

Case No. 74275

In the Supreme Court of Nevada

GEORGE STUART YOUNT, individually and in his capacity as owner of George Yount IRA,

Appellant,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10.,

Respondent.

Electronically Filed
Mar 05 2019 08:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Second Judicial District Court, Washoe County, Nevada
The Honorable N. PATRICK FLANAGAN, District Judge
The Honorable JEROME POLAHA
The Honorable EGAN WALKER
District Court Case No. CV16-00767

**APPELLANT'S APPENDIX
VOLUME 16
PAGES 3751-4000**

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7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
9 **THE STATE OF NEVADA IN AND FOR THE**
10 **COUNTY OF WASHOE**

11 GEORGE STUART YOUNT, Individually and
in his Capacity as Owner of GEORGE
12 STUART YOUNT IRA,

13 Plaintiff,

14 vs.

15 CRISWELL RADOVAN, LLC, a Nevada
limited liability company; CR Cal Neva, LLC, a
16 Nevada limited liability company; ROBERT
RADOVAN; WILLIAM CRISWELL; CAL
17 NEVA LODGE, LLC, a Nevada limited
liability company; POWELL, COLEMAN and
18 ARNOLD LLP; DAVID MARRINER;
MARRINER REAL ESTATE, LLC, a Nevada
19 limited liability company; NEW CAL-NEVA
LODGE, LLC, a Nevada limited liability
20 company; and DOES 1 through 10, Inclusive,

21 Defendants.

CASE NO.: CV16-00767
DEPT. NO.: B7

***ERRATA TO DEFENDANTS’
OPPOSITION TO PLAINTIFF’S
MOTION FOR JUDGMENT AS A
MATTER OF LAW, FOR RELIEF FROM
JUDGMENT, TO ALTER AND AMEND
THE JUDGMENT, TO AMEND THE
FINDINGS, AND FOR NEW TRIAL***

22
23 Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC (“CR Cal
24 Neva”), Robert Radovan (“Radovan”), William Criswell (“Criswell”), and Powell, Coleman
25 and Arnold LLP (“PCA”) (collectively “Defendants”), by and through their undersigned
26 counsel, submit their *Errata* to their Opposition to Plaintiff’s Motion for Judgment as a Matter
27 of Law, for Relief from Judgment, to Alter and Amend the Judgment, to Amend the Findings,
28 and for New Trial (“Opposition”). (***Changes are in bold, italics and underlined.***)

HOWARD & HOWARD ATTORNEYS PLLC

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1 This Opposition is made and based on the attached Memorandum of Points and
2 Authorities, the pleadings and papers on file herein, and the arguments of counsel at any
3 hearing hereof.

4 DATED this 24th day of May, 2018.

5 HOWARD & HOWARD ATTORNEYS PLLC

6
7 By: /s/ Martin A. Little, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This matter came on before the late Chief Judge Patrick Flanagan for a bench trial on August 29 through September 8, 2017. After assessing the evidence and credibility of all witnesses, Judge Flanagan issued an oral decision on the record on September 8, 2017.¹ Judge Flanagan entered a sweeping verdict in favor of Defendants, and dismissed Plaintiff George Yount’s (“Plaintiff”) claims against Defendants with prejudice. Significantly, Judge Flanagan also found that Plaintiff conspired with another investor, IMC Investment Group (“IMC”), to intentionally interfere with and sabotage the loan Defendants had lined up with Mosaic (the “Mosaic Loan”) to fund the completion of the legendary Cal Neva Hotel in Lake Tahoe (the “Project”).

Judge Flanagan specifically found that Defendants were damaged by Plaintiff’s interference with the Mosaic Loan, which ultimately led to the demise of the Project. The Court ruled:

In determining whether a party’s improper conduct bars relief, the Nevada Supreme Court applies a two-factor test. One, the egregiousness of the misconduct at issue; and, two, the seriousness of the harm caused by the misconduct against the granting of the requested relief. And that the District Court has broad discretion in awarding damages.

In this case, but for the intentional interference with the contractual relations between Mosaic and Cal Neva LLC, this Project would have succeeded. That is undisputed.²

...

This Court has documented dozens of e-mail exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic loan So the counterclaim from the defendants is granted.

Ex. 1, p. 1139:13-22 and p. 1140:20-21.

¹ A copy of the trial transcript of the issued decision (Volume 7) is attached hereto as **Exhibit 1**.

² Judge Flanagan expressly found “[t]hat [the] Mosaic [Loan] would have closed by year end and that all parties would have been paid. The project would be up, operational, and a spectacular success.” See Ex. 1, p. 1131:11-13.

1 Judge Flanagan then awarded Defendants Radovan and Criswell \$1.5 million each in
 2 compensatory damages, two year’s salary, management fees, attorneys’ fees and costs. *Id.* at
 3 1140:13-22, 1140:1-3, and p. 1140:20 – 1141:1-3. A week later, on September 15, 2017, Judge
 4 Flanagan issued a separate Amended Order clarifying his damage award and including lost
 5 development fees to Criswell Radovan. See Amended Order, dated September 15, 2017,
 6 **Exhibit 2** hereto.

7 Although Plaintiff purports to act shocked and surprised by the damage award – no
 8 doubt hoping to play on the fact this matter is before a new judge – the reality is his interference
 9 with the Mosaic Loan and Defendants’ resultant damages were a major focus of the trial.
 10 Indeed, even before trial, Defendants’ Proposed Findings of Fact and Conclusions of Law
 11 clearly stated:

12 “The evidence shows that Plaintiff conspired with certain other investors to not
 13 only interfere with, but ultimately sink the Project’s major refinancing loan with
 14 Mosaic, which would have bailed this Project out. This intentional interference
 15 has damaged the Defendants’ far in excess of Plaintiff’s initial \$1,000,000.00
 16 investment.”

17 See Defendants’ August 25, 2017 Proposed Findings of Facts and Conclusions of Law, **Exhibit**
 18 **3** hereto. During trial, not only did Plaintiff’s counsel stipulate into evidence fifty-six (56)
 19 defense exhibits (most of which were emails that dealt directly with Plaintiff’s interference),
 20 but Plaintiff’s counsel put on considerable evidence in his own case-in-chief to try to refute
 21 Plaintiff’s interference with the Mosaic Loan. Critically, Plaintiff’s counsel even called
 22 Brandon Cheney -- a member of the IMC Group – to try to downplay Plaintiff’s interference
 23 with the Mosaic Loan. See, Testimony of Brandon Cheney, Trial Vol. V., pp. 837-843; Trial
 24 Vol. VI., pp. 860-863. Critically, when Defendants’ counsel put on evidence of damages,
 25 Plaintiff’s counsel’s only objection was “lack of foundation” – not that somehow they were
 26 being bamboozled by an unpled counterclaim. Any suggestion that Plaintiff or his counsel had
 27 the wool pulled over their eyes by Judge Flanagan is misleading and flat out contradicted by
 28 the evidence presented at trial with Plaintiff’s counsel’s express consent.

Plaintiff misinterprets Judge Flanagan’s decision in order to circumvent the fact that
 neither the law, nor the facts, support the relief requested in his Motion. Plaintiff attempts to

1 reframe Judge Flanagan’s verdict as an award of “damages to defendants – not on a
2 counterclaim that they pleaded and proved, but on an affirmative of [*sic*] defense of unclean
3 hands . . . that defendants did not prove.” Plaintiff’s Motion (“Mtn.”), p. 2:5-7. In fact, Judge
4 Flanagan ruled against Plaintiff and awarded damages to Defendants based on a counterclaim
5 that was tried by the parties’ consent. There is ample justification in the civil rules for Judge
6 Flanagan’s decision. *See* NRCP 54(c) (“every other final judgment should grant the relief to
7 which each party is entitled, even if the party has not demanded that relief in its pleadings.”).

8 **II.**

9 **FROM JUDGMENT PLAINTIFF CANNOT SUSTAIN HIS BURDEN FOR RELIEF,
AMENDING THE COURT’S FINDINGS OR JUDGMENT, OR FOR A NEW TRIAL**

10 Plaintiff’s “Motion” is in fact five motions. Indeed, Plaintiff seeks: (1) judgment as a
11 matter of law based on NRCP 50(b); (2) relief from judgment pursuant to NRCP 60(b); (3) to
12 alter and amend the judgment based on NRCP 59(e); (4) to amend the Court’s findings pursuant
13 to NRCP 52(b); and (5) a new trial pursuant to NRCP 59(a).

14 **A. Plaintiff is Not Entitled to Judgment as a Matter of Law**

15 Although Plaintiff claims that the Motion “moves for judgment as a matter of law”
16 pursuant to Nevada Rule of Civil Procedure (“NRCP”) 50(b), Plaintiff completely abandons
17 this theory of relief. Mtn, p. 2:1-3. The Motion does not include any discussion of this ground
18 for relief, let alone a citation to the standard of review, which would have confirmed Plaintiff’s
19 admission in a footnote that NRCP 50(b) applies to jury trials.³ Accordingly, the Court should
20 not consider this ground for relief. *See* Rules of the District Court of the State of Nevada
21 (“DCR”), Rule 13(2) (stating that the absence of a memorandum of points and authorities in
22 support of each ground for relief in a motion is “cause for its denial or as a waiver of all grounds
23 not so supported.”) and Washoe District Court Rules (“WDCR”), Rule 12(1).

24 _____
25 ³ Under NRCP 50(b), a party must first move for judgment as a matter of law before the jury
26 renders its verdict, in order to be allowed to renew the motion after the verdict. *See Ren Yu*
27 *Zhang v. Barnes*, 382 P.3d 878 (Nev.2016) (stating that “A party must make the same
28 arguments in its pre-verdict NRCP 50(a) motion as it does in its post-verdict NRCP 50(b)
motion.”); *see also Price v. Sinnott*, 85 Nev. 600, 607, 460 P.2d 837, 841 (1969) (“It is solidly
established that when there is no request for a directed verdict, the question of the sufficiency
of the evidence to sustain the verdict is not reviewable.”).

1 **B. Plaintiff’s Claim for Relief from Judgment Must be Denied**

2 Plaintiff’s Motion is also missing the requisite points and authorities in support of
3 Plaintiff’s requested relief from the Judgment for reasons of “mistake, inadvertence, surprise,
4 or excusable neglect” under NRCP 60(b). Mtn, p.3:1-4. Other than one sentence on page three
5 of the Motion, which cites to NRCP 60(b), there is no discussion of the alleged basis for relief
6 on this ground, or any legal authority in support thereof. Accordingly, the Court should treat
7 this claim for relief as abandoned and deny Plaintiff’s request for relief from the Court’s
8 Judgment pursuant to NRCP 60(b)(1). DCR, Rule 13(2) and WDCR Rule 12(1).

9 Even if the Court does not deny this ground for relief as abandoned in light of its
10 procedural defects, Plaintiff cannot meet his burden of proving “mistake, inadvertence,
11 surprise, or excusable neglect” by a preponderance of the evidence. *Britz v. Consolidated*
12 *Casinos Corp.*, 87 Nev. 441, 445, 488 P.2d 911, 915 (1971). Plaintiff’s Motion is void of any
13 discussion of the purported “mistake, inadvertence, surprise, or excusable neglect” that
14 warrants relief from the Court’s Judgment.

15 Further, as discussed below, an examination of the trial transcript and the exhibits the
16 parties stipulated to demonstrates that the Court’s Judgment against Plaintiff came as no
17 surprise to Plaintiff and his counsel.

18 **C. The Court’s Actions Concerning Defendants’ Counterclaim Do Not
Warrant Altering the Judgment**

19 A motion to alter or amend judgment under NRCP 59(e) is “an extraordinary remedy
20 which should be used sparingly.” *Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F.Supp. 2d 1112,
21 1117 (D.Nev.2013) (*citing McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999)).
22 Such relief is available in four scenarios: “(1) where the motion is necessary to correct
23 ‘manifest errors of law or fact upon which the judgment rests;’ (2) where the motion is
24 necessary to present newly discovered or previously unavailable evidence; (3) where the
25 motion is necessary to ‘prevent manifest injustice;’ and (4) where the amendment is justified
26 by an intervening change in controlling law.” *Id.* (*citing Allstate Insurance Co. v. Herron*,
27 634 F.3d 1101, 1111 (9th Cir. 2011)).
28

1 Here, Plaintiff’s Motion should be denied, as Plaintiff cannot establish that the
 2 Judgment requires alteration to correct any errors of law or fact, to present new evidence, to
 3 prevent injustice, or to conform to a change in the law.⁴ Plaintiff points to three alleged errors
 4 by the Court that pertain to Defendants’ counterclaim. Specifically, Plaintiff contends that the
 5 Court erred (1) in allowing Defendants’ to cite Plaintiff’s unclean hands defense in a case
 6 involving solely legal claims (Mtn, p. 4:34-35); (2) in finding that Defendants proved Plaintiff
 7 was acting with unclean hands (Mtn, p. 3:21-23); and (3) in awarding damages based on
 8 unclean hands (Mtn, p. 5:21-23).

9 Plaintiff’s first contention does not rise to the level of a manifest error of law. First,
 10 Plaintiff fails to provide any points and authorities for his contention that the concept of unclean
 11 hands may not apply to legal claims and is not a basis for seeking affirmative relief. Mtn,
 12 p. 3:25-26. Plaintiff was apparently unable to cite authority for this proposition in Nevada, as
 13 there do not appear to be any Nevada cases on point.⁵ However, other states in the Ninth
 14 Circuit, such as California, have recognized the doctrine may also apply to remedies at law.
 15 *See, e.g., Camp v. Jeffer, Mangels, Butler & Marmaro*, 35 Cal. App. 4th 620, 638, 41 Cal. Rptr.
 16 2d 329 (Cal. Ct. App. 1995) (“In California, the doctrine of unclean hands may apply to legal
 17 as well as equitable claims and to both tort and contract remedies.”); *see also Maldonado v.*
 18 *Ford Motor Co.*, 476 Mich. 372, 719 N.W.2d 809, 818 (2006) (“The authority to dismiss a
 19 lawsuit for litigant misconduct is a creature of the ‘clean hands doctrine’ and, despite its
 20 origins, is applicable to both equitable and legal damage claims.”).

21 Plaintiff relies almost entirely on his unsupported opinions that Defendants cannot use
 22 their unclean hands defense because Plaintiff’s alleged misconduct does not sufficiently relate
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24 ⁴ “Since NRCP 59(e) does not itself provide standards for granting or denying a motion to alter or
 25 amend, ‘the district court enjoys considerable discretion in granting or denying the motion.’” *Stevo*
 26 *Design, Inc.*, 919 F.Supp. 2d at 1117 (citing *Allstate Insurance Co.*, 634 F.3d at 1111).

27 ⁵ In *USF Ins. Co. v. Smith’s Food & Drug Ctrl, Inc.*, 921 F.Supp 2d 1082, 1098 n.5 (D.Nev.2013), the
 28 Court stated, “[w]hile it may be likely that an unclean hands defense can be invoked even when only a
 remedy at law is sought despite the doctrine’s historical roots in courts of equity, the Court’s review of
 Nevada law did not reveal any decision addressing this issue.”

1 to Plaintiff’s affirmative claims, and also because it supposedly cannot be converted to a
2 counterclaim.⁶

3 However, Plaintiff’s unclean hands in interfering with the Mosaic Loan prevented
4 completion of the Project, which caused all the financial loss for which Plaintiff initially sought
5 damages from Defendants. Moreover, statutory and case law within Nevada and the Ninth
6 Circuit clearly allow an affirmative defense to be converted to a counterclaim. *See* NRCPC 8(c)
7 (“When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a
8 defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a
9 proper designation.”); *Las Vegas Dev. Grp., LLC v. SRMOF II 2012-1 Tr.*, No. 2:13-cv-02194,
10 2018 BL 65566 at *4 (D. Nev. Feb. 26, 2018) (The Court, relying on Fed. R. Civ. P. 8(c)(2),
11 construed an affirmative defense as a counterclaim in the interest of justice and judicial
12 efficiency.); *see also Schettler v. Ralron Capital Corp.*, 128 Nev. 209, 223 n.7 (2012) (Nevada
13 Supreme Court finds that “NRCPC 8(c) requires the court to treat [Plaintiff’s] counterclaims as
14 affirmative defenses...”).

15 Plaintiff also – seemingly as an afterthought and in mere conclusory fashion – alleges
16 there is no record evidence to support an interference counterclaim. As demonstrated below,
17 a substantial amount of documentary and testimonial evidence adduced at trial concerned
18 Plaintiff’s willful interference with the Mosaic Loan.

19 Simply put, Plaintiff cannot sustain his burden of demonstrating that the Court’s
20 judgment rests on manifest errors of law or fact, or should be amended in view of newly
21 discovered or previously unavailable evidence, an intervening change in controlling law
22 warrants amendment of the judgment, or to prevent manifest injustice.

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26 ⁶ The doctrine of unclean hands applies when a party seeks affirmative relief, but is itself guilty of
27 conduct involving fraud, deceit, unconscionability, or bad faith; and the misconduct directly relates to
28 the matter at issue, injures the other party, and affects the balance of equities between the litigants.
Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co., 324 U.S. 806, 814-15 (1945)

III.

PLAINTIFF’S MOTION FOR A NEW TRIAL SHOULD BE DENIED AS INTERFERENCE WAS EXTENSIVELY TRIED BY THE PARTIES AND THE TRIAL EVIDENCE SUPPORTS DEFENDANTS’ DAMAGE AWARD

A. Regardless of the Formality of the Initial Pleadings, the Parties Heavily Litigated and Tried the Issue of Plaintiff’s Interference by Express and/or Implied Consent

The evidence overwhelmingly demonstrates that the issue of Plaintiff’s interference with the Mosaic Loan was tried by consent and was a major focus of the trial.

Starting well before trial, Defendants made it clear this issue was part of their case, starting with their Motion for Summary Judgment:

Unfortunately, [Plaintiff] also involved himself with a select group of investors who actively meddled in the financing efforts to try to supplant their own financing. In the spring of 2016, these investors (with Plaintiff’s involvement) went behind Criswell Radovan’s back and sabotaged the loan Criswell Radovan had lined up with Mosaic to fund the remaining construction.

See Defendants’ Motion for Summary Judgment, ¶ 28 of the Statement of Undisputed Facts (*Exhibit 3*).

Just before trial, Defendants submitted their proposed Findings of Fact and Conclusions of Law, which contained a similar finding. *See* Defendants’ Proposed Findings of Fact and Conclusions of Law, ¶¶ 45-46, *Exhibit 4*. Importantly, Defendants’ Proposed Conclusion of Law number 68 stated:

The evidence shows that Plaintiff conspired with certain other investors to not only interfere with, but ultimately sink the Project’s major refinancing loan with Mosaic, which would have bailed this Project out. This intentional interference has damaged the Defendants far in excess of Plaintiff’s One Million Dollar investment.

Id.

During trial, Plaintiff’s interference with the Mosaic Loan was a central theme for nearly every witness who testified. Indeed, the extent to which the Mosaic Loan was an issue at trial is evidenced from a simple word search of the number of times the word “Mosaic” appears in the transcript—**over 300**. Importantly, the Mosaic Loan testimony and trial exhibits were specifically presented for Defendants’ Counterclaim for Interference. For Plaintiff and

1 his counsel to claim surprise by this issue after being mentioned over 300 times during the trial
2 is ridiculous and grossly misrepresents what this trial was about.

3 Importantly, a review of the trial transcript plainly shows that Defendants’
4 Counterclaim for Plaintiff’s Interference was tried by **express** consent. Indeed, Plaintiff’s
5 consent to try this issue began when Plaintiff stipulated into evidence all of Defendants’ trial
6 exhibits—the vast majority of which were emails that Judge Flanagan correctly documented
7 as “email exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic
8 loan.” *See* Transcript, September 8, 2017, p. 1140:1-3.

9 Among many others, these emails included:

- 10 • **Trial Exhibit 109:** Email exchange between IMC and Plaintiff before the secret
11 meeting with Mosaic sharing information “for our eyes only”.
- 12 • **Trial Exhibit 110:** Email exchange between IMC and Plaintiff—referring to
13 themselves as “Team” and discussing their “divide and conquer approach”.
- 14 • **Trial Exhibit 115:** Email exchange between IMC’s Brandon Cheney and
15 Plaintiff shortly before the secret Mosaic meeting wanting to talk about Robert
16 Radovan of Criswell Radovan.
- 17 • **Trial Exhibit 118:** Plaintiff’s email to IMC discussing the ousting of Criswell
18 Radovan and that “we must be extra careful not to underestimate these two
19 tomorrow”.
- 20 • **Trial Exhibit 119:** Email exchange between Plaintiff and IMC where they are
21 proposing to use Plaintiff’s claim and threat of lawsuit as a coercive means to
22 get Criswell Radovan to leave the Project.
- 23 • **Trial Exhibit 121:** Email exchange between Plaintiff and IMC referencing the
24 fact IMC was planning to secretly meet with Mosaic that Monday without
25 Criswell Radovan’s knowledge or consent.
- 26 • **Trial Exhibit 122:** Email exchange between IMC and Plaintiff making it clear
27 that Criswell Radovan did not know of the Mosaic meeting and referencing the
28

1 fact IMC was getting a letter of intent from another equity party (*i.e.*, someone
2 other than Mosaic).

- 3 • **Trial Exhibit 124:** Email from Mosaic to Radovan the very day IMC secretly
4 met with Mosaic saying they are backing out of the loan and tearing up the term
5 sheet.
- 6 • **Trial Exhibit 126:** Email exchange with Plaintiff referencing the secret Mosaic
7 meeting as a “good meeting”, and discussing that Criswell Radovan must
8 immediately resign and cede their 20% interest or “face swift civil and criminal
9 action”.
- 10 • **Trial Exhibit 127:** Email from Plaintiff to IMC asking for input on his legal
11 strategy against Criswell Radovan.
- 12 • **Trial Exhibit 130:** Less than a week after the Mosaic loan was torpedoed,
13 Plaintiff and IMC are discussing another potential investor.
- 14 • **Trial Exhibit 131:** Less than a week after the Mosaic loan was torpedoed, IMC
15 and Plaintiff are discussing a replacement developer to replace Criswell
16 Radovan and making sure “not [to] discuss with others outside this email list”.
- 17 • **Trial Exhibit 132:** Email exchange between Plaintiff and IMC shortly after the
18 Mosaic loan was torpedoed asking about another investment group.
- 19 • **Trial Exhibit 133:** Plaintiff email to IMC—after the Mosaic loan was
20 torpedoed—describing one of the IMC members as “our hero!”.
- 21 • **Trial Exhibit 142:** Email exchange between Plaintiff and IMC—approximately
22 1.5 months after the Mosaic loan was torpedoed—agreeing to a “good cop/bad
23 cop routine” against Criswell Radovan.

24 Plaintiff also presented three (3) of his own trial exhibits – Exhibits 55, 58 and 59 –
25 which were emails with IMC dealing with the interference claim:

- 26 • **Trial Exhibit 55:** Email between Plaintiff and IMC two weeks before the
27 Mosaic Loan was torpedoed talking about other refinancing options.

- 1 • **Trial Exhibit 58:** Email from Plaintiff to Molly Kingston the week before
2 Mosaic Loan was torpedoed saying “there is no way to the finish line with these
3 developers.”
- 4 • **Trial Exhibit 59:** Email exchange between Plaintiff and IMC a few days before
5 the Mosaic Loan was torpedoed stating “we need to get more investors on board
6 with their removal.”

7 Plaintiff’s stipulation to the admissibility of these emails not only refutes his claim that
8 he did not “acquiesce to a trial regarding intentional inference”, but these very emails and the
9 testimony regarding them were thoroughly weighed by Judge Flanagan and supported his
10 damage award:

11 **“This Court has documented dozens of email exchanges between Mr. Yount
12 and the IMC in their efforts to undermine the Mosaic loan and there is no
13 more solid evidence of that than in Exhibit 124.** That deal was done. That deal
14 had been executed. That deal was in place. Mosaic had evidenced its enthusiasm
15 to close this deal. And yet the day that individuals from the IMC went to the
Mosaic offices without the knowledge of CR, that deal was dead. And the
testimony is unequivocal, there was never an attempt by the IMC to resurrect it,
despite the open invitation by Mosaic to reintroduce the loan.”

16 See Transcript of Proceedings, September 8, 2016, pp. 52-53, (emphasis added). (**Exhibit 1**)

17 The fact Plaintiff tried the interference claim by consent is perhaps best demonstrated
18 by his counsel’s questioning of Plaintiff and Plaintiff’s star witness, Brandon Cheney from the
19 IMC Group, on this key defense topic. For example, on page 585 of Volume III of the Trial
20 Transcript, Plaintiff’s counsel asks Plaintiff: “Did you ever conspire to somehow undermine
21 the Mosaic loan?” Plaintiff and his counsel then began a colloquy lasting 16 pages trying to
22 downplay and explain away the damning emails showing his active involvement. *See*
23 Transcript, pp. 585-601. (**See, Exhibit 5**)

24 Opening the Counterclaim door even further, Plaintiff then called Brandon Cheney
25 from IMC as a witness and questioned him extensively on the Mosaic Loan—all in an effort
26 to try to undermine Defendants’ allegation that IMC and Plaintiff conspired to torpedo that
27 Project refinancing. *See* Transcript, Volumes V and VI (**Exhibits 6 and 7, respectively**), pp.
28 837-843 (**Exhibit 6**) and 857-865 (**Exhibit 7**). For example, on p. 842 of the Transcript,

1 Plaintiff's counsel asks Mr. Cheney if he and his partners went into the secret meeting with
2 Mosaic "to somehow torpedo the Mosaic loan?" Plaintiff's counsel then asked Mr. Cheney if
3 Plaintiff did anything to interfere with the Mosaic Loan. *See* Transcript, pp. 862:24-863:7
4 (*Exhibit 7*). Importantly, on p. 860 of the Transcript, Plaintiff's counsel introduced a brand-
5 new Exhibit as "impeachment evidence" to rebut Robert Radovan's testimony from the prior
6 day about sabotaging the Mosaic loan:

7 Q. Did you receive a letter through the course of your dealings with Mr. Radovan
8 that was sent from Mosaic to Mr. Radovan about terminating the loan going
9 forward?

9 A. Yes.

10 MR. CAMPBELL: Your Honor, I have a new exhibit. I believe it's an
11 impeachment exhibit. It goes directly to the heart of the evidence that we've heard
12 today from Mr. Radovan as to the -- as to what happened with the Mosaic loan.
13 Mr. Chaney provided it to me. I did not get it in discovery. It was not provided in
14 the CR discovery. But I think it goes to the heart of the matter and it should be
15 admitted as an impeachment witness.

14 THE COURT: Show it to counsel. You can provide it to the clerk.

15 THE CLERK: Exhibit 77 marked for identification.

16 THE COURT: Mr. Little.

17 MR. LITTLE: My response is the door is going to swing both ways on that. The
18 rules of evidence are clear that you can bring in impeachment evidence if it's truly
19 to impeach a witness. I guess I'd ask your Honor, you can separate the wheat from
20 the chaff, we know that. I'm not going to object to this, but by the same token when
21 I have impeachment evidence, I'll going to be relying on the same argument.

21 THE COURT: Mr. Wolf, anything to add?

22 MR. WOLF: I have no further comment on it.

23 THE COURT: All right. Thank you. 77 is admitted.

24 *See*, Transcript, pp. 860:22-861:21 (*Exhibit 7*). Tellingly, Plaintiff completely ignores the
25 following extensive findings that Judge Flanagan made about Mr. Cheney's lack of credibility:

26 **... and it's clear he was bitter and it's clear he was prejudiced and it's clear**
27 **he's biased against Mr. Radovan. ... But that bias is there. That bitterness is**
28 **there.**

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He has been found personally liable for tortious interference with a contract, with a verdict in the form of \$6.4 Million. He wasn't subpoenaed. He volunteered to testify here, because as he said, "I have a story to tell,".

See, Transcript of Proceedings, September 8, 2017, pp. **1127**, **Exhibit 1** (emphasis added). In fact, Judge Flanagan spent four pages of this Transcript explaining why Mr. Cheney's testimony was not credible.

Plaintiff's conspiracy with IMC to interfere with the Mosaic Loan was also addressed thoroughly by Defendants' counsel on cross examination of nearly every witness, most notably with Plaintiff, Robert Radovan and Brandon Cheney. Even a cursory review of this trial testimony shows how big of an issue this was at trial. Importantly, Plaintiff's counsel did not object to this line of questioning, and, instead, stipulated into evidence dozens of emails that pertain solely to this issue. The final nail in the coffin on Plaintiff's claim that he did not "acquiesce to a trial regarding alleged intentional interference" came when Defendants' counsel examined Robert Radovan about how Defendants had been damaged by Plaintiff and IMC's interference:

Q. [By Defendants' counsel]. Sir, can you quantify how CR Cal Neva has been damaged by Mr. Yount and IMC's interference?

Mr. Campbell: Objection, lack of foundation.

THE COURT: Sustained. I'm sorry, overruled. Go ahead.

See Transcript of Proceedings, Volume III, p. 493:6-24 (**Exhibit 5**). Importantly, Plaintiff's counsel's only objection to this line of questioning was one of "foundation"—not that Plaintiff was somehow being blindsided or ambushed by a trial on the issue of his interference with the Mosaic Loan and the resultant damages to Defendants.

In short, it is clear that the issue of the Mosaic Loan and the financial consequences of Plaintiff's interference with that loan was a key issue in the trial. Plaintiff not only failed to object to the presentation of significant testimony and evidence in this regard, but his counsel stipulated to the admissibility of dozens of emails dealing solely with this issue and then questioned Plaintiff's own witnesses on the subject. Judge Flanagan then weighed all the

1 evidence presented and found for Defendants in a well-reasoned opinion. For Plaintiff to claim
2 any sort of prejudice or suggest this was trial by ambush is nothing short of disingenuous.

3 **B. Defendants Proved Every Element of Plaintiff’s Interference**

4 As explained hereinabove, while the pleadings did not formally include a counterclaim,
5 there was substantial evidence presented at trial by consent of both sides to support Judge
6 Flanagan’s finding that Plaintiff had intentionally interfered with the Mosaic Loan.⁷ As stated
7 herein, there is ample justification in the civil rules for Judge Flanagan’s decision to award
8 damages on an interference claim.

9 Under well-settled Nevada law, “[I]ability for the tort of intentional interference with
10 prospective economic advantage requires proof of the following elements: (1) a prospective
11 contractual relationship between the plaintiff and a third party; (2) knowledge by the defendant
12 of the prospective relationship; (3) intent to harm the plaintiff by preventing the relationship;
13 (4) the absence of privilege or justification by the defendant; and (5) actual harm to the plaintiff
14 as a result of the defendant’s conduct.” *Wichinsky v. Mosa*, 109 Nev. 84, 87-88, 847 P.2d 727,
15 729-30 (1993).

16 Here, there is substantial evidence to support the Court’s ruling and award of damages
17 as a result of Plaintiff’s intentional interference with Defendants’ prospective contractual
18 relationship with Mosaic. The record evidence overwhelmingly supports Judge Flanagan’s
19 judgment. Among other things, Judge Flanagan found as follows:

20 The testimony at trial is undisputed that the Executive Committee finally
21 approved moving forward with the Mosaic Loan at its January 27, 2016
22 meeting, after which Radovan set up a meeting with Mosaic for February 1,
23 2016 to finalize the loan. *See* Transcript of Proceedings, Trial Volume III,
24 August 31, 2017, 462/9-22. Before that meeting took place, however, certain
25 members of the Executive Committee, led by IMC, secretly went to Mosaic’s
26 offices without the knowledge or consent of CR Cal Neva and killed that loan.

27 There is no more solid evidence of this interference than in Trial Exhibit 124,
28 which is an e-mail sent to Radovan by Mosaic on February 1, 2016 -- the very
day IMC secretly met with Mosaic without CR Cal Neva’s knowledge or

⁷ Incredibly, Plaintiff’s contend that Judge Flanagan never found that Plaintiff “intended to undermine the loan”. To the contrary, on page 52 of his oral decision, Judge Flanagan plainly states: “This court has documented dozens of email exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic loan and there is no more solid evidence of that in Exhibit 124.”

1 consent. In that e-mail, Mosaic explains that as a result of its meeting, it was
2 tearing up the executed term sheet for the loan, and indicated there was no
3 reason to meet with CR Cal Neva later that day as previously scheduled by
4 Mosaic and Radovan. Not coincidentally, the reasons Mosaic gave for backing
5 out (Trial Ex. 129) were verbatim the issues IMC had with CR Cal Neva.

6 Plaintiff got exactly what he bargained for -- a Founders' Share in Cal Neva
7 Lodge -- but then caused damage to himself, Defendants and every other
8 investor in the Project by colluding with IMC and Molly Kingston (another
9 Project investor) to undermine the Mosaic Loan, remove CR Cal Neva as
10 manager, and divest it of its interest in Cal Neva Lodge. *See* Trial Exhibits 50,
11 55, 58-59, 109, 110, 112, 115 – 116, 118 – 122, 124 – 133, 136, 139 – 142, 145
12 – 146.

13 Because of the intentional interference by IMC, Plaintiff and Kingston, the
14 Project tragically fell into Bankruptcy, and Criswell, Radovan and their entities
15 have suffered significant compensatory damages, including loss of their
16 investment and projected investment returns, loss of management fees, and loss
17 of development fees. *See*, Testimony of Robert Radovan, pp. 493: 6-25.

18 Plaintiff wrongfully colluded with IMC's principals and Molly Kingston to
19 intentionally interfere with the contractual relations between Mosaic and Cal
20 Neva Lodge, which interference caused Mosaic to rescind ("tear up") its
21 executed term sheet. *See* Transcript of Proceedings, Trial Volume III, August
22 31, 2017, 511:4 – 512:17; Trial Volume at pp:812:17-815:2; Volume VI at pp.
23 961:2-962:12 and trial exhibits referenced above. But for Plaintiff's intentional
24 interference, this Project would have succeeded.

25 Plaintiff's attack on this evidence on the basis that Defendants did not file an
26 interference counterclaim is a misplaced effort to elevate form over substance. Although
27 Defendants did not formally plead a counterclaim against Plaintiff, by consent of all parties,
28 including Plaintiff, a significant portion of the trial centered around Plaintiff's collusion with
IMC to interfere with the Mosaic Loan, which caused the demise of the Project and significant
damages to Defendants.

