

IN THE SUPREME COURT STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

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

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

**JOINT
APPENDIX ON APPEAL
VOLUME XVII OF XIX
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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

1
2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4
5 JOSEPH FOLINO, an)
6 individual; et al.,)
7 Plaintiffs,)
8 vs.) CASE NO.: A-18-782494-C
9 TODD SWANSON, an) DEPT. NO.: XXIV
10 individual; et al.,)
11 Defendants.)
12
13
14
15
16
17 VIDEO DEPOSITION OF AARON HAWLEY
18 LAS VEGAS, NEVADA
19 FRIDAY, JANUARY 31, 2019
20
21
22
23
24 REPORTED BY: JACKIE JENNELLE, RPR, CCR #809
25 JOB NO.: 598971B

1 VIDEO DEPOSITION OF AARON HAWLEY, taken at
2 10777 West Twain Avenue, Suite 300, Las Vegas,
3 Nevada, on FRIDAY, JANUARY 31, 2019, at 11:26 a.m.,
4 before Jackie Jennelle, Certified Court Reporter, in
5 and for the State of Nevada.

6
7 APPEARANCES:

8 For the Plaintiff:

9 BLACK & LOBELLO
10 BY: RUSTY GRAF, ESQ.
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12 Las Vegas, Nevada 89135
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13 For the Defendants:

14 THE GALLIHER LAW FIRM
15 BY: JEFFREY L. GALLIHER, ESQ.
16 1850 East Sahara Avenue, Suite 107
17 Las Vegas, Nevada 89104
(702) 735-0049
www.galiher-law.com

18 The Videographer:

19 TERRELL HOLLOWAY
20
21
22
23
24
25

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1 LAS VEGAS, NEVADA

2 FRIDAY, JANUARY 31, 2019; 11:26 a.m.

3 -o0o-

4 (Exhibit 1 Documents Bates No. PLT 01049 - 01052
5 marked.)

6 (Exhibit 2 Documents Bates No. PLT 1014 - 1041
7 marked.)

8 (Exhibit 3 Documents Bates No. SWANSON 0140 - 0141
9 marked.)

10 (Exhibit 4 E-Mail Chain marked.)

11 (Exhibit 5 November 24, 2017, Report - Infinity
12 Environmental Services marked.)

13 (Exhibit 6 December 7, 2017, Report - Infinity
14 Environmental Services marked.)

15 THE VIDEOGRAPHER: This is the beginning of
16 media No. 1 in the deposition of Aaron Hawley in the
17 matter of Folino, Joseph v. Swanson, Todd held at
18 Black & LoBello on January 31, 2020, at 11:26 a.m.

19 The court reporter is Jackie Jennelle. I
20 am Terrell Holloway, the videographer, an employee
21 of Litigation Services.

22 This deposition is being videotaped at all
23 times unless specified to go off the video record.

24 Would all present please identify
25 themselves beginning with the witness.

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1 THE WITNESS: Aaron Hawley.

2 MR. GALLIHER: Jeff Galliher for the
3 defendants.

4 MR. GRAF: Rusty Graf representing the
5 Folinos.

6 THE VIDEOGRAPHER: Will the court reporter
7 please swear in the witness.

8 Thereupon--

9 AARON HAWLEY,
10 was called as a witness, and having been first duly
11 sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. GRAF:

14 Q. Mr. Hawley, my name is Rusty Graf. We
15 introduced ourselves off the record. I represent
16 the Folinos in this matter.

17 Have you ever been deposed before, sir?

18 A. Many times.

19 Q. Do you need me to go through the
20 admonitions?

21 A. No.

22 Q. Okay. Only thing I'll caution you on, you
23 were just sworn in by the court reporter. It's the
24 same you would oath take in front a judge or a jury.

25 Are you aware of that?

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1 A. Yeah.

2 Q. Okay. One of the other things is during a
3 normal conversation you may know where I'm going
4 with an answer -- or excuse me, a question and try
5 to answer. Just if you would, just wait for a count
6 off like one or two before you answer so the court
7 reporter doesn't get mad at us. Okay?

8 A. Okay.

9 Q. Okay. All right. So if you would please
10 state your name and spell your last name for the
11 record.

12 A. Aaron Hawley, H-A-W-L-E-Y.

13 Q. Okay. Do you or have you ever been known
14 any other names?

15 A. No.

16 Q. You are not represented by counsel today;
17 correct?

18 A. No, I am not represented by counsel.

19 Q. I was going to ask it again. All right.
20 Thank you.

21 What did you do in preparation for your
22 deposition here today?

23 A. I briefly looked over the letter that I
24 wrote for the Swanson side. Affidavit I think they
25 call it.

1 Q. Okay.

2 A. I just briefed it. Just read it once and
3 that's it.

4 Q. All right. And we'll go over some of that
5 stuff.

6 Anything else that you looked at?

7 A. No.

8 Q. Okay. Did you have any conversations with
9 anybody?

10 A. No.

11 Q. Did you talk to Dr. Swanson prior to your
12 deposition here today?

13 A. Months ago. Many months ago.

14 Q. Okay.

15 A. I can't remember the last time I talked to
16 him.

17 Q. Okay. One of the other admonitions we
18 didn't talk about would be I'm entitled to your best
19 estimate here today. I don't want you to guess.

20 If you feel like you've got to guess, tell
21 me. But your responses thus far have been fine.

22 Your affidavit is dated September 23, 2019.
23 You're going to have the opportunity to review that
24 here in a minute. If you need to refresh your
25 recollection, you can use that document to do that.

1 Did you talk to him during or about that
2 timeframe September 23, 2019?

3 A. I think I talked to him a month before.

4 Q. Okay.

5 A. But I honestly -- it's a hard recollection.
6 I'm real bad with timing.

7 Q. That's fine.

8 A. But it wasn't after, I don't think.

9 Q. Okay. What is your date of birth?

10 A. October 19, '66.

11 Q. And are you married?

12 A. Yes.

13 Q. To whom are you married?

14 A. Rhonda.

15 Q. How long have you been married to Rhonda?

16 A. 23-ish years.

17 Q. Okay. Do you have any children?

18 A. I had three. I have two now.

19 Q. Okay. Where did you go to high school?

20 A. Western High School Las Vegas.

21 Q. What year did you graduate?

22 A. '84.

23 Q. Did you attend any college?

24 A. No.

25 Q. Do you hold any professional licenses?

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1 A. C1 plumbing license, journeyman plumber.

2 Q. Plumbing's one, huh? I didn't know that.

3 A. Yeah. You actually have to be somebody I

4 guess to pass a test anyway.

5 MR. GALLIHER: I think that's the only --

6 BY MR. GRAF:

7 Q. How long have you had a plumbing license?

8 A. I'm thinking --

9 Q. Let me ask a better question by the way.

10 That was not very artful.

11 You own Rakeman Plumbing?

12 A. Yes.

13 Q. Okay. How long has Rakeman Plumbing had a

14 C1 license?

15 A. I would say since '79, but I'm not -- we

16 bought it from somebody, and I'm not sure if they

17 had it before.

18 Q. Okay.

19 A. "We" as in my father.

20 Q. I was going to say. You didn't start when

21 you were 13, did you?

22 A. Try not to. Not that smart.

23 Let me turn this down.

24 Q. So let's talk about that. When did you

25 become or -- strike that. Better question:

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1 Are you the qualified employee for Rakeman
2 Plumbing?

3 A. Yes.

4 Q. How long have you been the qualified
5 employee?

6 A. I'm thinking about 2005.

7 Q. Prior to 2005, who was the qualified
8 employee?

9 A. My dad.

10 Q. What's his name?

11 A. S-T-E-P-H-E-N, Stephen.

12 Q. Okay. Any other contracting licenses that
13 you hold -- or actually better question: Any other
14 contracting licenses where you're the qualified
15 employee?

16 A. No.

17 Q. Okay. It's my understanding you own and
18 operate CPI Restoration also?

19 A. Yes.

20 Q. What type of license does that have?

21 A. I think then or maybe now it's B2.

22 Q. Okay. Who is the qualified employee for
23 that?

24 A. Then or now? I'm not sure. Right now,
25 it's Cody -- sorry. Don't have it on there. Cody

1 somebody.

2 Q. Okay. Who owns CPI Restoration?

3 A. I do.

4 Q. Okay. And Rakeman Plumbing, are there any
5 other owners other than yourself?

6 A. No.

7 Q. Okay. Any other licenses that you -- any
8 other licenses for businesses that you own?

9 A. I own one other company, Rakeman Air --
10 well, it's called R-A-C-E-R-A-H, LLC, and it does
11 business as Rakeman Air.

12 Q. And are you the qualified employee for
13 that?

14 A. No.

15 Q. Who is?

16 A. Guy named John -- I'm really bad with last
17 names. I'll try to come back on that.

18 Q. That's all right. I'm horrible with names
19 myself.

20 A. Kills me.

21 Q. Has --

22 A. It's John Freeman. I'm sorry.

23 Q. That's okay.

24 Has Rakeman ever had its license suspended
25 or revoked?

1 A. No.

2 Q. What about CPI Restoration?

3 A. No.

4 Q. What about Rakeman Air?

5 A. No.

6 Q. Any other licenses that you may hold other
7 than your driver's license?

8 A. No.

9 Q. Okay. Owning and operating Rakeman
10 Plumbing, CPI Restoration, and the HVAC company, has
11 that been your primary business and occupation for
12 the last how many years?

13 A. Depends on when we went into business. But
14 since I started in probably '82, a plumber back
15 then.

16 Q. Okay. Is that -- have you been a plumber
17 pretty much all your life?

18 A. Yes.

19 Q. Okay. And so we're here to take your
20 deposition in a case captioned Nicole and Joseph
21 Folino v. Todd Swanson and various entities that own
22 the property at 42 Meadowhawk.

23 Are you aware of that?

24 A. Yes.

25 Q. Okay. It's my understanding that Rakeman

1 Plumbing did the original construction plumbing
2 subcontractor work at 42 Meadowhawk.

3 Is that a fair statement?

4 A. As far as I know, yes, I'm pretty positive,
5 yes.

6 Q. So we had previously served Rakeman
7 Plumbing with a subpoena duces tecum asking for
8 records regarding 42 Meadowhawk.

9 The only thing that was produced to us were
10 documents and records regarding the repairs that
11 took place in 2017. There's two different leaks,
12 and we'll talk about those.

13 Does Rakeman Plumbing still have the
14 records and documents from the original construction
15 of the home?

16 A. When was it built?

17 Q. 2015 I believe.

18 A. I would think they got to be somewhere. We
19 don't destroy records for a long time. So they got
20 to be somewhere. Whether they weren't found, I
21 don't know.

22 Q. Okay. So Rhonda Hawley I think was the one
23 that signed the custodian yes and no of records
24 affidavit regarding that.

25 Should we contact her to follow up on the

1 original construction documents?

2 A. Yeah. We can give it another try.

3 Q. Okay. Some other background stuff. Have
4 you ever been convicted of a crime?

5 A. No.

6 Q. Did you ever serve in the military?

7 A. No.

8 Q. Did you start at Rakeman Plumbing in 1982?

9 A. No.

10 Q. When did you start?

11 A. Probably can't even answer that question.

12 My dad owned a company called Classic Plumbing. I
13 worked there until probably '02, '03. And then I --
14 that shut down and I started a company called
15 Majestic Plumbing in '02, '03. And then I just kind
16 of worked for both whether I had a paycheck or not
17 from Rakeman and Majestic.

18 So I honestly don't remember when I -- I
19 would say as a guess 2009.

20 Q. That you started working exclusively --

21 A. Yeah, and getting a paycheck. I closed the
22 other company down. I think it was 2009 we quit
23 doing business.

24 Q. When you -- let me break it up.

25 So when you were working at Classic

1 Plumbing, what type of plumbing were you doing?

2 Was it residential or commercial?

3 A. Mostly residential new construction.

4 Q. So was that -- my understanding is that it
5 gets broken up into either rough plumbing or finish
6 plumbing.

7 Did you do mostly rough or finish?

8 A. I did it all, but probably spent most of my
9 time on finish.

10 Q. Okay. So what about Majestic Plumbing,
11 what did Majestic Plumbing do?

12 A. Same thing, residential new construction.

13 Q. And then Rakeman Plumbing, since 2009 what
14 do they most --

15 A. What?

16 Q. What have they mostly done?

17 A. They've always been a service company, but
18 we do residential new construction, commercial new
19 construction. We do everything except union, big
20 stuff.

21 Q. You're a non-union shop?

22 A. Yes.

23 Q. Okay. Were Majestic or Classic union
24 shops?

25 A. No.

1 Q. Have you ever --

2 A. -- non-union. I just want to make sure I
3 got the yes and no.

4 Q. Have you ever been a member of any --

5 A. No.

6 Q. -- union?

7 It's my understanding that Rakeman did
8 re-pipe type activities following the Kitec
9 litigation.

10 Is that a fair statement?

11 A. Yes.

12 Q. When I say re-pipe, do you have an
13 understanding as to what I mean by that?

14 A. Yes.

15 Q. What's your understanding as to what I mean
16 by that?

17 A. Pull out some of the water lines, but
18 replace them all, hot and cold.

19 Q. Okay. So since 2015, have you personally
20 done any of the plumbing at 42 Meadowhawk?

21 A. No.

22 Q. Just for purposes of the record, so we have
23 some foundation for this, 42 Meadowhawk is the
24 residence that we're here talking about.

25 Do you have that understanding?

1 A. Yes.

2 Q. And it's a home that is in The Ridges.

3 Are you aware of that?

4 A. Yes.

5 Q. Did you ever supervise any of the work at
6 42 Meadowhawk?

7 A. No. I've never seen the house.

8 Q. And that was going to be my next question:
9 Have you ever been to the house?

10 A. No.

11 Q. So any testimony or knowledge that you have
12 regarding 42 Meadowhawk or the repairs at 42
13 Meadowhawk would be from documents that you reviewed
14 as the owner of Rakeman Plumbing?

