THE COURT: -- by March 25th?

MR. MARKS: The objections?

MR. SMITH: Yeah.

THE COURT: The objections.

MR. SMITH: That will work.

THE COURT: So the objections, any objections from the defendant to portions of the deposition transcripts, the specific excerpts or any exhibits that haven't already been admitted into the record, that will be due on the 25th.

MR. SMITH: We'll probably file a -- if there's any issues of import, we'll probably file a brief pleading of some sort, before the day of the hearing --

THE COURT: In response to the objection.

MR. SMITH: -- and then we'll argue it at the hearing.

THE COURT: Okay. And then what I anticipate is, unless I need something additional from the real estate appraisers, setting some type of a time line for the submission of closing briefs and --

MR. MARKS: Will you entertain oral argument?

THE COURT: In terms of closing arguments, or as to those issues?

MR. MARKS: Closing argument.

MR. SMITH: Today?

MR. MARKS: No.

THE COURT: Later.

MR. MARKS: Do you want written or oral closing or --

THE COURT: I think my preference would be to get something in writing.

MR. SMITH: Yeah, that would be --

MR. MARKS: And you'll set the date --

THE COURT: Given these issues.

MR. MARKS: -- after April 6th?

THE COURT: I will, because I'm not sure -- the real estate issue is a little bit of a moving target, as much as I want to pin that down.

MR. MARKS: The only issue with us, Your Honor, is sometimes you get these briefs, and you really want to say something about the cases or analyze the cases. I think, depending on what happens, I -- will you at least consider oral closings on April -- not to be done April 6th, but in terms of that --

THE COURT: At a later time?

MR. MARKS: Yeah, at a later time.

THE COURT: Well, I'm not going to say -- I'm not going to close the door on it right now.

MR. MARKS: Okay.

THE COURT: I think my preference -- but just so both sides know, my preference is to get something in writing, given the issues that we're talking about, the voluminous documents. I am -- I'm toying with some type of page limitation.

MR. MARKS: Okay.

THE COURT: I feel it would be appropriate. But at the same time, I also don't have a problem with even if it's updated marital balance sheets. I think those type of attachments as exhibits, whether or not I need to lay out a protocol for that, I don't know -- I don't know that I need to do that --

MR. MARKS: Because if you have --

THE COURT: -- with everyone here.

MR. MARKS: -- oral argument, then, if you have questions or comments, we can respond; otherwise, it's just totally in writing.

MR. SMITH: Why don't we leave it in your discretion, Your Honor, that, after the writing, if you feel there's still a need for oral (indiscernible).

THE COURT: I can call you in. I can call you in, and that's fair. I'm -- Mr. Marks, I'm not going to close the door on that, but --

MR. MARKS: Okay. Thank you.

MR. SMITH: Your Honor, the only concern we have now is the concern that was raised in the pretrial motion, and that is: Between now and then, we'd like to, first of all, have our name added to those accounts; and secondly, divide up some amount of money, so that Mr. Kogod, if he wants to continue to support Ms. Khapsalis and the children, can do so from his money, and not from joint money that's --

MR. MARKS: Your Honor, we agree. What I'd like is you to do an absolute decree of divorce, subject to your -- and community property, subject to your decision. We would agree, maybe, 2 million a piece should be divided.

MR. SMITH: That has --

MR. MARKS: We can put her on any account, as long as it's understood that they each can give their money to whoever they want. They can't try to gain a tactical advantage, where his money goes to her, but her money goes as a POD.

MR. SMITH: This is a non-issue.

MR. MARKS: It was an issue --

MR. SMITH: Our position --

MR. MARKS: -- in the documents that we saw.

MR. SMITH: It is a non-issue.

MR. MARKS: Okay. Fine.

MR. SMITH: The -- in terms of the -- so $2 million

would be acceptable. We'll put $2 million in --

THE COURT: Meaning 2 million each?

MR. SMITH: Yeah.

THE COURT: Okay.

MR. SMITH: So the expenditures of any kind for the payment of the Oak Pass home or any expenditures for the benefit of the -- of Nadya --

THE COURT: That would come from --

MR. SMITH: -- will come from --

THE COURT: -- defendant's portion.

MR. MARKS: And then how do you want to handle Lake Las Vegas? That needs to be sold and split. Right now, it's coming out of joint funds.

MR. SMITH: Well, miss -- we're happy to have it sold and split, but it should paid from at least until the time of the entry of the decree from joint funds, the earnings. And then, after that time, the parties would be equally responsible for the cost of the home.

THE COURT: Okay.

MR. MARKS: Hold on. But we should get -- in other words, you can say an absolute decree of divorce, everybody's money goes to themselves, you keep the accounts that are here joint. The delay shouldn't enure to the plaintiff's benefit, versus the defendant.

MR. SMITH: This -- we're actually saying the same thing. The delay will be the -- any benefit would be mitigated by the fact that they'll have their own money. But the entry of the decree is the date at which the parties' community estate ends. So they use their own money to handle their own expenses in the meantime, and then the community -- the funds from the earnings continue to be deposited into the account, until such time as the community is severed.

MR. MARKS: Your Honor, he should be able to have his own money with his earnings. He would pay the Lake Las Vegas to maintain that, until it's sold. But the delay just shouldn't be that it -- that his paycheck is in the 6446, just indefinitely. It should be today is the legitimate cutoff, knowing we're not dividing everything, but the community property should end, subject to your decision because we agree on 99 percent. All of this is over the disputed waste.

THE COURT: Well, listen --

MR. MARKS: Everything else --

THE COURT: -- I view -- notwithstanding there are some loose ends, I view February 26th, 2016 -- although I understand procedurally -- and that's going to be this Court issuing the decree of divorce --

MR. SMITH: Yes.

THE COURT: -- which is going to take some time for

me to prepare.

MR. MARKS: But we're asking a cutoff date --

THE COURT: I'm using -- I'm looking at today as the line of demarcation for me, in terms of valuation issues, because this is truly the end of evidence, but for the real estate issues. I'm not going to receive any additional evidence.

MR. MARKS: What about moving to divide everything, because we are so close to everything --

THE COURT: No.

MR. MARKS: -- subject to the disputed --

THE COURT: I'm going to leave that up to you, but I'm going ahead with the $2 million a piece.

MR. MARKS: Okay.

THE COURT: I think it make some sense --

MR. MARKS: (Indiscernible)

THE COURT: -- perhaps to go --

MR. MARKS: His paycheck can go into his account, but he'll pay the Las Vegas expenses, most to sell that, you know, reasonably expeditiously because community property should end here.

THE COURT: Well, is there any objection to putting the house on the market?

MR. MARKS: No, it's on.

MR. SMITH: None.

MS. VARSHAY: No.

MR. SMITH: But Ms. Kogod is going to need a little bit of time to relocate to the new residence.

THE COURT: Understood. But we'll go ahead -- that -- it sounds like there's a stipulation to sell, though.

MR. MARKS: But community property should end today.

THE COURT: Well, I -- like I said, I look at today as the --

MR. MARKS: Okay.

THE COURT: -- line of --

MR. MARKS: So my client's --

THE COURT: -- demarcation.

MR. MARKS: -- paycheck is his paycheck.

MR. SMITH: My only question, Your Honor --

THE COURT: Future, yes.

MR. MARKS: Right.

MR. SMITH: -- we would ask that any considerations contained in the decree be retroactive to the time of today.

THE COURT: In terms of -- I'm not sure I follow.

MR. SMITH: Support.

THE COURT: Oh, it would, it would.

MR. SMITH: Yes, right. Very good.

THE COURT: It would because I -- basically, I'm

treating that as the defendant's separate property. So you're right, any -- it would necessary go back to today's date.

MR. SMITH: Thank you, Your Honor.

THE COURT: Okay? All right. Thank you for your appearances.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: Your Honor, will you divorce them subject to your decision? In other words, can we get a decree of divorce, subject --

THE COURT: Well, I don't know that I need -- I'm certainly happy to pronounce the --

MR. MARKS: Yeah, can you pronounce --

THE COURT: If the parties want. But the understanding, I think both sides know, legally, until I sign that written decree that I'm going to prepare and it's filed, it's not official.

MR. MARKS: But can you --

MR. SMITH: We understand, Your Honor.

THE COURT: So I find --

MR. SMITH: I'll try to refrain from telling our client to go out and get married ago.

THE COURT: Well, so I find that, based on the testimony that's been offered, there is a basis to grant the parties a divorce on the grounds of incompatibility;

therefore, an absolute decree of divorce is granted, restoring the parties to the status of single, unmarried individuals, with the plaintiff, henceforth, known by the last name of Cioffi.

But as I tell every party, when I -- after I recite those words, you're not officially divorced until the written decree is signed by me and filed with the Clerk of the Court. So, even though I've pronounced you divorce, it's not official until the paperwork is completed. And unfortunately, that's still going to be a little bit of time; hopefully, not much time, but we're at the end of the road, so --

MR. SMITH: Thank you, Your Honor.

THE COURT: All right. Thank you.

(THE PROCEEDINGS CONCLUDED AT 16:48:28)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano

healthy is not a bad idea. I don't know if that's all of Equinox or if it's my share of Equinox because I think Nadya's is in her categories.

The idea that I can't -- Gabriel goes to the gym; she has a membership that I paid for since we lived in California, at 24 Hour Fitness. I continue to pay for it. So the idea that I can't go to a gym that has better hours, is closer to my home -- it's literally in walking distance of my home, Equinox. I can walk there. The idea that I shouldn't be able to have one, I -- I don't quite understand.

Q They have insurance, 126,269. Did you look at the backup to that?

A No, I've not had a chance to look at the backup to that, but it goes all the way back. And up until this day, I have paid Chubb Insurance, which I think has been the primary insurance company for Lake Las Vegas. A period of time that I paid State Farm, which was the insurance carrier for the cars in Lake Las Vegas. I don't know up until what point, but I'm --

Q And you --

A And even on my own, protecting assets, as Richard said, you know, given the price of these homes and the cars, of course you want good insurance on them; it would be silly not to.

Q Do you believe that's waste, having insurance?

A No. I think it's a smart investment.

Q Okay. And I think meals and entertainment, they're saying 201,000 over eight years is community waste. Do you agree with that?

A Not at all.

Q Did you look at their backup for meals and entertainment?

A No, I haven't seen any.

Q How much is 201,000 over eight years?

A Oh, my goodness. What is it, $25,000 a year. So it's $2,000 a month.

Q Do you believe that's excessive, based on your lifestyle?

A Not at all, and remarkably consistent with Gabrielle's $1,500 a month.

Q And who do you normally take out?

A Business colleagues, friends, my parents; Nadya and the kids, obviously, at time, but a variety of people.

Q All right. I think, on the insurance -- well, before I get to insurance, did you -- under "Lodging," do you see the amount they have for lodging? And that's Item 75. And did you go back and -- and I think it's Exhibit 60 and 61 -- to look at the lodging?

A I did, and I noticed that there are a lot of trips on there to Singapore and dates -- first of all, no one -- I've never taken anyone to Asia. Again, I think Nadya went to Germany and to Kazakhstan, which I didn't go to. There were trips to Amsterdam, there were trips to Singapore. There are a lot of domestic trips to Texas, New York, places I absolutely can tell you were business-related.

And then there were some times when Nadya and I did go somewhere together; to Las Vegas, to Palm Springs for meetings, where I took two rooms, one for the nanny and the girls. And since I was there on work, I, legitimately, expensed my room because I would have had to be there, anyway. But everything was put in this bucket, with no consideration for business or business reimbursement or just the ability to take a couple of days, and go away for a few days.

Q Did they give -- in terms of your travel, do you get checks back from your -- the travel agency, Concur?

A Yes, we use Concur as our system.

Q And did they -- in looking at their -- at the chart, their backup, did they credit you all the checks that came back?

A Yeah. Given that I don't have the number for Concur -- I tried to get it during the lunch break -- I can't opine on the number that they put out there this morning.

Q But did they credit -- when you look at Exhibit 60 and 61 --

A I understand --

Q -- that's their backup.

A -- the question now. There is no reconciliation at all for being reimbursed for any of these expenses from my company.

Q And if you look at Exhibit 60 and 61, for instance, they have Chubb. Who's -- what has -- this is Chubb insurance.

A Chubb is an insurance for homeowners.

Q And what house was it?

A It was -- I know it's been Lake Las Vegas for a period of time; and at some point, we also insured -- or I insured Oak Pass with Chubb because of the value of the home.

Q They also have -- they've listed, if you look at Number 67 through Number 73, all those loans. Do you see -- do you recall all those community loans?

A I do. Washington Mutual, which is ironic, 45,980.60 for two years in a row. They went out of business in early 2008. The last time we used Washington Mutual was when we lived in Coto de Caza. It was the first bank loan we took out (indiscernible) parkway. When we moved to Lake Las Vegas in 2003, we switched our business to Bank of America. So I don't

even know what it is. I mean, I know they went out of business many years ago, and I know we have used those once in our lifetime, just once, when we bought our first house in Coto de Caza. We got private financing when we bought the second home in -- in Coto de Caza.

Q When you look at loan payment, for instance, B of A, if you took out a loan with B of A, would that have been community waste?

A It all rolls up into the real estate, which I'm taking credit for.

Q So do you believe any of those payments, from 67 to 73, should be community waste?

A Without any backup on things like Chase, where I look at 4,000 and I have no idea what it is, and the twelve or 13,000 for Wells Fargo, which I don't know what it is. But certainly, the ones associated with the house, I -- I, unequivocally, say they're not waste. They're all reflected in the value of the real estate.

Q And on 64, they have legal fees not related to the divorce, I think. And they -- they're saying 38,597. Did you hire lawyers regarding your real estate and other transactions?

A I hired lawyers on our real estate, I hired lawyers to set up the trust, I hired real estate -- I hired lawyers to

look through real estate agreements. I hired lawyers to establish promissory notes to my parents and my brother. I -- I've used lawyers throughout my life, for the last 10 years.

Q And would those have benefitted the community, if it was relating to the real estate, because you're taking the real estate?

A I believe so, yes.

Q If you go to item -- Page 2, there was payments to individuals, you, for 46,000, on Item 84.

A I -- I don't know how to -- I don't know how to comment on that.

Q But anything to you would have not -- do you believe that payments to you would have been considered waste?

A No. On -- on the surface, I don't.

Q There's "need canceled check," 172,000. Do you believe that's waste?

A I'm in the same category. Without knowing what's in that, I -- I couldn't begin to opine.

Q They have property management, 8,000. Do you think that's waste?

A No, I don't. I think some -- some homes require some level of property management, so I don't.

Q They have shopping, 192,732, over eight years. What kind of shopping do you generally do?

A I buy a lot of clothes. I travel, I go through wear and tear on suits and shoes and luggage and raincoats and jackets. I mean, if you look at my lifestyle and the number of airplanes and the number of hotels; the number of climates, tropical, cold, et cetera, it a very reasonable number. If you look at 192,000, we're back to roughly $2,000 a month in kind of clothing.

Q Is that similar to what Gabby would spend?

A I'm not aware of her -- I think she was somewhere around $1,200 a month, if I recall her FDF.

MR. MARKS: Okay. Court's indulgence.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q If you go to 114, "Uncategorized," they're saying it's 55,224 for waste. Do you know what that is?

A I don't know how to even respond to "Uncategorized." I -- I couldn't even opine on what's in that category.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q On Number 31, "Cellular, AT&T."

A Yeah. Up until recently, I have paid Gabrielle's AT&T bill. I think she would tell you that, literally, in the last couple of months, she asked me to get the account out of my name and in her name, so she could take it on herself. I'm

sure there is some aspect, over the years, of Nadya being T-Mobile or AT&T. But since 2003, when we moved to -- to Lake Las Vegas, I've been paying her AT&T bill. And -- yeah, and that's cellular. Yes. Okay.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q If you go in -- I think it's Exhibit 60 -- well, first, they have payments to individuals on Item 82 of 65,839.

A Yeah.

Q And then I think it's in 61.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q In 61, there's a chart they've prepared, it's Page 100. If you start at -- if you'd go in 61, and look at Page 100.

A You know, the -- the ring is right through the numbers. All I see is 144. Am I looking at the right --

Q Yeah. It's 100 and 101 --

A Yeah, I know, I got that. But they've got the hole punched right through that, and all you see on every page --

Q So everything is in -- everything is in alphabetical order.

A Okay. So give me some reference --

Q So, for instance, there's a "Black Box,

Audio/Video." Would that be something for home?

A Yeah. Black box, audio/video was actually for a car.

Q There's, for instance -- there's --

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q On payments to individuals, if you look at Item 5267 --

A 5267?

Q On the left-hand side, there's a payment to Ken Heuer.

A I'm trying to go as fast as I can.

Q Fifteen -- sixty -- $400?

Q Three hundred.

A Yes.

Q Do you know what that was?

A Yeah. Sometimes, if some executives or a family member, either had a birth, and we didn't put it on the expense account, would call and say, so-and-so had a baby, I'm going to order something from me, would you like your name on the card, and I send a check, yes.

Q And then --

A Or pay in cash, when I see them the next time.

Q And then you see there's -- they're including

cleaning and cleaning service. Do you see that?

A Point me, please.

Q Under "Notes" to the right of (indiscernible).

A Okay.

Q There -- do you recognize any of these other individuals?

A Yeah, some of the names on here, I do. Robert Lewis, literally, when I wasn't home in Denver, because I wasn't there four days a week, would make sure there's some food in the refrigerator and my car got turned on once a week, so he just did little errands around the house when I wasn't there, picked me up at the airport when I came in. Some of these -- so there's a lot of "Robert Lewis" over a year-and-a-half period.

You know, Ronda Shelton works for DaVita. You know, Zelda Richardson, my ex-wife, I don't know why I ever wrote her a check. So I recognize, periodically, a couple of these.

Q Then, on the next page, 5314, there's a forty-thousand-dollar Federal Funds to somebody at Swift.

A So it's a capital call. You know, it was one of our mutual funds.

Q Then, under --

A I saw Swift a lot in there.

Q Under that is Federal Funds to Chase.

A What line item, please?

Q The next, it would be Item 5317.

A Yeah, I don't know what the fifteen -- just the Chase, I don't --

Q 5317.

A Yeah, but it says "To Lisa Urich." I don't know, Dan.

Q Okay.

A I couldn't tell you who Lisa Urich is.

Q All right. Without, I guess, blowing the rest of my remaining time by going line by line through Exhibit 60 and 61, do you believe that Exhibit 6 accurately reflects potential community waste?

A No, not at all.

Q And is Exhibit 6 part of your reasonable and regular business expenses or -- living expenses, as well as some business expenses, over the eight-year period?

A I think it is a very reasonable reflection of reasonable living, personal, business expenses over an eight-year period.

MR. MARKS: Okay. I want to move some exhibits in. Let's see if we can do that.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q You -- there was a comment made by Mr. Smith about the trade that happened this week.

A Yes. I'm anxious to explain that.

MR. MARKS: Your Honor, I'd like this marked next in order. Your Honor, would you like a copy of it?

THE COURT: Once it's admitted.

MR. MARKS: Okay. I'll leave it up here.

THE COURT: Okay.

THE WITNESS: Can I have a copy to walk you through? Because we're talking about the 250,000 SARs.

MR. MARKS: Well, do you want -- are you waiting for the original, or do you want to just move --

THE COURT: You can proceed with that.

THE WITNESS: We're talking about the 250,000 SARs that were traded --

THE COURT: What has this been marked as?

THE CLERK: It's 4-N.

(COUNSEL AND CLERK CONFER BRIEFLY)

THE COURT: 4-M and 4-N?

THE CLERK: Yeah.

THE COURT: Okay.

THE WITNESS: Can I walk you through the transaction?

BY MR. MARKS:

Q Sure. For the Form 4, for the United States Securities and Exchange Commission.

A At some point in my career, I was issued 250,000 stock options that had a vesting period between April 15th and May 15th of 2015. As I testified the other day, regretfully, at the time that they vested on the 15th of April and May of last year -- and they had been the same -- the stock was trading somewhere between 80 and $85 a share. We were in a blackout because we had knowledge of some government subpoenas coming as it related to Medicare Advantage. So, by the time my block blackout, as a Section 16 officer, ended, the stock had depressed to as low as, you know, 64 or 65, $66.

So what we ended up doing was deciding the stock was so deeply depressed, if I had traded it the first day that I could start trading again, which was last Monday, that the stock price was at $62 and change per share.

So here's the way to think about it. I had 250,000 options at a weighted price of $43.35 a share. So here's the way the calculation goes because you can't sell options, you can only trade shares. So you have to convert options to shares. So you take 250,000 options.

Q Okay.

A You take the difference between the price you sell that day; in this case, a weighted average of sixty -- $62.56.

Q Okay.

A Okay? And so you subtract 62.56 from 43.35, and you get roughly -- let's just say you get $19 a share.

Q Okay.

A You have $19 times 250,000 options, which is -- I don't know -- let's say roughly four and a half, $5 million.

Q Okay.

A Gross dollars.

Q Okay.

A You then say, the stock at that day was trading at $62 a share, you've got $5,000 worth of options, you divide it by 62.

Q Uh-huh.

A And then you come to a share number --

Q Uh-huh.

A -- because you can't trade options; you can only trade real shares.

So we had -- that day, when they made the trade, we had -- our gain was 76,766 gain shares.

Q What is "gain shares"?

A A real share, a real DaVita share.