Pursuant to NRCPC 15(b), "[w]hen issues not raised by pleadings are tried by express or
implied consent of the parties, they shall be treated in all respects as if they had been raised in
the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform
to the evidence and to raise these issues may be made upon motion of any party at any time,
even after judgment; but failure so to amend does not affect the result of the trial of these
issues." Amendments to conform to proof are perfectly proper and courts should be liberal in
allowing such amendments. *See Brean v. Nevada Motor Co.*, 269 P. 606, 606 (Nev. 1928)

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1 (citing *Miller v. Thompson*, 40 Nev. 35, 160 P. 775; *Ramezzano v. Avansino*, 44 Nev. 72, 189
2 P. 681).

3 In Plaintiff’s Motion, *Nutton v. Sunset Station, Inc.* is cited for the proposition that
4 NRCP 16(b) governs amendment of pleadings after a scheduling order deadline has expired.
5 Mtn, p. 8:1-12. While this proposition is true, *Nutton* deals with a case where an amendment
6 to the pleadings was sought long before trial took place and where one party objected. In the
7 instant case, the amendment comes after completion of a five-day trial with a large body of
8 testimony and evidence on the very issue of interference – without objection from Plaintiff –
9 and with the clear consent of both parties. See *Nutton v. Sunset Station, Inc.*, 357 P.3d 966,
10 978 n.3 (Nev. Ct. App. 2015) (“[Amendments under NRCP 15(b)] are permitted when a matter
11 has been tried by ‘consent,’... because this motion was resolved before trial, that question is
12 not before us in this appeal.”).

13 When a party is moving to amend its pleadings to conform to the evidence presented at
14 trial under NRCP 15(b), the liberal policy to amend when “justice so requires” is the proper
15 standard. See *State, University & Community College Sys. v. Sutton*, 120 Nev. 972, 987-88,
16 103 P.3d 8, 18-19 (2004) (A party moved to amend their pleadings under NRCP 15(b) and the
17 court analyzed their motion under the liberal policy of NRCP 15(a), with no mention
18 whatsoever of NRCP 16(b)).

19 Since Plaintiff’s interference with the Mosaic Loan was extensively tried, Judge
20 Flanagan’s resulting decision on this very issue is sound. The record evidence is abundantly
21 clear that the matter of Plaintiff’s interference with Defendants’ prospective economic
22 advantage was raised and tried, as evidenced by Judge Flanagan’s findings, which included the
23 following:

24 This Court has documented dozens of email exchanges between Mr. Yount and
25 the IMC in their efforts to undermine the Mosaic loan and there is no more solid
26 evidence of that than in Exhibit 124. That deal was done. That deal has been
27 executed. That deal was in place. Mosaic had evidenced its enthusiasm to close
28 this deal. And yet the day that individuals from the IMC went to the Mosaic
offices without the knowledge of [Criswell Radovan], that deal was dead. The
testimony is unequivocal, there was never an attempt by the IMC to resurrect it,
despite the open invitation by Mosaic to reintroduce the loan.

Exh.1, p. 1140:1-11.

1 Even more compelling than NRCP 15(b), **NRCP 54(c) provides:** “[e]very other final
 2 **judgment should grant the relief to which each party is entitled, even if the party has not**
 3 **demand that relief in its pleadings.”** “The Nevada Supreme Court recognized the liberal
 4 nature of NRCP 54(c) by confirming ‘Under the liberalized rules of pleading,’ a final judgment
 5 must grant the relief a party is entitled to, even where the prayer for relief did not ask for such
 6 relief.” *Magill v. Lewis*, 74 Nev. 381, 387-88, 333 P.2d 717, 720 (1958). *Magill* recognized
 7 that Rule 54(c) “implements the general principle of Rule 15(c), that in a contested case a
 8 judgment is to be based on what has been proved rather than what has been pleaded.” *Magill*,
 9 74 Nev. at 388; *see also Grouse Creek Ranches v. Budget Fin. Corp.*, 87 Nev. 419, 427, 488
 10 P.2d 917, 923 (1971) (NRCP 54(c) authorized the district court to amend the pleadings to grant
 11 a primary lien where the objecting party joined issue on the matter and suffered no prejudice);
 12 *Rental Dev. Corp. of Am. v. Lavery*, 304 F.2d 839, 842 (9th Cir. 1962) (Finding no prejudice
 13 to defendant lessor as a result of plaintiff lessee’s failure to include a request for cancellation
 14 of the lease in plaintiff’s complaint since it was permissible for the Court to order cancellation
 15 of the lease based on the issues framed by the pleadings and trial proceedings).

16 In this case, justice requires that judgment be entered in favor of Defendants and against
 17 Plaintiff, as provided by Judge Flanagan after hearing all evidence for Plaintiff’s intentional
 18 interference with Defendants’ prospective economic advantage, which interference caused
 19 Mosaic to terminate its executed term sheet and led to the demise of the Project without
 20 privilege or justification and for his own interest and not in the interest of the Project or its
 21 other investors. Plaintiff knew a prospective contractual relationship existed between Cal Neva
 22 Lodge and Mosaic. Plaintiff intended to harm and disrupt this relationship without privilege
 23 or justification, and his conduct resulted in significant harm to Defendants.

24 **IV.**

25 **DEFENDANTS’ UNCLEAN HANDS DEFENSE, AS ALSO TRIED**
 26 **BEFORE JUDGE FLANAGAN, MAY BE CONVERTED TO A**
 27 **COUNTERCLAIM AND ASSERTED AGAINST PLAINTIFFS**

28 Plaintiff’s omnibus motion is almost entirely directed to issues regarding Plaintiff’s
 unclean hands in his interactions with Defendants and Cal Neva – whether that behavior

1 sufficiently relates to Plaintiff’s underlying claims, whether it can be applied to defeat
2 Plaintiff’s legal claims, and whether it can be converted to a counterclaim.

3 First, Plaintiff’s unclean hands, as demonstrated by his willful interference in
4 sabotaging the Mosaic Loan is precisely what prevented completion of the Project causing all
5 of the financial damage upon which Plaintiff’s claims are based. As stated in the Court’s
6 Judgment, Judge Flanagan adopted Defendants’ Proposed Findings of Fact, dated August 25,
7 2017, which specifically state:

8 “The evidence shows that Plaintiff conspired with certain other investors to not
9 only interfere with, but ultimately sink the Project’s major refinancing loan with
10 Mosaic which would have bailed this Project out. This intentional interference
11 has damaged the Defendants far in excess of Plaintiff’s \$1 Million Investment.
12 Thus, any alleged damages are offset by the significantly greater damages his
13 conduct has caused Defendants.”

14 Exh. 2, p. 11, ¶ 68.

15 Second, case law within the Ninth Circuit supports the application of equitable defenses
16 to defeat legal claims. *See Camp*, 35 Cal. App. 4th 620 (Cal. Ct. App. 1995).

17 Third, under Fed. R. Civ. P. 8(c)(2), “[i]f a party mistakenly designates a defense as a
18 counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the
19 pleading as though it were correctly designated, and may impose terms for doing so.”
20 Similarly, under NRCP 8(c), “[w]hen a party has mistakenly designated a defense as a
21 counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall
22 treat the pleading as if there had been a proper designation.”⁸

23 ⁸ “[W]hile Chase has not explicitly asserted a counterclaim for quiet title or declaratory relief,
24 Chase’s Amended Answer, (ECF No. 44), provides an affirmative defense that states ‘LVDG
25 takes title, if any, to the Property subordinate in time and right to [Chase’s] interests, rights,
26 liens, and claims in the Property.’ (*Id.* 13:17-19). Chase’s Amended Answer additionally
27 contains a prayer for relief seeking a ‘judicial determination that [Chase’s] ownership interest
28 . . . is superior to [LVDG’s] claim of title,’ and that ‘[Chase’s] DOT survived the HOA sale,’
and ‘[LVDG] took title subject to [Chase’s] ownership interest’ and DOT. (Am. Answer 15:9-
16). **While Chase’s affirmative defense and prayer for relief were neither designated as a
counterclaim for quiet title, the Court will construe them as such in the interest of justice
and judicial efficiency.** *See* Fed. R. Civ. P. 8(c)(2) (‘If a party mistakenly designates a defense
as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the
pleading as though it were correctly designated, and may impose terms for doing so.’).”
Las Vegas Dev. Grp., LLC v. SRMOF II 2012-1 Tr., No. 2:13-cv-02194, 2018 BL 65566 at
*4 (D. Nev. Feb. 26, 2018) (emphasis added); *see also Schettler v. Ralron Capital Corp.*, 128

1 In any event, all of the issues now raised by Plaintiff regarding Judge Flanagan’s award
 2 of damages to Defendants because of Plaintiff’s unclean hands are red herrings. Judge
 3 Flanagan’s findings and conclusions demonstrate that Plaintiff’s unclean hands arose out of
 4 the same facts and circumstances that amply support Defendants’ interference counterclaim
 5 that was litigated through discovery and tried at length. Regardless of what term to use for
 6 Plaintiff’s behavior, Defendants proved every element necessary to establish Plaintiff’s willful
 7 interference with the Mosaic Loan. While such proof also necessarily establishes Plaintiff’s
 8 unclean hands, the Court’s well-supported judgment of willful interference—in practical
 9 terms—renders moot all of these issues concerning whether an unclean hands defense relates
 10 sufficiently to the underlying claims, or can be applied to defeat legal claims, or can be
 11 converted to a counterclaim.

V.

PLAINTIFF IS NOT ENTITLED TO A NEW TRIAL

12
 13
 14 Plaintiff’s request for a new trial is nothing more than a lament of his dissatisfaction
 15 with the Court’s decision. Plaintiff cannot satisfy the hefty burdens set forth in NRCP 59(a).
 16 Notwithstanding, in an attempt to escape the Judgment, Plaintiff makes three last-ditch
 17 arguments in support of his motion for a new trial: (1) that he “did not have adequate notice
 18 of an intentional interference counterclaim and was unaware he could be held liable for
 19 damages” [Mtn, p. 11: 20-22]; (2) that “legal error” occurred because Defendants’ evidence of
 20 damages was speculative [Mtn, p.12:23-26]; and (3) that “legal error” occurred based on the
 21 Court’s “unsupportable awards of damages to defendants” [Mtn, p. 14:6-7 and 14:18-20.]

22
 23 Plaintiff’s Motion does not even reference which of the seven grounds set out in NRCP
 24 59(a) he is relying on for his request for a new trial. This is because he cannot satisfy the hefty
 25

26
 27 Nev. 209, 223 n.7 (Nev. 2012) (even where recoupment is not expressly pleaded as an
 28 affirmative defense, fair notice was provided by including the issue on reconsideration and
 hence as part of the appeal).

1 burdens set forth in NRCPC 59(a), which include “any of the following causes or grounds
 2 materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the
 3 proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or
 4 abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct
 5 of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not
 6 have guarded against; (4) Newly discovered evidence material for the party making the motion
 7 which the party could not, with reasonable diligence, have discovered and produced at the trial;
 8 (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages
 9 appearing to have been given under the influence of passion or prejudice; or, (7) Error in law
 10 occurring at the trial and objected to by the party making the motion.”

12 The decision to grant or deny a motion for a new trial rests within the sound discretion
 13 of the trial court. *Edwards Industries, Inc. v. D.T.E./B.T.E. Inc.*, 112 Nev. 1025, 923 P.2d 569
 14 (1996). Moreover, the standard of review on appeal for the granting or denial of a motion for
 15 a new trial is abuse of discretion. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98
 16 (1998).

18 As explained herein, and in Defendants’ March 27, 2018 Motion to Amend Judgment,
 19 incorporated herein by reference, Plaintiff simply has not overcome the heavy burden of NRCPC
 20 59, and his Motion should thus be denied in its entirety.

21 **A. This Court already certified its familiarity with the record and it awarded**
 22 **damages to Defendants.**

23 In the Judgment, this Court already considered many of the arguments Plaintiff is now
 24 raising and specifically found no need or reason to recall witnesses.

25 Specifically, on page 3 of the Judgment, the Court held as follows:

26 “The Court has reviewed the trial transcript in its entirety and the exhibits
 27 referenced in the transcript and in Judge Flanagan’s ruling. Pursuant to NRCPC 63,
 28 the court here certifies its familiarity with the record. Moreover, given the status
 of the case at the time of Judge Flanagan’s passing (evidence closed, closing

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argument completed and a ruling from the bench on the merits, following by his written Amended Order), and the detailed extent of Judge Flanagan’s ruling from the bench and his subsequent Amended Order dated September 8, 2017, the court has determined pursuant to NRCP 63, that the proceedings in this case may be completed as set forth herein without prejudice to the parties.”

Under NRCP 63, the Court has the discretion to recall witnesses. The court finds no reason or need to recall witnesses.”

B. Plaintiff was not denied due process.

Plaintiff argues he is entitled to a new trial because he did not have adequate notice of the intentional interference Counterclaim against him. As shown extensively above, this is simply untrue. Neither can Plaintiff meet his burden under NRCP 59(a)(7) to prove the Court’s ruling on Defendants’ interference claim was an error of law, as Plaintiff failed to object to such evidence at trial. As the Court stated in *Padilla v. Ghuman*, 183 P.3d 653 (Colo. App. 2007), “a trial court has the duty to consider an issue raised by the evidence even though the matter was not pled and no formal application was made to amend.” *Padilla*, 183 P.3d at 658. In *Padilla*, the plaintiff claimed that the trial court erred in awarding defendants a refund of overpaid interest because the court’s damage award was a form of “special damages” that defendants failed to request in their pleadings prior to trial. In affirming the trial court’s decision awarding such damages, the Court stated:

Here, plaintiffs failed to object when [defendant] testified that defendants were overcharged due to plaintiffs’ wrongful use of default interest in their calculation of the cure amount. If they had objected, the court could have granted defendants leave to amend their pleadings or a continuance to enable plaintiffs to meet the evidence. Because plaintiffs failed to give the trial court an opportunity to address their contention that the evidence of overpaid interest was at variance with the pleadings, they cannot complain on appeal of defendants’ failure to amend their pleadings.

Id. In the instant case, except for an after-the-fact objection during closing arguments, Plaintiff failed to object to both the presentation of evidence of the interference claim and damages for Plaintiff’s interference.

1 More fundamentally, as the Nevada Supreme Court held in *Magill, supra*, Rule 54(c)
 2 “implements the general principle of Rule 15(c), that in a contested case a judgment is to be
 3 based on what has been proved rather than what has been pleaded.” *Magill*, 74 Nev. 388
 4 (emphasis added); *see also Charles Schmitt & Co. v. Barrett*, 670 F.2d 802 (8th Cir. 1982). In
 5 *Barrett*, the Court affirmed the trial court’s ruling rescinding the parties’ contract even though
 6 the plaintiff had not sought the remedy of rescission in his prayer for relief. The Eight Circuit
 7 Court noted that both parties had presented evidence of rescission during the bench trial. *Id.*
 8 at 806. In affirming the trial judge’s ruling, the Court stated:

10 “While [defendant] now claims that he did not consent to try that issue, Rule 54(c)
 11 nonetheless provides that the trial court may grant the relief to which the prevailing
 12 party is entitled, regardless of whether such relief was prayed for in the complaint.
 13 Where the defendant appears and the parties are at issue, we have held that the
 14 final judgment shall grant the relief to which the prevailing party is entitled.”

15 *Id.* Here, there is ample evidence in the record and justification in the civil rules to support
 16 Judge Flanagan’s award of damages to Defendants.

17 This case was fully tried and Judge Flanagan issued extremely detailed Findings of Fact
 18 and Conclusions of Law from the bench, along with an Amended Order clarifying his damages
 19 award. As shown above, both in Defendants’ Motion for Summary Judgment and in their
 20 Proposed Findings of Fact and Conclusion of Law – **both filed before trial** – Plaintiff was on
 21 notice that Defendants were alleging he conspired with IMC to interfere with the Mosaic Loan,
 22 and that “[t] his intentional interference has damaged the Defendants far in excess of Plaintiff’s
 23 \$1 Million Dollar investment.” *See, supra*.

24 At the outset of trial, Plaintiff stipulated to the admissibility of dozens of emails
 25 pertaining solely to the intentional interference claim, including three (3) exhibits of his own
 26 (Trial Exhibits 55, 58, and 59). Not only did Plaintiff consent to Defendants’ presentation of
 27 testimony on the intentional interference claim through nearly every witness, but he failed to
 28

1 object to the presentation of damages for the interference. Plaintiff would have this Court
 2 believe that this was Judge Flanagan’s first rodeo and that he did not know what he was doing.
 3 **Chief Judge Flanagan** was a sophisticated trial lawyer and judge, and his nearly 2.5 hour oral
 4 decision from the bench shows precisely the level of detail and care he took when analyzing
 5 the evidence and weighing the credibility of witnesses who came before him. It would be one
 6 thing for Plaintiff to claim a due process violation if this claim came out of left field, but this
 7 is a situation where Plaintiff even called witnesses of his own to try to refute the interference
 8 claim. Plaintiff cannot be allowed to claim he was denied due process when he stipulated to
 9 the admissibility of dozens of emails that show his conspiracy to interfere with the Mosaic
 10 Loan, then consented to Defendants putting on evidence of that interference and their damages,
 11 and then presented evidence of his own on the subject. The Mosaic Loan issue was a major
 12 part of this case and Plaintiff is not entitled to a new trial over it.

13
 14 **C. Defendants’ evidence of damages was not speculative.**

15 In his oral decision, Judge Flanagan awarded Radovan and Criswell \$1.5 Million
 16 Dollars each in compensatory damages, 2-year’s salary, lost management fees, attorney’s fees
 17 and costs. A week later, on September 15, 2017, he issued a separate Amended Order
 18 clarifying his damage award and including lost development fees to Criswell Radovan. *See*
 19 Amended Order. As stated below, and in Defendants’ Motion to Amend Judgment, there was
 20 substantial evidence to support Judge Flanagan’s damage award.

21 First, in terms of the compensatory damage award, Robert Radovan testified that the
 22 interference cost him and Criswell at least \$1.6 Million each in terms of lost revenues they
 23 would have received. *See*, Testimony of Robert Radovan, Trial VI. III, p. 493. He also testified
 24 they worked two years on the Project without salary. *Id.* These damages do not include
 25 evidence that had been presented of the loss of their investment in the Project nor the expected
 26 gains on that investment. Specifically, they held a \$2 Million investment (see, Trial Ex. 101),
 27
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1 but sold half of that interest to Plaintiff. Nor do these damages include their general loss of
2 business reputation and goodwill from this Project failing under their leadership and from
3 Plaintiff’s denigration of their performance and history. Accordingly, there was more than
4 sufficient evidence to support the \$1.5 Million award to each of Criswell and Radovan.

5 Second, in terms of lost Development Fees, the evidence at trial showed that Criswell
6 Radovan was the developer of the subject Project, entitled to a \$1.2 Million Development Fee,
7 payable in monthly installments of \$60,000.00 *See*, Confidential Private Placement
8 Memorandum, Trial Ex. 3, p. 8. Criswell Radovan earned all of its Development Fee, but
9 “recontributed to the Company \$480,000.00 of its Development Fee as of 6/01/14.” *See*
10 Section 7.4 of the Amended and Restated Operating Agreement, Trial Ex. 5; *see also*, the Trial
11 Testimony of William Criswell, Trial Vol. I, pp. 186-188. Importantly, Criswell Radovan was
12 not repaid its Development Fee before the Project failed. See, Trial Testimony of Robert
13 Radovan, Trial Vol. IV., pp. 953-956. Accordingly, pursuant to the Amended Order, and as
14 argued in Defendants’ Motion to Amend Judgment, the Judgment should be amended to
15 include and award of \$480,000.00 to Criswell Radovan. The basis and amount of this damage
16 award was clearly in the record.
17

18
19 Finally, the basis for a lost Management Fee award was also clearly substantiated by
20 the record – leaving only the amount to be calculated. Indeed, the Financial Pro Forma which
21 forms the basis for these damages was not only thoroughly vetted by several experts in the
22 hotel industry, including Starwood Hotel and Resorts, but according to testimony at trial, by
23 Plaintiff’s own accountant, Ken Tratner, who looked at the Pro Forma for reasonableness, and
24 then gave the Pro Forma to a hospitality expert to review, who told him it was reasonable; and
25 then accountant Tratner gave Plaintiff the go ahead to invest. See, Trial Testimony of Ken
26 Tratner, Trial Vol VI., pp 849-850, 855. As articulated in Defendants’ Motion to Amend
27 Judgment, the evidence at trial showed that Criswell and Radovan had a binding agreement
28

1 with Cal-Neva Lodge that they would manage the operations of the property once it was
 2 completed and opened. This fact is reflected in the Confidential Private Placement
 3 Memorandum, Trial Ex. 3, (recognizing that Cal-Neva Lodge will enter to a hotel management
 4 agreement with Criswell Radovan or its affiliate) and the Amended and Restated Operating
 5 Agreement, Trial Ex. 5, (“Day-to-day management of the Project will be performed by an
 6 Affiliate of CR”).

7 So, once again, the basis for the damage award was clearly substantiated in the record
 8 below, leaving only the amount to be determined (no different than an attorney’s fee award).
 9 Accordingly, Plaintiff is not entitled to a new trial.

10
 11 **D. At most, Plaintiff would only be entitled to a new trial on the amount of**
 12 **Defendants’ damages.**

13 Although the entirety of Plaintiff’s Motion addresses only the propriety of the
 14 counterclaim, he makes the blanket statement that he is entitled a “new trial”. Of course,
 15 Plaintiff has not alleged – and he is not entitled -- to a new trial on the merits of his underlying
 16 affirmative claim, which was thoroughly vetted and decided by Judge Flanagan based on
 17 significant exhibit and witness evidence that was presented over many days of trial. Nor is
 18 Plaintiff entitled to a new trial on the merits of Defendants’ intentional interference
 19 counterclaim, as that issue too was thoroughly tried by consent of both parties (as discussed
 20 above). Although Defendants believe there is more than enough evidence in the record to
 21 substantiate Judge Flanagan’s damage award, the most Plaintiff could possibly claim is
 22 entitlement to a trial on the amount of the lost development and management fees, which are
 23 the subject of Defendants’ Motion to Amend Judgment. However, for the reasons stated above,
 24 and articulated in Defendants’ Motion to Amend Judgment, the underlying basis for those
 25 awards was clearly established by record evidence, and the amount is simply a calculation that
 26 can and should be handled through Defendants’ Post-Trial Motion to Amend Judgment.
 27
 28

CONCLUSION

1 For the foregoing reasons, Plaintiff has not met his burden with respect to the requested
2 relief. Plaintiff's claim are the subject of a pending appeal and that is where they should be
3 heard.
4

5 Date: May 24, 2018.

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION

X Document does not contain the social security number of any person

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Document contains the social security number of a person as required
by:

_____ A specific state or federal law, to wit:

_____ (State specific state or federal law)

- OR -

For the administration of a public program

- OR -

_____ For an application for a federal or state grant

- OR -

_____ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125B.055)

Date: May 24, 2018.

HOWARD & HOWARD ATTORNEYS, PLLC

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HOWARD & HOWARD ATTORNEYS PLLC

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

On this day I served the foregoing ***ERRATA TO DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR JUDGMENT AS A MATTER OF LAW, FOR RELIEF FROM JUDGMENT, TO ALTER AND AMEND THE JUDGMENT, TO AMEND THE FINDINGS, AND FOR NEW TRIAL*** in this action or proceeding electronically with the Clerk of the Court via the E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed by me on May 24, 2018 at Las Vegas, Nevada.

/s/ Karen R. Gomez
An Employee of HOWARD & HOWARD ATTORNEYS PLLC
4818-5093-6422 v.1

HOWARD & HOWARD ATTORNEYS PLLC

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Yount v. Criswell Radovan, LLC, et al.

Second Judicial District Court, Washoe County, Nevada

Case No. CV16-00767

**ERRATA TO
 EXHIBIT LIST FOR**

**EXHIBITS
 TO
 DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
 JUDGMENT AS A MATTER OF LAW, FOR RELIEF FROM JUDGMENT, TO
 ALTER AND AMEND THE JUDGMENT, TO AMEND THE FINDINGS, AND FOR NEW TRIAL**

Exhibit No.	Description
1	September 8, 2017 Transcript of Proceedings Trial, (Volume 7)
2	Amended Order, dated September 15, 2017
3	Defendants' Motion for Summary Judgment filed June 29, 2017
4	Defendants' August 25, 2017 Proposed Findings of Facts and Conclusions of Law
5	August 31, 2017 Transcript of Proceedings Trial, (Volume 3)
6	September 8, 2017 Transcript of Proceedings Trial, (Volume 5)
7	September 8, 2017 Transcript of Proceedings Trial, (Volume 6)

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2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA

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7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 GEORGE S. YOUNT, et al.,)
12)
12 Plaintiffs,)
13)
13 vs.) Case No. CV16-00767
14)
14 CRISWELL RADOVAN, et al.,) Department 7
15)
15 Defendants.)
16 _____)

17
18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VOLUME III

20 August 31, 2017

21 9:00 a.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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1 APPEARANCES:

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1 RENO, NEVADA, August 31, 2017, 9:00 a.m.

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3 --oOo--

4 THE COURT: Good morning, ladies and gentlemen,
5 Mr. Little, your witness.

6 MR. CAMPBELL: I think we agreed to take Mr.
7 Coleman of order.

8 THE COURT: That's what I expected.

9 MR. CAMPBELL: Mr. Coleman is my witness.

10 THE COURT: Just a minute. Let's swear Mr.
11 Coleman in.

12 (One witness sworn at this time.)

13 MR. CAMPBELL: Your Honor, I think I need to stand
14 up there to have the witness see me.

15 THE COURT: That's fine.

16 BRUCE COLEMAN

17 called as a witness and being duly sworn did testify as

18 follows:

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Good morning, Mr. Coleman. Can you see me okay?

22 A. Yes, I can.

23 Q. How long have you been representing Mr. Criswell
24 or Mr. Radovan on any, either individually or any of the

1 legal entities they have?

2 A. I started representing an entity owned by
3 Mr. Criswell in 1981, and then I met Mr. Radovan somewhere
4 around the year 2000 when the two of them first started their
5 own companies.

6 Q. When you started in 1981, you haven't been in the
7 courtroom, but Mr. Criswell testified you were kind of a
8 general counsel to his company, is that correct?

9 A. Yes. He had a real estate development company. I
10 was the in-house general counsel.

11 Q. And how long were you in-house with his company?

12 A. Six years.

13 Q. After six years, did you go to a firm or
14 something?

15 A. Yes. Starting in '87 until now, I've been in law
16 firms.

17 Q. Once you started in a law firm, did you continue
18 as kind of an outside general counsel for Mr. Criswell?

19 A. Yes. I did projects from time to time.

20 Q. How many different projects do you think you
21 helped -- let's start with Mr. Criswell up until 2000?

22 A. You mean after I left his company and then worked
23 with him from the outside from that point until the year
24 2000?

1 Q. Let's say from when you started kind of -- you
2 started in-house, then you transitioned to an outside general
3 counsel. So that period of representation, both in-house and
4 then outside general counsel up until the year probably 2000?

5 A. Oh, hard to say. Dozens of projects.

6 Q. And then you met Mr. Radovan in approximately
7 2000?

8 A. Yes.

9 Q. Is that when Mr. Criswell and Radovan formed some
10 kind of partnership or entity?

11 A. Yes.

12 Q. From 2000 until today, have you been continuously
13 representing Criswell Radovan or one of their myriad
14 entities?

15 A. Yes.

16 Q. How many projects do you think you worked on for
17 Criswell and Radovan?

18 A. Probably 20.

19 Q. Were you continuing to act as Criswell Radovan's
20 outside general counsel?

21 A. I wouldn't call it general counsel. I'm just an
22 outside counsel working on projects they hired me to work on.

23 Q. Did you represent either of the two individuals in
24 an individual capacity?

1 A. Not that I can think of. It was always in terms
2 of a project.

3 Q. No individual lawsuits or anything like that you
4 took an individual representation?

5 A. No. I don't do litigation and the real estate
6 work I do is for their companies.

7 Q. Have any of those projects that you've worked on
8 over the years with either Mr. Criswell, or both Mr. Criswell
9 or Mr. Radovan ever ended up in some type of litigation?

10 A. Yes.

11 Q. How many different times, do you think?

12 A. I can think of two just off the top of my head.

13 Q. Okay. Any bankruptcy filings on any of the
14 projects that you had helped on?

15 A. I believe, again, this goes back a number of
16 years, I believe there were one or two.

17 Q. And did those involve the -- either the Criswell
18 entity or Criswell Radovan or one of their development
19 entities filing or were they involved as a creditor, to your
20 knowledge?

21 A. No. Both of these were related to the Criswell
22 Development Company entities in the '80s, the 1980s.

23 Q. And were they the entity filing in some type of
24 chapter of bankruptcy?

1 A. I believe so. I mean, I know so in one case. The
2 other one, it may have just been just a foreclosure. I'm not
3 sure if there was an actual bankruptcy.

4 Q. Now, it's my understanding sometime in 2013 you
5 were asked by either Mr. Criswell or Mr. Radovan, one of the
6 two or in concert, to represent them on the purchase and
7 redevelopment of the Cal Neva Lodge property up at Lake
8 Tahoe?

9 A. That's correct.

10 Q. You were either contacted by one or both of them.
11 Do you know who first contacted you about representation in
12 that matter?

13 A. I don't recall. It may have actually been Brandyn
14 Iverson who worked with them.

15 Q. Have you worked with Brandyn Iverson, I believe
16 that's Mr. Criswell's daughter, over some of these projects?

17 A. Yes.

18 Q. How many projects have you worked with her on?

19 A. Probably at least a dozen.

20 Q. When you were first retained, it's my
21 understanding that you assisted them in forming some type of
22 corporate entities in the State of Nevada?

23 A. Yes.

24 Q. And that would be CR Cal Neva LLC?

1 A. Yes.

2 Q. Criswell Radovan LLC was already in existence for
3 a number of years, correct?

4 A. Yes, it was.

5 Q. Did you assist them in forming Criswell Radovan
6 LLC as a Nevada corporation or limited liability company?

7 A. No.

8 Q. And my understanding is you prepared some
9 additional documents related to the securities offering that
10 was used in the project, is that correct?

11 A. I prepared the operating agreement for Cal Neva
12 Lodge LLC.

13 Q. Your counsel has told me that you've got the
14 binders in front of you that were overnighted to you. Do you
15 have those with you now?

16 A. Yes, I do.

17 Q. If you could look just to exhibit number --

18 A. I'm sorry, which exhibit?

19 Q. Exhibit Number 3.

20 A. Okay. Okay.

21 Q. That's the operating agreement. The back half of
22 that exhibit, though, had a draft operating agreement,
23 correct?

24 A. Yes.

1 Q. It's undated, it's unsigned. That was attached to
2 the private placement memorandum to show the investors how
3 the operating agreement -- how the members' relationships
4 would be governed between each other?

5 A. Yes.

6 Q. It's my understanding that you drafted the
7 operating agreement?

8 A. Yes, I did.

9 Q. And did you assist in drafting the private
10 placement memorandum, which is the first half of Exhibit
11 Number 5?

12 A. No, I didn't.

13 Q. Did you review it during your course of drafting
14 the operating agreement so you can make sure that the terms
15 were consistent in the two documents?

16 A. I probably referred to it some for any facts I
17 might need for my drafting.

18 Q. Let's switch to Exhibit Number 5, which is the
19 amended and restated operating agreement.

20 A. Okay.

21 Q. Do you have that in front of you, Mr. Coleman?

22 A. Yes, I do.

23 Q. It's my understanding this document was amended as
24 of May 1, 2014, a couple of months after the private

1 placement memorandum was issued. As amended, were there any
2 significant changes between the two documents?

3 A. I don't recall anything significant, just some
4 polishing.

5 Q. And this amended restated operating agreement is
6 the document that the various members of the LLC that had
7 contributed under the private placement memorandum, this is
8 what would have governed the relationship with those people?

9 A. Yes, it is.

10 Q. And CR Cal Neva would also be governed from their
11 role in the LLC under this agreement, correct?

12 A. Yes.

13 Q. Could you look at section 7.4 of that amended and
14 restated operating agreement, Exhibit Number 5?

15 A. Okay. Just a second. Okay.

16 Q. 7.4 talks about a development services agreement,
17 correct?

18 A. Yes.

19 Q. And under that development services agreement,
20 Criswell Radovan were to act as kind of the developer under a
21 separate contract to assist in developing the project,
22 correct?

23 A. You say Criswell Radovan. I can't remember which
24 entity it was that was named as the developer. It says CR

1 meaning CR Cal Neva or its affiliate. Like I said, I can't
2 remember exactly which entity was the developer entity.

3 Q. That's my mistake. It was CR Cal Neva was named
4 as the developer.

5 A. Okay.

6 Q. And also they were the manager under the operating
7 agreement, correct?

8 A. Yes.

9 Q. I'm interested in the latter half of the section
10 7.4. You can see it. It starts as a total of 2 million out
11 of such costs. I want to be clear. It's your understanding
12 that the developers, either CR or Criswell Radovan, somehow
13 put money into the project for certain purposes, and in
14 return for putting that money into the project, they would
15 receive two shares under the private placement memorandum?

16 A. That's correct.

17 Q. And if we look at that, not all of it was cash
18 advanced. It appears that some of it was either an infusion
19 of the fees they had received under the development services
20 agreement or at least a book entry transferring that as an
21 amount, right?

22 A. Yes. I believe it says \$480,000 of it's
23 development fee was recontributed.

24 Q. All right. And when you drafted this document,

1 did you do any -- had you seen documents or a paper trail or
2 financial records that confirmed the cash into the project as
3 set forth in this paragraph?

4 A. No. I wasn't asked to do that. I don't typically
5 do that.

6 Q. That was just based on what your clients had told
7 you?

8 A. That's correct.

9 Q. Generally, section 7.4 governed how CR Cal Neva
10 got their two shares under the PPM and how they were to be
11 treated under the PPM as members?

