IN THE SUPREME COURT STATE OF NEVADA

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JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual, Appellant, v. TODD SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYONS DEVELOPMENT, LLC, a Nevada limited liability company; DOES I through X; and ROES I through X, Respondent.	Case No. 81252
JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual, Appellant, v. TODD SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYONS DEVELOPMENT, LLC, a Nevada limited liability company; DOES I through X; and ROES I through X, Respondent.	Case No. 81831

Docket 81252 Document 2021-07291

APPEAL
FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JIM CROCKETT CASE NO. A-18-782494-C

JOINT
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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 9th, 2021.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 9th day of March 2021.

BLACK & WADHAMS

/s/ Rusty Graf
Rusty Graf, ESQ
Nevada Bar No. 6322
10777 W. Twain Ave., Ste 300.
Las Vegas, Nevada 89135
Attorneys for Appellants

A Well, they had to be replaced and -- and actually, I don't know if they were damaged or if they just took them out and -- in the course of drying the area, because the speakers were mounted in the ceiling.

Q Okay.

A And so I -- I talked to Ed Hogan sometime after that, as I recall, and he said when he came in, the stuff was just pulled out and they had asked him to replace it.

Q Okay. So in terms of that -- the phrase here "previous or current moisture conditions and/or water damage," you had an understanding or -- I want to make sure I understand your testimony here today. Is that the -- it had to be some sort of ongoing water condition for you to answer yes?

MR. GALLIHER: Objection. Misstates his testimony.

THE WITNESS: Not on -- not ongoing, but something more of a chronic nature.

BY MR. GRAF:

Q Okay. And how would you define "chronic"?

A Something that I guess from a medical

standpoint, a chronic illness is one that has to be treated for some period of time, whereas an acute problem is, say, a broken bone.

Q Okay. And then I guess we'll go over those later, actually.

So as to No. 7 on that same page -- well, actually, let's -- let's not leave the pool and spa.

Were you aware of any problems with the structure, wall, liner, or equipment of the pool?

A No.

Q Okay. Were there any problems with the structure, wall, liner, or equipment of the pool?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: When I filled this out or at any time that I owned the house?

BY MR. GRAF:

Q When you filled this out.

A Not that I'm aware of, no.

Q All right. And what about No. 7. Any previous or current fungus or mold?

MR. GALLIHER: Object to the form.

BY MR. GRAF:

Q Were you aware of any --

A No.

Q -- when you filled this out?

A No.

Q Okay. And then No. 11, "any other conditions or aspects of the property which materially affect its value or use in an adverse manner." Were you aware of any such condition when you filled this document out?

A No.

Q All right. So we'll come back to that document.

Exhibit 4, do you recognize Exhibit 4, Doctor?

A Yes.

Q What is Exhibit 4?

A This is the residential purchase agreement.

Q Okay. Was this the actual agreement that was entered into by the parties?

A No.

Q Okay. And I -- I think we've attached the -- well, maybe we didn't.

So this is Bates-stamped at the bottom, and it's tough to see because it's over like some other stuff, but it's Plaintiff 0001 through -- I think it's ten.

MR. GALLIHER: Twelve.

MR. GRAF: Is it 12? Well, it's ten, and then there's a counteroffer --

MR. GALLIHER: Yeah, I'm talking about the exhibit.

BY MR. GRAF:

Q The exhibit itself goes all the way through 12, but on pages 11 and 12, those are the counteroffers one and two; right, Doctor?

A Yes.

Q And is it your understanding when you executed -- well, actually, strike that.

On page 12 or Bates stamp 12, the electronic signature at the bottom dated 10/22/17, is that your electronic signature?

A I believe so, yes.

Q And did you cause it to be affixed to counteroffer No. 2, Bates stamp 12?

A I believe so, yes.

Q And it -- is it your understanding that Exhibit 4 is the agreement to purchase 42 Meadowhawk between yourself and the Folinos?

A That this was it in its entirety?

Q I believe so. That's what I'm asking you.

A Other than certain -- I don't know if they were addendums or amendments, I can't remember which.

Q So I think counteroffer one and two are the two documents that amend the price and the other types of terms. I think what you're referring to where there were disclosure addendums and there was the leaseback agreement and there was other agreements.

But in terms of the purchase of the property, do you agree that Exhibit 4 is the document that controls as to the agreement between yourself and the Folinos for them to purchase it?

A To the -- yes, to the best of my knowledge.

Q Okay. All right.

All right. A couple of other background issues.

Have you ever been convicted of a crime, Doctor?

A No.

Q Okay. Have you ever served in the military?

A No.

Q Okay. Let's talk about -- so let's go

ahead and mark these as next.

(Exhibit No. 5 was marked for identification.)

BY MR. GRAF:

Q Doctor, you've been handed what's been marked as Plaintiffs' Exhibit 5 for purposes of this depo.

Do you recognize that document, Doctor?

A Yes.

Q What is that document?

A It's my curriculum vitae.

Q So this is the one that I was able to find, and it appears to have been dated at the bottom starting on page two as June 19, 2009.

MR. GALLIHER: That date is also actually at the top of page one.

MR. GRAF: It is, yeah, but it runs throughout on the bottom.

BY MR. GRAF:

Q So is it -- do you have a more current CV, Doctor?

A It's probably been updated since then, since I practiced through 2016.

Q Okay. And does that CV -- does it have a list of the cases that you opined on as an

expert?

MR. GALLIHER: You're talking about the updated one that he's referenced?

MR. GRAF: Yes.

THE WITNESS: I don't think either one has a list of the cases, does it?

BY MR. GRAF:

Q Federal rules and the state rules now require it. So that's -- and I'm not positive that it required it in '16, but I'm just asking, does that CV that was updated in 2016 or as of 2016, did it contain a list of the cases that you had been retained and/or been deposed on as an expert?

MR. GALLIHER: I just want to object, because I don't think the testimony list is required to be a part of an expert CV. I agree that a testimony list is supposed to be disclosed, but I don't think it's part of the CV. I think that's just a --

MR. GRAF: Pursuant to NRCP 16 -- 26.

MR. GALLIHER: I think that's his confusion.

BY MR. GRAF:

Q Okay. So there's a list that's required

when you get hired as an expert in the -- your report, if you produce a report in a case, that you have a list of the cases that you have opined on previously.

Do you have such a list?

A Yes.

Q Okay. I would ask that it be produced in this case in terms of your testimony, that sort of thing, so that we can verify it.

In this case, Doctor, you provided certain written discovery responses.

Are you aware of that?

A Yes.

Q Okay. Let's start with -- we'll mark that as next. Here, actually, I'm going to give you all three of these as we go. There's the next, and then there's the next. So 6 is going to be Todd Swanson's responses.

(Discussion off the record.)

(Exhibit Nos. 6, 7, and 8 were marked for identification.)

MR. GRAF: And then let's have these marked as the next three. So these will be 9, 10, and 11.

(Exhibit Nos. 9, 10, and 11 were

marked for identification.)

BY MR. GRAF:

Q Okay. So, Doctor, you have been handed what have been marked as Exhibits 6, 7, and 8, and those are -- or they purport to be the interrogatory responses to the interrogatories propounded by my clients to you. Exhibit 6 is in your individual capacity, Exhibit 7 is as the trustee of the Shiraz Trust, and Exhibit 8 is the discovery that was propounded upon Lyons Development, LLC.

Do you see that?

A Yes.

Q Then the Exhibits 9, 10, and 11 are the verifications.

Do you have the verifications in front of you, Doctor?

A Yes, I do.

Q So do you -- do you have an understanding as to what a verification is?

A Well, I assume it's my signature that would be paired with each one of those documents.

Q So interrogatories are just a fancy word for questions that we ask that you responded to. Is that -- is that your understanding?

A Yes, it is.

Q And did you -- did you assist in the preparing of the responses that were provided here?

A Yes.

Q Okay. So -- and then on Exhibits 9, 10, and 11 is -- are those your signatures on the verifications?

A Yes.

Q And you're aware that by signing that verification, you are attesting to the truth and accuracy of those responses in the interrogatories?

A Yes.

Q Okay. And then by signing that verification, you're basically swearing under oath that that is the fact, that those are true and accurate responses?

A Yes.

Q Okay. Let's briefly look at your responses to the interrogatories, so Exhibit 6. And then in particular, I just want to ask you some questions about a couple of these.

So Interrogatory No. 4 asks you, "please identify the first time you became aware of any

form of water leak, water loss or water damage at the property, how you became aware of the water leak, water loss or water damage and what actions were taken as a result."

Do you see that?

A Yes.

Q So the first time that you became aware, according to this interrogatory, is August 2nd, 2015.

Do you see that?

A Yes.

Q Okay. Are you not aware of a water loss that occurred at the home in February of 2015?

A No, I'm not.

Q Okay. And so this incident that we're talking about here in August of 2015, August 2nd of 2015, was the one that occurred in the master bathroom -- under the master bathroom sink?

A Well, the two -- so the two leaks occurred almost simultaneously for some reason, probably because I had turned off the water main, and when I turned it on, I'm assuming that they hadn't secured the attachment under the sink and that caused that to come off.

Q Okay. So when you're saying "the two,"

which -- which other water loss are you talking about?

A So there was -- I found moisture in the carpet in the -- in the master closet, which was due to the recirculating pump.

Q Okay. And then what's the second one that you're referring to?

A The attachment under the sink in the master bathroom after I turned the water main back on came off.

Q Okay. And was that at a fitting or where was that?

A I believe so, yes.

Q Okay. In both of those instances, did you have Rakeman Plumbing do those repairs?

A Yes.

Q Okay. And why did you have Rakeman Plumbing do those repairs, Doctor?

A Because they were the ones who did the plumbing on the house.

Q So how did you come to have that information?

A I probably called Blue Heron first but didn't get an answer. Blue Heron constructed the house.

Q Okay.

A So they had given me a list of who all of the subcontractors were and Rakeman Plumbing was on the list so I called them second.

Q Okay. And in terms of the repairs that they did for this water loss, so the recirculating pump and the attachment coming off underneath the sink, did they charge you for those repairs?

A No.

Q Okay.

A It was covered under warranty.

Q And let's talk about that just briefly, Doctor.

Did you contract to have this house built at 42 Meadowhawk?

A Yes.

Q With whom or with what entity did you contract?

A With Blue Heron.

Q Okay. And in what capacity was Lyons Development involved?

A Well, Lyons Development held the property since I purchased the lot in -- I can't remember -- maybe 2008 or thereabouts.

Q Okay.

A So the property was held by Lyons Development when I contracted with Blue Heron, I think.

Q So I'm going by the name Lyons Development. It connotates some sort of activity during the development of the property.

Did Lyons Development do anything other than hire Blue Heron to build the house and hold the property in its name?

MR. GALLIHER: Form. Foundation.

THE WITNESS: Such as what? Can you give me a --

BY MR. GRAF:

Q Did Lyons Development contract directly with any architects to prepare plans to have the house built?

A That was done in-house, so I presume --

Q In-house where?

A With Blue Heron.

Q Okay. Did Lyons Development pull any permits to have the home constructed?

A Not to my knowledge, no.

Q Okay. So, again, other than contracting with Blue Heron to have the house built and holding the property in its name, what, if

anything, did Lyons Development do in the development of this property, this lot?

A Well, eventually it assumed all the -- the bills, even though the mortgage had to be taken out in my personal name or it would have been a -- a higher interest rate. Lyons Development paid the mortgage, paid all of the bills.

Q Okay. Anything else?

A Well, I haven't thought about this question much, but I can't -- before now, I haven't --

Q Sure.

A I can't think of anything.

Q All right. So in terms of this response No. 4, it says -- the first sentence says, "the carpet in the master closet was damp and later a rush of water came from under the master bathroom sink."

Do you see that?

A Yes.

Q So it's your understanding there were two sources of water causing that damp condition?

A There was one source causing the damp condition, and then there was this leak when the

fitting came loose under the sink.

Q Okay. And then you -- it's depicted here. It says, "I turned off the water main and called Rakeman Plumbing, who sent a plumber out that day to repair the leaks. I also immediately vacuumed and dried all visibly wet flooring areas." And it says, "Rakeman also sent out a wetter remediation specialist to thoroughly dry out all of the wet areas and later other trades to repair or replace carpet, baseboards, cabinets, and drywall."

Do you see that?

A Yes.

Q So does this response help to refresh your recollection as to the fact that there was carpets, baseboards, cabinets, and drywall that were replaced as a result of this water loss?

MR. GALLIHER: Let me object to the form of the question.

THE WITNESS: Well, I think by "replace," I'm talking about, for instance, the kick panel on the -- that they had to remove --

BY MR. GRAF:

Q Okay.

A -- to get to the water to allow the

remediation company to dry it out, they replaced. They put it back in place. The carpet that had been pulled up so they could effectively dry everything -- the carpet was not replaced but put back in place.

Q All right. What about the cabinets?

A It was just the kick plate on the cabinet.

Q Okay.

A It was put back in place.

Q Well, you see the response here says "carpet, baseboards, cabinets, and drywall." I was taking the baseboards as being the kick plates.

Is that an incorrect assumption?

A Let's see. Yeah, to be honest, I'm not sure even anything was done with the baseboards because the baseboards weren't damaged.

Q Okay.

A So that may be an error.

Q And so the cabinets, were the cabinets repaired or replaced?

A The cabinets were -- where they pulled off the kick plate, Absolute -- Absolute Cabinetry I think is who came in and just put that kick

plate back.

Q So --

A So I guess that would be --

Q -- I get what you're saying as to the kick plate, but there were no repair or replacement of any cabinets?

A Not that I recall, no.

Q Okay.

A Other than the repair of the kick plate on the cabinet.

Q Okay. And then the drywall, was it repaired or was it replaced?

A I don't recall the drywall being repaired. The only defect in the drywall was underneath the cabinet and they put a hole in that to see where the water was, so they could get the water out. But to my knowledge, with the next time we had to remove that, that hole was still there, so I'm not sure as I look at this that there was any repair to the drywall.

Q So did they have to cut a hole in any drywall to gain access to a recirculating pump?

A No, not to my knowledge. Because the recirculating pump, as I recall, was accessed through an access panel on the outside of the

house.

Q Okay. So the final sentence of the response No. 4 says, "I also had Rakeman Plumbing check all visible plumbing fittings throughout the house to be sure that they were securely attached."

Do you see that?

A Yes.

Q And that was in response to the request that says "what actions were taken as a result"; is that a fair statement?

A Yes, that's one of the things I guess that I had them do.

Q Okay. So why did you have them do that?

A Because I was a little surprised that the -- that the fitting came loose when I turned the water main on underneath the sink, and so I wanted to them to go through and make sure that all of them were sufficiently tight and that wouldn't happen somewhere else.

Q Okay. Well, you say here, very specific statement. You say, "I also had Rakeman Plumbing check all visible plumbing fittings."

You didn't have Rakeman Plumbing fix any of the other fittings that would have been inside

a wall cavity; correct?

A No.

MR. GALLIHER: Wait. I'm not sure -- that's not going to read right on the transcript.

BY MR. GRAF:

Q You did not ask Rakeman Plumbing to open up any of the drywall walls in your house and look at all of the fittings that were used to plumb this house; correct?

A That would have been a crazy request, so no, I did not do that.

Q Okay. But you would agree with me, Doctor, that you're aware that there are plumbing fittings that would be inside wall cavities of that house; right?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: There certainly are fittings, but not of the type that failed underneath the sink.

BY MR. GRAF:

Q So what's your understanding as to the type of the fittings that failed underneath the sink?

A Well, I can't remember what it looks like now, but I presume it was something hooked up

by a hose clamp or something like that to the plumbing of the sink.

Q Okay.

A So something from the wall coming out to the plumbing of the sink.

Q Okay. Was it the water supply line?

A Yes.

Q And do you have an understanding, as you sit here today, as to whether or not that was an IPEX type of pipe?

MR. GALLIHER: Foundation.

THE WITNESS: By IPEX, I think you're referring to the plastic pipe that now I know Uponor makes.

BY MR. GRAF:

Q It's a flexible piping --

A Yes.

Q -- that they use specific mechanical -- or excuse me, nonmechanical fittings to connect and to --

A Right.

Q Yeah.

A I don't recall if it was that pipe or not.

Q Okay. Did -- did you ever ask Rakeman

Plumbing as to whether or not that was the type of plumbing fitting that they were checking in the rest of the house?

MR. GALLIHER: Objection. Form.

THE WITNESS: What I asked them to do was to check underneath each sink or every access panel that they could access for a -- say a bathtub, that if any similar fitting -- well, to check any similar fitting to make sure they were tight, because I believe the answer they had given me was probably something wasn't sufficiently tightened on that fitting and that's why it came off.

BY MR. GRAF:

Q Do you know how those fittings are tightened?

A No.

Q Okay. Did you ask Rakeman Plumbing how those plumbing fittings are tightened?

A No.

Q Do you have an understanding, as you sit here today, as to whether or not those plumbing fittings can be tightened or if they have to install a new plumbing fitting at any juncture of the piping?

A I don't, as I sit here today.

Q Okay.

A I may have it looked at it at the time, but I don't remember.

Q Okay. But again, just -- just to confirm, we -- and I think you have already answered this. You did not ask Rakeman Plumbing to look at every plumbing piping connection in the plumbing system; right?

MR. GALLIHER: Asked and answered.

THE WITNESS: I believe that would require doing a lot of destructive checking, and of course I wouldn't ask them to do that for a fitting that came loose under a sink.

BY MR. GRAF:

Q Okay. For the first time that that happened; right? But if it happened the second time, would you have had them check all of the other plumbing fitting connections?

MR. GALLIHER: Incomplete hypothetical. Speculation. Foundation.

THE WITNESS: If a fitting came loose from underneath the sink?

BY MR. GRAF:

Q Or anywhere. A similar plumbing fitting

failure anywhere in the house, would that have caused you to have Rakeman Plumbing look at all of the piping connections in the plumbing system throughout the house?

MR. GALLIHER: Hold on. Form. Foundation. Speculation. Incomplete hypothetical.

Go ahead.

THE WITNESS: No, I wouldn't have them do destructive testing and look at every fitting in the house because I had no reason to believe that every -- that any other fitting would have a problem.

BY MR. GRAF:

Q Okay.

A I considered this to be a fluke as -- not a fluke. When I move into a new house, there are always little things that happen and you spend the first year calling the builder to come back and fix little things.

Q Okay.

A And I just assumed this is part and parcel of buying or building a new house.

Q All right. And when you say a little incident or something like that, how are you

quantifying or qualifying that as to little? Is it by a monetary amount or is it by area affected in the house? How are you saying that that is a little incident?

A By the -- I guess the effect that that leak had on the house. It caused a big puddle in my bathroom, and that was it.

Q Okay.

A In my opinion, that's not a big issue. That's a water leak like a toilet that overflows.

Q And the other -- and we'll move on after this.

You say the carpet that was in the bathroom was just lifted up, dried, and put back in place?

A That was in the master closet, but the answer to that is yes.

Q Okay. They didn't install any new carpet?

A The -- well, no, there was no need to. The carpet was fine.

Q Okay. And as you sit here today, and back in 2015, you weren't aware as to whether or not there was a standard in the industry if the carpet was wet as a result of a water loss like

this, that it should be removed and replaced; right?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: I'm not a construction expert, and I wouldn't have known that unless they told me.

BY MR. GRAF:

Q Okay. So No. 5 says, "please identify each and every incident of water leakage, water loss or water damage which occurred at the property from January 1, 2015, to the date the property was transferred to plaintiffs, how you became aware of each water leak, water loss, or drywall damage from January 1st, 2015, to the date the property was transferred to plaintiff and what actions were taken as a result of each incident."

And then did you assist in the preparation of the response to No. 5?

A Yes.

Q Okay. So, A, it says, "The hot water circulating pump near master closet and connector fitting slippage under the master bathroom sink."

A Yes.

Q Do you see that?

And you would agree with me that that's

two separate incidents of water loss?
A Yes.
Q Okay. And that occurred August 2nd, 2015, and it says "the carpet" -- and that's the one that we just talked about?
A Yes.
Q Okay. So let's move on to B. And then it says, "Hot water recirculating pump leak in the single garage, 8/3/2015."
Do you see that?
A Yes.
Q So just want to make sure that I'm reading this right. That's the next day after A?
A Yes.
Q Okay. Were you living on a day-to-day basis in the 42 Meadowhawk property in or about August of 2015?
A Yes.
Q Okay. And in terms of the hot water recirculating pump leak, did -- could you see the pump?
A It was up in the ceiling, so I crawled up there to see what was leaking, and I don't recall actually seeing the pump, but --
Q You saw the water leak?

A -- I saw some water, and that apparently is what was leaking, because Rakeman replaced both of those recirculating pumps.

Q There's two in the single garage?

A No. I'm sorry. The one -- the previous day they replaced --

Q Okay.

A -- on -- near the master bathroom --

Q Yep.

A -- and the one in the single garage.

Q So do you have an understanding as to whether or not there was any leak in that garage prior to August 3rd, 2015?

A I saw no evidence of a leak prior to that time, no.

Q Okay. So when -- what time of day did you first notice the leak on August 3rd, 2015?

A Early in the morning.

Q Okay.

A My assistant actually came in through that door and said, "Did you know there's water there -- out there?"

Q And who is that?

A Her name is Alexa Warren.

Q Okay. And when you say she came in

through that door, is there a door to the single car garage, other than the garage door?

A I think she came in through the garage door.

Q And that's what I was trying to clarify. Thank you.

Was there a car that was parked in that single garage?

A No, I don't believe so.

Q Okay. How big was the -- was there a puddle of water on the ground?

A I think there was some water on the ground as I recall, yes.

Q How big was the puddle or whatever it was?

A It's been so long, I can't remember exactly. The -- the entire floor wasn't flooded. It was a puddle in the middle of the floor.