15 A. Secondary information. It would be word of
16 mouth or documents.

17 Q. Okay. Did you -- did you ever talk to
18 Rocky Gerber who we deposed just prior to you about
19 the work that was done at 42 Meadowhawk?

20 A. What work?

21 Q. The repair work --

22 A. The repair work?

23 Q. -- 2017?

24 A. Yeah.

25 Q. Do you know when you talked to him?

1 A. Talked to him many times. Probably even --
2 I know I talked to him while the repairs were being
3 done.

4 Q. Okay. So let's go back and for the next
5 couple of questions that I'm going to ask you, these
6 are mostly regarding what you did in 2017. Okay?

7 So what was your job title at Rakeman
8 Plumbing in 2017?

9 A. Owner/president.

10 Q. What types of things would you do on a
11 day-to-day basis at Rakeman Plumbing?

12 A. Open the mail, answer questions, address
13 e-mails concerns, manage the company.

14
15 THE WITNESS: Am I going too fast?

16 Answer phones, you know, people are
17 calling.

18 BY MR. GRAF:

19 Q. So let's talk about some of those phone
20 calls.

21 Would you take phone calls from people like
22 Dr. Swanson that had a leak like we're going to talk
23 about here today in a house that you originally
24 plumbed?

25 A. No.

1 Q. Who would normally do that at Rakeman
2 Plumbing?

3 A. Whoever answers the phone would take it and
4 then send it over to a customer service rep.

5 Q. Do you know who Dr. Swanson is?

6 A. I know the name.

7 Q. Okay.

8 A. I think he's a knee doctor or something.
9 Why, because I Googled it, but I don't even remember
10 what he was.

11 Q. Okay.

12 (Multiple parties speaking.)

13 BY MR. GRAF:

14 Q. So did you -- have you ever met
15 Dr. Swanson?

16 A. I think he came into my office one time.

17 Q. And, again, I don't want you to guess.

18 But if you can give me an estimate, do you
19 know when that was?

20 A. When was the leak? '17, you said?

21 Q. So there's some question as to when the
22 leak occurred, but there's notes that one of the
23 leaks occurred in February of 2017 and then again in
24 November of 2017.

25 A. I would hate to even throw it out there,

1 but I know it was after the leaks. But, I mean,
2 I -- honestly, I don't think I can answer it to
3 where you guys -- where it would be anywhere
4 truthful.

5 Q. Okay. I appreciate that.

6 But you think he came into your office at
7 one point in time?

8 A. Yes.

9 Q. Was it around the time that you were
10 doing -- or that somebody prepared an affidavit?

11 A. I think I only did one affidavit; correct?

12 Q. That's all that I have.

13 A. Yeah. It was long before that.

14 Q. Okay. So we'll go over that in a few
15 minutes anyway.

16 Just to be clear, you never had any, in
17 2017, direct supervision responsibilities as to the
18 work that was being performed by Rakeman employees?

19 A. Direct like touching things or telling them
20 which way to go?

21 Q. Being present during any of the repairs.

22 A. Never been to the job site, but they always
23 report to me what they see, and, you know, Hey, I've
24 done this. Keep going, you know. If you see
25 damages, keep moving.

1 We always talk about things like that.

2 Q. That statement that you just made, If you
3 see damages, keep moving, what does that mean?

4 A. Stop and -- you know, our job is to fix it,
5 the leak, and to fix all damages that we see.

6 Q. Was that your responsibility in 2017 at the
7 two leaks at the 42 Meadowhawk?

8 A. When you say responsibility that's kind
9 of -- I would say we talked about it and, yeah, I
10 probably -- yeah, I would say sure.

11 Q. Okay. Did you speak with either doctor --
12 let me ask it this way: Did you ever talk to
13 Dr. Swanson about the leaks in 2017?

14 A. I would say more than likely, yes.

15 Q. Did you ever talk to him on the phone about
16 the leaks?

17 A. Yes.

18 Q. Okay. Do you remember the content of those
19 conversations?

20 A. No, I really don't.

21 Q. Okay. Some people may not remember the
22 specific words that were spoken, that sort of thing,
23 but they might remember the issues that were
24 discussed.

25 Do you remember anything about those

1 **conversations?**

2 A. Yeah. I think I talked to them about --
3 you know, later on, about the damages we found and
4 repaired. We talked about that a bit.

5 And then probably later on I think when
6 they came to my office, we talked about -- it might
7 have been on the phone. I don't remember -- about
8 testing the system to make sure it was holding.

9 **Q. And why would you make the suggestion of**
10 **testing the system to make sure it was holding?**

11 A. I guess he was trying to sell the house,
12 and I know we had had a leak in the past, and I
13 don't know if it was to satisfy the customer and
14 realtor. I guess just to show it was holding
15 pressure.

16 **Q. Okay. Had you previously done work for**
17 **Dr. Swanson at another residence other than 42**
18 **Meadowhawk?**

19 A. I don't have any idea. I never knew his
20 name before this incident or whatever this is.

21 **Q. Okay. Were you aware of the project when**
22 **the home was being constructed?**

23 A. Yeah. But I'm not sure I knew a name.

24 **Q. And that's where I was going.**

25 A. I mean, a lot of times, the block on the

1 side of the plans -- I mean, I don't usually look at
2 the plans. And another guy bids it. So I can't say
3 that I was aware that it was a Dr. Swanson.

4 Q. Okay. And that -- kind of my next
5 follow-up to that is: Did you ever -- do you recall
6 any conversations with Dr. Swanson during the new
7 home construction?

8 A. I don't recall any. There probably wasn't
9 any with me.

10 Q. Have you ever done any other projects with
11 the company that built the house -- it's his
12 company -- Lyons Development, L-Y-O-N-S?

13 A. Not as far as I know. I don't think we
14 built it for him. We probably built it for a
15 builder.

16 Q. So it's my understanding Blue Heron kind of
17 specked it for Lyons Development is the way I
18 understand it?

19 A. Yeah. We did quite a few houses for Blue
20 Heron.

21 Q. How many houses do you think you did for
22 Blue Heron?

23 A. Ten or 15 as of yet.

24 Q. And Blue Heron's kind of a custom,
25 semi-custom builder?

1 A. Yeah. Semi-custom usually.

2 Q. Okay. So just to confirm, you didn't
3 directly observe the repairs that were conducted at
4 42 Meadowhawk in 2017?

5 A. Not at all.

6 Q. So any information that you have say in
7 your affidavit -- and why don't we take a look at
8 that? It's Exhibit 3.

9 So you've been handed what's been marked as
10 Exhibit 3 for Mr. Gerber's deposition, but we'll use
11 it here today for yours also.

12 Do you recognize that document?

13 A. Yes.

14 Q. Now, did you prepare this document?

15 A. No.

16 Q. Do you know who did prepare this document?

17 A. I think Dr. Swanson's attorneys.

18 Q. So at the time Chris Young would have been
19 representing Dr. Swanson.

20 Does that name ring any bells?

21 A. It doesn't, but it could have been.

22 Q. What about Jay Hopkins?

23 A. Yeah, that names rings a bell.

24 Q. Did you know Jay Hopkins before this --

25 A. I don't think so, no.

1 Q. Okay. Did you correspond with Mr. Hopkins
2 about preparing this affidavit?

3 A. Yes.

4 Q. And when I say correspond, did you send
5 e-mails?

6 A. E-mails.

7 Q. Okay. You still have those e-mails?

8 A. I think I have -- probably have a couple of
9 them or some of them. Well, yeah, because I think I
10 got a couple of them. Not a bunch.

11 Q. Okay.

12 A. I might have even printed them. I don't
13 remember.

14 Q. I'm sorry?

15 A. I might have printed them. If I did have
16 them, I would have printed them.

17 Q. All right. We would request that you
18 produce those pursuant to our subpoena.

19 A. I think I did, didn't I? If I didn't, I
20 don't --

21 Q. Okay.

22 A. I think I produced some e-mails, but that's
23 all I had. So if it was directly related to this --
24 is this my e-mails here?

25 Q. No, not all them. We'll go through some

1 more.

2 A. All I could find is what I printed.

3 Q. Okay. Did you look for e-mails from 2019
4 though?

5 A. I looked for e-mails whenever they asked
6 for the e-mails to be printed or any information
7 when I was subpoenaed for that stuff.

8 I'm one of those kind of weirdos that I
9 don't like clogging my -- I don't keep a ton of
10 junk.

11 And it's not that it's junk. Sorry. I
12 didn't mean to say it that way. I just get stuff
13 out of my computer. No disrespect.

14 Q. None taken.

15 So let's go through your affidavit here.
16 Is that your signature on the second page SWANSON
17 141?

18 A. Yeah.

19 Q. And the notary there, do you know where you
20 signed this?

21 A. Yeah. The people came to my office.

22 Q. By people, just the notary or did the
23 attorney come to your office?

24 A. This one here was just a notary came by.

25 Q. Did you ever have any meetings with any of

1 the attorneys for Dr. Swanson?

2 A. I might have had one personal meeting. I
3 talked to him a little bit on the phone.

4 Q. So what did you talk to him about?

5 A. Well, they asked for an affidavit and, like
6 I said, I did not write this affidavit. I read it.
7 I had them change things that I didn't think were
8 correct.

9 Q. Like what?

10 A. There was statement in there that -- it's
11 mostly all correct. There was one statement in
12 there that said something like it was a normal
13 plumbing leak that you run into every day kind of a
14 deal, and there's no such thing as a normal plumbing
15 leak.

16 So that's pretty much all I changed. I
17 don't remember the exact wording.

18 Q. Okay. So paragraph five says, I oversee my
19 employees and have personal knowledge regarding the
20 work they perform on behalf of Rakeman Plumbing.

21 Do you see that?

22 A. Um-hmm.

23 Q. Is that a yes?

24 A. Yes.

25 Q. Sorry.

1 A. That's all right. That's my fault.

2 Q. Okay. And when you say oversee my
3 employees, you're not out at the job site seeing
4 what work they do; correct?

5 A. No. But we talked about this house quite a
6 few times -- many, many times. But oversee,
7 standing over it, no.

8 Q. When you say we talked many, many times,
9 who is the we?

10 A. Rocky and I.

11 Q. Okay. So what did you talk to Rocky about
12 regarding this property?

13 A. It being an Uponor leak, repairing the
14 damages, and bringing it back to normal. And we
15 also talked about when we were asked to water test
16 it by Mr. Swanson, you know, what procedure he used
17 just to double-check and make sure it was tight.

18 But not -- like I said, I never been to
19 the -- but we've talked extensively about this. And
20 what's extensively, I don't have any idea. We've
21 talked many, many times.

22 Q. So talk to me about the water test.

23 What's the purpose of the water test?

24 A. It's to show that at that exact time that
25 I'm checking that there was zero leaks, that the

1 system is 100 percent tight. And how do I know
2 that? Because the meter doesn't move.

3 We put a gauge on there to show pressure,
4 make sure it's not losing pressure in certain areas,
5 and then also sure that the meter is not moving.

6 And those meters are very, very delicate.
7 So if you watch them for 15 minutes, if you've got a
8 drip, you'll know.

9 Q. Okay. Who performed the water test at the
10 Swanson residence?

11 A. I'm pretty sure it was Rocky, but I don't
12 know. He has a crew that might have done it. I
13 don't know.

14 Q. So when you say you have personal knowledge
15 regarding the work that they performed, you have
16 knowledge of what they told you the work they
17 performed; right?

18 A. On the water test I told them how -- we
19 talked about what we were going to do.

20 Q. But, I mean, you didn't observe them doing
21 the test. You have to rely on what they told you;
22 correct?

23 A. Right.

24 Q. So paragraph six says, On May 23rd, 2017,
25 my company received a call regarding a plumbing leak

1 in the master bedroom at 42 Meadowhawk.

2 Do you see that?

3 A. Um-hmm.

4 Q. Is it your understanding --

5 A. Yes.

6 Q. That's all right.

7 A. Sorry.

8 Q. Is it your understanding that the leak
9 occurred on or about May 23, 2017?

10 A. I don't like the question. As far as I
11 would say the leak happened when it happened. I
12 don't know when the leak happened.

13 That's when we heard about it; correct? I
14 mean --

15 Q. I'm looking at your affidavit.

16 A. Yeah. I would say as far as I know, that's
17 how we look at it.

18 Q. So let me ask it this way: How did you
19 ascertain that you got a call on May 23, 2017?

20 A. I think I was probably seeing -- looked in
21 the computer and seen it was in the computer.

22 Q. Okay.

23 A. Or I seen the invoice that shows the date.

24 Q. Okay. So we have some of the invoices and
25 we're going to look at those.

1 A. Okay.

2 Q. Okay. But there is some question as to
3 whether or not the leak occurred on February 16,
4 2017, and then just got documented on May 23, 2017.

5 So that's what I'm trying to ferret out by
6 taking your deposition and by taking Rocky's
7 deposition. Okay.

8 So you just made a statement that you
9 looked at the computer. Let me stop you there and
10 let me ask you a couple of questions about that.
11 Okay.

12 Does Rakeman Plumbing have like software
13 that they use to track work in a specific address?

14 A. Could I go a different direction real
15 quick?

16 Q. Yeah, most definitely.

17 A. I would say -- my statement's probably
18 wrong because I can't remember -- we had a big
19 system crash. And I think it's maybe the beginning
20 of '18 we had a brand new system.

21 So I have really not a lot of records from
22 behind. That's why there's probably a lot of stuff
23 missing here because we had an absolute crash.

24 So I'm just -- I can't remember, like I
25 said, if I looked on an invoice or what.

1 Q. Okay.

2 A. And I can't remember what year, but I'm
3 thinking we went online with our new system like
4 January 1st I'm thinking '18 -- or maybe it was --
5 it could have been '17.

6 Q. But you would agree with me though that
7 this affidavit says, On May 23, 2017, my company
8 received a call.

9 I haven't read that incorrectly; correct?

10 A. No.

11 Q. Okay. And you signed this affidavit?

12 A. Right.

13 Q. There is an invoice that's going to be
14 dated May 23, 2017, but then there's other records
15 that references a leak in February 2017.