12 A. Yes. I mean, the whole document refers to how
13 they're to be treated. But, yes, this document is why they
14 got 2 million interest.

15 Q. Did you assist at all in negotiating the
16 construction loan with Hall Financial I believe was the
17 company?

18 A. Yes.

19 Q. And what was your role in assisting with that?

20 A. Reviewing the loan documents. I say I assisted.
21 They actually had another outside counsel in California that
22 was the main attorneys representing the company in connection
23 with that loan, but I did assist them.

24 Q. Had you ever worked at all with Hall Financial on

1 any other previous loans that either Mr. Criswell's company
2 or Criswell Radovan had negotiated with Hall?

3 A. No.

4 Q. Part of the private placement memorandum included
5 what is called a subscription agreement. Are you familiar
6 with that document?

7 A. Yes.

8 Q. Did you assist in drafting that document?

9 A. No.

10 Q. Did you understand that under the subscription
11 agreement, that was what a potential investor under the
12 private placement memorandum would sign if they wanted to
13 invest?

14 A. Yes.

15 Q. In essence, it was a contract between a potential
16 investor and the company governing the terms of their
17 investment?

18 A. As -- I'm not a securities lawyer, but as I
19 understand it and from reading it, the main purpose is to
20 have the investor represent that they understand that this is
21 not going to be a security, it's a private offering. And the
22 investor represents that they're a qualified investor or
23 whatever the term is, you know, that they have sufficient net
24 worth and sophistication to make an investment like this and

1 that they would then be bound by the company documents.

2 Q. Okay. And that they would also -- they would sign
3 off on it and the terms that they agreed to would be the
4 terms that they're bound to?

5 A. Yes.

6 Q. And do you recall that document also had an
7 acceptance for someone at CR Cal Neva to sign and accept that
8 subscription agreement?

9 A. Yes.

10 Q. It's my understanding that under the subscription
11 agreement, your law firm, Powell, Coleman and Arnold, was
12 designated as the escrow agent to collect and distribute
13 funds under the subscription agreement?

14 A. Yes.

15 Q. And those funds were deposited into your firm's
16 trust account, correct?

17 A. Correct.

18 Q. Had you in the past handled escrow -- acted as an
19 escrow agent for transactions similar to this one?

20 MR. LITTLE: Object to the form. What do you mean
21 similar to this one?

22 BY MR. CAMPBELL:

23 Q. A real estate investment, some kind of a
24 development deal where the investors or partners or something

1 like that would deposit money into your trust account?

2 MR. LITTLE: I'm still unclear. You mean similar
3 to Mr. Yount's transaction or similar --

4 THE COURT: What is the objection?

5 MR. LITTLE: That it's vague.

6 THE COURT: All right. Sustained. Go ahead.

7 Just clear it up.

8 BY MR. CAMPBELL:

9 Q. Mr. Coleman, have you ever participated in any
10 type of real estate transaction where your firm acted as the
11 escrow agent?

12 A. I don't believe so.

13 Q. Is this the first time that your firm or at least
14 you as a partner in the firm were set up as the escrow holder
15 or the escrow agent for a transaction?

16 A. Yes. I mean, I have had occasionally clients or
17 parties send money to my trust account to be distributed, but
18 it's -- I don't ever recall having an escrow agreement such
19 as this before now.

20 Q. Okay. And generally when those parties deposited
21 money into your trust account, that money would not go out of
22 your trust account until certain conditions were met or
23 agreements were signed, is that correct?

24 A. When somebody sends the money to my trust account,

1 they would let me know how I was to handle it.

2 Q. Were those usually written instructions?

3 A. Usually. I mean, there may have been occasions
4 where it was oral.

5 Q. Okay. And I'm sure you're familiar with Texas Bar
6 Rules and I believe Nevada Bar Rules provide that -- Rules of
7 Professional Responsibility provides that funds in a trust
8 account have to be delivered to either a client or a third
9 party when the client is or third party is actually entitled
10 to receive those funds?

11 A. Yes.

12 Q. It's my understanding that the subscription
13 agreement on the Cal Neva transaction, there were actually
14 escrow instructions contained in the subscription agreement
15 package, correct?

16 A. Yes.

17 Q. And those written escrow instructions set forth
18 how money that came in under the Cal Neva PPM would be
19 distributed to whoever?

20 A. Yes.

21 Q. Let's go to Exhibit Number 33, Mr. Coleman.

22 A. Okay.

23 Q. We had a discussion in your deposition about
24 certain communications back and forth between you and your

1 client. And during the deposition, do you recall that the
2 communications that set forth in section -- in Exhibit Number
3 33, we didn't discuss them, because there was a confidential,
4 attorney-client confidentiality issue?

5 A. Yes.

6 Q. And I assume your counsel has now told you that
7 they waived the confidentiality as to Exhibit 33?

8 A. Yes.

9 Q. If you look at the first page of Exhibit 33,
10 Ms. Hill had sent you an e-mail. Are you familiar with
11 Ms. Hill?

12 A. Yes.

13 Q. How did you become familiar with her?

14 A. She is the assistant to Mr. Radovan and
15 Mr. Criswell.

16 Q. Does she on a regular occasion act as their
17 conduit to provide information to you, you to provide
18 information to them through her?

19 A. Yes.

20 Q. And what did you understand as to what kind of
21 authority she had to make decisions on behalf of the company?

22 MR. LITTLE: Objection, vague and overbroad.

23 THE COURT: Overruled.

24 THE WITNESS: She was, as we said a minute ago,

1 she would provide information or instructions to me that
2 originated from Criswell Radovan and she was kind of the
3 person who would keep track of paper work or kind of the
4 detail type person, but she's not the one that would make the
5 binding decisions on their companies.

6 BY MR. CAMPBELL:

7 Q. So you saw her as kind of -- somewhat of a conduit
8 between Mr. Radovan and yourself. She would gather
9 documents, forward you stuff, things like that?

10 A. Yes.

11 Q. That either Mr. Radovan or Mr. Criswell pretty
12 much spoke on behalf of the company and were the clients that
13 you were representing?

14 A. Correct.

15 Q. On the first page of Exhibit Number 33, she tells
16 you that Cal Neva is now identified a person who will take
17 the place of one of CR Cal Neva's \$2 million investment
18 bringing them down to \$1 million. When this e-mail was sent
19 on October 2nd, had you become aware that Mr. Les Busick had
20 invested approximately one and a half million into the
21 private placement memorandum?

22 A. I had heard -- I was familiar with him, since he
23 was already an investor, and I had heard that he was
24 discussing with them putting in another million and a half.

1 I don't know if on that date of October 2nd I had heard he
2 had completed that transaction.

3 Q. At some point close to October 2nd of 2015, did
4 you find out that in fact he had completed that transaction?

5 A. Yes.

6 Q. Okay. And then when you saw the first line from
7 Ms. Hill, take the place -- it says, an investor will take
8 the place of CR Cal Neva's \$2 million investment. Did you
9 take that to understand that Cal Neva were selling one of the
10 two shares that they were allocated in the private placement
11 memorandum that we talked about in the operating agreement
12 earlier?

13 A. Yes.

14 Q. They actually had two designated shares,
15 \$1 million each, right?

16 A. Yes.

17 Q. So this would have been a sale from Criswell
18 Radovan -- I mean, excuse me, CR as an entity to that
19 potential investor that was identified there?

20 A. That's correct.

21 Q. And then the next paragraph says, he is prepared
22 to fund next week and would like to use your trust account to
23 process the transaction. Did Ms. Hill or anyone tell you why
24 they wanted to use your trust account?

1 A. No.

2 Q. At that time, though, you were still the
3 designated escrow agent for the PPM to collect money under
4 the private placement memorandum, correct?

5 A. By that time, all the money had been collected
6 except for the million and a half.

7 Q. But under the PPM --

8 A. At that point, I didn't have any more money in the
9 account that hadn't already been distributed.

10 Q. At that point, the private placement memorandum
11 when Mr. Busick invested was still open for some additional
12 investment, and under the subscription agreement under that
13 private placement memorandum, you were the designated escrow
14 agent?

15 MR. LITTLE: I'm going to object. It
16 mischaracterizes the evidence.

17 THE COURT: Sustained. Rephrase the question.

18 BY MR. CAMPBELL:

19 Q. Under the private placement memorandum, we've
20 agreed that you were the escrow holder, correct, for money
21 collected under the private placement memorandum?

22 A. Yes.

23 Q. And prior to Mr. Busick's investment, there was
24 still room under the private placement memorandum for an

1 investor to invest?

2 A. Correct.

3 Q. And when an investor signed that subscription
4 agreement, they would see under the subscription agreement
5 that the money was to be tendered to Powell Coleman's trust
6 account to be held in escrow?

7 A. Well, I need to clarify that. Until the first
8 \$14 million was raised, it would be held in escrow and none
9 of it would be released to the company until 14 million had
10 been collected. And then after that, there was -- it may
11 have still gone into escrow, but it could be immediately
12 released.

13 Q. Okay. Let's look at that subscription agreement.
14 Maybe it will help us through this a little bit. Can you
15 look at Exhibit Number 42, Mr. Coleman?

16 A. Okay. I've got it.

17 Q. And this is from Sherrie Montgomery and there's an
18 e-mail below from Sherrie Montgomery to Heather Hill, again,
19 who we just talked about. In the first e-mail, Sherrie
20 Montgomery is saying to Heather, attached are the signed
21 document for the Yount IRA, please forward. And then we go
22 on to the next pages in that document and this is the actual
23 subscription agreement?

24 A. Yes.

1 Q. And in that subscription agreement that Mr. Yount
2 signed, part of the subscription agreement included the
3 escrow instructions to escrow and wire transfer information
4 where Powell Coleman was still designated as the escrow
5 agent?

6 A. Yes.

7 Q. And Mr. Yount's money ultimately did come into
8 your escrow account, correct?

9 A. Yes.

10 Q. Let's go back to Exhibit Number 33. Are you there
11 with me, Mr. Coleman?

12 A. Yes, I have it here.

13 Q. Thank you. After the sentence in the second
14 paragraph, the trust account, we assume there's some sort of
15 swap agreement CR will need to sign to paper this transaction
16 above and beyond the typical documentation. You saw that,
17 correct, in the e-mail?

18 A. Yes.

19 Q. And then, you know, the final paragraph just talks
20 about the wire instructions. That would be the wire
21 instructions to your trust account, correct?

22 A. Yes.

23 Q. So if we go to the next page in this exhibit, it
24 was an e-mail from you to Ms. Hill dated October 6th. You

1 start, still haven't got the million dollars. In the
2 meantime, you want to go ahead and make them aware of some
3 requirements in the operating agreement. Do you see that?

4 A. Yes.

5 Q. Okay. In this e-mail, when you say you want to
6 make them aware of the requirements of the operating
7 agreement, and then when you kind of delineate what those
8 requirements are, are you responding to Ms. Hill's question
9 on the previous page where she says, we assume there's some
10 sort of swap agreement CR will need to sign?

11 A. Not really. She and I had a telephone
12 conversation contemporaneously with this. I don't know
13 exactly which day it was. I told her I would be preparing
14 a -- the agreement was an assignment agreement where the CR
15 Cal Neva LLC would assign the million dollar interest to the
16 purchaser. That's what I guess she was referring to was a
17 swap. She didn't know what the name would be of whatever I
18 prepared.

19 This October 6th document in her e-mail was -- it
20 just occurred to me that they might not remember this
21 requirement, so I wanted to make them aware of it.

22 Q. And this was a requirement under the operating
23 agreement when one member would sell or transfer his share to
24 a third party?

1 A. Yes.

2 Q. So you were basically giving them legal advice on
3 how to paper this transaction. The legal advice you were
4 giving them was the second page October 6th e-mail, this is
5 what you need to do?

6 A. Yes. And, I mean, the way -- I mean, it was a
7 recommendation on how to do it. The operating agreement
8 didn't specifically say exactly how you get that approval. I
9 mean, what form the approval would take. There's different
10 ways to get it.

11 Q. It just required some type of written approval
12 from 67 percent of the members in the company?

13 A. Yes.

14 Q. And in the last page of that agreement -- excuse
15 me -- of that exhibit, Exhibit Number 33, you say, I'm
16 attaching a proposed form of assignment of interest in
17 limited liability company to be used for the investment of
18 Stuart Yount.

19 A. Yes.

20 Q. I wasn't provided with that assignment of
21 interest, but that was just a form that would assign one
22 share from CR to Mr. Yount, both parties would agree to it
23 and sign it?

24 A. Correct.

1 Q. Now, you know that Mr. Yount is the investor at
2 least by October 16th, correct?

3 A. Yes.

4 Q. And prior to writing this e-mail, did you have --
5 you had knowledge that Mr. Busick had already made his
6 investment?

7 A. Yes.

8 Q. So you knew Mr. Yount could not invest under the
9 PPM after Mr. Busick's money came in, because it was
10 essentially closed out under the terms of that offering?

11 MR. LITTLE: Objection, mischaracterizes evidence.

12 THE COURT: Overruled.

13 THE WITNESS: The way I would answer that question
14 is it wasn't -- when I first became aware that Mr. Yount
15 wanted to invest, it wasn't in the context of, well, either
16 he or Mr. Busick would be investing. It was we are
17 selling -- CR is selling one of its shares to Mr. Yount.

18 BY MR. CAMPBELL:

19 Q. Okay. That's what CR told you they were going to
20 do?

21 A. Yes.

22 Q. But you knew -- you've been keeping track of the
23 investments under the PPM?

24 A. Yeah.

1 Q. You knew -- excuse me. Go ahead.

2 A. What they told me made sense, that there wasn't
3 anymore room for Mr. Yount to invest under the \$20 million
4 private placement.

5 Q. Because of Mr. Busick's previous investment of the
6 1.5 million?

7 A. That's correct.

8 Q. And then it goes on in the second sentence, you
9 have previously told me that you have approval from the
10 necessary members to transfer 1 million of the CR interest to
11 Stuart Yount. This previously told me, who told you that
12 they had approval from the necessary members?

13 A. Heather Hill.

14 Q. In your previous page, you had told Heather Hill
15 that you'll need some kind of a writing, something in writing
16 to approve this deal. Did she give you any type of written
17 document that said the members have, you know, ratified or
18 approval this transfer?

19 A. No.

20 Q. Did she tell you that there had been some type of
21 a member vote and that the members had somehow voted, had a
22 meeting and actually voted on approving this transfer?

23 A. No.

24 Q. She just said they've approved it?

1 A. Yes.

2 Q. And you took her for her word at that?

3 A. Well, I mean, she said we have the approval.

4 Q. Okay. So she didn't tell you in any shape or form
5 how they had the approval?

6 A. No.

7 Q. And you didn't ask her for any written documents
8 to backup that statement?

9 A. No.

10 Q. Who was it that first told you that someone was
11 going to buy one of the CR shares? Was that the first time
12 you heard was the first page of Exhibit 33?

13 A. Yes, Heather Hill.

14 Q. And did you --

15 A. She called me on or about the same time she sent
16 this e-mail. I don't know which came first.

17 Q. Okay. And that's the point where either the
18 e-mail or the telephone call, you became aware that they were
19 now going to sell a share to some unnamed investor at that
20 point?

21 A. Yes.

22 Q. Did you ever talk to Mr. Radovan or Mr. Criswell
23 to confirm that in fact the other members of the LLC had
24 indeed approved such a transfer of the share at or about this

1 time frame?

2 A. Not at that time.

3 Q. And then I believe, if you recall, the money was
4 received into your trust account about October 13th or 14th,
5 correct?

6 A. Yes.

7 Q. And then -- actually, October 14th, and then on
8 October 15th, the very next day, you released it from your
9 trust account to Criswell Radovan LLC, correct?

10 A. Yes.

11 Q. And just to confirm that, let's look at Exhibit
12 Number 71?

13 A. Okay. Just a minute.

14 Q. That's probably in the second binder there.

15 A. Yes. Okay.

16 Q. That's the next to last page in that exhibit.
17 It's got a Bates stamp of CR 245.

18 A. Okay.

19 Q. CR Cal Neva was the owner of that share, correct?

20 A. Yes.

21 Q. Do you know why it was sent to Criswell Radovan
22 LLC?

23 A. CR Cal Neva requested me to send it there, because
24 they had an outstanding loan from Criswell Radovan in excess

1 of the million dollars, so they wanted to pay it directly to
2 Criswell Radovan.

3 Q. Let me get this straight. CR Cal Neva had been
4 loaned a million dollars from Criswell Radovan LLC?

5 A. My understanding was it was more than that. I'm
6 not sure the number.

7 Q. Did you prepare some type of a note documenting
8 that loan between those two companies?

9 A. No. I believe they had done that in-house.

10 Q. Just like an intercompany book transfer, if you
11 know?

12 A. Well, I don't know. I'm sure there was some
13 documentation, but I don't know -- like I say, I wasn't
14 involved in the documentation.

15 Q. But, anyway, they just basically told you, send it
16 directly to us, because CR Cal Neva owes us some money?

17 A. Correct.

18 Q. In this October time frame, you were representing
19 both Criswell Radovan LLC and CR Cal Neva LLC?

20 A. Criswell Radovan LLC? I don't recall that entity
21 doing anything that I was representing them on at that point.

22 Q. But you had a continuing relationship doing legal
23 work for Criswell Radovan LLC?

24 A. Oh, sure. Yeah.

1 Q. And at the same time you were representing the Cal
2 Neva Lodge LLC, correct?

3 A. Yes.

4 Q. So as representing the Cal Neva Lodge LLC,
5 ostensibly you're representing its members also, correct?

6 A. Yes.

7 Q. And you understood that Mr. Yount after this
8 transaction was going to become a member of the LLC, even
9 though he was buying a CR share, under your understanding, he
10 would still become a member?

11 A. Yes. He would -- he's buying a member share. So
12 he would step into their shoes and become a member for that
13 million dollars.

14 Q. Did you ever contact Mr. Yount or any other
15 members of the LLC to ask about this transaction, the CR
16 share transfer to Mr. Yount?

17 A. I didn't have any information on Mr. Yount and did
18 not contact him, no.

19 Q. Did you ever contact any of the other members of
20 the LLC to tell them about this transfer of the share?

21 A. No. That's not something I would typically do.
22 The client would do that.

23 Q. And at any time after October 13th up until, let's
24 pin it at February 1st of 2016, did you ever see any written

1 documentation whereby Mr. Yount agreed to purchase a CR
2 share?

3 A. No.

4 Q. Let's go to page 61, Mr. Coleman.

5 A. Okay.

6 Q. This is a multi page e-mail string and it looks
7 like you're not on the copy until the very first page of the
8 string dated January 25th, 2016.

9 A. Yes.

10 Q. Correct. And then there's a redacted portion
11 underneath. I assume that redacted portion had something to
12 do with Mr. Radovan asking you for some legal advice?

13 A. I assume so.

14 Q. And then do you remember that under this redacted
15 portion, that Mr. Radovan had forwarded you the Stuart Yount
16 e-mail to Dave Marriner and the other investors?

17 A. Yes.

18 Q. And in that e-mail, Mr. Yount says, I was never
19 asked, told or agreed to an investment or purchase of CR
20 \$1 million share. And then he says, see the attached
21 acceptance by Cal Neva Lodge of our founders unit?

22 A. Yes.

23 Q. So it was your understanding -- was this the first
24 time that you had heard that Mr. Yount had never agreed to

1 such a transaction?

2 A. This is first I had heard, yes.

3 Q. Without getting into any attorney-client
4 privilege, I assume you were looking into this particular
5 issue about Mr. Yount never having agreed to that. That's
6 why the e-mail was sent to you?

7 A. I assume so.

8 Q. Do you remember?

9 A. No.

10 Q. Let's go to Exhibit Number 63.

11 A. Okay.

12 Q. This is an e-mail from Mr. Criswell to Mr. Yount
13 and both you and Mr. Radovan are copied on that. Do you see
14 that?

15 A. Yes.

16 Q. And Mr. Criswell says to Mr. Yount, I've been very
17 busy since we had the Hyatt meeting. He goes, at that time,
18 I told you that I would send you documents we discussed with
19 you by Monday, however, then he goes on, there's a problem
20 with those. So had you been preparing documents for
21 Mr. Yount to sign on or about -- or between that January 25th
22 date and the February 1st date as reflected in this e-mail?

23 A. Yes.

24 Q. Who asked you to prepare those documents?

1 A. Mr. Criswell.

2 Q. And without getting into any privileged
3 communications, was information provided to you to assist in
4 filling in the -- filling in the blanks in the documents, so
5 to speak?

6 A. Yeah. He gave me instructions on what he would
7 like me to prepare, if that's what you're asking.

8 Q. Sure. Let's flip over to Exhibit 64 now, Mr.
9 Coleman.

10 A. Okay.

11 Q. It looks like now Mr. Criswell, it's an e-mail
12 string, the first couple of pages on the e-mail string show
13 some kind of a redaction between you and Heather Hill and
14 Criswell Radovan copied on the e-mail. Do you see that on
15 the middle of the first page on 212?

16 A. Yes.

17 Q. So I assume there was some kind of attorney-client
18 communication back and forth about those documents?

19 A. Yes.

20 Q. And then if we go further in the e-mail, you've
21 actually attached some documents. Am I reading this right,
22 that below the redaction, you had attached and sent documents
23 via e-mail to your clients?

24 A. Yes.

1 Q. Okay. And those documents were three-fold. There
2 was an assignment of interest in the limited liability
3 company?

4 A. Right.

5 Q. A purchase agreement?

6 A. Yes.

7 Q. And then finally a resolution?

8 A. Yes.

9 Q. And those were the three documents that you sent
10 to your clients?

11 A. Yes.

12 Q. I'd like to walk you through some of the language
13 in those. Let's start with the assignment of the interest.

14 A. Okay.

15 Q. On the second -- on the third whereas, it says,
16 the assignee and assignor have erroneously executed a
17 subscription agreement. Why was that language put into this
18 assignment document?

19 A. That was at the request of Mr. Criswell to reflect
20 the fact that there had been a misunderstanding as to the
21 documents that were necessary to be signed back in October.

22 Q. You'd seen Mr. Yount's e-mail that Mr. Radovan
23 forwarded to you, correct?

24 A. Yes.

1 Q. That's Exhibit Number 61?

2 A. Yes.

3 Q. Under number one, did it appear to you that
4 Mr. Yount was under the -- was agreeing that he was some kind
5 of -- had erroneously executed some document?

6 A. That's not the -- yes, his language does indicate
7 that.

8 Q. Let's go on to the next, it goes on, the
9 subscription agreement dated October 13th, that was what the
10 exhibit I showed you before that Mr. Yount actually signed,
11 correct?

12 A. Yes.

13 Q. And then that subscription agreement that he
14 signed indicated that he was purchasing an interest as a
15 preferred member of the company from the company, correct?

16 A. Yes.

17 Q. And then it goes on, when it actually -- when it
18 is actually the intention of the parties that assignee
19 purchase such interest from assignor rather than the company.
20 Where did that information come to you that somehow it was
21 the intention of both parties to do this CR sale to
22 Mr. Yount?

23 A. From Mr. Criswell.

24 Q. As we mentioned before, you had not received any

1 independent confirmation that in fact there was some kind of
2 intent of the parties to enter into that type of an
3 agreement?

4 A. No. Up until this point, the only information I
5 had was that CR was selling its share to Mr. Yount.

6 Q. And in Exhibit Number 61, again, Mr. Yount said he
7 was never asked, told or agreed to an investment or purchase
8 of the CR 1 million share. So you just went ahead and put
9 this language in at the direction of Mr. Criswell?

10 A. When Mr. Criswell called me to request me to
11 prepare this, he said that he had had a conversation with
12 Mr. Yount and that he had told Mr. Yount that he would like
13 to correct what had been done before and that is when he
14 asked me to prepare this. He said that Mr. Yount was --
15 would look at what we prepared and decide what to do.

16 Q. You say correct what had been done. Did
17 Mr. Criswell explain that correct?

18 A. The fact that he had always agreed to sell half of
19 his interest, and the way it was documented did not reflect
20 that.

21 Q. When you say he had agreed to sell half of his
22 interest, that was CR?

23 A. I mean CR, but he told me.

24 Q. So if we go to the next document in this exhibit,

1 number 64, it's the purchase agreement.

2 A. Yes.

3 Q. Now, this purchase agreement, the way you drafted
4 it, was to have CR or have CR purchase Mr. Yount's share from
5 the purported transaction that took place back in October of
6 2015. Is that what I'm reading correctly here?

7 A. This purchase agreement prepared as it was
8 explained to me by Mr. Criswell is that he had offered in
9 that conversation he had with Mr. Yount that if for any
10 reason Mr. Yount did not want to keep the million dollar
11 interest, that CR would buy it back from him for a million
12 dollars if CR itself had been repaid the money it had loaned
13 to the company, to Cal Neva Lodge LLC.

14 Q. So you were assuming that in fact at that point in
15 time, Mr. Yount legally owned his share in the CR, his share
16 of the CR?

17 A. These two documents go together. So that if the
18 first document that is signed, then CR -- it would be
19 documented that CR had sold a million dollar share to Yount
20 and then the purchase agreement was an option for Yount to
21 sell it back to CR if he didn't want it.

22 Q. So it's my understanding, the first document, the
23 assignment, and ultimately the third document, which we'll go
24 into a little more detail, the resolution of the members,

1 those both had to be accomplished before Mr. Yount would have
2 title to his share?

3 A. Yes. Before he officially becomes a member,
4 approval would have to be attained.

5 Q. And if you look at Exhibit Number 4 to the
6 purchase agreement -- excuse me -- paragraph number four in
7 Exhibit 64 on the purchase agreement.

8 A. Okay.

9 Q. You see where it says approval of members?

10 A. Yes.

11 Q. This is a condition to closing, right?

12 A. Yes.

13 Q. And a precondition to having the deal consummated,
14 so to speak?

15 A. Well, this is a purchase agreement. If for Yount
16 to then sell back his interest to CR, it says it would
17 require the purchase -- I mean, the approval of the
18 67 percent.

19 Q. The same thing that you were telling Ms. Hill in
20 October under Exhibit 33 that for CR to sell their share to
21 Mr. Yount, you had to have this same type of approval as set
22 forth in paragraph four of this purchase agreement?

23 A. Yes.

24 Q. Let's go to the resolution, the last document

1 here.

2 A. Okay.

3 Q. This says, at a special meeting of the members on
4 January 27th, 2016, the undersigned members holding at least
5 67 percent of the percentage interest in the company approved
6 the following resolution and the resolution is approving the
7 share transfer we've just been talking about. Did someone
8 tell you that there was actually a member meeting on
9 January 27th and that the members had in fact approved this
10 deal?

11 A. No. This was intended as a -- something to be
12 sent around to all the members. The operating agreement
13 allows written consent by the members in lieu of an actual
14 meeting. So, in other words, they would just vote by a
15 ballot sent around.

16 Q. So there was no meeting on the 27th?

17 A. No.

18 Q. And you made the effective date back to
19 October 13th, 2015. Was this in order to get the membership
20 approval to be backdated to when the actual sale to Mr. Yount
21 purportedly took place?

22 A. Yes. We wanted it to be effective as of the date
23 he actually put his money in.

24 Q. And it looks like, if you look at Exhibit Number

1 65, you actually sent Mr. Yount these documents we've just
2 been discussing, correct?

3 A. Yes.

4 Q. And I believe, subject to check, that the only
5 change was the amount of the -- put in about the note that CR
6 had made a loan to or Criswell Radovan had made a loan?

7 A. That's what it appears, yes.

8 Q. And that's in the purchase agreement?

9 A. Yeah. The paragraph three of the purchase
10 agreement had been expanded.

11 Q. So this purchase agreement?

12 A. Yeah, those were the conditions upon which CR Cal
13 Neva would be willing to buy back the Yount interest if he
14 didn't want to keep it.

15 Q. Okay. So you sent these to Mr. Yount, it looks
16 like at 4:59 p.m. on February 2nd. And if you go to Exhibit
17 Number 66, Mr. Yount sent you an e-mail back about an hour
18 and a half later at 6:29. And I don't need to read it, but
19 do you agree with me Mr. Yount wasn't going to sign what you
20 sent to him, correct?

21 A. Yes.

22 Q. And he didn't agree with any of the
23 representations that we were just talking about, about
24 someone made a mistake or the intent of the parties was such?

1 A. That's correct.

2 Q. And then, actually, Exhibit 66 is just the e-mail.
3 If you go to 67, that includes the actual attachment to the
4 e-mail, which is the subscription agreement that we talked
5 about before?

6 A. Yes.

7 Q. And in that attached subscription agreement at
8 page 259, we see that the CR Cal Neva had in fact accepted
9 the terms of the subscription agreement?

10 A. Yes.

11 Q. Let's go to the next exhibit, which is Exhibit
12 Number 70.

13 A. Okay.

14 Q. This again is an e-mail string where Mr. Yount is
15 now sending you his -- the wire transfer funds that he sent
16 to your firm on 10/14 of 2015, right?

17 A. Yes.

18 Q. That's the third page of this document, confirms
19 that the Western Alliance Bank sent a million dollars to your
20 trust account?

21 A. Yes.

22 Q. And then it looks like you in turn, it looks like
23 the next day, sent an e-mail to Mr. Criswell and Mr. Radovan
24 where you were, it looks redacted below so there was some

1 kind of attorney-client confidential information now about
2 what Mr. Yount had sent these documents?

3 A. Yes.

4 Q. Let's go to Exhibit Number 71.

5 A. Okay.

6 Q. And then this kind of follows up on Mr. Yount's
7 previous e-mail. Let's go back to the first part of the
8 string. So on the 16th, we just looked at the previous
9 e-mail, he shows the wire transfer to your firm, and the he
10 asked you some questions on the second e-mail on 244. You
11 say, I'll check my records and get back to you as to where
12 your money went. And then you get back to him later on, and
13 you say, I've attached the receipt for the wire transfer,
14 which we just looked at.

15 And then he asks you on top of page 243, why did
16 you send our money to CR instead of Cal Neva LLC, please?
17 And you respond to him on the first page of this e-mail, I
18 was told by CR. So when you say you were told by CR, that's
19 the conversation that we talked about on or about October --
20 first couple days in October of 2015?

21 A. Yes.

22 Q. And you say below, because Cal Neva Lodge had
23 already sold the -- all of the shares it was authorized to
24 sell under the terms of the agreement. I had no question the

1 sale -- question the sale of a portion of CR's interest to
2 you.

3 A. Yes.

4 Q. And then he goes on, give me the documentation
5 that says you were told. You didn't tell him you didn't have
6 any documentation, right? You responded saying, I do not
7 represent you and do not feel it's appropriate to get into a
8 back and forth conversation with you with your previous
9 transaction with CR. If you have any issues with that
10 transaction, I suggest you deal directly with CR.

11 I'm wondering why you sent that message. Weren't
12 in fact at that time you were representing CR and he's
13 talking to you about the legal issues related to that
14 representation?

15 A. No. I felt they were factual issues. He wanted
16 to know why I thought that there was a sale of the CR
17 interest to him. And since they were the ones that had dealt
18 with each other, I presumed, they could discuss that. Plus,
19 you know, I'm an attorney and he isn't. So I didn't want to
20 just get into that unless I was needed.

21 Q. Again, your assumption that you just testified to
22 was based on no written documents, no confirmation from
23 Mr. Yount, it was only your clients had told you had
24 happened?

1 A. Yes.

2 Q. Let's go to Exhibit Number 72. It looks like you
3 and Mr. Yount had another e-mail string and he's following up
4 saying -- he gave you a refresher saying January 27th, you
5 had told him, I am the attorney representing the company, and
6 he says Cal Neva, I assume. And then you come back to him
7 and say, my statement was accurate. I have represented and
8 continue to represent the Cal Neva Lodge LLC. I did not
9 represent the company with respect to your transaction,
10 because the company couldn't sell any more money under the
11 terms of the operating agreement.

12 So are you saying that -- you were still
13 representing Cal Neva Lodge LLC in October of 2015. We
14 established that right? You told me that?

15 A. Yeah. That's correct.

16 Q. But you were just in this transaction, what you
17 were telling Mr. Yount, I'm not doing any -- I'm not
18 technically representing Cal Neva in this deal, I'm
19 representing CR?

20 A. Correct.

21 Q. Then he goes on on March 23rd, he once again
22 respectfully requests any documentation of the written escrow
23 instructions causing his \$1 million to be given to CR. You
24 never responded to do that e-mail, right?

1 A. No.

2 Q. Because you didn't have any documentation to give
3 him, correct?

4 A. I didn't want to continue going back and forth
5 with him.

6 Q. But you didn't have any documentation to give him,
7 right?

8 A. Well, I wasn't the escrow holder so, no, I had no
9 escrow documents.

10 Q. You had no documents whatsoever that somehow
11 papered the transaction back in October 13th of 2015?

12 A. No, because the document I had prepared was not
13 signed.

14 MR. CAMPBELL: That's all I have, Mr. Coleman.
15 Thank you.

16 THE COURT: Mr. Little.

17 MR. LITTLE: Thank you, your Honor.

18 CROSS EXAMINATION

19 BY MR. LITTLE:

20 Q. Good morning, Mr. Coleman. Could you turn over to
21 Exhibit 42 in the binder?

22 A. Yes.

23 MR. LITTLE: You need me to come up?

24 THE COURT: It might help him.

1 THE WITNESS: Okay. Just a second.

2 THE COURT: Perhaps you can just point it at you
3 and stay seated at the table.

4 MR. LITTLE: I'll stand. It's all right. Thank
5 you, your Honor.

6 BY MR. LITTLE:

7 Q. Are you there, Mr. Coleman?

8 A. I got that in front of me now.

9 Q. This is the subscription paper work that Mr. Yount
10 filled out in connection with this transaction. The point I
11 want to clear up is what you said at the end. Did you
12 receive or see the subscription paper work that was filled
13 out by Mr. Yount at any time before you sent the money to
14 Criswell Radovan?

15 A. No.

16 Q. What are the instructions you did receive with
17 respect to this transaction?

18 A. CR had told me that Mr. Yount would be sending his
19 payment through my trust account, and when I received it, I
20 was to wire it to them.

21 Q. Now, counsel asked you whether you saw any
22 agreement with Mr. Yount agreed to purchase CR Cal Neva
23 share. Do you recall that?