Q Okay.

A But we owe taxes on this; you don't -- you don't get this -- you're taxed at the time of the transaction --

Q Okay.

A -- at my effective tax rate.

So what they ended up doing was selling enough of those 76,000 shares to cover the tax liability only. So they had to sell, at that price, 33,290 shares, to cover the tax liability. There was no escaping that, you got to pay the taxes.

Q Right.

A So, at the end of the day, we, in our portfolio, inherited 43,476 real shares of DaVita stock, valued that day at, roughly, $62 and change.

Now, to put it in perspective, because it's a moving target, was that a good investment, as opposed to selling it at a depressed time, and they were going to expire in another 30 to 45 days, totally off the table; and we're getting ready to enter another blackout because we're getting to the end-of-quarter earnings and earnings prep?

Q Okay.

A And I have some knowledge of -- so we're going to be in another blackout. So my window was two weeks. I had to require clearance from our general counsel, chief accounting officer, which I did. Then you have a seven-day window to trade, that's it; then you have to reapply.

So we ended up taking into the account 43,476

shares, valued that day at -- post -- this is after-tax gains of $2,716,000. To put it in perspective, was it a good decision? We bought the shares at $62 that day. Today, they're up about $66 a share. Now they could go back down; that is the market. But we would have left a ton of money if we took that narrow window we had, and traded, and just cashed the option out instead of buying shares. This was a good business decision.

Q So those shares are now in your UBS account.

A They're in our UBS account.

Q And you did this in consultation with Bob Galen. Is that right?

A Bob Galen only executes the trade. You get permission from your company to trade, which is required. I did that. The order then goes to Bob that says, Dennis has 250,000 shares. They convert options, they converted into shares. And they tell Bob that, Dennis, today, has 76,000 shares, and before we give you those, you got to pay the tax bill, so you -- so yes.

MR. MARKS: I move the admission of these two exhibits.

THE COURT: 4-M and 4-N, any objection?

MR. SMITH: No objection.

BY MR. MARKS:

Q And Mr. Smith keeps using a seven --

THE COURT: M and N are admitted.

MR. MARKS: Sorry, Your Honor.

(DEFENDANT'S EXHIBITS MMMM AND NNNN ADMITTED)

BY MR. MARKS:

Q Mr. Smith keeps using a seven-million-dollar figure. Do you know where he's getting that from?

A You know, I don't. And I think this is what's confusing for a lot of people that aren't in the corporate world, that aren't issued options. When options are typically reported, they will say, Dennis traded X, and it is the stock price that day, without any consideration to you don't own that share, you only own the strike price, the delta between the strike price and the -- the stock.

So I have no idea where the 7 million -- it was 9 million during his opening. I have no idea where that came from.

Q Okay.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q On Mr. Smith's chart, he has other options or potential monies that you'd be getting in the next potential year or two. I'd like to go through that, and just clarify that with the Court.

He has on his chart, I think, and LTIPs -- let me see where his chart is. Do we have our chart?

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q If you turn, Dennis to exhibit 4-F.

A In whose binder, Dan?

Q It would be in our binder; it would be in Binder 4.

A In F?

Q 4-F, as in Frank. All right. Do you have that? This is going to be the breakdown.

A No, I've got 2-H, I'm sorry.

THE COURT: 4-F.

THE WITNESS: I'm still looking.

BY MR. MARKS:

Q So it would be in Volume 4, which is probably the next -- no, Volume 4.

A Okay. All right. I've got 4-F.

Q Okay. Can you walk the Court through what this exhibit is, in terms of your -- what you have remaining, in terms of stock options and LTIPs.

First, do you want to explain what's the difference between a SAR, an RSU, and a PSU?

A Yeah. A SAR is an option; it's the exercise we just went through. You're granted -- SARs are another way of

saying options. You're granted X number of SARs the day the compensation committee awards them. Whatever the stock price is at the close of that day, that's your strike price.

Q Okay. And what's a "PSU"?

A Before I do that, let me do an RSU.

Q Okay.

A It's easier to transition. A restricted share that you're giving is, at the point it vests, you just own a share of DaVita stock. It's -- there's no -- there's no strike price. If you're given 5,000 RSUs, when they vest, if you're still there -- there is no pro rata -- if you're still there, you get 5,000 shares of DaVita stock.

Q And if you're not there, you get nothing.

A You get nothing.

Q Okay. And what's a "PSU"?

A Companies have gotten more sophisticated, and they've decided executives like myself that have benefitted from the overall stock price doing well, they've gone to what's a PSU, where they arbitrarily assign some very specific goals on your relevant business units, and they put targets around there.

So, in my case, my PSUs, which is a performance share unit, is based on the performance of Healthcare Partners California and Nevada, the markets I've been running, and

DaVita Healthcare Partners International. So they're -- they're almost like SARs, but rather than based on a strike price, they're based on an artificial financial objective that you have to achieve.

Q And what are cash LTIPs are part of the award, they're literally cash. You're given a target over a four-year LTIP. The measurement period is typically year three of that four-year LTIP. And if you hit your target, which is based on operating income or EBITDA or discretionary to the compensation committee, you know, if you hit it at a hundred percent, and your cash LTIP is a million dollars, you'd get a million dollars. If you hit it at 150 percent of target, you'd get a hundred and fifty. And typically, below 90, you just drop. So from 90 to 100, you might get some pro rata, but below a certain cutoff, you just get nothing.

Q Okay. So what do you have remaining, right now, for DaVita?

A I've got a share of some -- Kidney Care LTIP, I think, was issued to me in 2012 and '13, where half of it will vest on April 15th or 16th, maybe 17th, of 2016, half, and half will vest in the same time period in 2017.

Q Okay. And then what do you have left, in terms of RSUs, PSUs, and SARs?

A Yeah. I can't read the writing on here, again, it's

all blacked out. So is there a better -- is there a better sheet?

Q Well, I'll approach with -- we have --

MR. MARKS: Mr. Smith, you can double-check whether you believe these are correct. Mr. Smith handed me the RSUs, the PSUs, and the cash LTIPs.

THE WITNESS: Okay. Which one do you want me to -- so payable, we have 36,466 RSUs. I think there's two grantings: One for -- one for 12,000 -- or one for 22,000, and one for 14,000, so they must have been part of two different grants, that vest sometime in 2016, so they're real shares.

BY MR. MARKS:

Q Okay.

A I -- I have no idea where the 7 million, well, I don't want -- I don't want to deal with -- I can't deal with --

Q Okay.

A -- Number 9.

The SARs, currently unvested, are -- I've got 220,000 options that vest in '17 and '18. And if I'm not mistaken, they have a strike price, if I'm not mistaken, of somewhere around 59 to $60 a share. They were issued when the stock was trading higher. Beyond that, I honestly don't know.

Q Okay. All right.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q Is everything dependent on you actually being there on the day, the vesting day?

A Yeah. If you're not there for stock options or restricted or PSUs or LTIP, there's no pro rata distribution. It's all or nothing, be there on that day.

Same thing as annual bonuses. You know, if I quit -- if I got fired January 1st, and annual bonuses aren't paid until March or April, you have to be there at the time that they're awarded.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q Okay. Starting at -- we have Exhibit S, which is in Volume 2. I want to move some exhibits in now.

A I'm sorry. Yes?

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q Volume 2.

A Okay.

Q Okay. Is Exhibit S the B of A 6446 account?

A Yes.

MR. MARKS: Move the admission of Exhibit S.

THE COURT: Any objection to Exhibit S?

MR. SMITH: Now I -- Exhibit S. Is that your PCPD?

THE WITNESS: No.

MR. MARKS: No. That's the B of A account.

THE COURT: B of A account.

MR. SMITH: If it's -- it's from the B of A account.

UNIDENTIFIED: Exhibit S is the Bank of America ending 6446.

MR. SMITH: Yeah, that's fine.

UNIDENTIFIED: (Indiscernible)

MR. SMITH: No objection.

THE COURT: Exhibit S is admitted.

(DEFENDANT'S EXHIBIT S ADMITTED)

MR. MARKS: Exhibit T --

MR. SMITH: Your Honor, let me note that these things -- these account statements, and so forth, are all part of the exhibit that you had pending, based upon the review of the flash drive by Mr. Marks.

THE COURT: And part of 108?

UNIDENTIFIED: 108.

THE COURT: Was it 108?

MR. MARKS: The question is: Are you really going to be able to look at it that way? This way, we have the most recent statements.

THE COURT: Well, as long as I know that -- and let me get back to -- is there any objection to the admission of 108, having had a chance to review that? I know I was deferring that.

MR. MARKS: No, it's just cumulative. It's got tax returns, it just has a lot of stuff we've --

THE COURT: Okay.

MR. MARKS: -- already put out.

THE COURT: So Exhibit S and 108 are admitted.

(PLAINTIFF'S EXHIBIT 108 ADMITTED)

THE COURT: Is T a continuation of that information?

MR. MARKS: T is another B of A account.

THE COURT: Okay. Any objection?

MR. SMITH: No.

THE COURT: Exhibit T is admitted.

(DEFENDANT'S EXHIBIT T ADMITTED)

MR. MARKS: U is a Wells Fargo Dennis account. Do you have any objection to U?

MR. SMITH: No.

THE COURT: Any objection to U? Exhibit U?

(COUNSEL CONFER BRIEFLY)

THE COURT: Exhibit U?

(COUNSEL CONFER BRIEFLY)

MR. SMITH: I don't have objections to -- from U

through -- are you going to try and move the other ones in, as well?

MR. MARKS: Yeah.

MR. SMITH: U through 2-E. They're all account statements and so forth.

THE COURT: Okay. So Exhibit U through 2-E are admitted into the record.

(DEFENDANT'S EXHIBITS U THROUGH EE ADMITTED)

MR. MARKS: Then, Your Honor, we have our appraisals, real estate appraisals, starting at 2-F, which I don't know if they ever moved theirs in or what we're doing on that.

MR. SMITH: I thought we were waiting to the end of this to --

THE COURT: Yeah. Yeah, I'm going to be looking at another date to -- so we'll wait on both sides, in terms of the real estate appraisals.

MR. MARKS: Okay. Court's indulgence.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: Starting 2-L are more account statements.

THE COURT: 2-L. Is that he next binder, Counsel?

MR. MARKS: Yes.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: 2-L is another party UBS account.

THE COURT: Are you moving to --

MR. MARKS: Yes, I'm moving to put it in.

THE COURT: Exhibit 2-L, Counsel?

MR. SMITH: 2-L?

THE COURT: It looks like there may be more statements.

MR. SMITH: Yeah. Yeah. I mean, we have all the updated credit cards that are on the marital balance sheet.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: So, Your Honor, 2-M through 2-W could come in.

MR. SMITH: And let me just note for the record, I've looked on, basically, his copies, and he's represented these were all just updated account statements.

THE COURT: Understood. So 2-M through 2-W are admitted.

(DEFENDANT'S EXHIBITS MM THROUGH WW ADMITTED)

MR. MARKS: And are all the financial disclosure forms in?

MR. SMITH: Yes, they're already in.

MR. MARKS: Okay.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: The NEA documents start at Exhibit 3-S.

I don't know if they are in.

(COUNSEL CONFER BRIEFLY)

MR. SMITH: Yeah, that's fine.

MR. MARKS: So we would admit 3-S.

MR. SMITH: No objection to 3-S.

THE COURT: Exhibit 3-S is admitted into the record.

(DEFENDANT EXHIBIT SSS ADMITTED)

MR. MARKS: 3-T is NEA.

MR. SMITH: No objection to 3-T.

THE COURT: Exhibit 3-T is admitted.

(DEFENDANT'S EXHIBIT TTT ADMITTED)

(COUNSEL CONFER BRIEFLY)

MR. MARKS: 3-W is the explanation of what Dennis just testified; it came from DaVita.

MR. SMITH: I have no objection to 3-W.

MR. MARKS: This is the DaVita cash performance award.

(COUNSEL CONFER BRIEFLY)

THE COURT: Any objection?

MR. SMITH: No objection.

THE COURT: 3-W is admitted.

(DEFENDANT'S EXHIBIT WWW ADMITTED)

MR. MARKS: And if you go to 3-V, that explains the LTIP program, that's been produced.

THE COURT: Any objection to 3-V?

MR. MARKS: V.

THE COURT: 3-V, as in Victor? 3-V, as in Victor, any objection?

(COUNSEL CONFER BRIEFLY)

MR. SMITH: Ms. Varshay will --

THE COURT: Okay. 3-V, as in Victor, any objection?

MS. VARSHAY: No objection, Your Honor.

THE COURT: Okay. 3-V is admitted.

MR. MARKS: 3-X. This was produced, this is the performance criteria.

MS. VARSHAY: Okay. No objection, Your Honor.

THE COURT: 3-X is admitted.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: And 3-Y is the Radiology Partners that was produced.

(COUNSEL CONFER BRIEFLY)

THE COURT: Any objection to 3-Y?

MS. VARSHAY: I -- okay. I don't remember seeing this, but no objection.

MR. SMITH: No. Okay.

THE COURT: 3-Y is admitted.

(DEFENDANT'S EXHIBIT YYY ADMITTED)

MR. MARKS: And 3-Z is Radiology Partners. It was

produced.

THE COURT: Any objection?

MS. VARSHAY: No objection, Your Honor.

THE COURT: 3-Z is admitted.

(DEFENDANT'S EXHIBIT ZZZ ADMITTED)

MR. MARKS: 4-A is another Radiology Partners document. It was produced.

MS. VARSHAY: Okay. Your Honor, these are documents that were like letters and things like that, that I don't recall.

MR. MARKS: But you got it.

MS. VARSHAY: Yeah, but -- I know they're Bates-labeled, but I don't know if they were produced.

MR. MARKS: Yeah, they were produced. All right. I mean, I don't -- there's enough Radiology Partners in here. I don't want to waste my time.

THE COURT: Okay.

MR. MARKS: If you don't want -- are you objecting to it or --

MS. VARSHAY: Yes.

THE COURT: Is there are an objection?

MS. VARSHAY: Yes, there is.

MR. MARKS: It doesn't matter, I can withdraw that document.

THE COURT: Okay.

(COUNSEL CONFER BRIEFLY)

THE COURT: All right.

MR. MARKS: All these securities things are in.

MS. VARSHAY: They were admitted, yeah.

(COUNSEL CONFER BRIEFLY)

THE COURT: Was 4 -- 4-B was admitted, has that been admitted?

MR. MARKS: 4-B is part of another --

MS. VARSHAY: 4-B is part of our plaintiff's notebook.

THE COURT: Oh, okay.

MS. VARSHAY: Yeah.

MR. MARKS: We're trying to figure out what's not duplicate.

THE COURT: Okay. I appreciate that. So we're not -- yeah, 4-B doesn't need to come in.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: 4-G is the movie (indiscernible).

MS. VARSHAY: No objection, yep. That's fine.

THE COURT: 4-B is admitted into the record?

THE CLERK: I think he said 4-G.

MR. SMITH: 4-G.

THE COURT: Oh, 4-G. I'm sorry.

(DEFENDANT'S EXHIBIT GGGG ADMITTED)

(COUNSEL CONFER BRIEFLY)

THE COURT: 4-H did you say?

MR. MARKS: Yeah.

THE COURT: Is admitted. Okay.

(DEFENDANT'S EXHIBIT HHHH ADMITTED)

MR. MARKS: 4-I?

(COUNSEL CONFER BRIEFLY)

MS. VARSHAY: No objection, it's a UBS statement.

THE COURT: 4 --

MR. MARKS: Okay. 4-I.

THE COURT: 4-I is admitted.

(DEFENDANT'S EXHIBIT IIII ADMITTED)

(COUNSEL CONFER BRIEFLY)

MR. MARKS: 4-J is his W-2s.

THE COURT: Any objection?

MS. VARSHAY: No.

THE COURT: 4-J --

MR. MARKS: 4-K is the --

THE COURT: -- is admitted.

(DEFENDANT'S EXHIBIT JJJJ ADMITTED)

MR. MARKS: -- life insurance.

MS. VARSHAY: No objection.

THE COURT: 4-K is admitted.

MR. MARKS: Thank you.

(DEFENDANT'S EXHIBIT KKKK ADMITTED)

MR. MARKS: Yeah, 4-A was admitted, right? Just not 4-B. Was 4-A admitted?

THE CLERK: Yes.

MR. MARKS: Okay.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: Do you object to 4-F, which is the document he's reviewing, the --

MR. SMITH: Which one?

MR. MARKS: The one he --

MR. SMITH: The one we just presented?

MR. MARKS: Yeah.

MR. SMITH: I don't know. I don't have -- you mean the stock thing, right?

MR. MARKS: The stock thing.

MR. SMITH: Yeah, I don't have an objection.

MR. MARKS: Okay. 4-F.

THE COURT: 4-F is admitted.

MR. SMITH: Oh, I thought that was something you just got.

MR. MARKS: No, 4-M and 4-N was what I just did. We -- going through his SARs and PSU.

(COUNSEL CONFER BRIEFLY)

THE COURT: I think 4-F was previously admitted.

MR. MARKS: Okay. So there's nothing else. Okay. I'll pass the witness (indiscernible).

THE COURT: All right.

(COUNSEL CONFER BRIEFLY)

THE COURT: Okay. But F was part of a prior discussion, I thought. Oh, we didn't have it. Okay, so it is admitted then.

(COUNSEL CONFER BRIEFLY)

THE COURT: All right. Cross-examination, Counsel.

(COUNSEL CONFER BRIEFLY)

CROSS EXAMINATION

BY MR. SMITH:

Q On the exhibit we were just looking at the -- with the Schedule 4 on it.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: 4-M, 4-N.

MR. SMITH: 4-N?

MR. MARKS: 4-M and 4-N is what I just showed.

(COUNSEL CONFER BRIEFLY)

BY MR. SMITH:

Q Okay. Can you go back to 4-N?

A I -- Mr. Marks just took my document.

(COUNSEL CONFER BRIEFLY)

THE WITNESS: Okay. Which one?

BY MR. SMITH:

Q Let's go through that quickly, just to -- so you know where the numbers came from, Mr. Kogod.

A Okay.

Q The total tranche was 250,000, so --

A Yes.

Q And when you converted those SARs, based on the strike price, you wound up with 173,234 shares, correct?

A Incorrect.

Q What did you wind up with?

A Seventy-six thousand, seven hundred and sixty-six shares.

Q That's -- okay. So --

A It's -- it's simple math. It's strike price to shares, times a number. I don't know where you're getting the number from.

Q What is the -- what is the -- what does the 120,816 constitute?

A Where are you looking, please?

Q I'm looking at the amount of securities beneficially owned, following reported transaction.

A I think that we -- we -- effectively, after this trade, I had 77,000 DaVita shares in my account.

Q That's right.

A Now I have another forty-three. As a result, I think, if you add those numbers up, it's 120,000 shares in our DaVita account.

Q Right. And at today's price, it's about $7.7 million.

A Okay. But you're showing it as an incremental. All that's incremental is this --

Q Actually --

A -- 43,476 that we just added. We've always had those other shares in the account.

Q I'm not showing anything. I'm just --

A Okay.

Q You're asking me where the seven point --

A Got it.

Q Well, you had indicated where the 7.7 million comes from. That's the shares that you own.

You're indicating these are in the DaVita account, but we don't have any record of them being in the DaVita account.

A They're in the UBS account, and the --

Q Or excuse me, the UBS account.

A I'm quite certain you have every one --

Q Do you know what account they're in?

A Nicole, can we find that, please? I don't, off the top of my head, sitting here.

MR. MARKS: It's the one that he keeps the stock in, right?

BY MR. SMITH:

Q And you've provided an explanation for your -- through your attorney, of your SARs and RSU, PSU, right?

A I've given you the best example I can. We have a full-time executive that administers. You now know the full extent of my knowledge on PSUs, RSUs, and cash LTIPs, yes.

(COUNSEL CONFER BRIEFLY)

BY MR. SMITH:

Q We've been provided through discovery --

MR. SMITH: May I approach, Your Honor?

THE COURT: Yes, you may.

BY MR. SMITH:

Q This is Exhibit 123. You provided through discovery an analysis of your PSU, LTIP, and RSU, and SARs. Is this that analysis?

A I believe it is.

Q Okay. And so that's the -- the likely payout was addressed by your financial person at DaVita, correct?

A There is on -- yes, but there's one caveat. First of all, it's a guesstimate. There's a -- there's a -- there's

a discrete financial target that we are going to earn 250 percent of. And then, as I was emailed today, there's a discretionary component. So if you assume I'm going to get the same 225 or 250 on the discretionary part, I'm not. But that's a reasonable number.

Q Okay. But whatever it is, that's going to be -- there's going to be a value associated with your cash LTIP, correct?

A There will be a first payout April 2016, some value.

Q Okay. And that's for -- that is for your 2015 earning, correct?

A Now it is a cash LTIP awarded in 2013, and it will be paid out, the first half, in 2016.

Q So it's for previous work. In other words, it's not something that -- for work in the future, right?

A Yes. It was -- it was awarded in '13.

MR. SMITH: Your Honor, you had asked us to provide a larger -- this is as large --

THE COURT: Right, a balance sheet.

MR. SMITH: This is as large as we could get it.

THE COURT: Okay. All right.

MR. SMITH: I'm going to provide that. I've provided a copy to Mr. Marks. The information that we've added is the same information that had been identified by Mr.

Kogod today.

