank?

12 A I've been a teller, a lead teller, a service manager,
13 and now this current position.

14 Q Are you familiar with Wells Fargo Bank's procedures
15 for opening new consumer accounts in 2004?

16 A Yes.

17 Q How is it that you're familiar with those procedures?

18 A I was part of the support that I do now. I work with
19 the personal bankers, make sure they're following the correct
20 procedures to open the account, so I know what the procedures
21 are that they need to follow.

22 Q Have you personally assisted customers at Wells Fargo
23 Bank with opening consumer accounts?

24 A I was before this position, yes.

25 Q Ms. Garvin, tell us what the procedure is.

1 A You need the customer, obviously, in front of you.

2 MR. KISTLER: I'm going to object to the question as
3 far as time frame. Are we talking about 2004?

4 THE COURT: Yes. That was my understanding.

5 MR. HAIRE: That's my understanding, as well. It's
6 appropriate for him to make that comment.

7 BY MR. HAIRE:

8 Q We're talking about in -- well, let me ask you this
9 question. Have the procedures changed between 2004 and now?

10 A No.

11 Q All right. Go ahead and tell us --

12 MR. KISTLER: Your Honor, I -- with the Court's
13 indulgence, I'm standing here because I'm having a difficult
14 time at counsel's table hearing the witness. I thought I would
15 move up in the courtroom if that's okay.

16 THE COURT: Okay.

17 BY MR. HAIRE:

18 Q I think I asked the question. Tell us what the
19 procedure is.

20 A The procedure is the customer is obviously in front of
21 you. You require two forms of identification. The banker will
22 at that time profile if it's a new customer, new to the bank.
23 They ask a lot of questions so they can profile them and set
24 them up on the computer. If it's an existing customer they can
25 pull up their information on the computer and use that

1 information to set up new accounts for them. Once they've done
2 all of that, they are required to sign the new account
3 application. And then before they leave they are given usually
4 temporary checks or withdrawal slips, depending on the type of
5 account that's open, and they are also given disclosures, which
6 would be the account agreements.

7 Q And so is it required within Wells Fargo Bank that
8 every new account customer get a copy of the account agreement?

9 A Yes, it's actually a federal regulation. We have to
10 do it. We have to be in compliance, so we have to give that to
11 every customer and every new account that's opened.

12 Q All right. Ms. Garvin, turn with me to Exhibit -- now
13 I forgot the number -- 34.

14 A In the big binder?

15 Q 34. This is an exhibit that has already been
16 admitted.

17 A Okay. Based upon your testimony thus far, is it your
18 opinion that Michael Kaplan received a copy of Exhibit 24 in
19 2004 ---

20 THE COURT: --

21 BY MR. HAIRE:

22 Q -- when he opened the --

23 MR. HAIRE: Huh?

24 THE COURT: 34.

25 MR. HAIRE: Did I say 24? 34. Thank you, Your Honor.

1 It's getting late.

2 BY MR. HAIRE:

3 Q 34. Let me just restate the question. Is it your
4 opinion that Mr. Kaplan requested a copy of Exhibit 24 in -- 34
5 in -- in the year 2004 when he opened the joint account that has
6 been discussed throughout this trial?

7 MR. KISTLER: I'm going to object to the question.
8 It's an improper question. Your Honor, if the question would be
9 did our procedures require us to give a copy of Exhibit 34 to
10 Mr. Kaplan as a new account holder, I would withdraw my
11 question. The question is not that, though. The question is so
12 is it your opinion that Mr. Kaplan actually received this.

13 There is no evidence whatsoever that this -- that Ms.
14 Garvin was the individual that went through the procedures with
15 Mr. Kaplan, that she took the account application statement,
16 that she distributed whatever she says the procedures were a
17 required to distribute. She can certainly say that he should
18 have been given a copy, but opining that he received a copy is
19 improper and I object to the question.