24 A. Yes.

1 Q. Did he send you \$1 million, correct?

2 A. Yes.

3 Q. And did he give you any instructions contrary to
4 the instructions that had been given to you by CR Cal Neva?

5 A. He gave me no instructions.

6 Q. Sir, did you believe you were acting as an escrow
7 agent with respect to this transaction?

8 A. No.

9 Q. Did you believe that this was being treated as an
10 escrow situation under the private placement memorandum?

11 A. No. This was different than that. I mean, the
12 private placement memorandum had an escrow, because none --
13 it was starting from \$0. None of the investors wanted to put
14 in money first and have their money used and then risk there
15 not being enough money raised to go in there. So it was all
16 collected and held until \$14 million was there.

17 This was totally different. This was just one
18 owner selling a part of its share to one buyer. The buyer
19 pays and the owner sells.

20 Q. And you used your trust account for other purchase
21 and sale agreements like this, right?

22 A. I'm sorry. That didn't come through.

23 Q. Sorry. Have you used your -- I think you said
24 earlier that you have used your trust account for other

1 purchase and sale agreements like this?

2 A. Yes.

3 Q. Sir, can you turn over to Exhibit 5? I want to
4 explore the transfer section in the operating agreement.

5 A. Okay. Just a second. Okay.

6 Q. Let's start with section 12.3.

7 A. Okay.

8 Q. The second sentence says, subject to --

9 A. Okay.

10 Q. Subject to satisfying the requirements of this
11 article 12, any such transfer requiring approval of the
12 members pursuant this article 12 will be considered by the
13 members at the members' next annual or special meeting. Did
14 I read that correctly?

15 A. Yes.

16 Q. Can we now go over to section 12.6.1?

17 A. Okay.

18 Q. And that section says, following satisfaction of
19 the requirements of sections 12.3 and 12.4, a proposed
20 transfer of interest requiring the members' approval will be
21 submitted to the members for their approval after the
22 transferee has executed this agreement and any other
23 documents. Are you still there, sir?

24 A. Yes.

1 Q. And any other documents and instruments as the
2 company require. Did I read that correctly?

3 A. Yes.

4 Q. Sir, was CR Cal Neva required to get preapproval
5 from the members before they could close this transaction
6 with Mr. Yount?

7 A. No. The language that we previously read said it
8 could occur at the next annual or special meeting.

9 Q. Now, sir, is Mr. Yount's purchase of CR -- one of
10 CR Cal Neva's founders share, is it still a founders share in
11 Cal Neva Lodge?

12 A. Yes. It's the same as what CR Cal Neva held.

13 Q. If we look at 12.6.2 on page 35, even if by some
14 chance the members or 67 percent of the members refused to
15 approve Mr. Yount as a member, he would still hold the
16 economic benefits of that share?

17 MR. CAMPBELL: Objection. I don't think that's
18 what the document says. There's some additional conditions.

19 THE COURT: I'll let you clear that up on
20 redirect. You can answer the question.

21 BY MR. LITTLE:

22 Q. Sir, did you understand the question?

23 A. Could you repeat it, please?

24 Q. Sure. If by, hypothetically, this was brought to

1 the members for vote at the next annual meeting, which I'll
2 represent to you was in April, and the members, they couldn't
3 get 67 percent of the vote, would Mr. Yount still hold the
4 economic benefits of that interest?

5 A. That's what section 12.6.2 says, yes.

6 Q. Sir, I want to clarify something you said at the
7 beginning. You referenced two either bankruptcies or
8 foreclosures in the 1980s under Criswell Development,
9 correct?

10 A. Yes.

11 Q. That was before Criswell and Radovan came together
12 in the 1990s, correct?

13 A. Correct.

14 Q. That was also under a severe economic depression
15 of the 1980s?

16 A. Yes. There was a pretty bad real estate recession
17 in Texas in the late '80s.

18 Q. And your not aware, sir, of any bankruptcies that
19 have been filed with respect to any of the Criswell Radovan
20 entities, correct?

21 A. Correct.

22 MR. LITTLE: That's all I have. Thank you, sir.

23 THE COURT: Thank you. Mr. Wolf.

24 MR. WOLF: No questions, sir.

1 THE COURT: Thank you. Mr. Campbell.

2 REDIRECT EXAMINATION

3 BY MR. CAMPBELL:

4 Q. Mr. Coleman, when Ms. Hill told that they wanted
5 to use your trust account to handle this transaction, did you
6 question why they would want to use your trust account to
7 handle a transaction between an entity and an individual?

8 A. No.

9 Q. It could have been sent directly to CR, correct?

10 A. It could have been.

11 Q. And as we talked earlier, the documents that you
12 prepared in January -- excuse me -- in February and sent to
13 Mr. Yount that he didn't sign, those documents were really
14 intended to validate and make legal the transaction that took
15 place back in October of 2015, correct?

16 A. It was intended to document it the way I had been
17 told that it was -- the deal was done.

18 Q. But if the money sitting in your trust account,
19 you had been told the deal was done, if in fact the
20 conditions to a transfer had not occurred correctly, doesn't
21 section 12.2 of Exhibit 5 say any attempt to transfer or
22 encumber any such interest without such approval will be null
23 and void and will not bind the company or the other members,
24 correct?

1 A. Yes. That's correct.

2 Q. So if Mr. -- if the other members didn't approve
3 and the money was already gone out of your trust account,
4 that money would not have been protected in your trust
5 account, and, in fact, Criswell Radovan would not be legally
6 entitled to it, because the transfer would have -- the
7 attempted transfer was null and void, correct?

8 MR. LITTLE: Objection, mischaracterizes the
9 evidence.

10 THE WITNESS: No.

11 THE COURT: Overruled.

12 THE WITNESS: The section we read a minute ago,
13 12.3, approval ultimately has to be obtained, but it didn't
14 have to be obtained before they did their transaction.

15 BY MR. CAMPBELL:

16 Q. But if we look --

17 A. It would be at the next annual meeting.

18 Q. Your testimony when I talked to you about the
19 purchase agreement that you drafted, section four says that
20 as a condition to closing, approval has to be obtained,
21 right, you agreed with me on that?

22 A. That was the proposed deal that was being made by
23 CR and Yount.

24 Q. But a condition to close --

1 A. In other words, that was -- that was a private
2 agreement. And the way I was told to document that is this,
3 you know, we'll get the approval at the same time. That
4 doesn't mean that the operating agreement required it to be
5 done that way. That's just what the parties were proposing
6 or what my client was proposing.

7 Q. I understand that. But your testimony as it
8 related to the agreement that you sent Mr. Yount on that
9 paragraph number four was that as a condition to closing,
10 that approval had to be obtained, right?

11 A. Yes.

12 Q. And you're a transactional attorney, you
13 understand what a closing is, right?

14 A. Sure.

15 Q. And usually a closing involves all the parties in
16 agreement and then funds are released to the certain party
17 that is entitled to them, right?

18 A. Yes.

19 Q. Let's go back to section 12 here again. Under
20 12.1, it says, each member here agrees that its interest and
21 any economic benefit thereon are not transferable except as
22 provided in this article, right?

23 A. Yes.

24 Q. And then economic benefit is defined on its own,

1 not as an interest, but as part and parcel of an interest.

2 It's actually a definition of economic interest, right?

3 A. Correct.

4 Q. Then if you go to 12.6.3, if a proposed transfer
5 of interest is approved by all the members, the transferee
6 will then be admitted as a member and will be vested with the
7 rights and powers, right?

8 A. Correct.

9 Q. And that transfer of interest was never approved
10 by the members, right?

11 A. That is correct.

12 Q. Okay. And 12.6.4 just talks about if the proposed
13 transfer of interest is refused, then the -- the members
14 interest will be not be admitted as a member, they will not
15 have the right to participate in the business or anything
16 like that?

17 A. Yes. They would just have economic interest, but
18 no voting rights or any other.

19 Q. So it really delineates that they may -- in fact,
20 it says, when they're defined in section 12.2 -- excuse me --
21 12.1, economic benefit or economic interest only means the
22 profits or other compensation?

23 A. Yes.

24 Q. So there is a difference between getting a share

1 that is approved versus getting a share that has never been
2 approved through this type of transaction?

3 A. That's correct.

4 Q. So you may get -- you may not have any voting
5 rights, any membership, any interest in the company, but you,
6 ultimately, you get a carve out to say, well, at least at the
7 end of the day there's some type of a return or compensation
8 or income, then that quasi nonmember might be able to get
9 some economic benefit. Isn't that what we're talking about?

10 MR. WOLF: Objection, compound, vague.

11 THE COURT: It is. I'll sustain. But I
12 understand where he's going. Go ahead, next question.

13 MR. CAMPBELL: That's all I have, your Honor.

14 THE COURT: Thank you.

15 RE CROSS EXAMINATION

16 BY MR. LITTLE:

17 Q. One brief question. Mr. Coleman, we saw a series
18 of correspondence between you and Mr. Yount. Didn't he make
19 it pretty clear that he had no interest in having this issue
20 submitted to the membership for a vote, right? He wanted
21 out. Is that what you understood from his letters to you or
22 his e-mails?

23 A. That's what it appeared.

24 MR. LITTLE: Thank you.

1 THE COURT: Mr. Wolf.

2 MR. WOLF: Nothing. No questions.

3 THE COURT: Thank you, Mr. Coleman.

4 MR. CAMPBELL: One follow-up to that, your Honor.

5 THE COURT: Hold on, Mr. Coleman. You're not off
6 the hook yet. Go ahead, one more, Mr. Campbell.

7 REDIRECT EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Mr. Coleman, when you say in response to
10 Mr. Little's question, he wanted out, wasn't Mr. Yount in
11 those e-mails that we just talked about saying, I'm not going
12 to sign an agreement that I didn't agree to?

13 A. That's correct.

14 Q. And did you ever see any document where he says, I
15 want out?

16 A. He -- I mean, I don't know what his thought
17 process was. I mean, I never saw -- he wasn't demanding that
18 it be put to a vote for the members to get fully a membership
19 share.

20 Q. What he was saying is, I'm not going to sign any
21 of these documents you sent me, right?

22 A. Yes.

23 Q. And they were all part and parcel of the
24 assignment of the interest in the -- all three of them were

1 interrelated, right?

2 A. Yes.

3 MR. CAMPBELL: That's all I have. Thank you.

4 THE COURT: That's five questions.

5 MR. CAMPBELL: One area.

6 THE COURT: All right. Thank you, Mr. Coleman.

7 We'll take our morning break here. Court's in recess.

8 (A short break was taken.)

9 THE COURT: Mr. Campbell, your next witness.

10 MR. CAMPBELL: I think Mr. Radovan is still on the
11 stand, your Honor.

12 THE COURT: Thank you. Mr. Campbell, your
13 witness.

14 BY MR. CAMPBELL:

15 Q. Good morning, Mr. Radovan.

16 A. Good morning.

17 Q. Yesterday afternoon, it was late in the day and I
18 just want to clear up a couple of things from your testimony
19 yesterday.

20 A. Okay.

21 Q. Is it your understanding that the only written
22 e-mail or document sent to Mr. Yount regarding the amount of
23 the change orders was the Exhibit Number 18, which is that
24 July e-mail.

1 A. Is it 18? I believe so.

2 Q. But I believe it's your position that you did tell
3 Mr. Yount about this verbally sometime in September?

4 A. No. I didn't say that. I said that this was the
5 result of a conversation I had with him in July.

6 Q. Maybe you misunderstood. But is it your position
7 that you did tell Mr. Yount about this \$9 million change over
8 sometime in September, a couple of months later?

9 A. No. I was referring to this document at the same
10 time in July.

11 Q. Let me refresh your recollection here. Do you
12 remember in your deposition you told me that you thought
13 there was an e-mail in September of 2015 that told
14 Mr. Yount --

15 A. Yes.

16 Q. -- that he had --

17 A. Correct.

18 Q. -- that you were over budget by 9 million?

19 A. Right.

20 Q. -- whatever the number was, right?

21 A. Yes.

22 Q. Then we took a break, and then you came back after
23 the break, you said I want to make a correction for the
24 record?

1 A. Right.

2 MR. CAMPBELL: May I approach, your Honor?

3 THE COURT: Yes, you may.

4 BY MR. CAMPBELL:

5 Q. You say I want to make a correction --

6 MR. LITTLE: What page are you at, counsel.

7 MR. CAMPBELL: Sorry, counsel, page 54.

8 BY MR. CAMPBELL:

9 Q. Right after the break, I asked you a question. We
10 were talking about Mosaic and I asked you, did you ever tell
11 Mr. Yount about the Mosaic, and you say, I did not. And then
12 you say, I want to make -- clear the record. Then we went
13 on, and you say, when I spoke earlier about the late
14 September, early October, that would have been a verbal
15 conversation, not an e-mail that was sent. Right?

16 A. Correct. I was referring to the July conversation
17 and e-mail.

18 Q. Just to refresh your recollection, it is your
19 position in late September or early October, you told
20 Mr. Yount that there was in fact a --

21 A. No. I was referring to the July conversation.
22 I'm sorry. I misstated that.

23 Q. So the correction in the deposition was wrong,
24 too, there was no verbal conversation?

1 A. Correct.

2 Q. So the only written document we have that purports
3 to tell Mr. Yount about the over budget amount is your
4 e-mail, that Exhibit Number 18?

5 A. Correct. As well as the conversation at that time
6 as well.

7 Q. Right. And the conversation around those dates?

8 A. Correct.

9 Q. And as to Mr. Tratner, I just wanted to make
10 clear, too, there are no contemporaneous written documents,
11 an e-mail or a letter or anything else, where Mr. Tratner and
12 you had a conversation that said, oh, by the way, there's a
13 delay in the project?

14 A. No. I had a conversation with him and discussed
15 that with him.

16 Q. But there's no written documentation
17 contemporaneous around that time?

18 A. Not from me. We did send him information. That
19 information was requested.

20 Q. We don't have a writing that says, Mr. Tratner, I
21 wanted to let you know that the project is over budget 9
22 million because of change orders?

23 A. I think I probably had the same conversation with
24 them relative to this e-mail.

1 Q. With Mr. Tratner?

2 A. I believe so.

3 Q. Let's move into this October, November time frame
4 right about when Mr. Yount funded.

5 A. Uh-huh.

6 Q. Was the project pretty much out of money by that
7 time?

8 A. No.

9 Q. Were you paying all of the other contractors on
10 the job?

11 A. Yes.

12 Q. Xavier Moulin, he was somebody you had just hired
13 to be kind of the hotel --

14 A. General manager.

15 Q. -- general manager. Did you pay him all the money
16 that you owed him under the contract?

17 A. There, we were paying him, but he -- in the time
18 he departed as the project got into February, he was still --
19 he was owed money.

20 Q. And, in fact, he sued Criswell Radovan claiming
21 that he was --

22 A. Cal Neva and Criswell Radovan.

23 Q. He was claiming that he was never paid the up
24 front moving expenses that he was entitled to?

1 A. He gave us those expenses as he departed.

2 Q. And your understanding of your agreement with him
3 was that you were going to pay his moving expenses to go from
4 the Bahamas to Lake Tahoe?

5 A. Certainly.

6 Q. Were you paying Hal Thannisch at that time in
7 October of 2015?

8 A. Yes.

9 Q. You know Mr. Thannisch filed a claim in the
10 bankruptcy court for some \$94,000?

11 A. Correct.

12 Q. So when did that money accrue?

13 A. I think it was -- it went from November, December
14 and January.

15 Q. There was no construction on the project in
16 November and December, was there?

17 A. Yes, there was. Construction didn't stop until
18 the holidays and there was still construction going on in
19 January.

20 Q. You're saying all the Thannisch claims in the
21 bankruptcy court for \$94,000 was all work --

22 A. He was still working for months in January and
23 February, working with Penta.

24 Q. And then who was Paul Duesing?

1 A. Paul Duesing is the interior designer.

2 Q. When was Paul Duesing doing work?

3 A. Throughout the construction.

4 Q. They filed a claim for \$90,000, correct?

5 A. Correct.

6 Q. Was that for work performed that was on the book
7 by October?

8 A. Basically, anything prepetition, anything that
9 would be on the book was anything that was unpaid at the
10 point of the filing, which was in May.

11 Q. So some of that Paul Duesing money owed to him was
12 due and owing by October and November of 2015?

13 A. Probably by November, not in October.

14 Q. And how about North Star Demolition, what was that
15 company?

16 A. One of the contractors.

17 Q. Was that outside of the Penta contract?

18 A. You know, I'm not sure, actually.

19 Q. And they -- I assume from their name North Star
20 Demolition, they did demolition work?

21 A. Yeah. It was probably one of the asbestos
22 abatement companies.

23 Q. When was that work done?

24 A. Most of the work was done in -- preclosing. So

1 that would have been summer of 2015. Because that work, the
2 majority of that work had to be completed prior to the loan
3 closing. So we had a separate contract where Penta, because
4 of the nature of the asbestos issues, they did not want to be
5 part of the contract.

6 So we paid them to manage the process, but paid,
7 it was probably four different asbestos abatement companies.
8 So we did most of that asbestos abatement prior to the
9 contract happening, because it was outside the contract.
10 That did continue on.

11 But right at the end, as we got into the certain
12 areas of the old building, they would abate certain small
13 areas at one time. There's still -- the showroom still needs
14 the abatement. It's simple, what do you call it, the popcorn
15 on the ceiling kind of stuff. But I don't know what their
16 claim is, but it would have been something that was done
17 probably November, December.

18 Q. That was \$96,000 of demolition work you're
19 claiming was done in November, December?

20 A. There could have been some in October as well.

21 Q. And then Brandyn Iverson, we talked about her.
22 There's a list on the schedule for \$100,000. Was that --

23 A. She loaned the company --

24 Q. Was that part of the note?

1 A. She loaned the company \$100,000.

2 Q. When was that?

3 A. And that's along with her, Mike Dickson, Charles
4 Munnerlyn, that was done, I believe, in February.

5 Q. Of?

6 A. Of 2016.

7 Q. While we're on the subject, let's go to Exhibit
8 Number 65. I'm not going to go over all the details of the
9 purchase agreement that we just went through with Mr.
10 Coleman. I just have one real focused area. That's under
11 the purchase agreement. And if you look, that's Bates stamp
12 270 within the purchase agreement?

13 A. I'm sorry. It's what?

14 Q. 270. There's three documents attached to that
15 e-mail.

16 A. Okay. Yes.

17 Q. And what I'm looking at is under the closing date,
18 paragraph three?

19 A. Okay.

20 Q. Are you with me?

21 A. I am.

22 Q. In that paragraph, there's a condition to the
23 closing, but it talks about the company repays the buyer
24 \$1,016,388 previously loaned to the buyer from the company.

1 So that was a loan that -- between your various entities?

2 A. Correct.

3 Q. And we know that you used Mr. Yount's \$1 million
4 to pay off a previous -- some previous debt you had, right?

5 A. Yes.

6 Q. When was this 1 million plus dollars loaned? When
7 did that take place?

8 A. It was from things that were over and above the
9 \$2 million of equity that we were loaning into the company
10 for -- during the period of time where we were paying out
11 those big, fat extension, quarterly extension fees.

12 Q. Do you remember when this loan, was it a single
13 loan or a series of loans?

14 A. It was a series of loans. I think it was three.
15 Actually, we did a -- that number has come down. As we did
16 a -- from this point in time on, this was done February 2nd,
17 we did an audit and there are two entities, Cal Neva and Cal
18 Neva Lodge. How that happened was we did the seller
19 financing on the Canyon Capital.

20 So to create that structure, they did New Cal Neva
21 Lodge was their entity. We came in as Cal Neva Lodge. So
22 the equity in the company if we raise all the equity and
23 we're able to close with the minimum of 14, we basically
24 bought out Canyon. And so we ended up having the two

1 entities, Cal Neva Lodge where all the equity lied, and then
2 New Cal Neva Lodge where the land was held, all owned by Cal
3 Neva Lodge. It wasn't done by design. It was a function of
4 the financing. So really they're functionally one company.

5 So as we closed in 2015 -- sorry -- 2014 and took
6 Canyon out, we had kind of that stub year for the new entity.
7 So we really because of the two entities, we couldn't do a
8 full audit, annual audit until 2016, because of the two
9 entities. So when we did that audit, that number did come
10 down to I think it was about 800,000.

11 Q. But at least as of October, November of 2015, that
12 amount had been loaned to the company?

13 A. Yes.

14 Q. And that would be a debt to Cal Neva, right?

15 A. A debt to Cal Neva owed to CR Cal Neva.

16 Q. Was that debt disclosed to the members of the LLC?

17 A. Oh, certainly.

18 Q. Let's move to the December 12th meeting. You've
19 been here through the trial. Mr. Criswell said there was
20 initially an executive committee meeting, is that correct?

21 A. Correct. Really, the whole meeting was held. I
22 think what happened is that the executive committee, you
23 know, walked in and basically they said let's just -- as a
24 general rule, unless there was certain things that we thought

1 shouldn't be heard by the overall, we held these meetings
2 open to the public -- open to members. Nobody was excluded
3 from an executive committee meeting.

4 Q. So what was designated as an executive committee
5 meeting, preparing some notes?

6 A. It included many other members.

7 Q. All of the members all were heard?

8 A. Right.

9 Q. Do you remember who the members were in that
10 meeting who were not on the executive committee?

11 A. Some of them, Dicksons, Munnerlyns, Martins,
12 Dave -- Marriners, Molly, and some of the IMC folks that were
13 not on the board.

14 Q. When you say IMC, that was an entity that
15 invested, but actually -- it was an investment club --

16 A. Yes.

17 Q. -- that has five or six members, correct?

18 A. Right.

19 Q. So according to Mr. Criswell, you gave the initial
20 kind of presentation?

21 A. Uh-huh.

22 Q. To what we now know as the executive committee
23 members and some of the members?

24 A. Right.

1 Q. And did you tell them at that point that there had
2 been an amount of the over budget that was --

3 A. Certainly. They were aware of that from the
4 meeting the month before in November.

5 Q. The executive committee members?

6 A. The executive committee members and there were a
7 number of nonexecutive committee members in that meeting as
8 well.

9 Q. What was the amount in the -- that was discussed
10 in that meeting as to at that time the amount?

11 A. I think it was right around the 9 million, 9
12 million and change.

13 Q. As we talked yesterday, there were two more change
14 numbers in the line that took that number way up, right?

15 A. Took it up to the 10.1, I believe was what the
16 number was.

17 Q. And did you tell them that those change orders are
18 in the line that we haven't signed yet?

19 A. Certainly.

20 Q. It was higher than nine?

21 A. Ten.

22 Q. It would be the total order change order 12,
23 proposed change order 13 which was not executed, and I
24 believe 14 had to do with the kitchen, kind of whether or not

1 to do it?

2 A. Sure. And those things were all functionally
3 known, we just didn't have numbers to them. Frankly, I think
4 they were all the items in the July update just with numbers
5 attached to them.

6 Q. This was the first time that the numbers to the
7 change orders were provided to all of these people?

8 A. No. That was in November as well.

9 Q. And did you tell the group there in that first
10 member meeting, slash executive committee meeting, about the
11 Mosaic loan?

12 A. Yes.

13 Q. And did you tell them that the Mosaic loan was --
14 the amount of the Mosaic loan was going to be --

15 A. Yes.

16 Q. -- approximately \$21 million?

17 A. 51.

18 Q. 51.

19 A. Yes. We discussed that back in November as well.

20 Q. And it was going to be adding another 21 million
21 of debt to the project?

22 A. 20, yes.

23 Q. Just so I'm clear on the number, because I think
24 there's been a couple of different numbers bandied around.

1 MR. CAMPBELL: If I may approach, your Honor?

2 Page 51, counsel.

3 THE COURT: Certainly.

4 BY MR. CAMPBELL:

5 Q. Mr. Radovan, in your deposition, we had a
6 discussion about the Mosaic loan. And I asked you, so you're
7 looking to raise approximately another 21 million. And you
8 say, correct. And what was that 21 million going to? You
9 say, it was fees and the different loans and then all of the
10 balance to complete. It was probably in September when we
11 started with them. And then I asked you, so in September,
12 you were injecting 21 million of additional money to complete
13 the project? You said, roughly that. Did that refresh your
14 recollection?

15 A. Yes. That's going from 51 up to 71.

16 Q. So you told the members at that meeting that the
17 Mosaic loan, total amount of the Mosaic loan was now going to
18 be 51?

19 A. 50.

20 Q. That was an increase in debt of at least 20 to \$21
21 million?

22 A. From 35 to 51, 16 million.

23 Q. Did you tell them that without that Mosaic loan or
24 some other financing that the project was not going to be

1 complete in the spring of that next year?

2 A. Yes. We said that we needed -- we needed that
3 financing, that or any other type of financing. But -- well,
4 we'd been talking about that for months, that we were seeking
5 financing.

6 Q. Did you tell them where you were in the process
7 with Mosaic?

8 A. Yes. And we spoke with them in the meeting prior.
9 They had asked me to go back -- I had asked for approval of
10 that loan in November, early November. And they had asked me
11 to go back and get the loan amount up, and I forget what the
12 other one or two minor issues, and achieve that end.

13 Q. So you met with Mosaic in November?

14 A. Spoke with them. Yeah, I did meet with them.

15 Q. Spoke with them?

16 A. Yeah.

17 Q. And then --

18 A. So we were asking to have the loan approved and
19 that's kind of where it got a little testy, the IMC and
20 Molly, basically. Molly was chirping in that we should raise
21 equity, not debt.

22 Q. Did you continue to talk to Mosaic after that
23 meeting in December?

24 A. Spoke with them a couple of times, told them that

1 we have to get the loan approved, and what the direction from
2 the members, you know, and then the executive committee is
3 let's take a look -- let's go through the holidays and see
4 where we end up getting next month. That was the direction
5 we were given.

6 Q. You kind of told Mosaic that you had a meeting
7 and --

8 A. And we did not have approval yet.

9 Q. And then in January, did you meet with Mosaic
10 also?

11 A. No. Sorry. We had a board meeting on the 27th,
12 an EC meeting, a member meeting on January the 27th, in which
13 the loan was approved unanimously by the executive committee
14 to move forward and that I was to set up a meeting with
15 Mosaic, which I did. The other members of the EC wanted to
16 come to that meeting as well.

17 So this is on a Wednesday. So as soon as we got
18 out of that meeting, I set up the meeting, told them it was
19 now approved. They said, great, looking forward to moving
20 forward. We set up a meeting Monday, I think it was
21 February 1st or 2nd, 4:00 at the Palo Alto Four Seasons
22 Hotel.

23 Q. Bear with me while I try to find this exhibit.
24 Could you look at Exhibit Number 49, Mr. Radovan?

1 A. Yes.

2 Q. Okay. It appears that Heather Hill then sent the
3 group around December 17th, sent the group a package of
4 documents for a meeting for the next day, right?

5 A. Uh-huh.

6 Q. And in that package of documents, there was a --
7 included a budget, which was like the third page?

8 A. Right.

9 Q. Third page of the exhibit. Okay. So this budget,
10 was this the same numbers that you had been discussing with
11 the members of the LLC at that December 12th meeting?

12 A. Correct.

13 Q. And if we look down at the comparison, if I'm
14 reading this correctly, there's three columns in this budget
15 sheet, right?

16 A. Correct.

17 Q. The first one, my copy is a little hard to read,
18 but it says total project and then in the second column is
19 budget, would that be the original budget?

20 A. Yes.

21 Q. And then the third column shows the variance?

22 A. Uh-huh.

23 Q. So as of at least in this December time frame, the
24 total land and predevelopment costs had jumped up

1 \$3.6 million?

2 A. No. Those are the -- from the original 13, those
3 were the financing costs attached to the seller financing and
4 the bridge loans. If you look at those, those are numbers we
5 talked about yesterday.

6 Q. It was mainly a shifting of numbers from the total
7 development financing?

8 A. Just so we showed in one category all costs that
9 went towards land.

10 Q. In the original budget, that was up to 9 million?

11 A. The original budget is 13.

12 Q. No. No. On the total development and financing
13 costs?

14 A. I'm sorry?

15 Q. Maybe let's do a side-by-side comparison just so
16 we're clear?

17 A. You want to just drop down to the bottom?

18 Q. No, actually, let's look at Exhibit Number 4, I
19 believe.

20 A. Are we keeping the other one open?

21 Q. Yeah, if you could keep the other one open, maybe
22 that will help. You get to Exhibit Number 4 and you go to
23 what would be the -- go all the way back to narrative, past
24 page 20, and then go five pages past page 20.

1 A. So what page? Sorry.

2 Q. It's a budget table that looks very similar to the
3 budget we were looking at 49. It's got a bold and then codes
4 and everything.

5 A. Yes.

6 Q. So if we look at the budget in Exhibit Number 49
7 and the original budget, we can then compare those to the
8 budget in Exhibit 4?

9 A. Those would be exactly the numbers that are on
10 front page and the --

11 Q. With the exception of the total development and
12 financing costs. That number has changed from 7.7 to 9.031
13 million?

14 A. Correct.

15 Q. How does that number change for development and
16 financing cost? Is there additional interest and fees?

17 A. Well, the interest, yeah, that would have been --
18 well, so we put the land cost stuff up top that was specific
19 to that, and then any other finance costs higher than what
20 was projected, whether it's a new financing or what we
21 thought we were -- where we were going to be with the
22 Picketts, that was a 12 percent loan, and anything as far as
23 fees, anything that was above and beyond what we'd originally
24 thought we could get.

1 Q. Would it be fair to say that this budgeting table
2 in 49 assumed the costs for the refinance?

3 A. Yes, definitely.

4 Q. And put those into the --

5 A. Correct.

6 Q. -- into the financing costs?

7 A. Yes.

8 Q. And then let's go back now to just focus on the
9 exhibit or the table in Exhibit 49.

10 A. Okay.

11 Q. We've got a jump in the design cost of about a
12 million dollars, right?

13 A. Correct.

14 Q. And then at this point, a total construction cost
15 had jumped \$10.65 million?

16 A. Correct.

17 Q. Did that include change order 14?

18 A. That includes everything, the whole kitchen sink.
19 That includes 14 on the other one, 1.2 to 1.4 on the
20 restaurant as well.

21 Q. Furniture and fixtures had gone up 1.1 million and
22 there's some others. There's a reduction in the development
23 and financing, we just talked about how that took place. The
24 total preopening costs, that jumped a million dollars. Where

1 did that come from?

2 A. That's for operating expenses. You put in an
3 operating reserve for once the hotel is open. So you have a
4 period of time that you can operate the hotel. Because it
5 will open in the red and you'll be losing money for the first
6 year, maybe two. So you always have an operating reserve.
7 And so often times that is not just a thing that the
8 developer puts in. We put in what we feel is appropriate,
9 but Starwood will have a certain number that they require to
10 have in there.

11 Q. Okay.

12 A. So it was probably a Starwood scenario.

13 Q. Just so we're clear, this kind of evidences or
14 documents the number that you were talking to the members at
15 the December 12th meeting?

16 A. Correct.

17 Q. And it's approximately the same number that you
18 testified earlier that you knew in September of 2015?

19 A. In July.

20 Q. In July.

21 A. Pretty much so. Pretty close.

22 Q. That the total refinance was going to add 20 plus
23 million dollars to the project in debt?

24 A. Correct. Well, no, sorry. 20 to the budget, 16

1 to the debt, the differential between the actual budget and
2 the sources used.

3 Q. You were here yesterday also and the day before
4 when Mr. Marriner was here?

5 A. Yes.

6 Q. Would you agree with both those gentlemen's
7 description of what happened after the executive committee
8 slash member meeting as to some pretty upset people?

9 A. Yes, the IMC, Molly, Mr. Yount.

10 Q. Do you believe they were upset because what they
11 had just been told in the meeting?

12 A. No. They had heard that before. They heard that
13 the month before. They were in the meeting the month before.
14 And, honestly, that was -- that was staged with the IMC and
15 Molly.

16 Q. Mr. Yount was in the meeting the month before?

17 A. No.

18 Q. Who was in the meeting the month before?

19 A. Most of the IMC, Les Busick, Phil Busick, Bill and
20 myself and two or three others I forget off the top of my
21 head. I actually don't recall that Dave was there.

22 Q. Okay. One final area, Mr. Radovan. I'm not going
23 to pin myself to a number of questions. Maybe we'd refer to
24 an exhibit would be the best way to start this. Let's look

1 at Exhibit Number 63. We can use that as a starting point.

2 A. 63 or 64? I'm sorry.

3 Q. 63. Back in the December 12th meeting, it's my
4 understanding that Mr. Yount and Mr. Criswell talked?

5 A. Yes.

6 Q. Were you in that conversation?

7 A. No.

8 Q. Did you have a conversation with Mr. Criswell
9 after the meeting he had with Mr. Yount?

10 A. Yes.

11 Q. As the record reflects, Mr. Criswell sent
12 Mr. Yount a couple of e-mails talking about that side
13 conversation, correct?

14 A. Uh-huh.

15 Q. Did you talk with Mr. Criswell about paying
16 Mr. Yount back?

17 A. We discussed that and honestly I think we had a
18 disagreement on that. And basically we had said that Bill
19 would, you know, handle conversations with Mr. Yount, because
20 they started that conversation.

21 Q. You said you had a disagreement. Did Mr. Criswell
22 want to pay him back and you not?

23 A. No. It had nothing to do with that. We were very
24 strong proponents of project. At that point in time, this is

1 not a troubled project. We had financing to cover the
2 overages. Starwood is marketing the project for an opening
3 in a couple of months. We have a new chef. A new general
4 manager had been there since September. This project is
5 moving forward and frankly there's absolutely no reason that
6 the hotel should not have opened last summer. It happened
7 because the Mosaic loan was tanked on purpose.

8 Q. We've heard that testimony. What I'm interested
9 in here, you and Mr. Criswell had a conversation about paying
10 Mr. Yount back?

11 A. We discussed what had happened and he thought it
12 would be good that he would work with Mr. Yount to find a
13 mutually acceptable scenario. And I had told him what had
14 happened. And so Bill is a very great person that wants to
15 keep everyone happy and so decided to go out of his way to
16 help Mr. Yount feel better about the situation. Put it that
17 way.