We have indicated in ours that the stock, at today's value, is 7.74 million, and we don't have a record that it's contained in a UBS account. If that's corrected, we'll advise the Court. But there's -- today, because this transaction happened so recently, and we don't have the account statement, showing the funds being deposited into the UBS, we just --

THE COURT: That can be verified, though.

MR. SMITH: It can be verified.

THE COURT: Okay.

MR. SMITH: So --

THE COURT: And is this marked as an exhibit or is -- -

MR. SMITH: I think we should.

THE COURT: Okay. Let's --

MR. MARKS: But Your Honor, based on the testimony today, Mr. Kogod is saying he's got two more million and change of UBS shares, in additional -- in addition to what he already had in his UBS account. They're adding --

MR. SMITH: No, no, no.

THE COURT: No, I think --

MR. MARKS: -- we think --

THE COURT: -- he's saying there's 76,000.

MR. SMITH: Seventy something thousand.

MR. MARKS: Okay.

THE COURT: Seventy-some-odd thousand shares.

MR. MARKS: Right.

THE WITNESS: He's looking at the total value of what I had in there before, plus the shares of the trade of last week --

MR. MARKS: Should be in the --

THE WITNESS: -- at the current value of --

BY MR. SMITH:

Q The 77,000 would be worth what?

A The 77,000 -- it's all based on whatever the stock price is that day.

Q So 77,000 times 64, roughly, today, I think.

A I can't do the math --

MR. MARKS: But it should be in the UBS --

THE WITNESS: Four -- forty -- 4 million, 4.2.

THE COURT: That's 4.9 million.

MR. SMITH: Right.

MR. MARKS: And it should be in the UBS account --

MR. SMITH: It should be.

MR. MARKS: -- as part of the UBS account.

MR. SMITH: But we don't think it is, so we don't know, but that's something we want to verify. We're not suggesting --

MR. MARKS: Hold on. We have a statement.

(COUNSEL CONFER BRIEFLY)

THE WITNESS: Okay. I think getting you verification will be quite simple.

MR. SMITH: Exactly.

THE COURT: Yeah, I --

BY MR. SMITH:

Q That's why I'm saying I'm not suggesting that this is something nefarious. I'm just saying we had to account for the money, that's all.

A Right, right. Yeah. I don't know the effect of transfer date of shares, from last week's trade into UBS, but there will be a confirmation if they're not already deposited in the account.

MR. SMITH: And for the record, our PCPD is 124. Let me move on, Your Honor.

THE COURT: Oh, this is marked as 124?

MR. SMITH: Yes, Your Honor.

THE COURT: So is there any objection to the admission of 124?

MR. MARKS: No.

THE COURT: 124 is admitted.

MR. MARKS: (Indiscernible) ours --

THE COURT: Correct.

MR. MARKS: -- that can come in, also.

(PLAINTIFF'S EXHIBIT 124 ADMITTED)

(COUNSEL CONFER BRIEFLY)

THE WITNESS: This is marked, do you want this back? Do you want it back?

MR. SMITH: You can just put it right there, they'll pick it up at the end.

THE COURT: Have you offered yours, Mr. Marks?

MR. MARKS: No, I'm -- well, I tried to this morning.

BY MR. SMITH:

Q Mr. Kogod, the -- in terms of the accounting of the GMC loan, when you were asked about that in your deposition, you didn't know that the GMC expenditure had included a loan, did you?

A I wasn't shown Schedule 6. We only went through Exhibit 2.

Q I understand. But we asked you about the GMC -- GMAC loan, and you said it was for cars; that's what you said.

A GMC does -- I do have -- have had leases through GMC.

Q I understand.

A You didn't say GMAC Mortgage.

Q Okay. But that was the -- we said that there was a

loan from GMAC, here was the amount, and you said it was for cars. We were all surprised, too, but you said that was the only thing that you could think of.

A If you had said GMAC Mortgage, I would have clearly -- that's not the question you asked me.

Q All right. In terms of the -- let me just do it this way. You haven't provided any additional documentation, other than production of bank account statements, correct?

A Interrogatories.

Q Okay.

A Financial --

Q Interrogatories.

A Financial --

Q But your --

A -- disclosures.

Q -- interrogatories -- your interrogatories doesn't -- they don't contain an accounting of the expenditures that you've made for Nadya Khapsalis or the children, do they, does it?

A Exhibit 2 did such a good job of categorizing those, I accept those.

Q But what I heard today was that Mr. Teichner indicated that it would be a waste of money to repeat the effort. The fees that -- you heard the fees today that were

paid by mister -- or paid -- or excuse me, incurred by mister -- or Anthem's office was about $96,000?

A I heard.

Q And that's what you were trying to save, $96,000, by not doing your own accounting?

A I don't know what the number would have been.

Q Well, that's how much you spent to get a new Ferrari during the time of this action.

MR. MARKS: Objection. Argumentative.

BY MR. SMITH:

Q Isn't it?

THE COURT: Sustained.

BY MR. SMITH:

Q Isn't that true?

THE COURT: Sustained.

MR. MARKS: Objection.

THE WITNESS: If you can buy me a new Ferrari for 96,000, please show me how to do that.

BY MR. SMITH:

Q That's what you paid to upgrade --

MR. MARKS: Objection. Argumentative.

BY MR. SMITH:

Q -- your existing Ferrari.

A A seven-year-old --

MR. SMITH: He answered the question.

BY MR. SMITH:

Q In regard to -- you've never provided the expense reports, correct; associated with the cash expenditure or any other expenditures you said that you used for -- when you were on trips, have you?

A I don't have cash receipts, so -- and I have -- have not been asked to provide it, either.

Q The expense reports?

A Sure. Not to my knowledge. And I don't have them, anyway; I don't keep cash receipts.

(COUNSEL CONFER BRIEFLY)

BY MR. SMITH:

Q If I understand the gist of your testimony, you're saying that you wouldn't have spent any more money, other than the in vitro, if you had a relationship with Nadya or did not have a relationship with Nadya; that's your contention?

A Yes. I testified that I would have spent the same, or perhaps greater, had I not been in a relationship with Nadya.

Q Okay. And when you filled out your -- or your FDF, in May of 2015, everything in that FDF was accurate, correct?

A To the best of my knowledge, yes.

(COUNSEL CONFER BRIEFLY)

MR. SMITH: Okay. No, that's -- pass the witness. I've run out of time, Your Honor. I'm sorry.

MR. MARKS: I have a couple of follow-ups.

THE COURT: All right. Redirect.

(COUNSEL CONFER BRIEFLY)

THE WITNESS: Yes, it's very distracting over here, too.

MR. MARKS: It's kind of distracting.

REDIRECT EXAMINATION

BY MR. MARKS:

Q Mr. Kogod, did you have anything to do with preventing DaVita from complying with any subpoenas or providing any documents in this case?

A I urged our in-house counsel, labor relations, Caitlin Moughon, to cooperate any way she can. She said she had some concerns about proprietary information, sought outside counsel. My only conversation with Caitlin was to be in contact, be accessible, be available. And her job is to protect the company. I --

Q Even though you're the COO, did you, in any way, impede or stop or prevent any disclosure by DaVita?

A Quite the contrary. I called her personally, and asked her to cooperate.

Q Okay. Counsel asked what you produced. Did you

produce significant numbers of documents in this case?

A I can't even tell you how many tens of thousands, I'm sure.

Q Okay. And you provided credit card statements?

A Everything that was -- that was asked for that was possible to reproduce, I produced.

Q And then they asked for certain questions in the Answers to Interrogatories that were (indiscernible) did you answer those?

A I did.

Q And during your deposition, did you go line by line, and answer all those questions about any expenditures on the Leauanae or the Anthem report, correct?

A Line item by line item.

Q And they only chose to ask you about Exhibit 2, and not Exhibit 6, right?

A That's the only exhibit they put in front of me.

Q And you would have answered any question, correct?

A Correct.

Q And you had no idea what Leauanae's backup was, until sometime after February 12th, when I --

MR. SMITH: These are leading, Your Honor.

BY MR. MARKS:

Q Did you have any idea of the -- what they were

accusing you of, waste or shopping and lodging and meals --

A I understand the question.

Q -- until you saw the backup?

A No.

MR. MARKS: Okay. That's all I have.

(COUNSEL CONFER BRIEFLY)

THE COURT: You may step down.

THE WITNESS: Thank you, sir.

MR. MARKS: Your Honor, I have to -- I'd like to admit our marital balance sheet as next in order?

THE COURT: And which --

MR. SMITH: I don't have an objection to that.

MR. MARKS: And our asset and debt sheet is --

THE COURT: Has that been marked or is --

MR. MARKS: I'm going to mark it now.

THE COURT: Okay.

MR. SMITH: Is that something new or is this --

MR. MARKS: No, it's what I handed you at the first day.

MR. SMITH: Okay.

MR. MARKS: Just you put yours in, so I was going to put mine in.

MR. SMITH: No problem. Is it different than what's on your pretrial memorandum?

MR. MARKS: It was the one I handed you day one.

MR. SMITH: So the answer is, yes, it's different than the pretrial memorandum?

MR. MARKS: Only --

MR. SMITH: The only reason I ask is because --

MR. MARKS: -- the marital balance sheet.

MR. SMITH: -- I've represented to the Court that we went through the balance -- the marital balance sheets, and we --

THE COURT: In the pretrial memo and --

MR. SMITH: Yes, and we just showed exactly what the differences are. So, Your Honor, if you -- if we could, as part of our closing, we will include an analysis of the updated ones --

THE COURT: Okay.

MR. SMITH: -- so that we can address those in argument.

MR. MARKS: It was very close.

THE COURT: Okay.

MR. MARKS: I think we had a typo.

MR. SMITH: Yeah, it was really -- it's very -- there was very few differences.

MR. MARKS: There's very few differences.

THE COURT: All right. So this is going to be

exhibit --

THE CLERK: Well, is it one or two exhibits?

THE COURT: Two.

MR. MARKS: Two exhibits.

THE COURT: Two separate, yeah.

THE CLERK: Two separate. Okay?

(COUNSEL AND CLERK CONFER BRIEFLY)

THE COURT: 4 P's and 4 O's.

THE CLERK: The assets is 4 O's and then the marital balance sheet will be 4 P's.

MR. SMITH: There's two exhibits or one?

MR. MARKS: The other didn't change. Do you want to mark our copy?

MR. SMITH: These are the two that the clerk is marking now, Dan?

MR. MARKS: Yes.

MR. SMITH: Okay. So Mr. Marks has provided me a copy of what he's provided to the clerk, Your Honor. Thank you.

(DEFENDANT'S EXHIBITS OOOO AND PPPP ADMITTED)

(COUNSEL CONFER BRIEFLY)

THE COURT: I do want the exhibits for both parties, fees on both sides. Well, you're going to -- I think -- I believe they were offered.

MR. MARKS: They were put in yesterday.

THE COURT: Okay.

MR. MARKS: So here's mine.

THE COURT: I believe they were admitted.

MR. SMITH: What was that, Your Honor?

THE COURT: Your attorneys' fees and expert fees.

MR. SMITH: If they're not, we would offer them in, Your Honor.

THE COURT: They were, that's Exhibits 100 through 103; those were admitted. And yours are marked -- this is Exhibit Q, 4-Q?

THE CLERK: Oh, this is another one?

MR. MARKS: Yeah. Sorry.

THE COURT: So there are two exhibits, Mr. Marks, or --

UNIDENTIFIED: One.

MR. MARKS: One exhibit.

THE COURT: So this is 4-Q.

(DEFENDANT'S EXHIBIT QQQQ ADMITTED)

(COUNSEL AND CLERK CONFER)

THE COURT: That's admitted.

THE CLERK: It is? Okay.

THE COURT: Right.

MR. MARKS: This is Mr. Jimmerson's fees.

THE COURT: Okay. So that will be --

MR. MARKS: Just for completeness.

THE COURT: That will be 4-R, is admitted, as well.

MR. MARKS: Just so you're complete, yes.

THE COURT: Okay.

(DEFENDANT'S EXHIBIT RRRR ADMITTED)

THE COURT: All right, Mr. Marks, any additional?

MR. MARKS: Yeah, I have the two depositions. I'm just trying to clean up the housekeeping here.

MR. SMITH: Let me -- on a housekeeping matter, Your Honor, I think Mr. Marks and our firm will have incurred additional charges as part of this file. So I think it makes --

THE COURT: Right.

MR. SMITH: -- it seems reasonable, Your Honor --

THE COURT: To submit a supplement, right. That's what I would expect from both sides.

MR. MARKS: And I'm not sure Mr. Teichner submitted his bills.

THE COURT: Okay.

MR. MARKS: I'm going to submit those as part of the supplement.

THE COURT: Okay.

MR. SMITH: I --

MR. MARKS: I'm not sure he's attached --

(COUNSEL CONFER BRIEFLY)

THE COURT: Mr. Smith, do you have Exhibit 123?

MR. SMITH: It's possible.

(COUNSEL CONFER BRIEFLY)

(COURT AND CLERK CONFER BRIEFLY)

THE CLERK: Is that being admitted?

MR. SMITH: The thing? What's that?

THE COURT: 123.

MR. SMITH: Oh, yes.

THE CLERK: 123.

MR. SMITH: Yes, 123 is.

THE COURT: I don't believe there was any objection to that. Exhibit 123.

(PLAINTIFF'S EXHIBIT 123 ADMITTED)

MR. MARKS: Your Honor, I have the two depositions. Do you want me to give them to you?

THE COURT: Yes. Well, let's -- no, let's -- we're going to mark the deposition transcripts as exhibits, as well.

MR. MARKS: Yeah, so we'll give them to the clerk.

THE COURT: Yes.

THE CLERK: Oh, they're not being published?

THE COURT: No. I think these were --

MR. MARKS: These were relating to your ruling --

THE COURT: Just Mr. Kogod's are being published, right. So I believe the understanding -- Mr. Smith --

MR. MARKS: I have a question about that. Can I -- Mr. Smith gave you his portions; I was going to give you mine.

THE COURT: Okay. And those are the complete depositions.

MR. MARKS: Well (indiscernible).

THE COURT: Right. And I believe Mr. Smith -- Ms. Varshay, did you stipulate --

MS. VARSHAY: Yeah.

THE COURT: I think, previously, we agreed that these two deposition transcripts would come in --

MS. VARSHAY: Which two?

THE COURT: -- entirely?

MS. VARSHAY: Which two?

THE COURT: They're the --

MR. MARKS: Eugene and Stephanie.

MS. VARSHAY: Oh, we did agree? I don't know about that.

(COUNSEL CONFER BRIEFLY)

THE COURT: Right. I believe, at the beginning --

MR. MARKS: These were the two --

THE COURT: -- you had indicated you didn't have a problem with those coming in, and agreed --

(COUNSEL CONFER BRIEFLY)

THE COURT: Right. Okay. So we're going to mark those --

MR. SMITH: And I assume that there's going to be a form of the question -- I can't remember if there were or not.

MR. MARKS: There were, it was pretty calm.

MR. SMITH: Yeah. Yeah.

THE COURT: Okay. So these are going to be admitted as -- admitted as 4-S and T.

THE CLERK: 4-S and 4-T?

(DEFENDANT'S EXHIBITS SSSS AND TTTT ADMITTED)

THE COURT: And then the deposition transcripts that you --

MS. VARSHAY: We've already given them the excerpts.

MR. SMITH: And what about the transcripts themselves (indiscernible).

MS. VARSHAY: Yes. Yes.

THE COURT: Yeah, we need to mark those. And then I'm going to lay out the protocol on how we're going to --

MR. MARKS: I have one question --

MR. SMITH: And we have rebuttal from Mr. Leauanae.

THE COURT: Okay. No, and I get that, and you'll get that --

MR. SMITH: Because I have a lot of time left.

(COUNSEL CONFER BRIEFLY)

THE COURT: It probably doesn't matter, she just needs to know which is which.

MR. MARKS: So what are the next two?

THE COURT: S -- 4-S and 4-T.

MR. MARKS: Okay. So Eugene would be SSSS --

THE COURT: Eugene is four S's, and then --

MR. MARKS: Stephanie would be 4-T.

THE COURT: -- Stephanie is four T's.

MR. MARKS: Your Honor, I have a question on this murky publication of the deposition. I -- this is published.

THE COURT: Mr. Kogod's deposition.

MR. MARKS: Right. Other than what was read for impeachment, you can't, in closing or in a brief, quote what was not read or utilized in the trial.

THE COURT: If it hasn't been referenced in some specific capacity, and that includes Anthem Forensics' report --

MR. MARKS: I understand.

THE COURT: -- it's not something that I'm going to be looking at.

MR. SMITH: (Indiscernible)

MR. MARKS: And I used --

THE COURT: Right.

MR. MARKS: I used Mrs. Kogod's depo, which some judges would say it's published if you use it. But respecting your --

THE COURT: Right.

MR. MARKS: -- how you did it --

THE COURT: I --

MR. MARKS: -- it would be in the record for impeachment and for you -- and for any purpose, as a party --

THE COURT: Well --

MR. MARKS: -- it doesn't --

THE COURT: -- understood, but --

MR. MARKS: It's not officially published.

THE COURT: Yeah, I --

MR. MARKS: Okay. Just so we're clear.

THE COURT: Again, I've got plenty of reading to do, so --

MR. MARKS: Okay. So just so we're clear.

MR. SMITH: Okay. So I just wanted that clear; that's the Court's ruling --

THE COURT: Correct.

MR. SMITH: -- in terms of the --

THE COURT: Correct.

MR. MARKS: And just I preserve my objection to the appellate court, to reading outside of court. I'm not waiving

that just because I'm cooperating with the Court's ruling.

THE COURT: I -- understood.

MR. MARKS: Is that clear on the record?

THE COURT: Right. Understood.

THE CLERK: So with these, are these exhibits or are they --

THE COURT: Yeah. Are you talking about these depositions?

MR. SMITH: (Indiscernible)

MR. MARKS: All the depositions I started to read by saying, I thought there was a case, and I thought the proper procedure is it has to be read. But you've done your procedure, where we can file our objections --

THE COURT: Well, and that came up early on. Did you find a case, since we've been in court.

MR. MARKS: (Indiscernible) where the judge can't reread a transcript.

THE COURT: Well, then, without any legal precedent that's been offered to the Court, otherwise, I'm inclined, in lieu of having the transcripts read into the record, I maintain the same protocol that I discussed, based on the discussion we had, that we will mark these exhibits -- these deposition transcripts as exhibits.

It's my understanding that a summary of the excerpts

that will be relied on by the plaintiff has been forwarded to defendant. You'll have the opportunity to lodge any objections regarding those specific excerpts, and then I will make a determination as to what portion, based on my rulings in that regard, that I will read.

MR. MARKS: So --

MS. VARSHAY: Those objections being a written form, and then we get to respond to it, or --

THE COURT: Well, it should be in a written form. So I'm going to lay out that protocol.

MR. SMITH: Will you give us some time to do that?

THE COURT: Right.

MR. SMITH: We're just getting those excerpts now.

THE COURT: Right.

MR. SMITH: We have a -- for some reason, on the reporter on Nadine Khapsalis, she gave us a certified transcript, and said it was a sealed transcript. Is that acceptable?

MR. MARKS: That's acceptable.

MR. SMITH: All right.

THE COURT: Okay. So this will be exhibit -- next in order on plaintiff's side is?

MR. SMITH: So we actually are offering all of the depositions. So should we mark these as exhibits then?

THE COURT: Yeah, that's what I'm inclined to do --

MR. SMITH: Okay.

THE COURT: -- is have them marked as exhibits.

MR. SMITH: All right. So let's -- we'll just go in order then. Nadine's certified transcript will be the next.

(COUNSEL AND CLERK CONFER BRIEFLY)

THE COURT: Okay. Okay. All right.

(PLAINTIFF'S EXHIBITS 125 ADMITTED)

THE COURT: Okay. Okay. Mr. Marks?

MR. SMITH: What about the protocol on the exhibits that are attached to the depositions; how are we going to do that? Because those are brought in through the witnesses themselves.

THE COURT: Right. I -- really, it -- and you're talking about some exhibits that are not already part of the record?

UNIDENTIFIED: Yes.

MR. SMITH: A few, a few. Not many, but there's a few.

MR. MARKS: We'll make our objections at the time.

THE COURT: I'll deal with it the same way.

MR. MARKS: The problem was, on the ones we did, we added them as separate exhibits, and they weren't objected to. If there's objections when it moved in (indiscernible) the

depo (indiscernible).

MR. SMITH: Technically, these had to be moved in by the party who actually stated, I've seen the exhibit, yes, I've seen this, I know this, and (indiscernible).

THE COURT: Well, I would use the same protocol, I would expect. To the extent that Mr. Marks has any objections to any of the exhibits that are attached to the deposition transcript, I'm going to give him that opportunity to do that.

MR. SMITH: Very good. All right.

MR. MARKS: But I think, honestly, anything of super significance, they've moved in.

THE COURT: It's already been.

MR. MARKS: It's in.

THE COURT: It's already part of the record.

MR. SMITH: (Indiscernible)

MR. MARKS: I can't imagine there's something --

MR. SMITH: The only thing I can think of is that each of them went through and gave their own testimony about specific documents. So it may be easier for the Court, when reviewing that, to look at those specific documents, as opposed to the larger document that we've admitted, in terms of all the statements and --

THE COURT: Well, and to that extent, what I would expect is that, if it is already part of the record, there

really would be no basis to object to it.