20 MR. HAIRE: And, Your Honor, that's a valid objection.

21 THE COURT: Yes. Okay.

22 MR. HAIRE: I'll withdraw the question.

23 THE COURT: All right.

24 BY MR. HAIRE:

25 Q Ms. Garvin, is the account agreement evidenced by

1 Exhibit 34 consistent with the account agreements that would
2 have been provided to customers at Wells Fargo Bank when they
3 open new accounts in 2004?

4 A Yes.

5 Q All right. And how do we -- is there something about
6 that exhibit that tells you that that would have been what was
7 in effect in 2004?

8 A I don't understand what you mean.

9 Q Well, let me just point out that the first page of
10 that consumer agreement has a date at the top, effective April
11 1, 2003. What is the purpose of that?

12 A That states the -- the date that these particular --
13 this particular disclosure went into effect.

14 Q Was it -- are you -- are you aware of any changes in
15 the consumer account agreement between the effective date of
16 April 1, 2003, and the year 2004?

17 A No.

18 Q If a bank customer was added to an already existing
19 account, would that added customer in the course and habit of
20 the bank receive a consumer account agreement?

21 A Yes.

22 Q And why is that?

23 A It's required. Any time there's any signers added to
24 the account, anytime anybody opens an account, whether they're
25 an existing customer or not, every single time an account is

1 open or there is a signer, they are given one of these.

2 Q All right. Ms. Garvin, turn to Exhibit 2, if you
3 would, please. Specifically, the second page of Exhibit 2,
4 which is Bates No. WFB2. Are you familiar with the consumer
5 account application evidenced not this one in particular, but
6 these types of applications?

7 A Yes.

8 Q According to your review of Exhibit 2, what is Lisa
9 Johnson's relationship to the account?

10 A She is a joint owner on the account.

11 Q How do you know that?

12 A It states on there that she -- on the -- where the
13 names are typed at the top next to the right where it says new
14 relationship, it says that Michael is the primary joint owner
15 and she is the secondary joint owner.

16 Q Is there something else that could be placed there
17 relative to Ms. Johnson? Could she be something else?

18 A No.

19 Q Let's turn now to Exhibits 13 and 14. These have been
20 admitted, as well. These are purportedly Mr. Dounel's business
21 cards. Now, do these Exhibits 13 and 14 look like Wells Fargo
22 business cards --

23 A Yes.

24 Q -- to you? All right. Any reason to think that these
25 are not Mr. Dounel's business cards?

1 A No.

2 Q The title Mr. Dounel possesses in Exhibit 13 purports
3 to be, quote, premier banker, close quote. Do you know what a
4 premier banker is?

5 A They deal with high value customers within the store
6 itself, the retail part of it. So that's basically what they
7 do. They deal with high value customers.

8 Q Is a premier banker considered management within Wells
9 Fargo Bank?

10 A No.

11 Q Exhibit 14 suggests that Mr. Dounel has or had another
12 title.

13 A Yes.

14 Q It states there brokerage associate. Do you know what
15 a brokerage associate at Wells Fargo is or does?

16 A That's when they deal with the customers about
17 investments and stock purchases, things like that. They have to
18 be licensed in order to do that.

19 Q Is brokerage associate, is that a title that suggests
20 Mr. Dounel was management of Wells Fargo Bank?

21 A No.

22 Q In either of his capacities as demonstrated in these
23 business cards, would Mr. Dounel have access to customer account
24 information that was contained on Wells Fargo's computer system?

25 A Yes.

1 Q Like what? What would he have access to?

2 A He can pull up a customer's profile, see what accounts
3 they've had, have currently or have had in the past, whether
4 they're open or closed, how long they've been open, their
5 balances.

6 Q You said he could -- a person in his position would be
7 able to note that the account was closed; correct?

8 A Yes.

9 Q Would he have access -- or would the computer system
10 that he could access indicate why the account was closed?

11 A No.

12 Q And why? Is there a reason for that to your
13 knowledge?

14 A I just know that it's not on there.

15 Q Okay.

16 A We just don't have -- I don't even have access. If I
17 were to pull it up on that system, same thing, it would just
18 tell me it was closed, but would not give me a reason why.