18 Q. Did you take the position that Mr. Yount was not
19 entitled to his money back?

20 A. I told Bill how the transaction happened, and just
21 as I discussed yesterday, that the PPM had the available
22 founders share. We went through the same closing regimen
23 that we did with anyone else. Bruce then did tell us we
24 needed to get that assignment and we were -- had that

1 documentation to do that at the next annual meeting and had
2 planned to do that.

3 In between that, Bill was then working with
4 Mr. Yount. And all the elements that you kind of talked to,
5 anything that went past the 12th was Bill working with
6 Mr. Yount.

7 Q. So you say you had a closing the same as all the
8 other agreements?

9 A. Any of the -- under the PPM.

10 Q. So you're comparing closing Mr. Yount with the
11 closings from the other investors?

12 A. Yes, because it was an available founders share
13 under the PPM.

14 Q. And when you talk about a closing, that's a
15 closing of a transaction where all the documents have been
16 executed and that's when the money is released?

17 A. Correct.

18 Q. You're a developer, too, you understand what a
19 closing is?

20 A. I do.

21 MR. CAMPBELL: That's all I have, your Honor.

22 THE COURT: Thank you. Mr. Little.

23 MR. LITTLE: Thank you, your Honor.

24 CROSS EXAMINATION

1 BY MR. LITTLE:

2 Q. Mr. Radovan, we beat a lot of horses to death the
3 last couple of days. I'm going to try not to beat them any
4 further. Can you look at Exhibit 3 and 4? Three is the PPM,
5 right; four is the confidential offering memorandum?

6 A. Yes.

7 Q. They're both dated in March of 2014, correct?

8 A. Correct.

9 Q. Well before Mr. Yount became interested in
10 possibly investing?

11 A. Correct.

12 Q. Now, counsel asked you whether these were updated
13 before they were submitted or provided to Mr. Yount. Do you
14 recall that?

15 A. Yes.

16 Q. Can you tell us why they were not?

17 A. On advice of counsel, securities counsel, that
18 everyone needed to sign the same document and you couldn't
19 have different documents that were floating around at
20 different times. So everyone had to sign the same document.

21 That's why when we first started talking in July,
22 we updated to what is different in this document to where it
23 was at that point in time. So that -- it was purely on
24 advice of counsel.

1 Q. Go over to Exhibit 3, please, sir. And turn over
2 three pages in, at the bottom it will have three little iii.

3 A. Yes.

4 Q. Up in the top in bold letters, follow me, it says,
5 neither the delivery of this memorandum nor any sale made
6 hereunder shall under any circumstances create any
7 implication that there has been no change in the affairs of
8 the company after the date of this memorandum. Did I read
9 that correctly?

10 A. Yes.

11 Q. Go over to page 11. Let's look at the section
12 talking about forward looking statements.

13 A. Okay.

14 Q. The first sentence says, certain statements
15 contained in this memorandum, including, without limitation,
16 statements containing the words believes, anticipates,
17 intends, expects, and words of similar import constitute
18 forward looking statements. Those would be things like the
19 budget that you gave in these documents, correct?

20 A. Correct.

21 Q. Now, down at the bottom, the last two sentences
22 say, given the uncertainties, prospective investors are
23 cautioned not to place undue reliance on such forward looking
24 statements. The company disclaims any obligation to update

1 any such factors or to publically announce the result of any
2 revisions to any of the forward looking statements contained
3 herein to reflect future events or developments. Did I read
4 that correctly?

5 A. Yes.

6 Q. Now, there's been a few times where counsel has
7 asked you, well, did you tell Mr. Yount this, or did you tell
8 him that, right before he decided to invest. You remember
9 those types of questions?

10 A. Certainly.

11 Q. Let's break that down a bit. In your mind, did
12 you think a deal was going to happen with Mr. Yount after,
13 say, mid August?

14 A. Well, as I kind of talked about yesterday, you
15 know, this was a three-and-a-half, four-month process from
16 the original conversations. And it certainly didn't seem to
17 myself, Mr. Marriner that we were getting there. If you look
18 at that entire period of four months, I spoke to him twice,
19 had a number of e-mails go back and forth. Dave, I don't
20 know how many times. But continually asking, checking in, do
21 you need anything from us?

22 Dave I think a couple of times asked for, do you
23 want a site tour, even just to create contact. I was driving
24 through Yountville and took pictures of one of Mr. Yount's

1 great forefathers, the founder of the town of Yountville, and
2 just a way to reach out, Mr. Yount is a great guy and really
3 enjoy talking to him.

4 But there was very little conversation. I think
5 he was traveling for a bit of that time as well. It just
6 didn't seem there was that much going on. We usually --
7 people will typically close anywhere from two to three days
8 to a couple of weeks.

9 Q. Let's look at some of these efforts that you and
10 Mr. Marriner made to reach out to Mr. Yount and ask if he
11 needed information or wanted tours. Let's go to Exhibit 29.
12 And let's look at the second page of that document first.
13 This is an August 26th, 2015 e-mail from Mr. Marriner to
14 Mr. Yount, correct?

15 A. Correct.

16 Q. And you're copied on it?

17 A. Yes.

18 Q. Take your time to read it, but essentially Mr.
19 Marriner is asking Mr. Yount saying, talking about progress
20 to the project and inviting him to come do a tour with him to
21 discuss that progress and see it.

22 A. Right.

23 Q. Let's go over to the first page of that exhibit.
24 We move forward a couple of weeks to September 8th. It's

1 another e-mail from Mr. Marriner to Mr. Yount, again, asking
2 him if he wants to do a tour and see the updated progress,
3 correct?

4 A. Correct.

5 Q. Let's go over to Exhibit 30. Go over to page two.
6 This is a little over a week after that, on September 16th,
7 again, Mr. Marriner is reaching out to Mr. Yount asking if he
8 has questions and wants to do another tour and see an update,
9 correct?

10 A. Correct.

11 Q. Exhibit 35, this is an October 6th, 2015 e-mail to
12 Mr. Yount, you're copied, Mr. Marriner is copied from Heather
13 Hill asking if there's anything else he needed, correct?

14 A. Correct.

15 Q. Exhibit 37, a couple days before Mr. Yount funds,
16 Mr. Marriner -- excuse me -- October 10th, so a couple of
17 days before he funds, Mr. Marriner is again asking him, does
18 he want a site tour as he moves forward towards funding?

19 A. Correct.

20 Q. To your knowledge, did he take Mr. Marriner up on
21 any of those gestures or offers to come look at the property?

22 A. Not that I'm aware. No.

23 Q. And when you and your company were and Mr.
24 Marriner were reaching out saying, do you need any additional

1 information, did he respond affirmatively?

2 A. No.

3 Q. Did Mr. Yount ask you for any information that you
4 didn't provide?

5 A. No.

6 Q. And had you answered all of his questions
7 truthfully?

8 A. Certainly.

9 Q. Do you believe the information you gave him was
10 truthful as of the time he closed?

11 A. Yes.

12 Q. Let's look at Exhibit 36. There is one question
13 that Mr. Yount asked you a few days before he closed,
14 correct? And he asked how the schedule was holding up?

15 A. Correct.

16 Q. And you told him that there was going to be a soft
17 opening in spring with a grand opening on Fathers's Day,
18 correct?

19 A. Correct.

20 Q. Was that information accurate at the time?

21 A. Yes.

22 Q. What was that based on?

23 A. That was based on the change orders, with
24 everything taken into account, with Penta having agreed, an

1 opening schedule with them, with Starwood aligned to that,
2 because they were actually out marketing at this point in
3 time. So that became a set date.

4 Q. So it was based on information provided to you by
5 your contractor?

6 A. Correct.

7 Q. And, in fact, in this e-mail you were telling him
8 that you had just brought in the general manager and chef,
9 right?

10 A. Yes.

11 Q. Now, we've already gone through the mathematical
12 exercise of comparing the change orders through the end of
13 September with that \$10.5 million that you told Mr. Yount
14 about in July. I'm not going to waste the Court's time going
15 through that exercise. We can do the math ourselves.

16 MR. CAMPBELL: I'm going to object as to
17 mischaracterization of the evidence that he told Mr. Yount
18 \$10.5 million.

19 THE COURT: Overruled. Go ahead, Mr. Little.

20 BY MR. LITTLE:

21 Q. Mr. Radovan, do you believe that the budget
22 numbers of you gave Mr. Yount in July were still accurate in
23 early October when he invested?

24 A. Yes. It was at the nine level that we discussed

1 in July.

2 THE COURT: Go ahead.

3 MR. LITTLE: Do you want to break?

4 THE COURT: No.

5 BY MR. LITTLE:

6 Q. Mr. Yount has alleged that he was duped into
7 buying one of CR Cal Neva's two founders shares, because the
8 project was failing. Is there any accuracy to that
9 statement?

10 A. Absolutely not.

11 Q. Please tell us, you've gone over it, I don't want
12 to belabor it too much, but tell us the status of the
13 construction and financing when Mr. Yount finally got around
14 to investing?

15 A. It was moving incredibly well. There was 100 plus
16 people on site. And at that point, we're gearing towards
17 opening. We were already scheduling an installation for
18 February. We were just completing all of the major exterior
19 things. Pool had been ready for gunite, basically, pool, hot
20 tub, all the grading in the back complete. We were in
21 opening mode.

22 Q. And you heard Mr. Marriner testify yesterday that
23 he walked the job with Mr. Busick and Penta's top guy on the
24 project within a week or so of Mr. Yount investing, correct?

1 A. Correct.

2 Q. And Mr. Busick came out of that meeting and
3 invested another million and a half dollars?

4 A. Correct.

5 Q. And that million and a half dollars went into the
6 project, correct?

7 A. Correct. And by the way, he came out of that also
8 wanting to spend more money. Saying, windows here, let's do
9 this, let's do this. It wasn't just that -- like I say, this
10 was a project moving forward towards opening.

11 Q. And Penta was being paid at this point in time?

12 A. Certainly.

13 Q. Let's clean that up for the record. Let's look at
14 Exhibit 152. Turn over to the Bates number CR 359. It's
15 towards the end.

16 A. 152? I'm sorry.

17 Q. 152, Bates number 359.

18 A. Okay.

19 Q. This is an unconditional waiver and release upon
20 progress payment dated October 1st, 2015 signed by Lee Mason
21 on behalf of Penta Building Group, correct?

22 A. Correct.

23 Q. Can you tell the Court what an unconditional
24 waiver and release is?

1 A. An unconditional waiver and release basically
2 means that they're giving up any lien rights that they have
3 to this amount of work. So up -- they can't do -- they can't
4 put a lien. It's a full release. They have no rights prior
5 to October 1st to anything on that site at that point in
6 time.

7 Q. So you didn't sell one of your -- one of CR Cal
8 Neva shares because you thought the project was failing.
9 Help explain to the Court, why sell one of CR Cal Neva's
10 shares to Mr. Yount once Mr. Busick closed out the
11 subscription?

12 A. We had the -- as it was delineated, and there's a
13 number of places where the CR Cal Neva share was there,
14 Mr. Yount is a very prominent guy in the community, he's been
15 there a long time, neighbor, very influential, great guy, we
16 thought he would be a fantastic person to have as a member
17 and investor in the project.

18 Q. And can you tell this Court why this matter did
19 not go to a vote at the next annual meeting in April?

20 A. We never got there. The suit was filed, I think,
21 on the 4th or 5th.

22 Q. So you understood that Mr. Yount didn't want it to
23 go to member approval?

24 A. Correct.

1 MR. CAMPBELL: Objection, that mischaracterizes
2 the testimony.

3 THE COURT: Sustained. Go ahead, next question.

4 BY MR. LITTLE:

5 Q. Well, by filing suit, what was your understanding
6 of whether Mr. Yount wanted his founders share to go to
7 member approval?

8 A. That he did not want that.

9 THE COURT: All right. Thank you.

10 BY MR. LITTLE:

11 Q. Sir, was there a time in 2016 when Mr. Yount was
12 excited about his or at least appeared to you to be excited
13 by his founding member interest in Cal Neva Lodge?

14 A. Well, it certainly seemed so in February, March
15 when there was a potential sale of the property for, I don't
16 remember what the price point was, 120 or \$130 million.
17 There had been a group called GECI that had approached me in
18 December of 2015 wanting to discuss a potential acquisition
19 of the property.

20 You know, went down the path with them. Did some
21 due diligence on the people. And it was very obvious that to
22 me that it was -- it was kind of a scam. Our attorneys had
23 known of these people. They had been around for a couple of
24 years, never closed a project, and I warned everyone, I said,

1 there is this thing out there and -- but don't get all --
2 don't start thinking this is out there.

3 And so one of the IMC guys, Paul Jamieson, said,
4 hey, Robert, I'll help you with this and then we'll go down
5 the path with that. So Paul started really believing that
6 was a real deal and spent about a month and a half on that
7 and thought he got to a contract with them of about 130, 135
8 million or something like that.

9 And definitely people -- there was people that
10 thought that was real and Paul certainly did and was telling
11 everyone and he got really excited about it. I continually
12 cautioned, this is not, and that's how it turned out.

13 Q. Was Mr. Yount attending member meetings in late
14 2015, 2016?

15 A. Yes, into 2016. Yes.

16 Q. Sir, did Mr. Yount buying one of the CR Cal Neva's
17 founders shares negatively affect the project at all?

18 A. Well, as we now understand, you know, what had
19 happened with the Mosaic loan, basically, the IMC, Molly
20 Kingston and Mr. Yount were communicating a lot.

21 MR. CAMPBELL: Objection, there's no foundation.

22 THE COURT: Sustained.

23 BY MR. LITTLE:

24 Q. I think you misunderstood my question. My

1 question was, did Mr. Yount buying one of CR Cal Neva's
2 shares negatively impact the project?

3 A. Oh, no.

4 Q. Did it cause any money to be pulled out of the
5 project?

6 A. Absolutely not.

7 Q. Was any of the money that CR Cal Neva receive from
8 the sale of the founders share put back into the project?

9 A. Yes. There was a couple of hundred thousand that
10 when things did go, something started being unpaid in
11 November, we were basically loaning money to the project to
12 make payments to the different consultants.

13 Q. Is there any difference between the founders share
14 Mr. Yount purchased from CR Cal Neva different from any of
15 the other founders shares?

16 A. Absolutely not.

17 Q. You had started to tell the story through counsel
18 about how the Mosaic loan was torpedoed. We got up through
19 the January 27th, 2016 executive committee meeting where they
20 approved the Mosaic loan, correct?

21 A. Correct.

22 Q. And then you set up a meeting with Mosaic at the
23 Four Seasons on or about February 2nd?

24 A. Yes. On Monday at 4:00 in the afternoon.

1 Q. What happened from there?

2 A. Well, as I was driving down to that meeting, I
3 received an e-mail from the Mosaic folks. And it read,
4 basically, it started off, Robert, as you're aware, we met
5 with a number of the investors today, and I don't remember
6 the exact wording, but it sounds like things are a bit of a
7 mess there and we're going to give you the opportunity to get
8 this cleaned up, we'll tear up the term sheet and you can
9 resubmit at some point in time. Basically, we're out.

10 Q. If you look at Exhibit 124, the third page in. Is
11 this the e-mail you received from Mosaic?

12 A. Yes.

13 Q. And they indicate that they met with a group who
14 represented themselves as investors in Cal Neva?

15 A. Correct.

16 Q. And they were interested in hearing about the
17 history of Mosaic's involvement in Cal Neva with you and
18 Mosaic explained our deal with you and told them how he met
19 you. And we told them that we issued a term sheet and we
20 told them that you executed it and the day you executed it.
21 Correct?

22 A. Correct.

23 Q. And then he goes down on to indicate in the second
24 paragraph that they went on to explain a little of the

1 history of the deal from their perspective, and to tell you
2 the truth, there seems to be a little bit of a mess right
3 now, and we're going to take a step back, tear up the
4 executed term sheet, give you and the ownership time to
5 figure things out on your own and at the right moment.

6 Correct?

7 A. Correct.

8 Q. They didn't become interested again after that
9 point in time, did they?

10 A. No.

11 Q. And who did you understand was behind that
12 meeting, that secret meeting?

13 A. A number of the IMC guys.

14 Q. That include Mr. Chaney?

15 A. Mr. Chaney, Mr. Jamieson. I'm not sure who else.

16 Q. And did you come to understand that Mr. Yount was
17 working behind the scenes with the IMC group?

18 A. That's what we have found through discovery.

19 Q. Can you turn over to Exhibit 122?

20 A. Yes.

21 Q. This is a January 31st, 2016 e-mail between
22 Mr. Jamieson and Mr. Yount, correct?

23 A. Correct.

24 Q. And Mr. Jamieson is part of the IMC group?

1 A. Correct.

2 Q. It's regarding talk with Jeremy and he's also part
3 of the IMC group?

4 A. Correct.

5 Q. And he's indicating right there, but to be clear,
6 they do not know this particular meeting is happening.

7 That's referencing you guys, right?

8 A. Correct. The EC days earlier, three days earlier,
9 the entire EC approved the loan. This is not an approved
10 meeting in any way, shape or form.

11 Q. Down at the bottom, Mr. Yount puts some numbers or
12 bullet points that he was sending to Mr. Jamieson. Number
13 one is referencing, he said three of the EC is having a
14 meeting with Mosaic in Sac on Monday without CR. Is that
15 legit without CR, without their advanced permission? And
16 number two, he said, he said he's been told that Mosaic are
17 sharks and will want the project to go broke, flush out
18 investors and take it for themselves. Do you see that?

19 A. Yes.

20 Q. And then above that, look at the last paragraph
21 that Mr. Jamieson wrote to Mr. Yount. It says, lastly, we
22 should be getting an LOI from an equity party before
23 Wednesday. This is the one who would be friendly and
24 favorable. I believe Hall and Penta would stay in if this

1 party were to enter. I also had a great call with Roger
2 yesterday and can fill you in when you're back. Did you
3 understand that the IMC group and Mr. Yount were proponents
4 of some other form of financing?

5 A. As we understand Roger, Roger is Wittenberg, who
6 was working with North Light and that introduction was made.

7 Q. Who was that introduction made by?

8 A. As I understand, by Mr. Yount.

9 Q. Let's turn over to Exhibit 125.

10 A. Yes.

11 Q. Molly Kingston is whom?

12 A. She is an investor in the project.

13 Q. And this is a February 2nd e-mail with Mr. Yount
14 and Ms. Kingston?

15 A. Right.

16 Q. And it looks like it's the day of that meeting?

17 A. It was the day after.

18 Q. And the first paragraph says, I spoke with Paul
19 this morning. I learned the EC minus CR met with Mosaic and
20 had a, quote, good meeting, end quote. Right?

21 A. Yes.

22 Q. And then down at the bottom, the kind of the third
23 paragraph up, it starts with, to that end.

24 A. Yes.

1 Q. It says, to that end, CR must immediately resign
2 and cede their 20 percent. What's your understanding about
3 that?

4 A. Well, at the -- there was a meeting. We were
5 asked, Bill and I were asked to come back up to the meeting
6 room where the member and EC meeting was held on the 27th.
7 And what had -- we had actually sat down with Mr. and
8 Mrs. Yount to discuss the situation, Bill and I, and then we
9 were asked to come up. The Younts came up as well.

10 The IMC and Molly and Busicks and Dicksons were in
11 the room. And basically the guy who -- Brandon Chaney and
12 Jeremy Page led the meeting. And basically within
13 30 seconds, it became a shouting match where Jeremy is
14 pointing his finger at my partner and screaming at him, I
15 will bury you. And basically saying that we had to give up
16 our rights and interest to the IMC.

17 Q. Not give your share back to the project, but give
18 it to IMC?

19 A. To the IMC. And it was interesting that just one
20 of the couples, the Dicksons, who were there, were not part
21 of it and they stuck around to have a couple of glasses of
22 wine. And they pretty much jumped and just talked about how
23 inappropriate the entire thing was. That this should not --
24 it should not be some secret meeting and if they wanted to do

1 something with us, they always have the ability to remove us
2 at any time. Shareholders could remove us today. At any
3 point in time for no reason, we can be removed.

4 Q. In fact, in the last paragraph of this e-mail,
5 Ms. Kingston is referencing you or Criswell Radovan facing
6 swift civil and criminal action. Do you see that?

7 A. Yes.

8 Q. Is it your understanding they were making
9 accusations of financial improprieties with the bookkeeping?

10 A. Yes.

11 Q. And they had a full audit performed, did they not?

12 A. Yes.

13 Q. What's your understanding of the results of that
14 audit?

15 A. Showed absolutely no improprieties at all.

16 Q. It's been a year and a half since this point in
17 time?

18 A. Yes.

19 Q. And is CR Cal Neva still the manager of Cal Neva
20 Lodge?

21 A. Yes.

22 Q. And there's provisions under the operating
23 agreement for you to be removed, right?

24 A. At any point in time.

1 Q. And that hasn't happened?

2 A. No.

3 Q. Sir, do you believe the Mosaic loan would have
4 closed but for the interference by the IMC group and
5 Mr. Yount?

6 A. Yes.

7 Q. What would that loan have meant to this project?

8 A. That means we would have opened on Father's Day.
9 No. It probably would have been a little later, because at
10 that time we were now looking at closing that loan probably
11 30 days out from that point, so late February. You know, we
12 were trying to get it closed and Mosaic was on track for a
13 late -- sorry -- late November, early December closing of the
14 loan.

15 So we probably would have been open in the summer,
16 but we would have now at this point been open for almost a
17 year and a half, had two summers under our belt, and the
18 record snowfall, I think the place would be a screaming
19 success.

20 Q. Do you believe their actions are what caused Cal
21 Neva Lodge to have to file bankruptcy?

22 MR. CAMPBELL: Objection, I don't believe there's
23 a foundation for that.

24 THE COURT: I think he's the manager.

1 THE WITNESS: I certainly believe so.

2 THE COURT: Overruled.

3 THE WITNESS: At that point in time, we were
4 continually working at, you know, other scenarios after that
5 happened. But, you know, the kind of word gets around a
6 little bit. And Molly was out shopping it. You know, we
7 kept hearing that it's being shopped around the place by
8 somebody.

9 So it became difficult to get there. We were
10 working with Colombia Pacific. We had Langham, the hotel
11 operator, were very interested. They were going to buy out
12 the Starwood franchise. We pretty much had a deal set with
13 them. They were going to buy out the IMC, Molly, Mr. Yount
14 as part of the deal and just wanted the group gone. Come in,
15 put up enough capital. They were keeping Hall in, Ladera in.
16 So we were working on that very strongly, as well as the
17 Colombia Pacific loan in parallel paths.

18 Ladera had in May, towards the end of May now, was
19 a -- was their first period where we had to start paying them
20 or renegotiate them. They had the ability then to foreclose
21 against the company interests of Cal Neva Lodge, CNL, the
22 equity holders.

23 They gave us one two-week extension to the get the
24 Colombia Pacific loan closed and we were working through that

1 with the appraisals, everything with them. Then they
2 decided, this is like 4:00 in the afternoon, we're not going
3 to give you the other extension. Do what you need to do. We
4 filed Chapter 11 then on that date to avoid foreclosure.

5 BY MR. LITTLE:

6 Q. Sir, can you qualify how CR Cal Neva has been
7 damaged by Mr. Yount and IMC's interference?

8 MR. CAMPBELL: Objection, lack of foundation.

9 THE COURT: Sustained. I'm sorry. Overruled. Go
10 ahead.

11 THE WITNESS: I can tell you personally, you know,
12 this thing is going to cost Bill and I at least 1.6 million,
13 revenues that would have come to our operating company, a
14 million dollars a year, roughly. Bill nor I have not been
15 paid one penny in the last two years, which has dramatically
16 cost us.

17 And the entire time, you know, me and my staff and
18 Bill, we have worked tirelessly without getting paid, despite
19 all of the, sorry, crap, worked to protect everyone's
20 interests. And it's been a huge, huge toll on myself, my
21 family. As Dave talked about it the other day, it's been
22 unbelievably difficult, not just the capital side of it is
23 devastating, and this never should have happened. This came
24 from a couple of people trying to steal a project.

1 BY MR. LITTLE:

2 Q. Now, Mr. Yount has indicated that he intends to
3 call Brandon Chaney as a witness at this trial?

4 A. Uh-huh.

5 Q. You talked about him before. Is he kind of the
6 one --

7 A. He's the kind of appointed leader of the IMC, as
8 far as the group goes.

9 Q. And that's the same group that Mr. Marriner
10 testified had threatened to take legal action against him if
11 he didn't join their side?

12 A. Correct.

13 Q. And is that the same group that Mr. Marriner
14 testified was spreading lies and rumors to other investors
15 that he had been instructed or he had instructed the IMC
16 group not to tell Mr. Yount about cost overruns?

17 A. Correct.

18 Q. Now, was Criswell Radovan or one of its entities
19 previously involved in litigation with Mr. Chaney?

20 A. Yes.

21 Q. Can you tell us about that?

22 A. Yes. We had, in 2015, we had put a winery, what
23 used to be the Cuvaison Winery up in Napa --

24 THE COURT: Could you spell Cuvaison?

1 THE WITNESS: C-u-v-a-i-s-o-n.

2 THE COURT: Thank you.

3 THE WITNESS: And had gotten control of that,
4 we're in contract on that, and seeking capital partners for
5 that. Brandon and his partner, Anthony Zobot, came in and
6 were the capital partners for that. That was in April of
7 2015.

8 As we went down the path, I was able to raise all
9 the debt for that. He had put in 2 million into that. The
10 balance of that I raised on debt. We got into a situation
11 where he couldn't basically fund anymore, so we started
12 loaning money to the project. I think we had about 300,000
13 loaned to the project just to keep the doors open.

14 By December of 2015, I was able to put it into
15 contract -- well, sorry. We had it under an LOI with a very
16 strong group that wanted to buy the property for
17 15.1 million. As we went into January, we had negotiated the
18 sale purchase and sale contract with this group, very well
19 funded equity fund that had done other things in Napa Valley,
20 Southern California and the Bay Area, so, very, very strong
21 group. And this was part of the business plan they were
22 doing around the Valley. So what would have happened in that
23 scenario is that in a matter of 10 months Mr. Chaney would
24 have got his \$2 million, plus a ten percent return and an

1 extra \$3 millions.

2 We got into a situation where we had been loaning
3 this \$300,000. We needed to -- I remember the date, because
4 it was on my birthday, January 22nd, Mr. Chaney came into the
5 office and said he'll loan us \$25,000, gave us a note.
6 Because we need to pay the -- it was a payroll day and so we
7 needed that \$25,000 to make payroll.

8 So he came in and had a note for the 25 that he
9 wanted me to sign, the manager. And then an operating
10 agreement that had a red line in it that basically showed --
11 the red line showed that he added the note, basically, into
12 the operating agreement, amended restated. So I signed that
13 and went through all the red line stuff.

14 What he had done is he changed the document pretty
15 substantially. And so as he then next week came back and
16 with the changes he had made gave himself full control and
17 was trying to foreclosure us out of the project. And so we
18 got an attorney, obviously. Real quickly discovered that
19 Brandon had just wholeheartedly changed the entire document.
20 Bruce had done the operating agreement, found it all.

21 So our attorney called his attorney to say, you
22 know, what you're attempting to do, you can't do. You can't
23 foreclose a partner out, first of all, so we're giving you a
24 three-day warning to stop. And also Brandon had refused

1 right at the end to sign the purchase agreement on -- for the
2 winery and basically saying, sign this, then I'll -- we'll
3 sign the purchase agreement next week.

4 So what ends up happening two days later out of
5 the three, he filed suit against us for mismanagement and
6 fraud. Sued Heather and Lisa in our office for \$4 million
7 each. So I can tell you we end up settling and he paid us.

8 BY MR. LITTLE:

9 Q. Is it fair to say that Mr. Chaney has an ax to
10 grind against you and Mr. Criswell?

11 A. Certainly.

12 MR. LITTLE: That's all I have. Thank you, sir.

13 THE COURT: Mr. Wolf, let's take our lunch break.
14 Thank you very much.

15 (A lunch break was taken.)

16 THE COURT: Mr. Radovan, please resume the stand
17 and you remain under oath. Mr. Wolf, your witness.

18 MR. WOLF: Yes, thank you, your Honor.

19 CROSS EXAMINATION

20 BY MR. WOLF:

21 Q. Mr. Radovan, earlier in your testimony today, you
22 discussed the timing of Mr. Yount's lawsuit being served
23 versus an upcoming meeting at which you planned to submit the
24 proposed transfer of the CR membership interest to Mr. Yount.

1 A. Correct.

2 Q. Do you have any reason to believe that the members
3 were not prepared to approve that transfer of the CR
4 membership share to Mr. Yount?

5 A. No reason that I can perceive. I believe they
6 would have. He had been in the meetings previously in the
7 last couple of months with all of the members.

8 Q. In that regard, did Mr. Yount, did he behave or
9 comport himself as a member, attending meetings, receiving
10 investment information as other members?

11 A. Yes.

12 Q. Did the members as well as the managers treat
13 Mr. Yount as a member?

14 A. Yes.

15 Q. And was there any time where he was excluded from
16 membership information or participation because of the manner
17 in which his interest had been purchased?

18 A. Absolutely not.

19 Q. I'd like you to turn to Exhibit 122 in the book,
20 in one of the books.

21 A. Got it.

22 Q. At the bottom of the first page of that two-page
23 document, it's labeled 4797, there appears to be an e-mail
24 from Mr. Yount. I'm not sure to whom. Do you see that

1 January 30, 2016 at the bottom?

2 A. Yes.

3 Q. The bottom of page 1 of Exhibit 122?

4 A. Yes.

5 Q. And it reads, he said three of the EC is having a
6 meeting with Mosaic in Sac on Monday without CR. Is that
7 legit without CR, without their advanced permission, question
8 mark. Do you see that?

9 A. Yes.

10 Q. Do you understand that to be Mr. Yount expressing
11 his feelings or concern about a meeting happening between
12 certain members of the EC and Mosaic without CR's knowledge
13 or permission?

14 MR. CAMPBELL: Objection. I think the document
15 speaks for itself. He's asking for Mr. Yount's mindset and I
16 think the document speaks for itself.

17 THE COURT: Sustained.

18 BY MR. WOLF:

19 Q. Did Mr. Yount ever share with you prior to the
20 meeting with Mosaic that you were driving to, that there was
21 going to be a meeting between members of the EC and Mosaic in
22 advance of your planned meeting with Mosaic?

23 A. No.

24 Q. Do you believe that he should have so informed

1 you?

2 A. Well, those people who knew, certainly somebody
3 should have.

4 Q. And why do you say that?

5 A. It was totally unauthorized and, frankly,
6 interference. And, obviously, in the letter that Mosaic
7 said, starts off with, as you know. That is -- so they
8 obviously told Mosaic they were authorized to do that.

9 Q. So the, as you know, words in the e-mail you
10 received from Mosaic's representative actually was not
11 accurate. You did not know that had happened?

12 A. Exactly.

13 Q. When did you become aware of efforts by the IMC
14 group or certain of its members to, for lack of a better
15 word, cut you and Bill Criswell and Criswell Radovan out of
16 the project, out of the --

17 A. At the time, the first time that was seen was at
18 the second meeting on -- after the EC and member meeting on
19 January 27th. But as we have come to find out in discovery,
20 it started on December 13th or earlier.

21 Q. And what did you determine began on or before
22 December 13th in regard to efforts to remove you or replace
23 you?

24 A. That Brandon and Paul had an entire drop box file

1 with to-dos with different people of the team between Molly,
2 Brandon, Paul about different things to do. Mr. Yount was in
3 that chain.

4 MR. CAMPBELL: Objection, I don't think there's
5 any foundation.

6 THE WITNESS: He is in the communications.

7 THE COURT: Just a minute. It's overruled. Go
8 ahead, you can answer.

9 THE WITNESS: It was in a small group of -- it
10 wasn't out to the investors, it was to a small group of
11 people who were having that discussion, and, you know, at
12 least going down that path. Otherwise, they didn't -- they
13 didn't speak with any of the other investors who obviously
14 didn't want to have anything to do with it.

15 THE COURT: Next question.

16 BY MR. WOLF:

17 Q. What conditions did the IMC group propose to your
18 approving the Mosaic loan? To frame the context a little
19 better, it sounds like in November and December, the IMC
20 group approved the terms of the Mosaic loan. What further
21 conditions did they impose on you as a condition of signing
22 the loan document?

23 A. Just the November meeting, they asked for a few
24 changes to happen. And so then it was approved in January to

1 go forward with the term sheet as it was at the time.

2 Q. Was there an effort to remove you as manager to
3 move forward with the loan later?

4 A. No. They tried to -- it was approved at the EC
5 meeting and then later they basically put a piece of paper in
6 front of us that said, basically, you need to get out, and
7 here's the document to sign and you're giving your rights,
8 title and interest in the project to the IMC.

9 Q. And what was their threat or inducement for you to
10 do that?

11 A. Well, as Jeremy said, screamed at Bill in Bill's
12 face, I will bury you. It's just a bunch of threats.

13 Q. What other sorts of threats?

14 A. This is going to end horribly for you. We're
15 going to sue you. We're going to destroy you, blah, blah,
16 blah.

17 Q. Around what time frame?

18 A. The day, you mean?

19 Q. The time frame month?

20 A. Right away.

21 Q. Month and year?

22 A. It wasn't any specific -- it's we're going to do
23 this to you.

24 Q. No. The time the threat was made?

1 A. So that was January 27th, I'm sorry, probably 4:00
2 or 5:00 in the afternoon.

3 Q. The IMC group, they were proponents of an
4 independent audit happening, correct?

5 A. Yes.

6 Q. Did they select an auditor?

7 A. Yes.

8 Q. When was the auditor selected and tasked to the
9 independent --

10 A. They had -- it was kind of funny how it worked.
11 So it was a day or two before New Years, I believe, and one
12 of the things that had been discussed in the December meeting
13 was to -- the IMC wanted to have a separate accounting firm
14 to kind of look over our shoulder. So they suggested one
15 some of those guys use. And they wanted us to interview this
16 person.

17 And so this was, it wasn't New Years Eve, but it
18 was probably the day before, I believe. We all flew back
19 from somewhere. I actually had to fly up. So the intention
20 was to interview this person, Darcy Casey, or something like
21 that. And so, I mean, I flew back, you know, we had come
22 back from the holidays, but everyone came in to talk to this
23 person and so spent about a half hour talking to her.