16 So that's why I'm trying to figure out was
17 there more than one leak or was it documented months
18 after the leak?

19 MR. GALLIHER: Compound.

20 You can answer.

21 BY MR. GRAF:

22 Q. You can answer.

23 A. Oh. I think I know that there was two
24 leaks at this house, the original leak and then I
25 guess there was one as the house was closing escrow.

1 I'm pretty sure that's the case.

2 Is that what you're asking?

3 We don't -- I would say I probably pulled
4 that -- maybe I pulled that off the invoice.

5 Q. Okay. So the statement that says, My
6 company received a call on May 23, 2017, isn't
7 accurate?

8 A. I mean, when I read it, I probably took
9 that out there and said -- that, Yeah, you're right.
10 It could not -- it may not be accurate, but I don't
11 think it's a month off. That seems irregular to me,
12 but --

13 Q. Okay. We'll go over that stuff.

14 A. Yeah. I probably just got it off the
15 invoice.

16 Q. Okay.

17 A. And there was no meaning for deception as I
18 read because I didn't write it, but there was no
19 meaning of deception.

20 Q. Got it.

21 Do paragraph seven says, Rakeman Plumbing
22 was familiar with the Uponor plumbing system
23 installed at the residence because Rakeman Plumbing
24 had installed it during construction of the house.

25 That's an accurate statement; right?

1 Rakeman did the original construction?

2 A. Yes.

3 Q. Okay. I recall that the leak was in the
4 sidewall in the master closet.

5 Do you see that?

6 A. Yes.

7 Q. And that's information that you received
8 from Rocky Gerber?

9 A. Rocky Gerber or on the invoice.

10 Q. Paragraph eight says, Rakeman Plumbing
11 technician William Rocky Gerber went to 42
12 Meadowhawk Lane to repair the reported leak.

13 He testified that he didn't repair
14 anything, that all he would have done was supervise
15 other employees.

16 Is that your understanding as to what
17 actually occurred?

18 A. I don't know what actually occurred. But
19 like I just told you a second ago, he has a crew and
20 that's -- I probably should have had him adjust it
21 and say one of Rocky's crew.

22 Q. It says, Mr. Gerber met a person at the
23 residence who informed Mr. Gerber that she was Dr.
24 Todd Swanson's assistant.

25 That's just information that was related to

1 you by Mr. Gerber; right?

2 A. I'm pretty sure that I talked to
3 Dr. Swanson and he had said we talked to his
4 assistant.

5 Q. So then for paragraph nine it says, Onsite
6 Mr. Gerber found the following and took the
7 following corrective action.

8 And then that appears to depict some
9 information that we looked at that is on -- if
10 you'll look at Exhibit 4, there's an e-mail and then
11 there's some attached invoices.

12 If you look at page 63, the Bates stamp at
13 the bottom --

14 A. Which one?

15 Q. -- page 63 and it's kind of --

16 MR. GALLIHER: These are on the bottom, but
17 the ones that are sideways.

18 THE WITNESS: I gotcha.

19 MR. GALLIHER: Next page.

20 BY MR. GRAF:

21 Q. It's actually the second to last page of
22 that exhibit.

23 A. I thought I missed it.

24 Q. Sorry.

25 A. There's 64.

1 MR. GALLIHER: Right here.

2 THE WITNESS: You guys stamped it. I
3 gotcha you.

4 I was wondering what that number was.

5 BY MR. GRAF:

6 Q. It's a Bates stamp.

7 Do you know what a Bates stamp is? It's
8 got an alphanumeric and then numeric sequential
9 numbers that we keep track of thousands of pages
10 that we end up producing in these cases.

11 A. Gotcha.

12 Q. So this Bates stamp PLT 63, do you
13 recognize that document?

14 A. Not really, but I'm sure I've looked at it.
15 I looked at thousands of these things.

16 Q. So if you would just take a look at
17 underneath where it says description of work.

18 This is dated 5/23/2017 and Mr. Gerber has
19 testified that this is his handwriting.

20 That's his name where it says technician
21 signature; correct?

22 A. Yes.

23 Q. Okay. Is that where you got the
24 information for this affidavit is from this invoice?

25 A. I can't 100 percent say that, but I would

1 say probably yes.

2 Q. Okay. You're saying that because you
3 didn't prepare the affidavit; correct?

4 A. Exactly, exactly.

5 Q. Okay.

6 A. Which you taught me a big lesson here.
7 I'll never sign something I haven't prepared because
8 my word -- and when I read something, you just read
9 it as, Okay, yeah, that's right. And it may --
10 yeah, you taught me a real lesson here.

11 Q. Okay. So again, paragraph nine reads,
12 Onsite Mr. Gerber found the following and took the
13 following corrective action.

14 Mr. Gerber noted these actions on this
15 invoice. That's how you came to have that
16 information, not upon seeing that actual work done
17 at the site; correct?

18 A. Right. Yeah, because I didn't write this
19 so -- yeah. It would have been either he would have
20 told me or I would have seen it on the invoice.

21 Q. Okay. So then paragraph ten says, The
22 May 23, 2017, leak was fully and completely repaired
23 and we did not expect any further problems.

24 Do you see that?

25 A. Yes.

1 Q. So my question to you is this: What work
2 if any did CPI Restoration -- is it CPI Remediation
3 or --

4 A. Restoration.

5 Q. -- Restoration do for the May 23rd, 2017,
6 incident?

7 MR. GALLIHER: Foundation.

8 THE WITNESS: I don't know without looking
9 at the invoice. But I know that -- I don't know if
10 this is a first leak, a second leak.

11 I know that we tore stuff out, dried it
12 out. Put it -- either put it back together or hired
13 somebody to put it back together.

14 BY MR. GRAF:

15 Q. Okay. And that's kind of the question.

16 So do you know if cabinets were removed and
17 replaced out of this closet?

18 MR. GALLIHER: Foundation, speculation.

19 THE WITNESS: As far as I know, they were
20 definitely removed.

21 What do you mean by replaced? Brand new?

22 BY MR. GRAF:

23 Q. Yes.

24 A. As far as I know, there was some removed
25 and we paid somebody to put them back together

1 because it was not our expertise.

2 Q. Okay.

3 A. But I don't know if or what new was put in
4 there, brand new.

5 Q. And I want to make sure I understand your
6 response.

7 Are you saying that you do not know whether
8 or not there were new cabinetry installed in this
9 closet?

10 A. I wouldn't -- I don't know that personally.

11 Q. Okay.

12 A. But I know we sent out and had somebody
13 else do their replacement. I'm pretty darn sure.

14 I'm sure there's got to be an invoice,
15 but -- Rocky would know that better than I would.

16 Q. Okay. So skipping down to paragraph 11
17 there on page 1 of two it says, I invoiced Uponor
18 the manufacturer of the repaired pipe because the
19 pipes at the residence were under a 25-year Uponor
20 warranty.

21 Do you see that?

22 A. Yes.

23 Q. We'll go through it here in a second, but
24 it appears that there was like an invoice for 2496.

25 And that was paid by who?

1 A. This one?

2 Q. Yeah.

3 A. I'm going to speculate and say that Uponor
4 did.

5 Q. Okay.

6 A. Because I haven't read this invoice.

7 Q. This affidavit says, I -- and that denotes
8 you -- invoiced Uponor.

9 So would you have been the one that
10 normally submitted warranty claim paperwork to
11 Uponor?

12 A. I am Rakeman Plumbing. I don't -- no, I
13 don't key punch.

14 Q. Who would have invoiced Uponor?

15 A. One of the girls in the office.

16 Q. Okay.

17 A. I represent myself I as Rakeman Plumbing.

18 Q. Okay. So then the last paragraph,
19 paragraph 13 on page 2 -- so there's originally two
20 exhibits, and I think that it's a typed out invoice
21 and then the check that they got from Uponor.

22 It says, Those records were kept in the
23 regular course of business. It says, I have
24 personal knowledge that the invoice was created at
25 or near the time the leak was repaired on or about

1 May 23, 2017, and that the January 9, 2017, letter
2 from Uponor was received by Rakeman on or shortly
3 after January 9, 2017.

4 Do you see that?

5 A. Um-hmm, yes.

6 Q. So, again, is that an indication by you
7 that the leak occurred on or about May 23, 2017?

8 MR. GALLIHER: Foundation, speculation.

9 THE WITNESS: I'm just going by the invoice
10 date. I would say.

11 BY MR. GRAF:

12 Q. Okay.

13 A. I mean, there's a difference between
14 what -- I mean, I was at a house three days ago and
15 I found a leak that the lady didn't even know was
16 leaking.

17 When did it start? I have no clue, but it
18 leaked for a long time. So I guess maybe I was
19 speaking incorrectly when you say that's when the
20 leak occurred. We have no idea when the leak
21 occurs.

22 Q. So let's look at Exhibit 1 to Mr. Gerber's
23 deposition. So go ahead and take a second and take
24 a look at this.

25 Do you recognize this document?

1 A. Not this particular one, no.

2 Q. Do you recognize the form of the document
3 though?

4 A. No. It's just an e-mail. This form here,
5 I would say no, I probably don't recognize it. And
6 I was more reading the e-mail side of it.

7 Q. Okay. It's a -- Exhibit 1 is Bates stamped
8 1049 through 1059. Yeah, it's all of those.

9 A. Okay. Okay.

10 Q. And on the second page, which is 1050, at
11 the bottom it says the failure date, 16
12 February 2017.

13 A. Okay.

14 Q. Do you see that?

15 A. Yeah.

16 Q. So --

17 A. Yes.

18 Q. -- what we're trying to ascertain by doing
19 these depositions is was there a leak in May of 2017
20 or was it the leak that occurred February 16, 2017,
21 that was just documented in May of 2017?

22 And I guess there wasn't a question there
23 really.

24 A. I really don't have an answer.

25 Q. That's what I want to know.

1 Do you know if there was one water leak
2 that occurred either on February 16, 2017, or on
3 May 23, 2017, or were there two?

4 A. I thought I heard that there was two leaks,
5 the one where we worked on the closet and then I
6 think when they closed escrow or something, one
7 might have come up. For some reason, I'm thinking
8 there was two leaks with this house.

9 Q. Okay. So if you look at PLT 1055 through
10 PLT 1059 --

11 A. Okay.

12 Q. -- I think that those are the Exhibits A
13 and B to your affidavit by the way, that -- that
14 invoice and the transmittal with the check.

15 A. Okay.

16 Q. So do those documents help to either
17 refresh your recollection or to show you as to
18 whether or not the leak occurred on May 23rd or
19 February 16, 2017?

20 A. I'd have to defer back and say it doesn't
21 make -- I mean, it's dated May 23rd.

22 Q. Okay. So if you look back at the first
23 page, 1049, and where it says claimant and job site
24 information, it says claimant information.

25 That's your company and your name; right?

1 A. Yes.

2 Q. And is that an accurate e-mail for you,
3 aaron@rakeman.com?

4 A. Um-hmm.

5 Q. Is that a yes?

6 A. Yes.

7 Q. You're good. We got video, so it's a
8 little bit better --

9 (Multiple parties speaking.)

10 THE WITNESS: Yes. No, I know better. I
11 just get lazy.

12 BY MR. GRAF:

13 Q. How long -- has aaron@rakeman.com been your
14 e-mail since 2015?

15 A. Many, many years, yes.

16 Q. Okay. Probably going back to 2009 when you
17 started to operate Rakeman Plumbing?

18 A. Yes.

19 Q. Okay. And do you use that e-mail to
20 communicate with Uponor regarding warranty claims?

21 A. That's the only e-mail I use, yes --

22 Q. Okay.

23 A. -- for warranty claims.

24 Q. So in terms of this warranty claim software
25 that -- it looks like these two pages, right, or

1 three pages because there's another one after it?

2 Do you input the information in this claim
3 form?

4 A. I do not. I don't -- we fill out a paper.
5 I don't know if this is transposed. I know we fill
6 out a paper and send it to them or we used to.

7 Q. So this is what I'm getting at --

8 A. Okay.

9 Q. Who inputs the failure date? Is that
10 something that Rakeman Plumbing says, Hey, this is
11 the date, the failure date?

12 A. As far as right here?

13 Q. Yes. And you're pointing to the failure
14 date 16 Feb 2017 on 1050?

15 A. Yeah. I would say this isn't a Rakeman
16 Plumbing document.

17 Q. No, I get it.

18 A. Okay. Because I don't recognize this form
19 at all.

20 Q. Okay.

21 A. Where that date comes from, I don't know.
22 You taught me a lesson there. I read that
23 affidavit many times and it seemed correct.

24 Q. Okay. Let's look at Exhibit 4. That is
25 Bates stamped PLT 54 through PLT 64.

1 The first couple pages are e-mails back and
2 forth between yourself and Nicky Whitfield.

3 Do you see that?

4 A. Yes.

5 Q. Have you ever met Nicky Whitfield?

6 A. No.

7 Q. Did you ever talk to her on the phone?

8 A. I might have.

9 Q. Do you recall when you talked to her?

10 A. No. Because I can't remember if it's all
11 e-mails, but seems to me I did talk to her one time.
12 And if I would have, it would have been -- I don't
13 know by the dates when --

14 Q. So let's go through these in reverse order
15 because the e-mail string is newest to oldest. So
16 on 55 there's an e-mail from you to Nicky Whitfield
17 dated November 17 -- at 11:32 a.m.

18 What does that e-mail say?

19 A. This is a letter I sent to Mr. Swanson this
20 morning (reading).

21 Q. Down below that is the e-mail string of you
22 sending the scanned image.

23 And I think if you look on page 56, is that
24 the letter that was attached?

25 A. I don't know.

1 Q. Okay. So let's keep going.

2 And then she responds, Is there a way you
3 could give us an estimated timeframe for repairs?

4 A. Do you want me to read this?

5 Q. No, no. We'll come back to it.

6 Is there a way that you could give us an
7 estimated timeframe for repairs if the mold spore
8 comes back negative? We understand if the mold
9 spore test comes back positive, it will change the
10 entire timeframe.