19 Q All right. Thank you. That's all the questions I
20 have.

21 THE COURT: Thank you.

22 Mr. Kistler.

23 CROSS-EXAMINATION

24 BY MR. KISTLER:

25 Q Ms. Garvin, as I understand your testimony, your

1 testimony is that Exhibit 36, this multi-page document, was
2 required pursuant to Wells Fargo Bank procedures in 2004 to be
3 given to each new customer of the bank.

4 A Correct.

5 Q If a new account was opened, if someone was added to
6 an account as an addition signer, that that document pursuant to
7 Wells Fargo Bank's procedure should have been given?

8 A Yes.

9 Q Okay. And you don't know as you sit here today
10 whether or not that was actually done on this account?

11 A I don't know.

12 Q The one relevant -- you don't know?

13 A No, because I wasn't there.

14 Q So I take it that -- I take it that all members of the
15 community, myself, the law clerk, Her Honor, should have
16 expected at the time that they open a Wells Fargo if they did
17 have one, that they would receive this big fat document at that
18 time; is that right?

19 A Yeah, it's actually not a big fat document. It's --
20 it's the size of a brochure about this big and it's about this
21 thick. So it's not a big fat document like this.

22 Q Okay. So you're saying that the font size is much
23 smaller than --

24 A It's --

25 Q -- that given in Exhibit 36?

1 A It could be maybe a little bit smaller, yes.

2 Q Okay. And so -- and the --

3 MR. KOVAL: 34.

4 BY MR. KISTLER:

5 Q 34, I'm sorry. Exhibit --

6 A Yeah, I knew which one.

7 Q We're talking about 34.

8 A Yeah, I knew which one you were talking about.

9 Q Okay.

10 MR. HAIRE: I feel vindicated.

11 BY MR. KISTLER:

12 Q And so they -- you're saying the big fat thick

13 document given by Exhibit 34 is not quite as fat and not quite

14 as thick --

15 A No, it's

16 Q -- as the actual version that is supposed to be

17 distributed to customers?

18 A It's about the size of a brochure. Like I said, what

19 a brochure would be, and it's however many pages it says in

20 here. So it's not a huge thick document like this.

21 Q Okay. But you don't know if Mr. Kaplan received one

22 of these when the account was open?

23 A I wouldn't know.

24 Q And you don't know whether or not Ms. Johnson received

25 one at the time the account was opened?

1 A I wouldn't know that, either.

2 Q And I'm sure that in your experience in your job at
3 Wells Fargo you have had occasions where you became aware that
4 this document was not given to a new account owner or a new
5 account signer or someone like that; right?

6 A I have --

7 Q You've had those experiences?

8 A I have not personally, no.

9 MR. KISTLER: Court's indulgence, Your Honor.

10 BY MR. KISTLER:

11 Q Ma'am, there was evidence -- well, you presented
12 evidence, you presented testimony concerning Mr. Dounel's, based
13 on job title, whether or not he was a member of management at
14 Wells Fargo Bank. Do you recall that testimony?

15 A Yes.

16 Q Are you familiar with an individual by the name of
17 Kirk Clausen?

18 A Yes.

19 Q And Kirk Clausen, as of October 17, 2011, was the
20 Nevada Regional President of Wells Fargo Bank; is that right?

21 A Yes.

22 Q Is Mr. Clausen a member of management of Wells Fargo
23 Bank?

24 A Yes.

25 Q Also, are you familiar with an individual by the name

1 of Kate Wright?

2 A Yes.

3 Q Kate Wright is identified in Exhibit 19 as the Vice
4 President of Western Mountain -- I'm sorry, Vice President
5 Western Mountain District Manager of Wells Fargo Bank. Is Ms.
6 Wright -- that's Ms.; isn't it?