MR. MARKS: To object, right. I would say 99 percent is part of the record --

THE COURT: Right.

MR. MARKS: -- and we would have moved it in.

THE COURT: All right. Do you have any additional examination, Mr. Marks?

MR. MARKS: No, Your Honor. I just want to make sure all our exhibits --

(COUNSEL CONFER BRIEFLY)

MR. MARKS: Okay. We rest.

THE COURT: Okay. All right. Mr. Smith indicated he had rebuttal, he had a rebuttal witness. He has 10 minutes remaining.

MR. MARKS: How much do I have?

THE COURT: Oh, no. Wait a second. Hang on.

MR. MARKS: He said he was out of time.

THE COURT: He has 16 minutes remaining; you have --

(COUNSEL CONFER BRIEFLY)

MR. MARKS: Your Honor, I thought he had 26 minutes when he started the afternoon. He had Mr. Kogod on the stand on cross. I don't -- he said, I don't see -- and Mr. Teichner. How can he still have time?

THE COURT: He had -- yeah, and you have 23 minutes

left.

MR. MARKS: He had six -- he had 24 minutes or 26 minutes before Mr. Teichner, and then he crossed --

THE COURT: No. No. He had -- hang on.

(COUNSEL CONFER BRIEFLY)

THE COURT: He used -- he had 35 minutes --

MR. SMITH: I only used like 10 minutes. The rest of it's been --

MR. MARKS: He used some time with my client.

MR. SMITH: Ten minutes.

THE COURT: He used 10 minutes.

MR. SMITH: Right.

MR. MARKS: And Mr. Teichner.

THE COURT: Mr. Teichner was from 11:45 to 11:52 on voir dire, 2:03 to 2:10 and 2:17 to 2:19, and then 3:47 to 3:57 on the defendant, so --

MR. SMITH: Right.

(COUNSEL CONFER BRIEFLY)

MR. SMITH: I recall Joseph Leauanae.

(COUNSEL CONFER BRIEFLY)

THE COURT: Please remain standing and raise your right hand to be sworn.

THE CLERK: Do you solemnly swear that the testimony you're about to give in this action shall be the truth, the

whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: You may be seated. Counsel, you may proceed.

JOSEPH LEAUANAE

called as a rebuttal witness on behalf of the Plaintiff and being first duly sworn, testified as follows on:

DIRECT EXAMINATION

BY MR. SMITH:

Q Exhibit 64 and 65, which --

THE COURT: Well, let me have you state your full name for the record, first, and spell your --

MR. SMITH: Oh, sorry.

THE COURT: Spell your last name, please.

THE WITNESS: Leauanae, L-e-a-u-a-n, as in Nancy, a-e.

MR. SMITH: Now I have 15 and a half minutes.

BY MR. SMITH:

Q The -- you had two rebuttal report to Mr. Teichner's report, that's 64 and 65. Is that right?

MS. VARSHAY: Yes. Yes. It's in Volume 4.

THE WITNESS: I have 64 in front of me.

BY MR. SMITH:

Q All right. Now do you recognize that document?

A I do.

Q Is that your rebuttal report dated February 5th, 2016?

A It is.

MR. SMITH: And I would move for the admission.

MR. MARKS: No objection.

THE COURT: Exhibit 64 is admitted.

(PLAINTIFF'S EXHIBIT 64 ADMITTED)

BY MR. SMITH:

Q And Exhibit 65. Can you tell me what that document is?

A 65 is a summation of footnotes that were contained in various reports. I believe, actually, for these footnotes, they are for the rebuttal reports.

MR. SMITH: Move for the admission of 65.

MR. MARKS: Can I voir dire on this?

THE COURT: Yes, you may.

MR. SMITH: His time.

VOIR DIRE EXAMINATION

BY MR. MARKS:

Q Are these the exact same footnotes in your report, only blown up, in a different format? In other words, you're saying Footnote 1. Were these actually in your reports?

A Reference to these would have been in the footnotes

to the rebuttal report.

Q So you just blew up this chart of all your footnotes in all your reports, or just your rebuttal report?

A No. This chart was created as a document to reflect the various footnotes, and more as a correlation of the summary exhibits that support those footnotes.

Q And you did this for preparation for trial?

A I believe it may have been done in preparation for the deposition, my deposition.

MR. MARKS: I have no objection.

THE COURT: No objection?

MR. MARKS: No objection.

THE COURT: Exhibit 65 is admitted.

(PLAINTIFF'S EXHIBIT 65 ADMITTED)

BY MR. SMITH:

Q You've heard the testimony of Mr. Teichner about the work that he did on this case.

A I have.

Q In your opinion, as a -- well, let me first -- your CV is contained in the initial report provided by Anthem Forensics?

A I believe it was, yeah.

MR. SMITH: Yeah, I move for the admission of Mr. Leauanae as an expert, based on his CV, attached to his

report.

THE COURT: Any voir dire or objection?

MR. MARKS: No objection.

THE COURT: Okay. The Court recognizes this witness as an expert.

BY MR. SMITH:

Q Based upon your expertise in forensic accounting, and based upon the information you heard today from Mr. Teichner, did Mr. Teichner do -- did he do adequate due diligence to support the information contained in his report?

A In my opinion, the opinions that Mr. Teichner has rendered in his report do not reflect adequate due diligence.

Q Can you briefly explain that; very briefly, please?

A Yes. As a forensic accountant, you should be expected to do certain things. Mr. Teichner indicated in his deposition, and confirmed once again this morning, that, in reviewing the notations and the instructions that he received from Mr. Kogod, he did no additional verification procedures. Specifically, he indicated that he didn't believe, as a forensic accountant, he needed to verify any of those recitations from Mr. Kogod.

Q Mr. Kogod represented today that -- or testified today that the amount of money that we allocated, or you allocated in Anthem's report for Mr. Kogod was the same as the

money that he estimated had been spent by Gabrielle?

A I believe --

MR. MARKS: Objection. No foundation for this.

THE COURT: Overruled.

THE WITNESS: I believe I heard that testimony.

BY MR. SMITH:

Q And do you believe that -- is that accurate, based upon the report that you and Ms. Allen had prepared; that Dennis' allocation of funds, under the report that you did, under, specifically, Exhibit 6, is the same as the spending? In other words, his spending would have been equal, based upon those observations or allocations.

A That is not correct.

Q And what was the amount that was allocated to Mr. Kogod in the process of determining the excess spending for Exhibit 6?

A I believe it was approximately 2.4.

Q All right. And what he testified that he had estimated for Gabby was 1.8, I believe, correct?

A That sounds correct.

MR. SMITH: All right. All right. Nothing further. Pass the witness.

CROSS EXAMINATION

BY MR. MARKS:

Q In your report, Page 13 -- do you have your report, sir?

A I don't. Which report would this be?

Q December 15th, Exhibit 57.

A Okay.

MR. SMITH: It's in the first book.

MS. VARSHAY: It's in the same book.

MR. SMITH: Same book?

MS. VARSHAY: Yeah, Book 1.

THE WITNESS: Well, I'm in 64 right now.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q You co-authored your report, correct?

A That is correct.

Q Would you go to Page 13?

A Yes.

Q In the middle of page, "Assessment of Potential Community Waste Not Elsewhere Classified in this Report," you state, quote:

"While we have sought to identify potential community waste related to specific cost centers, the documentation that we have thus far received has prevented us from being able to precisely allocate other outflows between Dennis and non-community uses."

Did you say that?

A Yes.

Q "As such, we have prepared a summary of outflows not elsewhere classified in this report, in an attempt to allocate these outflows between Dennis and non-community uses."

Did you say that?

A Yes.

MR. SMITH: And Your Honor --

BY MR. MARKS:

Q You believe --

MR. SMITH: -- we admitted the reports, right?

MR. MARKS: The reports are not --

THE COURT: No, no, the reports are not.

BY MR. MARKS:

Q You believe that community waste is not for the expert to determine. Isn't that correct?

A That's correct.

Q And it's for the Court to determine, correct?

A It -- I believe that's correct, yes.

Q And your job is to put potential monies spent in various buckets, as you've said, and the Court will determine whether those buckets are waste or not, correct?

A We wear various hats. In this particular engagement, that was one of the instructions that we received,

yes.

Q All right. And you agree that it's -- you did not, in your report, have a legal determine -- a legal definition of "community waste." Is that correct?

A That is correct.

Q Okay. And you're criticizing Mr. Teichner for relying on Dennis, correct?

A I criticize Mr. Teichner for, essentially, taking what Mr. Kogod had told him, not doing any verification procedures on those recitations from Mr. Kogod, accept -- accepting them wholly as fact, and then presenting them as an opinion.

Q Okay. And you and Jenny Allen took various expenditures from the bank statements, and you worked very closely with Mrs. Kogod regarding her input on those. Isn't that correct?

A We worked with Mrs. Kogod, where her input was helpful.

Q Okay. And forensic accountants do that all the time, don't they?

A As part of their verification procedures, in addition to other processes, yes.

Q When we asked you for backup on Exhibit 6, do you recall that at your deposition on February 9th --

A I do.

Q -- of 2016?

A I do.

Q And then you sent us the backup, I think, on February 13th?

A The 144 pages of schedules, yes.

Q Correct.

Those schedules don't provide any underlying backup or verification, do they?

A That's incorrect.

Q All they are is listings of expenditures.

A That is incomplete.

Q Okay. But that's what you provided.

A That is incomplete, as to what I provided.

Q Did you provide any checks, receipts, et al?

A I provided references in that 144 pages to the exact statement and the exact date of the transaction that could have been verified.

Q Right. But did you provide any checks, receipts, et cetera?

A To the extent that that information referenced Bates Numbers, it was already in the discovery file.

Q But in those -- in the documentation you provided, that included various references, for instance, to GMAC

Mortgage, correct?

A Yes.

Q It provided various hotels, correct?

A Transactions reflected, yes.

Q Okay. In those schedules, which I think are admitted as Exhibit, what, 60 and 61, did you provide any analysis of (indiscernible) 60 or 61, is there any analysis on those charts?

A Yes.

Q Isn't it just a listing?

A No.

Q Now you've gone up against Mr. Teichner in court.

A I wouldn't characterize it as that. I mean, there is a camaraderie between experts.

Q Okay. There's camaraderie, but you've also been an expert, and he's been an expert opposing you. Isn't that right?

A We've been involved in matters where our clients have opposed each other, yes.

Q And you've testified where you thought there was no waste, and he thought there was waste, correct?

A That's incorrect.

Q You never had a case regarding waste with Mr. Teichner?

A I don't believe that characterization is correct.

Q Okay. Isn't it true that what you do is characterize transactions that occur over a period of time, and you're not saying the way we're characterizing them (indiscernible) community waste?

A Speaking specifically to this engagement, that's fair.

Q And community waste is a legal determination that is ultimately a finding for the trier of fact. Isn't that correct?

A That is correct.

MR. MARKS: That's all I have, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Leauanae, you had indicated that you -- or Mr. Teichner said he did have a case against you at some point, correct?

A Yes.

Q All right. I just wanted to clear that up for the record. But that case did not involve -- well, it doesn't matter. All right.

The -- in all of your charts that you've provided with your reports -- let's take a look at 57. In Exhibit 1 of

57, it -- Exhibit 1 to your report, you provide a complete outline, and I mean in excruciating detail, of all of the accounts you've received, by month, date, and you've indicated what you don't have. So anyone reading this report could know exactly what's -- what accounts that you looked at, correct?

A As of this date, and encompassed in Exhibit 1, yes.

Q And in Exhibit 2, and other exhibits, just by example, including Exhibit 2 to this report, and including Exhibit 60, when Mr. Marks asks for backup and you provide him additional information, you include the same information. Do you see that? You see a reference number, a date, an amount, a category, the use, check number, location, and the account and the amount of the check. So anyone looking at these statements could simply go to the source document that was exchanged during discovery and get this information, correct?

A That's correct.

MR. SMITH: All right. Thank you.

THE COURT: All right. Any additional questions, Mr. Marks?

(COUNSEL CONFER BRIEFLY)

MR. SMITH: Your Honor, just as a housekeeping matter, I had read from the deposition of Mr. Teichner today. I have the sealed transcript, if you want to publish that. I think it has to be in the record, but with the same

understanding, that the only portion --

THE COURT: The same protocol. Okay. So that will be published.

MR. SMITH: So this will become the next in order.

THE CLERK: But it's being published it --

MR. MARKS: What number?

THE COURT: Yeah, we won't mark it as an exhibit --

MR. SMITH: Oh, okay.

THE COURT: -- it's just being published --

MR. SMITH: Good, perfect.

THE COURT: -- as Mr. Kogod's was.

MR. SMITH: Okay. Perfect.

And then in the transcript, you'll have the numbers that were referenced, I note.

THE COURT: Right, right.

Mr. Marks, any additional --

MR. MARKS: I just -- Court's indulgence.

(PAUSE)

MR. MARKS: I have nothing further.

THE COURT: All right. You may step down.

Okay. Any additional testimony?

MR. MARKS: Court's indulgence.

(COUNSEL CONFER BRIEFLY)

MR. SMITH: I'd like to call in surrebuttal Mr.

Teichner, briefly.

THE COURT: Okay. I remind you, you're still under oath.

THE WITNESS: Yes, Your Honor.

THE COURT: Counsel, you may proceed.

RICHARD TEICHNER

called as a surrebuttal witness on behalf of the Defendant and being first duly sworn, testified as follows on:

DIRECT EXAMINATION

BY MR. MARKS:

Q Mr. Teichner, you heard Mr. Leauanae's testimony --

A Yes.

Q -- criticizing your report as not being up to the standards of a forensic accountant?

A Yes.

Q Do you believe his report is up to the standards of a forensic accountant, that you're used to, in the 20 years of your experience?

A No.

Q And why not?

A Well, just for some examples, if -- again, getting back to Exhibit 6, which is the most blatant, for example, today, the testimony was that the GMAC payments were for mortgage. They classified that as a Cadillac payment, not

based on independent verification, but based on what they think. And I am not sure what Mr. Kogod said in a deposition about having a Cadillac.

But this -- this Exhibit 6 is fraught with assumptions and -- and no backup for those expenditures. They've got cash expenditures, withdrawals. They've got -- blanketly took all the -- the credit card payments and put those in the column that consisted -- that they allege is community waste. They have canceled checks that they didn't receive; they assume it's community waste. They've made many, many assumptions.

And they claim they have backup for Exhibit 6, and the backup they -- they provided, even though there might be some references, they still -- I still don't know what kind of analysis they did to determine that a payment from a bank account, from a bank statement, how they know, necessarily, that is community waste. I mean, again, they're -- they have not provided any particular evidence saying why these items are community waste. In fact, as I just mentioned, many of -- many of them are blatantly not community waste.

Q You heard Mr. Leauanae criticize you for relying on Dennis' testimony; you heard that, correct?

A Yes.

Q Didn't you hear Ms. Allen relying on Dennis'

deposition and financial disclosure form to create their Exhibit 6?

A She did mention that, yes.

Q Okay. So is that being consistent?

A No.

Q And didn't they rely on the plaintiff for a part of that analysis?

A Right. As -- as I mentioned, as I testified this morning, or earlier today, is that it -- both in the report and in Mr. Leauanae's deposition, they said they relied on Gabrielle, on Mr. Smith, and on the Court's -- the Court's directive. And they didn't say anything -- they didn't say they relied on anything else. I'm not saying they didn't, but I'm just, you know, saying -- I'm just quoting what they said.

Q Did you see any -- did you see any verification, as you would normally, when an accountant is doing an audit, and you do third-party verification; did you see any third-party verification here in their report?

A No.

Q And when they refer to "backup" for Exhibit 6, do you consider that backup, what they sent me?

A No. What -- again, the -- to some extent, they do refer to -- you know, to certain documents. But again, there's no -- they don't tell why they say these items are

community waste.

Q So there's no analysis in their report.

A That -- that I see, no.

Q It's basically a listing (indiscernible).

A Yeah. Yeah.

MR. MARKS: All right. I'll pass the witness.

CROSS EXAMINATION

BY MR. SMITH:

Q No other third-party information, really?

A I'm sorry.

Q I thought you told me you read all the depositions.

A Yes.

Q Well, I thought you said -- just said there was no third-party information provided by --

MR. MARKS: I said "verification," Counsel; "verification," not "information."

BY MR. SMITH:

Q Isn't the process of verification or doing a forensic accounting looking into others' testimony in regard to how they characterize certain expenses?

A Certainly.

Q Wouldn't it be significant if Nadya said, I spent this money here? That's a significant fact, correct?

A Yes, and I'm -- I'm not -- I'm not saying that she

didn't, and I'm not --

Q Yeah, but the answer is, yes, that's a significant fact.

A Well, you gave me an example, but --

Q And that's third-party verification, when you say, is this expense something you spent.

A That is a third-party verification --

Q Yes.

A -- which may --

Q And so --

A -- have been --

Q -- if you read --

A -- refuted by --

Q Thank you --

A -- Mr. Kogod.

Q -- Mr. Teichner.

If you read all those depositions, you know that, throughout those depositions, we asked specific questions to those individuals to verify information that is contained in Mr. Leauanae's report, right?

A No. No.

Q Okay. Well --

A Only -- only --

Q -- I understand --

A -- to a --

Q -- you don't believe --

A Only to a --

Q -- that's true.

A -- small extent.

Q Okay. Thank you.

A And say --

MR. SMITH: That's all I have, Your Honor.

MR. MARKS: I have one follow-up.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. MARKS:

Q From your review of the depositions, did Mr. Smith ever ask Dennis about Exhibit 6's $3.6 million?

A No, not that I --

Q To the extent -- and if the 3.6 million was such a big deal in this case, should they have asked Dennis about it during his deposition?

A I would think so, yes.

RECROSS EXAMINATION

BY MR. SMITH:

Q In fact, all of the information that's contained in Exhibit 6 is comprised of expenditures that are addressed in the exhibit that was presented to Dennis at his deposition,

and that we went through, line by line. Do you remember how many transactions there were?

A We did not go through, line by line --

MR. MARKS: Objection.

A -- in Exhibit 6 at all.

MR. MARKS: That assumes facts not in evidence.

MR. SMITH: Well, no, no.

THE WITNESS: Not when I was there.

THE COURT: Hang on.

MR. MARKS: (Indiscernible)

THE WITNESS: Not what I've read.

THE COURT: There's an objection.

MR. MARKS: Assumes facts not in evidence.

THE COURT: A foundation needs to be laid. The objection is sustained.

MR. SMITH: We'll just -- we're done with this witness. We'll recall mister -- do you want to come up?

THE COURT: Okay. You may step down.

MR. MARKS: No, you can't have sur-sur-surrebuttal. This is -- there's rebuttal, we did surrebuttal, I thought that -- that's got to be the end, isn't it?

THE COURT: Well, what's the offer?

MR. MARKS: We're doing surrebuttal.

THE COURT: I --

MR. SMITH: The offer is --

MR. MARKS: The depos are going to speak for themselves. You published Dennis' depo; you can see what he was asked. You can -- the trier of fact, you can make that determination.

THE COURT: Is there an offer as to the necessity of any additional testimony?

MR. SMITH: Well, the offer is that Mr. Leauanae would testify that the -- if he were presented with the same information that Mr. Teichner was presented with, in terms of a report like his, the efforts he would have made, and what he would have done to perform his due diligence.

MR. MARKS: He already said that.

THE COURT: Well, and I don't need that.

MR. SMITH: Okay.

THE COURT: I'm good.

MR. MARKS: We did the same thing.

THE COURT: All right.

MR. MARKS: Do we have any time left?

THE COURT: You've got a couple of minutes each. Did you want to make a closing?

MR. SMITH: A closing in a couple of minutes?

MR. MARKS: Your Honor, what's your pleasure regarding closings, oral or briefs?

THE COURT: Well, here's where I'm at. First of all, I do want to outline a time line. We have the issue on the deposition excerpts. I want to coordinate that in conjunction with the real estate appraisals.

My thought is to set a -- set, basically, just some type of a status hearing, which serves as a deadline to have those reports completed; and then, at that status hearing, determine whether or not I need to hear from those experts. It would be non-evidentiary. I just want to get an idea of whether or not there's the need for anything further.

MR. MARKS: But before we go there, you understand we have an objection that it was after the discovery cutoff.

THE COURT: Right, and I --

MR. MARKS: In other words, we're hampered by the fact they updated a week before trial, and two months after the --

THE COURT: Well, we -- and we've argued this.

MR. SMITH: (Indiscernible)

THE COURT: I previously ruled.

MR. MARKS: I thought you didn't rule, and you said --

THE COURT: No, I did.

MR. MARKS: -- we'd argue it Friday.

THE COURT: No, listen, I ruled. I made a couple --

well, I did, at one point, defer to another time to actually rule on the motions.

But here's where I'm at, regardless of how it's come down. I said before, I'm not inclined to go down the path of having experts provide the Court with an opinion as to fair rental value; I said that earlier.

MR. MARKS: Right.

THE COURT: I said I'm not --

MR. MARKS: We had a number --

THE COURT: So, at the same time I was saying that, I said, I am inclined, given the timing of when the prior appraisals were completed, to -- because it -- I am inclined, the bottom line is, to have updated appraisals submitted. The plaintiff intended to offer updated appraisals; I'm not receiving those appraisals.