11 Do you see that?

12 A. Yes.

13 Q. So who were you having conduct the mold
14 spore test?

15 A. It was environmental -- Infinity
16 Environmental. I think it's the only company we
17 ever used.

18 Q. Okay. Take a look at Exhibit 5 and 6.
19 We're going to look at 5 and 6.

20 A. Okay.

21 Q. Do you recognize Exhibit 5?

22 A. Not particularly, but I've read them and I
23 probably did read this one.

24 Q. Go ahead and take a look at it just real
25 quick and I'm going to ask you about some of the

1 results.

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2 A. Okay. Just go ahead. You want me to super
3 read this thing?

4 Q. No.

5 A. Okay. Go ahead.

6 Q. So Infinity Environmental, what's your
7 understanding as to what they do?

8 A. They are the hygienist, oral hygienist or
9 whatever you want to call it, that we've always used
10 to -- we go in there and we clean it up to what we
11 think is clean to where I guess it's livable or
12 whatever within limitations and we call them out to
13 double-check that it is.

14 Q. So Exhibit 5 is purports to be dated
15 November 24, 2017, and in the first paragraph first
16 sentence it says that the subject services were
17 performed on November 17, 2017.

18 Do you see that?

19 A. Yeah.

20 Q. So if we go back and we look at Exhibit 4,
21 the e-mail that we were just talking about, that
22 e-mail is dated November 17, 2017; correct?

23 A. Um-hmm.

24 MR. GALLIHER: That's a yes?

25 THE WITNESS: Yes.

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1 BY MR. GRAF:

2 Q. So this report is the one that's being
3 referenced in that e-mail; right?

4 A. I would say yes.

5 Q. Okay. This report came back positive for
6 mold spores; right?

7 A. I don't know.

8 Q. Go ahead and take a look at it.

9 A. Visible fungi or whatever you want to call
10 it, yeah.

11 Q. And so there were airborne samples and
12 there were surface samples that were taken; correct?

13 A. As far as I know. I don't know what their
14 exact -- it shows air -- non-viable air fungal
15 analysis. So I would say they did air and I know
16 they swab surfaces. They surface swab.

17 Q. Sorry. In this report required that there
18 be further mold remediation; correct?

19 A. I would say yes, if it was found, yes.

20 Q. So who would have done the mold remediation
21 that's suggested in this report?

22 A. CPI Restoration. I'm pretty sure they did
23 the mold remediation on this one.

24 Q. So CPI Restoration -- other than the B2
25 license, does it or any of the employees hold any of

1 the certifications that talk about mold remediation
2 and that sort of thing?

3 A. I used to have a guy that did, but at this
4 time I would say no.

5 Q. Okay.

6 A. I don't know if you need a license to do
7 that.

8 Q. Okay. Do you have an understanding as to
9 whether or not -- strike that.

10 Did you perform any supervisory duties over
11 the employees at CPI Restoration?

12 A. As the owner I do, but --

13 Q. Who would have been the supervisor for this
14 job?

15 A. Rocky.

16 Q. Okay. All right.

17 A. I used to have another guy named Rafael,
18 but I think he was already gone by that time.

19 Q. All right. And as you sit here, you don't
20 have any personal knowledge as to whether or not --
21 like the recommendations that are on page 4 of this
22 report, can you testify as to any personal knowledge
23 regarding those recommendations being performed?

24 A. No.

25 Q. So then there was a follow-up report that

1 is Exhibit 6 dated -- which purports to be dated
2 December 7th, 2017, from Infinity Environmental.

3 Do you see that?

4 A. Yes.

5 Q. And it's a viable and airborne fungal post
6 remediation verification report.

7 Do you see that?

8 A. Yes.

9 Q. And this is the normal report that gets
10 prepared after all the remediation has been done,
11 they come back out and they retest?

12 A. As many times as necessary.

13 Q. Okay. So this report says that there's no
14 more mold?

15 A. I'll take your word for it. Yeah. I would
16 say it does. I mean, we always call them. We do
17 our work. Well, we call them. We do our work.
18 Then we make sure it's to the -- whatever their
19 standards are.

20 Q. So here's my question: So that's for the
21 leak that occurred in November of 2017.

22 A. Okay.

23 Q. Did you have a same or similar report
24 prepared for the work that was done in May of 2017
25 or February for that matter?

1 A. I would say I don't know.

2 Q. Okay. And who would have that information?

3 A. I would say everything we found we gave
4 you. But I don't --

5 Q. We didn't receive any records that had CPI
6 Restoration even on there. So let me ask you a
7 little bit about that just briefly.

8 So for the November of 2017 leak and the
9 work that was done out there by CPI Restoration,
10 would CPI Restoration invoice the homeowner or would
11 they invoice Rakeman Plumbing?

12 A. CPI would have invoiced either Uponor or
13 Rakeman.

14 Q. Okay. Does CPI Restoration maintain its
15 own separate set of records and documents?

16 A. Yeah. Separate computer system.

17 Q. So would CPI Restoration have its own file
18 regarding the work that was performed at any time at
19 42 Meadowhawk Lane?

20 A. There was -- should have been invoices or
21 something, yeah, something was done up. But, like I
22 said, it's on the same computer system. And that's
23 the crapper of this whole thing is you can't pull
24 anything up from that on the computer side.

25 But there should be paper somewhere.

1 Whether we found it or not, I don't know. Whether
2 they even looked on the CPI, I don't know.

3 Was it subpoenaed? I don't know.

4 Did I think about -- would I have thought
5 about? No, probably not.

6 Q. Let me make sure I understand what you just
7 told me. Okay?

8 Are you telling me that the same computer
9 system that you testified earlier had failed for
10 Rakeman Plumbing, that's the same server that housed
11 information and files for CPI?

12 A. Yes.

13 Q. They both failed or the one served failed?

14 A. The system failed. Like three companies
15 are all in the same server.

16 Q. So in the documents that we subpoenaed from
17 Rakeman Plumbing, we didn't receive anything from
18 CPI.

19 So then we would ask again that, in
20 addition to those e-mails that you may have gotten
21 between yourself and the lawyers, we'd ask that you
22 look and see if there's anything between Rakeman and
23 CPI as to this property.

24 A. I don't think I had any -- just what little
25 memory I have, I don't think any CPI in that

1 conversations were e-mailed, I wouldn't think.

2 Q. I'm just more worried about records, say an
3 invoice or something like that by CPI to Rakeman, if
4 it exists, then we'd want to see it.

5 A. Yeah. Honestly, I think people, they look
6 at Rakeman, Rakeman, Rakeman. They don't read it.

7 Q. I don't think I knew about CPI until we had
8 taken these depositions.

9 A. Gotcha.

10 Q. No, I don't think a subpoena has gone to
11 CPI.

12 A. We don't withhold information because we
13 don't like you.

14 Q. And I'm not saying that you did that. I'm
15 just saying --

16 A. Gotcha.

17 Q. Yeah.

18 So we'll probably send you another
19 subpoena.

20 A. That's fine.

21 Q. All right. Okay.

22 A. Yeah. I would have never even thought
23 about the CPI side.

24 Did you get this from the swans or did we
25 send it to you? I'm wondering how we even got this

1 to you or how you even got this.

2 Q. So the one dated December 7th, we got from
3 the Swansons. The one dated November 24th, we got
4 from the Environmental --

5 A. Okay. I don't know if that would have been
6 attached. I was thinking that that wouldn't have
7 came from us because more than likely it wasn't
8 attached to anything.

9 Q. You know what, one other thing. Going back
10 to Exhibit 4, we didn't go over that letter that's
11 in PLT 56.

12 A. Okay.

13 Q. Okay. So read that letter and then I'm
14 going to ask you some questions about it.

15 A. This letter was to Dr. Swanson. As I
16 discussed with you on the telephone --

17 Q. You can just read it to yourself.

18 A. Oh, sorry.

19 Q. Yeah. I'll ask you some questions.

20 A. Okay.

21 Q. What was the purpose of this letter?

22 A. If I remember right, he was -- to my memory
23 it just tells me that it was towards the end of the
24 year when he was trying to sell this house.

25 So we were called out there. He wanted to

1 do a pressure test on his house.

2 I don't really remember why I wrote the
3 letter. It was just going back and forth with him
4 answering questions probably.

5 Q. And that's probably a good qualification.

6 Did you prepare this letter?

7 A. Yeah. I wrote this.

8 Q. Okay. Did you prepare it after having a
9 conversation with Dr. Swanson?

10 A. I would say yes because he's the one that
11 asked me to do a pressure test on the house.

12 Q. Okay. So the visual inspection that's
13 discussed in here, who did the visual inspection?

14 A. I don't know. Rocky or Rocky's crew.

15 Q. Okay. There weren't any walls that were
16 opened up to look at any of the Uponor fittings that
17 were inside wall cabinets; correct?

18 A. I can't answer that. I don't know.

19 Q. Okay.

20 A. I would say -- if this -- if my timing is
21 right with, like I said, I was thinking it's the end
22 of the year towards the end of the year he was
23 trying to sell it, house should have been fully
24 livable.

25 Q. Okay.

1 A. But kind of like -- I'll go back to -- I
2 don't need to throw this out there, but a house I
3 was at the other day had a leak in it, you could see
4 it through the side through the stucco.

5 Q. Okay.

6 A. He knew it was leaking because it was
7 soaking wet.

8 Q. So let's go ahead and mark these as next.

9 So --

10 (Exhibit 7 Documents Bates No. PLT 01646 marked.)

11 (Exhibit 8 Documents Bates No. PLT 01645 marked.)

12 MR. GALLIHER: The letter is 7.

13 THE WITNESS: Invoice is 8.

14 BY MR. GRAF:

15 Q. You've been handed what's been marked as
16 Exhibits 7 and 8 for purposes of this deposition. I
17 think that they're for the same thing but for
18 they're for different amounts. So I wanted to see
19 why the difference.

20 So Exhibit 7 totals 13,160. It's dated
21 January 30, 2018. And then Exhibit 8 is for
22 \$14,459, and it's dated January 5, 2018.

23 A. Do I remember why it was cut?

24 Is that what you're asking?

25 Q. Okay.

1 A. Is that what you're asking?

2 Q. Yeah.

3 Is there a different scope of work?

4 Why is there a different amount?

5 A. I don't remember. I would say -- we're
6 talking about the same exact leak I would say.

7 Q. So one is -- Exhibit 8 is an invoice that's
8 billed to Uponor?

9 A. Right.

10 Q. Exhibit 7 is more of a letter breakdown,
11 bid type thing?

12 A. Right.

13 Q. Dated January 30, 2018, and it's addressed
14 to John.

15 Do you know who John is?

16 A. No. I'm sure I did at the time. I would
17 say worked for Uponor. These people go through
18 employees and it's amazing.

19 MR. GRAF: Let's go ahead and mark this as
20 9.

21 THE WITNESS: I would say, you know,
22 probably a lot of times when you itemize things, it
23 comes out different.

24 I mean, maybe this was a -- I don't know.

25 (Exhibit 9 Documents Bates No. PLT 01647 - 01648

1 marked.)

2 (Thereupon, an off-the-record discussion was had.)

3 THE WITNESS: That doesn't make sense. I
4 would say this is one I would expect to get paid,
5 but that's just a guess.

6 BY MR. GRAF:

7 Q. And when you say this one, which one are
8 you referring to?

9 A. The 14459. I mean, I don't know why I
10 broke it down for them.

11 Q. Okay. So I've handed you what's been
12 marked for Exhibit 9 for purposes of this
13 deposition.

14 You'll notice that one of the invoices that
15 is being paid is on the second page, RMA -- which
16 I'm assuming is some anachronism for Rakeman
17 Plumbing?

18 A. No.

19 Q. What's RMA?

20 A. Yeah, something like that. That's their
21 number that they give a certain address.

22 Q. Okay. But the one dated February 1, 2018,
23 is for 13160?

24 A. Um-hmm. You know, we could have done
25 something extra for the doctor. We could have done

1 something extra for the homeowner. I honestly don't
2 know why there's a difference.

3 Q. Okay. Do you recall ever having any
4 conversations with Dr. Swanson telling him about
5 either Uponor or Kitec litigation?

6 A. I don't remember a conversation, but I
7 could have.

8 Q. Okay. On or about November of 2017, were
9 you aware of litigation involving other plumbing
10 systems?

11 A. Yeah, Kitec. Big time. I don't -- whether
12 I -- go ahead.

13 Q. And Mr. Gerber testified this morning that
14 Rakeman Plumbing had done in excess of a thousand
15 homes for the re-piping caused by the Kitec?

16 A. Right, exactly.

17 Q. And then I cut you off.

18 You said you didn't know about the
19 conversations.

20 A. I know there's always litigations. So I
21 know that Kitec was found to be a defective system.

22 I know there was Uponor litigations. I
23 don't think they ever turned out to be anything.

24 I know the same attorneys were trying to
25 drum up more money. I don't think it ever turned

1 out to be anything. So I know Uponor had issues as
2 far as -- as far as to be sued for or whatever,
3 whether they had issues or not, they had grounds of
4 being sued for defective, but I don't think they
5 were found to have anything defective.

6 Q. Did you ever talk to Dr. Swanson about that
7 type of litigation?

8 A. Uponor?

9 Q. Yes.

10 A. I mean, I don't recall.

11 Q. Okay.

12 A. It's tough questions, you know, that you
13 talk to so and so. Tough questions because I talk
14 to people about this stuff all the time.

15 Q. All right. So --

16 MR. GALLIHER: We've been going an hour and
17 a half. Can we take a break?

18 MR. GRAF: We can take a break.

19 THE VIDEOGRAPHER: Off the video record at
20 12:59.

21 (Thereupon, a break was taken.)

22 THE VIDEOGRAPHER: Back on the video record
23 at 1:04.

24 BY MR. GRAF:

25 Q. You're aware you're still under oath,

1 Mr. Hawley?

2 A. Yes, sir.

3 MR. GRAF: All right. Let's go ahead and
4 mark this as next.

5 (Exhibit 10 Home Inspection Report marked.)