Q Okay. Did you clean it up or did you have somebody else clean it up?

A I think -- well, I called Rakeman Plumbing and they came out and fixed the leak and I probably assisted -- actually, I can't remember if I had to work that day or -- or not, but that would be where my shop vac would be, so I may have

assisted. I just don't remember.

Q Okay. So did -- talk to me about the condition of the drywall. So I'm assuming that in the ceiling of the single garage, it's drywall?

A Yes.

Q Okay. And could you see damage to the drywall?

A No. I could see maybe some moisture, because I think they had to repaint part of it.

Q Okay. Was there any drywall that was removed and replaced as a result of that repair?

A Not to my recollection. I think it was just repainted.

Q So --

A I think some of the paint bubbled.

Q I'm not trying to trick you here. Why don't you read the response and then I'm going to ask you some questions about it, Doctor.

A So, I don't think they had to replace drywall. I think it was just the paint, so I believe that's an error.

Q And I think we're going to go over those invoices anyway. So, again, I'm not trying to trick you or anything. I'm just trying to make sure we understand. And if there was, you know, a

bulge in the drywall ceiling or something like that that was caused by the water or something, that's what I'm trying to ascertain and understand.

So when you say you could see it, you could just see the water that was dripping down?

A Yes.

Q Okay. And there wasn't any deformity or change in the actual condition of the drywall as a result of the exposure to the water?

A Not that I recall, no.

Q Okay.

A Not to the point where they had to replace it, that I recall.

Q Okay. So the -- we already talked about the speakers. The speakers had been repaired and replaced?

A Yes.

Q Actually, I said repaired and replaced. They were just replaced; right, Doctor?

A They were replaced.

Q Okay. Anything else that was replaced? I saw some other low voltage. Was there like some sort of like touch plate or something like that --

A Yeah.

Q -- that was repaired or -- excuse me, replaced?

A I didn't mean to talk over you.

Q No, you're fine.

A There was a keypad or a touch pad I think that had been pulled out for some --

Q And the water had shorted it out or something?

MR. GALLIHER: Speculation. Foundation.

THE WITNESS: I don't know. All I know is Ed was called in and he said the -- those things were already out, so he replaced them.

BY MR. GRAF:

Q Okay. All right. Any other type of repairs that were necessary in the single-car garage?

A Not that I recall, no.

Q All right. Did you -- so on August 3rd, 2015, had you already had Rakeman Plumbing go and inspect all of the other plumbing fixtures that they could see?

A I'm sorry, on which date?

Q So this loss occurred on August 3rd, 2015. In your previous response to Interrogatory No. 4, the last sentence, you say that you asked

Rakeman to go and observe all of the visual plumbing fittings and connections in the house.

Had they done that prior to this water loss on August 3rd, 2015, or was it subsequent to this?

A I think it was subsequent to this.

Q Okay. And did the fact -- strike that.

Just foundationally, had the water been turned on and turned off a couple of times to do the repair in the master closet?

A I know I had turned it off and on and then back off again, and I -- I'm sure that they had to turn it off to replace the recirculating pump, as well.

Q Okay. So the --

A I'm sorry, can I back up?

Q Sure.

A I'm not sure of any of that. I don't know what they turned on or off. They may have turned off the hot water. Whatever they did, they probably turned something off. I know what I turned off.

Q And we're going to depose them next week, so we'll ask them.

A They can tell you, yes.

Q Exactly.

So in terms of these events, I think you have already testified, you didn't see where the water was coming from regarding the circulating pump?

A No. It -- in the first one or the second one?

Q The one -- we're talking about the single-car garage right now.

A As I recall, I crawled up there to see if I could tell, and I -- I'll tell you, it's been so long, I can't remember if I saw it was coming from there or not or whether I'm just remembering that's what they replaced.

Q Okay. The water that was coming from the circulating pump, do you have an understanding, as you sit here today, as to whether or not it was coming from the supply or was it coming from when it goes out of the circulating pump?

MR. GALLIHER: Foundation. Speculation.

BY MR. GRAF:

Q So just the piping into the circulating pump versus the piping going out of the circulating pump?

A My understanding was it was the recirculating pump in both instances.

Q Okay.

A Because their remedy was to replace them with what they called better pumps, as I recall.

Q Okay.

A So I don't know if they had -- if they were plastic and they put -- replaced them with metal pumps or what exactly.

Q Okay.

A I'm just going by what they told me.

Q And who did you talk to at Rakeman Plumbing?

A Oh, that's a good question. I don't recall. You know, someone answered that night, the first night. Someone answered the next day. I didn't know who I was talking to.

Q So as you sit here today, you don't know -- we're deposing Aaron Hawley. He's the owner of Rakeman -- or it's my understanding he's the owner of Rakeman Plumbing.

Do you have an understanding as to whether or not he was the one you talked to on either of those occasions?

A I'm guessing probably he had someone

else answering, although I don't know.

Q Okay. We're also deposing Rocky Gerber. Does that refresh or ring any bells in your mind?

A No.

Q Okay. And both of those individuals -- or, excuse me, Mr. Hawley has provided an affidavit in this case.

Are you aware of that?

A Yes.

Q Okay. Did you talk to Mr. Hawley in the preparation of that affidavit?

A No.

Q Okay. Now, Mr. Hawley --

A Well --

Q Go ahead.

A I called him before the affidavit just to see if he would be willing. He had apparently just been through a quite traumatic event where he lost his daughter, so I just asked him if it would be okay for my attorneys to contact him, and that was the extent of the conversation.

Q Okay. All right.

So in February -- and then we're going to move to the next incident of water.

"In February of 2017, the carpet in the master closet was damp. I called Rakeman Plumbing, who came out that day to repair the leak. They then sent out a water remediation to dry out all areas and then carpet, baseboards, drywall, and cabinets trades to make repairs."

Do you see that?

A Yes.

Q So where was this exactly?

A So this was back in the master closet.

Q In the same area as to A?

A Yes.

Q Okay.

A In the same -- in the same area as the first leak.

Is that what you said?

MR. GALLIHER: Yeah, he meant A on this sheet here.

BY MR. GRAF:

Q A on this response, which would be page 4 of 13 --

A Yes.

Q -- as to Interrogatory No. 5.

A Yes.

Q And actually A is two losses, the

recirculating pump and -- excuse me -- the fitting underneath the sink, and then C, do we know what the source of the leaking water was on C?

A It was a leak in the pipe itself, as I was told.

Q Okay. So was it in just a run of the pipe, or was it at a connection to either, you know, a fixture or a connection between two pipes?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: I don't know. I didn't see it. All I recall is more or less, you know, what they told me.

BY MR. GRAF:

Q Okay. And that's what I'm trying to ascertain, Doctor, as to what they told you.

So you think that it was the actual IPEX piping itself that had the hole?

A Yes.

Q Okay. And do you know if that was near or adjacent to the recirculating pump that had been previously repaired and replaced in 2015?

A I don't.

Q And --

A Although I'm assuming they're kind of in the same area near my master closet, so they must

have been in some kind of proximity.

Q Okay. And so the repairs that you described here, the carpet, baseboard, drywall and cabinet trades to make repairs, was the carpet removed and replaced?

A No. It was the -- basically the same thing they did when this had happened on August 2nd, 2015.

Q Okay. The baseboard itself, are you referring to the toe kick again there or are we talking about baseboards?

A I don't recall that the baseboards were taken out, and I could be mistaken, but I don't recall that the toe kick was taken out. That's how they access the -- the wall to get in to dry the wall.

Q Okay. And the drywall there, you just said that they had to get inside the wall. So did they have to cut out a section of the drywall to gain access?

A Yes, underneath the cabinet.

Q Okay.

A And I don't know that they even had to cut it out. I'm not sure it was ever put back after the first time. There was never any --

Q So if we go look at that place underneath the sink in the master closet and if there's drywall that's in there that means that it was replaced?

A Well, now there's been another leak, and I think it would have been taken out again. But ...

Q Okay. And we're going to talk about the -- the leak D here in a second.

So the -- the leak that occurred in February of 2017, did you pay for that repair or did Rakeman Plumbing pay for that?

A Rakeman paid for it.

Q Okay. And do you know if they submitted a warranty claim to Uponor?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: I do now.

BY MR. GRAF:

Q How do you know now?

A Because digging through my documents, I found that receipt that said something about Uponor, and --

Q From this leak? I want to make sure -- hold on. I am cutting you off.

A That's okay.

Q And for a reason. I want to make sure that you have an understanding that there was an Uponor claim that was made as to this February 2017 water loss.

A Yes, I believe that was the claim that was made.

Q Okay. And do you have an understanding as to why that claim was made to Uponor?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: Other than it was their pipe that was leaking, no.

BY MR. GRAF:

Q Okay. And you said a few minutes ago or just now that you were reviewing documents and that you have a document that evidences a receipt of some sort from Uponor; is that a fair statement?

A Yes. One of your requests was to provide any, I think, correspondence with Uponor.

Q Yep.

A So I typed into my computer the word "Uponor," and that stuff popped up.

Q Okay. So --

A And --

MR. GRAF: Is that the stuff you

produced yesterday, Jeff?

MR. GALLIHER: No. It would have been --

MR. GRAF: With the previous production.

MR. GALLIHER: It would have been with the responses to the RFPDs.

MR. GRAF: And I think we'll get to those.

MR. GALLIHER: Yesterday was the four-page e-mail thread between him and Ivan and Austin. That's it.

BY MR. GRAF:

Q Okay. So -- and I think we'll get to those e-mails here and the Uponor stuff here.

MR. GALLIHER: Can we take a quick break?

MR. GRAF: Yeah, might as well.

THE VIDEOGRAPHER: Off the video record at 11:19.

(Whereupon, a recess was taken.)

THE VIDEOGRAPHER: Back on the video record at 11:32.

BY MR. GRAF:

Q Okay. Doctor, you're aware you're still under oath?

A Yes.

Q So we were going through the interrogatories -- your interrogatory responses, in particular response No. 5, and we've talked to you about the water leaks A, B, and C.

As to C, Doctor, did you ever ascertain as to whether or not the -- the source of the water was one of the previous two sources of water loss in the master closet that may have recurred or happened again?

A Well, as I said, my understanding with the first leak was a failure of the recirculating pump, and I was told the February 2017 leak was a failure of the pipe.

Q Okay.

A So I did not believe them to be the same source or cause.

Q All right. So let's go to D. It says, "Leaking water pipe near master closet, November 7, 2017." So this is the third or fourth, depending on how you look at it, instance of moisture in the master closet; correct?

A Yes.

Q Okay. And it says here, "My assistant, Nicole Whitfield, found moisture in the master

closet when she came to work at my house."

That was your statement; correct?

A Yes.

Q And do you know what the source of that moisture was in the master closet?

MR. GALLIHER: Speculation. Foundation.

THE WITNESS: Do I know now?

BY MR. GRAF:

Q Sure.

A It was another leak in the piping, to my knowledge.

Q And when you say "piping," are you saying it was a -- a hole in the IPEX or was it a failure of one of the fittings that connects some section of piping in the plumbing system?

A I can't remember for sure. It could -- could have been the latter, but I can't remember for sure.

Q Did you ask Rakeman Plumbing about the source of the water?

A I did.

Q And what did they say to you?

A Well, I just can't remember what they said, other than it was a -- a leak in the pipe.

Q Okay. And as you sit here, you don't

know whether or not it was a hole in the piping itself or one of the -- a failure of one of the fittings?

A No. It seems like I saw a photo somewhere and it's -- I don't know where it is, of like a split near a fitting, but I could be wrong.

Q Okay. So, like, the section of pipe that goes into a fitting, it had torn and caused a leak?

A Possibly.

MR. GRAF: Okay. Let's go ahead and mark this as next.

(Exhibit No. 12 was marked for identification.)

BY MR. GRAF:

Q Go ahead and leave the interrogatories out, and we'll come back to that. I just wanted to -- this was a good time to go through this.

So, Doctor, you've been handed what's been marked as Exhibit 12 for purposes of this deposition.

Do you recognize that document, Doctor?

A Well, I haven't looked at this for a long time, but I -- I think I recall why I had this done. I just don't recall --

Q Okay. Do you recall whether or not the repairs that are listed on this page and the subsequent pages, Roman numeral two and three -- do you know if those repairs were made to the house?

A Which are you talking -- can you say again which pages?

Q So the report starts off with a cover page on 51. On 52, it has a table of contents, and then on 53 and 54, it is the, quote/unquote, items to be addressed before releasing the contractor.

Do you see that on page 53? And then there's the list. And the list contains heating and ventilation, plumbing, electrical, interior repairs, exterior repairs, roof repairs.

This is a list of items that had to be repaired; correct, Doctor?

A Yes.

Q Do you know if you gave this list -- or, excuse me, if this list was repaired by Blue Heron?

A So let me go through them and maybe something will stand out.

Q Okay.

A So the answer to your question is yes, I did provide this to them, because I recognize some of the entries that I know they did fix.

Q Such as what?

A Oh, let's see. A cover is missing from the vent fan in the media room.

Q And which page are you on, Doctor?

A That's page two, make interior repairs.

Q So that -- let's go with the Bates stamps because -- we'll say 54.

A Oh, I'm sorry. Fifty-four, yes.

Q And that's an interior repair?

A Yes.

One burner valve on patio grill is not functional. I recall that. The handrail has been removed from the second floor window. The handrail should be properly replaced and the wall penetration sealed.

Q And you're saying that was repaired?

A Yes.

Q Okay.

A The patio slider in the basement media room does not latch, although it took a couple of times for them to fully repair that.

Q Is that the same patio slider that

wouldn't latch when the house was sold --

A Yeah.

Q -- in November of 2017?

A Yeah.

Q That was never really fixed; right?

A Well, we thought -- we thought it was on several occasions.

Q So -- and then the -- the other line item there is "unfinished stucco surface at the roof feature."

Do you know if that was repaired?

A Where do you see that?

Q Where it says "repair exterior."

A Oh, at the roof feature. Well, I don't have an independent recollection of that, but if I provided some of these to them, I provided all of them to them. And I wouldn't have signed off unless I was confident that these problems had been fixed or that there was some logical explanation why they shouldn't be fixed. Leaks at the recirculation pumps would have been something I would have had fixed.

Q Okay. And so can you tell me, as you sit here today, that the leaks at the recirculation pumps that were observed as a result

of this report in May of 2015 aren't the same as the leaks in the recirculating pumps on August 2nd and August 3rd of 2015?

MR. GALLIHER: Object to the form. Calls for speculation and lacks foundations.

THE WITNESS: I have no idea. I probably would not have investigated any of this. I had a busy practice. I had a zillion things going on. I left it up to professionals like this organization, Criterium, and Blue Heron to make the repairs and make sure everything was done properly.

BY MR. GRAF:

Q Okay. And, Doctor, you would agree with me that this report put you on notice that there are leaks in the recirculation pumps in May of 2015; right?

MR. GALLIHER: Object to the form. Foundation.

THE WITNESS: Puts me on notice?

BY MR. GRAF:

Q That there are leaks at both recirculation pumps; right?

A This report states there are leaks at both recirculation pumps, yes.

Q And you received this report; correct?

A Apparently, yes.

Q Okay. You produced this report?

A Yes.

Q Okay. And you would agree with me, right, Doctor, that if this condition -- the leaks at the recirculation pumps existed from May of 2015 through August of 2015, that would be a chronic condition, wouldn't it, Doctor?

MR. GALLIHER: Object to the form.

BY MR. GRAF:

Q Using your definition.

MR. GALLIHER: Foundation.

THE WITNESS: If they existed for that full period, yes.

BY MR. GRAF:

Q Okay. So if Blue Heron didn't make any repairs to the recirculation pumps and they were leaking for a three-month period, that would definitely be a previous condition of moisture; right?

MR. GALLIHER: Form. Foundation. Speculation.

THE WITNESS: I wouldn't have not had them repair that -- those leaks.

BY MR. GRAF:

Q I get your response, Doctor, but you've got to answer my question. Okay?

MR. GRAF: If you could read it back. I understand what you're saying, but listen to the question.

THE WITNESS: Okay.

MR. GRAF: Thank you.

(Whereupon, the record was read.)

THE WITNESS: So you're asking me a hypothetical?

BY MR. GRAF:

Q It doesn't look to be hypothetical, but under a hypothetical, if it was leaking from the date of this report until August of 2015 when it was eventually repaired by Rakeman, that would be a chronic condition, as you define it, of water leak or exposure; right?

A Well, it is a hypothetical because you're saying it wasn't repaired, so you're saying assuming -- let's assume it wasn't repaired in -- what was the date? May? And it continued to leak through August, would that be a chronic condition? Under that hypothetical, I would say yes, I would consider that a chronic condition.

Q Okay. And given that, you should have denoted yes on Question 1A on Exhibit 3, which is the seller's real property disclosure form?

MR. GALLIHER: Based on the hypothetical?

MR. GRAF: If that occurred.

MR. GALLIHER: Well, but that's not how you asked the question so I'm going to object to the form of the question.

BY MR. GRAF:

Q Okay.

A That's assuming I would know about it. If I knew about that, of course, yes, I would have.

Q You knew about it, though, Doctor; right? You got this report May 11, 2015; right?

A You're asking me a hypothetical. I did not know there was a leak and I still don't know there was a leak from May through August.

Q So -- and, Doctor, let's not use hypotheticals. Okay. Let's use this. You're here to testify regarding your knowledge. This document says that there was leaks at the circulation -- recirculation pumps; correct?

A Yes.

Q It's your testimony here today that you put Blue Heron on notice of this -- of these issues; right?

A Yes.

Q Can you testify under oath that this condition was repaired in May of 2015?

A To the best of my knowledge, yes.

Q And what's that knowledge based on, Doctor?

A It's based on the fact that I wouldn't have let them not fix these items unless there was some reason and there would be no reason not to fix a water leak.

Q What proof do you have that the leak at the -- at the recirculation pumps was fixed?

MR. GALLIHER: Other than what he just testified to?

MR. GRAF: Yeah.

THE WITNESS: I'm just telling you --

BY MR. GRAF:

Q Do you have a document from Blue Heron saying that they fixed this condition?

A I have thousands of documents from Blue Heron, so maybe.

Q None of those thousands of documents

were produced in this case, Doctor. I have 484 pages and then a couple of more that got produced recently, so I've got probably 500 pages of documents that have been produced by you in this case.

Are you telling me that there are thousands of pages of documents in communication between you and Blue Heron which could specifically involve this issue as to the recirculation pump?

A No.

Did you not request documents from January 15 of 2015 onwards?

Q Sure.

A Many of those documents precede that date.

Q Okay. You would agree with me, though, that January 15 of -- excuse me, January 1st of 2015 is prior to May of 2015; right, Doctor?

A That I won't argue with.

Q So if you had a communication or a document that evidenced Blue Heron repairing this condition after this report, you should have produced that; right, Doctor?

A If I could find it, yes. You -- you

gave us a pretty broad request for documents, and I did the best I could to produce everything, including some documents that do not help my case.

Q So that's what I'm asking, Doctor. Can you point me to any document that shows that these repairs were made by Blue Heron?

A Not as I sit here.

Q Okay. But the documents that we do have show, and from your interrogatory responses indicate, that the same recirculating pumps leaked three months later; right?

A Yes. The same pumps -- I don't know if they were --

Q And that's -- I'm going to ask you that question here in follow-up, too.

Are you aware of any other recirculating pumps, other than the one that's in the master closet and in the single-car garage?

A No.

Q Okay. Okay. And so -- and that's what I want to clarify. The recirculating pumps that we're talking about in this report and the recirculating pumps that we're talking about in response to Interrogatory No. 5, those are the same pumps; right?

MR. GALLIHER: Speculation.

THE WITNESS: Yes.

BY MR. GRAF:

Q Your answer was?

A Yes.

Q So let's talk about a couple of more of these as we go, Doctor.

There is a plumbing leak above the ceiling of the basement bathroom.

Do you see that, Doctor?

A Yes.

Q And this document put you on notice of that plumbing leak?

A This document informed me of that plumbing leak, yes.

Q Did you ever -- you did not add that as another instance of a water leak in the house in response to Interrogatory No. 5; correct, Doctor?

A No, I did not.

Q Why not?

A Because, to be honest, I did not recall that there was a leak.

Q Okay. Is it your understanding that that leak was repaired?

A I would have had them repair that leak,

yes.

Q So same question. What -- do you have an e-mail? Do you have a text? Do you have any type of documentation to show that you requested the repair?

A I may. I would have to look for it. But I do know that I would not have closed on the house with leaks in the house, with really any of these problems with the house.

Q Okay. So did you -- and then the second half of that question is, do you have any documents, an e-mail, a text, a document that shows that Blue Heron came and did these repairs? This specific repair, the leak above the ceiling in the basement bathroom.

A I would have to go back and look specifically for it.

Q So you -- you haven't produced such a document in this case yet?

A I don't recall.

Q You don't recall what, Doctor?

A Well, I produced a lot of documents, and I don't recall whether that was one of them or not. I didn't recall this was one of them. I tried to produce everything in your broad request.

Q Okay.

A I did not have a chance to review every one, because of the time.

Q So the last line item in the plumbing repairs says, "The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house."

Do you see that?

A Which page are you on?

Q I'm still on Swanson 53. The last line item under repair plumbing fixtures.

A Yes.

Q And then it says, "This should be investigated further and repaired as needed."

Do you see that?

A Yes.

Q Same thing, do you have any documents showing that Blue Heron was put on notice of this needed repair?

A No, but I know -- I know that was fixed because there was no such sound in the house.

Q So do you have any documents showing that Blue Heron repaired that?

MR. GALLIHER: Foundation.

THE WITNESS: I would have to look, but

obviously it didn't come up in my first search if you don't have it.

BY MR. GRAF:

Q Okay. Do you know what water hammer is?

A Well, I'm assuming it's some kind of -- I don't know what a water hammer is.