7 A Yes.

8 Q Is Ms. Wright a member, at that time, October 26,
9 2011, a member of management of Wells Fargo Bank?

10 A Yes.

11 Q There's a gentleman that's referenced in an email
12 communication conversation with Mr. Kaplan in Exhibit 24, a Mr.
13 Chad W. Maze. Do you know who Mr. Maze is?

14 A No, I don't.

15 Q Mr. Maze is identified as Vice President Wells Fargo
16 Private Bank on WFB0467. You don't have to -- you can confirm
17 that if you want to, but I'll state that for the record. Now,
18 would the Vice President of the Wells Fargo Private Bank be a
19 management employee of Wells Fargo Bank on or about December
20 2011?

21 A Yes.

22 Q Do you know an individual by the name of Jennifer
23 Scafe?

24 A No.

25 Q S-C-A-F-E?

1 A No.

2 Q Okay. She's identified in Exhibit 25 as Senior
3 Counsel at Wells Fargo Law Department. You don't know her?

4 A I don't.

5 Q In your opinion would the Senior Counsel at Wells
6 Fargo Law Department be a member of management at Wells Fargo
7 Bank?

8 A I would say now.

9 Q You would think that they advise management of Wells
10 Fargo Bank; is that right?

11 A Yes.

12 Q So the Senior Counsel, would you -- would characterize
13 the Senior Counsel at Wells Fargo Law Department as of December
14 2011 as being an executive of the bank?

15 A I wouldn't know how to classify them.

16 Q Okay. But certainly someone, if not management, would
17 be an advisor to management; is that correct?

18 A Yes.

19 Q Ma'am, have you ever been to the Malibu branch of
20 Wells Fargo Bank?

21 A No.

22 Q Never in your life?

23 A Never.

24 Q Do you know how it's set up?

25 A No.

1 Q Do you know what computers -- what computers they have
2 available for the people that work there?

3 A I am going to say they would be the exact same
4 computers that we have in the stores here. They're the same
5 across the country.

6 Q Okay. But you've never been there to make that
7 determination?

8 A No, but I know it.

9 Q Okay. What level computer did Mr. Dounel -- are there
10 different levels of access of computers? And, again, just so
11 the record is clear, I'm referring your attention to the period
12 of time October 2011.

13 A Within the store itself, no. Tellers, bankers, store
14 managers, they would all have the same access.

15 Q Okay. As you sit here today, you don't know what Mr.
16 Dounel looked at on his computer screen when he was involved in
17 a conversation with Mr. Kaplan on October 6, 2011?

18 A I don't know what he was specifically looking at, no,
19 but I know what he could be looking at.

20 Q Have you ever talked with Mr. Dounel?

21 A No.

22 Q Have you ever met Mr. Dounel?

23 A No.

24 Q It was clear, was it not, that on the early afternoon
25 hours of October 6, 2011, Mr. Dounel was acting within the scope

1 and course of his employment with Wells Fargo when he had the
2 meeting with Mr. Kaplan?

3 A Yes.

4 Q That's true, isn't it?

5 A Yes.

6 Q That's really undisputed, isn't it?

7 A Correct.

8 Q And I -- I apologize. I didn't hear your -- your job
9 title, ma'am.

10 A Market Support Consultant.

11 Q Okay. And would you deem that you yourself are a
12 member of management of Wells Fargo?

13 A No.

14 MR. KISTLER: I have no further questions.

15 THE COURT: Thank you.

16 Mr. Haire?

17 MR. HAIRE: No, redirect.

18 MR. KISTLER: Ms. Garvin, I appreciate your attention,
19 ma'am. Thank you.

20 THE WITNESS: Uh-huh.

21 THE COURT: Okay. Ms. Garvin, you may step down.

22 Any further witnesses, Mr. Haire?

23 MR. HAIRE: The defendant has no further witnesses,
24 Your Honor. However, out of an abundance of caution that only
25 lawyers can ever exercise, Mr. Dounel's deposition has been

1 admitted as an exhibit; correct?