I've already -- and both sides -- and Mr. Marks, during your case, you said you want the real estate appraisals in; I said no.

MR. MARKS: Well, we objected, and you never ruled, so maybe after --

THE COURT: Well, my --

MR. MARKS: We objected to the drive-by. They had an appraisal. They went ahead and just did an updated drive-by, trying to change the values by a huge amount on a drive-

by, based on that alone, where the guy never went --

THE COURT: Well --

MR. MARKS: -- in the house.

THE COURT: And again, that goes to --

MR. MARKS: (Indiscernible)

THE COURT: And if the -- if defendant's expert basically says nothing has changed since the prior appraisal was completed, then I understand there's going to be a difference, and I've got to determine what I need to do to resolve that, whether I have additional, limited evidence taken in by the real estate appraisals, but I want to give you that opportunity.

If you're telling me, right now, look, we're sticking with those numbers, at that time, that's fine. But I'm going to give you that chance. So I'm just looking at how much time you want for that.

MR. MARKS: So you're considering the drive-by over my objection, just so the record is clear.

THE COURT: Well, no, no.

MR. MARKS: No?

THE COURT: For the -- for sake of this record, I want to be very clear. I have not considered anything --

MR. MARKS: Okay.

THE COURT: -- in terms of real estate appraisals.

MR. MARKS: Okay. Fair enough.

THE COURT: Nothing has been admitted, there's not been a shred of testimony offered. Other than what both parties may have reflected on their marital balance sheets, which have come into the record, I have no evidence, right now, as I sit here, regarding real estate values.

MR. MARKS: Okay.

THE COURT: So we can get into this drive-by notion, whatever it is. I haven't considered anything.

MR. MARKS: Okay.

THE COURT: So I'm just looking for a time line, set really what I hope is a short hearing, to say, okay, do we -- do I need anything further, or are our numbers close enough that --

MR. MARKS: Okay. That's fine.

MR. SMITH: That will be up to Mr. Marks because it's his expert that needs the time.

THE COURT: How much time, Mr. Marks, do you --

(COUNSEL CONFER BRIEFLY)

MR. MARKS: We have to call him. When I talk to him --

THE COURT: All right.

MR. MARKS: Realize, I called him, I think, Thursday or Friday, called him Monday, had to call him back Tuesday to

cancel everything. He was telling me three weeks.

THE COURT: So, if we come back in 30 days, do you think that's sufficient? And I'm not trying to pinch, in terms of time, but --

(COUNSEL CONFER BRIEFLY)

MR. SMITH: I'd like the record to be clear, when we submitted the large exhibit that's on flash drive, so the Court, when looking through it, will know, we submitted all of the disclosures. That would include both parties' disclosures of expert reports, so --

MS. VARSHAY: Of the appraisals.

MR. SMITH: I think the appraisals would be included in that giant morass. But we understand that you haven't considered those at this point --

THE COURT: Right.

MR. SMITH: -- you haven't even looked at that. And that --

THE COURT: They haven't been admitted.

MR. SMITH: Those would be considered by the updated appraisals at the time future.

THE COURT: Right.

MR. SMITH: And then you'll make a determination --

THE COURT: Right.

MR. SMITH: -- as to how you're going to deal with

them then.

THE COURT: So I'm looking at March 29th, at 1:30, if you can check your calendars.

(COUNSEL CONFER BRIEFLY)

THE COURT: And I don't need the parties here.

MR. SMITH: That's my Easter holiday, Your Honor.

THE COURT: That's fine, that --

MR. SMITH: Is that Easter? No.

(COUNSEL CONFER BRIEFLY)

THE COURT: Right. It's the week --

MR. SMITH: I thought I was going to be in New York. I don't know if that's --

THE COURT: Well, and Mr. Kogod indicates he won't be able to be here, but really, the only purpose of that hearing is to determine whether or not I'm going to need any testimony from the real estate appraisers. Right, either party may appear by phone, that's fine.

(COUNSEL CONFER BRIEFLY)

MR. SMITH: Okay. I'm told I'm in trial that day.

THE COURT: How about April 6th, at 11?

MS. VARSHAY: April 6th, at 11?

(COUNSEL CONFER BRIEFLY)

MS. VARSHAY: Yes, that's fine.

MR. SMITH: That works.

THE COURT: Mr. Marks?

MR. MARKS: That's fine.

THE COURT: All right. And either party may appear by phone at that, or -- and there's no necessity that you appear. So I'll make a determination at that time whether or not I'm going to need anything further, just from the real estate appraisers.

MR. MARKS: If we get the appraisals, do you want us to bring them, file them; what do you want us to do?

THE COURT: What's that?

MR. MARKS: If we can get the appraisals by then, do you want us to just bring them to court, exchange them with counsel, file them --

THE COURT: By --

MR. MARKS: -- or --

THE COURT: Well, I would exchange them prior to that point in time. My intent, also, at that hearing, is to address the deposition excerpts, and make rulings on any objections that have been made, so --

MR. SMITH: So should we say a week before then, by at least a week, we have that information?

THE COURT: If you have the -- can you have any objections --

MR. SMITH: (Indiscernible)

# IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS KOGOD,

Appellant/Cross-Respondent,

v.

GABRIELLE CIOFFI-KOGOD,

Respondent/Cross-Appellant.

Electronically Filed
Aug 07 2017 08:17 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 71147
71994

District Court Case No.
D-13-489442-D

## RESPONDENT/CROSS-APPELLANT'S APPENDIX

RADFORD J. SMITH, CHARTERED
RADFORD J. SMITH, ESQ.
Nevada Bar No. 002791
GARIMA VARSHNEY, ESQ.
Nevada Bar No. 011878
2470 St. Rose Parkway, Suite 206
Henderson, Nevada 89074
(702) 990-6448
rsmith@radfordsmith.com



Docket 71147 Document 2017-26053

## INDEX TO RESPONDENT/CROSS-APPELLANT'S APPENDIX


| Document | Page No. |
|---|---|
| Non-Jury Trial Transcript for February 26, 2016[1] | RA 0001-00188 |


[1] Appellant has included all the remaining Trial Transcripts in his Appendix. However, the transcript of the Trial on February 26, 2016 is incomplete in the Appellant's Appendix and is therefore being included in the Respondent's Appendix.

TRANS

COPY

FILED
APR 28 2016
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

| | |
|---|---|
| GABRIELLE CIOFFI-KOGOD,<br><br>Plaintiff,<br><br>vs.<br><br>DENNIS L. KOGOD,<br><br>Defendant. | CASE NO. D-13-489442-D<br><br>DEPT. Q<br><br>(SEALED) |

BEFORE THE HONORABLE BRYCE C. DUCKWORTH
DISTRICT COURT JUDGE

TRANSCRIPT RE: NON-JURY TRIAL - VOL. II

FRIDAY, FEBRUARY 26, 2016

APPEARANCES:

| | |
|---|---|
| The Plaintiff: | GABRIELLE ROSE CIOFFI-KOGOD |
| For the Plaintiff: | RADFORD SMITH, ESQ.<br>GARIMA VARSHNEY, ESQ.<br>2470 St. Rose Parkway, Suite 206<br>Henderson, Nevada 89074<br>(702) 990-6448 |
| The Defendant: | DENNIS L. KOGOD |
| For the Defendant: | DANIEL MARKS, ESQ.<br>NICOLE YOUNG, ESQ.<br>610 South Ninth Street<br>Las Vegas, Nevada 89101<br>(702) 386-6812 |

# INDEX OF WITNESSES


| | DIRECT | CROSS | REDIRECT | RECROSS | VOIR DIRE |
|---|---|---|---|---|---|
| FRIDAY, FEBRUARY 26, 2016 | | | | | |
| PLAINTIFF'S WITNESSES | | | | | |
| Joseph Leauanae (Rebuttal) | 343 | 347 | 353 | -- | 344 |
| DEFENDANT'S WITNESSES: | | | | | |
| Robert Teichner (Surrebuttal) | 356 | 359 | 361 | 361 | |


* * * * *

# INDEX OF EXHIBITS

| | ADMITTED |
|---|---|
| FRIDAY, FEBRUARY 26, 2016 | |
| PLAINTIFF'S EXHIBITS: | |
| 64 - Rebuttal report | 344 |
| 65 - Chart | 345 |
| 108 - Bank Statements | 304 |
| 123 - Bills | 332 |
| 124 - PCPD | 321 |
| 125 - Transcript | 339 |
| DEFENDANT'S EXHIBITS: | |
| F - Surrebuttal report | 230 |
| S - Bank of America statements | 303 |
| T - Bank of America statements | 304 |
| U through EE - Accounts statements | 305 |
| MM through WW - Account statements | 306 |
| SSS - NEA documents | 307 |
| TTT - NEA documents | 307 |
| WWW - DaVita documents | 307 |
| YYY - Radiology Partners documents | 308 |
| ZZZ - Radiology Partners documents | 309 |
| GGGG - Movie | 311 |
| HHHH - USB statement | 311 |
| IIII - Unidentified | 311 |

## INDEX OF EXHIBITS (CONT.)

| | ADMITTED |
|---|---|
| DEFENDANT'S EXHIBITS: | |
| JJJJ - W-2s | 311 |
| KKKK - Life Insurance information | 312 |
| MMMM - Options information | 297 |
| NNNN - Options information | 297 |
| OOOO and PPPP - Marital balance sheet | 329 |
| QQQQ - Jimmerson fees | 330 |
| RRRR - Jimmerson fees | 331 |
| SSSS and TTTT - Transcripts | 334 |

THE COURT: All right. We are back on the record in the Cioffi-Kogod matter.

MR. MARKS: Your Honor, Court's indulgence for a second.

THE COURT: Okay. I believe we'll have Mr. Teichner take the stand, though.

MR. MARKS: Yeah, that's fine.

THE COURT: Well, okay. Please, go ahead.

(COUNSEL CONFER BRIEFLY)

MR. MARKS: Your Honor, I just was handed a proposed sheet by counsel, and he's dealing with this same issue regarding the stock that there was some testimony on, and he's added a bunch of other stock there was no testimony on. It's like I have a real concern if you use a sheet in which there's no testimony. Is that where we'll deal with that in closing or --

THE COURT: Well, I have no idea what you're referring to, so --

MR. MARKS: All right. Is this in evidence, Counsel? You just handed it to me.

MR. SMITH: No. The -- and again, I don't want to use any up of my time if that's what we're doing here. The testimony --

THE COURT: Well, it's going on someone's time.

MR. SMITH: Well, the testimony was that it was on Form 4 of the United States Security Exchange Commission filing. That's what Mr. Kogod testified about, 110 shares (sic). The form, which is a public record the Court can take judicial notice of actually indicates 120,000 shares, and it lays out all of the information that we've now added to the PCPD.

There's no -- on the PCPD from defendant, there's no reference to this stock holding. So -- and I think he testified that it's all in a accountant UBS, and we don't have access to these accounts, and it's only happened in the last few days. So we don't know what happened to it. But we do know it's on the Form 4. And again, that's a public record. So --

MR. MARKS: But --

THE COURT: Has that form been admitted?

MR. SMITH: No, but we certainly could.

MR. MARKS: But Your Honor, here's the problem. I think my client testified that, on certain SEC documents, it would have the total sale, but it wouldn't take into account on certain documents that there was a strike price --

THE COURT: Right.

MR. MARKS: And he testified --

THE COURT: In terms of the option --

MR. MARKS: -- and then they just ignored that in this form. So I just want the Court to be aware, we're trying to finish, we're trying to do things quickly. He never asked questions about other restricted stock, other unvested.

MR. SMITH: Well, is this --

MR. MARKS: And he's added on a chart. I don't know what he's going to do. He never asked my client any questions about it.

MR. SMITH: What's that suggestion, here, that these things don't exist? He did this two days before the trial, and it's in a Form 4 that --

MR. MARKS: The numbers are wrong.

MR. SMITH: -- we filed with the United States Securities Exchange Commission.

MR. MARKS: But the numbers are wrong. Simply, the numbers are wrong.

MR. SMITH: Well, look, the numbers are contained in Form 4 if you would have contested. But what are you going to say, that we're going to leave that asset out because he did it two days before trial? I mean, I don't even understand the argument.

THE COURT: Yeah, I'm not sure what you're asking me to do.

MR. MARKS: We sent them --

THE COURT: If there's --

MR. MARKS: -- the statements. There -- we are -- my client testified that it would say he sold shares at a price, but not, in that document, give the strike price. We sent them UBS documents, showing the exact amount that went into the account after the trade.

MR. SMITH: But it didn't show the stock. It's 120,000 shares that haven't been realized. How do you show the stock? Where's the statement that shows the stock?

MR. MARKS: We gave them the -- we gave them all of the documentation. And they have access to Bob Gable, who was their broker for both of them.

MR. SMITH: This is silly. They --

MR. MARKS: It's not silly.

MR. SMITH: -- this happened two days -- okay.

MR. MARKS: They're trying to say there's money that we don't have. He had a window; he, on the stand, testified that he had that window or could lose it.

MR. SMITH: On the stand, he testified he had 110,000 shares. It actually turns out that the document he filed with the SSC (sic), through his attorney in fact, says 120,816. I'm not making this stuff up.

MR. MARKS: Is this in evidence yet?

MR. SMITH: If it doesn't exist, it doesn't exist.

He's here, he can explain it to us.

MR. MARKS: All right. Then --

MR. SMITH: But here's the form.

MR. MARKS: I have a document; we'll just introduce it, Your Honor, please.

THE COURT: Okay. All right. I remind you you're still under oath.

MR. MARKS: Can we have a time check, Your Honor, before we start?

THE COURT: You've used 390 minutes.

MR. MARKS: What do I have left?

THE COURT: One hundred and fifty minutes.

MR. MARKS: What does Rad have left?

THE COURT: Thirty-five minutes.

MR. MARKS: So 150 is 2 hours.

THE COURT: Yeah.

MR. MARKS: Because I want to save a half.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q Okay. So we're going to try and go quickly, Mr. Teichner. Are you on Exhibit D, which is your report --

A Yes.

Q -- that's in evidence.

On Page 2 of your report, you say there's a lack of

basis for JLL's opinion on potential community waste. Can you turn to that page?

A Yes.

Q Why do you think there's a lack of basis for JLL's opinion on potential community waste?

A Well, I think he did not take into consideration -- well, him and Anthem did not take into consideration, first of all, as -- as it was brought out regarding Exhibit 6, there is no basis for most, if not all, of those items on that exhibit. There's no underlying documentation that shows that -- those items of community waste. In fact, there are loan payments, there are capital expenditures, there's cash that Mr. Kogod used as a number -- a variety of things that they included on that schedule, so there was no basis for that.

In addition, they -- I don't think they took into consideration, or they did not apparently, based on the report, Anthem's report, is that the Kogods were living apart for much of the time. And it goes back to 2004, maybe a little -- 2003; And that, in 2010 is where they were completely separated. So that wasn't taken into account, that they were living their own lives. So there's personal expenses that each one had. And it did not take into account Ms. Kogod's expenditures in relation to Mr. Kogod's.

There's -- they made a number of assumptions

regarding the yacht expenses. They -- they even made assumptions based on what they included for Nadya. There were -- not only were there a number of items that Mr. Kogod had eliminated based on his deposition and some -- to some extent, before and after his deposition, but also, there are expenditures, undoubtedly, that benefitted both Mr. Kogod and Nadya and the children, and they didn't do an allocation as to those expenses that would be attributed only to Ms. Kogod and the -- I'm sorry, Mrs. Nadya and the children.

And then, also, I don't -- they did not take into account, which I know is a very contested issue, the fact that the expenditures that Mr. Kogod had -- had made over the period of time that we're talking about, and primarily, based on my observations, from 2008 through around November -- mid-November 2015, didn't take into account the fact that his expenditures, normal living expenditures were still a very small percentage; normal living expenditures, including expenditures for Nadya, which could have been made -- if he wasn't with Nadya, it could have been for somebody else. He could have gone out with his friends, whatever. Those total expenditures, in relation to his income, was relatively very small; much, much smaller than all the statistical information out there.

Q Now, did mister -- did Anthem have any definition of

"waste" contained in their report?

A I did not see any definition of waste, no.

Q Was there any explanation as to any objective standard that you could see as to what Anthem considered waste, versus non-waste?

A No.

Q If there's no standard regarding waste, how can one actually conclude something is potential community waste if there's no standard?

A Well, I don't know what standards they may or may not have used, but they certainly didn't indicate what those were in the report.

Q From your experience in reports -- and you've done reports where you're alleging potential community waste, correct?

A Correct.

Q What are -- what factors, in your experience, are usually present for a claim of potential community waste?

A Well, generally, it's reckless spending; what we call "reckless spending," where spending is made on all kinds of things, like maybe alcohol, drugs, gambling, particularly excessive gambling, and especially in relation to what somebody earns or their net worth. So if they're basically just paying their estate or -- or their income that they earn,

then that certainly is a strong consideration for waste.

Q Normally, do -- is there an element of financial misconduct, in your experience?

A Yes. I mean, reckless spending, I think -- inherent and reckless spending is financial misconduct.

Q Normally, in your experience of community waste, is there a diminution or diminishment of the estate?

A That's one -- certainly -- that's certainly what you have to look at, as well as, again, how much of the earnings are being wasted, as well.

Q Did the Anthem report take into account anything to do with Dennis' earnings, *vis-a-vis* his spending?

A No.

Q Did Anthem take into account anything to do with Dennis' net worth or the community net worth as it related to the spending?

A No.

Q You then -- also, on Page 2 of your report, you indicate that there's no explanation of analyzing the 27,200 transactions. Can you elaborate on that?

A Well, again, I didn't see any definition of "analyzed," and I'm still not sure what was done to analyze, since I haven't seen where they have substantiated or otherwise supported most, if not all, of the transactions that

they listed and considered as potential waste.

Q You were at Mr. Leauanae's deposition, weren't you?

A Yes.

Q Where he was asked about the report?

A Yes.

Q Did he explain adequately what he did regarding analyzing the transactions, in your opinion?

A Well, he did give a general explanation, but when you started pinning him down, particularly on the items on Exhibit 6, he said he didn't know what most of those were, and that he would provide backup later on.

Q And do you know when he provided the backup?

A It was shortly after his deposition testimony. It was -- it was at the end -- I believe it was the end of the week, by Friday of that week, that he was deposed.

Q Now he was deposed on February 9th, so that's a mere couple of weeks ago. Do you recall that?

A Yes.

Q And do you recall, at the end of the week -- so I think it was the 13th -- he provided the backup that we were dealing with this morning?

A I recall that was the date that I received it from the office, yes.

Q Do you believe that is sufficient backup to it for

him to analyze the alleged community or potential community waste that he referenced?

A No, it was just mainly a listing of the -- of the expenditures in some other format, but it still didn't organize it by Buckus, and it didn't give the explanation why any of those were potential waste.

Q Now you hear Ms. Allen's testimony this morning, correct?

A Yes.

Q Okay. And you hear her explain they were primarily looking for whether Dennis spent money on third parties, correct?

A Yes.

Q Okay. And specifically, Nadya, correct? They were looking at expenditures to Nadya, primarily.

A Well, I -- I don't know if it was just Nadya, only because I'm not sure whether they were saying some of the expenditures on Exhibit 6, which are the unallocated expenditures, were also, you know, fall in -- fell into that category. But I know that the expenditures for Nadya was being -- it was a focus.

Q Okay. On Exhibit 6, the unallocated, did they --

MR. SMITH: Let me just note for the record. There's no -- in Exhibit 6, there is no reference of any word

"unallocated." This is something that's -- the objection is it mischaracterizes the document.

MR. MARKS: On Exhibit 6, the --

THE COURT: The document speaks for itself, but the objection is overruled.

MR. MARKS: I'll just rephrase.

BY MR. MARKS:

Q The assessment of potential community waste, not elsewhere classified.

A Yeah, I'm just -- I was using the word "unallocated" because that's been used in the testimony today.

Q Okay. Using the assessment of potential community waste not elsewhere classified, that we discussed with Ms. Allen, I think you heard her answer that she was concerned about whether any of that went to third parties, correct?

A Yes.

Q Okay. Is there anything about the backup that was sent by Anthem that you reviewed that suggested any of the assessment of potential community waste not elsewhere classified went to third parties?

A No.

Q Now, if you --

A I mean, when you say it "went to third parties," if there was a payment for Starbucks, or whatever it was, that's

a third party. But for the benefit of a third party, no.

Q Okay. Now if you'd go to Page 3 of your report.

A Yeah, I'm there.

Q Okay. The second full paragraph, you write:

"JLL states that Anthem was specifically asked to 'provide observations about the spending and potential waste,' yet, he offers Anthem's opinion that potential community waste is approximately 6.2 million."

And you say:

"There is no basis on which JLL can offer such an opinion by Anthem."

Can you elaborate on that?

Q Well, again, I don't see where he has come up with anything meaningful as potential community waste of being $6.2, especially in light of the fact that so many of these expenditures, particularly on Exhibit 6, which is 3.6 million and change of the 6.2, are not expenditures at all. They're -- there's capital expenditures -- I mean capital investments, there's loan repayments; there's all kinds of items that were brought out today that have no basis for being even called potential community waste, in my opinion.

Q Okay. Let's go to Exhibit 6, the Anthem report. Do you have that? We have your report, and I think your report has a schedule that deals with Exhibit 6.