Is that what you're asking me?

Q Yes.

A No, I don't know what a water hammer is.

Q Okay. And it's your testimony, as you sit here today, that you believe that that condition was repaired?

A Yes.

Q Okay. But you don't have any document to show that it was repaired?

A I don't know. I would have to go look again.

Q Okay. So going down to the electrical on the same page, it says, "There is no power at the outlet in the master closet. The cover is also missing from this outlet."

Do you see that?

A Yes.

Q Do you know if that was repaired?

A Yes.

Q Was it repaired?

A Yes.

Q Is -- was there a cover on that outlet?

A Yes.

Q "The whirlpool tub is not GFCI protected."

Do you see that? Same section, a couple down.

A Yes.

Q Do you know if that condition exists today?

A I do not.

Q Do you know if it was repaired or remedied?

A I can only presume it was, but I would have to look at the -- at the whirlpool tub or see if I have a document showing that.

Q As you sit here today, are you aware of any such document?

A I know of no specific document.

Q It says on the next page on 50 -- Swanson 54, the repair exterior, it says "The grout is missing from the tile joints on the patio stairs."

Do you see that?

A Yes.

Q Which -- which patio stairs are we talking about there? Are we talking about the stairs that go down from the pool deck to the basement or are we talking about the patio stairs that are on the stairs by the barbecue area?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: Well, there is no tile on the stairs -- there's a spiral stairway going up from the barbecue, so it would have to be the other stairway.

BY MR. GRAF:

Q Okay. I'm just trying to qualify.

Do you know if that condition was ever repaired?

A I can only presume so.

Q Okay. And did -- today, can you point me to any documents showing that it was repaired?

A I'll just -- I'll answer that question for any future question you ask me, I may have a document, I just don't have it in front of me today. I would be happy to look for it and provide that to you if I can find it.

Q Okay. So -- and mainly what I'm looking for, Doctor, is if there's a transmittal, an

e-mail or something like that that shows you've sent this to Blue Heron and said, Hey, fix this stuff. And then if there's any response as to when and if it got repaired, that's what I'm looking for.

A And you understand that a lot of communication occurs verbally, so I don't always get a written document verifying everything.

Q Okay.

A So I may or may not be able to provide a written document, but it doesn't mean that these things weren't done.

I do know, having had a problem with water, which I think you already know about in the -- and a mold problem, that I would not allow there to be water leaks in my house that were not fixed properly.

Q Okay. So going down on this page, it says "repair garage firewall."

Do you see that?

A Where are you looking?

Q Down on 54, and it's probably the third-from-the-bottom bullet point.

A Okay.

Q It says "repair garage firewall."

Were you aware of that condition needing to be repaired, Doctor?

A I don't even know what a garage firewall is.

Q Okay. So it would be the wall separation between the garage and the actual living space of the home.

So did you have any understanding as to Blue Heron coming in and adding an additional layer of drywall on one of those walls?

A I don't recall.

Q Do you recall Blue Heron coming in and doing any type of fireproofing as to any of the openings or anything like that in the wall that was between the garage and the living space of the house?

A I don't recall. I was gone from that house more than I was in the house at that time. So many things could have happened without my knowledge.

Q Okay. It says "maintain/repair the swimming pool and equipment."

Were you aware -- other than the issue as to the water hammer on the automatic solenoid valves of the pool fill circuit, were you aware of

any other issues with the swimming pool or the equipment?

A Other than these issues?

Q Yes.

A No.

Q Okay. So in terms of this report, it then goes through and gives you a more detailed report as to what they did and how they did it. So if you turn to Swanson 55, it starts the more detailed report. I think that they were calling that previous two pages that we looked at, the summary report, and then it says here, "At your request, a structural, electrical and mechanical inspection of the above property was performed on May 8, 2015."

So did you provide them with access on or about May 8, 2015, to perform this inspection?

A I presume so, yes.

Q Okay. So then as we go through this document, if you look on Swanson 56 and the summary section, it says "the plumbing system is in good condition, but in need of some repair."

Do you see that?

A Yes.

Q Okay. So it's your testimony here today

that you would have had those repairs performed; right?

A Yes.

Q Okay. And then if you keep turning through this document, beginning on page four, there's a description section, and then it's broken down by the various, I guess, subspecialties involved in the house. The first one is structure, then water in terms of seepage or leakage in through the slab.

And then if you turn to page nine of this report, and that's Swanson 63.

A Yes.

Q This is their depiction of their inspection of the plumbing system.

Do you see that?

A Yes.

Q Okay. And if you look on page ten, this document -- when I asked you some questions about the sump pump, this document says in the fourth full paragraph, "the basement bathroom uses a sewage ejector pump to lift the wastewater to the elevation of the main sewer pipe."

Do you see that?

A Yes.

Q Okay. It says, "since these pumps can break down creating a waste backup condition, it is important to have the system serviced at least once a year. At the time of this inspection, the pump was in working order."

Do you see that?

A Yes.

Q Sorry. And then at the bottom of that page, it says, "the following specific deficiencies were noted in the fixtures and the related piping."

Do you see that?

A Yes.

Q And there's where they also list again, "there are leaks at both hot water recirculation pumps."

Do you see that, Doctor?

A Yes.

Q So, Doctor, if you turn -- there's beginning on page -- I can't see that.

MR. GALLIHER: Eighty.

MR. GRAF: Is it 80?

MR. GALLIHER: Swanson 80.

BY MR. GRAF:

Q So Swanson 80, there's a series of

photographs.

A Okay.

Q And specifically on page 81 through 82, there are three photos, photo No. 3, photo No. 4, and photo No. 5 which show the leaking that's occurring at the recirculation pumps; correct?

A Apparently, yes.

Q And in particular photo No. 5, that's showing some leaking and drywall and a framing member that appears to be moist or damp.

Do you see that?

MR. GALLIHER: Object that the document -- the photograph speaks for itself.

THE WITNESS: Yeah, I don't know what -- what I'm seeing here.

BY MR. GRAF:

Q Okay. Do you recall reviewing these photographs upon receiving this report, though, Doctor?

A I do not.

Q Okay. And, again, photo No. 6 indicates the leak in the basement bathroom; correct?

A That's what it says. I can't identify where that is.

Q Do you not see some sort of deformity in

the drywall to the left of the -- whatever that is, a vent or a -- a fan opening?

A Well, I see a couple little spots. Is that what you're referring to?

Q Yeah, do you see that?

A These spots?

Q Sure.

A I see two spots. I don't know what they are.

Q Well, in the report they indicate that that's a moisture or water loss; correct?

A I don't think they report that's the water loss, but they say there is a -- the plumbing leak. I honestly don't know what I'm looking at here.

Q So in the -- when we first looked at Swanson 53, it says, "There is a plumbing leak above the ceiling of the basement bathroom." And it's my understanding from reading this report that that is to -- and in particular, if you look at page 82 and 83, so photos six and seven, six, the description is "there's a plumbing leak in the ceiling of the basement bathroom." Seven says, "There's a plumbing leak at the ceiling of the basement bathroom. This is the water on the floor

under the drip."

So it's my understanding that six is indicating or showing that there's a drip from the ceiling in the basement bathroom.

Do you see that, Doctor?

A Yes.

Q And, again, that -- that drip or that condition, that water leak, that was never indicated in your response to Interrogatory No. 5; correct?

A No, because I think it was fixed.

Q And do you have any documentation to show that it was fixed?

A Well, I know there was no water in that bathroom because I used it all the time.

Q Okay. Do you -- do you recall or do you have any documents showing that somebody came in and fixed whatever the source of the water was in the ceiling of that basement bathroom?

A I don't know.

Q You haven't produced one to date, have you, Doctor?

A No.

Q Okay. And do you know what the source of the water was that was coming from the ceiling

in the basement bathroom?

A No, not as I sit here today.

MR. GALLIHER: It's 12:15. Do you want to break?

MR. GRAF: Yeah.

THE VIDEOGRAPHER: Off the record at 12:15.

(Whereupon, a recess was taken.)

(Exhibit Nos. 13 and 14 were marked for identification.)

THE VIDEOGRAPHER: Back on the video record at 1:48.

BY MR. GRAF:

Q Okay. Doctor, we took our break for lunch. You're aware you're still under oath?

A Yes.

Q During the lunch break, it's my understanding that you did some investigation as to Exhibit No. 12, and in terms of your notes and/or -- you've given us two new documents which appear to be versions of Exhibit 12 that have your typed notes on them; is that a fair statement?

A Yes.

Q So let me talk about those documents real quick.

So as to Exhibits 13 and 14, the red -- on Exhibit 13, the red notes and wording there, on Roman numeral two and Roman numeral three, which is the executive summary of findings, is that your notes?

A Yes. So I think I presented this to the superintendent, his name is Henry, and told him what needed to be done, and then as things were done, I -- I put notes.

Q Do you know Henry's last name?

A It's like Regnault. Something like the car Regnault.

Q So the file I think has his name on it.

MR. GRAF: Counsel, could you spell that name for me?

MR. GALLIHER: R-E-G-N-A-U-L-T is the name that's on the file.

BY MR. GRAF:

Q And it's your understanding -- who does Mr. Regnault work for?

A Blue Heron.

Q Okay. And is there any way for you to tell by looking at the file electronically as to when and if this was actually sent?

A Sent to whom?

Q Kind of my question. So is there any way that you can look at that --

A So this was -- this was -- yeah, I can show you when the document was created. It wasn't -- well, I can maybe find when it was sent to them. But these notations are made by me so I could keep track of what had been fixed and what hadn't.

Q Okay. So --

A So they go in sequence from, you know, this is the first one, I guess, where these things need to be fixed and here's what's been done and explained a few things.

MR. GALLIHER: For the record, you're referring to Exhibit 13 right now?

THE WITNESS: Exhibit 13, to the final one that I have, which kind of addresses everything what has been done or is to be done.

MR. GRAF: Okay. And so the difference --

MR. GALLIHER: Hold on. And that's Exhibit 14?

THE WITNESS: That's Exhibit 14, yes.

BY MR. GRAF:

Q So Exhibit 12 is the original report,

Exhibit 13 has your comments regarding it, and we'll go through a couple of those, and then Exhibit 14, it's your understanding that that is the final version of your notes and everything?

A Yes. So there's two in between that I just found that I e-mailed to Jeff. They were hiding in a folder on my laptop that I hadn't looked called Blue Heron Disputes. I didn't think to look in that. There were some financial disputes and whatnot, so this was in there.

Q So let me stop you there and ask some questions about that real quick.

So the financial dispute that you had with Blue Heron, did it involve change orders?

A One involved a change order. Well, let's see. I can -- I can think of -- I think there were only two. It wasn't a change order. It was something that was built not according to their architectural drawings, so they had to tear it down and rebuild it, and they were charging me for it.

And the second one was they left the house unlocked one night and they came in and stole some of the media equipment that had been installed, just like the boxes in the walls for

the TVs and whatever.

Q Okay.

A And they weren't going to reimburse Ed Hogan. He'll -- he can tell you that when you depose him.

Q So was there any dispute as to these repairs being made by Blue Heron?

A No. Every -- everything that was resolved or how it was going to be resolved is on -- to my knowledge, anyway, is on this Exhibit No. 14.

Q So does -- is there any way that you can look at Exhibit 13 or 14 or the two that are in between when you produce those to tell me when the repairs were completed?

A I didn't put dates on when they were completed, but I suppose if you go through them chronologically and you see what's changed between each of them, each has a date assigned to it --

Q So what is the date that is assigned to Exhibit 13?

A Thirteen, so they're all -- they're all within a month. Like, the first three I think were all in May shortly after -- what's the date on this? May 11th. So they were shortly after

this. And then this one is in June -- the first part of June, I think.

MR. GALLIHER: But --

BY MR. GRAF:

Q So when you say "this," you're talking about Exhibit 14?

A Exhibit 14, yes. So they kind of go in sequence like a week apart or so, I think.

Q Okay. Are you able to tell by looking at the specific documents when the repairs were made specifically?

A Only based on if I -- if it's -- if something isn't noted on one and then it is noted on the next one, it would have been made somewhere -- somewhere between those two.

Q In these documents -- so the difference between 13 and 14 as to the leaks at the -- both recirculation pumps --

A Yes.

Q -- it says there are three leaks inside the house that need to be fixed on Exhibit 13, and I'm assuming that's --

A Yes.

Q -- both recirculation pumps and then the ceiling of the bathroom.

A Yes.

Q And then on 14 it says "fixed by plumber," and I'm assuming that's as to the recirculation pump?

A Yes.

Q And then there's also a reference that says "need plumber to address" on 14 that's been crossed out?

A Right.

Q And then as to the bathroom ceiling leak, it says, "they couldn't find it. I'll monitor. Need plumber to address."

A Yes.

Q So can we --

A So I'm guessing --

Q Go ahead.

A -- what I would normally do with something like this or try to explain my system, is I would have put these red notes first as to what needs to be done, and then if they come back and tell me what was done or what is being done, put it in blue. Once it's all done, then I crossed it off the list.

Q Okay. So at least as of this version, Exhibit 14, the leak in the ceiling of the

bathroom basement hasn't been fixed?

A They couldn't find it.

Q Okay.

A And so I said I would -- well, I'm just going by my notes. I said I would monitor it. I use that -- that bathroom is right to the -- have you been in the house?

Q I have.

A So the bathroom is right next to what I use as my exercise room, so I use that bathroom all the time and I never saw any leaks in there.

Q Okay.

A I meant to call you Mr. Graf. I apologize.

Q So in terms of those leaks and those issues again, though, these are your notes. We don't -- this isn't another document that shows that Rakeman Plumbing came out and made a repair at those two places; right?

A No. This is my way of keeping track of what was done, and I don't know that they ever sent me anything saying here's what we did, because as you probably know if you've bought a house, there's a punch list, and then they take care of things and they just check them off and

then they just say, okay, is there anything else you want us to do.

Q Okay. All right. And we've subpoenaed the records from Rakeman Plumbing, and they don't have any reference to the recirculation pumps prior to August of 2015. So that's why I'm asking.

A Okay.

Q Okay. So -- so then if we look through Exhibit 14, if it's not crossed off and it says that it's an open issue one way or the other, like the third line item, it says -- or fourth line item, "there's no air gap on the icemaker drain line. In addition, we recommend that the drain line be cleaned." It says "Henry will investigate with plumber" is your red note.

A Yes.

Q And then the blue note is "plumber is addressing."

A Yes.

Q But there's no cross-outs.

Does that mean it didn't get completed?

A Well, I don't know if it got completed or not.

Q Okay.

A Because I can't swear that -- maybe it got completed in July and maybe I didn't update this -- this list.

Q Okay. And in particular, say as to the recirculation pumps, it says "fixed by plumber" and then it says need "plumber to address," and that's been crossed out.

But you don't have -- you can't tell me as you sit here today that that wasn't fixed in August of 2015 in the records that we've already looked at?

MR. GALLIHER: Object to the form.

THE WITNESS: Are you asking me could this have been fixed not in May or June but in August instead?

BY MR. GRAF:

Q Yep.

A Well, so if I said it was fixed by plumber in this document, and there's -- I can probably -- if you pull it up, there will be a date stamp of when the document was created. It wasn't created in August or September. It was created in May.

Q Okay.

A So I would have notated that it was

fixed by plumber in May.

Q Okay. And we'll take a look at that.

A And if -- if yours is date stamped today, for some reason, because sometimes if you copy a file I think maybe that happens, I can screen shot it or whatever to show you.

Q Okay.

A Because mine says May.

Q So is it -- I don't like to say is it fair to say.

These documents were created after January 1st, 2015; right, Doctor?

A Yes.

Q You would agree that it's an iteration of Exhibit 12?

A Yes.

Q You would agree that these should have been produced in response to our requests?

A In a perfect world, yes.

Q So you would further agree that there's other documents out there that are in your possession and control that you should probably produce; right, Doctor?

A There may be. I mean, I thought I had produced them all, but I didn't -- I've got a lot

of files on my computer. I looked in the most logical places.

Q Well, let's talk --

A I sent those to you. In fact, obviously I sent one that was not to my advantage, but I sent it to you anyway.

Q And you're referring to Exhibit 12?

A Yes.

Q Okay. So, Doctor, let's talk about where you keep documents like this. Okay. You say your computer, and I have seen you get on your laptop here today.

Is that the same computer that you had back in 2015?

A No.

Q Okay. The files and everything that you're accessing, are they on the physical hard drive of that laptop or are you accessing them in some sort of file safe, file directory that's in the cloud?

A I had a server in my home that everything was kept on for continuity when I changed computers, and now everything is kept in the cloud and migrated it about a couple of years ago or so.

Q Okay. So when we propounded our discovery requests and when you were brought into the case, did you go and look at all of your files to determine or -- whether or not there were any other documents responsive, or do you think, as you sit here today, after we've gone through this information, that you need to go back and look at some other documents?

A I typed in keywords based on your requests, and anything that came up, I sent to you and --

Q All right. So let's take a look at -- oh, my apologies. It's in here someplace. Hold on.

Did we mark the request to produce responses yet?

MR. GALLIHER: No. You've only --

MR. GRAF: I had those.

MR. GALLIHER: You've only remarked the responses so far. But the --

BY MR. GRAF:

Q Okay. Well, I guess we'll go over those later.

Okay. When we got knocked off of our review, we were going through your interrogatory

responses, which is Exhibit -- I forget which now. Six?

MR. GALLIHER: Yes.

BY MR. GRAF:

Q Okay. So --

MR. GALLIHER: His personal?

MR. GRAF: Yes.

THE WITNESS: So are we putting 14 -- 13, 14, and 15 aside?

MR. GRAF: We can put those aside for now, and here's two paperclips for you for 13 and 14 so we don't get those mixed up.

THE WITNESS: Thank you.

MR. GRAF: And 12 should be stapled.

MR. GALLIHER: Yeah, 12, 14.

MR. GRAF: Are you sure you don't have my request to produce responses in that pile there?

MR. GALLIHER: No, these are just the ones that you have given to me. These are one through 14. But you showed them to him, yeah. Because, remember, you showed him the disk copy.

MR. GRAF: Yeah, we did. We did mark that, didn't we?

MR. GALLIHER: So it's got to be

somewhere.

THE WITNESS: Is that the one?

MR. GRAF: Yeah, thank you. Okay. I'm not crazy, at least for that reason.

MR. GALLIHER: Well, I'm not stipulating to that.

MR. GRAF: At least for that reason, I'm not crazy.

MR. GALLIHER: It's two. Two.

BY MR. GRAF:

Q Back on the record, go ahead and talking about Exhibit 2 -- we never went off the record.

And I guess we should have an ECR afterwards to say that there's got to be other documents that are responsive, so I want to actually do a couple of more follow-up questions on your -- the way that you store stuff. In what cloud service is your documents or are your documents?

A Dropbox.

Q Okay. And when was that file service created?

A I'm going to say a couple of years ago, maybe.

Q Two or three?

A Thereabouts, yeah.

Q So 2018 or 2017?

A One of the two. I can't -- I'm trying to think of an event that might have occurred around that period to --

Q Okay. And so you have to have a user name for that. What's the user name?

A I'm sorry?

Q You have to have a user name for Dropbox.

A Yes.

Q What's the user name?

A I don't recall offhand.

Q Is it your e-mail address?

A It may be. I don't know.

Q So what was -- what were your e-mails back in 2018?

A What do you mean, what were they?

Q What were your e-mail addresses back in 2018?

A TVS@TSwansonMD.com.

Q T Victor?

A TVS@TSwansonMD.com.

Q Okay. Any others?

A TV Swanny.

Q S-W-A-N-I?

A S-W-A-N-N-Y @Gmail.com. Let's see. T Swanson at DO -- wait a minute. What year? 2017, '18. So DO -- TSwanson@DOCLV.com.

Q Is that your work e-mail back then?

A Yes.

Swanson hip -- let's see. TSwanson@Swansonhipandknee.com.

Q All one word?

A Yes.

Q No hyphens or anything?

A No.

Q Okay.

A TSwanson@minitotalhip.com. TSwanson@minitotalknee.com. ToddSwanson.orthopedics -- I think that's what it was -- @Gmail.com. And then I also had three infos: Info@Swansonhipandknee, info@minitotalhip, and info@minitotalknee. And I think that was it.

Q Okay. And just for purposes of the record, I assert that these documents, the ones that you have given to me today, 13 and 14, should have been produced as a result of requests to produce, 17 at a bare minimum, 18, 19 potentially, and possibly 20.

So going back to the response to Interrogatory No. 5, we started talking about leak D, as in dog, which is the leaking water pipe near the master closet in or about November 7th, 2017. And then it says, "my assistant, Nicole Whitfield, found moisture in the master closet when she came to work at my house."

So Nicole Whitfield, who is that?

A That's my assistant.

Q Is she still your assistant?

A Yes.

Q Okay. And I think we -- do we have her depo set next week? Or is it the week after?

MR. GALLIHER: Well, I think it's the 30 -- no.

MR. GRAF: It's next week, yeah, I think you're right.

MR. GALLIHER: No, Kelley is next week and then Holly and Gerber are next week.

MR. GRAF: I think she's next week, too. And if not, she's like the third or the fourth.

MR. GALLIHER: Yeah, I want to say she's ...

BY MR. GRAF:

Q All right. So Nicky was the one that

called Rakeman Plumbing for this leak?

A Yes.

Q Okay.

A I was going to school in Denver.

Q And what were you going to school in Denver for?

A They have a senior audit program that I stumbled upon, so I took some engineering, math, physics and computer science courses.

Q Senior audit program for what? What are you auditing?

A I audited several classes.

Q Oh, you're saying you just went and sort of were trying to -- you weren't taking the classes for a specific reason?

A I wasn't taking them for credit.

Q Okay. Anything else that you were doing while you were in Denver?

A My son lived there.

Q Which -- which one?

A Adam.