2 THE COURT: I think that that was a discussion that we
3 were having was what's the most appropriate way to make sure
4 that it's in the record. I -- it has an exhibit number as a --
5 I guess for purposes of identification it had the exhibit
6 number. And my question is --

7 MR. HAIRE: Is it part of the record?

8 THE COURT: Yeah. And so that was what my question
9 was how -- how best to make it part of the record. I think the
10 easiest thing is to just admit it as an exhibit if we're not
11 going to be reading in those portions, you know, under the
12 federal system of you mark certain lines. So we'll just admit
13 the whole thing inclusive of exhibits as it's been attached.

14 Do you have the original?

15 THE CLERK: No.

16 THE COURT: So we've got a copy, so I'm assuming that
17 the copy that's here as the Proposed Exhibit --

18 MR. KISTLER: Your Honor, I believe that you have the
19 original.

20 MR. HAIRE: That's the reason I asked whether --

21 THE COURT: -- 26.

22 MR. HAIRE: -- we should substitute --

23 THE COURT: Proposed Exhibit 26.

24 THE CLERK: Well, the only other was Michael Kaplan.
25 I have Lisa Johnson's and Michael Kaplan's.

1 MR. KISTLER: Oh.

2 THE COURT: Okay.

3 MR. HAIRE: The court reporter's cover letter, Your
4 Honor. It says this is the original transcript. I think it's
5 the preference of the parties that the original be made part of
6 the record.

7 THE COURT: Okay.

8 MR. KISTLER: And it's -- it's the sealed version,
9 Your Honor.

10 THE COURT: All right. For purposes of the record
11 we'll go ahead we'll publish it and admit it as an actual
12 exhibit.

13 (Exhibit 26 admitted)

14 To serve purposes of, you know, clarity, other than
15 the exhibit, it's taken Thursday, October 25, 2012, and it
16 consists of 117 pages, inclusive of signature line, and has
17 attached as exhibits seven exhibits. Yeah, and then, again, for
18 the record, the original that has been provided to the Court for
19 publication is unsigned. I don't know if signature was waived
20 or if it was sent to them and they haven't returned it.
21 Sometimes they send back a signature page with corrections. I'm
22 not sure how this particular court reporter -- do I know this
23 court reporter? It was Mandy. Yeah, I know Mandy. I would
24 assume she would have sent in a copy with an original signature
25 page to sign and return. I think that's typically her practice.

1 MR. HAIRE: Unless it was waived on the record.

2 THE COURT: Yeah. If -- if they waived the signature.

3 MR. KISTLER: I don't think either party is objecting
4 to the deposition being considered by the Court in its present
5 form.

6 MR. HAIRE: That's a correct statement.

7 THE COURT: Prior to completion of the proceedings,
8 the reading and signing of the transcript by requested by the
9 witness or a party. I further certify that I am not -- so it
10 wasn't waived, but if neither party objects, then we'll accept
11 it as --

12 MR. KISTLER: Your Honor, we do have a forwarding
13 letter to Mr. Fitts of the original transcript notifying him of
14 the right to review it.

15 THE COURT: Yeah. Signature, read and sign or waive?
16 Mr. Fitts, you can send it to me and I'll send it to Mr. Dounel.
17 Page 116. So --

18 MR. KISTLER: I'm sorry, Your Honor. One second. I'm
19 sorry, Your Honor. What were you reading from?

20 THE COURT: Page 116, the reporter's question to Mr.
21 Fitts. And signature, read and sign or waive? Mr. Fitts, you
22 can send it to me and I'll send it to Mr. Dounel.

23 MR. KISTLER: Your Honor, this is Exhibit No. 25?

24 THE CLERK: The deposition?

25 MR. KISTLER: Yes, ma'am.

1 THE CLERK: 26.

2 MR. KISTLER: 26. Your Honor, I would offer what's
3 been marked, or what's not been marked, but I would offer it to
4 be marked, is Exhibit 26A, which the letter from the court
5 reporting office dated November 7, 2012. It addresses Steward
6 Fitts, advising Mr. Fitts of the availability of the original
7 certificate of witness of the transcript, any changes, etcetera,
8 etcetera, etcetera, etcetera, etcetera.