6 THE WITNESS: Are we done with this other
7 stuff?

8 BY MR. GRAF:

9 Q. Yeah, for the most part. We might go back
10 to one or two.

11 Keep the affidavit handy, yours.

12 A. Okay.

13 Q. You've been handed what's been marked for
14 Exhibit 10 for purposes of your deposition. It
15 purports to be a home inspection report for 42
16 Meadowhawk Lane prepared for Mr. Todd Swanson dated
17 May 11, 2015.

18 Do you recognize this document, Mr. Hawley?

19 A. No.

20 Q. So, if you'll turn to -- again, this is
21 Bates stamped, and at the bottom right it says
22 Swanson and then alphanumeric. So go to 53.

23 A. Okay.

24 Q. So it says, Executive summary of findings.
25 And then it says, Items to be addressed before

1 releasing the contractor. And then it says, Repair
2 plumbing fixtures.

3 And remember this report was prepared am
4 May of 2015.

5 On that page it says, There are leaks at
6 both recirculation pumps.

7 In 2015 was Rakeman called back out to 42
8 Meadowhawk Lane to perform repairs at the
9 recirculation pumps?

10 A. I don't know.

11 Q. Okay. And so this subpoena that we had
12 sent to Rakeman, it's the testimony of Dr. Swanson
13 that somebody did come out.

14 A. Okay.

15 Q. Okay. So is it possible that you may have
16 a paper file that may have some of this information
17 in it?

18 A. I would say there's -- you know, if there's
19 warranty work done behind our new construction,
20 there may not be any papers behind it. It's not
21 like it's an invoiceable call to where somebody
22 calls up.

23 If this was done under warranty, which I
24 don't know if it was or wasn't, there may not be any
25 papers involved.

1 Q. Okay. So then the next line item says,
2 There's a plumbing leak -- plumbing without the B --
3 leak above the ceiling of the basement bathroom.

4 Are you aware as you sit here today as to a
5 leak that was in the ceiling of the basement
6 bathroom?

7 A. No.

8 Q. Do you even know where the basement
9 bathroom is in that house?

10 A. No, no.

11 Q. Okay.

12 A. How far after the completion of the house
13 is this?

14 Q. I think this was only -- I think this was a
15 blue tape list that he had an actual outside
16 contractor prepare.

17 A. Gotcha.

18 Good for him.

19 Q. Yeah.

20 So then on SWANSON 82 -- actually, let's
21 start on 81. Those are photographs of the
22 recirculation pumps.

23 Do you see those?

24 A. Yes.

25 Q. And where -- can you tell by those

1 photographs where they're leaking from?

2 A. No. I would guess, but no.

3 Q. What would your guess be based upon?

4 A. It's going to be a leak at one of the
5 joints. More than likely the pump is not leaking
6 itself or the tubing or the fitting. So it's going
7 to be at one of the joints if there was a leak.

8 Q. And if you turn to 82, photo No. 5 shows
9 that recirculation pump, is that drywall that it's
10 next to?

11 MR. GALLIHER: Speculation, foundation.

12 THE WITNESS: I have not a clue.

13 BY MR. GRAF:

14 Q. Okay. What does a recirculation pump do?

15 A. So if you want instant hot water -- instant
16 within ten seconds usually, you just don't throw --
17 this house was built with a recirculating system
18 line in there. So you don't just throw a pump in a
19 system and then you get instant hot water.

20 It's a series. You run your water tubing
21 through the house in a certain series to make sure
22 hot water gets to a certain fixture in a certain
23 amount of time. And you make a loop out of the
24 system and it loops back through a pump and
25 circulates to keep hot water live in your system so

1 you have that instant, you know, within ten
2 seconds-ish hot water.

3 Q. Okay. And it's a closed system?

4 A. All -- yeah, plumbing systems are closed
5 systems.

6 Q. So then beginning on photo No. --

7 A. The -- it's not theoretically closed. I
8 mean, you can open and close --

9 Q. At the fixtures?

10 A. Exactly. But a closed system in something
11 else is different.

12 Q. Got it.

13 Like a heating and cooling closed system?

14 A. Exactly. Yeah. This has actual outlets.
15 But basically what you're saying is correct.

16 Q. I understand what you're saying.

17 So beginning on 82 for photos No. 6 and 7,
18 those are the two pictures that are depicting the
19 plumbing leak at the ceiling of the basement
20 bathroom.

21 And these aren't color photos?

22 A. I can't even tell you what that is.

23 Q. And you don't recall ever going out to or
24 even having your employees go out to fix any leak in
25 the ceiling of the bathroom in the basement;

1 correct?

2 A. No, I don't recall. I would say that we
3 did, but I don't know.

4 Q. Okay. Let's look at --

5 MR. GRAF: I guess we'll mark this as 11.
6 (Exhibit 11 Executive Summary of Findings marked.)
7 BY MR. GRAF:

8 Q. So Dr. Swanson kept a log basically of
9 these different repairs, and you'll notice that he
10 put annotations to the left of what was SWANSON 53
11 and the subsequent pages.

12 A. Okay.

13 Q. So it says, There are leaks at both
14 recirculation pumps. Need plumber to address.

15 Then it says, Fixed by plumber.

16 A. Okay.

17 Q. Again, sitting here, you're not aware of
18 going out and fixing those leaks to the --

19 A. No, not personally, no. I would say by
20 what he wrote that we repaired them.

21 Q. But like the leak in 2017, you don't have
22 any invoices or your affidavit doesn't address going
23 out and making these repairs; correct?

24 A. Because this was -- if this was considered
25 warranty work, there wasn't an invoice made up, so

1 it probably was not addressed.

2 Q. But your affidavit certainly doesn't
3 address these repairs?

4 A. No, no. I have no idea. First time I'm
5 ever looking at this stuff.

6 Q. And then it says they couldn't find it out
7 of monitor as to the plumbing leak in the ceiling of
8 the basement bathroom.

9 Do you see that?

10 A. Yes.

11 Q. So you certainly don't have an invoice or
12 any type of records regarding the attempts to locate
13 that leak; correct?

14 A. I would say no.

15 Q. All right. Now, Mr. Hawley, were you aware
16 that there was some subsequent leaks in the home in
17 August of 2015?

18 A. I'm not aware, no.

19 Q. Okay. And if Dr. Swanson had previously
20 testified that Rakeman Plumbing had done those
21 repairs for the recirculation pump in the master
22 closet and a recirculation pump in the single-car
23 garage, you don't remember that?

24 A. No. I would -- thing is a lot of things
25 get done without me seeing it. I would take his

1 word for it. We're very good at our warranty work.

2 If there is, we go take care of it.

3 MR. GRAF: If we could mark this as next.

4 (Exhibit 12 Documents Bates No. SWANSON 183 - 184
5 marked.)

6 BY MR. GRAF:

7 Q. Mr. Hawley, you've been handed what's been
8 marked as Exhibit 12 for purposes of your
9 deposition. It's Bates stamped SWANSON 183 to 184.

10 On 184 there's an e-mail from Rhonda
11 Hawley.

12 That's your wife?

13 A. Yeah.

14 Q. To Nicky Whitfield, which is Dr. Swanson's
15 assistant.

16 It says, Thank you. The plumbing
17 inspection was done for Mr. Swanson, and there's no
18 report. It's just the visual inspection and water
19 pressure test.

20 Do you see that?

21 A. Yes.

22 Q. There's no reference in that e-mail to the
23 mold test that was conducted; correct?

24 A. Correct.

25 Q. And if we go back and we look at that

1 November 24th report from Infinity Environmental, it
2 would have been three days after this e-mail.

3 So your wife wouldn't have had those
4 results at that point in time; right?

5 A. Yeah. It's usually a week plus. Sometimes
6 less. Usually a week.

7 Q. So on 183, the e-mail between
8 Mr. Swanson -- or Dr. Swanson and his assistant, it
9 says, Can you ask Rakeman Plumbing if there's a test
10 they can do with the plumbing to assure there are no
11 other weak spots in the waterlines that may result
12 in another leak.

13 Do you see that?

14 A. Yes.

15 Q. Did you or anybody at Rakeman ever tell
16 Dr. Swanson or his assistant that were quote/unquote
17 weak spots in the waterlines that caused any of the
18 previous leaks either in November of 2017 or the one
19 prior --

20 A. I don't think anybody would use the
21 terminology of weak spots.

22 Q. That's what I'm asking.

23 Do you have any understanding what he's
24 referring to in terms of weak spots in the
25 waterlines?

1 MR. GALLIHER: Speculation.

2 THE WITNESS: My opinion?

3 BY MR. GRAF:

4 Q. Sure.

5 A. My opinion is if there was one or if there
6 was two leaks, they were the same style leak, and I
7 guess you could note that as a weak spot where a
8 leak occurred I guess. And they both -- you know,
9 they happened at fittings. I don't think we would
10 address it as weak spots.

11 Q. Okay.

12 MR. GRAF: So then if we can mark this as
13 next.

14 (Exhibit 13 Documents Bates No. SWANSON 179 - 181
15 marked.)

16 BY MR. GRAF:

17 Q. So you've been handed what's been marked as
18 Exhibit 13, the first page SWANSON 179 through 181.

19 The first page is the only new e-mail. The
20 others are e-mail chain type things. It says, The
21 buyers are going to want a statement by a mold
22 remediation expert that there is no mold in the
23 master closet after the water run.

24 Do you see that?

25 A. Yes.

1 Q. And did you ever receive this e-mail?

2 A. I don't think so, but it doesn't -- I don't
3 think I ever read that before, but I may have. I
4 don't think so.

5 Q. So on November 17th Infinity Environmental
6 did their testing out there. So two days after this
7 e-mail they did their testing.

8 So does it stand to reason that you may
9 have received this e-mail -- actually, let me ask a
10 better question.

11 What would have caused you to have Infinity
12 do the testing on November 17th?

13 A. I would gather -- the only time that we
14 usually have them come out is if there was a leak.
15 I only showed the two Infinitys, if you're talking
16 November 24th you mean? Oh. This one here? I
17 gotcha.

18 Q. Yeah. The November 24th one was conducted
19 on November 17th.

20 Here's the thing: What would cause CPI or
21 Rakeman to call and get a mold test done?

22 MR. GALLIHER: Foundation, speculation.

23 THE WITNESS: I would say that the only
24 reason we would have is there had to have been a
25 leak. So a leak could have occurred. We fixed the

1 leak. And to make the whole process, you know, the
2 homeowner, who was Swanson at the time, to make him
3 right, you know, you have to go through and make
4 sure that this is done and all the repairs are made.

5 BY MR. GRAF:

6 Q. So I guess my question is this: It's kind
7 of a follow-up on that question in the sense that
8 would Rakeman or CPI always do a mold test for every
9 water leak?

10 A. No.

11 Q. So what would differentiate one water leak
12 from another as to why you would get this type of
13 testing done as opposed to not getting this type of
14 testing done?

15 A. It's going to either be extreme water or
16 spores were found. Usually, it's going to be spores
17 were found or something was seen or we think it's an
18 old leak, an extensive period of time.

19 In this case it might have been spores
20 found. I don't know.

21 Q. That begs the question, okay, the spores
22 are kind of a chicken or the egg type thing. You
23 don't know that they're spores until you have the
24 testing done; right?

25 Or what you're saying is that there was a

1 visually indication of mold or fungus in the area of
2 the water loss.

3 A. Speaking for somebody else, you know, it
4 could have just been -- I would have to say normally
5 we would call them because we probably seen spores.

6 Q. And when you say seen spores, what do you
7 mean by that?

8 A. Something that might look like mold.

9 Q. So if you look at the last two pages of
10 the --

11 A. 13?

12 Q. No. Exhibit 5 --

13 A. Okay.

14 Q. -- which is the November 24, 2017,
15 report --

16 A. Okay.

17 Q. -- there's a series of four photographs.

18 A. I wouldn't recognize spores on any of
19 those, but I want to say -- I don't recognize
20 anything in those pictures. That's a pretty shitty
21 picture, crappy picture.

22 But I would say the reason we would call
23 them, we probably did see --

24 Q. Okay.

25 A. I can't speak for somebody else. If these

1 were better pictures, I would be like, Heck, yeah.

2 Q. And I'm not trying to be tricky here.

3 All I'm trying to figure out is --

4 A. No, I'm not either.

5 Q. So the e-mail we looked at on Exhibit 13,
6 is that the reason you called out Infinity, or was
7 it because you saw mold spores?

8 MR. GALLIHER: Object to the form.

9 THE WITNESS: I would say -- I don't know.
10 I would say if we saw it, we would have called
11 Infinity. We would never ever leave a situation
12 where there was mold.

13 BY MR. GRAF:

14 Q. Okay.

15 A. I don't know, you know, whether these guys
16 were or weren't talking, I don't have a clue. But
17 if we go there and we see them, this happens.

18 Q. So follow-up question is this: We don't
19 have these reports for May 2017. We don't have
20 these reports from the August 2015 water losses.

21 Do you know why that is?

22 A. Probably because we didn't see anything.
23 As a guest. Or maybe it was done and CPI didn't
24 turn it in because CPI wasn't subpoenaed. I don't
25 know. Just guessing.

1 Q. All right.

2 A. But, no, we don't call this --

3 Q. So when you did the work at the 42
4 Meadowhawk in whatever it is, February of 2017, and
5 November of 2017, were you aware that there had been
6 prior leaks at the residence in 2015?

7 A. The warranty service stuff?

8 Q. Yes.

9 A. Probably not personally. The company,
10 somebody. But see, two different departments: New
11 construction and service. So they probably didn't
12 cross over.

13 Q. So the pipe fittings that were tested by
14 Uponor, Uponor indicates at least on Exhibit 1 that
15 they failed, that there was a splitting of the
16 tubing.

17 Were you aware of a similar type of failure
18 in other Uponor fitting cases?

19 A. I'd seen them before.

20 Q. On other projects?

21 A. Yeah. On very, very limited. You know, I
22 see them more now than back then. This was probably
23 back at the start of all this happening. I can't
24 tell you how many. But as you know, time tells all,
25 and the longer -- whatever -- they've told me

1 they've got a timeframe that there was some issues
2 with.