24 She left and then came back 20 minutes later with

1 a document that says, basically, you need to give me all your
2 books and records right now kind of thing. And that's how
3 this kind of got started.

4 Q. Ultimately, they completed, that firm completed
5 its audit or forensic review?

6 A. Yes.

7 Q. Or whatever it might have been of your books and
8 records?

9 A. Yes.

10 Q. And when was that completed?

11 A. Completed in March.

12 Q. March of 2015?

13 A. March of 2015.

14 Q. Or 2016?

15 A. I'm sorry. 2016.

16 Q. And in what form was that? Was it a written
17 report?

18 A. Yes.

19 Q. And was it shared with the EC?

20 A. Yes.

21 Q. Was it shared with other members besides the EC?

22 A. I believe it was shared with the membership.

23 Q. Was it shared with Mr. Yount, to your knowledge?

24 A. Yes.

1 Q. What was the conclusion of the report, as far as
2 you understood it?

3 A. You know, in a layman's verbiage here, basically,
4 that some things could be done better, but there were no
5 improprieties was the gist of it.

6 Q. From October 2015 when Mr. Yount invested until
7 April when the lawsuit was started, this lawsuit was started,
8 did Mr. Yount ever through his words or conduct indicate an
9 intent at some time to be a member and at other times to want
10 to get his money back? Did he vacillate in that regard?

11 A. Well, he was at all the meetings and acted as a
12 member and then at the same time saying that he wanted out.

13 Q. Were there times when he appeared to lean more in
14 one direction or other?

15 A. I wouldn't say so.

16 Q. Now, when the lawsuit was initiated, how were you
17 informed of it, this lawsuit?

18 A. This lawsuit. We were -- as I described the
19 lawsuit that Brandon Chaney had filed against us, we were in
20 mediation, it was probably April 4th or 5th, in mediation in
21 San Francisco. And Mr. Chaney handed it to the judge as he
22 was coming back into our room and said, here's a copy of the
23 lawsuit, basically, give this to Robert and Bill.

24 Q. Here's a copy of Mr. Yount's new lawsuit, please

1 give it to Bill and Robert?

2 A. Yes.

3 Q. Are you aware of any other support or
4 encouragement or anything of that nature by Mr. Chaney to
5 Mr. Yount in conjunction with the prosecution or initiation
6 of this lawsuit?

7 A. Not that I'm aware of.

8 MR. WOLF: Thank you. That's all the questions I
9 have, your Honor.

10 THE COURT: All right. Mr. Campbell.

11 REDIRECT EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Mr. Radovan, I hate to have you flip through all
14 the books. Hopefully, we'll get through it quickly.

15 A. Sure.

16 Q. Can you look at Exhibit 152 quickly?

17 A. By the way, I was going over my notes and records
18 yesterday, we had spoken about meet, speaking of Ken Tratner,
19 around early August and I had spoken with him about the
20 overall project. But in going back over my notes, it looked
21 like I was actually speaking with you, Mr. Yount, on the
22 schedule issues. I'm sure I spoke with him about those
23 things as well, but my notes that was what I was talking
24 about. Sorry about that.

1 Q. Let me get this clear. You're correct from your
2 testimony yesterday with regards to your conversations with
3 Mr. Tratner?

4 A. Yes.

5 Q. And go through that one more time, your notes?

6 A. Going from my notes, I had conversations with
7 Mr. Yount and Mr. Tratner on the overall project. So totally
8 different topics on budget, project. Mr. Tratner,
9 hospitality numbers, all of that, all of the stuff we were
10 giving him, and then roughly at the same time having a
11 conversation with Mr. Yount where that -- where the subject
12 of the schedule came in where we had pushed it back for the
13 first -- for the first period of time.

14 Q. So you're saying that you talked to Mr. Yount in
15 addition to Mr. Tratner?

16 A. Yes.

17 Q. About the schedule changes?

18 A. Yes.

19 Q. And that would have been in the August time frame?

20 A. Correct. August 10th, around there.

21 Q. So you're changing your testimony that I pointed
22 out earlier in your deposition that it was late September
23 when you told Mr. Yount about the schedule change and the
24 cost?

1 A. Well, the first schedule change, yes, it was in
2 early August.

3 Q. But you're sure you talked to Mr. Tratner also?

4 A. Yes.

5 Q. And the discussion with Mr. Tratner included the
6 schedule changes and the amount of the change orders?

7 A. To the best of my recollection.

8 Q. So let's go back to 152. You got that in front of
9 you?

10 A. Yes.

11 Q. Mr. Little showed you that to somehow say that as
12 of the last progress report dated October 6th, 2015, that
13 Penta had released and accepted everything that had been done
14 so far, right?

15 A. Sorry. Which one are we going to?

16 Q. It's Exhibit 150 he was just pointing to you, I
17 believe the last change order or the last pay app, which was
18 number ten, the last page of that document?

19 A. Okay.

20 Q. And this document was dated October 6th of 2015,
21 right?

22 MR. LITTLE: Did you say Exhibit 150?

23 MR. CAMPBELL: I'm sorry 152. 152. I'm sorry.

24 THE WITNESS: Right. Which one do you want me to

1 turn to?

2 BY MR. CAMPBELL:

3 Q. The very last page of 152?

4 A. 00360?

5 Q. Yes. And that's the pay app for number,
6 application number ten, right?

7 A. Yes.

8 Q. So that pay app was dated October 26th. That's
9 when Penta signed off on it, right?

10 A. Correct.

11 Q. And that pay app would have been to pay for things
12 that were occurring on the job prior to October 6th, back
13 in -- could have been September, August, for all we know?

14 A. Correct.

15 Q. And then if you look at Exhibit 149?

16 A. Yes.

17 Q. And page 424 on the Bates stamp.

18 A. Yes.

19 Q. This is a -- it looks like a progress report
20 prepared for Hall, correct?

21 A. Correct.

22 Q. And at page 424, it says, Penta and subcontractor
23 work on the project has reported stopped. The date of this
24 document is in January.

1 A. January 26th.

2 Q. And it says, Penta reports being paid only through
3 September, correct?

4 A. That's what it says.

5 Q. And then in -- by the time of the January -- or
6 the December, early December meeting with -- at the
7 Fairwinds, Penta was owed, I believe, approximately over
8 \$7 million?

9 A. By the time this document was here.

10 Q. Yeah.

11 A. Yes.

12 Q. So Penta was never paid any money after this pay
13 order -- this pay order?

14 A. This pay app was paid in late October. It was the
15 September pay app. It's always you finalize the pay app at
16 the end of the month and typically you get paid 30 days
17 later.

18 Q. But it was submitted for work performed prior to
19 the date of the pay app?

20 A. Right.

21 Q. But by December, over \$7 million were owed to
22 Penta, correct?

23 A. For two pay apps. When those pay apps came due,
24 this was probably the pay app for December.

1 Q. And at that point in December, there was no money
2 to make those payments to Penta, correct?

3 A. That's true.

4 Q. And then shortly after that, I believe in the
5 first part of January, Hall again notified you as manager of
6 the Cal Neva that the project was out of -- the loan was out
7 of balance, correct?

8 A. Correct.

9 Q. And they were going to stop funding on the loan?

10 A. Yes.

11 Q. You testified in response to Mr. Little that
12 documents that you reviewed in discovery proved to you that
13 Yount somehow had involvement with the undermining of the
14 Mosaic loan. Do you remember that testimony?

15 A. Yes.

16 Q. What documents are you talking about?

17 A. The documents where the -- the e-mails where they
18 were planning that meeting. There's actually an e-mail where
19 Mr. Yount points out that bringing in -- with the terms of
20 North Light coming into the deal is not as good for everyone,
21 as long as the Mosaic loan is in place, and I think it was on
22 Friday before they did it.

23 Q. So if we go through all the documents, what you're
24 talking about is all the e-mail --

1 A. Yes.

2 Q. -- chatter back and forth?

3 A. Yes.

4 Q. With the Incline Men's Group?

5 A. Yes.

6 Q. Mr. Yount, Ms. Kingston?

7 A. Yes.

8 Q. That's where you're getting the impression that
9 somehow Mr. Yount interfered with the Mosaic loan?

10 A. That he's part of the group doing it, yes.

11 Q. And you're claiming that somehow Mr. Yount and the
12 IMC are responsible for you and Mr. Criswell losing millions
13 of dollars, correct?

14 A. Given that loan being tanked, that is -- I'm just
15 talking about what it's cost us. The rest of the investor
16 group, that could -- you know, we'll see where that ends up,
17 but it's a substantial, substantial amount.

18 Q. Did you file a compulsory counterclaim against
19 Mr. Yount from his lawsuit?

20 A. No.

21 Q. Did you file any lawsuit against the IMC or any of
22 the other investors for interfering with that loan?

23 A. No. The outcome is not yet determined.

24 Q. You said the winery sale with Brandon Chaney, and

1 you put a lot of details surrounding that particular lawsuit,
2 right?

3 A. Yes.

4 Q. You settled that lawsuit, correct?

5 A. We did.

6 Q. Did you sign a confidentiality agreement not to
7 disclose the terms of the settlement?

8 A. I did not confirm, didn't say anything, but just
9 that it settled.

10 Q. You're saying the settlement agreement doesn't
11 have any kind of confidentiality agreement?

12 A. I'm sure it does.

13 Q. And, finally, let's go to Exhibit Number 124. And
14 let's go to the back of that document, starting at the --
15 would be the page -- this one on top says page 78 of 1 and it
16 starts with, begin forward message, Sterling Johnson to
17 yourself?

18 A. Right. Yes.

19 Q. And you received this e-mail?

20 A. Yes.

21 Q. Mr. Little had you read only a portion of the last
22 paragraph. He left out a couple of lines. Could you read
23 the entire last paragraph that says, we also told them?

24 A. We also told them for the better part of three

1 months, we have not heard much from you or your team. We
2 went on to explain a little bit of the history of the deal
3 from their perspective, and to tell you the truth, it seems
4 to be a little bit of a mess right now. We're going to take
5 a step back, tear up the executed term sheet, give you and
6 the ownership time to figure things out on your own, and at
7 the right moment, if you desire, reintroduce the deal to
8 Mosaic.

9 Q. So Mr. Johnson is telling you that we haven't even
10 heard from you for -- that would be dated February 1st, so
11 that would be November, December, January, correct?

12 A. We did not have all that much going on. We were
13 waiting for the approval.

14 Q. Do you know who called the meeting for the --
15 between the Incline Men's Club and Mosaic?

16 A. I do not know. I can guarantee you, it wasn't
17 Mosaic.

18 Q. You're absolutely positive about that?

19 A. I am.

20 MR. CAMPBELL: That's all we have.

21 THE COURT: Thank you. Mr. Little.

22 RE CROSS EXAMINATION

23 BY MR. LITTLE:

24 Q. Sir, while we're on Exhibit 24, I think you

1 already explained this in your testimony, but the delay that
2 Mosaic is talking about here, is that something that is
3 attributable to you or Mr. Criswell?

4 A. No. We were waiting for approval. You know, as
5 we said in the November meeting, I was given direction, go do
6 X, Y and Z with them. I met with Mosaic and then they agreed
7 to those aspects. We took it back to the committee, tried to
8 do that on the 12th, and nobody wanted to -- it didn't even
9 get to the point of being able to ask for the approval,
10 honestly.

11 There was too much argument over we should be
12 raising equity, we should be raising this, raising that, do a
13 capital call, these types of things. By the time we got
14 around to the January 27th, we had a structured meeting and
15 asked for the approval of the loan and which was unanimously
16 given.

17 Q. Sir, counsel asked you if you had filed a
18 compulsory counterclaim against Mr. Yount in this litigation.
19 You have through me in the pleading filed an affirmative
20 defense for unclean hands, have you not?

21 A. Yes.

22 Q. So look at Exhibit 149. This is the January third
23 party report for Hall. Go to page three again.

24 A. Okay.

1 Q. Under status, first bullet, Penta's reporting that
2 there wasn't a slow down until November, correct?

3 A. Correct.

4 Q. And at this point in time, even at the end of the
5 year, there was still money under the Hall loan to fund pay
6 applications that Penta was presenting?

7 A. There was another 9 million.

8 Q. You don't control what Hall does or doesn't do
9 with its funding?

10 A. Correct.

11 Q. Now, counsel objected and said there was no
12 foundation that Mr. Yount had been conspiring with the IMC
13 group to oust you and take this loan. Can you go to
14 Exhibit 109?

15 MR. CAMPBELL: Objection. I think that
16 mischaracterizes my question. I asked him to please show --

17 THE COURT: I understand what you're saying. We
18 can do without the adverbial clause. Just ask the question.
19 Exhibit 109?

20 MR. LITTLE: Yes, your Honor.

21 BY MR. LITTLE:

22 Q. Mr. Wolf had asked you when this dated back to and
23 you were talking about, I believe this is the next e-mail,
24 I'm going to show you. This is a December 17th, 2015 e-mail

1 from Mr. Chaney and Mr. Yount and some of the other investors
2 are copied on that, right?

3 A. Yes.

4 Q. And he indicated he created a drop box for
5 information he received from CR and other documents obtained
6 from other sources for their eyes only, correct?

7 A. Correct.

8 Q. And that was part of what you were referring to?

9 A. Yes.

10 Q. And if you look over to the next Exhibit 110?
11 Mr. Yount, by the way, I think I asked this, but he's copied
12 on the list of people that that e-mail is going to, right, on
13 109?

14 A. Yes.

15 Q. And similarly, 110, it's a week later,
16 December 26th, 2015, Paul Jamieson of IMC is sending an
17 e-mail to several people, including Mr. Yount, correct?

18 A. Correct.

19 Q. And they're sending an action item list for their,
20 quote, divide and conquer approach, right?

21 A. Correct.

22 Q. And they're saying for obvious reasons that this
23 isn't to be shared with Criswell Radovan?

24 A. Correct.

1 Q. If we go over to Exhibit 115, e-mail communication
2 between Mr. Chaney and Mr. Yount. The subject line is
3 tomorrow. And he's asking Mr. Yount to call him, that he has
4 something to discuss with him about you.

5 A. Correct.

6 Q. And if we turn over to Exhibit 119, this is a day
7 before the January 27th meeting that we've been talking
8 about, right?

9 A. Yes, it is. It's the day of, early morning.

10 Q. Again, this is an e-mail communication from Paul
11 Jamieson of IMC and Mr. Yount is copied on it, correct?

12 A. Correct.

13 Q. And down below, they're referring to a productive
14 meeting and talking about key points for how tomorrow's
15 meeting at the IMC with Criswell Radovan will go. Do you see
16 that?

17 A. Yes.

18 Q. And they give kind of a series of branches which
19 way it's going to go depending on what happens. If you go
20 down to number three --

21 A. Yes.

22 Q. -- it says if you and Bill are not willing to
23 leave, then Stuart, Mr. Yount, is going to urge Criswell
24 Radovan to reread his e-mail, correct?

1 A. Correct.

2 Q. Does that sound like coercion to you?

3 MR. CAMPBELL: Objection.

4 THE COURT: Sustained.

5 MR. LITTLE: I'll withdraw. I don't have any
6 further questions. Thank you.

7 THE COURT: Mr. Wolf.

8 MR. WOLF: If the Court would indulge one
9 question?

10 THE COURT: Go ahead.

11 RE CROSS EXAMINATION

12 BY MR. WOLF:

13 Q. Mr. Radovan, you testified earlier that the
14 acrimony at the December 12th, 2015 meeting at the Fairwinds
15 appeared to you to be staged. Would you explain your
16 testimony, your impression in that regard?

17 A. The IMC guys that were there had themselves all
18 around the room. This is even from Heather and Lisa in our
19 office who were sitting behind them, you know, saw them all
20 texting each other, you say this now, now you say this. So
21 they were continually texting each other about, you attack on
22 this, you attack on that.

23 MR. CAMPBELL: Objection, there's no foundation
24 for those texts.

1 THE COURT: Just a minute. Sustained. I'll allow
2 you another question.

3 MR. WOLF: I guess my response would be, your
4 Honor, I think the question was okay. He started talking
5 about things that were outside his personal knowledge. So I
6 would augment the question by saying please answer with
7 things you observed or heard yourself.

8 THE WITNESS: It was all staged. They all had
9 certain things that they were to say and --

10 MR. CAMPBELL: Same objection.

11 THE COURT: Overruled.

12 THE WITNESS: They were positioned all around the
13 room. And it was one at a time to do his thing and then the
14 other one jumped in on top of that and another came up with
15 another. So it was a staged event.

16 BY MR. WOLF:

17 Q. That's based on your own observation of it?

18 A. Yes.

19 MR. WOLF: Thank you, your Honor.

20 THE COURT: Thank you, Mr. Radovan. Mr. Campbell.

21 MR. CAMPBELL: I call Mr. Yount.

22 (One witness sworn at this time.)

23 THE COURT: Mr. Yount, pull that mic a little bit
24 closer to you so Ms. Koetting can hear you. You don't have

1 to chew on it, but -- that will be fine. Thank you,
2 Mr. Campbell, your witness.

3 GEORGE STUART YOUNT

4 called as a witness and being duly sworn did testify as

5 follows:

6 DIRECT EXAMINATION

7 BY MR. CAMPBELL:

8 Q. Good afternoon, Mr. Yount.

9 A. Good afternoon.

10 Q. Can you just tell me a little bit of background on
11 your employment at the present time?

12 A. On my what?

13 Q. Employment.

14 A. Oh. I'm employed by Fortifiber Corporation, which
15 my father started in 1939. I've worked there since 1969.
16 And I was technically not head of it from 1976 when my father
17 stepped out of the office and he got a separate office with
18 he and his secretary. But I was formerly president -- or
19 chairman and CEO as of 2001 when he passed away.

20 Q. And what does Fortifiber do?

21 A. We make residential building products, such as the
22 black paper that goes behind stucco walls, flashing that goes
23 around windows and other products that go into a residential
24 house.

1 Q. You sell it to contractors or builders?

2 A. No, not contractors. We sell it to building
3 material dealers.

4 Q. One step removed from the contractor level?

5 A. One, sometimes two steps.

6 Q. Fortifiber is not a company that is involved in
7 construction, per se, of buildings?

8 A. Oh, no.

9 Q. It's like selling widgets to a car manufacturer?

10 A. Yes.

11 Q. So have you ever been involved in the construction
12 of some kind of commercial enterprise?

13 A. I was involved in building two factories for my
14 company, if that's what you mean.

15 Q. Yeah. But you hired general contractors to do
16 that?

17 A. Yes. Absolutely.

18 Q. And have you ever made an investment into some
19 kind of real estate development or commercial building type
20 venture?

21 A. No.

22 Q. And I understand you live at Lake Tahoe?

23 A. I do.

24 Q. How long have you lived up there?

1 A. 21 years. And before that, I was a Nevada
2 resident part-time. Well, when I went to college in 1967, I
3 went to UNR, as my father did in 1926.

4 Q. And then just, we'll get this out of the way, you
5 recently have built a guest house addition to your regular
6 house, right?

7 A. That's true.

8 Q. And Peter Grove's name has come up, he's an
9 architect?

10 A. Yes.

11 Q. We'll go through that later in your testimony.
12 Peter Grove was at one time working for you?

13 A. Yes. He was not involved in the building of our
14 main house, which we moved into 19 years ago today. But the
15 beach house, he followed on the previous architect, Jeff
16 Lindall, who had also designed the beach house and brought it
17 to fruition since Mr. Lindall had sold the business and
18 retired.

19 Q. How long was Mr. Grove involved with you?

20 A. Four years, three or four years.

21 Q. When did you first hear about the Cal Neva being
22 redeveloped and reopened?

23 A. I ran into Mr. Marriner in 2014, I think the
24 spring, at a restaurant and he was telling me a little about

1 it. We weren't there to see each other. We were there with
2 other people, but we talked briefly.

3 Q. My understanding, you've been through this whole
4 trial, you saw an initial e-mail that you and Mr. Marriner
5 had an e-mail exchange back in February of 2014?

6 A. Sounds right.

7 Q. And Mr. Marriner sent you, looked like may have
8 sent you some documents, but at least cut and paste as part
9 of the document and sent it to you?

10 A. Correct.

11 Q. Were you interested in investing at that time?

12 A. No, I was not.

13 Q. On the time line, as we've seen through the
14 e-mails, it looks like in June of 2015, you made contact with
15 Mr. Marriner again about the Cal Neva?

16 A. Correct.

17 Q. Tell me about how that contact came about.

18 A. Well, my situation had changed to where I might be
19 interested in such a project and participating and,
20 therefore, I reached out to him, first of all, to see how the
21 project was going.

22 Q. What did Mr. Marriner tell you?

23 A. He said it's going famously. He said it's going
24 very well. It's still scheduled to be opened December 12th

1 of 2015. He also said that there was still a million and a
2 half investment possibility still available.

3 Q. Let's flip back to February of 2014. Did Mr.
4 Marriner, when he sent you some -- any documentation, ask you
5 to sign a nondisclosure agreement?

6 A. He did.

7 Q. Did you sign it?

8 A. No.

9 Q. And he sent you the documents anyway?

10 A. Yes.

11 Q. Between that February 2014 and the June 2015 time
12 frame, had you been following the progress of the Cal Neva?

13 A. Not really, except driving by on the street you
14 might see something. That's it.

15 Q. Some of the other investors, the names have kind
16 of been circulated around the courtroom, were any of those
17 investors friends of yours or acquaintance of yours?

18 A. Les Busick was an acquaintance.

19 Q. Had you talked to Mr. Busick at all?

20 A. No.

21 Q. In that time frame we're talking about?

22 A. No. I don't think I had seen or spoke to
23 Mr. Busick during that time frame.

24 Q. Did you see Mr. Marriner on a regular basis?

1 A. No, not a regular basis. As he said, we might see
2 each other in the grocery store, although I didn't do much of
3 that, but, you know, restaurant or something, passing by,
4 very briefly, brief occasion.

5 Q. You weren't close friends and went back and forth
6 to each other's house?

7 A. No.

8 Q. So in June of 2015, why all of a sudden were you
9 now maybe potentially interested in the Cal Neva?

10 A. My 401K plan had excess money in it that I was
11 just investing in mutual funds and I thought it might be a
12 spot for it to invest. It was dedicated to my charitable
13 foundation, so that when I pass, that money would go to the
14 charitable foundation. But it was -- I was told it was a
15 possibility to be able to move that 401K money into an IRA
16 that would then be able to invest in Cal Neva. That proved
17 to be quite difficult, by the way.

18 Q. Let's talk about that just for a minute since you
19 brought it up. So you had to get some type of accounting
20 assistance or trust company assistance to be able to move
21 from a retirement fund and make a different kind of
22 investment --

23 A. Yes.

24 Q. -- in a development?

1 A. You saw Premier Trust in there is who we finally
2 found. But it was difficult to find someone who was able to
3 do that transition and the laws are very, very strict on
4 401Ks and IRAs and all that, as you might know.

5 Q. In that time frame between that June, when you
6 first talked to Mr. Marriner, and up until the time you made
7 your investment in early October, had you ever told Mr.
8 Marriner that you really weren't interested in the project?

9 A. No. In fact, we communicated regularly by e-mail
10 and the calls.

11 Q. And you were in pretty constant communication,
12 pretty regular communication with Mr. Marriner throughout
13 that time frame?

14 A. Yes. Yes.

15 Q. So we can get a good record here, let's start
16 looking at a couple of exhibits in that time frame that will
17 help us walk through this. Let's first look at Exhibit
18 Number 7.

19 A. Seven. Yes, sir.

20 Q. Now, we move to July 12th of 2015.

21 A. Yes.

22 Q. And the e-mail string looks like it was attempting
23 to set up some kind of a site tour, correct?

24 A. I believe so.

1 Q. And did you do that site tour of the Cal Neva?

2 A. Yes, I did.

3 Q. And who took you on that site tour?

4 A. David Marriner.

5 Q. And did Mr. Marriner seem to have a pretty good
6 knowledge of the project?

7 A. I'm sorry?

8 Q. Did Mr. Marriner have knowledge of the project? I
9 mean, he knew where to take you and what to show you and
10 everything?

11 A. Absolutely.

12 Q. What did he tell you in that site tour about the
13 project?

14 A. We went all through the project and he would point
15 out different areas of what was being done and when it was
16 being done and in some cases why it was being done. And he
17 told me that it was definitely on track and on schedule for
18 the December 12th opening.

19 Q. Did he seem pretty intimately familiar with the
20 details of the construction and what was needed to be done
21 and what had yet to be done?

22 A. Yes. He was very experienced in construction
23 himself, as well as he had been involved in that project for
24 a year or so directly, I believe.

1 Q. And then if we go to Exhibit Number 8 next?

2 A. Eight?

3 Q. Yes.

4 A. All right.

5 Q. Now, it looks like you're now -- Mr. Marriner is
6 telling you, kind of following up on the actual tour of the
7 project?

8 A. Correct.

9 Q. And he goes on and he says, as I mentioned in the
10 tour, Robert has released an additional 1.5 million of
11 equity?

12 A. Yes.

13 Q. Did Mr. Marriner, was this the first time that he
14 explained to you about how the Cal Neva was going to raise
15 money for the development?

16 A. The \$20 million cap and all of that?

17 Q. Yes.

18 A. I don't remember if it was -- it was on or about
19 this time, but, yes.

20 Q. But he said on the tour he told you that Robert
21 had released an additional 1.5 million of equity?

22 A. Correct. It was the last 1.5 possibility.

23 Q. You don't remember if it was at the tour, but
24 somewhere in this July 14th time frame, did he explain to you

1 that the money being raised, the equity being raised was
2 under a private placement memorandum?

3 A. Yes.

4 Q. And did you understand what a private placement
5 memorandum was?

6 A. Yes.

7 Q. And then it appears that then Mr. Marriner follows
8 on and says, asked me to forward some documents for you,
9 which would be the -- he says the PPM?

10 A. Private placement memorandum.

11 Q. Private placement memorandum. And then he sent a
12 founders progress report with colored renderings and finish
13 designs, right?

14 A. Yes.

15 Q. And you got those documents?

16 A. I did.

17 Q. And you looked at those documents?

18 A. I did.

19 Q. And then it goes down next and it says, the date
20 on your PPM secures your position in line to secure a cabin
21 location if you choose to buy a cabin. What was that about?

22 A. I'm sorry. Could you speak up just a little bit?
23 I've had a cold and my ears are clogged.

24 Q. The date on your PPM secures your position in line

1 to select a cabin location if you choose to buy a cabin.

2 A. Correct.

3 Q. What was that about?

4 A. That was what I believe they called the 28 units
5 they had permission to build, and as a founding member, you
6 had the right to buy one of those, in the first position to
7 buy them.

8 Q. Okay. And then he says, the last eight pages are
9 our signature pages. Do you remember seeing a package in the
10 PPM, something along the lines of a subscription agreement or
11 an agreement where you would sign documents?

12 A. Yes.

13 Q. And what did you understand that subscription
14 agreement with the last eight pages of signature pages was?

15 A. It was agreeing to the PPM and terms and
16 conditions of the operating agreement and also instructions
17 as to how to invest, I believe.

18 Q. And in return for you sending in a check?

19 A. Yes. I think it also told me where to send the
20 check.

21 Q. We'll look at that document a little later.

22 A. Okay.

23 Q. This site visit, this was done in July of 2015.

24 Did you ever take any more site visits prior to making your

1 investment?

2 A. No.

3 Q. When you looked at the private placement
4 memorandum, did you review those in pretty good detail?

5 A. I tried to, yes.

6 Q. And did you see some budgets and time lines and
7 things like that?

8 A. And pro formas, yes.

9 Q. Let me ask you this. As you know, there have been
10 some various different documents. Exhibit 3 is the actual
11 private placement memorandum and then Exhibit 4 is called a
12 confidential offering memo.

13 A. Yes.

14 Q. Do you remember if, as part of the private
15 placement memorandum, which is Exhibit Number 3, that you
16 also received this Exhibit Number 4, which was the offering
17 memo with the pictures and the renderings and things like
18 that?

19 A. Yes.

20 Q. Did you review that also?

21 A. Yes, I did.

22 Q. And that had basic -- that had some
23 representations about the construction budget, how solid the
24 budget was?

1 A. Yes. I believe so.

2 Q. The schedule?

3 A. Uh-huh.

4 Q. And it had numbers ascribed to the budget, where
5 the money was going to go?

6 A. Correct.

7 Q. And then to make sure, there was another exhibit,
8 which is number five, which is an amended and restated
9 operating agreement.

10 A. Yes.

11 Q. And this one, it kind of -- there was an operating
12 agreement within the PPM, but it was unsigned. This is an
13 actual signed version with all the members' signatures?

14 A. Yes.

15 Q. And did you get a copy of that, you know, on or
16 about that same time frame?

17 A. I believe it was a similar time frame, if not the
18 same.

19 Q. And did you read it in that time?

20 A. I did.

21 Q. Let me ask you, can you look at schedule 4.3?

22 A. In that document?

23 Q. Yes.

24 A. Yes.

1 Q. So you looked at the budget, right, in some of the
2 other documents?

3 A. Yes.

4 Q. And you read the private placement memorandum, you
5 knew how much money could be raised under that?

6 A. Yes.

7 Q. And did you look at this uses of capital
8 contributions?

9 A. Yes.

10 Q. And what was your understanding of what the table
11 4.3 is in this document is for?

12 A. It's saying once -- at the time of this document,
13 they had raised eight and a half million, but they were going
14 to 20 million. Is that what you're asking?

15 Q. No. On the 4.3, it says uses of capital
16 contribution.

17 A. Oh. Okay.

18 Q. Just the schedule 4.3.

19 A. I'm looking at clause 4.3.

20 Q. Go to the very back of the document. I believe
21 even past the signature pages?

22 A. Got it. Too many 4.3s. My apologizes.

23 Q. On schedule 4.3, what did you understand these
24 three bullet points to represent?

1 A. First one says it's to repay the \$6 million bridge
2 loan. Second point is payment of approximately \$10 million
3 to redeem the equity interest in the New Cal Neva. And the
4 third is to provide additional development capital for the
5 project.

6 Q. So it was your understanding from reading this
7 that the raise of equity under the private placement
8 memorandum once it was -- all the money was fully raised,
9 that would provide some additional development funds for the
10 project?

11 A. Yes.

12 Q. Was that important to you?

13 A. Of course. No funds, no project.

14 Q. Next in the sequence of e-mails regarding your
15 discussions with Mr. Marriner --

16 A. What exhibit are you on, sir?

17 Q. Let's go to Exhibit Number 11.

18 A. Yes, sir.

19 Q. Mr. Marriner says, I hope you received my
20 documents yesterday, and those would be the documents we were
21 just talking about, Exhibits 3, 4 and 5?

22 A. Yes.

23 Q. And then it looks like he's sending you some
24 basic, they call it basic term sheets for preferred

1 investors. Had you asked for something like that?

2 A. I don't remember asking for it.

3 Q. He just sent that, right?

4 A. Yes.

5 Q. And he's telling you also at the bottom, we
6 project to have the hotel refinanced within two to
7 three years and return the investors' capital and preferred
8 return?

9 A. Yes.

10 Q. Your understanding is that he was just trying to
11 project out to you how much money you might make at the back
12 end of this project?

13 A. I believe so, yes.

14 Q. And then he tells you it's a rough outline and you
15 have to look to your legal advisor to flesh it out, right?

16 A. Yes.

17 Q. Is Mr. Radovan on this e-mail?

18 A. No.

19 Q. And then if we go to the next Exhibit Number 12, I
20 don't know if you had another conversation with Mr. Marriner,
21 but he's now telling you, thanks for taking the time to
22 review our founding membership, preferred membership. And
23 then Robert Radovan will give you a response to your
24 question. So you had sent him an e-mail below that

1 specifically asked Mr. Marriner some questions, right?

2 A. Correct.

3 Q. And those questions are the ones at the bottom of
4 that e-mail?

5 A. Correct. And a little bit on the next page as
6 well.

7 Q. And it says, looking forward to having you on our
8 founding members team.

9 A. Correct.

10 Q. What did you understand that to mean?

11 A. He was trying to sell me a share of the project.

12 Q. Under the private placement memorandum?

13 A. Private placement, excuse me.

14 Q. Let's go to the questions you proposed to Mr.
15 Marriner.

16 A. Okay.

17 Q. I won't through all of them, but a couple of them.
18 On number four, it says, it appears you're raising 20
19 million, and you said the entire investment is some 60
20 million?

21 A. Yes.

22 Q. Where is the other 40 million coming from and do
23 members have any liability for it? So when you're asking Mr.
24 Marriner, you said, it appears you're raising 20 and you said

1 the entire investment is some 60, did Mr. Marriner tell you
2 that the entire investment would be \$60 million?

3 A. Either Mr. Marriner or one of the documents. I
4 don't remember which. That was my understanding.

5 Q. Okay. But that came from some other source? You
6 didn't glean that -- it looks like somebody told you or some
7 document told you?

8 A. Correct.

9 Q. And then the 12th question on the next page?

10 A. Yes.

11 Q. You ask him, the manager or its affiliates take
12 out more than 1.2 before the members are paid?

13 A. Right.

14 Q. Why were you asking that question?

15 A. I wanted to make sure that the project wouldn't be
16 drained before it was done. And I would be, as an investor,
17 I would be returned along with them, not after them.

18 Q. Okay. Do you remember, just going back to that
19 same exhibit, number 12, do you remember having any telephone
20 conversations or personal meetings with Mr. Marriner where
21 you discussed some of the terms or the items in the
22 investment?

23 A. No, I do not remember.

24 Q. Not to say they don't have happen, you just don't

1 remember?

2 A. Yes.

3 Q. The next document is Exhibit Number 13.

4 A. Yes.

5 Q. That's July 17, 2015, correct?

6 A. What about it?

7 Q. Have you got that in front of you?

8 A. Yes, I do.

9 Q. Great. And this is from Peter Grove to yourself?

10 A. Correct.

11 Q. It starts -- it looks like at the bottom of the
12 document, you had had some communication with Mr. Marriner,
13 and then you attached that and then did a follow on and
14 reached out to Mr. Grove and said, what do you rate the
15 project's chance of success?