9 So the bank's counsel was notified of Mr. Dounel, the
10 bank's employee's right to receive this by counsel or through
11 counsel. And whether or not he availed himself or didn't,
12 clearly he had the opportunity.

13 THE COURT: Okay.

14 MR. KISTLER: So I would offer this as 26A.

15 THE COURT: All right. Thank you.

16 (Exhibit 26A admitted)

17 MR. KISTLER: That kind of clarifies the record.

18 THE COURT: All right. Yeah, just so it's clear that
19 an opportunity was provided, there was no objection, and we'll
20 take it with the original as if it were signed.

21 Okay. So at this point in time, Mr. Haire, anything
22 else? I think we had admitted 34, and I just think that -- I
23 don't think there was an objection to admitting it previously.
24 It was just a question Mr. Kistler was arguing over, you know,
25 what it was used for before. I think it is in. I think it was

1 admitted yesterday, so --

2 MR. HAIRE: Yeah, I think that's right.

3 THE COURT: Okay.

4 MR. HAIRE: It's a little irregular, but it works for
5 me.

6 THE COURT: Right. So we've got 34 in. We've got the
7 deposition in. Anything else?

8 MR. HAIRE: No, Your Honor.

9 THE COURT: The rest of the exhibits over here, 30 --
10 35 through 43 proposed exhibits. Any other exhibits that you
11 want to make sure are admitted?

12 MR. KISTLER: So the defendant -- defendant rests?

13 MR. HAIRE: Defendant rests.

14 THE COURT: Okay. So I was just making sure there's
15 nothing else that you wanted admitted, Mr. Haire.

16 MR. KISTLER: Your Honor, I would --

17 THE COURT: I asked Mr. Haire. I just want to make
18 sure there were -- there were none of these other exhibits that
19 were here, Exhibits 35 through 43?

20 MR. HAIRE: No, Your Honor.

21 THE COURT: Okay. Great. And the defendant rested.
22 Just confirming.

23 MR. KISTLER: Your Honor, I may have to take back just
24 in a small measure the lack of rebuttal. I think that given the
25 witness's testimony this afternoon, I may ask the Court to take

1 judicial notice of a file pleading in this case.

2 THE COURT: Uh-huh.

3 MR. KISTLER: I thought we had the file pleading here
4 with us. It was an exhibit attached to a -- the motion for
5 summary judgment filed by Mr. Haire or the reply. It was one of
6 the exhibits. We don't have that with us now, so with that
7 caveat I -- I'd like to --

8 THE COURT: The most recent motion for summary
9 judgment?

10 MR. KISTLER: It was either the motion or the reply,
11 Your Honor.

12 THE COURT: Okay.

13 MR. KISTLER: And so -- and I don't remember. It was
14 one of the exhibits. It wasn't a statement of the -- in the
15 document itself. But the point being, you know, I may -- what I
16 would like to do tomorrow morning is ask the Court to take
17 judicial notice of that pleading, and that would be all the
18 rebuttal that's -- that's -- that would be presented.

19 MR. HAIRE: I'm a little confused, Your Honor. I
20 don't know what's being requested judicial notice be taken of.
21 Is it --

22 MR. KISTLER: I'm not asking --

23 MR. HAIRE: -- an exhibit?

24 MR. KISTLER: -- the Court take -- I'm not asking the
25 Court to take judicial notice of anything at this moment. What

1 I'm saying is I'm not prepared to waive my rebuttal case because
2 I intend to look at and probably ask the Court to take judicial
3 notice of a document as part of my rebuttal case. And then I
4 will rest my rebuttal case. And I ask the Court's permission to
5 do that tomorrow afternoon before we argue the case.