3 And so whatever pipe was manufactured in
4 that timeframe, they've got an issue with. What the
5 issue is nobody knows because I'm not to that pay
6 level so --

7 Q. Did you ever tell Dr. Swanson about those
8 types of failures?

9 A. No.

10 Q. Okay.

11 A. Back then, I don't know the dates and the
12 times, but there was probably very few back then.

13 Q. Okay. And was it an issue with the
14 fittings or was it an issue with the tubing?

15 MR. GALLIHER: Foundation, speculation.

16 BY MR. GRAF:

17 Q. As far as you know?

18 A. If you ask my opinion or what they tell me?

19 Q. Well, let's ask about both.

20 A. Okay. In my opinion?

21 Q. Yeah.

22 A. I mean, I don't know the chemical side of
23 it, but in my opinion heat has a lot to do with
24 what's going on here. Their side, they tell us that
25 they added a chemical on the outside for their

1 coloring that they're having an issue with.

2 Whether that's true or not, I don't have a
3 clue. It's not my pay grade. And they're not going
4 to put information out to me or to anybody that they
5 can get sued with. Right.

6 So that's how I look at that. Whether or
7 not I'm right or wrong, I don't know. I think heat
8 has to do with everything. Heat and plastic don't
9 like each other.

10 Q. Do you recall ever speaking with any of the
11 realtors that were involved in the transaction in or
12 about November of 2017?

13 A. I don't think I'd ever have a reason to.
14 No, I don't recall.

15 Q. Did you ever tell Dr. Swanson that similar
16 failures could occur in the future?

17 A. No.

18 MR. GALLIHER: Form.

19 THE WITNESS: I don't think so. I mean, I
20 could have because it makes sense. But, no, I
21 don't -- I don't think so. You know, maybe.

22 BY MR. GRAF:

23 Q. So why do you say that?

24 A. Because thinking of her house in
25 particular, this house in particular, Uponor

1 somewhere along the way decided to re-pipe her house
2 and I dealt with that.

3 So did I know then there was an issue? Did
4 I know there was an issue? I know I've seen a
5 number of them, probably less than ten.

6 Q. So let me ask you about timing.

7 Those number that you saw less than ten was
8 that prior to November of 2017?

9 A. I would say yes.

10 Q. Okay.

11 A. But -- and this doesn't matter but to you,
12 but -- and the reason I asked the question, is
13 because of these failures.

14 I asked them, I said, How much pipe do you
15 make? They said at that time they made 29 miles of
16 pipe a day. So I thought, Well, heck, a little
17 speck here, a little speck there, a little
18 non-mixing here, so you make 29 miles of pipe,
19 that's a lot of pipe.

20 So you just say, Well, maybe that's the
21 case. That's a lot of pipe.

22 Q. That's here to Boulder City.

23 A. That's crazy.

24 Q. Back then, what type of documentation did
25 Uponor require to do or to pay the warranty claims?

1 A. There was probably just a one sheet thing
2 that we filled out.

3 Q. So I don't have any like handwritten sheet,
4 warranty claim on this or on the May 23, 2017, that
5 did actually get paid.

6 So do you know if that is in that hard file
7 that we haven't seen yet?

8 A. It would be in a Rakeman file. So if we
9 could have found it, we would have found it.

10 What do you mean hard file?

11 Q. So it's my understanding that you looked at
12 the computer file for these records?

13 A. Right.

14 Q. So is there a paper file maybe that might
15 contain that one-page sheet from Uponor?

16 A. I have to say yes, but I don't know why we
17 wouldn't have looked -- see, the problem is is a lot
18 of stuff is attached to invoices.

19 Now, the way we file them is by invoice
20 numbers. So this folder has invoice number 1
21 through 100, but what addresses are in that?

22 When your computer crashes, we go
23 through -- I think we do probably 40 calls a day
24 five days a week. We didn't flip through every
25 single file to look for your stuff, believe it or

1 not.

2 You're not that important. No, I'm
3 kidding, but that's a ton of work. I mean, I
4 don't -- we didn't do that. I'm sure we didn't do
5 that.

6 Q. Okay.

7 A. And there's, you know, the boxes that are
8 stored. That's the hard part is the way we file
9 them by invoice number makes this really hard. And
10 there's no other way really to file them.

11 Usually you just go to the computer, you
12 pull it up, and it says invoice number, bang, go
13 pull it.

14 Q. But we don't have that because your server
15 crashed?

16 A. That's -- yeah.

17 MR. GRAF: That's all I got.

18 THE WITNESS: That's just so hard to find.
19 That's the crapper.

20 MR. GALLIHER: I've got some follow-up,
21 Mr. Hawley. I'm going to kind of go through the
22 exhibits in order hopefully.

23 EXAMINATION

24 BY MR. GALLIHER:

25 Q. Take a look at Exhibit 1 again if you

1 would.

2 This is it here.

3 A. Okay.

4 Q. Now, with respect to -- my understanding is
5 this is, at least the information within the e-mail
6 is related to a warranty claim submitted to Uponor
7 by Rakeman; is that correct?

8 A. That's what the information is about, yes.

9 Q. Okay. Would anyone or anybody -- any
10 person, any company other than Rakeman submit
11 information to Uponor regarding this claim?

12 A. I don't think so.

13 Q. Okay.

14 A. CPI should have billed Rakeman.

15 Q. None of this information in this claim
16 would have come from Dr. Swanson directly; right?

17 MR. GRAF: Objection, calls for
18 speculation.

19 THE WITNESS: What do you mean? In this
20 information right here?

21 BY MR. GALLIHER:

22 Q. In any of these, this claim --

23 A. The whole claim?

24 Q. Well, we're talking about the information
25 that starts on PLT 001049 where it says -- there's a

1 little box that says claimant and job site
2 information; correct?

3 A. Yes.

4 Q. It lists your company, your address, your
5 e-mail, your phone numbers?

6 A. Yes.

7 Q. On job site information, it says
8 residential. It has your name, but it has the 42
9 Meadowhawk address?

10 A. Yes.

11 Q. So when I talk about the claim, this is the
12 claim I'm talking about.

13 Do you have any information that would
14 indicate that Dr. Swanson would have provided any of
15 this information that's in this claim file to
16 Uponor?

17 MR. GRAF: Same objection.

18 THE WITNESS: No, I don't think -- I mean,
19 did I give him an Uponor e-mail address? I don't
20 know.

21 BY MR. GALLIHER:

22 Q. Well, have you -- you've made other claims
23 to Uponor; correct?

24 Not just 42 Meadowhawk, but for other
25 projects?

1 A. Yes.

2 Q. When you do that, is the customer, the
3 homeowner, typically involved in that process at
4 all?

5 A. No.

6 Q. So the failure date that's indicated on
7 page PLT 001050, 16 February 2017, that would have
8 had to come from Rakeman; correct?

9 A. I would guess unless there was a typo
10 because I'm going to guess that this was inputted by
11 Uponor because this doesn't look like one of our
12 documents.

13 Q. I want to ask you a couple questions about
14 the server crash you talked about because you
15 said -- you first said, Well, I think it might have
16 happened around the first of 2018 and then you said,
17 Well, maybe it was of the first of 2017.

18 Do you remember that?

19 A. I'd have to get on the phone and ask my --

20 Q. Okay. Well, you've seen several documents
21 during your testimony today of e-mail and invoices
22 that were ail from 2017; correct?

23 A. Um-hmm, yes.

24 Q. So if the crash had occurred at the
25 beginning of 2018, you wouldn't have been able to

1 retrieve those documents; right?

2 A. E-mails are different than my -- I can't
3 TMS or whatever the name of our warranty stuff was.

4 Q. Okay. Well, what about the invoices? Did
5 you lose those invoices -- let me ask you this:
6 When your server crashed, what kind of information
7 did Rakeman lose?

8 A. I can't pull up anything.

9 Q. What does that mean?

10 A. Bills, any invoices. I mean, we still have
11 the paper stuff.

12 Q. Okay.

13 A. But anything that was inputted -- you know,
14 we would scan stuff. You got that -- I mean, I'm
15 sure some of the stuff you're looking for, we scan
16 in the invoice, we scan in all these other papers
17 right here. And once I can't pull up that warranty
18 service system, I can't pull up any of that stuff.
19 Because we scanned a lot of stuff in attached to
20 that address.

21 Q. How about letters and stuff, can you still
22 get those?

23 A. Letters as far as what?

24 Q. Like letters that you've written on your
25 computer.

1 A. Yeah, yeah. E-mails.

2 Q. You can still get e-mails?

3 A. Yeah. E-mails were never a problem here.

4 Q. I'm going to have you take a look at
5 Exhibit 9.

6 A. I'm out of order. Is it a single page?

7 Q. It's two pages, isn't it, 1647 and 1648.
8 Looks like this up in the corner.

9 A. Okay.

10 Q. That's the second page of it right there.

11 A. Okay.

12 Q. There it is.

13 A. Okay.

14 Q. Now, this is a document that was addressed
15 to Rakeman Plumbing dated February 8, 2018.

16 Do you see that?

17 A. Yes.

18 Q. Do you know, did Rakeman Plumbing produce
19 this or did Uponor?

20 A. Make this letter?

21 Q. No. I mean, produce it to counsel here in
22 this litigation.

23 A. I would not know.

24 Q. You don't know? Okay.

25 MR. GRAF: We can tell by the Bates stamp.

1 Because I grouped together the productions. So when
2 you go back and look at our production, it will tell
3 you who gave it to us or --

4 BY MR. GALLIHER:

5 Q. So I'm going to have you take a look at
6 Exhibit 8 now, if you would.

7 This is an invoice No. 23700. It's dated
8 January 5, 2018; correct?

9 A. Yes. The invoice number is a little wrong,
10 but yes.

11 Q. Why is it wrong?

12 A. Because you said 23,700.

13 Q. 23 seven thousand.

14 Now, this invoice that was submitted to
15 Uponor with respect to 42 Meadowhawk, this work and
16 these charges are for the leak that occurred on
17 November 7, 2017.

18 Isn't that correct?

19 A. I would say depends on whatever this RMA
20 never address is to.

21 Q. Well, the RMA number, that's generated by
22 Uponor?

23 A. Right. I can't tell you look at this what
24 date.

25 Q. Well, let me clarify something.

1 So you said you knew of two leaks: One
2 that occurred during closing, correct, and another
3 that occurred sometime earlier that year?

4 A. That's what I recall. Yeah, yeah.

5 Q. Okay. We know we've discussed this little
6 bit.

7 So that other leak occurred either in
8 February or in May?

9 A. Right.

10 Q. But not both; correct?

11 MR. GRAF: No. Objection, misstates prior
12 testimony.

13 MR. GALLIHER: No, it doesn't.

14 BY MR. GALLIHER:

15 Q. Go ahead.

16 Do you think there were three leaks?

17 A. I know of two leaks.

18 BY MR. GALLIHER:

19 Q. So you don't know of three leaks?

20 A. I don't know of three weeks.

21 Q. So if one of them is during closing, that's
22 in November of 2017?

23 A. If I remember it, yeah.

24 Q. So you're aware of one other leak that
25 year?

1 A. That's what I'm aware of.

2 Q. Okay. So just common sense tells us you're
3 not aware of one on May 23rd and one on
4 February 16th because that would be two?

5 A. Yeah. I'm only aware -- I only remember
6 two leaks.

7 Q. Now, Exhibit 9, which is the one we're
8 looking at with the -- where you got the check from
9 this one.

10 On there it lists multiple RMAs; correct?

11 A. Yes.

12 Q. And all of those RMAs, they all have
13 different dates; correct?

14 A. Yes.

15 Q. But they're all related to the same leak,
16 aren't they?

17 A. I would say no.

18 Q. Okay. Let's take a look at it.

19 So the first one is RMA 744566?

20 A. Um-hmm.

21 Q. And it's dated January 5th, and that's for
22 \$10,375?

23 A. February 5th.

24 Q. Okay. What leak date, for lack of a better
25 term, is that RMA related to?

1 A. Invoice is --

2 (Thereupon, an off-the-record discussion was had.)

3 THE VIDEOGRAPHER: Off the record.

4 (Thereupon, a break was taken.)

5 THE VIDEOGRAPHER: Back on the video record
6 at 1:53 a.m.

7 BY MR. GALLIHER:

8 Q. I think I might have answered my own
9 question.

10 Does Exhibit 9 and the check that's
11 attached to it, is that payment for different RMAs
12 from different projects?

13 A. Yes.

14 Q. Okay. Thank you.

15 A. Yeah. Uponor, when there's a leak, they
16 assign an RMA to -- no matter all that work, it's
17 assigned to that RMA for each address.

18 Q. Okay. So you were answering some questions
19 about the testing done by Infinity.

20 There was a test done on November 17th;
21 correct? That's Exhibit 5 I think.

22 A. Okay.

23 Q. Is that 5?

24 A. 5 and 6.

25 Q. Yeah.

1 Okay. So Mr. Graf was asking you questions
2 about why did you have that testing done?

3 Do you recall that testimony?

4 A. Yes.

5 Q. Okay. So that testing was done on -- the
6 first testing was done on November 17th; correct?

7 A. Yes.

8 Q. And that was after a leak that occurred on
9 November 7th; correct?

10 A. I don't remember the day, but yes.

11 Q. Now, you saw the e-mails that were marked
12 as Exhibit 12 and Exhibit 13.

13 A. Okay.

14 Q. Okay. And No. 12 -- strike that.

15 No. 13 says the buyers are going to want a
16 statement by a mold remediation expert, it starts
17 off.

18 Do you see that?

19 A. Um-hmm, yes.

20 Q. Okay. And then Exhibit 12 which is later
21 chronologically, it's from November 16th, says, Can
22 you ask Rakeman if there's a test they can do with
23 the plumbing to assure there are no weak spots.

24 That's for a different test though; right?

25 A. Yes.

1 Q. Does Exhibit 13 indicate to you that the
2 reason the mold test was completed was because the
3 buyers had requested it?