Q Okay. Was there a point in time when you were training to be -- to change your specialty from orthopedics to some other specialty?

A No.

Q Did you ever take any training or education regarding prosthetics or to produce prostheses?

A Prostheses. Where I trained like how to design them? Is that what you're asking me or --

Q I don't know what I'm asking, Doctor. Did you ever train --

A Then I don't know how to answer.

Q Okay. Did you ever train to --

A I understand.

Q -- try and be a doctor in the area of prosthetics?

A That's what an orthopedic surgeon specializing in hip and knee replacements is, not specifically to design them, but to work with them.

Q Okay. So after March of 2016, your disability, did you then try to change or shift your focus to the area of prosthetics?

A I was just generally interested in math and engineering principles, how a computer chip works, how circuits work, and it was -- it was sort of a perfect opportunity. They had an orthopedic biomechanics testing lab there, so they

welcomed me as much as I welcomed the opportunity.

Q When you say "there," are you just referring to Denver or was this a specific school or company?

A University of Denver.

Q Okay. Now, did you enroll or anything of that nature?

A Through the audit program, yes.

Q Okay. Have you proceeded with that line of education or to go down that road in terms of working in that area further?

A Well, I moved to Toronto. We have a very small place, so I haven't really been able to do too much. We're trying to find a larger place back in the lower 48.

Q Okay. Is it your intent to pursue a further career in the area of prosthetics?

A Not necessarily prosthetics, but I have interests and ideas in engineering -- various engineering principles.

Q Okay. All right. So going back to this response in the interrogatories, it says, "a mold testing company was called after the closet was dry and carpet, baseboard, cabinet, and drywall trades to make repairs."

Q Okay. Do you recall whether or not the repairs that are listed on this page and the subsequent pages, Roman numeral two and three -- do you know if those repairs were made to the house?

A Which are you talking -- can you say again which pages?

Q So the report starts off with a cover page on 51. On 52, it has a table of contents, and then on 53 and 54, it is the, quote/unquote, items to be addressed before releasing the contractor.

Do you see that on page 53? And then there's the list. And the list contains heating and ventilation, plumbing, electrical, interior repairs, exterior repairs, roof repairs.

This is a list of items that had to be repaired; correct, Doctor?

A Yes.

Q Do you know if you gave this list -- or, excuse me, if this list was repaired by Blue Heron?

A So let me go through them and maybe something will stand out.

Q Okay.

A So the answer to your question is yes, I did provide this to them, because I recognize some of the entries that I know they did fix.

Q Such as what?

A Oh, let's see. A cover is missing from the vent fan in the media room.

Q And which page are you on, Doctor?

A That's page two, make interior repairs.

Q So that -- let's go with the Bates stamps because -- we'll say 54.

A Oh, I'm sorry. Fifty-four, yes.

Q And that's an interior repair?

A Yes.

One burner valve on patio grill is not functional. I recall that. The handrail has been removed from the second floor window. The handrail should be properly replaced and the wall penetration sealed.

Q And you're saying that was repaired?

A Yes.

Q Okay.

A The patio slider in the basement media room does not latch, although it took a couple of times for them to fully repair that.

Q Is that the same patio slider that

wouldn't latch when the house was sold --

A Yeah.

Q -- in November of 2017?

A Yeah.

Q That was never really fixed; right?

A Well, we thought -- we thought it was on several occasions.

Q So -- and then the -- the other line item there is "unfinished stucco surface at the roof feature."

Do you know if that was repaired?

A Where do you see that?

Q Where it says "repair exterior."

A Oh, at the roof feature. Well, I don't have an independent recollection of that, but if I provided some of these to them, I provided all of them to them. And I wouldn't have signed off unless I was confident that these problems had been fixed or that there was some logical explanation why they shouldn't be fixed. Leaks at the recirculation pumps would have been something I would have had fixed.

Q Okay. And so can you tell me, as you sit here today, that the leaks at the recirculation pumps that were observed as a result

of this report in May of 2015 aren't the same as the leaks in the recirculating pumps on August 2nd and August 3rd of 2015?

MR. GALLIHER: Object to the form. Calls for speculation and lacks foundations.

THE WITNESS: I have no idea. I probably would not have investigated any of this. I had a busy practice. I had a zillion things going on. I left it up to professionals like this organization, Criterium, and Blue Heron to make the repairs and make sure everything was done properly.

BY MR. GRAF:

Q Okay. And, Doctor, you would agree with me that this report put you on notice that there are leaks in the recirculation pumps in May of 2015; right?

MR. GALLIHER: Object to the form. Foundation.

THE WITNESS: Puts me on notice?

BY MR. GRAF:

Q That there are leaks at both recirculation pumps; right?

A This report states there are leaks at both recirculation pumps, yes.

Q And you received this report; correct?

A Apparently, yes.

Q Okay. You produced this report?

A Yes.

Q Okay. And you would agree with me, right, Doctor, that if this condition -- the leaks at the recirculation pumps existed from May of 2015 through August of 2015, that would be a chronic condition, wouldn't it, Doctor?

MR. GALLIHER: Object to the form.

BY MR. GRAF:

Q Using your definition.

MR. GALLIHER: Foundation.

THE WITNESS: If they existed for that full period, yes.

BY MR. GRAF:

Q Okay. So if Blue Heron didn't make any repairs to the recirculation pumps and they were leaking for a three-month period, that would definitely be a previous condition of moisture; right?

MR. GALLIHER: Form. Foundation. Speculation.

THE WITNESS: I wouldn't have not had them repair that -- those leaks.

BY MR. GRAF:

Q I get your response, Doctor, but you've got to answer my question. Okay?

MR. GRAF: If you could read it back. I understand what you're saying, but listen to the question.

THE WITNESS: Okay.

MR. GRAF: Thank you.

(Whereupon, the record was read.)

THE WITNESS: So you're asking me a hypothetical?

BY MR. GRAF:

Q It doesn't look to be hypothetical, but under a hypothetical, if it was leaking from the date of this report until August of 2015 when it was eventually repaired by Rakeman, that would be a chronic condition, as you define it, of water leak or exposure; right?

A Well, it is a hypothetical because you're saying it wasn't repaired, so you're saying assuming -- let's assume it wasn't repaired in -- what was the date? May? And it continued to leak through August, would that be a chronic condition? Under that hypothetical, I would say yes, I would consider that a chronic condition.

Q Okay. And given that, you should have denoted yes on Question 1A on Exhibit 3, which is the seller's real property disclosure form?

MR. GALLIHER: Based on the hypothetical?

MR. GRAF: If that occurred.

MR. GALLIHER: Well, but that's not how you asked the question so I'm going to object to the form of the question.

BY MR. GRAF:

Q Okay.

A That's assuming I would know about it. If I knew about that, of course, yes, I would have.

Q You knew about it, though, Doctor; right? You got this report May 11, 2015; right?

A You're asking me a hypothetical. I did not know there was a leak and I still don't know there was a leak from May through August.

Q So -- and, Doctor, let's not use hypotheticals. Okay. Let's use this. You're here to testify regarding your knowledge. This document says that there was leaks at the circulation -- recirculation pumps; correct?

A Yes.

Q It's your testimony here today that you put Blue Heron on notice of this -- of these issues; right?

A Yes.

Q Can you testify under oath that this condition was repaired in May of 2015?

A To the best of my knowledge, yes.

Q And what's that knowledge based on, Doctor?

A It's based on the fact that I wouldn't have let them not fix these items unless there was some reason and there would be no reason not to fix a water leak.

Q What proof do you have that the leak at the -- at the recirculation pumps was fixed?

MR. GALLIHER: Other than what he just testified to?

MR. GRAF: Yeah.

THE WITNESS: I'm just telling you --

BY MR. GRAF:

Q Do you have a document from Blue Heron saying that they fixed this condition?

A I have thousands of documents from Blue Heron, so maybe.

Q None of those thousands of documents

were produced in this case, Doctor. I have 484 pages and then a couple of more that got produced recently, so I've got probably 500 pages of documents that have been produced by you in this case.

Are you telling me that there are thousands of pages of documents in communication between you and Blue Heron which could specifically involve this issue as to the recirculation pump?

A No.

Did you not request documents from January 15 of 2015 onwards?

Q Sure.

A Many of those documents precede that date.

Q Okay. You would agree with me, though, that January 15 of -- excuse me, January 1st of 2015 is prior to May of 2015; right, Doctor?

A That I won't argue with.

Q So if you had a communication or a document that evidenced Blue Heron repairing this condition after this report, you should have produced that; right, Doctor?

A If I could find it, yes. You -- you

gave us a pretty broad request for documents, and I did the best I could to produce everything, including some documents that do not help my case.

Q So that's what I'm asking, Doctor. Can you point me to any document that shows that these repairs were made by Blue Heron?

A Not as I sit here.

Q Okay. But the documents that we do have show, and from your interrogatory responses indicate, that the same recirculating pumps leaked three months later; right?

A Yes. The same pumps -- I don't know if they were --

Q And that's -- I'm going to ask you that question here in follow-up, too.

Are you aware of any other recirculating pumps, other than the one that's in the master closet and in the single-car garage?

A No.

Q Okay. Okay. And so -- and that's what I want to clarify. The recirculating pumps that we're talking about in this report and the recirculating pumps that we're talking about in response to Interrogatory No. 5, those are the same pumps; right?

MR. GALLIHER: Speculation.

THE WITNESS: Yes.

BY MR. GRAF:

Q Your answer was?

A Yes.

Q So let's talk about a couple of more of these as we go, Doctor.

There is a plumbing leak above the ceiling of the basement bathroom.

Do you see that, Doctor?

A Yes.

Q And this document put you on notice of that plumbing leak?

A This document informed me of that plumbing leak, yes.

Q Did you ever -- you did not add that as another instance of a water leak in the house in response to Interrogatory No. 5; correct, Doctor?

A No, I did not.

Q Why not?

A Because, to be honest, I did not recall that there was a leak.

Q Okay. Is it your understanding that that leak was repaired?

A I would have had them repair that leak,

yes.

Q So same question. What -- do you have an e-mail? Do you have a text? Do you have any type of documentation to show that you requested the repair?

A I may. I would have to look for it. But I do know that I would not have closed on the house with leaks in the house, with really any of these problems with the house.

Q Okay. So did you -- and then the second half of that question is, do you have any documents, an e-mail, a text, a document that shows that Blue Heron came and did these repairs? This specific repair, the leak above the ceiling in the basement bathroom.

A I would have to go back and look specifically for it.

Q So you -- you haven't produced such a document in this case yet?

A I don't recall.

Q You don't recall what, Doctor?

A Well, I produced a lot of documents, and I don't recall whether that was one of them or not. I didn't recall this was one of them. I tried to produce everything in your broad request.

Q Okay.

A I did not have a chance to review every one, because of the time.

Q So the last line item in the plumbing repairs says, "The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house."

Do you see that?

A Which page are you on?

Q I'm still on Swanson 53. The last line item under repair plumbing fixtures.

A Yes.

Q And then it says, "This should be investigated further and repaired as needed."

Do you see that?

A Yes.

Q Same thing, do you have any documents showing that Blue Heron was put on notice of this needed repair?

A No, but I know -- I know that was fixed because there was no such sound in the house.

Q So do you have any documents showing that Blue Heron repaired that?

MR. GALLIHER: Foundation.

THE WITNESS: I would have to look, but

obviously it didn't come up in my first search if you don't have it.

BY MR. GRAF:

Q Okay. Do you know what water hammer is?

A Well, I'm assuming it's some kind of -- I don't know what a water hammer is.

Is that what you're asking me?

Q Yes.

A No, I don't know what a water hammer is.

Q Okay. And it's your testimony, as you sit here today, that you believe that that condition was repaired?

A Yes.

Q Okay. But you don't have any document to show that it was repaired?

A I don't know. I would have to go look again.

Q Okay. So going down to the electrical on the same page, it says, "There is no power at the outlet in the master closet. The cover is also missing from this outlet."

Do you see that?

A Yes.

Q Do you know if that was repaired?

A Yes.

Q Was it repaired?

A Yes.

Q Is -- was there a cover on that outlet?

A Yes.

Q "The whirlpool tub is not GFCI protected."

Do you see that? Same section, a couple down.

A Yes.

Q Do you know if that condition exists today?

A I do not.

Q Do you know if it was repaired or remedied?

A I can only presume it was, but I would have to look at the -- at the whirlpool tub or see if I have a document showing that.

Q As you sit here today, are you aware of any such document?

A I know of no specific document.

Q It says on the next page on 50 -- Swanson 54, the repair exterior, it says "The grout is missing from the tile joints on the patio stairs."

Do you see that?

A Yes.

Q Which -- which patio stairs are we talking about there? Are we talking about the stairs that go down from the pool deck to the basement or are we talking about the patio stairs that are on the stairs by the barbecue area?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: Well, there is no tile on the stairs -- there's a spiral stairway going up from the barbecue, so it would have to be the other stairway.

BY MR. GRAF:

Q Okay. I'm just trying to qualify.

Do you know if that condition was ever repaired?

A I can only presume so.

Q Okay. And did -- today, can you point me to any documents showing that it was repaired?

A I'll just -- I'll answer that question for any future question you ask me, I may have a document, I just don't have it in front of me today. I would be happy to look for it and provide that to you if I can find it.

Q Okay. So -- and mainly what I'm looking for, Doctor, is if there's a transmittal, an

e-mail or something like that that shows you've sent this to Blue Heron and said, Hey, fix this stuff. And then if there's any response as to when and if it got repaired, that's what I'm looking for.

A And you understand that a lot of communication occurs verbally, so I don't always get a written document verifying everything.

Q Okay.

A So I may or may not be able to provide a written document, but it doesn't mean that these things weren't done.

I do know, having had a problem with water, which I think you already know about in the -- and a mold problem, that I would not allow there to be water leaks in my house that were not fixed properly.

Q Okay. So going down on this page, it says "repair garage firewall."

Do you see that?

A Where are you looking?

Q Down on 54, and it's probably the third-from-the-bottom bullet point.

A Okay.

Q It says "repair garage firewall."

Were you aware of that condition needing to be repaired, Doctor?

A I don't even know what a garage firewall is.

Q Okay. So it would be the wall separation between the garage and the actual living space of the home.

So did you have any understanding as to Blue Heron coming in and adding an additional layer of drywall on one of those walls?

A I don't recall.

Q Do you recall Blue Heron coming in and doing any type of fireproofing as to any of the openings or anything like that in the wall that was between the garage and the living space of the house?

A I don't recall. I was gone from that house more than I was in the house at that time. So many things could have happened without my knowledge.

Q Okay. It says "maintain/repair the swimming pool and equipment."

Were you aware -- other than the issue as to the water hammer on the automatic solenoid valves of the pool fill circuit, were you aware of

any other issues with the swimming pool or the equipment?

A Other than these issues?

Q Yes.

A No.

Q Okay. So in terms of this report, it then goes through and gives you a more detailed report as to what they did and how they did it. So if you turn to Swanson 55, it starts the more detailed report. I think that they were calling that previous two pages that we looked at, the summary report, and then it says here, "At your request, a structural, electrical and mechanical inspection of the above property was performed on May 8, 2015."

So did you provide them with access on or about May 8, 2015, to perform this inspection?

A I presume so, yes.

Q Okay. So then as we go through this document, if you look on Swanson 56 and the summary section, it says "the plumbing system is in good condition, but in need of some repair."

Do you see that?

A Yes.

Q Okay. So it's your testimony here today

that you would have had those repairs performed; right?

A Yes.

Q Okay. And then if you keep turning through this document, beginning on page four, there's a description section, and then it's broken down by the various, I guess, subspecialties involved in the house. The first one is structure, then water in terms of seepage or leakage in through the slab.

And then if you turn to page nine of this report, and that's Swanson 63.

A Yes.

Q This is their depiction of their inspection of the plumbing system.

Do you see that?

A Yes.

Q Okay. And if you look on page ten, this document -- when I asked you some questions about the sump pump, this document says in the fourth full paragraph, "the basement bathroom uses a sewage ejector pump to lift the wastewater to the elevation of the main sewer pipe."

Do you see that?

A Yes.

Q Okay. It says, "since these pumps can break down creating a waste backup condition, it is important to have the system serviced at least once a year. At the time of this inspection, the pump was in working order."

Do you see that?

A Yes.

Q Sorry. And then at the bottom of that page, it says, "the following specific deficiencies were noted in the fixtures and the related piping."

Do you see that?

A Yes.

Q And there's where they also list again, "there are leaks at both hot water recirculation pumps."

Do you see that, Doctor?

A Yes.

Q So, Doctor, if you turn -- there's beginning on page -- I can't see that.

MR. GALLIHER: Eighty.

MR. GRAF: Is it 80?

MR. GALLIHER: Swanson 80.

BY MR. GRAF:

Q So Swanson 80, there's a series of

photographs.

A Okay.

Q And specifically on page 81 through 82, there are three photos, photo No. 3, photo No. 4, and photo No. 5 which show the leaking that's occurring at the recirculation pumps; correct?

A Apparently, yes.

Q And in particular photo No. 5, that's showing some leaking and drywall and a framing member that appears to be moist or damp.

Do you see that?

MR. GALLIHER: Object that the document -- the photograph speaks for itself.

THE WITNESS: Yeah, I don't know what -- what I'm seeing here.

BY MR. GRAF:

Q Okay. Do you recall reviewing these photographs upon receiving this report, though, Doctor?

A I do not.

Q Okay. And, again, photo No. 6 indicates the leak in the basement bathroom; correct?

A That's what it says. I can't identify where that is.

Q Do you not see some sort of deformity in

the drywall to the left of the -- whatever that is, a vent or a -- a fan opening?

A Well, I see a couple little spots. Is that what you're referring to?

Q Yeah, do you see that?

A These spots?

Q Sure.

A I see two spots. I don't know what they are.

Q Well, in the report they indicate that that's a moisture or water loss; correct?

A I don't think they report that's the water loss, but they say there is a -- the plumbing leak. I honestly don't know what I'm looking at here.

Q So in the -- when we first looked at Swanson 53, it says, "There is a plumbing leak above the ceiling of the basement bathroom." And it's my understanding from reading this report that that is to -- and in particular, if you look at page 82 and 83, so photos six and seven, six, the description is "there's a plumbing leak in the ceiling of the basement bathroom." Seven says, "There's a plumbing leak at the ceiling of the basement bathroom. This is the water on the floor

under the drip."

So it's my understanding that six is indicating or showing that there's a drip from the ceiling in the basement bathroom.

Do you see that, Doctor?

A Yes.

Q And, again, that -- that drip or that condition, that water leak, that was never indicated in your response to Interrogatory No. 5; correct?

A No, because I think it was fixed.

Q And do you have any documentation to show that it was fixed?

A Well, I know there was no water in that bathroom because I used it all the time.

Q Okay. Do you -- do you recall or do you have any documents showing that somebody came in and fixed whatever the source of the water was in the ceiling of that basement bathroom?

A I don't know.

Q You haven't produced one to date, have you, Doctor?

A No.

Q Okay. And do you know what the source of the water was that was coming from the ceiling

in the basement bathroom?

A No, not as I sit here today.

MR. GALLIHER: It's 12:15. Do you want to break?

MR. GRAF: Yeah.

THE VIDEOGRAPHER: Off the record at 12:15.

(Whereupon, a recess was taken.)

(Exhibit Nos. 13 and 14 were marked for identification.)

THE VIDEOGRAPHER: Back on the video record at 1:48.

BY MR. GRAF:

Q Okay. Doctor, we took our break for lunch. You're aware you're still under oath?

A Yes.

Q During the lunch break, it's my understanding that you did some investigation as to Exhibit No. 12, and in terms of your notes and/or -- you've given us two new documents which appear to be versions of Exhibit 12 that have your typed notes on them; is that a fair statement?

A Yes.

Q So let me talk about those documents real quick.

So as to Exhibits 13 and 14, the red -- on Exhibit 13, the red notes and wording there, on Roman numeral two and Roman numeral three, which is the executive summary of findings, is that your notes?

A Yes. So I think I presented this to the superintendent, his name is Henry, and told him what needed to be done, and then as things were done, I -- I put notes.

Q Do you know Henry's last name?

A It's like Regnault. Something like the car Regnault.

Q So the file I think has his name on it.

MR. GRAF: Counsel, could you spell that name for me?

MR. GALLIHER: R-E-G-N-A-U-L-T is the name that's on the file.

BY MR. GRAF:

Q And it's your understanding -- who does Mr. Regnault work for?

A Blue Heron.

Q Okay. And is there any way for you to tell by looking at the file electronically as to when and if this was actually sent?

A Sent to whom?

Q Kind of my question. So is there any way that you can look at that --

A So this was -- this was -- yeah, I can show you when the document was created. It wasn't -- well, I can maybe find when it was sent to them. But these notations are made by me so I could keep track of what had been fixed and what hadn't.

Q Okay. So --

A So they go in sequence from, you know, this is the first one, I guess, where these things need to be fixed and here's what's been done and explained a few things.

MR. GALLIHER: For the record, you're referring to Exhibit 13 right now?

THE WITNESS: Exhibit 13, to the final one that I have, which kind of addresses everything what has been done or is to be done.

MR. GRAF: Okay. And so the difference --

MR. GALLIHER: Hold on. And that's Exhibit 14?

THE WITNESS: That's Exhibit 14, yes.

BY MR. GRAF:

Q So Exhibit 12 is the original report,

Exhibit 13 has your comments regarding it, and we'll go through a couple of those, and then Exhibit 14, it's your understanding that that is the final version of your notes and everything?

A Yes. So there's two in between that I just found that I e-mailed to Jeff. They were hiding in a folder on my laptop that I hadn't looked called Blue Heron Disputes. I didn't think to look in that. There were some financial disputes and whatnot, so this was in there.

Q So let me stop you there and ask some questions about that real quick.