6 MR. HAIRE: Again, Your Honor, I -- his rebuttal case
7 will be limited to -- to the defendant's case in chief.
8 Nevertheless --

9 MR. KISTLER: That's correct, Your Honor.

10 MR. HAIRE: -- it would be helpful to know what he's
11 talking about so that I would have -- I can use the opportunity
12 to find out what it is he's talking about and see if there will
13 be a reason.

14 MR. KISTLER: I'll be happy to, Your Honor. There was
15 an exhibit attached to either a motion for summary judgment that
16 Mr. Haire filed or his office filed or the reply on the motion
17 for summary judgment, I'm not really sure, an exhibit. There
18 was a bank exhibit.

19 It was a -- it was a bank interrogatory response or a
20 bank statement or bank pleading that contradicts the testimony
21 Your Honor heard today concerning the characterization, the
22 account that was given by Ms. Garvin. That's my recollection.
23 I'd like to confirm that and offer the Court for the
24 consideration of the document tomorrow as part of my rebuttal
25 case. If I determine that my memory is mistaken, then there

1 would be no rebuttal case.

2 MR. HAIRE: I was just seeing, Your Honor, if we could
3 help Mr. Kistler make that determination now so that all we have
4 to do is present closing arguments.

5 MR. KISTLER: We have the motion and reply, we just
6 don't have the exhibits.

7 MR. HAIRE: Oh.

8 MR. KISTLER: And it was one of the exhibits.

9 MR. HAIRE: I see.

10 MR. KISTLER: We have the motion and reply. We don't
11 have the exhibits that were attached to the motion --

12 THE COURT: Okay.

13 MR. KISTLER: -- and reply. And that's the problem.
14 It was -- it was an exhibit attached to either the motion or
15 reply.

16 MR. HAIRE: It was a discovery response though?

17 MR. KISTLER: By the bank.

18 MR. HAIRE: By the bank.

19 I'll leave it to the Court's discretion as to whether
20 you will allow the plaintiff to reopen their case for rebuttal
21 purposes.

22 MR. KISTLER: It's not reopening, Your Honor.

23 MR. HAIRE: Yeah, I know. It's a wrong choice of
24 terms, but to leave open its rebuttal case.

25 THE COURT: Okay. Exhibit 1 is the deposition.

1 Exhibit 2 is Ms. Johnson's second amended responses to
2 interrogatories. And you say this was a bank discovery
3 response? Here's Mr. Kaplan's deposition.

4 MR. KISTLER: My recollection is that it was a
5 response by the --

6 THE COURT: Okay. Here we go.

7 MR. KISTLER: -- bank, Your Honor.

8 THE COURT: No. 4 is discovery commissioner's report
9 and recommendation. No, that's not right.

10 MR. KISTLER: I'll find it, Your Honor. And if I --
11 if I don't, then I won't present it.

12 THE COURT: So that's --

13 MR. KISTLER: But it is a -- it was a bank -- it was a
14 bank pleading. It was either a discovery response or a
15 statement in the pleading itself.

16 THE COURT: Yeah, that was in the motion. So in the
17 reply -- yeah, there's -- there aren't any exhibits to the
18 reply. All right. Yeah, take a look and if you -- if you find
19 what you're looking for, the document to take judicial notice
20 of, I'm not sure, I'd have to see it. Okay. Anything else?

21 MR. HAIRE: No, Your Honor. Just to clarify, perhaps,
22 that we start at 1:30 tomorrow.

23 THE COURT: Correct. 1:30. All right. Anything
24 further, then, or are we in recess?

25 MR. KISTLER: In recess.

1 THE COURT: Okay. We will be in recess until 1:30.

2 Thank you.

3 (Proceedings adjourned at 4:19 p.m.)

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ATTEST: I HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY
TRANSCRIBED THE AUDIO/VIDEO PROCEEDINGS IN THE ABOVE-ENTITLED
CASE TO THE BEST OF MY ABILITY.



JULIE POTTER
TRANSCRIBER