4 A. I would say the mold test was done -- I
5 mean, they may have requested it, but if we saw
6 black or if we saw any mold or anything that looked
7 like mold, we would have done it anyway.

8 Q. But you don't have any evidence, do you,
9 that anybody from Rakeman prior to November 15,
10 2017, saw any mold, do you?

11 A. I don't have any evidence that says that,
12 no.

13 Q. None of the paperwork that Rakeman's
14 produced in this case indicates that, does it?

15 A. No.

16 Q. In fact, the -- Rakeman didn't request the
17 mold inspection until after they were contacted by
18 Mr. Swanson's assistant to request one; isn't that
19 true?

20 MR. GRAF: Objection, lacks foundation.

21 THE WITNESS: I would say there could be
22 some kind of overlap.

23 I mean, I don't know where we were in the
24 process. She might have been jumping the gun or I
25 don't have a clue.

1 BY MR. GALLIHER:

2 Q. Okay. Who paid for the mold test?

3 A. Uponor. Rakeman. Uponor through Rakeman.

4 Q. Okay. Now, the house at 42 Meadowhawk has
5 been re-piped; right?

6 Do you know that?

7 A. I heard that.

8 MR. GRAF: Objection.

9 THE WITNESS: I quoted it.

10 BY MR. GALLIHER:

11 Q. Okay.

12 A. But I didn't do it.

13 Q. Now, Mr. Graf asked you some questions
14 earlier about a conversation that you had with
15 Dr. Swanson about the recommendations that the house
16 be re-piped.

17 Do you recall that testimony?

18 A. No. Say it again.

19 Q. I think Mr. Graf asked you did you ever
20 have any conversations with Dr. Swanson about, you
21 know, problems with the Uponor pipe, and then your
22 response was, Well, I remember he and I discussing
23 the recommendation that the house be re-piped.

24 Do you not recall that testimony?

25 A. Yeah, yeah.

1 Q. Okay. Now, do you remember when that
2 conversation happened?

3 A. No.

4 Q. Okay. Did it happen before or after
5 December 1st of 2017?

6 A. I'm pretty sure it happened after.

7 Q. And because do you recall when you first
8 learned of Uponor's recommendation that 42
9 Meadowhawk be re-piped?

10 A. No, I don't remember. I do remember I
11 talked to Ms. Folino a bit.

12 Q. Okay. And when you say Ms. Folino, you're
13 talking about Nicole Folino?

14 A. Yes, the person that was buying the house.

15 Q. Did you ever have any conversations with
16 Ms. Folino before she owned the home at 42
17 Meadowhawk?

18 A. I don't think so.

19 Q. So take a look at Exhibit 5 and Exhibit 6
20 again. I want to make sure I understand the
21 chronology of these two reports and what they
22 represent.

23 A. Okay.

24 Q. So Exhibit 5 is a report of a mold test
25 that was completed on November 17, 2017?

1 A. Okay.

2 Q. Is that correct?

3 A. Yes.

4 Q. Is that your understanding?

5 A. Yes.

6 Q. Okay. And I think we've gone through this
7 and that mold test or that testing indicated the
8 presence of some mold?

9 A. Yes.

10 Q. And then subsequent to November 17th, CPI
11 Restorations did remediations -- now I'm confused.

12 CPI Restoration did remediation at 42
13 Meadowhawk Lane; right?

14 A. Yes.

15 Q. And then on December 5, 2017, the same area
16 at 42 Meadowhawk was tested again by Infinity; is
17 that correct?

18 A. Yes.

19 Q. And that test showed no mold; is that
20 correct?

21 A. I could read through it, but yes.

22 Q. Okay. Is that the type of result that you
23 hope to have if you have a test that shows mold, and
24 then you do remediation?

25 Isn't that the point of doing it so you can

1 get a clean test afterwards?

2 A. Exactly. We do the repair. We hire out --
3 they do their test. They tell us, We found it here,
4 here, here, here. This is what we found.

5 They give us suggestions and there are
6 probably suggestions in here. We follow
7 suggestions, clean it.

8 And then we call for a follow-up inspection
9 and that's what the second one is. And hopefully we
10 get it and, if we fail, then we call for another
11 one.

12 Q. So let me understand. The first test is
13 done after -- you said we and I want to make sure
14 I'm clear -- after Rakeman did their repairs?

15 A. Yes. Rakeman does their repairs. They
16 would have noticed something, I'm gathering, or
17 maybe this Nicole lady told us to.

18 But either way, we make the repair. We
19 probably saw something. So that's when they call
20 this in, find out what we see, and then they give us
21 recommendations.

22 We -- it was called in by Rakeman. So when
23 I say we, Rakeman gets recommendations and Rakeman
24 hires CPI. CPI goes, does the restoration part of
25 it.

1 CPI calls them back. They do their
2 follow-up inspections. And then they let CPI know
3 if it's passed or not, and then from there, it's
4 over.

5 Q. All that work --

6 A. Follow-up -- then from there, we actually
7 put the house back together.

8 Q. And all of that work or the costs for all
9 that work were paid by Uponor?

10 A. Yes.

11 Q. And how about the cost to re-pipe the house
12 at 42 Meadowhawk, who paid for that?

13 MR. GRAF: Objection, lacks foundation.

14 THE WITNESS: I didn't do the work, but --

15 BY MR. GALLIHER:

16 Q. Okay. Then you've already answered that.

17 Let me ask you this: Have you done
18 re-piping jobs for Uponor on other locations?

19 A. Yes.

20 Q. Who paid for those?

21 A. Uponor. In the same instance I know that I
22 gave a price, another company came with a lower
23 price, and then actually Nicole was very mean to me
24 on the phone and wouldn't use me anyway and they had
25 somebody else do it. So I know -- not -- I didn't

1 see the check, but Uponor paid for the work.

2 Q. We have multiple Nicoles involved so when
3 you say --

4 A. I'm sorry. Ms. Folino. I'm sorry.

5 MR. GALLIHER: That's all I have.

6 MR. GRAF: I don't have anything.

7 MR. GALLIHER: All right. Thanks. We
8 appreciate your time.

9 THE VIDEOGRAPHER: Off the record at 2:02.

10 - - - - -

11
12 (Proceedings concluded 2:02 p.m.)

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jackie Jennelle, RPR, CCR #809, Clark
County, State of Nevada, do hereby certify:

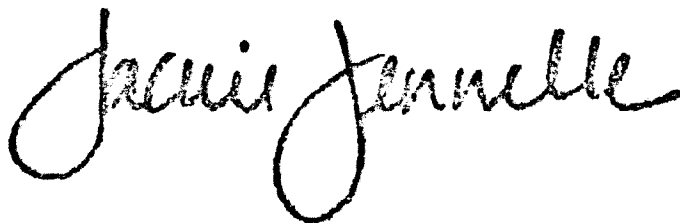
That I reported the deposition of AARON
HAWLEY, commencing on FRIDAY, JANUARY 31, 2020, at
11:26 a.m.

That prior to being deposed, the witness was
Duly sworn by me to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
complete, true and accurate transcription of my said
shorthand notes.

That prior to the completion of the
proceedings, reading and signing of the transcript
was not requested by counsel, the witness or any
party.

I further certify that I am not a relative
or employee of counsel, of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Clark, State of
Nevada, this 2nd day of February, 2020.



JACKIE JENNELLE, RPR, CCR #809

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I declare under penalty of perjury that I have read the

5

foregoing _____ pages of my testimony, taken

6

on _____ (date) at

7

_____ (city), _____ (state),

8

9

and that the same is a true record of the testimony given

10

by me at the time and place herein

11

above set forth, with the following exceptions:

12

13

Page Line Should read:

Reason for Change:

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ERRATA SHEET				Page 101
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DISTRICT COURT

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CLARK COUNTY, NEVADA

4

5 JOSEPH FOLINO, an)
individual; et al.,)

6)

Plaintiffs,)

7)

vs.) CASE NO.: A-18-782494-C

8) DEPT. NO.: XXIV

TODD SWANSON, an)

9 individual; et al.,)

)

10 Defendants.)

)

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VIDEO DEPOSITION OF WILLIAM GERBER

18 LAS VEGAS, NEVADA

19 FRIDAY, JANUARY 31, 2020

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24

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809

25

JOB NO.: 598971A

1 VIDEO DEPOSITION OF WILLIAM GERBER, taken at
2 10777 West Twain Avenue, Suite 300, Las Vegas,
3 Nevada, on FRIDAY, JANUARY 31, 2020, at 9:00 a.m.,
4 before Jackie Jennelle, Certified Court Reporter, in
5 and for the State of Nevada.

6

7

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8

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9

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17

The Videographer:

18

TERRELL HOLLOWAY

19

20

21

22

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I N D E X

WITNESS: WILLIAM GERBER

EXAMINATION

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EXHIBIT

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1 LAS VEGAS, NEVADA

2 FRIDAY, JANUARY 31, 2020; 9:00 a.m.

3 -o0o-

4 THE VIDEOGRAPHER: This is the beginning of
5 media No. 1 in the deposition of William Gerber in
6 the matter of Folino, Joseph v. Swanson, Todd, held
7 at Black & LoBello on January 31, 2020, at 9:16 a.m.

8 The court reporter is Jackie Jennelle. I
9 am Terrell Holloway, the videographer, an employee
10 of Litigation Services.

11 This deposition is being videotaped at all
12 times unless specified to go off the video record.

13 Would all present please identify
14 themselves beginning with the witness?

15 THE WITNESS: William Gerber, Rakeman
16 Plumbing.

17 MR. GALLIHER: Jeff Galliher for the
18 defendants.

19 MR. GRAF: Rusty Graf representing the
20 Folinos.

21 THE VIDEOGRAPHER: Will the court reporter
22 please swear in the witness.

23 ///

24 ///

25 ///

1 Thereupon--

2 WILLIAM GERBER,
3 was called as a witness, and having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. GRAF:

7 Q. Good morning, Mr. Gerber. My name is Rusty
8 Graf, and I represent the Folinis in this action.

9 We subpoenaed you for your deposition to
10 discuss your work at 42 Meadow Hawk Lane?

11 Are you aware of that?

12 A. Yes.

13 Q. Okay. Have you ever had your deposition
14 taken before?

15 A. No, sir.

16 Q. All right. So all that a deposition is is
17 a formal conversation between you and I and the
18 attorney for Dr. Swanson, and the court reporter to
19 your left and directly across from you is the
20 videographer.

21 A. Okay.

22 Q. The most important thing that we do here
23 today is make sure that we have a clear record.
24 Even though it's being videotaped and transcribed by
25 the court reporter, we need to make sure we have a

1 clear and audible record.

2 So as we go through this process, if
3 there's a question that I ask that you don't hear,
4 don't understand or would simply like me to
5 rephrase, please ask me to do so and I will. Okay?

6 A. Yes.

7 Q. I'm going to assume if you answer a
8 question you've answered the question I've posed.

9 Is that a fair assumption?

10 A. Yes.

11 Q. Okay. So that goes along the lines of when
12 you're answering questions, make sure you understand
13 it before you respond. That way, we all have a
14 clear understanding of what your responses are to
15 the various issues we're going to be talking about
16 today. Okay?

17 A. Understood.

18 Q. You're also going to be given the
19 opportunity in a couple of days because they're are
20 due on February 6th. So we're going to have these
21 expedited.

22 So you'll have the opportunity in a couple
23 of days to review this transcript and make any
24 changes you deem appropriate. One thing that I'll
25 caution you on, if you make any changes, like if it

1 was an auto accident case and you had testified it
2 was yellow and then you went back and you reviewed
3 it, and said, no, it was red, that type of change
4 could be brought to the attention of a trier of
5 fact.

6 So whether you think it's material or not.
7 It can be addressed. Okay?

8 A. Gotcha.

9 Q. All right. So are you taking any
10 prescribed medications or under a doctor's care?

11 A. No.

12 Q. Any reason medically or physically that you
13 cannot proceed today?

14 A. No.

15 Q. Have you taken any intoxicating substances
16 in the last 24 hours?

17 A. No.

18 Q. Okay. Now, are you being represented by
19 counsel here today?

20 A. No.

21 Q. Just showed up?

22 A. Yeah. I was requested to come in here.

23 Q. All right. And you're aware that you're
24 being deposed pursuant to a subpoena that we served
25 on you?

1 A. Correct.

2 Q. All right. Now, Mr. Gerber, are you known
3 by any other names?

4 A. Rocky.

5 Q. If I call you Rocky during this process, do
6 you mind?

7 A. Perfect.

8 Q. Okay. One of the other things that we have
9 to worry about during this deposition is you wait
10 until I finish my question before you respond
11 because then the court reporter has a tough time
12 interlineating who says what and when. Okay?

13 A. Yes.

14 Q. Okay. Mr. Galliher may make objections
15 during the process of this deposition. He's not
16 your client, so he's not go to instruct you not to
17 answer, but he'll interject an objection usually
18 after a question that I pose and it's for purposes
19 of the record. Okay?

20 A. Yes.

21 Q. Also, I'm entitled to your best testimony
22 here today. I don't want you to guess.

23 So you can give me a legitimate estimate or
24 what you think is a rational estimate. An example I
25 would be I may ask you how long this table is and

1 you could say, Well, it's ten to 12 feet, looks like
2 something of that nature. Whereas if I asked you
3 how big or how wide my desk is, you wouldn't know
4 because you've never been in my office.

5 Do you understand the deference?

6 A. Yes.

7 Q. So if you feel like you have to guess to my
8 of my responses, please ask me to do so. It isn't a
9 marathon -- I mean, it is kind of marathon actually.

10 It's not an endurance test though. So if
11 at any point in time you want to take a break or
12 just have a second, then please ask to do so and
13 we'll take that break.

14 The only thing that I'll ask is if there's
15 a question pending, answer the question and then we
16 can take the break. Okay?