So the financial dispute that you had with Blue Heron, did it involve change orders?

A One involved a change order. Well, let's see. I can -- I can think of -- I think there were only two. It wasn't a change order. It was something that was built not according to their architectural drawings, so they had to tear it down and rebuild it, and they were charging me for it.

And the second one was they left the house unlocked one night and they came in and stole some of the media equipment that had been installed, just like the boxes in the walls for

the TVs and whatever.

Q Okay.

A And they weren't going to reimburse Ed Hogan. He'll -- he can tell you that when you depose him.

Q So was there any dispute as to these repairs being made by Blue Heron?

A No. Every -- everything that was resolved or how it was going to be resolved is on -- to my knowledge, anyway, is on this Exhibit No. 14.

Q So does -- is there any way that you can look at Exhibit 13 or 14 or the two that are in between when you produce those to tell me when the repairs were completed?

A I didn't put dates on when they were completed, but I suppose if you go through them chronologically and you see what's changed between each of them, each has a date assigned to it --

Q So what is the date that is assigned to Exhibit 13?

A Thirteen, so they're all -- they're all within a month. Like, the first three I think were all in May shortly after -- what's the date on this? May 11th. So they were shortly after

this. And then this one is in June -- the first part of June, I think.

MR. GALLIHER: But --

BY MR. GRAF:

Q So when you say "this," you're talking about Exhibit 14?

A Exhibit 14, yes. So they kind of go in sequence like a week apart or so, I think.

Q Okay. Are you able to tell by looking at the specific documents when the repairs were made specifically?

A Only based on if I -- if it's -- if something isn't noted on one and then it is noted on the next one, it would have been made somewhere -- somewhere between those two.

Q In these documents -- so the difference between 13 and 14 as to the leaks at the -- both recirculation pumps --

A Yes.

Q -- it says there are three leaks inside the house that need to be fixed on Exhibit 13, and I'm assuming that's --

A Yes.

Q -- both recirculation pumps and then the ceiling of the bathroom.

A Yes.

Q And then on 14 it says "fixed by plumber," and I'm assuming that's as to the recirculation pump?

A Yes.

Q And then there's also a reference that says "need plumber to address" on 14 that's been crossed out?

A Right.

Q And then as to the bathroom ceiling leak, it says, "they couldn't find it. I'll monitor. Need plumber to address."

A Yes.

Q So can we --

A So I'm guessing --

Q Go ahead.

A -- what I would normally do with something like this or try to explain my system, is I would have put these red notes first as to what needs to be done, and then if they come back and tell me what was done or what is being done, put it in blue. Once it's all done, then I crossed it off the list.

Q Okay. So at least as of this version, Exhibit 14, the leak in the ceiling of the

bathroom basement hasn't been fixed?

A They couldn't find it.

Q Okay.

A And so I said I would -- well, I'm just going by my notes. I said I would monitor it. I use that -- that bathroom is right to the -- have you been in the house?

Q I have.

A So the bathroom is right next to what I use as my exercise room, so I use that bathroom all the time and I never saw any leaks in there.

Q Okay.

A I meant to call you Mr. Graf. I apologize.

Q So in terms of those leaks and those issues again, though, these are your notes. We don't -- this isn't another document that shows that Rakeman Plumbing came out and made a repair at those two places; right?

A No. This is my way of keeping track of what was done, and I don't know that they ever sent me anything saying here's what we did, because as you probably know if you've bought a house, there's a punch list, and then they take care of things and they just check them off and

then they just say, okay, is there anything else you want us to do.

Q Okay. All right. And we've subpoenaed the records from Rakeman Plumbing, and they don't have any reference to the recirculation pumps prior to August of 2015. So that's why I'm asking.

A Okay.

Q Okay. So -- so then if we look through Exhibit 14, if it's not crossed off and it says that it's an open issue one way or the other, like the third line item, it says -- or fourth line item, "there's no air gap on the icemaker drain line. In addition, we recommend that the drain line be cleaned." It says "Henry will investigate with plumber" is your red note.

A Yes.

Q And then the blue note is "plumber is addressing."

A Yes.

Q But there's no cross-outs.

Does that mean it didn't get completed?

A Well, I don't know if it got completed or not.

Q Okay.

A Because I can't swear that -- maybe it got completed in July and maybe I didn't update this -- this list.

Q Okay. And in particular, say as to the recirculation pumps, it says "fixed by plumber" and then it says need "plumber to address," and that's been crossed out.

But you don't have -- you can't tell me as you sit here today that that wasn't fixed in August of 2015 in the records that we've already looked at?

MR. GALLIHER: Object to the form.

THE WITNESS: Are you asking me could this have been fixed not in May or June but in August instead?

BY MR. GRAF:

Q Yep.

A Well, so if I said it was fixed by plumber in this document, and there's -- I can probably -- if you pull it up, there will be a date stamp of when the document was created. It wasn't created in August or September. It was created in May.

Q Okay.

A So I would have notated that it was

fixed by plumber in May.

Q Okay. And we'll take a look at that.

A And if -- if yours is date stamped today, for some reason, because sometimes if you copy a file I think maybe that happens, I can screen shot it or whatever to show you.

Q Okay.

A Because mine says May.

Q So is it -- I don't like to say is it fair to say.

These documents were created after January 1st, 2015; right, Doctor?

A Yes.

Q You would agree that it's an iteration of Exhibit 12?

A Yes.

Q You would agree that these should have been produced in response to our requests?

A In a perfect world, yes.

Q So you would further agree that there's other documents out there that are in your possession and control that you should probably produce; right, Doctor?

A There may be. I mean, I thought I had produced them all, but I didn't -- I've got a lot

of files on my computer. I looked in the most logical places.

Q Well, let's talk --

A I sent those to you. In fact, obviously I sent one that was not to my advantage, but I sent it to you anyway.

Q And you're referring to Exhibit 12?

A Yes.

Q Okay. So, Doctor, let's talk about where you keep documents like this. Okay. You say your computer, and I have seen you get on your laptop here today.

Is that the same computer that you had back in 2015?

A No.

Q Okay. The files and everything that you're accessing, are they on the physical hard drive of that laptop or are you accessing them in some sort of file safe, file directory that's in the cloud?

A I had a server in my home that everything was kept on for continuity when I changed computers, and now everything is kept in the cloud and migrated it about a couple of years ago or so.

Q Okay. So when we propounded our discovery requests and when you were brought into the case, did you go and look at all of your files to determine or -- whether or not there were any other documents responsive, or do you think, as you sit here today, after we've gone through this information, that you need to go back and look at some other documents?

A I typed in keywords based on your requests, and anything that came up, I sent to you and --

Q All right. So let's take a look at -- oh, my apologies. It's in here someplace. Hold on.

Did we mark the request to produce responses yet?

MR. GALLIHER: No. You've only --

MR. GRAF: I had those.

MR. GALLIHER: You've only remarked the responses so far. But the --

BY MR. GRAF:

Q Okay. Well, I guess we'll go over those later.

Okay. When we got knocked off of our review, we were going through your interrogatory

responses, which is Exhibit -- I forget which now. Six?

MR. GALLIHER: Yes.

BY MR. GRAF:

Q Okay. So --

MR. GALLIHER: His personal?

MR. GRAF: Yes.

THE WITNESS: So are we putting 14 -- 13, 14, and 15 aside?

MR. GRAF: We can put those aside for now, and here's two paperclips for you for 13 and 14 so we don't get those mixed up.

THE WITNESS: Thank you.

MR. GRAF: And 12 should be stapled.

MR. GALLIHER: Yeah, 12, 14.

MR. GRAF: Are you sure you don't have my request to produce responses in that pile there?

MR. GALLIHER: No, these are just the ones that you have given to me. These are one through 14. But you showed them to him, yeah. Because, remember, you showed him the disk copy.

MR. GRAF: Yeah, we did. We did mark that, didn't we?

MR. GALLIHER: So it's got to be

somewhere.

THE WITNESS: Is that the one?

MR. GRAF: Yeah, thank you. Okay. I'm not crazy, at least for that reason.

MR. GALLIHER: Well, I'm not stipulating to that.

MR. GRAF: At least for that reason, I'm not crazy.

MR. GALLIHER: It's two. Two.

BY MR. GRAF:

Q Back on the record, go ahead and talking about Exhibit 2 -- we never went off the record.

And I guess we should have an ECR afterwards to say that there's got to be other documents that are responsive, so I want to actually do a couple of more follow-up questions on your -- the way that you store stuff. In what cloud service is your documents or are your documents?

A Dropbox.

Q Okay. And when was that file service created?

A I'm going to say a couple of years ago, maybe.

Q Two or three?

A Thereabouts, yeah.

Q So 2018 or 2017?

A One of the two. I can't -- I'm trying to think of an event that might have occurred around that period to --

Q Okay. And so you have to have a user name for that. What's the user name?

A I'm sorry?

Q You have to have a user name for Dropbox.

A Yes.

Q What's the user name?

A I don't recall offhand.

Q Is it your e-mail address?

A It may be. I don't know.

Q So what was -- what were your e-mails back in 2018?

A What do you mean, what were they?

Q What were your e-mail addresses back in 2018?

A TVS@TSwansonMD.com.

Q T Victor?

A TVS@TSwansonMD.com.

Q Okay. Any others?

A TV Swanny.

Q S-W-A-N-I?

A S-W-A-N-N-Y @Gmail.com. Let's see. T Swanson at DO -- wait a minute. What year? 2017, '18. So DO -- TSwanson@DOCLV.com.

Q Is that your work e-mail back then?

A Yes.

Swanson hip -- let's see. TSwanson@Swansonhipandknee.com.

Q All one word?

A Yes.

Q No hyphens or anything?

A No.

Q Okay.

A TSwanson@minitotalhip.com. TSwanson@minitotalknee.com. ToddSwanson.orthopedics -- I think that's what it was -- @Gmail.com. And then I also had three infos: Info@Swansonhipandknee, info@minitotalhip, and info@minitotalknee. And I think that was it.

Q Okay. And just for purposes of the record, I assert that these documents, the ones that you have given to me today, 13 and 14, should have been produced as a result of requests to produce, 17 at a bare minimum, 18, 19 potentially, and possibly 20.

So going back to the response to Interrogatory No. 5, we started talking about leak D, as in dog, which is the leaking water pipe near the master closet in or about November 7th, 2017. And then it says, "my assistant, Nicole Whitfield, found moisture in the master closet when she came to work at my house."

So Nicole Whitfield, who is that?

A That's my assistant.

Q Is she still your assistant?

A Yes.

Q Okay. And I think we -- do we have her depo set next week? Or is it the week after?

MR. GALLIHER: Well, I think it's the 30 -- no.

MR. GRAF: It's next week, yeah, I think you're right.

MR. GALLIHER: No, Kelley is next week and then Holly and Gerber are next week.

MR. GRAF: I think she's next week, too. And if not, she's like the third or the fourth.

MR. GALLIHER: Yeah, I want to say she's ...

BY MR. GRAF:

Q All right. So Nicky was the one that

called Rakeman Plumbing for this leak?

A Yes.

Q Okay.

A I was going to school in Denver.

Q And what were you going to school in Denver for?

A They have a senior audit program that I stumbled upon, so I took some engineering, math, physics and computer science courses.

Q Senior audit program for what? What are you auditing?

A I audited several classes.

Q Oh, you're saying you just went and sort of were trying to -- you weren't taking the classes for a specific reason?

A I wasn't taking them for credit.

Q Okay. Anything else that you were doing while you were in Denver?

A My son lived there.

Q Which -- which one?

A Adam.

Q Okay. Was there a point in time when you were training to be -- to change your specialty from orthopedics to some other specialty?

A No.

Q Did you ever take any training or education regarding prosthetics or to produce prostheses?

A Prostheses. Where I trained like how to design them? Is that what you're asking me or --

Q I don't know what I'm asking, Doctor. Did you ever train --

A Then I don't know how to answer.

Q Okay. Did you ever train to --

A I understand.

Q -- try and be a doctor in the area of prosthetics?

A That's what an orthopedic surgeon specializing in hip and knee replacements is, not specifically to design them, but to work with them.

Q Okay. So after March of 2016, your disability, did you then try to change or shift your focus to the area of prosthetics?

A I was just generally interested in math and engineering principles, how a computer chip works, how circuits work, and it was -- it was sort of a perfect opportunity. They had an orthopedic biomechanics testing lab there, so they

welcomed me as much as I welcomed the opportunity.

Q When you say "there," are you just referring to Denver or was this a specific school or company?

A University of Denver.

Q Okay. Now, did you enroll or anything of that nature?

A Through the audit program, yes.

Q Okay. Have you proceeded with that line of education or to go down that road in terms of working in that area further?

A Well, I moved to Toronto. We have a very small place, so I haven't really been able to do too much. We're trying to find a larger place back in the lower 48.

Q Okay. Is it your intent to pursue a further career in the area of prosthetics?

A Not necessarily prosthetics, but I have interests and ideas in engineering -- various engineering principles.

Q Okay. All right. So going back to this response in the interrogatories, it says, "a mold testing company was called after the closet was dry and carpet, baseboard, cabinet, and drywall trades to make repairs."

So again, I'll ask you those same lines of questions. Was the carpet replaced as a result of this loss or water damage?

A No, not to my knowledge.

Q Okay. So the baseboards in this instance that are listed here, were they replaced?

A No. I think that's the -- the kick panels again.

Q So the kick boards or, excuse me, the kick panels, toe kicks --

A Yeah.

Q -- to the cabinets replaced as a result of this water loss?

A They weren't replaced as new -- as if new ones were put in. They were just put back in place.

Q Okay. Any of the cabinets replaced?

A Not to my knowledge.

Q And any drywall that was replaced?

A Not to my knowledge.

Q It says, "I immediately called Ivan Sher."

Who is Ivan Sher?

A He's the broker that I had basically contracted with to sell my house.

Q So he was your broker?

A Yes.

Q Okay. "And who notified the buyers' agent of the water leak, and I made a written disclosure of the leak to the buyer."

So when you say you "made a written disclosure of the leak to the buyer," that's one of those addendums where you said there's been a water leak and you signed it and you sent it off?

A Yes.

Q Okay. Now why did you do that?

A Because my understanding was that if there is an active, ongoing problem, that needs to be disclosed to the buyer.

Q Okay. And you didn't do a similar addendum to the SRPD as to A, B, or C; correct?

A Those problems were not active at the time, so I did not.

Q Okay. And going to Interrogatory No. 10, it says, "Please state with specificity the reason or reasons you marked no on the seller's real property disclosure form for the question asking are you aware of, in quotes, previous or current moisture conditions and/or water damage, period, end quote."

And what was your response there, Doctor?

A I think we had a long discussion about that earlier.

Q I know. What was your response here in this verified document?

A It was my understanding -- you want me to read this?

Q I do.

A "It was my understanding that if there were no ongoing problems with the property I -- i.e., any prior problem had been fully repaired, that the proper way to answer the question on the SRPD was no."

Q Okay. So as to the water leak in Exhibit 12, which is the report that Criterion prepared, in the basement bathroom, though, that one you would agree was never repaired?

A Well, I don't know if there ever really was a leak, even though they --

Q The report says there was a leak, though; right, Doctor?

A I could never find evidence of it, nor could anyone else.

Q You couldn't find any other evidence

other than the puddle of water on the ground in the bathroom; right?

A I never found a puddle of water on the ground. I was down there literally four or five times a week using that bathroom, and I don't recall any water, so I don't --

Q You would agree --

A I mean, I wish -- I wish I could explain it to you, but -- I don't know what they saw, but it wasn't --

Q Well, if we look at Exhibit 12, and I think it's pictures -- and even if we look in Exhibit 14 or -- or, there, I've got 13 in my hand, but if we look at pictures six and seven, they have a description that says, "there's a plumbing leak in the ceiling of the bathroom," and then seven says "this is the water on the floor under the drip." So somebody saw some water from a drip from the ceiling; right?

A I don't know what they saw. We don't know where that water on the floor came from. I -- I can't say where it came from. Maybe the toilet over -- it overflowed and there was some water on the floor. I have no idea.

But I lived in the house for two years,

and I can tell you there was never any water dripping from that ceiling.

Q Okay. So Interrogatory No. 11 states, "Please state your rationale for why a repaired leak does not qualify as a pre -- in quotes, previous, end quote, moisture condition." And that response says, "Objection, calls for a legal conclusion and invades the attorney-client privilege."

I previously asked you whether or not you sought the assistance of an attorney in preparing the SRPD; correct?

A Yes.

Q So when you filled out this form, when it asked you if you're aware of the following, and it says "previous or current moisture conditions and/or water damage." So if you read this in the disjunctive, you could say previous water damage.

So why didn't you mark yes for the fact that there was previous water damage?

MR. GALLIHER: Objection. Asked and answered.

THE WITNESS: Where -- which one are you reading? Which interrogatory are we on?

BY MR. GRAF:

Q Number 11.

A So -- and what was your question?

Q Well, the question is, "Please state your rationale for why a repaired leak does not qualify as a previous moisture condition."

You say it calls for a legal conclusion and invades the attorney-client privilege. And I'm just trying to verify a couple of things foundationally.

You did not seek the assistance of an attorney to fill out the SRPD; correct?

A No.

Q So your interpretation is your interpretation; right?

A Yes.

Q Okay. So my question is -- if you read that very simple sentence, "previous water damage," because it says "previous or current moisture conditions and/or water damage." It's a pretty broad statement, and if you read it without the "or current moisture conditions," you say previous water damage. So previous moisture condition.

How would those conditions that we've

talked about this morning not be responsive to that?

MR. GALLIHER: Okay. I'm going to object to the question -- hold on -- and the problem with this -- with Interrogatory No. 11 is it asks for current rationale, not the rationale when he filled out the SRPD. His current rationale relies in large measure on conversations he's had with his attorney and, therefore, this question invades attorney-client privilege and I'm going to instruct him not to answer.

MR. GRAF: I'm not trying to seek that, so I want to make sure we're clear here on the record. I'm trying to seek what his rationale was for saying that it wasn't a previous -- I could care less what he thinks today. This is all relevant as to when you filled out the SRPD.

BY MR. GRAF:

Q So I want to know what your rationale was as to why that wasn't a previous moisture condition back in October 24, 2017.

MR. GALLIHER: Okay. Same instruction, because that's the same question as Interrogatory No. 10, so it's asked and answered. Interrogatory No. 10 asks the reasons or reasons --

MR. GRAF: And if that's your response, then that's your response. You didn't think you had to tell -- tell or identify previous moisture conditions?

MR. GALLIHER: Misstates his testimony.

THE WITNESS: Well, I think we had a long discussion about that this morning. I think I answered that question.

BY MR. GRAF:

Q Okay. And what was that response, Doctor?

MR. GALLIHER: Objection. Asked and answered.

BY MR. GRAF:

Q You can still answer, Doctor.

A I understood a previous moisture condition to be something that was ongoing, not an acute water leak that was identified immediately, fixed, and had no lingering consequences.

Q Okay. So you said a lot of things there, but when you say "ongoing," you're referring to ongoing as of the date and time that you signed the SRPD; correct?

A Yes.

Q Okay. You have an understanding that

previous would mean in the past; right?

A Yes.

Q Okay. So that means that if there was water damage in the past, why wouldn't you identify or mark yes?

MR. GALLIHER: Objection. Asked and answered. It's an incomplete hypothetical. It seeks a legal conclusion and assumes facts not in evidence.

BY MR. GRAF:

Q You can still answer, Doctor.

A I don't know of any water damage, unless you want to say that the electronics weren't working, which I'm not even sure that's true, but they were replaced, because of the water. Otherwise, I know of no other damage and my understanding in general of the SRPD is that it is to protect the buyer from something that would cause long-term harm to them, reduce the value of the home, and certainly replacing electronics with brand-new electronics would have no effect on that.

Q Okay. So in Interrogatory No. 14, we asked you to identify each and every lawsuit to which you've been a party. Do you see that?

A Yes.

Q Okay. So there's no response there, and it says that it's publicly available. It's -- that's not the standard as to whether or not you provide it, so I'll ask you again here.

So which lawsuits have you been a party to?

MR. GALLIHER: I'll object to the -- that it's -- to the relevance to that and that it potentially invades attorney-client privilege.

But go ahead, tell him what you know.

THE WITNESS: Well, let's see.

MR. GALLIHER: Hold on, before you -- but I am going to instruct you that if you're under any type of confidentiality requirement or nondisclosure agreement with respect to any of those, I'm going to instruct you not to answer those.

MR. GRAF: No. And if that's the case, we're going to have to call the discovery commissioner because that's not how it's applied. At all. This is a legal proceeding. He has a responsibility to come here and testify. And most of those provisions are going to have a carve-out for purposes of testifying in a setting like this.

MR. GALLIHER: I'm not saying if there's a -- if there's a -- well, I'm not saying if there's a settlement agreement and the -- and the terms of settlement are confidential.

MR. GRAF: Yeah.

MR. GALLIHER: That's not what I'm talking about.

MR. GRAF: Okay. But the actual existence of a lawsuit that's been filed in a public forum, I don't think you can instruct him not to answer.

MR. GALLIHER: I can if -- if the lawsuit has been sealed, and I don't know if that's the case, but I think he doesn't have to testify about a sealed lawsuit. That's the purpose of getting a lawsuit sealed. So that's the purpose of my instruction. If he is involved in a lawsuit that's been sealed, he doesn't need to disclose that.

MR. GRAF: No. I don't think that's accurate. I think the purpose of sealing it is sealing it from the public record. That does not disparent -- does not cut off his obligation to testify as to the information. That's two different things. Sealing a record is something

that's done as to the official record of whatever county or city or -- excuse me, city or state. It's not whether or not he has an obligation to testify here today.

MR. GALLIHER: Okay.

MR. GRAF: So --

MR. GALLIHER: Let him answer the question and see where it goes.

MR. GRAF: All right.