A I'm -- which -- under which tab --

Q Exhibit 57 in the books in front of you. They've marked Exhibit 57 as Exhibit 6 of the Anthem report.

(COUNSEL CONFER BRIEFLY)

THE WITNESS: I'm sorry. What letter tab is it under?

BY MR. MARKS:

Q You're in the --

A Exhibit -- if I --

THE COURT: It's in there. It's in the black binders, not the white ones.

THE WITNESS: Okay.

(COUNSEL CONFER BRIEFLY)

MR. SMITH: Are you looking for Joe's report or -- you found it.

MR. MARKS: Yeah.

MR. SMITH: Oh, you got it?

MR. MARKS: I got it.

MR. SMITH: It's 57, actually.

MR. MARKS: Right. 57 is the December 15th report in Exhibit 6.

MR. SMITH: Are you looking at 56 or 57?

MR. MARKS: 57.

MR. SMITH: 57.

MR. MARKS: Exhibit 6 of 57.

MR. SMITH: Okay.

BY MR. MARKS:

Q Mr. Teichner, are you in Exhibit 6 of 57?

A Yes.

Q Okay. And then, if you have your report open, which is Exhibit D, specifically, Page 4 of your report.

A Okay.

Q And in the middle of the page, you have a category, "Expenditures After Deletions From JLL's Report;" Exhibit 6, titled "Assessment of Potential Community Waste not Elsewhere Classified." Do you see that?

A Yes.

Q Okay. Can you tell the Court what you did as it related to Exhibit 6 of the Anthem report?

A I went through various line items in the adjusted column, which is the far-right column on Exhibit 6, and deleted a number of those items that I -- well, that either, obviously, not items that should not be -- that should not be considered as potential waste, such as, again, capital investments that were assets.

Q So let's go through it.

A Yeah.

Q Did you do a Schedule 1 to your report?

A Yes.

Q And is -- in Schedule 1 to your report, did you make certain deletions?

A Yes.

Q Can you tell -- if you turn to Schedule 1 in your report, can you tell the Court what deletions you made and why?

A Well, do you want me to go through each one?

Q Yeah, why don't you go through and -- just as quickly as you can, the deletions and why you did it.

A Okay. I went through -- there were a number of expenditures for automobiles, and one of the ones that's in the adjusted column is -- it says "GMAC Cadillac, $273,300," and I deleted that one because, again, either the car -- either this expense -- expenditures for an automobile or the cost of an automobile. And if it's the cost of an automobile, again, that would be -- have been as asset, and if that asset was traded in, sold, eventually, that would wind up in other assets.

Q When you got the backup from Mr. Leauanae, and you went through GMAC Mortgage, did you see what appeared to be mortgage payments?

A As far as the -- as far as the GMAC payments, there was a mortgage loan on the house. And I'm not sure, by the

way, whether these -- this particular GMAC, all of this GMAC payment is mortgage payments, but certainly, it appears -- and again, I don't have the backup for all this. But it appears that, based on the round amounts that were shown here, those -- those could be a combination. I -- they're round amounts, so I don't where the round amounts came from.

But there were mortgage payments on a residence, and that was GMAC, that was later refinanced; that loan was later refinanced with B of A, Bank of America. And so, whether these are all mortgage payments or a combination of mortgage payments and auto payments, I don't know. But in any event, either way, it's either for maintenance of an auto, for the cost of an auto that was either sold or traded in, or for the mortgage payments.

Q Okay. Did you see the backup provided by Mr. Leauanae that said "GMAC Mortgage"?

A Mr. Leauanae?

Q Yeah.

A From his -- no.

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q If you'd hold your spot and go to Exhibit 60.

MR. MARKS: May I approach the witness, Your Honor --

THE COURT: Yes, you may.

MR. MARKS: -- so I can speed this along?

THE COURT: Yes, you may.

BY MR. MARKS:

Q Are you on Exhibit 60?

A Yes. I was going to go to the next --

Q Before we go to the next one, did you want to look at Exhibit 60, the backup? Before you go to that. Can you turn to Exhibit 60, is's in the (indiscernible).

A Exhibit 60?

Q Correct. Page 3 of Exhibit 60. I don't know if we have a sticker.

(COUNSEL AND CLERK CONFER BRIEFLY)

MR. MARKS: Thank you very much.

BY MR. MARKS:

Q On Exhibit 60, Page 3, you were sent that from -- you were sent that from my office after we received in on the Friday after Mr. Leauanae's deposition?

A Correct.

Q Okay. And did you see a bunch of GMAC Mortgage payments?

A Yes. The GMAC, that says "auto-related, Cadillac," was paid to GMAC Mortgage Company.

Q Yeah.

A At lease these -- these items that they listed. And I -- and I don't know if those total the amounts, but they appear to be plenty close --

Q All right.

A -- if not -- yeah.

Q All right. Let's go back to your report, which is Exhibit D. I think I put a Post-It in there. Do you have your report?

A Yes.

Q Okay. If you go back to your report, did you make another deletion?

A Yes.

Q The next one, I think, is 466,649 for a luxury -- auto-related luxury, not elsewhere classified. Can you explain to the Court what you did there?

A Yeah. The $466,000 of the total of a million-three was placed in the adjusted column. And again, mister -- my understanding is Mr. Kogod was, basically, an auto collector to -- I mean, he had a number of automobiles. And that was, I guess, one of his hobbies or, you know, one of his -- one of the things he liked to do, was to have a number of automobiles. And they weren't all, necessarily, at the same time because he had leased them, he had traded -- he had bought some, traded them in for other automobiles. But it

appears from here -- from this schedule, that they included both expenses and -- and the cost of automobiles, which again, were either sold, traded, or retained, and -- and in some form, reported in the marital balance sheet as an asset.

Q Okay. So the cars would be on the marital balance sheet. Is that right?

A The cars, or if they were sold and a new car was bought or traded.

Q Okay.

A Yes.

Q At Mr. Leauanae's deposition, I think he said he used 3,700, a figure as a car allowance. Do you recall that testimony?

A Yes, uh-huh.

Q Do you believe that's a proper -- that an accountant like Mr. Leauanae has a right, in a family law matter, to just arbitrarily set a car allowance?

A No.

Q Okay. The next deletion you have is 25,000 capital -- I think it says "for capital call."

A Yes.

Q Why did you delete that?

A Well, capital call is usually -- well, it is additional money for an investment that you have, so it's

certainly an asset.

Q On the next page of -- or I think Item 57, you deleted 60,000 or so for art work. Why did you do that?

A Because that was art work in Mr. Kogod's home and his house that he bought out of the money that was allocated to him as separate property. And so it's an asset of his, but it's also included -- it's also part of the cost of his home, or it's a furnishing. And art, usually, that costs that much money is -- has some retained value.

Q Did you --

A It could even go up in value.

Q Did you also -- Item 68, loan payment B of A, 249,000. Why did you delete that?

A Those -- those were loan payments -- well, I -- again, I got -- I eliminated virtually all the loan payments because the loan payments were either on a mortgage -- they were either mortgage payments or loan payments or payments on money that Mr. Kogod borrowed. And if -- whether it's a line of credit or whatever -- for whatever reason he borrowed it, if he can make more money investing, or a greater return on an investment than what he pays interest on a borrowing, then it makes sense, economic sense, to borrow money and then invest it.

Now this particular B of A -- I think this was -- I

believe, but I'm not certain, that it's all related to mortgages.

Q So you deleted all of the mortgages.

A Yes.

Q Because did you believe that Mr. Kogod was a reasonably prudent investor, based on his portfolio?

A Yes.

And let me just add that the -- that the homes that Mr. Kogod had bought all went up in value. I mean, my understanding is they've all gone up in value from the time he purchased them. So, if anything, that benefits the community.

Q And you deleted 172,000, saying you need canceled check. Why did you do that?

A Because I don't have any idea, whatsoever, what those checks were for. And to assume that all those canceled checks of 172,400 is a waste is a unfounded assumption that -- it's certainly something I would never do.

Q And is it -- in your experience, is it common that it's difficult to get records going back more than seven years or seven years or more, right now, from banks?

A Often, yeah. And sometimes, even less period than that.

Q Okay. So you made these deductions from Exhibit 6, correct?

A Yes.

Q From their Exhibit 6.

A Yeah.

Q And then the remaining amount, you have an opinion regarding whether the remaining amount of 1.8 is reasonable living expenses for somebody at Mr. Kogod's level.

A Yes. But just let me qualify that there are other items on this schedule, now, that I have since found out that also are not -- should be -- should be eliminated from this schedule, as well.

Q Okay. Explain to the Court what you're talking about.

A There is -- there is -- line -- it's on the second page, and it's Reference Number 173, "Withdrawals and Cash Advances."

Q Okay.

A Three hundred fifty thousand, five hundred dollars.

Q Okay.

A Now, again, my understanding is those cash withdrawals and advances were for either normal living expenses or for cash advances; cash that had to be taken out for travel, whether domestic or foreign, and again, just normal -- normal, I guess, cash expenditures.

Q You heard --

A And to -- excuse me. And to assume that cash advances are -- without having any backup, is community waste, again, is -- is an assumption that -- that there's no proof that -- that it is waste.

Q You heard Ms. Allen's testimony this morning.

A Yes.

Q Did she classify, other than Nadya, every other item of cash that Dennis spent over the last eight years to be potential waste; is that the three fifty number?

A I believe so. Now the only -- the only qualification to that is, on that line item, 173, the total cash was 629,500, and this 279,000, that is not included in there.

Q Right.

A But that two seventy-nine, my understanding is that's what they added in on the Exhibit 9, where they compiled or summarized all of the items of community waste. So that two seventy-nine is also included in the total amount that they claim is community waste. So that makes -- I'm pretty sure that's what that two seventy-nine is because it's the same amount, and it's cash paid out.

So -- so, to answer your question, the 350,000 then would be the other cash expenditures that Mr. Kogod -- withdrawals that Mr. Kogod made. And again, to assume that

those are potential community wastes, I think, is -- is just an assumption that they made with no -- no basis whatsoever.

Q If you deduct the three fifty from that amount, and look at it over an eight-year period, what is the average yearly expenditure?

A Less -- I guess, less than -- less than 200,000 a year.

Q Okay. And did you recall what Mrs. Kogod was spending during the same period, the plaintiff?

A Well, I believe it was 13,000 and change per month.

Q And that's about 180,000 a year?

A It's close; not quite, but yeah.

Q A hundred and eighty --

A Twenty-six and -- let's see. Twenty-six and one thirty, a little less than that, yeah.

Q One eighty. And if you multiply that over eight years, do you know what that number comes to?

A It's like a million -- a million-four, something like that.

Q Yeah, it's over a million-four.

A Yeah.

Q And if you deduct the three fifty from the one eight four two, aren't you at about a million-four and change?

A Yes.

Q So aren't -- isn't that the same level of spending?

A Yes.

Q All right. You had some comments, I think, regarding the yacht or the boat. Did you -- would you like to go back to your report and -- which is Exhibit D? And on Page 5 of your report, you analyzed the Anthem report, Schedule 3, which dealt with yacht expenditures. Do you -- are you familiar with that?

A Yes.

Q You've reviewed Schedule 3 to the Anthem report --

A Yeah.

Q -- regarding yacht expenditures?

A Yeah, yes.

Q Okay. And do you have any criticism of the way they've added up what they're claiming is potential community waste?

A Yes.

Q Can you explain it to the Court.

A Yes. Included in their figure for the -- for the yacht expenses, which is about -- oh, gosh. Let's see. I have to look at the report. But it's five hundred and something thousand dollars, five forty-five, somewhere in that neighborhood.

They've included a few things that don't belong

there. First of all, they included equipment for the -- for the yachts that are really part of the yachts. It certainly would increase the value of the yachts. And so -- so I did take out all of those expenditures.

And then what I -- what I disagree with is the fact that they include, also, in the -- in the total amount of potential community waste relative to the yacht, is that they're including the -- a net loss on what the total yachts yielded during this, I think it's a two-and-a-half year period, more or less.

And that's -- you know, I mean, some yachts go up in value, some go down in value. And it's one -- it's -- you can look at it as another investment besides being a hobby. But the fact that there was a loss, you know, that -- they include that as a waste. But if it had gone up in value, if the yachts had gone up in value, I'm sure they would have not, you know, shown that otherwise.

So, also, it's -- to me, it's just cherry-picking because Mr. Kogod had all kinds of real estate investments and other investments that all appreciated. So, to take one asset like a yacht, and include a loss and call it community waste, to me, is -- is not appropriate.

Q Okay. I want to clarify that the yacht transaction in the Anthem report is Exhibit 5 to their report.

A Yes.

Q And then you made deletions to Exhibit 5 in your Schedule 3, correct?

A Correct.

Q And in your Schedule 3, you eliminated certain expenses?

A Yes.

Q As you just testified?

A Yes.

Q Okay. And can you -- on Page 5 of your report, you indicated that, after eliminations, there were expenditures of 145,000.

A Right.

Q And that's over, approximately, a three-year period.

A I believe a little bit less, yes.

Q Okay.

A Yeah.

Q And you say in here that -- do you believe the mere fact that Dennis had a yacht constitutes community waste, just because it's an expensive item?

MR. SMITH: To the extent, it's calls for a legal conclusion, I object.

THE COURT: Noted for the record, but the witness may answer.

BY MR. MARKS:

Q Do you believe that, just because you have a yacht, it's community waste?

A That a yacht expense could be community waste?

Q No, that, in this case, they're saying it's potential community waste, I guess, just because he had a yacht. Do you agree with that?

A No.

Q Okay. You've done cases for wealthy individuals over the years, correct?

A Yes.

Q What types of hobbies, toys, do they usually have?

A Expensive cars, boats.

Q Do they have planes?

A Planes, some have airplanes. Yes.

Q Other than this boat and car, did Dennis have expensive or extensive hobbies in your -- based on your experience of other cases of forensic accounting?

A Based on my experience of high-income earners, yes, other -- well, I'm not sure if I should answer yes. Ask the question again.

Q Do you have experience with high-income earners?

A Yes.

Q How did the -- Dennis' he had three cars, I think,

and the yacht for a short period of time. How did that compare with your experience of other high-income earners?

A Again, it's not unusual at all.

Q Okay. You did a chart that compared the percentage of each year's expenditures to total expenditures from 2008 to 2015, correct?

A Yes. Schedule 5 to the report.

Q That's Schedule 5 to your report, and I think it's at -- it's at your report D037, correct?

A Yes.

Q Can you explain what you did?

A Yes.

Q Tell the Court what you did.

A What I did was try to take all the living expenses, including the expenditures from Nadya and Jennifer, the yacht expenses; again, just the expenses, not the loss on -- not the cost of the equipment, and money is paid to the family, Mr. Kogod's family. And in Exhibit 6, as -- as modified -- and I have a schedule on how I modify that Exhibit 6, but again -- or how I allocated it, I should say, the expenses among the years -- because the total -- if you go out to the total column of -- for Exhibit 6, you come up with the one million, eight forty-two, that was the total on my Schedule 2.

Q Okay.

A And so I took all -- all the expenditures, living expenditures, basically -- by the way, that million-eight probably includes -- and I think I qualified this in a footnote, but the -- that -- the modification, we already, I think, established that, at least I did, that 350,000 -- that should be reduced by $350,000.

And there's probably some business expenses in there, as well. But assuming they're all living expenses, if you take the living expenses of all the -- all his living expenses that we have taken from these other schedules, and add them up year by year, and compare that with the income that Mr. Kogod earned, then take a percentage of the expenses in relation to the income, those percentages are down towards the bottom of the page, based on total income and after-tax income.

And so you can see there's variations throughout the year, but they're all relatively very small. Maybe 2008, 2009 are certainly higher than -- than the other years. But if you take an average over the eight-year period or almost-eight-year period, the total expenditures in relation to his income, total income, is 5.3 percent; and in relation to his after-tax income, is 9.8 percent.

Q And in your experience, how does it -- how do those numbers compare to other individuals?

A Well, you know, it's certainly very, very low. Most -- you know, because I do quite a bit of divorce work, most of the time, the expenditures are 50 percent or more of someone's income; sometimes the expenses are more than their income. But even with higher-net-worth individuals, I found -- I found high -- much higher expenses.

Also, if you compare this with the Bureau of Labor Statistics data, which, again, that's a whole different level of income, but if -- but anything over $150,000 of -- 150,000 or more of earnings, the expenditures were something like -- pre-tax, were 54.3 percent, I believe, and after tax was 64.9 percent. Those are the -- those are 2014 figures, by the way.

So this is for people earning $150,000 or more. Those are the percentages of personal living expenses to income. So -- so, you know, of course the expenses -- the percentage of expenditures on this schedule is greatly lower than those percentages.

Q And do you think Anthem should have considered the percent of expenditures versus total income in making a waste or potential waste analysis?

A Yeah, I think they got to look at that the expenditures in that context. Yes, absolutely.

Q All right. And then, you also looked at Exhibit 2 to the Anthem report, the expenditures for Nadya and the

children?

A Yes.

Q Did you look at that schedule?

A Yes, I did.

Q Okay. And did you make certain deductions based on Dennis' deposition testimony?

A (No verbal response)

Q Did -- Dennis, in his deposition, was he asked by Mr. Smith about certain expenditures?

A Yes.

Q Okay. And did you rely on his statements under oath to make deletions or corrections to that Exhibit 2 to the Anthem report?

A Yes.

Q In general, was Exhibit 2 to the Anthem report giving any credit to Dennis for food, CVS Pharmacy, items for the home that he shared with Nadya, et cetera. Were they giving him any credit at all?

A It didn't appear that they did. They certainly included expenditures that Mr. Kogod had indicated were solely for him.

Q You also did a surrebuttal report in this case?

A Yes.

Q And I think that's contained in Exhibit F. Is that

right?

A Yes.

Q And that's based on your rebuttal to the -- I guess the surrebuttal report that Anthem produced after your report, correct?

A Correct.

MR. MARKS: All right. I move the admission of Exhibit F.

MR. SMITH: No objection.

THE COURT: Exhibit F is admitted.

(DEFENDANT'S EXHIBIT F ADMITTED)

MR. MARKS: Your Honor, I'll pass the witness.

THE COURT: Any cross examination?

CROSS EXAMINATION

BY MR. SMITH:

Q I'm going to ask you a series of yes-and-no questions, Mr. Teichner. Okay?

The -- tell me -- I'm going to show you a copy of the transcript of your deposition.

A Sure.

Q Tell me if I read this portion of the deposition correctly.

A Sure.

Q "Question: Okay. So is it fair to say, then, all

of the deletions that are contained in your expert report are deletions that you were identified to" --

MR. MARKS: Can I have the page? I'm sorry, Your Honor.

MR. SMITH: Yes. Page 61, Line 19.

MR. MARKS: Okay. I know you want to hurry, but can I just get it, pull it out so I can follow? What is it?

MR. SMITH: It's 61, 19.

MR. MARKS: Okay. Hold on.

(COUNSEL CONFER BRIEFLY)

THE COURT: All right. Go ahead.

BY MR. SMITH:

Q Okay.

"So it's fair to say, then, all the deletions that are contained in your expert report are deletions that were identified to you by Dennis, either at his deposition or in his subsequent conversation?

"Answer: Yes, or even prior conversation. I wasn't really -- well, I wouldn't say it was a conversation. He actually went through each item and line, deleted it with a yellow marker.

"Question: Once you received that information, either in the form of the yellow deletions, or testimony at the deposition, or a conversation subsequent to the deposition

with Mr. Kogod, did you do any independent analysis of the expenditures to verify information that was provided to you by Mr. Kogod?

"Answer: No.

"Question: Why not?

"Answer: Because when you say 'verify,' I'm not sure what you mean by verify, first of all. But no, why not?

"Question: Let me break that down because you said that you don't understand the question, essentially. So it's my understanding, as a forensic accountant, when someone indicates they expend money in a particular way, one of the things to do is to look at, for example. receipts or other information about the expenditure. That would include bank statements, receipt statements, information from other depositions in the like. Did you do any kind of that kind of analysis whatsoever on any of the expenditures that you identify that Mr. Kogod deleted from the report of Mr. Leauanae and Ms. Allen as potential community waste?

"Answer: No.

"Question: Why not?

"Answer: For the same reason I didn't look at all of the -- at any of the expenditures that mister -- or that Anthem included. That was not something I was asked to do."

Is that -- did I accurately read that testimony?

MR. MARKS: Well, that's not the whole answer, Your Honor. Doesn't he have to read the whole answer? It goes on for like three more paragraphs, four paragraphs.

MR. SMITH: Oh, okay. That's fine. Let's read it. I've highlighted it, as well.

BY MR. SMITH:

Q Now in the answer it says:

"That I was asked to do. I'm not going to question mister -- Dennis' testimony as being untrue, nor am I going to question his other deletions as being untrue. As a forensic accountant, we don't always verify everything. I didn't think it was necessary, particularly in light of my -- the general concepts of my report that none of the expenditures are justifiably potential community waste, based on all the reasons I gave. So there was no -- there was really no reason to do that. I just went ahead and did this for what it's worth.

"It really -- I don't know if it has any bearing, one way or another, these deletions, because, if it turns out that none of the expenses are considered potential community waste, it's a moot point."

Okay. And then the next question -- all right.

So did I read those questions and answers correctly, Mr. Teichner?

A Yes.

Q You -- what is the amount of money somebody can spend on a girlfriend without it being community waste?

A What amount?