16 A. Yes.

17 Q. And why were you asking Mr. Grove that question?

18 A. Because he was the architect for the project and I
19 knew him, so I thought he might answer me accurately.

20 Q. And he did send you an answer, right, in the text
21 and the e-mail before?

22 A. Yes.

23 Q. And he says, I'm going to say pretty good. He
24 goes on, on the short-term they are in fund raising mode.

1 Construction costs are exceeding budget. They, we are trying
2 to get our arms around it to keep in check. Mr. Grove
3 doesn't put how much costs are exceeding the budget, right?

4 A. Correct.

5 Q. Did you ever have any other follow-up
6 conversations with him where he actually put a number to that
7 issue?

8 A. No.

9 Q. Let's go to Exhibit Number 14.

10 A. Yes, sir. I'm there.

11 Q. This is from Mr. Marriner to you, and it's a
12 follow on e-mail from you -- initial e-mail from you to him
13 on the 19th and it looks like an e-mail you sent to him,
14 you're asking him for some comparisons from some other
15 properties in the Basin?

16 A. Yes. It was part of -- it was what was listed in
17 their information that they had sent me, so I was questioning
18 it.

19 Q. They had put information in there basically
20 saying, this is how we compare to similar projects in the
21 Basin?

22 A. Yes.

23 THE COURT: Squaw Peak?

24 THE WITNESS: Squaw, the Ritz, the Embassy Suites,

1 and the Hyatt Regency.

2 BY MR. CAMPBELL:

3 Q. And then he responds back, and he says, Robert is
4 out of town. He's going to be back in the saddle. And he
5 says, we have a draft response to your question being
6 reviewed, right?

7 A. Correct.

8 Q. He doesn't say Mr. Radovan is preparing a draft
9 response?

10 A. No, he doesn't.

11 Q. You understood that Mr. Marriner was at least
12 working on some kind of draft response?

13 MR. WOLF: Objection, leading.

14 THE COURT: Speculation. Sustained.

15 BY MR. CAMPBELL:

16 Q. What did you interpret the word we in the e-mail
17 from Mr. Marriner?

18 A. I interpreted we as to mean that he and Robert
19 Radovan was working on a draft response.

20 Q. And then let's go to Exhibit Number 15. Again,
21 this is Marriner and you communicating by e-mail. It looks
22 like a lot of your communications were with Mr. Marriner by
23 e-mail?

24 A. Correct.

1 Q. Was it kind of your habit at that time to
2 communicate with parties via e-mail?

3 A. Yes. Most of it.

4 Q. I see you carry an iPad around with you.

5 A. I do.

6 Q. Is that pretty much how you communicate with
7 people?

8 A. Yes.

9 Q. At this point, he says, I understand that you and
10 Robert had a chance to talk yesterday in the first e-mail at
11 the bottom of the string?

12 A. Yes.

13 Q. Do you remember that conversation with Robert?

14 A. I mentioned it happened. I don't remember the
15 details of it.

16 Q. Let's go back to Exhibit Number 14. At the bottom
17 of Exhibit Number 14, that first page, it says, as I
18 understand it, you're over budget by more than 5 million so
19 far. What will that and likely more funding needs come from?

20 A. Correct.

21 Q. As you understood it, where did your understanding
22 come from? Had someone told you about the budget was
23 \$5 million over?

24 A. Robert Radovan had told me it was over 5 something

1 million or perhaps more over budget at that point.

2 Q. And that would have been in the conversation?

3 A. Possibly the day before.

4 Q. Or that day of, right around that same time frame?

5 A. Yes.

6 Q. That's where you got the \$5 million number?

7 A. Yes.

8 Q. Did Mr. Radovan at that time tell you that the 5
9 million and more might even total 9 or 10 million?

10 A. I believe he told me at the time that he was
11 mentioning about the possibility of a refinancing the
12 mezzanine loan. Should I not get into that?

13 Q. I'm talking about this meeting. When you would
14 this discussion with Mr. Radovan --

15 A. He told me that it was a time about 5 million,
16 maybe six, and that he was looking to create a cushion of
17 some \$3 million, making a total of nine.

18 Q. Okay. But he didn't tell you that the change
19 orders he estimated, what the amount of the change orders he
20 estimated to be at the time?

21 A. He expected more change orders, but he did not
22 tell me there was any anticipated directly specifically over
23 5, 5 to 6.

24 Q. And he didn't ascribe a number to the amount of

1 those change orders that he anticipated?

2 A. No more than nine, I believe, because that's what
3 he was looking to potentially fund.

4 Q. Did he tell you that the change orders could
5 amount to 9 million?

6 A. Not what he knew at that point. But he wanted to
7 have a cushion to be able to deal with that.

8 Q. And then back to Exhibit Number 15. Mr. Marriner
9 now he's confirming your conversation and he said he hopes to
10 answer most all of your questions. He said, I have attached
11 the recent Cal Neva progress report, confidential. That's, I
12 believe, Exhibit Number 10?

13 A. Yes, I believe so.

14 Q. And did you review that when you got it from Mr.
15 Marriner?

16 A. Yes, I did.

17 Q. Okay. If you look at page 16 of that report, did
18 you look at the construction summary when you got that
19 report?

20 A. One second. Yes.

21 Q. Did Mr. Marriner when he sent you this report or
22 afterwards tell you what the amount of the budget impact was
23 going to be?

24 A. No. I don't believe so. I assumed it was what

1 they had been talking about.

2 Q. Now let's go to Exhibit Number 18.

3 A. Okay.

4 Q. And you've been in the courthouse, there's been a
5 lot of discussion about this exhibit. You've heard this,
6 right?

7 A. Yes.

8 Q. So this kind of follows up, it's from Mr. Radovan
9 to yourself, and it kind of follows up on your conversation
10 with him and the discussion about the questions and answers?

11 A. Yes.

12 Q. In points one and two was your understanding from
13 Mr. Radovan as to what you were investing in under?

14 A. Yes.

15 Q. And was that the private placement memorandum?

16 A. Private placement memorandum up to a million and a
17 half dollars. It was still available.

18 Q. And was it your understanding that that was all
19 the more that could be raised under the private placement
20 memorandum?

21 A. Correct. That would reach the \$20 million limit.

22 Q. And then he tells you about the capital stack,
23 which is the equity, the mezzanine, and then the debt and the
24 total capital to the project?

1 A. Correct.

2 Q. And your understanding is that they were going to
3 raise \$55.5 million through various sources?

4 A. Correct.

5 Q. Okay. And then he says, we are refinancing the
6 mezzanine piece with a less costly 15,000?

7 A. 15 million.

8 Q. 15 million. Do you remember the conversation with
9 Mr. Radovan the day before about that refinancing of the
10 mezz?

11 A. Basically, just what it says here. I don't
12 remember details.

13 Q. Anything different?

14 A. I don't.

15 Q. And in the e-mail he says it's less costly. Do
16 you remember anything of him telling you about being a less
17 costly loan?

18 A. At this point, the project had gone along so far
19 that I was assuming that he could get better financing at a
20 lesser rate, because of the project being within two or
21 three months of completion.

22 Q. So that's what you understood from --

23 A. That was my understanding.

24 Q. And then it says, it goes on, this is to cover the

1 added costs of regulatory and code requirements, which change
2 already added by the two counties and the TRPA. Did you talk
3 about that in your conversation with him?

4 A. No. I saw it on the list on the report that you
5 had me look at.

6 Q. In the actual conversation, I assume that was over
7 the telephone?

8 A. Yes. But -- no, I had not met him yet before.

9 Q. Is that in the conversation where he told you that
10 the change orders at that point were 5 million plus, right?

11 A. 5 million, yes, 5 to 6.

12 Q. I believe your earlier testimony was he told you
13 he was going to pay off the mezz loan. That was the six plus
14 interest, right?

15 A. Correct.

16 Q. And he was going to use the additional 9 or 9 less
17 whatever the interest was --

18 MR. LITTLE: Your Honor, I'm trying to be lenient.
19 I understand it is a bench trial. But these are substantive
20 issues, but could we ask the witness to testify and not
21 counsel.

22 MR. WOLF: Join that objection.

23 MR. CAMPBELL: I'll try to be better, your Honor.

24 THE COURT: Thank you.

1 BY MR. CAMPBELL:

2 Q. What did Mr. Radovan tell you as to the specific
3 uses of the refinance?

4 A. He said it was going to be used to pay off the
5 \$6 million mezzanine loan and whatever interest was owed on
6 it and the remainder would be used for the 5 to \$6 million
7 change orders and the roughly 3 million or I guess less would
8 be kept as a cushion in case there was other change orders
9 that would happen.

10 Q. And it also goes down and says, we have also added
11 some costs for design upgrades within the project. And he
12 says, predevelopment of the condo units is also included with
13 this.

14 A. Yes.

15 Q. Do you remember the discussion you had with him
16 about that?

17 A. Well, they were created, because TRPA had changed
18 their philosophy on condo units. They were getting more
19 focused on developing an area and therefore were more lenient
20 on units in such a denser area like where the hotel was.

21 Q. What did you understand when he said, we also
22 added costs for design and upgrades?

23 A. Preliminary design and application or whatever was
24 necessary to secure those 28 units.

1 Q. And that would be, when he says costs, you'd have
2 to spend money for that?

3 A. Yes, sir.

4 Q. Did he quantify how much money out of the
5 mezzanine refinance that he was going to use for those design
6 upgrades, predevelopment of the condos?

7 A. I don't recall him saying how much.

8 Q. He didn't say that was a minimal cost? He didn't
9 say anything about how much that would be?

10 A. I do not recall.

11 Q. Did he tell you what the interest on the Ladera
12 loan was going to be?

13 A. I don't recall that.

14 Q. In this July time frame, right about this -- right
15 after this July 25th date, let's say in the next week or so
16 after that, did Mr. Marriner or Mr. Radovan ever have any
17 further discussion with you about these change orders?

18 A. I don't believe so.

19 Q. Going into August of the next month, did
20 Mr. Radovan or Mr. Marriner -- did you have any discussions
21 with them about the amount of change orders?

22 A. No. I don't believe so.

23 Q. And in September of 2015, right up until you
24 invested, right there in the first half of October, did Mr.

1 Marriner or Mr. Radovan ever quantify what the change orders
2 in the project were prior to your investment?

3 A. I was not aware of changes from when we talked
4 about the 5 to 6 million with the \$3 million cushion. And as
5 you said, I do almost everything by e-mail, very little by
6 conversation.

7 Q. Had you been told prior to your investment, you
8 know, tendering the money -- what would you have done if you
9 had been told prior to the investment that the change orders
10 were now closing in on 9 to \$10 million?

11 A. I would ask a lot of questions about, when your
12 cushion is gone, what would you I expect in the future?

13 Q. But you were never told that?

14 A. No.

15 Q. Would that have given you any pause?

16 A. Absolutely. I would start questioning, if it's
17 that quickly that much more, how much more is it going to be
18 in the near future after that?

19 MR. LITTLE: Are we at a stopping point to take a
20 break?

21 MR. CAMPBELL: It's as good as any.

22 THE COURT: Mr. Yount, you may step down. Watch
23 your step going down. I can assume that we'll spend the rest
24 of the afternoon with Mr. Yount. What's our schedule for

1 tomorrow? Will you be done?

2 MR. CAMPBELL: I don't think so, your Honor.
3 Actually, I think Mr. Yount is going to take the rest of the
4 day and then I assume these guys are going to have some
5 significant cross examination of him.

6 MR. LITTLE: You think it will go through the rest
7 of the day?

8 MR. CAMPBELL: I don't know.

9 MR. LITTLE: If we take it up to 4:00 or 4:30, I
10 would like ask the Court's indulgence to not start and stop
11 and just go on to tomorrow.

12 THE COURT: I agree. Let's say you take Mr. Yount
13 on cross starting tomorrow morning, how much time?

14 MR. LITTLE: An hour to two hours.

15 THE COURT: Mr. Wolf?

16 MR. WOLF: 15 minutes to 30 minutes on top of
17 that.

18 THE COURT: Okay.

19 MR. WOLF: At tops.

20 THE COURT: Thank you. And then after Mr. Yount?

21 MR. CAMPBELL: I'd have redirect, depending on
22 their cross.

23 THE COURT: But after Mr. Yount?

24 MR. CAMPBELL: After Mr. Yount, we have

1 Mr. Chaney, who we talked about earlier in the trial. And
2 then we have one potential -- one for sure, potentially two
3 rebuttal witnesses.

4 THE COURT: Well, at the end of the day, let's
5 talk about the calendar, where we go from here with the
6 addition of these witnesses. I've been working with
7 Ms. Clerk about some of the other trials and we're looking at
8 trying to open up a couple of days for everybody here to wrap
9 up. But let's talk about it at the end of the day.

10 MR. LITTLE: Thank you, your Honor.

11 THE COURT: Thank you very much. Court's in
12 recess.

13 (A short break was taken.)

14 THE COURT: Mr. Yount. Mr. Campbell, your
15 witness.

16 BY MR. CAMPBELL:

17 Q. Mr. Yount, could you turn to Exhibit Number 19 in
18 the book?

19 A. Yes, sir.

20 Q. It's an e-mail to you from Mr. Tratner. Who is
21 Ken Tratner?

22 A. Ken Tratner is my CPA for many years. He's in the
23 Los Angeles area.

24 Q. It appears from this e-mail you're sending him

1 some facts and figures relating to the project?

2 A. Yes.

3 Q. And the e-mail says also that you're attaching
4 some summary sheet? Is that Exhibit 21, investment notes,
5 you called it?

6 A. Yes.

7 Q. So that was the attachment, one of the attachments
8 you sent to Mr. Tratner?

9 A. Correct.

10 Q. And also, I attached the offering, what were you
11 referring to there?

12 A. The PPM I believe it's called.

13 Q. And then you say, my investment in the LLC would
14 be 1 million of a \$60 million project. Where did you get the
15 number that the project was going to be 60 million?

16 A. I believe Mr. Marriner had told me that number.
17 But in any case, the PPM shows 51 plus the 20 million mark
18 would go to increase the budget to 55-ish, plus the 5 million
19 in change orders that Mr. Radovan told me about would make
20 60.

21 Q. And when you say the PPM, are you referring to the
22 offering memorandum, the tables in the offering memorandum?

23 A. Yes, probably. I get those terms mixed up.

24 Excuse me.

1 Q. That's Exhibit Number 4?

2 A. Yes. That's the one.

3 Q. And you're talking about kind of the budget.

4 You've been in the trial?

5 A. Yes.

6 Q. You've seen that document a bunch, correct?

7 A. Correct.

8 Q. And the e-mail you're talking about was the one
9 you just discussed earlier where you said -- it said in
10 reference to Mr. Marriner, you said you told me?

11 A. Yes.

12 Q. Then it looks like you also attached the inquiry
13 to the project architect Mr. Grove?

14 A. Yes. I believe so.

15 Q. That's that earlier e-mail we talked about?

16 A. Yes.

17 Q. And what were you asking? What kind of advice
18 were you asking from Mr. Tratner?

19 A. I wanted him to look at the pro formas and
20 especially the back end functioning of the payouts that were
21 projected in there. He could look it over and see if it made
22 any sense to him. I don't know what you call it, but the pro
23 formas, they were saying year one, year two, year three would
24 come to such and such a cash flow and when I would be paid

1 out.

2 Q. Kind of the income stream?

3 A. Yes, the income stream.

4 Q. And then in the actual Exhibit Number 21, which
5 was the notes you had?

6 A. Yes.

7 Q. You mention that 60 million again?

8 A. Yes.

9 Q. And then at this point you also understood what
10 the 2 million the developer's 2 million was about? If you go
11 down to the third line?

12 A. Yes.

13 Q. And then did you cut and paste the rest of this?

14 A. I believe so, yes.

15 Q. Because it looks fairly familiar to Exhibit Number
16 18?

17 A. Yes. Good source.

18 Q. So let's go to Exhibit Number 22 now.

19 A. All right.

20 Q. Exhibit 22 is August 3rd and it looks like Dave is
21 reaching out to you again, kind of where you are on moving
22 forward, correct?

23 A. Yes.

24 Q. And then you said, I've been dealing directly with

1 Robert. Thanks. He will be taking questions from my CPA,
2 more soon.

3 A. Yes.

4 Q. Had you already talked to Mr. Tratner about a
5 meeting with Robert? I assume that's Mr. Radovan?

6 A. Yes. By telephone, they weren't going to
7 physically meet.

8 Q. You knew they were going to talk?

9 A. Absolutely. I requested that they talk.

10 Q. And then if we go to Exhibit Number 23, that's an
11 e-mail string between you and Mr. Tratner, and then
12 Mr. Tratner and Mr. Radovan?

13 A. Yes.

14 Q. I think if you look at the next page, and I think
15 Mr. Radovan testified to this yesterday.

16 A. Yes.

17 Q. The discussion with Robert appeared that it
18 centered around the -- some pro forma investor returns?

19 A. Yes.

20 Q. Is that the kind of document you were asking
21 Mr. Tratner to review?

22 A. Yes.

23 Q. Again, that was related to what?

24 A. The cash flow in the future and did it make sense

1 that I would be paid out as indicated? The assumptions, were
2 they reasonable, et cetera.

3 Q. And then Exhibit Number 24, Mr. Radovan tells you
4 that he's been talking to Mr. Tratner and he owes him some
5 information?

6 A. Yes.

7 Q. And then we go to Exhibit Number 25, this is from
8 Pete Dordick to you and Mr. Tratner, so you got his e-mail?

9 A. Yes.

10 Q. And you saw the attachments to this e-mail?

11 A. Yes.

12 Q. And that was your understanding of what
13 Mr. Tratner was tasked to look at those kinds of pro formas?

14 A. Yes. Yes.

15 Q. Let's go next to Exhibit Number 27.

16 A. 27. All right. I have it.

17 Q. What are you telling Mr. Tratner in this -- what
18 are you telling Mr. Tratner in this Exhibit Number 27 e-mail?

19 A. What it says. That we -- Robert called me and we
20 chatted a bit.

21 Q. You had a conversation with him about the
22 schedule?

23 A. Yes. And he said it was absolutely on track for
24 the Sinatra 100th birthday party, which would be

1 December 12th.

2 Q. He says, however, they're fearful of the possible
3 huge cost of another winter with little snow and tourists.

4 A. Absolutely.

5 Q. So they're only opening up for the party and not
6 really doing the soft opening until March to pick up the
7 spring break?

8 A. Correct. That they're going to be ready to go.

9 Q. This came from a conversation between you and
10 Mr. Radovan?

11 A. Yes.

12 Q. Did Mr. Radovan give you any other reasons in
13 this, I assume it was a telephone conversation?

14 A. Yes.

15 Q. Did he give any other reasons in that telephone
16 conversation about the opening date?

17 A. No. None whatsoever.

18 Q. And you made this -- you sent this e-mail
19 contemporaneously or in very close proximity to the time
20 frame that you had that conversation with Mr. Radovan?

21 A. Correct. Yes.

22 Q. Other than that conversation with Mr. Radovan, did
23 Mr. Radovan tell you that there were other reasons for the
24 schedule to slip?

1 A. No.

2 Q. And if you look at Exhibit Number 28, you reached
3 out to Peter Grove again. Why were you asking him about the
4 opening then?

5 A. Between the pictures and what I had seen, I was
6 concerned whether it could be done on time and I just wanted
7 some assurance besides what Robert had said.

8 Q. Did Mr. Grove ever respond to you?

9 A. I don't believe so.

10 Q. And then Exhibit Number 29, again, Mr. Marriner's
11 contacting you?

12 A. Yes.

13 Q. And talking about moving forward, right?

14 A. Yes.

15 Q. Did you ever tell him, no, I'm not interested?

16 A. No.

17 Q. And he was trying to help you to facilitate this,
18 right?

19 A. He was trying --

20 MR. LITTLE: Objection, your Honor, leading.

21 THE COURT: Just a minute.

22 MR. LITTLE: I'm trying to be lenient here.

23 THE COURT: I know you are, but I promise I won't
24 be misled.

1 MR. LITTLE: Okay.

2 THE COURT: Do your best. Go ahead.

3 THE WITNESS: I'm sorry, your Honor.

4 THE COURT: Go ahead.

5 BY MR. CAMPBELL:

6 Q. Let's go to Exhibit Number 30. What's Mr.
7 Marriner telling you in this document?

8 A. He's asking if I'm making progress on the
9 self-directed IRA. And I said, yes, I'm making progress.
10 And then he asked -- that was on September 8th and again on
11 the 16th he asked.

12 Q. When he says, Robert hopes to close out the final
13 founding membership very soon, what did you understand that
14 to mean?

15 A. He wants to sell the last million and a half as
16 quickly as he can.

17 Q. It looks like he also asked you to do a tour?

18 A. Yes.

19 Q. Did you do another tour before you --

20 A. Not before I invested. Time was too short in my
21 schedule and not able to.

22 Q. 31, it's an e-mail between you and Mr. Driver.
23 Who is Mr. Driver?

24 A. Doug Driver was my CFO of many years and at that

1 time he was my CFO.

2 Q. Mr. Driver says he's e-mailing you based on an
3 e-mail you had sent him?

4 A. Yes.

5 Q. What answer on the valuation question are you
6 talking about?

7 A. As to whether the pro formas and projections were
8 reasonable or not.

9 Q. And he hadn't answered you yet?

10 A. No. He was still analyzing.

11 Q. But you were ready to proceed?

12 A. I was ready to proceed.

13 Q. Other than these due diligence that I think
14 Mr. Tratner was doing, did you ever follow-up on the status
15 of the change orders from the conversations you had back in
16 July?

17 A. I assumed if there was a -- if there was something
18 different than the change orders, I would have been told that
19 by Mr. Radovan or Mr. Marriner.

20 Q. Did you do any due diligence on the schedule?

21 A. Other than talking to Peter Grove, no. Again, I
22 would have thought that the developer would have told me if
23 there was a change in the schedule or other reasons that he
24 already said or Mr. Marriner.

1 Q. Exhibit 34, Mr. Yount, can you turn to that page?

2 A. Okay.

3 Q. This is an e-mail string, so take a minute and
4 review back to the beginning of this e-mail string.

5 A. I'm sorry?

6 Q. Take a moment and review back, go back and go to
7 the start of the e-mail string and try to review going
8 forward. What was happening in this e-mail string?

9 A. It started with me saying that I was -- I had
10 called Fidelity, who was the holder of my 401K funds, and
11 telling them to issue a check and mail it to me. And then I
12 went forward from there.

13 Q. And then?

14 A. Dave thanked me for the hard work in getting that
15 put together, because it was not easy.

16 Q. And then on October 3rd in this string,
17 Mr. Radovan actually sent you an e-mail, correct?

18 A. Yes.

19 Q. On the second page. And he's saying, actually,
20 the funds should be wired into our attorney's account in
21 accordance with the documents?

22 A. Correct.

23 Q. Do you know what documents he was talking about?

24 A. I think the PPM if I'm getting the right document

1 name.

2 Q. And then he later goes on and says, Heather in my
3 office will send you the wire instructions first thing on
4 Monday.

5 A. Yes.

6 Q. Did Heather Hill send you those wire instructions
7 later, do you recall?

8 A. I believe she did. On the first page of this, it
9 says I sent the wiring instructions to both Doug and Premier
10 Trust.

11 Q. So by October 3rd of 2015, had you decided to make
12 the investment?

13 A. Yes. I asked for the check and it was ready to
14 go.

15 Q. And Mr. Radovan was in the loop?

16 A. I believe so. Yes. Yes. On October 1st, he was
17 in the loop.

18 Q. Let's backup in time just a little bit back to
19 July. You were aware that mezzanine finance was being
20 discussed?

21 A. Yes. Ready to go.

22 Q. You were aware that mezzanine refinance was being
23 discussed?

24 A. Correct.

1 Q. Were you aware that there was a total refinance of
2 the project?

3 A. Absolutely not.

4 Q. Did anybody ever give you any details about the
5 nature or amount of the refinance of the project?

6 A. Before my investment?

7 Q. Yes.

8 A. No.

9 Q. And you sat through the court today, you heard the
10 numbers that Mr. Radovan ascribed to that refinance, correct?

11 A. Yes.

12 Q. And you've heard Mr. Radovan's testimony about
13 whether the project would proceed or not without the
14 refinance?

15 A. Correct.

16 Q. If you had been told about that, the timing of
17 the -- or the pendency of the refinance and the project
18 completion, and the amount of the refinance, what would you
19 have done?

20 A. I would not have invested.

21 Q. And why?

22 A. Because the project then would have been so far
23 over budget I would have really been worried. And the costs
24 were escalating quickly with that indication.

1 Q. You also heard Mr. Marriner talk about, well, you
2 were -- I think he intimated that you were aware of a total
3 refinance because of some discussions with Roger Whittaker --
4 Wittenberg?

5 A. Wittenberg. No, I believe I was asked to put them
6 together so they could talk about the mezzanine finance,
7 refinance. I was never told about it being a total
8 refinance.

9 Q. Maybe explained this little better for the Court.
10 Mr. Marriner reached out to you?

11 A. I believe so.

12 Q. What did he tell you?

13 A. I believe he wanted me to make contact with
14 Wittenberg, since he knew I knew him well, and put him in
15 contact with either Robert, which probably --

16 Q. Just that?

17 A. Well, I think it was to discuss the mezzanine
18 financing, but I don't remember for sure if that's what they
19 wanted to discuss, I believe.

20 Q. Just as a facilitator?

21 A. Yes. A friend calling a friend.

22 Q. Did you ever attend any discussions about
23 refinance in the minutes with Roger?

24 A. I didn't get into the details of anything. I

1 asked him if he wanted to talk to them about that. He says,
2 I'm not a financier, I'm a developer, and so no.

3 Q. And at about that same time frame, before you
4 invested, had you ever talked to anybody about a total
5 refinance package?

6 A. No.

7 Q. Okay. Mr. Marriner talked, in his testimony,
8 talked to you about the North Light -- some discussions with
9 North Light. Were those before you invested?

10 A. I had no discussions with North Light before,
11 during or after. I've never spoken to North Light.

12 Q. You've also sat through the court and heard some
13 of the testimony about the Hall loan out of balance issue?

14 A. Yes.

15 Q. Had you ever been told in July or August that
16 money, equity and infusion needed to keep the loan in
17 balance?

18 A. At no time before I invested was I aware of that.

19 Q. What if you had been told that prior to your
20 investment?

21 A. I would have inquired a lot more about it and been
22 concerned.

23 Q. Were you ever told about whether or not Hall was
24 continuing to fund in August of 2010 or 2015?

1 A. I had no reason to think they weren't funding as
2 they had been.

3 Q. Let's go to Exhibit Number 35 now.

4 A. Yes, sir.

5 Q. Take a minute to look at that string, that e-mail
6 string again.

7 A. Okay.

8 Q. It looks like the first string is an e-mail from
9 yourself to Mr. Radovan on October 1st?

10 A. Correct.

11 Q. And the e-mail is pretty self-explanatory, you're
12 talking about investment vehicle and how you were going to
13 fund, right?

14 A. Yes.

15 Q. And then Ms. Hill then sent you something?

16 A. I'm sorry?

17 Q. Ms. Hill then sent you something at the top of the
18 e-mail?

19 A. Yes, she sent the instructions, I believe. She
20 says it looks to be correct my wiring instructions.

21 Q. So on October 1st, Mr. Radovan knew that you were
22 proceeding towards funding?

23 A. Correct.

24 Q. Let's go to Exhibit Number 36.

1 A. Okay.

2 Q. Why this communication with Mr. Radovan on
3 October 10th?

4 A. Why what, sir?

5 Q. Why were you having this communication with
6 Mr. Radovan on October 10th?

7 A. I just wanted to make sure that my money was going
8 in and it was still on schedule.

9 Q. And how did he respond?

10 A. He says, looking good, soft opening in spring and
11 grand opening Father's Day weekend, just brought in our
12 general manager and chef. You want me to continue?

13 Q. That's fine. So that soft opening in spring, was
14 that consistent with the other e-mail note you made about
15 what he had told you?

16 A. Yes.

17 Q. And this was prior, October 10th was prior to the
18 funding date?

19 A. I believe so by two or three days, four days.

20 Q. And did Mr. Radovan ever send you any other e-mail
21 at around this October 10th time frame and informed you about
22 the mezzanine finance, the amount of the change orders at
23 that time, or the -- anything else related to your
24 investment?

1 A. No.

2 Q. This was it?

3 A. This was it, as far as I remember.

4 Q. Let's go to Exhibit Number 38.

5 A. Yes.

6 Q. And who is Sherrie Montgomery?

7 A. She works for Premiere Trust who is the
8 facilitator or trust agent for my IRA.

9 Q. And you weren't copied on this e-mail, but what's
10 your understanding of what Ms. Montgomery -- that Heather
11 Hill sent Ms. Montgomery?

12 A. Heather says, the full subscription booklet and
13 operating agreement as exhibits is attached, the smaller PDF,
14 et cetera. You want me to read it?

15 Q. Go ahead and read it.

16 A. The smaller PDF is the placed out subscription
17 packet that needs to be filled out with all the investing
18 information, LLC charter, IRS EIN statements, wire
19 instructions to our corporate account or Criswell Radovan
20 LLC. Once we receive the funds, I will recirculate the
21 operating agreement updating the capital stack with
22 Mr. Yount's investment.

23 Q. The last statement in this e-mail, did you
24 actually get wire instructions -- well, let me backup.

1 Strike that. Were all of these documents provided to you
2 after this e-mail from of Ms. Hill to Ms. Montgomery?

3 A. As far as I know.

4 Q. Did you ever see this e-mail -- the actual e-mail
5 itself?

6 A. I don't recall. I'm not copied on it.

7 Q. Okay. Were you ever told as to where you were
8 supposed to wire the \$1 million?

9 A. I believe the wiring instructions in the document
10 said to send it to Mr. Coleman, but yet at one point they
11 were saying I should send it to Criswell Radovan, I believe.

12 Q. Was there some confusion over that?

13 A. Yes, there was some confusion.

14 Q. How did you resolve that?

15 A. My CFO said send it to Mr. Coleman as the
16 documents say you should.

17 Q. And it looks like Exhibit Number 39?

18 A. Yes.

19 Q. An e-mail to Mr. Radovan, wire transfer is going
20 to arrive tomorrow, right?

21 A. Correct.

22 Q. And then next day, or the same day, Marriner
23 writes you an e-mail says, welcome as a founders unit
24 ownership?

1 A. Yes.

2 Q. And then let's go to Exhibit Number 42.

3 A. Yes.

4 Q. See all the attached documents?

5 A. Yes.

6 Q. What was your understanding of these attached
7 documents?

8 A. They were confirming that my transaction had taken
9 place and that I had bought from Cal Neva LLC a founders
10 share of \$1 million.

11 Q. And that was your understanding?

12 A. Yes.

13 Q. And was that your understanding all through your
14 negotiations?

15 A. Yes.

16 Q. With Mr. Marriner?

17 A. Absolutely.

18 Q. And then just for the record, exhibit.

19 MR. WOLF: I'm going to object to the last
20 question, lacks foundation, the phrase, negotiations with Mr.
21 Marriner.

22 THE COURT: That was his understanding. The
23 question was, what was your understanding through all of your
24 negotiations with Mr. Marriner. What's the objection?

1 MR. WOLF: I believe he was asked about his
2 understanding of the document and he's referred to
3 negotiations with Mr. Marriner. I don't have a problem with
4 his understanding of the document. The question interjected
5 a fact not established.

6 THE COURT: All right. I'll overrule. Thank you.

7 MR. WOLF: Thank you.

8 THE COURT: Mr. Campbell.

9 BY MR. CAMPBELL:

10 Q. And then if you look at exhibit -- strike that.
11 Just for the record, go back to --

12 A. 41.

13 Q. I'm sorry Exhibit Number 40.

14 A. Yes, sir.

15 Q. And that's been established as the acceptance of
16 the subscription with Mr. Radovan's signature?

17 A. Yes, sir.

18 Q. Did you receive that?

19 A. I received that and I see it right here.

20 Q. Okay. When you got the acceptance of Mr. -- of
21 the subscription agreement signed off by the president, where
22 did you think you were in the process?

23 A. I thought I had bought a founders share from Cal
24 Neva LLC, who he's signing for here.

1 Q. At any time prior to the -- you making your
2 investment on or about that October 13th date, had anyone
3 told you about potential other investors taking out the last
4 piece of the PPM?

5 A. No.

6 Q. And you sat through the trial, you understand now
7 that Mr. Les Busick had in fact done that?

8 A. Yes.

9 Q. If you had found out that Mr. Busick had already
10 funded the 1.5 million, would you have continued to invest?

11 A. No. I would have called Mr. Busick and
12 congratulated him and gone away.

13 Q. And you know through sitting through three days of
14 the trial as to what transpired with your money, right?

15 A. Yes.

16 Q. Okay. And you heard Mr. Radovan testify that he
17 instead decided to sell you one of their shares?

18 A. He decided on his own.

19 Q. Just to confirm, you had never been told this
20 prior to the investment?

21 A. No, not even close to the investment.

22 Q. Mr. Marriner never told you?

23 A. No.

24 Q. Mr. Radovan never told you?

1 A. No.

2 Q. Anybody at CR ever tell you?

3 A. No.

4 Q. Did Bruce Coleman ever tell you?

5 A. No.

6 Q. If you had been told that you could not buy a
7 share under the PPM, but instead were buying a share of the
8 CR portion of the PPM, would you have proceeded with the
9 transaction?

10 A. No chance in hell.

11 Q. Why not?

12 A. Because to me that is a clear indication that the
13 developer knows that the project is going to die and they're
14 trying to escape with my money and it's not going into the
15 project.

16 Q. You didn't find that out until a much later date,
17 right?

18 A. Oh, yeah, until I believe late January.

19 Q. Okay. Let's proceed sequentially here. So I
20 believe you then had some kind of a breakfast meeting with
21 Mr. Radovan and Mr. Marriner?

22 A. Correct.

23 Q. And when did that take place?

24 A. Latter part of October.

1 Q. And what happened at that breakfast meeting?

2 A. We discussed the project. I was again reassured
3 that it was on schedule, on track, and then we went over to
4 the Cal Neva project and walked the project.