THE WITNESS: Okay. Well, I don't have a problem answering it. It just may take a little while.

BY MR. GRAF:

Q Okay.

A Let's see, malpractice lawsuits, so I had --

Q You said five or six?

A Yeah.

Q So do we know -- as you sit here today, do you know the names of any of those people that filed the malpractice cases?

A Yes, I know -- I think I probably know them all.

Q Okay.

A Glen Davis, that was in California.

Q Yep.

A Let's see. Francis Fotius, don Ware, Frank Marone.

Q Do you know how to spell Ware? Is it --

A W-A-R-E.

Frank Marone. The last one I only know are -- her last name, Elisi-Magnovero. It's a hyphenated name. Elisi-Magnovero. Nilson.

Q How do you spell that?

A N-I-L-S-O-N.

And then I was just served, believe it or not, even though I'm not practicing, with a lawsuit, and I can't remember his name other than it starts with an S.

Q Here in -- is the lawsuit in Clark County?

A Yes.

Q Okay.

A And then in our dealings with CLS during the sale, they sued us for -- well, I don't know if you want to hear the details. It doesn't have much relevance.

Q Did you get personally sued?

A Yeah.

Q Or did your entity get sued?

A I always get personally sued, never an entity gets sued. Let's see.

Q And is that case ongoing, the CLS?

A No, no, we just resolved it.

I was sued by two CEOs of a hospice we were invested in, John Bettencort and Dan Granderath.

Q How do you spell that last name?

A G-R-A-N-D-E-R-A-T-H.

Q And where is that?

A Here in Las Vegas.

Q And was this -- the CLS lawsuit in Las Vegas, also?

A Yes.

Q Okay. Thank you.

A Troy Herbst.

Q What's that one about?

A Over a construction defect on a house that I presumably built as an owner/builder, although I didn't know it until after the fact.

Q Oh, did he buy a house that you had had built or spec'd?

A Yeah.

Q Okay.

A We were involved in a -- a lawsuit from

mold which you had questioned me about I think somewhere.

Q That's the Planting Fields house?

A The Planting Fields Place.

Q Okay. That's Trophy Homes you sued?

A Trophy Homes, yeah.

I may have missed one or two. I can't -- I can't remember as I sit here, but --

Q So you were involved in a lawsuit in South Dakota?

A Oh, yeah, yeah. How could I forget that one.

Q And who sued you?

A Richard Jones.

Q Has that been resolved?

A Oh, yeah.

Q Okay. So that's resolved and closed?

A (Nodding head.)

Q Okay. And did you get -- did you get divorced in Clark County?

A Yes.

Q Okay. And any other suits?

A I can't think of them as we sit here. You've got a list probably, so ...

Q I know of one more.

So did you have litigation outside of your divorce with your wife, your ex-wife?

A We went back one time when I was sick with my ulcerative colitis to try to get the alimony payment reduced.

Q No, this wasn't a family court case. Did you guys have a case between the two of you alleging damages?

A Between the two of us? Other than the divorce?

Q Yeah.

A Not that I know of.

Q Okay. It's back in 2005, case A502401, Todd Swanson versus Julie Swanson.

A I think that was -- the only thing I recall is going back for the reduction in alimony, because my divorce attorney -- is that the one that went to appeal?

Q Don't know.

MR. GALLIHER: I don't think it has a C case number if it was in family court, though.

MR. GRAF: No, it wouldn't. So that's why I know it's not.

THE WITNESS: It's what?

MR. GALLIHER: It wouldn't have a C

before the case number if it was in family court. This would be -- this is in civil-criminal court.

THE WITNESS: I sued her in -- well, you're going to have to give me some hints, because I don't know what it is offhand. That's the year that our divorce was finalized. I don't know why I would sue her for anything that year.

BY MR. GRAF:

Q Okay. What about Shannon Mathis?

A I don't know who that is.

Q It's Case No. 04 -- 4-A-478713.

A Shannon Mathis.

Q Spelled M-A-T-H-I-S.

A Is it a -- a malpractice or something else?

Q I don't think so. I couldn't find anything specific on that.

A I don't even know who that is. I don't recognize the name.

Q All right. We talked about Frank Marone, so -- all right.

Of those cases, did you testify or get deposed in any of those cases that we just talked about? So let's just go through them, and you tell me if you testified or got deposed.

So Glen Davis?

A No.

Q Francis Fotius?

A I don't recall if I got deposed. I think -- I don't think so, but I don't recall.

Q Don Ware?

A Yes.

Q Frank Marone?

A No.

Q Elisi-Magnovero?

A No.

Q Nilson?

A No.

Q The CLS case?

A No.

Q The Bettencort/Granderath case?

A No.

Q The -- I know you got deposed in the Planting Fields case; right?

A Yes.

Q Versus Trophy Homes.

What about in the Herbst case?

A Yes.

Q Is the Herbst case still going --

A No.

Q -- or has that been resolved?

A We resolved that a long -- a couple years ago. A few years ago.

Q Did you get deposed in the South Dakota case?

A Yes.

Q All right. And then did you get deposed in your divorce case?

A Yes, I'm sure I did.

Q Okay. So just in turn -- let's talk about the Planting Fields case. You -- you were a party to that litigation; correct?

A Yes.

Q You and your wife were the plaintiffs?

A Yes.

Q Now, I can't find another caption. I can only find the deposition transcripts.

Were the children parties to that case or you as guardians of the children?

A Yes.

Q Okay. And was there -- was there a third-party complaint that was filed in that case by the Trophy versus all of the subs?

A Probably.

Q Okay. So do you remember getting

deposed on or about October 22nd, 2004?

A Over that case?

Q Yes. It appears there were two volumes of your deposition. I'm not trying to confuse you, so I want to make sure we're clear going into this. You had two -- two different sessions of your deposition: One dated October 22nd, 2004, and then one dated November 12, 2004.

Do you recall that?

A I don't recall them specifically, no.

Q Okay. What -- let's talk about that case generally.

What was that case about?

A We had -- we had hired Trophy Homes to build kind of a semi-custom home, which they built for us. And we moved in and I just started having headaches, and I just assumed that it was something with work or something else. And I had had some sinus problems, but after living there for a couple of years, we noticed a little water around our shower. So we asked them to come and take a look at it. And they basically tore out the drywall and there was mold inside the wall and so they found mold there. There was a second leak under the French door right next to my bed where

apparently they found mold, and not just in the -- the mold wasn't just in the floor or the wall; it was in the air.

And then a third place was a window that they had installed wrong, so there was water seeping into the wall there. And so we were advised to move out and we had to leave -- had to destroy or leave or have cleaned, especially a bunch of our belongings, but anyway basically filed a -- a construction defect case and a personal injury case for the mold.

Q And that case is resolved and closed?

A Yes.

Q Okay. So had you previously -- previous to the Planting Fields Place, had you been sued -- you or your wife been sued by a subsequent purchaser of one of the homes that you had sold?

A Yes. The very first home we owed -- owned, when we sold it, we had drapes hanging in one of the rooms. And we talked to our Realtor, they said the drapes -- the things that aren't attached, like blinds or something, are not part of the house, so we took the drapes because we thought we could use them in our next house. And they sued us for that and so we went to court and

we won the case.

Q Was there any allegation as to roof leaks in that case?

A No.

Q Did you have another lawsuit that involved roof leaks? You -- you getting sued for roof leaks?

A We -- us getting sued?

Q Yes.

A For roof leaks? Not that I recall.

Q Okay.

A At that house? Or any one?

Q Another house. Not the Planting Fields residence.

A Us getting sued for roof leaks? Not that I recall. I mean, if you tell me the -- what you've got, I'll tell you if we did or not. I just don't recall anything.

Q So there appears to be some testimony on page 18 of volume one of your deposition in that case. "The other one was a case where we, Julie actually did most of the legwork on this, but we had hired someone to take care of a couple of water leaks. When it rained" --

A This is --

Q -- "we had a leak in our roof and then we" --

A Is this at --

Q -- "had some leaks around the balcony. And so it was a company called Ajax, I believe, that came in and did the work and never really fixed the problem. The roof still leaked, the deck still leaked so we took that to small claims court and basically I don't think either party prevailed."

A Yeah. So I thought you -- I thought you said did someone sue us.

Q Oh, I'm sorry, I must have misspoke. I apologize.

A Yeah. So I don't remember the roof leak, but I remember we hired someone -- there was some water leakage around a deck, so we hired this company -- I think Ajax is the name of the company -- and they charged us to fix it. They fixed it, but it still leaked, so we took them to small claims court. And I don't think -- I don't think we got anything out of it. It was a waste of time.

Q And that was involving the 2870 Elk Canyon Court?

A Yes.

Q Okay. So in the Planting Fields residence, it appears that there were a series of four different leaks in that house.

A Three that I recall.

Q Okay. So there was a water pipe that had a nail in it that had worked free.

Do you recall that leak?

A What part of the house? Does it say?

Q It doesn't say.

A So I don't recall that specifically.

Q Okay. So the French doors leaked?

A That was one, yes.

Q And then around the bathroom shower panels, those leaked?

A Yes. Yes.

Q And then you had a window that was installed improperly?

A Yes.

Q Okay. So those four leaks and everything else, when you sold the Planting Fields residence, did you fill out an SRPD?

A I didn't sell the house because my then ex-wife moved back into the house, waited for the market to come -- well, I can't remember. She

moved in and -- anyway, after our divorce in '05, real estate was doing very well, and she was a Realtor, so she took advantage of it and sold it, and made pretty good money on it, from what I heard.

Q And you didn't have to sign off on the SRPD?

A No.

Q Okay.

A She got the house in the divorce.

Q Okay. What about the Elk Canyon property, did you sign off on the SRPD on that property?

A I presume so, if there was an SRPD then, which there was.

Q Okay. So in this case, you were asked some questions about some of the furniture that was left in the house, and then I guess subsequently the furniture got donated or something like that. There were some questions as to whether or not you were aware that the furniture could or couldn't be cleaned.

Do you recall any of that?

A In the Planting Fields Place?

Q Yes.

A I don't recall that. What --

Q So at some point in time -- on page 125 of the October deposition, it says, "Did anybody tell you that there were items that could not, under any circumstances, be cleaned?" And your answer was, "Yes, Linda Stetzenbach, as I said, told us basically that anything with a cushion thicker than an inch, to the best of my recollection, could not be sufficiently cleaned."

Do you recall that?

A I don't recall that, but I wouldn't question --

Q Okay.

A -- if she said that.

Q So in that instance, in terms of the cleaning and that sort of thing, so there was at least four instances of water losses in the master bedroom in the 42 Meadowhawk property; right?

A We're back to 42 Meadowhawk now?

Q I am.

A Okay. There were at least four what?

Q Instances of water, moisture conditions that existed in that master bathroom; correct?

A Well, I don't consider them moisture conditions for the reasons we just talked about,

but there were four -- one, two, three -- there were four water leaks prior to the -- to the final leak.

Q Okay. And in each instance, the carpet was made wet and never replaced; right?

A Yes.

Q Okay. All right. So did we ever ascertain as to whether or not the trust is the manager of Lyons Development?

A It is.

Q It is. Okay.

And you're the trustee or the cotrustee of the trust; correct?

A Yes.

Q Okay. Does anybody else have any ownership interest in Lyons Development?

A No.

Q Okay. Has Lyons Development ever been sued?

MR. GALLIHER: Other than this case?

MR. GRAF: Other than this case.

THE WITNESS: No.

BY MR. GRAF:

Q Okay. What, if anything, does Lyons Development own today?

A Today, it owns nothing.

Q Was -- Lyons Development was in existence when you purchased the lot at 42 Meadowhawk; correct?

A Yes. Well, I think your old partner, Gary Schnitzer, created the LLC for the purpose of putting that piece of land in the LLC.

Q Lyons Development?

A Yes.

Q Or Lyons Development, LLC?

A Yes.

Q I keep adding an S. It's no S; right?

A There is an S, yes.

Q Oh, there is.

A It's because I went to school in Lyons, South Dakota, and you got to pick a name.

Q Okay. So then what is Tiger's Tail Management Trust?

A That's another irrevocable trust that is the member of many of my LLCs.

Q Okay. Does it have or has it had in the past any ownership interest in Lyons Development?

A Yes.

Q Okay. When?

A I don't know the specific dates, but

it's the -- it's the member now. It has been for, I don't know, quite some time, several years.

Q Okay. And you say that that's an irrevocable trust?

A Yes.

Q Okay. And who is the trustee?

A Same as the Shiraz Trust, myself and Shannon Evans.

Q Do you receive any financial compensation from Tiger's Tail Management Trust?

A No.

Q Who was the original -- what entity was the original purchaser of the 42 Meadowhawk property?

A I think it was Lyons Development.

Q So I guess there's a period of time from July 29, 2013, to February 3rd, 2014, that you personally were the owner of the lot at 42 Meadowhawk.

Is that an accurate statement?

A I think those are the correct dates, yes.

Q Okay.

A I provided them to you.

Q So what was the purpose of transferring

the property into your name?

A Because banks either won't lend or they'll charge premium --

Q To trustees?

A -- to lend to an LLC versus an individual. So they recommended I transfer it into my name for the purpose of getting finance, and then they -- once the financing -- the construction loan is in place, they allowed me to transfer it back into the LLC.

Q So there was a change in the use of the property during that time period, i.e., you developed the property. And then once the home was complete, you transferred it into the name of Lyons Development?

A No. I -- well, I transferred it in -- I transferred it back into the name -- I transferred it back to Lyons Development just shortly after construction was underway.

Q Okay. So you did it during construction? You didn't wait until after it was constructed?

A No.

Q Okay.

A The construction loan rolled into my

permanent financing.

Q Oh, so you didn't have to refinance?

A No.

Q Okay. When the property was owned by Lyons Development, did you make any rental payments to Lyons Development when you occupied it?

A Yes, I did for a while. And that was Gary that suggested I do that too. But I don't know if I was making those rental payments at the time of sale or not, but at least for a while, I was.

Q Okay. And what was the purpose of -- what was your understanding of making the rental payments?

A Because Lyons Development is an entity that was set up for the investment property, and so this investment property I was renting from Lyons.

Q Okay.

A In the end, I don't know that it made any difference.

Q So when we went through the various A through D in response to Interrogatory No. 5, the water leaks that we talked about -- so it's A

through D, but it actually is five water leaks, because A was two water leaks.

So were you the one -- and actually they indicate or the response in the interrogatory indicates whether you found them or in I think one instance your assistant found it.

A (Nodding head.)

Q Okay. Did -- and I think we have some of those e-mails.

One of the other things that you had prepared -- and let's go ahead and mark this as next.

(Exhibit No. 15 was marked for identification.)

BY MR. GRAF:

Q You have been handed what's been marked as Plaintiffs' 15 for purposes of this deposition. It purports to be a letter dated November 16, 2017, from Nova Geotechnical and Inspection Services.

Do you see that?

A Yes.

Q And this is addressed to you to the attention of Nicky Whitfield?

A Yes.

Q What's the -- what was the purpose of having this report prepared?

A I think this was prepared because on the -- the buyer's inspection, there was a concern of some offset of tiles on the back patio where a channel drain ran to funnel water off the patio. And so the question was, is there some shifting of the -- of the ground or the -- or something underneath the tile. And so I think these people were brought in to address that.

Q Okay. Did you ever get a signed copy or version of this document?

A I -- a signed copy?

Q Yep. Because this is Bates-stamped Swanson 391 and 392. On 392 it's got the stamp of the engineer, Mark Jensen, but it also says not official until signed, and it isn't signed. So I was wondering if you ever got a signed version of this document?

MR. GALLIHER: Well, hold on. I'm going to object to the characterization, because it says respectfully Nova Geotechnical Inspections Services, Mark D. Jensen, P.E.

Are you suggesting that nonofficial until signed means it has to have a wet signature

on it, like a handwritten signature?

MR. GRAF: Some sort of signature, yeah, I am representing that.

MR. GALLIHER: In addition to the stamp?

MR. GRAF: Yeah.

MR. GALLIHER: Okay.

MR. GRAF: Because that's why you put that other stamp on the nonofficial until signed, because it's like a draft report type of thing. It's the way I understand these engineering reports to work.

MR. GALLIHER: So your question is, did he ever receive a copy of this had that a --

MR. GRAF: An actual signature from the engineer.

MR. GALLIHER: -- a hand signature on it. Okay.

THE WITNESS: I don't know offhand. I was in Denver at the time, so Nicky would have taken care of that.

BY MR. GRAF:

Q There are some recommended repairs in this letter.

Do you know if these repairs were ever completed?

A I don't know if they were repaired or not.

Are you talking about the cracked tiles --

Q The cracked tiles and then in the fourth full paragraph on Swanson 391, it says, "If it is desired to bring the displacement back to level, it is our recommendation that the row of panels on the lower side be removed and reset using standard construction techniques appropriate to the type of material at the same level as the panels on the high side."

Do you know if that repair was ever made?

A I -- I do not. Well, I don't think that repair was made. I think we presumably provided this to the seller, and if they -- because I think, if I remember correctly, they extended their due diligence because their inspector had found this and one other problem, so we got the report, and then eventually they closed so I assumed they were okay with this report.

Q Okay. So -- all right. Why was -- in terms of the water damage in November of 2017, why was Rakeman Plumbing chosen to repair those leaks?

A The -- the last leak in 2017?

Q Yes.

A Because they were the ones that had installed the plumbing. We assumed that it was still under warranty by them, and they had done a good job repairing the other leaks. They were prompt. They were thorough. They brought in, you know, the water remediation people to dry the place -- to dry the Sahara desert, and so we thought they were doing a great job, so why wouldn't we call them for the leak.

Q Did Rakeman Plumbing ever tell you about any defect lawsuits regarding Uponor fittings or piping?

A Not at that time. I learned of that probably in December.

Q So --

A And let me back up. I'm not sure I even knew about a lawsuit. Did you say a -- a lawsuit or class-action lawsuit? What did you ask me?

Q I asked about defects.

A Defects?

Q Yeah.

A Yeah. I'm not sure he even mentioned that. He just said -- he e-mailed me and asked me

to call him. I called him, and he said he had sent the pipe to Uponor, and frankly I didn't know who Uponor was or maybe I did by that point. But he said they're recommending repiping the house. I don't know that they -- that he said anything about, you know, there being defects with other pipe other than this house.

MR. GRAF: All right. Let's go ahead and mark this as next.

MR. GALLIHER: Just so we're clear, when you're saying "he," who are you referring to?

MR. GRAF: Aaron Hawley?

THE WITNESS: Aaron Hawley, yes.

MR. GALLIHER: Thank you.

BY MR. GRAF:

Q That's who you meant as he?

A Yes. Yes, he's the one that contacted me.

(Exhibit No. 16 was marked for identification.)

BY MR. GRAF:

Q So I've handed you what's been marked as Exhibit 16 for purposes of this deposition.

Have you ever seen this document before?

A Not that I recall, no.

Q Okay. So this -- this e-mail is dated December 13, 2017, from a Stacey Beissel, Beissel, at Uponor. First off, have you ever had any communications directly with Uponor?

A No.

Q Okay. Did you instruct Rakeman to have any conversations with Uponor on your behalf?

A No.

Q Did you ever understand that any of the previous leaks that we've talked about were submitted to Uponor for warranty reimbursement?

A I wasn't aware, although I found a receipt that referenced Uponor on the February leak.

Q February of what?

A Of 2017.

Q Okay.

A But as with many documents that were coming through at that time, I saw that it was paid for. Probably my usual and customary way of handling any correspondence would be to put it in Nicky's scan and file folder or basket, I should say. And so I presume she scanned it and put it in my documents, and that's how I was able to find it for the document request that you requested.

But I was not aware of any Uponor problem before December.

Q So this document purports to be the e-mail with the results or the -- the documentation regarding the Uponor claim as to February of 2017. You're aware of that?

MR. GALLIHER: Wait. What are we talking about?

MR. GRAF: This e-mail.

MR. GALLIHER: Okay.

MR. GRAF: And the second full paragraph says, "Per your request, below please find the information associated with the initial claim submitted to Uponor in February of 2017."

MR. GALLIHER: Okay. And what's the question?

BY MR. GRAF:

Q I'm asking him if he knew about the warranty claim that was submitted to Uponor in February of 2017.

A I know now that Uponor paid for it, because I found that information in my document search. I don't know that I knew about it at the time, because I probably didn't pay attention to those documents when they came through.

Q Okay. And if you look at -- I think it's on page three, which is Plaintiffs' 51. In the second reference, it appears that there's -- one, two, three, four, five -- six different references to products that were tested and/or examined by Uponor.

Do you see that?

A Are you talking about these?

Q So the first one is the Q4751775 description, ProPEX EP reducing tee.

A Yes.

Q And that there's a problem of the tube split at fitting.

Do you see that?

A Yes, I see that.

Q And then it says review result, no failure on that one.

A Okay.

Q And then on the next one, it says F2060750 at the three-quarter-inch AquaPEX red 300-foot coil, and it says problem tubing split at fitting, and then it says review result manufacturer.

Do you see that?

A Yes.

Q And that seems to be the reference that she's making in the e-mail as to the fact that -- in the second sentence of the e-mail it says, "As discussed, Uponor has identified the limited manufacturing-related issue with the tubing samples return to our office for evaluation and are recommending replacement of all red and blue AquaPEX tubing currently installed in your home with new Uponor AquaPEX."

Do you see that?

A Yes.

Q Okay. So this original problem -- and if you look to the last page of this document, it has a tee fitting of the tubing and pipe that was sent to them. It's your testimony here today under oath that you didn't receive any notice of the fact that there was a manufacturing defect identified as to the tubing installed in your home in February of 2017?

A No. I couldn't have told you who Uponor was in 20 -- February of 2017.

MR. GRAF: Okay. Let's mark this as next.

(Exhibit No. 17 was marked for identification.)