Q Yeah, what amount.

A Well, I don't think there's any threshold amount. I think it's you got to take it, again, in context as to whether those expenditures are -- would have been made otherwise. That's -- you know, you got to take into -- take into account how much was expended, what the person's earnings were, how -- whether or not that person is living -- is apart from their normal spouse and for how long.

It doesn't -- you got to take it in a -- you got to take the expenditures in context, and then say, what's reasonable, are these living expenses expenditures that -- that Mr. Kogod would have spent anyway, had he not had a girlfriend, or are they a little bit more. And if they're a little bit more, then still, is it that -- is he dissipating the marital estate by doing this, while his income is going up, while his net worth is going up. I think you have to take this all into context.

Q Mr. Leauanae and Ms. Allen's report, Anthem's report, addressed expenditures that could be for the benefit of Nadya and the children. You would agree?

A Yes.

Q Those expenditures were based upon the notion that, when you spend money without the consent of the other party, on a girlfriend, a mistress, including things like in vitro fertilization, trips aborad, mansions, Ferraris, Bentleys, that those things are community waste. You don't agree?

A Again, I think you have to put into context how much was spent, whether those amounts would have been spent, elsewhere in some other fashion, and what impact, if any, does that have on the dissipation on the marital estate.

Q So, if the marital estate is large enough, or if I make enough money, I can have as many girlfriends as I want.

A Well --

Q Is that your testimony?

A I think, if you've lived a part from your spouse for a long period of time, I think you're entitled -- yes, I think -- I mean, you've asked me -- you're not asked me a legal opinion, obviously, because I'm not a lawyer, but --

Q I'm asking the fundamental basis of your finding that there was no community waste because he didn't spend enough money to make it community waste. That's what you're saying, correct?

A Yeah, in effect, it -- he didn't spend enough in the context that I just gave you.

Q Right. So, if I'm a rich guy, I leave my wife, I can spend as much as the community earnings on a girlfriend as I please, correct?

MR. MARKS: Assumes facts is not in evidence. No foundation. That's not what he's saying.

THE COURT: Overruled.

BY MR. SMITH:

Q Is that right?

A Well, as much as the community -- of the community earnings, depending on how -- two things: It depends on how much the community earnings are, and it depends how much -- what the expenditures of the other spouse are because the other spouse -- if the other spouse is spending as much money on something else, what difference does it make what one spouse spends the money on?

If one spouse spends money on a girlfriend, and another spouse spends money on entertainment in the same amount -- I'm just giving you a hypothetical now -- the same amount, then why should one spouse be hit with community waste and the other not?

Q Did miss -- are you aware of any facts in this case that suggests that Ms. Kogod spent money that Mr. Kogod was unaware of?

A I -- no.

Q Are you aware of whether or not Mr. Kogod actively concealed both his spending and earnings in this case from Mrs. Kogod; do you know whether that happened?

A I know that, for a period of time, she was not aware.

Q Oh, no, no. That's not what my question was. My question was: Did he actively conceal, did he mislead her in regard to both his earnings and his assets?

A Oh, I -- not that I know of. I -- did he mislead her? No, not that I know of.

Q Did he tell her about the yacht, to your knowledge?

A Well, how is that misleading? I mean, he didn't tell her -- did she ask him if he had a yacht, and he said, no, I don't have a yacht? That -- you're asking me if he misled her. I don't know if -- I have not seen anything where he's misled her.

Q You said that there was no backup for this information. If you look to the charts in your report -- let's look at those together.

A Which charts?

Q The charts in the report. Exhibit 2. In any of the exhibits, because they're essentially Mr. Leauanae and mister -- Allen's charts. You've just put them into a different form, haven't you?

A Pretty much, yes.

Q Right. And this -- you said there was no backup. But in every chart that's provided in Mr. Leauanae's report and Ms. Allen's report, every chart that they submitted in terms of the backup, not only is -- the identification of the date, the type of expense, the account number, and the amount, it's all identified in the backups, right?

A It's a listing of expenditures. That doesn't --

Q Wait, wait, wait.

A That doesn't mean it's waste.

MR. MARKS: He said -- he won't --

BY MR. SMITH:

Q Look at look at Exhibit 60.

MR. MARKS: He's trying to finish, and the -- and you're cutting him off.

MR. SMITH: I've only got limited time. That wasn't --

MR. MARKS: I know, but you can't come --

THE COURT: Move on, move on.

MR. SMITH: Move to strike as nonresponsive.

THE COURT: Stop. Let's move along.

BY MR. SMITH:

Q Exhibit 60. Look at it, please.

A Tell me which -- what exhibit that is again, because

I -- what -- under what tab?

MR. SMITH: You know, I'll pass the witness. I'm done. I pass the witness, Your Honor.

THE COURT: Any redirect?

MR. MARKS: Yes.

REDIRECT EXAMINATION

BY MR. MARKS:

Q Did you look at when there was a diminution, meaning a dissipation, of assets in this case?

A Yes.

Q And there was no dissipation, correct?

A Correct.

Q You don't know whether Dennis had access or was monitoring anything that Gabby was spending money on, do you?

A Say it -- say that again.

Q Did Dennis monitor what Gabby was spending money on over, let's say, the last five years?

A I don't know. But I don't think -- not that I know of.

Q Okay. Counsel asked you, if you spend money on a girlfriend, do you -- is it waste or not waste. What if Dennis just had a friend who was not romantically involved; would that be waste?

A Again, I -- if -- I mean, again, you've got to take

everything into context. If he's living apart from his wife, he's got his own life, she's got -- the wife has her own life. Yes, I think you're entitled to go out and have friends, have girlfriends, you know, have some entertainment, enjoyment in your life. That's -- that's --

Q And would that apply --

A Again, that's not a legal opinion, obviously.

Q Would that apply to Gabby, as well as Dennis?

A Yes.

Q And do you -- did you -- did Anthem, in their report, ever consider that the parties were living separate and apart for at least five years in their analysis?

A No.

Q Did they ever consider it?

Did they ever consider the -- how much Dennis spent versus his income for all of those years; did they look at it --

A No.

Q In other words, if he spent 200,000 a year that they claim is unallocated, and over eight years, he spent 1.6 million, let's say, and during that same period of time, he spent 50 million -- he earned 50 million, did they take any sort of proportionality rule into effect?

A No.

Q In fact, in their report, they say if you spend a dollar that they think is incorrect, they should get their 50 cents back, in spite of the fact that the Court said we should look at 5,000 or more, correct?

A They said that, in -- essentially, in so many words, yes.

Q And do you believe you have to look at the proportionality of what someone earns versus what someone spends in any forensic divorce case?

A When there's waste involved, you mean?

Q Yeah, a large waste.

A Yeah. Yes.

Q Okay. Did they show any asset that (indiscernible) both sides of the marital balance sheet of about $40 million, correct?

A Yes.

Q In your experience of community waste -- and you've had other cases where you and Mr. Leauanae are on opposite sides, right?

A (No verbal response)

Q You and he have been on opposite sides, where he's saying no waste and he's saying waste, correct?

A One case, yes.

Q Okay. In those instances, isn't there money,

literally, disappearing, gone, so that there's not an equal division?

A Money is -- yes. Money is gone, cannot be found, and it's a huge part of -- in fact, it dissipated the -- the -- the -- if you -- the case you're talking about, it essentially dissipated the entire community, as far as we know, but we don't know what happened to the --

Q Well, talking in general. But one party says the estate should be 500,000; the other part is saying, oh, there's only 100,000. And the person accusing of waste is saying, where did that other money go, it should be back in the pot, correct?

A Right.

Q In this case, both are saying the estate is 40 million, right?

A Yes.

Q And all -- and what they're saying is, we don't like the way you were living over the last eight years, and we want 3 million back.

MR. SMITH: Leading.

BY MR. MARKS:

Q Isn't that what they're really saying?

MR. SMITH: Leading, Your Honor.

THE COURT: Overruled.

BY MR. MARKS:

Q Isn't that really what they're saying? We don't like how you live over the last eight years, we don't like what toys you had or cars you had or dinners you had or girlfriends you had, and we think we should get the money back, even though we both agree this is a forty-million-dollar estate. Isn't that what they're really saying?

A That's my view, yes.

Q And in your experience of doing this for 30 years and going up against Mr. Leauanae on both sides, where -- there are cases where he says there's no waste at all, right?

A Yes. I've been doing this type of work all -- about 20 years.

Q Okay. There were cases where Mr. Leauanae says, there's no waste, even though it's a diminution case where there's no -- the parties don't agree on what the net worth is, correct?

MR. SMITH: Objection. Foundation.

THE COURT: Sustained.

MR. MARKS: Your Honor, I'm laying foundation.

BY MR. MARKS:

Q You've been against Mr. Leauanae, where the parties disagree on what the net worth to be divided is, correct?

A Well, just -- just to clarify that, in the case we

had, we really didn't address net worth. We addressed -- earnings were addressed, but not net worth.

Q Okay. But there was money allegedly gone.

MR. SMITH: Objection.

THE WITNESS: Yes.

MR. SMITH: Vague and ambiguous. Money allegedly gone here or there?

BY MR. MARKS:

Q Not to be divided. Is that right?

MR. SMITH: I have an objection, Your Honor. The questions is vague and ambiguous.

MR. MARKS: I'll rephrase.

MR. SMITH: I don't know which -- what case he's referring to.

MR. MARKS: I'll rephrase. I'm not --

THE COURT: Sustained.

MR. MARKS: -- referring to any case. I'll rephrase it.

BY MR. MARKS:

Q In your experience in doing this for 30 years --

A Twenty years.

Q -- or 20 years --

A This type of work.

Q -- of doing forensic, the normal waste claim is

where there is missing money or assets, correct?

A Missing or knowing where it went, such as gambling, let's say; it's missing because somebody gambled the money away, let's say, just for an example.

Q And is less money to be divided, so there has to be an unequal division to equalize it, correct?

A Yes.

Q And that's not this case, is it?

A Correct. It's not.

MR. MARKS: I'll pass the witness.

RECROSS EXAMINATION

BY MR. SMITH:

Q Mr. Teichner, you didn't provide any accounting whatsoever, correct?

MR. MARKS: Objection. Asked and answered this morning.

THE COURT: Overruled.

BY MR. SMITH:

Q You didn't provide any independent accounting of the spending of Dennis Kogod or Ms. Khapsalis or anyone else, correct?

A I didn't do -- make a listing of -- when you say "accounting," we've got to clarify this because I didn't make a list, go through the expenditures and make a listing. The -

- the -- the nature of my accounting was going through the expenditures with Mr. Kogod, and also asking questions about certain items and what the reasonableness is.

And when I -- for example, on -- and for the yacht, just to give an example, yeah, I did accounting. I -- I eliminated the -- like I said, the equipment. I eliminated the loss on -- on the sale of the yacht, and just took into account those expenditures that were for maintaining the yachts during the period of time that they were held.

Q You --

A Not saying that they're even potential community waste.

Q You have not provided a single, underlying document, independent of your citation to the report of Mr. Leauanae, correct?

A Well, the only -- as far as -- when you say "underlying document," I mean, I -- certainly, I looked at the -- the answers to the --

Q No, no, no. I'm saying have you recorded --

A Those are under oath.

MR. MARKS: He's answering.

BY MR. SMITH:

Q I'm sorry.

A I mean, we've got depositions --

MR. SMITH: He's not --

MR. MARKS: The question was non -- I mean the answer was nonresponsive.

THE COURT: Correct.

BY MR. MARKS:

Q Have you provided a single, independent document to prove these accountings you said you did, other than the -- these charts that were provided to you by Mr. Kogod -- or mister -- or Anthem's report?

A Again, it you've got the depositions. If you want the -- if you want the schedules that Mr. Kogod --

THE COURT: No. You need to -- you need to answer the question Counsel is asking.

WITNESS: I'm not sure what --

BY MR. SMITH:

Q Have you provided a single, independent document to verify your accounting, other than your review of the charts that were provided to you by the Anthem report?

A No, I did not -- no, I did not provide the listing that Mr. Kogod had yellow-lined.

Q In fact, your charts that are on your report reference the exact same references that were referenced by mister -- or Anthem's report because you didn't look at any underlying documents, correct?

A Correct.

Q Okay.

MR. SMITH: That's all.

THE COURT: Any redirect?

FURTHER REDIRECT EXAMINATION

BY MR. MARKS:

Q When you were at Mr. Leauanae's deposition with me and we went through his Exhibit 6, and we tried to find out where he made all of these adjustments, he said, I'll send you -- he didn't know, correct?

MR. SMITH: This is the improper use of a deposition. If he's going to put words in the mouth of Mr. Leauanae, he should use the deposition, Your Honor.

MR. MARKS: It's just foundational.

BY MR. MARKS:

Q Did Mr. Leauanae say he was going to send backup to explain the adjustments on Exhibit 6?

A Yes.

Q Do you recall that?

A Yes.

Q Okay. And did Mr. Leauanae actually send backup, or just send more schedules; did he send any underlying backup?

A No

Q Okay. So you didn't get any backup from them when

you had questions regarding Exhibit 6 to their report, correct?

A Correct. And in fact, I -- you wrote a letter. I saw a copy of a letter that you wrote, I guess it was addressed to Mr. Smith, about we want the backup and I've -- we've never seen it.

Q Okay. So all you got -- all we got is more, just schedules, listings that didn't have any backup, correct?

A Correct.

MR. MARKS: All right. I'll pass the witness.

THE COURT: All right. You may step down.

THE WITNESS: Thank you.

MR. MARKS: Your Honor, can we take a five-minute break?

MR. SMITH: How many minutes do I have left?

THE COURT: You have used nine minutes this afternoon.

MR. SMITH: So I've got 30 -- 26 left?

THE COURT: Yeah.

MR. SMITH: Twenty-six left.

(COUNSEL CONFER BRIEFLY)

THE COURT: All right. Let's take a break.

MR. SMITH: We took a short lunch. Can you give us each another seven and half minutes? What? Right.

MR. MARKS: How much time do I have left?

THE COURT: You have used -- I'll look at the time allocations when we come back and look at our --

MR. SMITH: Thank you, Your Honor.

THE COURT: The goal is to be -- I have to dismiss my staff by 5, so if that means any extra time, I'm happy to give it out. I just don't know if the numbers add up, so I'll take a look at that.

(COURT RECESSED AT 14:20:21 AND RESUMED AT 14:33:46)

THE COURT: We're back on the record in the Cioffi-Kogod matter.

Your next witness?

MR. MARKS: I need a time check.

THE COURT: You have used 473 of 540 minutes. That's just over an hour.

MR. MARKS: And what is Mr. Smith at?

THE COURT: Oh, wait a second. Hang on. Mr. Smith has used 514 minutes.

MR. MARKS: So he has 26 minutes; I have 73 minutes.

THE COURT: Correct, 67 minutes.

MR. MARKS: 540 minus --

THE COURT: Oh, wait a second. Yeah. Hang on.

MR. MARKS: Seventy-seven minutes.

THE COURT: Right.

MR. MARKS: Okay. I have 77; Mr. Smith has 26?

THE COURT: I believe that's correct. Let me just --

(COUNSEL CONFER BRIEFLY)

THE COURT: That's correct. All right.

MR. MARKS: Okay. I'm going to call Mr. Kogod back.

THE COURT: Okay. Please remain standing and raise your right hand to be sworn.

THE CLERK: Do you solemnly swear that the testimony you're about to give in this action will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: You may be seated.

DENNIS KOGOD

having been called as a witness on his own behalf as Defendant, having been first duly sworn, testified as follows on:

DIRECT EXAMINATION

BY MR. MARKS:

Q Mr. Kogod, you're familiar with the supplemental expert report, the December 15th report?

A I am.

Q Okay. And you reviewed the schedules, I think, with Mr. Smith during his -- during your deposition, correct?

A As well as Mr. Teichner and yourself, yes.

Q Okay. So I'd like to quickly, because we have limited time remaining, first going to Exhibit 2 of that --

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q Exhibit 57 is their report, and Exhibit 2 of Exhibit 57.

A Okay. I've got Exhibit 57.

Q And then the attachment is Exhibit 2, I believe, is the expenses for Nadya and Rachel.

A Okay.

Q All right. And you heard the -- you've heard the testimony in court from Ms. Allen as to how she did the calculation of the expenses of Nadya and the children?

Q I have.

Q Okay. And she's concluding that you spent 1.6 million over an eight-year period for Nadya and the children, correct?

A Correct.

Q All right. And did you go over those expenses with Mr. Smith at your deposition?

A I did, line item by line item.

Q Okay. And did you, therefore, essentially account by telling him your opinion as to each line item on that

exhibit?

A I opined on who they should be allocated to and took out those that were clearly mislabeled.

Q Okay. On Exhibit 2, are there items that clearly were not for Nadya and the children, or were in another way were for you, your benefit?

A In the original report before I pulled them out at my depo or since getting a revised report back?

Q Let's say the original report, before you pulled them.

A There were several things on there. We talked about dry cleaning yesterday. We talking about a lot of clothing stores that are clothing stores for men, and there were clothing stores that were for men and women that Nadya would buy me work clothes; a lot of medication that I paid cash for, so a lot of charges at CVS. I think there were some car payments. There were a host of things that clearly didn't belong ascribed to Nadya.

Q And did you honestly answer those?

A I did.

Q And from that 1.6 million, how much did you believe was for your benefit and not for Nadya and the children; how much did you deduct?

A I think we deducted -- was it 586,000, roughly?

Q Roughly, or five sixty.

A Five sixty, I'm sorry.

Q And that was contained in some -- that number, approximately, was contained in Mr. Teichner's report, correct?

A Correct.

Q Okay. And from that number, did that include food that you would have shared with Nadya and the girls?

A If I'm not mistaken, we then went back and attributed a value to food, if I'm not mistaken.

Q Okay.

A So, rather than taking it out on just saying every grocery bill was for me, we tried to do it proportionally.

Q Okay. And what -- so explain to the Court, what do you think you spend for Nadya and the girls at -- including cash, over the eight-year period.

A I think your opening statement said it correctly. Between expenses, the children, their care, Nadya, and all of her care, and her books and cash to her and her family, and groceries that were associated with Nadya and the kids and the nanny, I think the 1.5 million that you talked about, clearly, clearly, reflects what I've spent over eight years.

Q Now when they say you didn't do any accounting, when you take cash out of an ATM, do you write down what you're

spending it for?

A No, I don't.

Q Would you have been doing expenditures such as that for an eight-year period?

A No, I don't. I haven't.

Q They had every single transaction, 23,000 or so, transactions of -- wasn't that -- weren't those transactions coming out of your bank statements, credit cards, et cetera?

A They were coming from a every available source, yes.

Q And did you prevent the plaintiff from getting those documents?

A No, not at all. We provided everything we could, and those at the bank required subpoenas. I think they went ahead and subpoenaed -- subpoenaed those.

Q And the documents that they didn't get, is that because if you or because of a banking issue?

A It's because the banks stopped keeping records or they only keep them for so many years. Going back before 2008 was just impossible.

Q And did they ever file, from your knowledge, a motion to compel discovery, claiming that you didn't cooperate?

A No, they didn't.

Q Okay. So, when they keep saying you didn't do an

accounting, what more could you have done than what you did in cooperation with them, in terms of just giving your honest opinion of what you spent on Nadya and what you spent on yourself?

A I think, between the two days of deposition, the financial disclosures, which highlighted myself and for somebody else, and all the bank statements including those that have Nadya's name on there, are attributed to Nadya. I think we did a pretty thorough accounting of her expenses.

Q Okay. And you recall that we got their supplemental report on December 15th, 2015, correct?

A I do.

Q And we had agreed that Mr. Teichner's report, I think, would be due in late January for this February trial, correct?

A I think we even asked for a week extension, correct.

Q Okay. But when you go the December report, prior to getting the December report, did you have any idea that there would be 3.6 million in alleged on allocated or unclassified expenses that were not in a category?

A I was shocked when you called me and told me that was the number, and even more surprised when I looked through and saw what the entries were that made up that 3.6.

Q So would there be any way to account for the 3.6,

I'm going to call it "unallocated," on their Exhibit 6, prior to December 15th?

A Can you ask the question again, please?

Q Would you have in any way anticipated that there would be a plaintiff's claim for 3.6 million on unallocated expenses prior to December 15th.

A No, not at all.

Q Okay. So, in terms of -- I'm going to come back to Exhibit 6. Let's -- let's talk, staying on Exhibit 2.

If you weren't living with Nadya and the girls, and you're just living in LA for the past eight years, essentially, on your own, do you have an opinion as to what you would spend on yourself for entertainment, food, clothing, et cetera?

MR. SMITH: Foundation, Your Honor.

THE COURT: Sustained.

BY MR. MARKS:

Q You've lived in LA since when?

A Other than a two-year period that I was going back and forth between LA and Denver, clearly, from 2010 -- actually from 2004, when I was in Overland, a very small time in Las Vegas, 2010, none in Vegas, splitting a year -- two years in Denver and LA; so, effectively, since 2010.

Q Form 2000 to 2004, you were also in the Orange

County area, which is the suburb of LA, isn't it?

A Yes, we -- yeah.

Q Okay. From --

A 2003.

Q From all your time in Southern California, did you -- were you able to observe the cost of living there?

A It is a significantly high place to live, and LA County even more so than Orange County.

Q Okay. So, in their report, they're basically saying 1.6 million on Nadya and the girls, which is 200,000 a year, for eight years. Isn't that correct?