5 Q. Any mention in those meetings after you had
6 invested about the fact that you had purportedly bought a CR
7 share?

8 A. No. None whatsoever.

9 Q. Did you take a tour of the property at that time?

10 A. Yes.

11 Q. About that same time frame?

12 A. That same day with Mr. Marriner and Mr. Radovan
13 following breakfast, I believe.

14 Q. And the discussions you just testified, was that
15 during the tour and breakfast?

16 A. Yes.

17 Q. So after that meeting, sometime in October, did
18 you attend any member meetings or executive committee
19 meetings of the Cal Neva Lodge LLC?

20 A. I never was at an executive committee meeting that
21 didn't include the shareholders, but I was at several
22 meetings, yeah, because I thought I was shareholder.

23 Q. Did you attend a meeting, either executive
24 committee or member meetings in October of 2016?

1 A. I don't recall.

2 Q. How about the November? You heard testimony about
3 the November meeting? Did you attend that meeting?

4 A. No, I did not.

5 Q. Had you been talking to any of the other investors
6 in the October, November time frame?

7 A. I don't believe so.

8 Q. Did any of them reach out to talk to you at all?

9 A. No. I don't believe so.

10 Q. Had you ever met any of the other investors other
11 than, I think you said Mr. Busick you knew?

12 A. No. I don't believe so.

13 Q. Did you know --

14 A. Except at one of those meetings, perhaps.

15 Q. Okay.

16 A. Not outside of that.

17 Q. It's my understanding that you attended the party
18 slash meeting on December 12th of 2015?

19 A. Yeah. The party, yeah.

20 Q. And you heard Mr. Radovan testify about, it was
21 kind of a two-part meeting?

22 A. Yes.

23 Q. Did you attend the executive committee member
24 portion of that where Mr. Radovan gave a speech?

1 A. No. As far as I knew, it was only the executive
2 committee, not the members until later and we were touring
3 the project at that time, I believe.

4 Q. You were on property. That was at the Fairwinds,
5 right?

6 A. I was on property after the executive committee
7 meeting for the party.

8 Q. And so were you in the party when the meeting
9 broke up?

10 A. Basically, yes, I believe so.

11 Q. And tell me what happened when that meeting broke
12 up and the party started?

13 A. The party started and Mr. Radovan started to
14 explain to everyone the status of the project. And there was
15 quite a bit of disturbance and upset. And then Mr. Criswell
16 stood up by his side to help also explain what was going on.

17 Q. Prior to December 12th, had you ever talked to the
18 members of the IMC?

19 A. No. I don't believe so.

20 Q. And --

21 A. I didn't even know there was such a thing, except
22 in the books and records, or the documents.

23 Q. Okay. We've heard various takes on what happened
24 at the party.

1 A. Yes.

2 Q. What was your take on the mood of the other
3 investors?

4 A. I think most of the investors were quite disturbed
5 and no one I know of was saying, calm down, except for
6 Mr. Criswell and Mr. Radovan.

7 Q. You heard the testimony that it appeared from a
8 couple of people that it appeared that the Incline Men's Club
9 was leading the charge?

10 A. I did not get that impression at that time. And
11 maybe wasn't looking for it, but I didn't see the so called
12 staging of them around the room situation either. But I
13 didn't know them either.

14 Q. And from your appearances, the investors looked
15 pretty upset?

16 A. They were so upset, as Mr. Marriner said in his
17 testimony, he told his wife not to come to the party. Yes,
18 there was quite a bit of upset.

19 Q. Okay.

20 A. I think well beyond IMC.

21 Q. And that happened right after the -- right after
22 what Mr. Radovan explained to the members?

23 A. Yes.

24 Q. And what did he explain to the members?

1 A. He explained the project was substantially over
2 budget and it had to be totally refinanced or, basically, I
3 believe it wasn't going to continue.

4 Q. Did he --

5 A. Refinanced or other capital put in somehow some
6 way.

7 Q. Did he mention a number to your recollection?

8 A. He probably did, but I was kind of stunned at the
9 moment. So, no, I don't recall.

10 Q. Prior to that time, I think your testimony was you
11 didn't know about a total refinance at all?

12 A. No.

13 Q. And did Mr. Radovan or Mr. Criswell talk about the
14 number ascribed to the change orders?

15 A. The number of change orders?

16 Q. The number ascribed to the change orders?

17 A. They may have. I don't recall what it was.

18 Q. You don't remember any discussion of how much the
19 change orders amounted to?

20 A. I was under the impression from their discussion
21 that it was substantially more than the 5 or 6 million, let
22 alone the 9 million that was discussed previously.

23 Q. Okay.

24 A. And the project was not ready to be opened.

1 Q. Okay. Now, by December, did you know about the --
2 you buying a CR share instead of a --

3 A. No.

4 Q. -- a PPM share?

5 A. No.

6 Q. And you heard Mr. Criswell, it appears you had
7 some kind of a separate conversation with him?

8 A. Yes.

9 Q. Tell me about that?

10 A. We went up to him and we were extremely upset and
11 this was my first time meeting Mr. Criswell, and we said,
12 this is not what we signed up for. We want our money back.
13 This is totally misleading and we feel we've been taken
14 advantage of.

15 Q. What was Mr. Criswell's response?

16 A. We had some discussion on it, and he said, let us
17 try to explain it to you over the next couple of weeks. But
18 if you're not satisfied, then I will do my best to get your
19 money back. And if -- I don't remember, I think it was the
20 next day he said they would buy it themselves if they got
21 paid 900 and something thousand, which was supposedly owed
22 them by the Cal Neva.

23 Q. Prior to making your investment, had you ever
24 heard about loans that either CR or Criswell Radovan was

1 making to the project?

2 A. No. I was not aware of it.

3 Q. Would that have concerned you?

4 A. If they were excessive, they were large like
5 million dollar kind of loans.

6 Q. And why? Why would that concern you?

7 A. Why would the project be short of money when it
8 was totally funded at that stage? Therefore, how would they
9 ever finish it?

10 Q. So how long did you talk to Mr. Criswell at that
11 December 12th meeting?

12 A. Ten minutes, perhaps.

13 Q. And Exhibit 46 is a follow-up to that
14 conversation.

15 A. I have to get to a different book now.

16 Q. Sure.

17 A. Okay. Exhibit 46.

18 Q. You there?

19 A. Uh-huh.

20 Q. And you had sent Mr. Criswell -- you attached the
21 e-mail that Mr. Radovan had sent you right prior to making
22 your --

23 A. Yes.

24 Q. -- investment. That's the e-mail below it?

1 A. Yeah. I thought about it overnight and just want
2 out.

3 Q. Okay. And when you say this was the reassurance
4 we need to proceed, what were you talking about?

5 A. I'm sorry, sir?

6 Q. When you say, this was the reassurance we needed
7 to proceed in the second line of that, what reassurance were
8 you talking about?

9 A. The reassurance that the project was on track.

10 Q. And you say the financial wheels were coming off?

11 A. Yes.

12 Q. Where did you get that impression?

13 A. From the presentation at the party, so-called
14 party the day before, the night before.

15 Q. Then you go on in the next paragraph and you say,
16 we appreciated your commitment upon hearing last night that
17 you were also shocked?

18 A. That was the impression that I had, that he was
19 shocked about the lack of information as well.

20 Q. Did you discuss with him about information being
21 provided to you in that meeting the night before?

22 A. I discussed with him that it was shocking what
23 Mr. Radovan had to say about how badly in trouble the project
24 seemed to be and the lack of information during the couple of

1 months since we invested that didn't give any indication of
2 that.

3 Q. And did Mr. Criswell tell you anything about the
4 reporting?

5 A. I believe he made a comment that we've probably
6 not done a very good job of reporting.

7 Q. And on the 13th of December, is this the first
8 time in writing that you demanded to get your million dollars
9 back?

10 A. Yes. Well, I talked about it the night before,
11 but he tried -- he said he wanted me to wait a couple of
12 weeks and get more information before I made that final
13 decision. And thinking about it overnight, it was just too
14 much for me to bear.

15 Q. And then if you go to Exhibit Number 47?

16 A. Okay.

17 Q. This is an E e-mail string, it looks like from Mr.
18 Marriner to you starting -- well, it looks like he sent the
19 first one on December 14th and then he did a cut and paste
20 from some other e-mails previously, correct?

21 A. There's the July 22nd e-mail attached.

22 Q. Okay. Do you see the -- Mr. Marriner in his
23 e-mail to you is explaining the progress report, then there's
24 some bold letters, unfortunately, did not have the financial

1 details associated with the list of change orders.

2 A. I'm sorry. Where are you reading, sir?

3 Q. In the middle of the second paragraph under Mr.
4 Marriner's e-mail?

5 A. Okay.

6 Q. Do you see the bold letters?

7 A. Yes.

8 Q. Was that how the e-mail was sent to you?

9 A. Yes. This is it.

10 Q. What was your understanding of what Mr. Marriner
11 was bolding this text for?

12 A. Evidently. Certainly a different size font.

13 Q. You didn't do that, though?

14 A. No, I did not do that.

15 Q. Had you talked to Mr. Marriner prior this e-mail
16 either on the 12th or the 13th?

17 A. I might have talked to him on the 12th at the
18 party slightly. I don't remember any detail.

19 Q. You don't remember breaking out after Mr. -- the
20 discussion with Mr. Criswell and trying to find Mr. Radovan
21 and talk to him?

22 A. I don't recall.

23 Q. In that e-mail below, same page on Exhibit 47,
24 couple of paragraphs below the highlighted section.

1 A. We're working hard.

2 Q. Yeah. The second sentence says, we've all been
3 shocked regarding the recent announcement about the cost
4 overruns. Is that an accurate assessment of the mood in the
5 meeting?

6 A. Shocked is an understatement, yes. It's hard for
7 me to understand how he can be that close to the project and
8 be shocked.

9 Q. Mr. Yount, you've been in the courtroom, you heard
10 Mr. Radovan and Mr. Little's discussion about participating
11 with the IMC in some kind of plan or scheme, right?

12 A. Yes. I was shocked, immensely shocked by those
13 comments.

14 Q. The comments you heard in court today?

15 A. Yes.

16 Q. Did you ever conspire to somehow undermine the
17 Mosaic loan?

18 A. That would be insane. I was going to get paid if
19 the Mosaic loan went through. All I did was try to calm the
20 IMC and do anything I could to make sure that the project got
21 funded, because as soon as it would have gotten funded, CR
22 would have been paid their \$900,000 and they would have paid
23 me the \$1 million on my share that I never got back.

24 Q. Isn't that what Mr. Criswell told you in the

1 e-mail he sent you the next day after the meeting?

2 A. Yes. I was surprised they weren't thanking me for
3 helping to calm them as much as I had, including trying to
4 get them not to confront Mosaic themselves. And including
5 talking to Jeremy Page after his outburst they spoke of
6 earlier and telling him he was out of line and off base and
7 after that he no longer participated at all. He left it up
8 to Paul Jamieson.

9 Q. Okay. Did you have conversations with the other
10 members of the LLC related to the Mosaic loan itself?

11 A. You mean the IMC?

12 Q. IMC, yes.

13 A. Yes, there was conversation, but I didn't
14 participate in trying to change anything or condoning that
15 meeting that they had.

16 Q. In fact, you saw the testimony earlier that you
17 had actually asked whether they could even do that meeting,
18 right?

19 A. Did I what, sir?

20 Q. Whether they could even do that meeting?

21 A. It seemed out of line to me, which is why I raised
22 the question. As we said, I'm no attorney and I'm not a
23 member of the EC, but I just don't think that was an
24 appropriate thing to do from what I was reading or hearing.

1 Q. And did you attend the meeting with Mosaic?

2 A. No, not at all. I've never spoken to anyone in
3 person or on the phone or any e-mail directly with Mosaic.

4 Q. And you never took any actions whatsoever with any
5 of the other members to somehow undermine the Mosaic loan?

6 A. Not a chance. It would be to my detriment. Why
7 would I do that? I didn't care who funded, as long as
8 somebody funded it so they would get their money and I would
9 get mine.

10 Q. Was that your position pretty consistently?

11 A. Very consistently.

12 Q. And that would be since December?

13 A. Yes, since December 12th.

14 Q. And that was your position in January?

15 A. Yes.

16 Q. And how about February?

17 A. Yes. How about today? Yes.

18 Q. Let's look at Exhibit Number 50.

19 A. All right. You want me to start at the back
20 again?

21 Q. Sure.

22 A. Okay.

23 Q. And on the very first, go all the way to the back,
24 the 2677 document?

1 A. 2677, yes.

2 Q. Okay. That was the e-mail earlier we talked about
3 Mr. Criswell and --

4 A. That was the December 16th e-mail.

5 Q. Yes. Mr. Criswell tells you, as you will see in
6 the information you will be receiving this week and in the
7 coming weeks, will show that Criswell Radovan has lent over
8 900 to the Cal Neva project, which is expected to be repaid
9 as soon as the project has new financing funded from the debt
10 equity or some combination thereof?

11 A. Yes.

12 Q. Was that your understanding of the source of funds
13 that might pay you back?

14 A. When they got that those funds paid, he would pay
15 me back. Not that I agreed with that, but that was their
16 stance.

17 Q. And what was your understanding of the status of
18 the Mosaic loan in this December time frame?

19 A. I thought it was still imminent.

20 Q. Let's go back on the same e-mail, Exhibit Number
21 50.

22 A. Where am I going, 50?

23 Q. Exhibit number 50. Let's look at the first page
24 of that.

1 A. Yes.

2 Q. Mr. Jamieson says, you and I are on the same page.
3 The approach is key to turning this project around. So you
4 had been talking to Mr. Jamieson about what?

5 A. About making the project a success, getting it
6 refunded so it could continue on and so I could get paid and
7 get out.

8 Q. Let's put this at January 8th now.

9 A. What exhibit?

10 Q. January 8th, I'm just referring to a time frame.
11 By January 8th, it would have been after the holidays?

12 A. Yes.

13 Q. Were you aware then about the CR's purported sale
14 to you?

15 A. No.

16 Q. Okay. And if you can look at Exhibit Number 54?

17 A. Yes.

18 Q. Did you see that -- I see you're cced on this.
19 Did you see the cap table that is attached to that?

20 A. I did.

21 Q. Did you review it?

22 A. Did I review it?

23 Q. Yes, the cap table.

24 A. Yes.

1 Q. And do you see something missing from the cap
2 table?

3 A. Yes, me.

4 Q. Did you ask somebody about that?

5 A. I believe I did. I don't remember if I called Mr.
6 Marriner or Mr. Radovan, but I was upset that I did not -- I
7 was not on the table.

8 Q. Okay. And did either of them respond to you?

9 A. I don't remember.

10 Q. Okay. Let's go to Exhibit Number 55.

11 A. Okay.

12 Q. This is another Paul Jamieson to Stuart Yount.

13 For the Court, tell us who Paul Jamieson is?

14 A. Paul Jamieson is a member of the IMC and one of
15 the investors.

16 Q. You didn't know Mr. Jamieson before December 12th?

17 A. No. Except for maybe seeing him at a meeting, but
18 not outside any of the Cal Neva stuff.

19 Q. So Mr. Jamieson is sending an e-mail to you.

20 Roger, who would that be?

21 A. Roger Wittenberg.

22 Q. Heather?

23 A. Heather is his step daughter who runs the
24 Biltmore.

1 Q. And then Geri is your wife?

2 A. Geri is my wife.

3 Q. Sitting in the back, suffering through this?

4 A. 47 years.

5 Q. What is Mr. Jamieson telling this group here?

6 What happened that precipitated this e-mail?

7 A. I believe he spoke with Mr. Wittenberg, who he
8 knew prior to me. I don't know if it's before I knew
9 Mr. Wittenberg, but he knew -- I was not the introduction to
10 him, to Mr. Wittenberg. I believe they had done some work
11 together years prior and I don't know the detail of it.

12 Q. And he says, thank you for putting together the
13 meeting to discuss the Cal Neva. Did you put together the
14 meeting?

15 A. I don't think I put together the meeting. I am
16 listed in the to column, but Roger, I could have, I don't
17 recall that. I may well have told Roger, I believe, Paul
18 Jamieson wants to speak to you about it.

19 Q. Were you in that meeting?

20 A. No.

21 Q. Do you know what the conversations with North
22 Light centered around?

23 A. Probably financing. They were the financier of
24 the Biltmore and Boulder Bay Redevelopment.

1 Q. Did you follow-up with Mr. Jamieson on this e-mail
2 about North Light as a viable refinancing option?

3 A. I may well have. I don't remember. I was not
4 really in it.

5 Q. Were you in any discussions with Roger or North
6 Light to follow up on the details of some kind of a
7 refinance?

8 A. Never with North Light. I talked with Roger
9 fairly frequently, because he's a good friend and he's on my
10 Board of Directors and I know him well, but -- and he told me
11 that he was already well aware of Paul Jamieson and knew him
12 well.

13 Q. So it would be fair to say Mr. Jamieson was
14 looking at different options for financing?

15 A. Absolutely.

16 Q. Go to Exhibit Number 56.

17 A. All right.

18 Q. This is an e-mail from you. And I assume this is
19 pretty much all the investment group and management in the
20 cc. In the cc, it's the investment group and the management?

21 A. I believe so.

22 Q. And you put in quotes about the discussion of the
23 previously circulated equity table.

24 A. Yes.

1 Q. Are you quoting from the minutes of the meeting?

2 A. I believe so.

3 Q. Were you at that meeting?

4 A. I believe so.

5 Q. Okay.

6 A. Which -- January 8th?

7 Q. Yes.

8 A. Yes, I believe I was.

9 Q. Was that the first executive meeting that you
10 attended?

11 A. No. I believe there was one in December within a
12 couple of weeks of the December 12th situation and I flew to
13 St. Helena and met with -- that EC meeting, EC and
14 shareholder meeting I attended in person.

15 Q. And that was an executive committee meeting?

16 A. Yes, but it included shareholders. It wasn't just
17 the executive committee.

18 Q. And you heard Mr. Radovan, the shareholders were
19 pretty much always welcome into the executive committee
20 meetings?

21 A. Yes, that's what he said. Yes.

22 Q. You found that to be true?

23 A. Yes, I did.

24 Q. What happened in that December executive meeting

1 you attended?

2 A. I didn't attend that one -- oh, the second one.
3 I'm sorry. Yes, that was, again, a rousing discussion of the
4 concerns we all had and what they were doing about it.

5 Q. Did Mr. Radovan or Mr. Criswell give you any
6 update on the Mosaic progress?

7 A. They probably did. I don't remember the details.

8 Q. Let's go to the next executive committee that you
9 believe you attended. What was the discussion about a note
10 to be made to you?

11 A. It was some discussion about because I had nothing
12 to show for them agreeing to pay me back or owing me money or
13 anything that they might at least start with pretty much
14 useless piece of paper that would say they did.

15 Q. So this would have stemmed out of your
16 conversations with Mr. Criswell about getting paid back?

17 A. Yes.

18 Q. And then the highlighted portion below with the
19 three question marks is your question about what's going on
20 with the note, so to speak?

21 A. Yes.

22 Q. Let's look at Exhibit Number 58. And this is an
23 e-mail string between you and Molly Kingston. Who is Molly
24 Kingston?

1 A. Yes.

2 Q. Who is Molly Kingston?

3 A. Who is Molly Kingston? She's a shareholder.

4 Q. You heard the testimony, she was one of the
5 shareholders in the December 12th meeting?

6 A. Absolutely.

7 Q. Was she upset?

8 A. She's very upset. She's not a member of the IMC.

9 Q. So, I mean, the language in here is pretty
10 self-explanatory?

11 A. Yes.

12 Q. What were you talking to Molly about at the end of
13 January in regards to CR's continuation in the project?

14 A. She was concerned that whether the people that had
15 driven the bus off the cliff could -- should be driving the
16 bus when it's resurrected from the bottom of the cliff.
17 Which did not make a whole lot of sense to either of us, but,
18 again, my concern was getting paid.

19 Q. You said, I totally agree there's no way to the
20 finish line with these developers, thanks?

21 A. Yes.

22 Q. And that was your feeling at this time?

23 A. Yes.

24 Q. Why?

1 A. Because they had driven the bus off the cliff and
2 it was in terrible financial shape and I believe mismanaged
3 and so why would you continue with the people who did that?

4 Q. And in her e-mail to you down below, she says,
5 everyone wants them out, not only for their performance on
6 this project, but they have a reputation and history of
7 running projects into the ground?

8 A. That's what she said. I was not aware of that.

9 Q. But you hadn't been talking to all the other
10 members about forcing them out?

11 A. No.

12 Q. This is just an e-mail between you and her?

13 A. Yes.

14 Q. But you agreed at that time?

15 A. I agree with the concept. That was one potential
16 solution if they didn't get the Mosaic loan funded and pay
17 me.

18 Q. Then if you go to Exhibit Number 59?

19 A. 59. Okay.

20 Q. We're now up to January 25th?

21 A. Yes.

22 Q. And this appears to be you -- you had sent a draft
23 e-mail to Mr. Jamieson, right?

24 A. Yes.

1 Q. By January 25th, 2015, if you look at your draft
2 response, it appears -- are you now aware of the switch from
3 buying a PPM share to a CR share?

4 A. Yes. I'm aware of the bait and switch.

5 Q. How did you find out about that?

6 A. I believe Mr. -- in fact, I know Mr. Criswell told
7 me in a meeting with Mr. Criswell and Mr. Radovan I believe
8 at the lobby of the Hyatt Regency Lake Tahoe. It was a side
9 meeting to see -- one of their CR Cal Neva meetings with the
10 executive committee and the shareholders they wanted to
11 attend.

12 Q. Okay. And how did that subject come up?

13 A. He told me that is what is being done and I said,
14 I was never told that. I never had any discussion whatsoever
15 of buying a CR share. And I told them why that would bother
16 me greatly and I would not accept that.

17 Q. And did you continue on those discussions about
18 remedying that situation?

19 A. What was that?

20 Q. Did you continue in the discussion with
21 Mr. Criswell and Radovan about how to remedy that situation?

22 A. Pay me my money.

23 Q. Did they talk about a note at that time?

24 A. I don't recall.

1 Q. So you send a draft response to Mr. -- or a draft
2 e-mail to Mr. Jamieson?

3 A. Correct.

4 Q. Why did you send that draft to him?

5 A. Because I wanted to see if he thought it was
6 appropriate. I had been communicating with he and the IMC
7 and Molly since that December 12th event. That's where we
8 then got to know each other and we were all very upset.

9 Q. When you say you had been communicating with the
10 IMC, it looks like primarily Paul Jamieson, right?

11 A. He was kind of heading it up.

12 Q. I don't see any e-mails with Brandon Chaney?

13 A. Yeah.

14 Q. Or any of the other members, right? It was
15 primarily Mr. Jamieson?

16 A. Once Jeremy got rather aggressive in the meeting
17 with Mr. Radovan mentioned, I told him he was off base and
18 needed to tone down his threatening style. And that's when
19 he pretty well left me and everything there, too. But also
20 Paul Jamieson was on the executive committee. And he was a
21 minor stockholder compared to Brandon Chaney and Jeremy and
22 some of the others.

23 Q. And the Incline Men's Club was the single largest
24 investor in the PPM?

1 A. I believe so, \$6 million, as I understood it.

2 Q. Hold on a second. Let's go to 122 now, Mr. Yount.

3 A. All right.

4 Q. This centers around the meeting of the Incline
5 Men's Club with Mosaic, correct?

6 A. Yes.

7 Q. And what was your understanding of that meeting?

8 Let me ask you this, how did you find out that the Incline
9 Men's Club was going --

10 A. I believe Paul Jamieson told me.

11 Q. And did you have some concerns about that?

12 A. I did. As I said in there, my number one is, the
13 meeting without CR, is that legit without CR and without
14 their advanced permission?

15 Q. And then you wrote that you heard that Mosaic are
16 sharks. Where had you heard that?

17 A. I don't remember for sure, but I believe it was
18 Molly might have said that. But that's only a vague
19 recollection.

20 Q. And then you go on, on number three, he said
21 there's no way the redone appraisal will come with needed to
22 get the 71 million funding. We'll still be unfunded. What
23 are you talking about there?

24 A. I believe the condition under the Mosaic loan was

1 an appraisal that would substantiate the loan they were going
2 to give. And I don't -- and there was a lot of concern of it
3 coming up with the 71 million, which is what it would have
4 taken, I believe, to fully fund what they were looking for,
5 CR was looking for, I should say.

6 Q. Had you seen the Mosaic loan term sheets, anything
7 like that?

8 A. Some of the meetings, they would have term sheets
9 that I would see brief at the meeting, yes.

10 Q. And somehow you knew about there was some kind of
11 a condition in the Mosaic loan about an appraisal?

12 A. Yes.

13 Q. And so what you're saying here is there needed to
14 be an appraisal for that loan to close, is that what you're
15 trying to say?

16 A. I'm trying to say that what they thought -- what
17 they were espousing they would get would probably not be
18 gotten if couldn't -- CR, by the way, probably not be
19 obtained if the appraisal did not come up to this level of 71
20 million.

21 Q. And then in Mr. Jamieson's e-mail above that, he's
22 kind of responding to your e-mail about the Mosaic situation?

23 A. Yes. Is there a question?

24 Q. Just looking. Let's go now to Exhibit Number 61?

1 A. 61?

2 Q. Yes, sir. This is the same e-mail that you had
3 asked Paul Jamieson to pass on in the draft, right, at the
4 bottom of that first page?

5 A. I believe so.

6 Q. Okay. Did you get a response from Mr. Marriner
7 immediately after that to --

8 A. I don't recall. I imagine there was a response.
9 I don't know that.

10 Q. And if we go to Exhibit Number 62? Does this
11 refresh your recollection?

12 A. Yes.

13 Q. As to whether Mr. Marriner responded?

14 A. Mr. Marriner has responded at that point, and he
15 says, Robert will need to explain why our investment was
16 changed from taking 1 million of the available 1.5 that you
17 signed up to fill to selling you one of their 2 million.

18 Q. And --

19 A. I was under the impression that you were fully
20 informed regarding the details of that change. I am very
21 upset that your transaction was so poorly executed. You want
22 me to go further?

23 Q. No. That's good. You weren't fully informed,
24 though?

1 A. I was not even minorly informed.

2 Q. Okay. Did Robert ever get back to you and explain
3 to you about the change?

4 A. I don't recall.

5 Q. And prior to that time, you'd already had a
6 meeting with Radovan and Criswell?

7 A. In the lobby of the Hyatt, yes.

8 Q. Where you would talk through what had happened?

9 A. What they said they had done, not what had
10 happened as far as I knew.

11 Q. Now, let's go to Exhibit 63.

12 A. Yes, sir.

13 Q. This is from Mr. Criswell to yourself and
14 Mr. Radovan and Mr. Coleman are on it and we've gone over
15 this document.

16 A. Yes.

17 Q. When it says we've -- Mr. Criswell tells you, it's
18 been a hectic time since we visited the Hyatt last week?

19 A. Yes.

20 Q. Is that the Hyatt meeting you were just testifying
21 to a couple of minutes ago?

22 A. I believe so.

23 Q. And that reference --

24 A. There might have been two Hyatt meetings in

1 January, but, yes. I believe this is the one talking about
2 the 27th, I believe.

3 Q. And do you remember at the Hyatt meeting last week
4 if you had discussed with Mr. Criswell about some documents?
5 It says in the e-mail, at the time I told you I would send
6 you the documents --

7 A. Yes.

8 Q. -- we discussed.

9 A. I understood that to mean he was going to send me
10 a draft of the a note he would sign.

11 Q. That's what I'm asking for. What was your
12 recollection of the discussion with Mr. Criswell at the
13 meeting at the Hyatt about documents?

14 A. We discussed the note possibility. I had no idea
15 he was going to try to paper back the transaction to
16 October 13th and change it.

17 Q. And that note discussion, that had been reflected
18 in some other conversations earlier in the month, right?

19 A. Yes, I believe so.

20 Q. That was the note that was talked about in the EC
21 meeting in early January?

22 A. Yes.

23 Q. And it looks like Exhibit Number 65, on
24 February 2nd, you actually got the documents that

1 Mr. Criswell was talking about?

2 A. Yes. Not the documents I expected.

3 Q. You got some documents?

4 A. I got documents.

5 Q. And did you review those documents?

6 A. Within, I believe an hour and a half I responded.

7 Q. And when you look at the first document, the
8 assignment of interest in the limited liability company.

9 A. It was dating it back to October 13th and here we
10 are in, what is it, February? February 2nd.

11 Q. Let me ask you this, under the whereas, did you
12 believe you had erroneously executed a subscription agreement
13 back in October?

14 A. No. I never erroneously did anything that I know
15 of.

16 Q. That was the only document you were ever sent to
17 sign, right?

18 A. Yes. There was no other documents to choose from.

19 Q. And Mr. Radovan had actually accepted that
20 document we saw on the record?

21 A. In writing, yes.

22 Q. And it goes on to say, it was the intent of the
23 parties that the assignee purchase such interest from the
24 assignor. Was it ever your intent to purchase a CR share?

1 A. I never knew of the concept until speaking with
2 Mr. Criswell in January and Mr. Radovan. How could that have
3 been my intent back in October?

4 Q. If you look at Exhibit Number 66, you responded
5 fairly promptly to Mr. Coleman?

6 A. Yes. Quickly and strongly.

7 Q. And those are your comments to Mr. Coleman. We
8 don't need to read those into the record. That's how you
9 felt when you got the documents?

10 A. Yes. Absolutely.

11 Q. And you weren't going to sign these documents,
12 right?

13 A. I did what?

14 Q. You weren't going to sign these documents?

15 A. Not a chance. They were total lies. They were
16 nothing I ever agreed to or signed. Why would I sign
17 something that was a total falsehood?

18 Q. Okay.

19 A. I took it that they were trying to cover their ass
20 for mistakes they had made.

21 Q. Mistakes they made, you mean back in October?

22 A. Back in October, either illegally over selling the
23 subscription of the 20 million, or not telling me and trying
24 to cover it with a sale of one of their shares. Which if it

1 was so darn valuable, why would they do that? Because I've
2 got a great name in the community? I'm sorry, I don't buy
3 that. They don't give up money for great names in the
4 community unless they have to.

5 Q. Mr. Yount, you've heard testimony from, I think,
6 Mr. Radovan, maybe Mr. Criswell, I can't remember, but
7 something along the lines that you were trying to play both
8 sides of the fence to get your money back and participate?

9 A. I did never wanted to participate. Ever since
10 December 13th when I said I wanted my money back, I never
11 changed from that one moment.

12 Q. But you did participate as far as talking with the
13 other members of the group about potentially getting a
14 refinance, right?

15 A. Yes. But that wasn't to my benefit except to get
16 them paid off so they would pay me. I was never looking for
17 a profit from them from that standpoint.

18 Q. Did you ever evidence an intent to anyone that you
19 were going to stay in, leave your money in the project?

20 A. No chance. I lost all faith in the developers and
21 therefore wanted out. I don't like doing business with
22 people I don't trust.

23 Q. So it was never your intent to play both sides of
24 the fence, so to speak?

1 A. No.

2 Q. And all your communications, let's look at
3 Exhibit 68. It looks like you're talking to Jamieson about
4 some issues related to payments being made, correct?

5 A. Yes. Len Savage is one of the principals in
6 Savage and Sons, the oldest contracting license in Nevada,
7 and they did the plumbing work in the -- yeah, plumbing work
8 in the Cal Neva towers, I believe.

9 Q. And Mr. Savage had told you prior to this time
10 that they hadn't been paid on their work at the Cal Neva over
11 a million dollars since October 1st?

12 A. Yes. Since October.

13 Q. Let's go to Exhibit Number 69.

14 A. Yes.

15 Q. This is an e-mail from you to Mr. Radovan and
16 Mr. Criswell and it references a March 17th meeting.

17 A. It was actually March 16th meeting.

18 Q. March 17th, it says yesterday's meeting?

19 A. Yes.

20 Q. You heard Mr. Criswell say he doesn't remember
21 that meeting in his testimony?

22 A. Yes. I believe he was there.

23 Q. And you sent this e-mail, correct?

24 A. Yes.

1 Q. What happened in that meeting?

2 A. It was a discussion about my share and where I
3 stood and I just -- this reiterated my position on things,
4 because it was still not being acknowledged and made clear.

5 Q. After the got the documents from Mr. Coleman in
6 early February up until this mid March time, had Mr. Radovan
7 or Mr. Criswell or even Mr. Coleman followed up with you
8 about your e-mail about I'm not signing these documents?

9 A. I don't remember any follow-up on that.

10 Q. And do you remember getting any e-mails where they
11 followed up and --

12 A. I do not recall any such e-mails.

13 Q. Kind of radio silence from them when you said I'm
14 not going to sign these documents?

15 A. I believe so.

16 Q. And then this meeting, was this an executive
17 committee or a membership meeting?

18 A. I believe so.

19 Q. Let me ask you this, so you're attending a meeting
20 in March of the organization, but you're still wanting your
21 money out. Why were you still attending the meetings, the
22 membership meetings?

23 A. To try to get my money out.

24 Q. That was your sole purpose?

1 A. I'm sorry?

2 Q. That was your sole purpose?

3 A. That was my sole purpose. Yeah, I just wanted my
4 money out.

5 Q. That's what you reiterated in this e-mail to
6 Mr. Criswell and Mr. Radovan?

7 A. I believe so. If I didn't stay close to it, I
8 wouldn't know if I was ever going to get money.

9 MR. CAMPBELL: I got another 15 or 20, your Honor.

10 THE COURT: I'd like to finish him.

11 MR. CAMPBELL: I'll try to get through.

12 THE COURT: Thank you.

13 BY MR. CAMPBELL:

14 Q. Let's just go to Exhibit number 70. You were in
15 the courtroom yesterday when I had Mr. Coleman on the screen,
16 so to speak, and so there's a series of four or five e-mails.
17 Since we've already gone through them, I won't go through
18 them in detail. Just generally tell me, why were you
19 communicating with Mr. Coleman in that March time frame,
20 which was -- it looks like would have been just a couple of
21 days after your meeting with Mr. Radovan and Mr. Criswell and
22 I guess the other members on March 16th.

23 The first one is March 17th, and so right after
24 that meeting, you start sending e-mails to Mr. Coleman,