BY MR. GRAF:

Q You've been handed what's been marked as Exhibit 17 for purposes of this deposition. I believe we produced it, but I think we reproduced it after it was used as an exhibit, and that's why it's got the file stamp --

MR. GALLIHER: Okay.

MR. GRAF: -- at the top. Or somebody used it as an exhibit and that's the copy that we're using here. I just don't want to confuse anything. Okay.

MR. GALLIHER: It doesn't matter. It's Bates-stamped.

BY MR. GRAF:

Q So this is some e-mail exchanges between Nicky Whitfield and Aaron Hawley. The last of which is dated Friday, November 17, at 12:09. It says, "Thank you. I have informed the buyer's agent." And then Aaron's e-mail a couple of minutes before that, it says "two weeks maximum, I'm pretty sure that I should be about one week, but Thanksgiving is next week and that changes a lot of things."

These -- this e-mail exchange is discussing the water leak that occurred in

November; correct, of 2017?

A I believe so, yes. Yes.

Q So then you got a letter -- or prior to this, you got a letter dated November 16, 2017, beginning on Plaintiffs' 56.

Do you see that letter?

A Yes.

Q Did you receive this letter, Doctor?

A Yes, I did.

Q Okay. So I had some questions about the content of the letter.

So it says, "As I discussed with you on the telephone" -- so at least on or before November 16, 2017, you had a phone conversation with Mr. Hawley?

A Yes, I must have.

Q And then it says, "Rakeman Plumbing will take responsibility to rebuild the damages that arose from the recent leak on the Uponor piping at the access panel. The repairs will be strictly limited to the repairs only from the latest leak."

Do you see that?

A Yes.

Q Do you have any understanding, as you sit here today, from your recollection of the

telephone conversation with Mr. Hawley as to what other leaks were being referred to in that sentence?

A No. I think that the buyers -- I think we closed the following day, on the 17th, but before we closed, the buyers wanted a letter from Rakeman assuring them that everything was going to be fixed. And I think that's the reason that I probably called Aaron Hawley to request the letter, and that's where this letter -- that's why this letter was sent.

Q So it says the damages are in the closet and affect the carpet, the base of the closet, organizer, baseboard and possibly paint and drywall.

Do you see that, Doctor?

A Yes.

Q It says, "Further, Rakeman Plumbing has also authorized to have an outside hygienist do an air spore test."

Do you see that?

A Yes.

Q Is it your understanding that that was going to be third-party unrelated industrial hygienist or company that was going to do that air

spore test?

MR. GALLIHER: Foundation.

THE WITNESS: Well, versus Rakeman, you mean?

BY MR. GRAF:

Q Yeah. Or Aaron Hawley or one of his related entities.

A Well, I know -- quite sure Aaron Hawley doesn't do mold testing. So I think I had sent an e-mail to Nicky that we had worked with Linda Stetzenbach previously, and then I think she somehow communicated back to me that Rakeman had already retained someone, which was whoever it was, to do the -- the testing.

Q Do you know who that was?

A Well, I know it was a company -- there's a CPI Restoration.

Q Okay. And are you aware, as you sit here today, as to whether or not CPI Restoration is owned by Aaron Hawley?

A I have no idea.

Q And if I told you that it was owned by Aaron Hawley or a related entity that was owned by Aaron Hawley, would that be the first time you've heard it?

A Yep.

Q Okay.

MR. GRAF: Can we have this marked as next.

(Exhibit No. 18 was marked for identification.)

THE WITNESS: Excuse me, did you say -- just so I know, is CPI owned by Rakeman or is this Infinity Environmental Services owned by Rakeman?

BY MR. GRAF:

Q I think it's CPI, the restoration remediation company.

A So they're the ones that remediated and then Infinity did the testing, the final testing?

Q Yep.

Do you recognize Exhibit 18, Doctor?

A Yes, I've seen this document.

Q And what is this document?

A This is the results of the final mold test, I believe. Let me just check to be sure.

Yeah, this was the final mold -- mold test, I believe.

Q Okay. So on the first paragraph, second sentence of this December 7, 2017, document, it says, "The visible and airborne fungal post

remediation verification, PRB, was requested to assess visual and airborne fungal levels in the above-mentioned water and fungal damaged areas of the subject residence after CPI Restoration performed the fungal remediation activities."

Do you see that?

A Yes.

Q Okay. Was it your understanding that there was mold or fungus that was being remediated?

A I tried to find documentation regarding that, and I couldn't find any, but it seems that at some point, I had heard that there was surface mold, but I don't recall there being airborne mold. But --

Q Okay.

A That's to the best of my recollection.

Q So if we go back to Exhibit 3 and we go to page two of five and line item seven that's fungi and mold, "any previous or current fungus or mold," and you marked no; correct?

A Yes.

Q Okay. And is it your --

A This is filled out on 10/24.

Q Understood.

So this is filled out on 10/24. This is -- the area that was being tested here on December 5th, 2017, that was the water loss from November of 2017?

A Yes.

Q And that's after the October 24, 2017, SRPD; correct?

A Yes.

Q The area that was being tested here, is that still the master closet?

A I presume so, yes.

Q Okay. So the other water losses that occurred in February of 2017 and in August of 2015, did you have mold or visible and airborne fungal post-remediation verification tests performed?

A No.

Q Okay. So going back to the Rakeman letter in Exhibit 17, do you know what the result of the Rakeman pressure test was that's referenced in paragraph two of this letter?

A I saw some correspondence that it had passed a 70-pound-per-square-inch test for ten minutes or something like that.

Q Okay. And then the third full paragraph

says, "Rakeman will do a simple walk-through visual inspection of all plumbing fixtures and piping in the house."

Again, that's the similar request previously. That's only the visible fixtures and fittings; right? No walls were opened up, nobody tried to determine anything like that; right?

A Correct. I think the buyers had requested both of these.

Q So then the second-to-the-last sentence in the third paragraph begins, "Rakeman Plumbing will not make any repairs at this time unless authorized by you after the inspection," and by "you" they mean you, Dr. Swanson.

Did they inform you of any other necessary repairs?

A So what is the question?

Q Did they ever inform you that there were any additional necessary repairs subsequent to this letter?

A No, not that I recall.

Q Okay. So there's -- if you look in the next page, Plaintiff 57, have you ever seen this work order?

A No, I don't believe so.

Q So at the bottom, there's notes by Allison Brooks dated January 12, 2018.

Do you see that?

A Yes.

Q And you may not know this actually. Is this a note from an inspection that was performed on or about January 12, 2018?

MR. GALLIHER: Objection. Foundation. Speculation.

THE WITNESS: I have no idea when -- when it was performed. That's what the date says there.

BY MR. GRAF:

Q So at the -- and I'm not trying to confuse anything. I'm just trying to make sure I understand what's happening here.

At the top of this, it says scheduled, rocky by route No. 2 -- number zero two rocky, it says "scheduled January 5th, 2018."

Do you see that at the -- kind of top right of this document? And then --

A Yes --

Q -- if you turn the page, there's some handwritten notes dated January 5th, 2018. So are -- and this is -- appears to be some sort of

invoice with a total of $14,459, and it seems to have the same or very similar information as that note on the previous page. So I'm trying to figure out when Rakeman did this work.

Is this another leak that occurred in January of 2018 or you don't know that?

A I don't know. This is the first I've heard of this.

Q Okay. All right.

A I assumed they were -- were -- they repaired the leak immediately when we informed them in November of 2017, and I presume the remediation -- I'm just trying to think. I lived in that house for not quite a week after that. I'm trying to think if it had been remediated by then or not, and I -- I can't remember. But this certainly looks like a much more extensive remediation than the November leak would have required.

Q Okay. And then if you turn to Plaintiffs' 61, which appears to be another Rakeman invoice, which is invoice No. 236151, this appears to be some issue with the backyard hose bib on November 12, 2017.

A Yes.

Q Do you -- and this is on November 12, 2017.

A Yes.

Q So my question is on this, was this told to the Folinos, this condition?

MR. GALLIHER: Object to the form.

THE WITNESS: Was what told? The pressure test or --

BY MR. GRAF:

Q No. The fact that there was -- the hose bib on the backyard and the hose bib on the front yard were removed and replaced or that the -- the hose bib in the backyard was removed and replaced because it was leaking?

A I have no idea, because I don't recall being informed of this. I only knew that -- I only heard -- and I can't remember which document -- that it had passed the 70 PSI pressure test.

Q Was this the document that's -- you got that said that --

A No, I -- no, I haven't seen this document.

Q So then if you turn to Plaintiff 63, and this is invoice No. 232809, and the date -- and

this is where my confusion lay. The date -- the handwritten date is 5/23/17, and we haven't talked about any leak or anything that occurred in May of 2017.

A I think that's the date the invoice was sent, because I was confused about that too, whether the date -- whether the leak occurred in February or March. But I finally was able to narrow it down by looking through enough documents.

Q All right. We'll talk to Rakeman about that.

All right.

A I may have to take a little boy -- old man break at some point.

Q Just whenever. Just tell me.

A Okay.

MR. GRAF: Do you want a break? Let's go.

MR. GALLIHER: Yeah.

MR. GRAF: Off the video record at 3:29.

(Whereupon, a recess was taken.)

THE VIDEOGRAPHER: Back on the video record at 3:41.

(Exhibit No. 19 was marked for

identification.)

BY MR. GRAF:

Q Dr. Swanson, we're back on the record. You're aware you're still under oath?

A Yes.

Q You've been handed what's been marked as Exhibit 19 for purposes of this deposition. It's an e-mail from you to Ivan Sher.

Do you recognize this document?

A Yes.

Q Okay. Did you prepare this document?

A Yes.

Q Was it sent?

A Yes.

Q Okay. What was the purpose of this?

A Because I had just learned of the problem with the piping, and I thought I should inform him as my broker what was going on. And I think Aaron Hawley had told -- told me -- I don't know if he spoke directly with Ms. Folino or not, but that she was threatening lawsuits. And so I was just telling him what I had been told by Mr. Hawley.

Q Okay. So this is dated December 15, 2017. And our letter that we talked about in

Exhibit 17 was dated November 16, 2017.

MR. GALLIHER: Wait. Say that again. What are the dates you just said?

MR. GRAF: The letter is dated November 16, 2017.

MR. GALLIHER: Okay.

MR. GRAF: This is dated December 15, 2017.

BY MR. GRAF:

Q The information that you state in here, this is the information that Aaron Hawley gave you?

A Yes.

Q Okay. And that includes taking a month with multiple, over 200, drywall holes?

A That's what he told me.

Q Okay. And do you know, did this replumb happen?

A I presume it did, but I've not been in the house, so I don't know.

MR. GRAF: Okay. Let's go over this one.

(Exhibit No. 20 was marked for identification.)

BY MR. GRAF:

Q So you've been handed what's been marked as Exhibit 20 for purposes of this deposition.

Do you recognize this document?

A Yes.

Q And did you -- or, yeah, did you prepare this document?

A Yes.

Q Okay. And what's the purpose of this document?

A So I think that the Folinos wanted a pressure test and a visual inspection, but I also felt that since there was another leak, that maybe they should do another pressure test, so I think we both had the same idea. So I don't know -- I don't know who -- maybe we both came up with the idea to do a pressure test at the same time.

Q And I just --

A Or, actually, it says we will need that to close. Oh, so this is -- I think I know what this is. So I think Mrs. Folino, the Folinos wanted to do the pressure test.

Q Okay.

A And so I was passing this onto Nicky, since I was in the middle of my final exams, to

contact Rakeman and set that up.

Q All right. So it says, "Can you ask Rakeman if there's a test they can do with the plumbing to ensure there are no other weak spots in the water lines that may result in another leak."

So what is the other leak that you're talking about? Is that the November 2017 leak?

MR. GALLIHER: Object to form.

THE WITNESS: May result in another leak? I'm saying --

BY MR. GRAF:

Q So that denotes that there was a previous leak. So is the previous leak that you're referencing there, is that the November 2017 leak or is it some other leak?

A No, it's the November leak.

(Exhibit No. 21 was marked for identification.)

BY MR. GRAF:

Q Okay. You've been handed what's been marked as Exhibit 21 for purposes of this deposition. It's some e-mail exchanges between Rhonda Hawley and Nicky Whitfield. Nicky Whitfield, again, is your assistant?

A Yes.

Q And these are dated Tuesday, November 21st.

So what is the purpose of this e-mail exchange?

MR. GALLIHER: Foundation. Speculation.

THE WITNESS: I don't know. Maybe -- I would just be speculating. I kind of have an idea what it might be, but I'm not sure, and I haven't discussed this with Nicky to know. This was apparently between Rakeman and Nicky and regarding --

BY MR. GRAF:

Q It appears to be talking about the results of the pressure test.

A But there's also something about an invoice. So they say we will not provide a copy of the invoice unless we get something in writing letting us know we can send a copy to them. So I think that I paid for the -- for the pressure test -- it was like $125 or something for the pressure test. Maybe that's it. I don't know.

Q Okay.

(Exhibit No. 22 was marked for identification.)

BY MR. GRAF:

Q So you've been handed what's been marked as Exhibit 22 for purposes of this deposition. It purports to be an e-mail between you and Henry Regnault, and it cc's Chris Myers.

Who is Chris Myers?

A He is I think Henry's boss.

Q Okay. And those are the people at Blue Heron; correct?

A Yes.

Q All right. What was the purpose of this e-mail? And really I'm just referring to the top part.

A Yeah.

Q Yeah.

A It's just letting Henry, so the construction supervisor that we've talked about, telling him that everything is dry and that he needs to have the people come in to put things back together.

Q So let me -- let me ask you a couple of foundational questions.

You prepared this e-mail; correct?

A Yes.

Q And that's your electronic signature box

at the bottom of this?

A Yes.

Q And you were responding to Henry and it says, "Well, everything is dry at 42 Meadowhawk." That's the property we're talking about that the Folinos purchased; correct?

A Yes.

Q And some of the repairs are being done. It says, "The drywallers came in last week to start fixing the water damage in the garage."

Do you see that?

A Yes.

Q Does that sentence help to refresh your recollection as to whether or not there was water damage in the garage?

A There must have been something that they needed to fix, according to this.

Q So you state in this e-mail, "The items I need addressed, in paren, that I know of, due to the water leaks." So this is repairs that are needed because of the water leaks; right?

A Yes, these are things that need to be done.

Q Okay. And No. 1 is "finish drywalling and painting the garage and install new access

panel to the attic area."

Do you see that?

A Yes.

Q Okay. And this is purportedly as to the water damage in the garage; right?

A Yes.

Q It says, "Replace the electronics that were ruined in my garage previously sent to you but I'm attaching again." And those that -- we already talked about those electronics; correct?

A Yes.

Q And then it says "install new carpet in my master closet."

Do you see that?

A Yes.

Q Does that help to refresh your recollection as to whether or not the carpet was replaced?

A Yes, but I don't think it was. I think they just put it down.

Q So you asked them to replace it, and they didn't do it?

A Well, I asked him to install new carpet in my master closet. I think when the carpet people came in, they said this carpet is fine.

They put it back down again, to my knowledge.

Q Okay.

A I don't remember that carpet ever being replaced.

Q All right. And then it says, "Fix the built-in cabinets in my master closet. Some of the base pieces had to be ripped out to access the water."

A Those are those kick panels or toe -- toe panels.

Q Toe kicks?

A Yeah.

Q Okay. It says, "Touch up some faux paint in the master bedroom that got scratched by something, possibly a dehumidifier there. Fairly minor."

So there was some painting that was done as a result of the repairs?

A Yeah, probably getting one of their drying equipment pieces in and out or something.

Q So then it says, "Paint the stucco that was repaired on the side of the house."

Do you see that?

A Yes.

Q So where the recirculating pump was that

is, I believe, the subject of this water loss or is this because of the fitting that came undone under the sink, or is it both?

A Which -- which part of this?

Q Any part of this e-mail.

A I think it was probably both.

Q Okay. So was there a portion of the stucco on the exterior of the house that had to be removed to access either the fitting underneath the sink or the recirculating pump?

A Not the sink, for sure, and the recirculating pump was in an access panel.

Q Okay.

A So the only thing -- I don't know what that's referring to, other than maybe they didn't -- when they came that night, it was dark. They didn't open the access panel and look there first, so maybe they punched a hole in the stucco, perhaps.

Q Is it possible that they punched a hole in the stucco to dry the interior wall cavity?

MR. GALLIHER: Speculation, foundation.

THE WITNESS: It would be unlikely, because all of the drying was done from inside the house.

(Exhibit No. 23 was marked for identification.)

BY MR. GRAF:

Q Okay. You've been handed what's been marked as Exhibit 23 for purposes of this deposition. It purports to be an affidavit of -- by you, and then on -- and it's Bates-stamped Swanson 195 to 197. And then on 197, it has a signature above Todd V. Swanson, M.D.

Is that your signature?

A Yes.

Q Okay. And was this notarized on or about August 13 of 2018?

A Yes.

Q And this affidavit, the first line or sentence on 195 says, "Todd V. Swanson, M.D., being first sworn, deposes and says under penalty of perjury as follows."

Do you see that?

A Yes.

Q So you agree that you were under oath and/or subject to the penalties of perjury when you signed this document; correct?

A Yes.

Q All right. Did you prepare this

document?

A I assisted with it.

Q Okay. So this was prepared after the lawsuit was filed, correct, in this case?

A Yes.

Q Do you know what the purpose of this affidavit was?

MR. GALLIHER: Object to the form.

THE WITNESS: I'm assuming maybe for the mediation, although I don't recall for sure.

BY MR. GRAF:

Q Okay. And is it your understanding that the information that's contained herein is true and accurate to the best of your knowledge?

A Yes.

Q All right. So it goes through a series of information about the -- the home and different leaks. So let's go through some of this stuff.

So you would agree you moved into the property in approximately April of 2015?

A Yes.

Q Okay. And then August 2nd, 2015, there were two leaks in the master closet and bedroom?

A Yes.

Q Okay. And then there was also -- in the

next paragraph you say, I also experienced another recirculating pump leak in the garage?

A Yes.

Q Okay. It says "all leaks were repaired by Rakeman Plumbing"?

A (Nodding head.)

Q Is that a "Yes," Doctor?

A Yes. Yes.

Q Sorry.

A Or at least they were coordinated by Rakeman Plumbing. Rakeman Plumbing wouldn't have done the cabinet work or carpet work.

Q All right. And then on the next page, the first full sentence it says, "To my knowledge, the water leak problem was completely repaired by Rakeman Plumbing."

Do you see that?

A Yes.

Q And what you're referring to there is only the leaks that you're referencing in this affidavit?

A Well, let's see. I reference the 2015 leaks, and then I say "to my knowledge the water leak problem was completely repaired by Rakeman Plumbing." So I'm assuming that probably refers

to the 2015 leaks because I go on to talk about the 2017 leaks -- or leak.

Q And then I have another question on that.

So the next paragraph says, "In January 2017, I discovered a small pinhole leak in one of the plastic water pipes in the wall."

Do you see that?

A Yes.

Q So that's not the date that we have in response to Interrogatory No. 5.

So was there another leak in January of 2017?

A No. I think there was a lot of trouble pinning down the date of that February leak, but the date was February 17th or 18th or something like that, I think. Or 7th or 8th.

Q So C in response to Interrogatory No. 5 says February 16, 2017.

A That sounds correct.

Q Okay. And then -- so in this affidavit, you say, "When I prepared the disclosures, I knew there had been two previous water leaks."

Do you see that?

A Yes.

Q Okay. Which two previous water leaks are you referring to there, Doctor?

A Well, I think I'm referring to the August leaks and the February leak.

Q Okay. And then the second-to-the-last paragraph of your affidavit says, "About one month after the closing, on or about December 12, 2017, Aaron Hawley of Rakeman Plumbing informed me that the Folinos were claiming the entire house needed to be replumbed."

Do you see that?

A Yes.

Q Is it your understanding that the Folinos were claiming that the house needed to be replumbed or was that Uponor?

A No, I think that's kind of misstated. It -- well, the Folinos were saying I think that they had been told by Rakeman, who had been told by Uponor, that the house needed to be repiped.

MR. GRAF: Let's go ahead and mark that as next.

(Exhibit No. 24 was marked for identification.)

BY MR. GRAF:

Q Do you recognize this document, Doctor?

A Yes.

Q Who is Frank Cruz?

A He is an HVAC technician.

Q So it says "repair leaks in media room, mini split air conditioner system."

Do you see that?

A Yes.

Q What leaks are those?

A There's a line set that goes between the unit in the media room and the condenser on the outside, and they had trouble maintaining the pressure in those -- those pipes. So he had to come out and fix that.

Q And I'm just asking, what kind of leak was that?

A Whatever --

Q Was it water? Was it air?

A No, no, no.

Q Was it --

A Whatever material, Freon or whatever they use in an air-conditioner.

Q Okay. And those -- okay. Got it. It's from the outside condenser to the inside forced air units; right?

A Yes.

(Exhibit No. 25 was marked for identification.)

MR. GRAF: Let's do all of these together.

MR. GALLIHER: You're going to include this in 25?

MR. GRAF: No, because they're not together in the production, actually.

MR. GALLIHER: You're going to do all the invoices together?

MR. GRAF: I'm going to do all three of them just as three consecutive whatchamacallit. So -- wait, what did I do? That one is yours.

So the e-mail should be 25, the $6,000 is 26, and the $845 is 27.

(Exhibit Nos. 26 and 27 were marked for identification.)

BY MR. GRAF:

Q So first off, the e-mail dated August 5th, 2015, is from you to Henry Regnault again at Blue Heron. And again, copy C. Myers. And it says, "Received this invoice from EH Design for replacing the damaged electrical equipment. I assume Rakeman will take care of this. Can they pay directly, or do I -- I prefer the former."

And then there's two invoices for the touch screen, the other touch screen switch, and the in-ceiling speaker. And then the -- the labor, the -- the final invoice is for the labor to do all of that, it looks like.