A That's what they're alleging, yes.

Q Okay. So, if you weren't living with Nadya and you didn't have two girls, in terms of your living expenses, do you have an opinion, as to during that eight years, whether you expenses would have been higher or lower than 200,000 a year?

A I think, at minimum, they would have been the same. If I hadn't gone out to dinner with Nadya -- and you can separate the in vitro, I get that. But I would have gone out with friends, I would have probably gone out on other dates, I would have -- I would have taken some trips. I would have found things to occupy my time. I was literally living a different world, apart from Gabrielle. So the thought that I

was going to sit home in the house and do nothing for five years, and not have any social life -- so the cost of living with Nadya is probably less than the cost of me living with a guy who's going to go out and drink equally. So, at minimum, the same; more likely, more.

Q You understand that they're saying it's community waste because it's a girlfriend.

A I do.

Q You understand that. Do you think that's realistic based on your lifestyle and Gabby's lifestyle over the eight years?

A No, I don't. And then I think, when you look at her FDF and you say fifteen to 21,000, I think the amounts we spent over that eight years were remarkably close. I think what's at issue here is the girlfriend versus, I have life, I had to eat, I had to go out. And I think what we're just getting entangled is, is it just -- it happened to be the emotional issue of it's Nadya and a girlfriend.

Q So do you have an issue with Gabrielle spending 180,000 a year on whatever she spends during the same period; do you have an issue with that?

A I not only had -- I didn't have an issue, I didn't have any visibility either. The checking account has always been in her name, her credit cards are in her name, she gets

the bills, she gets the statements. I have no idea how much she was writing checks to her family to keep up the Brooklyn home. So it didn't matter to me. But at the end of the day, the amounts are remarkably consistent over that eight-year period.

Q On their Exhibit 2, do they include things for the home like some small furniture, sheets, pillowcases; things like that?

A Yeah, there were -- there were costs in there, particularly to furnish Edenberg and Oak Pass from Crate & Barrel, too, which is not a high-end store by any means. Ross, where laundry and linen things or -- and sheets are purchased. So there were a bunch of entries that had to do with furnishing a home that was my primary residence in Los Angeles.

Q Do they also have expenses for Mo in -- under Nadya.

A Yeah, they did. And I've heard the testimony back and forth this morning. And at the end of the day, that was my investment. Nadya, other than going to one trade show and then getting frustrated that it did -- there just wasn't anything for her to do, and she knew that. This was an investment decision similar to, I iChill and Radiology Partners, where you bet on people.

Radiology partners, I bet on my former CFO and our

Chief Operating Officer that they're good people; the same thing with iChill. I met two remarkable designers that were highly qualified, had a lot of credentials, and just thought it was either -- like I said, it was either going to be really big, or we'll lose a little bit of money and -- "we," meaning the portfolio, and that's when I -- when I refer to "we," I think about the portfolio and Nadya. I read her -- I heard her testimony, and it's just wishful thinking.

Q Okay. But the portfolio is you and Gabby, correct?

A When I say "we," I think -- yes. The portfolio, as the money sitting in the account that was going to fund it.

Q And you understood that if Mo had taken off an become another John Varvatos, that it would have been a community asset, correct?

A No question about it.

Q Okay. Also on Exhibit 2, there are car payments. Do you see those; BMW?

A I do.

Q Do you believe those should have been considered waste?

A No, I don't at all. I've had multiple cars over the years at the same time. Other times, where I actually had a car in Denver, as well, because I was going back and forth. I don't think that should be community waste at all.

A Those BMWs were owned by you, or leased by you?

A They were -- they were leased by me, correct.

Q Okay. But Nadya could only drive a car because you allowed her to drive a car, correct?

A That's correct.

Q And you've had multiple cars before Nadya, and you had multiple cars after Nadya. Isn't that right?

A We had multiple cars in North Carolina, we had multiple cars in Orange County, we had multiple cars in Las Vegas. I -- all the way back from 1993, I've had multiple cars, and nice cars.

Q So, whether you have a girlfriend or not, you always have multiple cars.

A I have; I just enjoy driving them.

Q All right. The next item I wanted to talk about was the cash. They have on Exhibit 3 -- they're claiming, one way or another, all of the cash that you withdrew from ATMs over an eight-year period as community waste. Do you understand that?

A I do.

Q And tell the Court what your use of cash in LA is.

A It's not just Los Angeles, it's domestically and internationally. I just -- I use cash a lot. I'm on the go, you pull up a car in Los Angeles, and it's a twenty-to-twenty-

five-dollar valet. I typically -- you come out of a restaurant, you give your ticket, and you don't want to stand their handing credit cards to guys that are running back and forth.

I tip when I walk in restaurants. That's particularly beneficial when you're trying to get a nice reservation at a restaurant because you're entertaining a group of physicians or hospital executives.

Over the years, I've paid for private lessons just for health and fitness, and krav maga and others and mat fees and coaches.

And you know, my lifestyle is just based on cash. So much of what I do, when I fly, I tip the baggage handlers, the limo drivers or the -- I just -- my system is just based on one of cash. I'm moving too quickly to hand credit cards to every single person. And it's just so easy to reach into my pocket and pay the valet, and pay the gardener, and pay everyone else that I can possibly pay in cash because it's just quicker.

Q And when you do foreign travel, explain what -- how do you use American cash?

A Yeah. Only recently, the -- literally, the last three or four trips, I've tried to buy currency in the U.S. before I've left, my most recent two trips, one to Brazil and

one to Germany. But prior to that, you take cash and you shop around for the best exchange rate.

I mean, typically if you exchange dollars at the airport here, you take a terrible beating. They just -- your arbitrage between buying and selling, it's terrible, but they rely on the fact that you're in a hurry. So you take cash and you find out the best place when you land there, where to convert cash in the local currency, and -- and there you go.

Q In your experience, if you had American dollars, cash American dollars, did you get a better rate than if you were dealing with credit cards and paying fees and all of that?

A If you are buying things from vendors, yes, the dollar is -- is much coveted around the world; the strength of the dollar, so, yes.

Q So, when reviewing the chart, what accounting would you have every kept regarding your use of cash for eight years? What could you have done; do you know?

A I can't think of a single thing I could that would be any more scientific than what's been done.

Q But over an eight-year period, they are claiming all of the cash you spend is in this unallocated potential community waste column. Is that realistic?

A No, it's not realistic at all.

Q And how much cash do you think, over eight years -- they're saying it's three fifty in cash in your column, that's about 40,000 a year in cash.

A And I think that's a pretty close number to what I probably spend over eight years, for myself, for business, for things where I didn't charge my company. You know, I look at my income. And I stop at Starbucks in the morning and you spend $20 in a different country or at a nice hotel. I would never, in a million years, think of sticking a receipt back to company that's rewarded us nicely, saying, here's my morning breakfast. So I think the number is a very reasonable accounting of what I've spent over that eight years.

Q And when you lived with Gabby, did she also utilize cash a lot?

A Gabrielle always had cash in her bedroom drawer, stuffed in one of her -- yes, she did.

Q The next issue the yacht. Tell the Court, in your -- how -- what kind of work day and hours have you worked over, let's say the last five years.

A Yeah. On average, I work five and a half to six days a week. My mornings start sometimes at six o'clock in the morning. The only time I can talk to my European and middle operations -- Middle East operations are six, seven, eight o'clock in the morning because, after that, we're nine,

ten hours difference. They're closing down for the day.

I then work a normal day, domestically, with my domestic responsibilities, which could include travel, could be including recruiting physicians, doing state and village (sic), meeting hospital administrators, visiting clinics, doing town halls, et cetera.

Then, when I get home, my Asian operation is just opening; six, seven o'clock at night, Singapore is just opening the next day for business.

On top of that, by example, in the last four weeks, I've taken two international trips. I went to Germany for three days, and I went to Brazil for three days. Out of those three days, I took a red eye going on a commercial flight, spent all night in an airplane, got to the country, worked, had one night in the hotel, and flew red eye back the next day, only to return to work domestically at Healthcare Partners.

The number of times I've taken trips to places like India and Dubai and Saudi, 22 hours each way for a meeting with the Minister of Health. You get an hour, and that's all you get. You know, there's nothing lavish about that lifestyle. At the end of the day, it is another long flight where you're not even going to get -- you don't even bring clothes with you because you're not going to be at a hotel.

So five and half, six days a week. Conference calls routinely on weekends with my boss, with the senior staff, et cetera. I work really hard.

Q Okay. So, in your peer group, what type of recreational opportunities do people in your peer group have.

A I think what you said, the majority of people --

MR. SMITH: Foundation, Your Honor.

BY MR. MARKS:

Q Are you --

THE COURT: Sustained.

BY MR. MARKS:

Q Are you familiar with other high-level executives in your company and other healthcare or other companies?

A I can readily recognize the people in my peer group at DaVita and what they've done.

Q And what have they done?

A Mostly, more than anything else, real estate. And you know, my boss has --

MR. SMITH: Objection. Foundation, Your Honor. How does he know this?

THE COURT: Sustained.

BY MR. MARKS:

Q Do you have communications with your peer group regarding what toys, perks they have?

A I have been physically in many of their homes, outside of their primary residences, to be able to tell you firsthand; ski chalets, beach houses, lake houses.

MR. SMITH: The foundation, Your Honor, as to who, when, where, what he saw.

MR. MARKS: This is just for foundation of the yacht. I don't want to kill all my time talking about everybody's beach house or ski chalet.

MR. SMITH: Well, you can't just, generally, say everybody owns a yacht.

MR. MARKS: I'm not saying everyone owns a yacht. I think he's very frugal compared to what his peers --

THE COURT: Well --

MR. SMITH: That's an opinion, not an argument --

THE COURT: Well, listen. The objection is sustained. From a time standpoint, just so you're aware your time was actually at 445. So I want to correct that. You, actually, starting this examination, had 95 minutes remaining, not 77, so --

MR. MARKS: Okay.

THE COURT: But the objection is sustained.

MR. MARKS: Okay. Let me rephrase it.

BY MR. MARKS:

Q Tell us a little about you love of boating growing

up.

A My grandfather had a sixty-foot Chris Craft, all wooden, at the Chesapeake Bay. We lived in Baltimore, Maryland until I was 17 years old. And for a majority of those years, every weekend, my mother and my father would go down to the Chesapeake, and we'd go -- we'd go around Annapolis.

I didn't touch a boat for many, many years, A, because I couldn't afford it; B, I wasn't really living in a place that was accessible to the water. And then, somewhere around 2013, when I had to give up the two things I loved doing the most for myself, which were --

Q Tell the Court about that.

A Playing golf and -- and mixed martial arts, competing at a national level. I gave up -- I tore two rotator cuff, and I -- I tore -- I herniated a disk in my neck to go along with two in my lower back. So I, literally, gave up the things that I enjoyed doing.

And as it turned out, I was taken back to the water. It brought me, there, some peace and serenity. As you mentioned the other day, it was a -- it was a good vehicle to take people that worked for me out on -- four, five, six hours into the ocean, out to Catalina. You talk about a captive audience. There's not many places that they can go, and say,

hey, we can't stay in this meeting anymore, we're going to go elsewhere, it's not that big of a boat. So it simply replaced two other hobbies that I had a real passion for going into boating.

And when I took up boating, I -- honest to God, I could be sitting out there, and it didn't matter what happened the other six days of the week, those hours were mine.

Q What was the -- how expensive was golf in LA?

A Yeah. There are very few public courses in LA. You're really talking about Pacific Palisades, going down to Trump National, and there may be one or two other courses up in Malibu, and then you go down to Newport Beach and Pelican Bay. And we're talking about two to $350, depending on the time of the year and the season, just for greens fees. Forget golf balls, forget the snack cart, forget the parking, forget the gas, forget, you know, I broke a club, I'm going to buy a shirt, et cetera. So, easily, just on average, 250 to $300 a day to play a round of gold in Los Angeles or Orange County.

Q And is that for one person?

A Yes, just for one person.

Q That's not bringing anybody.

A No, no.

Q Okay. And what about mixed martial arts; how expensive was that?

A You know, I was taking about 100 and -- I don't know. When I had time, 180 hours -- 180 minutes of lessons a week. So I paid mat fees, I paid trainer fees. I was competing in a lot of local contests. I competed in two of the senior tournaments in Brazilian jujitsu, the North American Open. You know, by the time you finish the week, by paying gym fees and your trainers and the coach and the mat, equipment, clothing, et cetera, you could easily spend $500 a week on mixed martial arts, as a serious practitioner. I'm not talking about someone who goes to the gym once, but someone who truly enjoys the sport and competes.

Q So, in terms of the yacht, could you trace, briefly, the purchase of the yacht and -- the two yachts and the sail?

A Yeah. I think we -- 2012, November, December, we were down in San Diego at the -- it wasn't the American Society of Nephrology. We were down at meetings staying at the Marriott, at the waterfront, at that marina. And looking out over the water, it was just like when I went to Lake Las Vegas, I was struck by the beauty of the water, the boats.

I went downstairs, I found a broker. There were a bunch down there because there were a lot of charter companies. And I purchased a fifty-six-foot 2007 cruiser for about $580,000.

I went down for X number of weekends to get

certified by a captain, where an insurance company would actually grant me a license or insurance to take the boat off property, passed all the Coast Guard requirements, et cetera, and transported the boat up from San Diego up to Marina Del Rey.

Q Okay.

A And I think I traded that boat somewhere around June of 2014 for a smaller boat, but one -- a little bit more modern, the electronics, it was safer to handle, et cetera. And I bought a fifty-foot -- actually a fifty-eight-and-a-half-foot Marquis.

Q Okay. And then, ultimately, what happened to the Marquis?

A Sold the boat roughly July 2015 to a private individual.

Q Okay. And in that -- and the Anthem report is claiming potential community waste of some $626,000 plus. Do you believe that's --

A I don't --

Q -- legitimate?

A No, I don't believe it at all. First of all, they put the acquisition prices in, and as Richard said, they put some equipment in there that allowed for a better trade-in on the boat, so I don't agree.

And I don't agree that the operating expenses are waste. They're no different than any other hobbies. They're no different than maintaining a house and have a garden, and a pool, and replacing a wall and painting the exterior. It's just the cost of something you enjoy doing, so I don't agree with it.

Q And was that your only hobby during that period of time?

A Once I gave up golf and mixed martial arts, the boat was pretty much it, yes.

Q And when you sold the boat, did the proceeds go into a UBS account?

A They did.

Q So there was -- there would be nine ninety that's back in the UBS account.

A I would hope, since -- that would be a little bit more, since it was July, that it's done something, even if it generated some normal interest from just being in a -- in a --

Q Okay.

A -- saving's account.

Q So do you think you should be charged any community waste for owning the yacht for the three years?

A No, I don't.

Q The next issue is relating to what we're calling

Exhibit 6, that I'm calling "unallocated," and they have the long phrase of "assessments of potential community waste not elsewhere classified." I hope I can use the word "unallocated" because it's shorter. And the -- just so you know, that's Exhibit 6. And the backup that we received on February, I think, 12th from Anthem would be exhibit --

(COUNSEL CONFER BRIEFLY)

BY MR. MARKS:

Q Would be exhibit -- in Exhibit 60 and 61. And I think you've reviewed Exhibit 60 and 61. I have a loose copy. Isn't that right?

A I have a -- yes. Multiple times.

Q Okay. And so, if you can keep Exhibit 6 open and Exhibit 60 and 61 both open, so I can refer back and forth.

A I'll do my best, yes.

Q Okay. You reviewed Exhibit 6, which is the assessment of potential community waste not otherwise elsewhere classified, correct?

A I have.

Q And you couldn't review that in full until we got the backup on February 12th of 2016, correct?

A Correct.

Q So was there any accounting you could have done?

A Not in that short time frame, no.

Q Okay. And in fact, wasn't that the discovery cut off that day when we got there?

A That was my understanding, yes.

Q Okay. So I'm going to go through some items. The first, in the far-right-hand corner, those adjust -- where it says "Adjusted," that will add up to the 3.6 million. Do you understand that?

A I do.

Q Item 7, auto-related, GMAC Cadillac, 273,300. After you reviewed the backup in Exhibit 60 and 61, what did you determine that charge was?

A I think I determined what anyone would. When the word "mortgage" is following it, and ascribing that a Cadillac Escalade, which is an eighty-five-to-ninety-thousand-dollar vehicle is $273,000, when Cadillac lease payments are captured otherwise, that it -- that it was a mistake. That was the mortgage, the first mortgage for Edenberg.

Q And Edenberg was rolled into Oak Pass?

A Yes. And on my side of the balance sheet.

Q Okay. So you don't believe that should be potential community waste?

A Not at all.

Q The next item is 466,694.86, auto-related, luxury, not elsewhere classified. You heard how Ms. Allen gave you a

car allowance of a certain amount of money and looked at your FDF and your depo testimony, and I guess, determined 466,694 is -- they want to consider waste. Should that be waste in your opinion?

A Not at all. And I think Richard did a good job of this category. But arbitrarily assigning an auto allowance of $3,700, I don't even know how they arrive at that.

Q Are you taking the cars on your side of the column?

A Taking the cars and the depreciations on my side of the column.

Q Do you have an exotic car hobby; would you classify yourself as a lover of exotic cars?

A I love driving nice cars, yes.

Q Okay. And would you have nice cars whether you were married or not married, have a girlfriend or not have a girlfriend?

A I would have nice cars, and that is a habit that began back in 1991, living in Philadelphia, with a purchase of our first Infinity QX56, which was a high-end luxury car, in 1991.

Q The next item, 17, is bank fees, cash advance. Do you know why -- do you believe that bank fees should be considered waste?

A I don't. You know, I can't, every time I need cash,

ride around town. I don't have the luxury of working three days a week, at leisure, and trying to find a Bank of America ATM. Sometimes, you just accept what you have if you need cash, and you pay the 3.95 or the 4.95 associated with the transaction.

Q Do those -- in other words, they have bank fees, finance charges, foreign transaction fees. Why would Nadya or some community waste issue relate to foreign transaction fees?

A You know, the only thing I can think of, if Nadya -- she made one tip to Kazakhstan to visit her family, and I think one trip to Germany. I may, directionally, be off during the years. But I think that was captured on all of her credit cards. I think the foreign transactions were charges on my credit card, and the fees associated with the credit cards charging an arbitrage between kind of local currency and conversion.

Q They're saying you -- loan interest, that I guess you shouldn't have had any interest over eight years. You had 26,000 in interest. Can you explain that?

A I don't know how you have a loan to finance things that end up adding value, in most cases, not all, and not have any interest associated with those.

Q You're pretty debt-free, though, aren't you?

A Yes, I am debt-free. The home in Oak Pass is paid

for, Carlyle is paid for, and my parents' condo and my brother's condo are all paid for --

Q But you --

A -- so --

Q But you have a UBS line of credit.

A I do.

Q And why do you use that; for what?

A Yeah. There are times when a capital call will come in, and as Richard said, a capital call is you make a pledge to a fund to commit X number of dollars, let's just say $500,000. They don't take it all at once; they, periodically, will send an email saying, you have a capital call due tomorrow or the next day. And when you look at your portfolio and you start moving things around, you, literally, make a business decision.

My line of credit is somewhere about 1.4 percent. You know, there are not a lot of rates you can access with that. So you just say, rather than take money or liquidate something that's generating three or four or five percent, access a line of credit. It -- it's not free money, but it's less-expensive access to capital than taking something out of a fund that's performing higher.

Q Now has Gabby --

MR. SMITH: Foundation, Your Honor. I don't know

where any of those numbers came from.

THE COURT: Sustained.

BY MR. MARKS:

Q What -- in terms of your line of credit, is your interest rate on your line of credit?

MR. SMITH: Foundation, Your Honor. Where's --

MR. MARKS: He would know his own interest rate, wouldn't he?

MR. SMITH: Well, I don't know. You'd have to look at a document, which he's never provided, in terms of --

MR. MARKS: No, but do you know what the -- he could know what the rate is on his line of credit.

THE COURT: The witness may answer the question.

THE WITNESS: 1.4 -- 1.4 percent, the last time I checked.

BY MR. MARKS:

Q Is your dealings in your portfolio with your line of credit, was that helping or hurting Gabby?

A It was, ultimately, helping.

Q The next item they have is "Capital Call Mutual Fund." Do you know what that is?

A It's the same concept. You -- you sign up to participate in a fund; and rather than taking all of your money up front and sitting on it, they only take money, as

needed, to purchase something in their portfolio. That benefits you. Otherwise, your money is sitting there, not doing anything at all, in terms of interest. So any capital call -- and there's a whole bunch throughout the -- since 2011, since we had UBS, so that's what that capital call is.

Q Then they have "CC Payments," I guess all the credit card payments. Why would those be community waste?

A I -- I don't have any idea.

Q Do you use your personal card both for personal and business?

A Up until very recently, I used my personal cards for business, primarily, get the AmEx points. Certain hotels, with AmEx, will give you late checkout, upgrade to a higher room, free internet. So yeah, yes, I use my personal cards a lot.

Q Then they have dues and subscriptions, 23,000.

A Yeah.

Q Do you see that on Line 43?

A I do. I -- dues and subscription. I'm sorry. Which line, Dan?

Q 43.

A Yeah. I don't know what the cost is of Equinox, and I'm assuming -- you know, I'm entitled to a health club membership; I work out a lot. In a stressful job, staying