So --

A Yes.

Q -- this is consistent with what you previously testified, right, that the touch screen had to be replaced and that one of the speakers had to be replaced, and that work was done?

A Yes.

Q And you wanted Rakeman to pay for this?

A Well, my assumption was it was all covered by Rakeman.

Q And why is that?

A Because everything was still under warranty.

Q Okay. And what -- is it because it was also a result of the water loss?

A Yes.

Q Okay. That's his. Sorry. She will give you the copy. I apologize.

MR. GALLIHER: And this is 28?

(Exhibit No. 28 was marked for

identification.)

BY MR. GRAF:

Q You've been handed what's been marked as Exhibit 28 for purposes of this deposition, and it is the defendants' motion to dismiss plaintiffs' second amended complaint with the exhibits.

This motion on page six asserts certain undisputed facts. The first line item was that there was a previous water leak at the property.

Do you see that?

A Yes.

Q Okay. There was more than one previous water leak at the property; right, Doctor?

A Yeah.

This is dated what?

Q September 24, 2019.

A Yes.

Q And then in the next line item, it says that a licensed plumbing contractor, Rakeman Plumbing, came to the property on May 23rd, 2008 -- '17, excuse me, and completely repaired the leak.

Do you see that, Doctor?

A Yes.

Q But there were previous leaks in 2015;

correct?

A Yes, and that date is wrong.

Q And the date is wrong; right?

A Yes.

Q So none of -- that's not an undisputed fact, is it, Doctor? It's not a true fact, actually?

A Well, the date is off, yes.

Q Okay. And the previous statement is off because there were at least two prior leaks?

MR. GALLIHER: No, I'm going to object to the question, to the form of it. A previous water leak would still be a true statement, even if there were multiple previous water leaks.

MR. GRAF: Okay. Fair.

BY MR. GRAF:

Q But then the last statement says that the defendants did not disclose the previous water leak in their October 24, 2017, SRPD.

Do you see that, Doctor?

A Yes.

Q That is in the singular; correct?

A Yes.

Q And you also didn't disclose the water leaks, at least three water leaks, that occurred

in 2015; correct?

A Correct.

Q And so then if we look at Exhibit A, which is the affidavit of Aaron Hawley, the affidavit of Aaron Hawley in paragraph six reads, "On May 23rd, 2017, my company received a call regarding a plumbing leak in the master bedroom."

Do you see that, Doctor?

A Yes.

Q That's not accurate, is it, Doctor?

A I don't believe so, unless my dates are off. Because I keep seeing this date, but I think that was the date of the invoice.

Q Okay. And the actual leak occurred sometime in February of 2017, didn't it, Doctor?

A Yeah, to the best of my knowledge.

Q Okay. Well, and I guess that begs the question, Doctor, were there two leaks in early part of '17? Did one occur in January or February of 2017 and then there was a subsequent leak in May of 2017?

A No.

Q Okay.

A There was one leak.

Q You would agree, though, that there's

documentation that states those three time periods; correct?

A There's a lot of confusion about the date of the leak; yes.

Q Okay. I -- and that's what we don't want to be, is confused about the dates of any of these leaks occurring.

So it's your understanding that the leak occurred somewhere in the time period of January or February of 2017; correct?

A Yes. I -- I saw these dates and I found some documents that were pretty persuasive that the date was in February, whatever that date was, February 8th or whatever.

Q What documents are you referring to that were fairly persuasive -- you said fairly persuasive?

A Yeah.

Q Okay.

A Well, I can't remember, just in the process of preparing for this.

Q So what types of documents? Invoices? E-mails? What were they?

A I can't remember. All I know is that I kept seeing this date and it didn't make sense,

and so I -- I tried to find the correct date.

Q Okay.

A And that's what I came up with.

Q So this -- this affidavit goes further to state in paragraph nine that Mr. Gerber found the following and took the corrective action. "A tech found a three-quarter-inch Uponor tee leaking on the hot side of the plumbing system. He cut out the leaking fitting and replaced with a new fitting to restore water with no further leaks."

Do you see that?

A Yes.

Q Do you know where that was?

MR. GALLIHER: Hold on. Let me make sure -- I want to make sure I understand the question.

You're saying where in the house the leak was or where this is written down?

MR. GRAF: No, where in the house this was. I appreciate the qualification, because you're right, it was a little murky.

THE WITNESS: So this refers to the February leak that they're calling a March leak, and that was in --

BY MR. GRAF:

Q Or May. May. They're calling it May. I don't want to confuse things any further.

A So that's the fourth date we've seen now.

Q Okay.

A Okay. Anyway, that was in the master closet.

Q Okay. So in -- let's say in November after the -- in 2017 when the fourth or fifth, depending on how you count these, the leaks had occurred, did you ever ask Rakeman Plumbing if there was a problem with the Uponor product?

A Well, I wouldn't have asked about the Uponor product because I didn't know what Uponor was, but I don't recall. I may have asked them, like -- like why are these leaks occurring or something like that. I don't remember.

Q So let's go back to Exhibit 28, and in particular, I want you to look at the Exhibit A to the affidavit, which is the invoices. And those have another date on them.

A Which exhibit is it?

MR. GALLIHER: That one and the next -- well, hold on. Go one more. Okay. That's

Exhibit B, you want the -- one more. There you go.

BY MR. GRAF:

Q So attached to the affidavit are two invoices. It's invoice No. 232809. It's two pages, I guess, of an invoice. And it says -- on first page, it says "customer Uponor."

Do you see that?

A Yes.

Q Did you ever receive a copy of this invoice, Doctor?

A I had a copy of this in my files, yes.

Q Okay. Did you ever question Rakeman as to why the customer was being listed as Uponor?

A No.

Q Okay. You would agree with me that this invoice is dated May 23rd, 2017; correct?

A Yes.

Q Okay.

A At that point I couldn't have cared less who paid for it as long as it was under warranty and it wasn't me. I was busy and -- like I did with most documents, I would have Nicky scan it and file it, so I may not have even read this thing.

Q Do you know if the previous work that was conducted by Rakeman at the house in 2015 was similarly submitted to Uponor for warranty repair reimbursement?

A And which leak are we referring to?

Q The leak under the sink in the master bedroom -- the master bathroom, excuse me. The leak adjacent to the recirculating pumps. Do you know if any of those were submitted to Uponor for reimbursement?

A I don't.

Q Okay. Did you ever have any conversations with my clients regarding the water leaks at any time?

A I only spoke with Mrs. Folino once.

Q When was that?

A That was -- that was after I learned of Uponor's suggestion that the house be repiped, so I --

Q And we looked at that e-mail. It's like December 17th of --

A Yeah. I think it was mid December.

Q And what was the content of that conversation?

A So I just called her -- I don't think

she and I had ever spoken, and so I wanted to just reach out to her and tell her that, you know, if there's anything that I could do -- in fact, I don't live in my house because I was going to school. I offered her that -- you know, if it would make it easier for them while they were repiping, they could stay in my house.

Q Do you have any -- any way of determining what day that conversation took place?

A I could look at my cell phone records, I suppose. I don't know that I took any record of it.

Q Do you still have the same cell phone carrier that you had back in 2017?

A Yes.

Q And which carrier is that?

A Verizon.

Q Do you still have the same cell number?

A Yes.

Q What's your cell number?

A (702) 249-9219.

Q Okay.

MR. GALLIHER: Did we establish the phone call happened on a cell phone?

BY MR. GRAF:

Q Did you talk to her on your cell phone?

A Yes.

Q I assumed that, because you said I could look at my cell phone bill and determine it.

MR. GALLIHER: Yeah, so I did. I just wanted to make sure.

BY MR. GRAF:

Q He's right. We should verify it.

So you believe you had that call on your cell phone?

A Yes.

Q Okay. And you think it happened after the closing?

A Yes.

Q Now, did you ever -- you as an individual or as trustee of the trust or as owner of Lyons Development, did you ever get any e-mail or other contact by Uponor?

A No.

Q Okay. Did Rakeman ever forward you any e-mails, letters, or other contact from Uponor regarding any of the leaks that we've talked about today?

A Only the documents that I forwarded to

you.

Q Okay. So let's -- let's talk about that a little bit here.

So you have several e-mails. Does each e-mail have its own Dropbox?

A No.

Q So what providers -- let me -- let me strike that.

Did you house those e-mails out of your server that was at your house that we talked about previously?

A The e-mails?

Q Yeah.

A Well, the e-mails were either on the server or now I think they have a different system where it doesn't have to go through a server. It's on Outlook.

Q Okay. So -- and that's my next question. Is there -- nowadays, there's providers either through Google for Gmail. Outlook, you can designate whatever you want or anything like that.

Are all of those e-mails serviced or housed on Outlook?

A Yes.

Q Okay. Did they each have their own

separate account or are they all under your name? How is that done?

A Well, are you talking about all of those e-mail addresses?

Q Yes.

A So they all feed into Outlook, yes. So I guess they would all be housed in Outlook.

Q Okay. Did you have any responsibility in picking the subcontractors for the original construction of the 42 Meadowhawk property?

A Very little. There were only a couple that I had worked with previously that I asked if they could submit bids.

Q Like who?

A That would have been Ed Hogan, who I had worked with previously, and the electrician, Harry -- I can't remember Harry's last name offhand.

Q So what about the -- what about Rakeman?

A No.

Q Had you had any experience with them prior to this house?

A Not to my knowledge. I don't think he had done the plumbing on any other house.

Q So your understanding that we've talked

about a couple of times and your attorney has objected a couple of different times to this question, but I want to make sure that I have an understanding as to something.

Your determination to mark no as to question 1A on the seller's real property disclosure form, that was your own interpretation of that question; correct?

MR. GALLIHER: Asked and answered.

MR. GRAF: Yeah.

THE WITNESS: Yes.

BY MR. GRAF:

Q And it wasn't based upon any memo or report that was given to you or prepared by any attorney retained on your behalf?

A No. I mean, it was partially based on advice on how to fill out the reports given to me by my Realtors in the past.

Q Okay. Which Realtor gave you that information in the past?

A Well, I've had a few of them, so I can't remember.

Q That's my question.

Do you know which one it was? So Ivan Sher was your Realtor on this?

A He was the --

Q Was he the one that gave you the information?

A He was the -- he was the broker.

Q So what Realtor in Ivan's group did you deal with directly?

A Kelley Contenta.

Q Did Kelley give you that information?

A Not that I recall. And I'm not even referring to this particular sale. I'm referring to previous sales.

Q No, I get that. I'm going to work back. I hopefully don't have to go over all ten houses that you bought and sold over the years.

But who were the other Realtors that you used?

A So I used Ivan Sher for -- to backtrack, 42 Meadowhawk, 51 Meadowhawk, and 38 Meadowhawk. And I used Ken Lowman for Promontory.

Q Is Promontory the one that Herbst bought?

A No, he bought 38 Meadowhawk.

Q He bought 38. Okay.

A And, let's see. I used Pauline -- well, I bought La Madre, so I don't know who we used for

Elk Canyon Court, and I think that's the only houses I've sold.

Q Okay.

A Did I leave one out?

Q So going through them in your head, does that help to refresh your recollection as to which one told you that interpretation?

A No.

Q Okay. Was anybody else living in 42 Meadowhawk the six months before you sold it in November of 2017?

A No.

Q So was your assistant staying there, living there at any point in time?

A She just has an office there, so she would work there.

Q Okay.

A But not every day.

Q Okay. And that's Nicole Whitfield?

A Yes.

Q All right. Anybody else living there with you during that time period?

A No.

Q So -- and I'm just trying to ascertain or make certain that you're the one that would

have all of the information regarding what happened at the house and that sort of thing; right?

MR. GALLIHER: Object to the form.

THE WITNESS: Yes.

BY MR. GRAF:

Q All right.

A All of the information? I wouldn't say I had all the information related to the house, but I was the only one living in the house.

Q Okay.

A If that's what you're asking.

Q So what's your understanding as to the purpose of Shannon Evans being the cotrustee of the Shiraz Trust?

A Can you be more specific? I don't know what you're asking me.

MR. GALLIHER: I might -- I think his confusion is you're saying why is it Shannon Evans or why you have a cotrustee.

MR. GRAF: No, I -- I understand that there's a second cotrustee. I get that.

BY MR. GRAF:

Q So why is it Shannon Evans?

A Because she was my first estate planning

attorney.

Q Yeah.

A That's the reason.

MR. GALLIHER: I don't do estate planning.

BY MR. GRAF:

Q Okay. Does Shannon Evans participate in the management of the trust?

A She does. The -- she has to sign off on some documents when funds are transferred. Particularly any funds that are transferred to me or my family for any personal use, I cannot sign off on. She has to sign off on that.

Q So the beneficiaries of the Shiraz Trust, you're a beneficiary?

A Well, the -- the Shiraz Trust more or less serves as a manager, but I'm the beneficiary, yes.

Q And then your four children are also beneficiaries of that trust?

A I don't know that they're beneficiaries of that trust, but the other trust, they are.

(Discussion off the record.)

MR. GRAF: No, no, no, that's the response.

BY MR. GRAF:

Q So in the interrogatory responses by the Shiraz Trust, we asked the list of beneficiaries. The beneficiaries were listed as yourself and your children.

Do you have any reason to dispute that?

A Oh, well, I may be -- I'm sure I looked at my trust, so that probably is correct then.

Q Okay. On or about the time that the property was sold, November of 2017, what role did Tiger's Tail Management Trust have? As the owner of the membership interest in Lyons Development? Is that it?

A Yes.

Q Is there an operating agreement for Lyons Development?

A Yes.

MR. GRAF: So I think I'm done. The one thing that I want to say and put on the record now is this: It's my understanding that the doctor is going to do a further search of documents, quote/unquote, that may be responsive to the written discovery and/or NRCP 16.1. I think we have plenty of time left on our ability to depose the good doctor, so I'm going to not end today.

I'm going to end subject to asking him some additional questions after those additional documents are produced.

MR. GALLIHER: Okay. I think -- I think you probably have another hour to hour and a half of time left, estimate, right, based upon the time we been on the record today. We've been fairly efficient. We took an hour. It's 4:38 now. We started at -- right on time at 9:00. We've taken a few breaks totaling maybe 35 minutes, and then we took another hour, hour and 25.

MR. GRAF: They'll be able to tell us exactly how long we've been on the record today.

MR. GALLIHER: Yeah, I'm just estimating.

MR. GRAF: But I want to make sure that we're clear on one thing. I agreed to notice up Dr. Swanson as an individual, as the trustee, and as the representative of Lyons Development. I believe under the rules the way I read them, I get three separate bites. Okay?

MR. GALLIHER: Okay.

MR. GRAF: So I get what you're saying. I -- I definitely don't have --

MR. GALLIHER: Twenty-one hours.

MR. GRAF: Yeah, exactly. I just -- I want to be able to reserve the right and you've been very accommodating, so -- so --

MR. GALLIHER: I understand what you're saying.

MR. GRAF: -- if he produces documents, I want to be able to call him back and talk to him.

MR. GALLIHER: I understand and you understand I'm not stipulating, but I understand what you're saying.

MR. GRAF: Agree.

MR. GALLIHER: All right. I have just a couple of follow-ups that I would like to ask you about.

THE WITNESS: Can we take one quick break before we start?

MR. GALLIHER: I'm talking like five minutes. Do you want -- yeah, we can take a break. Yeah, sure.

THE VIDEOGRAPHER: Off the video record at 4:39.

(Whereupon, a recess was taken.)

THE VIDEOGRAPHER: Back on the video record at 4:44.

MR. GALLIHER: It's my understanding that -- that Mr. Graf has suspended his questioning for today, and I don't have any further questions for the witness.

THE WITNESS: Now does that mean I have to fly back here from Toronto in the next week?

MR. GRAF: I don't need you here, Doctor. We can do it via Skype if we need to.

THE WITNESS: Oh, okay. That'd be --

MR. GRAF: I'll do it via Skype. I don't have a problem with that.

THE WITNESS: Okay. I've been flying back and forth, and that's a long flight.

MR. GRAF: We can go off the record.

THE VIDEOGRAPHER: Off the video record at 4:45 p.m.

(Whereupon, the deposition concluded at 4:45 p.m.)

* * * * *

CERTIFICATE OF COURT REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Heidi K. Konsten, Certified Court Reporter licensed by the State of Nevada, do hereby certify that I reported the deposition of TODD SWANSON, M.D., on January 24, 2020, at 8:58 a.m.

Prior to being deposed, the witness was duly sworn by me to testify to the truth. I thereafter transcribed my said stenographic notes via computer-aided transcription into written form, and that the transcript is a complete, true and accurate transcription and that a request was not made for a review of the transcript.

I further certify that I am not a relative, employee or independent contractor of counsel or any party involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this February 3, 2020.

Heidi K. Konsten

Heidi K. Konsten, RPR, CCR No. 845

DECLARATION OF DEPONENT

I, TODD SWANSON, M.D., deponent herein, do hereby declare under penalty of perjury that I have read the within and foregoing transcription of my testimony taken on January 24, 2020, at Las Vegas, Nevada, and that the same is a true record of the testimony given by me at the time and place hereinabove set forth, with the following exceptions:

ERRATA SHEET

PAGE	LINE	SHOULD READ:	REASON FOR CHANGE:

ERRATA SHEET

PAGE	LINE	SHOULD READ:	REASON FOR CHANGE:

Date: _____

_____
TODD SWANSON, M.D.

HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE

Litigation Services is committed to compliance with applicable federal and state laws and regulations ("Privacy Laws") governing the protection andsecurity of patient health information.Notice is herebygiven to all parties that transcripts of depositions and legal proceedings, and transcript exhibits, may contain patient health information that is protected from unauthorized access, use and disclosure by Privacy Laws. Litigation Services requires that access, maintenance, use, and disclosure (including but not limited to electronic database maintenance and access, storage, distribution/ dissemination and communication) of transcripts/exhibits containing patient information be performed in compliance with Privacy Laws. No transcript or exhibit containing protected patient health information may be further disclosed except as permitted by Privacy Laws. Litigation Services expects that all parties, parties' attorneys, and their HIPAA Business Associates and Subcontractors will make every reasonable effort to protect and secure patient health information, and to comply with applicable Privacy Law mandates, including but not limited to restrictions on access, storage, use, and disclosure (sharing) of transcripts and transcript exhibits, and applying "minimum necessary" standards where appropriate. It is recommended that your office review its policies regarding sharing of transcripts and exhibits - including access, storage, use, and disclosure - for compliance with Privacy Laws.

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SUBP
RUSTY GRAF, ESQ.
Nevada Bar No. 6322
BLACK & LOBELLO
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (fax)
rgraf@blacklobello.law
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual, Plaintiff, v. TODD SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYONS DEVELOPMENT, LLC, a Nevada limited liability company; DOES I through X; and ROES I through X, Defendants.	CASE NO.: A-18-782494-C DEPT. NO.: XXIV

NOTICE OF RESCHEDULED VIDEOTAPED DEPOSITION SUBPOENA FOR (1) TODD SWANSON, (2) TODD SWANSON AS PMK FOR SHIRAZ TRUST AND (3) TODD SWANSON AS PMK FOR LYONS DEVELOPMENT LLC

THE STATE OF NEVADA TO:

TODD SWANSON, INDIVIDUALLY
TODD SWANSON AS PMK FOR SHIRAZ TRUST
TODD SWANSON AS PMK FOR LYONS DEVELOPMENT, LLC
c/o Christopher M. Young, PC.
2460 Professional Court, #200
Las Vegas, Nevada 89128
Tel: (702) 240-2499
Fax: (702) 240-2489

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony at the following date, time and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS, you

EXHIBIT NO. 1
1-24-20
Swanson
Heidi Konsten, CCR 845

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

make an agreement with the attorney or party submitting this subpoena:

Old Date:	January 7, 2020 (Vacated)
New Date:	**January 24, 2020**
Time:	9:00 a.m.
Place:	Black & LoBello, 10777 W. Twain Avenue, Suite 300, Las Vegas, NV, 89135

If you are a public or private corporation, partnership, association, or governmental agency, you are ordered to designate one or more officers, directors, managing agents, or other persons who consent to testify on your behalf. The persons you designate will be examined, and are ordered to testify, on the matters set forth below that are known or reasonably available to the organization. NRCP 30(b)(6).

WITNESS FEES: You are entitled to witness fees and mileage traveled, as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not exceeding $500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a witness disobeying a subpoena shall forfeit to the aggrieved party $100 and all damages sustained as a result of the failure to attend, and a warrant my issue for the witness' arrest. NRS 50.195, 50.205, and 22.100(3).

Please see the attached Exhibit "A" for information regarding your rights and responsibilities relating to this Subpoena.

By: _____
Rusty Graf, Esq.
Nevada Bar No. 6322
BLACK & LOBELLO
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (fax)
rgraf@blacklobello.law
Attorneys for Plaintiff

1-8-2020
Date

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) ***Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) ***Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 9th day of January, 2020, I caused the above and foregoing document **NOTICE OF RESCHEDULED VIDEOTAPED DEPOSITION SUBPOENA FOR (1) TODD SWANSON, (2) TODD SWANSON AS PMK FOR SHIRAZ TRUST AND (3) TODD SWANSON AS PMK FOR LYONS DEVELOPMENT LLC**; to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

[X] by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

[ ] pursuant to EDCR 7.26, to be sent via facsimile;

[ ] hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.
Nevada Bar No. 7961
Jay T. Hopkins, Esq.
Nevada Bar No. 3223
Christopher M. Young, PC
2640 Professional Court, #200
Las Vegas, Nevada 89128
Attorneys for Defendants

Jeffrey L. Galliher, Esq.
Galliher Legal, P.C.
Nevada Bar No. 8078
1850 E. Sahara Ave., #107
Las Vegas, NV 89104
Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

An Employee of Black & LoBello