17 A. Correct.

18 Q. Okay. Do you have any questions about the
19 process?

20 A. No.

21 Q. Are you ready to proceed?

22 A. Yes.

23 Q. Okay. Other than Rocky and William, any
24 other names you've been known as?

25 A. No.

1 Q. What is your date of birth?

2 A. 7/18/1981.

3 Q. Okay. Are you married?

4 A. Yes.

5 Q. What is your wife's name?

6 A. Kristina with a K, K-R-I-S-T-I-N-A, Gerber.

7 Q. How long have you been married?

8 A. Since 2016.

9 Q. Do you have any children?

10 A. Yes.

11 Q. How many?

12 A. Two.

13 Q. What are their ages?

14 A. Eight weeks and 19 years.

15 Q. Good spread.

16 All right. What did you do in preparation
17 for your deposition today?

18 A. Nothing.

19 Q. Did you talk to anybody in preparation for
20 your deposition?

21 A. No.

22 Q. What about Mr. Holly, did you talk to him
23 about your deposition?

24 A. Just that we had it today.

25 Q. Okay.

1 A. That's --

2 Q. Did you look at any documents in
3 preparation for your deposition today?

4 A. No, I haven't.

5 Q. Okay. Have you ever spoken with -- when
6 actually, strike that.

7 When was the last time you spoke with
8 Dr. Swanson?

9 A. I believe I only spoke with Dr. Swanson
10 once and that was at his residence.

11 Q. Approximately when was that?

12 A. Three years ago, if I'm thinking right.

13 Q. And was he still the owner of that
14 residence?

15 A. Yes.

16 Q. And so the house sold or closed on
17 November 17, 2017?

18 A. Okay.

19 Q. Does that give you any reference to was it
20 before or after that date?

21 A. It would have been before that date.

22 Q. What was the occasion that you had to speak
23 with Dr. Swanson?

24 A. He was just at the home when I went there
25 with one of my guys to look at the leak. Didn't say

1 much but hello. Didn't have a conversation him.

2 Q. Okay. All right. Let's talk about your
3 background here just a little bit. Let me ask you
4 one other question.

5 Have you ever spoken with Nicole Whitfield,
6 his assistant?

7 A. I couldn't recall.

8 Q. All right. Where did you go to high
9 school?

10 A. El Dorado.

11 Q. And did you graduate?

12 A. No.

13 Q. When would you have graduated?

14 A. '98.

15 Q. Okay. Did you obtain your GED?

16 A. No.

17 Q. Do you hold any professional licenses?

18 A. No.

19 Q. So you don't have a plumbing license?

20 A. I have a journeyman's license. I do then,
21 yeah.

22 Q. Okay. And are you a union plumber?

23 A. No.

24 Q. And are you the qualified employee for any
25 plumbing license?

1 A. No.

2 Q. Where do you currently work?

3 A. Rakeman -- well, Rakeman Plumbing and CPI
4 Restoration.

5 Q. How do you work at both?

6 A. Same building, same owner.

7 Q. All right. What do you do for Rakeman
8 Plumbing?

9 A. I'm a supervisor.

10 Q. How long have you worked for Rakeman
11 Plumbing?

12 A. 19 years.

13 Q. Okay. So fair to say that's who you worked
14 for for your entire adult career?

15 A. Yes, sir.

16 Q. All right. And CPI Restoration, what you
17 do you do for them?

18 A. Supervisor.

19 Q. Okay. What does a supervisor do for CPI
20 Restoration?

21 A. Just oversee the guys coordinate jobs.

22 Q. Okay. Do you have any type of water
23 remediation license or certifications?

24 A. Me, no.

25 Q. Okay. Talk to me about what you did over

1 the 19 years, what different positions have you held
2 at Rakeman Plumbing?

3 A. I was a field plumber. I was a field
4 foreman. Then I was the quality control and safety
5 manager.

6 Q. And then became a supervisor?

7 A. Yes, and supervisor.

8 Q. Okay. How long did you work as a field
9 plumber?

10 A. Roughly five years.

11 Q. Okay. And as a foreman?

12 A. Probably roughly around five years.

13 Q. Okay. And then same for quality control?

14 A. I believe that was probably around two
15 years.

16 Q. So then if my math is right, the last seven
17 years you've been a supervisor?

18 A. Yeah.

19 Q. Okay. As a field plumber and a field
20 foreman, what types of plumbing were you doing?

21 A. Mainly finish plumbing.

22 Q. Okay. Explain to me what a finish plumber
23 does.

24 A. Setting all of the final fixtures, faucets,
25 toilets, showers, the finished end product of the

1 plumbing.

2 Q. Okay. So did Rakeman Plumbing, did they do
3 the pre-slab plumbing?

4 A. I'll have to back up there.

5 So Rakeman Plumbing had a secondary company
6 which was Majestic Plumbing that the owner owned and
7 that was our field plumbing. We closed the doors on
8 that roughly 2008.

9 And that was the field plumbing. Rakeman
10 Plumbing is more -- it's kind of morphed -- Rakeman
11 Plumbing has always been there, but that was the
12 service division. And as the tides turned, a few of
13 us were able to stay.

14 Q. So Majestic did mostly construction stuff?

15 A. Exactly. Majestic was new construction,
16 yes.

17 Q. And did you work for them for a while?

18 A. Yes. As I say, Rakeman Plumbing, yes, it's
19 the same company -- not same company, same owner.

20 Q. Okay. So you had previously done new
21 construction work?

22 A. Yes, yes.

23 Q. All right. So you were familiar with the
24 Uponor product?

25 A. Yes. It's a product in town, yes.

1 Q. All right. And you -- it's my
2 understanding that Rakeman was the plumber from
3 start to finish at 42 Meadow Hawk.

4 Is that a fair statement?

5 A. I believe so.

6 Q. Okay. So Rakeman Plumbing was familiar
7 with, at least in 2013 to 2015 when this house was
8 built, with the installation of the Uponor IPEX pipe
9 and fittings?

10 A. Yes.

11 Q. Okay. Now, did you ever, prior to -- it's
12 my understanding you did some repair work at the
13 home in November of 2017.

14 Is that a fair statement?

15 A. If that date is correct, then I made
16 repair, yes.

17 Q. We'll go through some documents. I'm not
18 trying to trick you.

19 A. Right.

20 MR. GALLIHER: I'm sorry, Rusty. When you
21 say you, do you mean him personally or Rakeman?

22 MR. GRAF: I think it was him personally.

23 THE WITNESS: No, sir.

24 BY MR. GRAF:

25 Q. Well, then we'll clarify that.

1 A. Yes.

2 Q. Okay. The point of my question was had you
3 done or participated in the original construction of
4 42 Meadow Hawk?

5 A. No.

6 Q. Okay. Do you know who did?

7 A. No.

8 Q. Okay. Did you ever -- when you went out
9 there to do or supervise the repairs in November of
10 2017, did you ever ascertain as to who did the work
11 for Rakeman Plumbing in the original construction?

12 A. No.

13 Q. Can Rakeman Plumbing do that?

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

15 Q. Does Rakeman Plumbing have the ability to
16 go back and look at records or documents as to the
17 original construction of 42 Meadow Hawk and
18 determine who at Rakeman Plumbing did that work?

19 A. I don't know.

20 Q. All right. We'll ask Mr. Holly.

21 A. There you go.

22 Q. Okay. Some other background stuff. Have
23 you ever been convicted of a crime?

24 A. No.

25 Q. Did you ever serve in the military?

1 A. No.

2 Q. So in your plumbing career, did you
3 primarily do residential or did you also do
4 commercial plumbing work?

5 A. Residential.

6 Q. Okay. Do you still go out and do repairs
7 on homes?

8 A. Personally?

9 Q. Yes.

10 A. No.

11 Q. When is the last time you did?

12 A. I couldn't even tell you.

13 Q. Five years ago?

14 A. Yeah, five years ago.

15 Q. Back in 2000 -- November 2017 when this
16 repair that we're talking about occurred, were you
17 involved in the supervision of those employees that
18 did that type of work?

19 A. That did the repair?

20 Q. Yes.

21 A. Yes.

22 Q. And how would you supervise them?

23 A. Just kind of oversee the job. Just went
24 there initially to look and see what the leak was
25 and instruct to what needs to be done.

1 Q. When you say you went to -- did you bid the
2 project?

3 A. No.

4 Q. That's another question that I've got. In
5 2017 was it part of your responsibilities to provide
6 bids or estimates as to work that was being --
7 repair work that was being done?

8 A. Yes. I do the bids for some of the work
9 that I do, yes.

10 Q. Did you do the bids on this project?

11 A. That was not a bid job.

12 Q. What was it?

13 A. That was a service call.

14 Q. Okay. Did you have an understanding that
15 the work that was going to be completed as to the
16 repairs in November 2017 at 42 Meadow Hawk would be
17 submitted for a warranty reimbursement?

18 A. Yes.

19 Q. How did you have that understanding?

20 A. It was called in as a leak and that's
21 typical with that piping. It's new enough that it
22 would try to go under a warranty.

23 Q. Okay. So it's my understanding that the
24 house was completed in early 2015.

25 Did you have that understanding?

1 A. I don't know when it was finished.

2 Q. Okay. And so because of your previous
3 statement, that's why I'm asking that question.

4 When you would go out and do that type of
5 repair and given your response, would somebody at
6 the office or would somebody else check as to when
7 the work was completed at that property?

8 A. My understanding is Uponor has a 25-year
9 warranty, so I knew that home wasn't 25 years old.

10 Q. It's my understanding that Rakeman had done
11 a series of repairs at 42 Meadow Hawk.

12 Other than the November 2017, incident, did
13 you supervise any of the other repairs at that
14 property?

15 A. No.

16 Q. Okay. So there were repairs that were done
17 in August of 2015.

18 Did you -- were you aware of those repairs?

19 A. No.

20 Q. So another question about what you would do
21 in terms of if you got a call in November of 2017,
22 would you go back -- excuse me, would you go back
23 and see if you had done any other previous repairs
24 at a residence?

25 A. No.

1 Q. Okay. So is it fair to say the first time
2 you went to 42 Meadow Hawk was in approximately
3 November of 2017?

4 A. Yes.

5 Q. Okay. Did you have an understanding as
6 to -- excuse me, a prior relationship between
7 Rakeman Plumbing or Aaron Hawley and Dr. Swanson?

8 MR. GALLIHER: Object to the form.

9 You can answer.

10 THE WITNESS: No.

11 BY MR. GRAF:

12 Q. Had you ever heard of Dr. Swanson prior to
13 going out there to do the repairs in November of
14 2017?

15 A. No.

16 Q. Okay. So let's start -- let's try and use
17 some records because that will be I think easier to
18 go through this stuff.

19 MR. GRAF: Let's mark this as 1.

20 (Exhibit 1 Documents Bates No. PLT 01049 - 01052
21 marked.)

22 MR. GRAF: Jeff, have you seen these yet?
23 These are the Uponors.

24 We've got four or five productions that
25 they've got all stacked ready to go. So I don't

1 know why they haven't sent them out yet, but they
2 will.

3 MR. GALLIHER: I've seen some of this
4 stuff.

5 MR. GRAF: Yeah. But you haven't seen it
6 with these Bates stamps.

7 BY MR. GRAF:

8 Q. Mr. Gerber, Rocky, I've handed you what's
9 been marked as Plaintiff's Exhibit 1 for purpose of
10 your deposition.

11 It has a Bates stamp at the bottom right.
12 There's a PLT and then a numeric sequencing number
13 on each page.

14 So as we go through this, I'll direct you
15 to those page numbers so that way we have a clear
16 record. Okay?

17 A. Yes.

18 Q. So I've handed you what's been marked for
19 Exhibit 1 for purposes of this deposition and it has
20 Bates stamps PLT 1049 through 1059. These are
21 documents that were produced to my office pursuant
22 to a subpoena from Uponor.

23 You haven't seen these documents before?

24 A. No.

25 Q. Okay. So it appears that this an e-mail

1 and then kind of a claims log printout on the first
2 two pages -- three pages I should say, and it has
3 the information here Rakeman Plumbing, Aaron Hawley.

4 He's the individual that owns and operates
5 Rakeman Plumbing?

6 A. Yes.

7 Q. Okay. And does Rakeman Plumbing still
8 operate at 4075 Losee Road?

9 A. Yes.

10 Q. One thing I forgot to ask you, Mr. Gerber,
11 is what is your home address?

12 A. 2686 Spring Stone Street. That's Las
13 Vegas, Nevada 89142.

14 MR. GALLIHER: 89 --

15 THE WITNESS: 142.

16 BY MR. GRAF:

17 Q. Okay. So going back to Exhibit 1, this is
18 an e-mail from a Stacey Beissel at Uponor to Nicole
19 Whitfield talking about the repair and/or some other
20 repairs that were going to be necessary at the home.

21 Did you subsequently become aware that that
22 house was going to be re-plumbed?

23 A. Yes.

24 Q. Okay. When I say re-plumbed, do you have
25 an understanding as to what I mean by that?

1 A. Water piping.

2 Q. Let me be a little bit more specific. So
3 did that -- so let me backtrack. Bad question.

4 Did Rakeman do any re-plumbing work on the
5 Uponor or Kitec cases?

6 A. Yes.

7 Q. If I use Uponor or Kitec or yellow brass
8 cases kind of denomination or phrase, do you know
9 what I'm talking about?

10 A. They're all different, but yes.

11 Q. Okay. So Uponor, you're aware that there
12 was a class action that was filed as to the Uponor
13 plumbing system?

14 A. No.

15 Q. Oh, okay. You weren't aware of that?

16 A. No, sir.

17 Q. All right. Were you aware that there was a
18 Kitec construction defect defect type -- defective
19 product type litigation?

20 A. Yes.

21 Q. Okay. Did Rakeman Plumbing participate as
22 a re-pipe subcontractor following the Kitec case?

23 A. Yes.

24 Q. Okay. Approximately how many houses do you
25 think Rakeman re-plumbed as a result of that case?

1 A. I don't know.

2 Q. This is a point where I don't want you to
3 guess obviously, but if you can given me an
4 estimate.

5 Like is it more than a hundred homes?

6 A. Yes.

7 Q. More than 500 homes?

8 A. Yes.

9 Q. More than a thousand homes?

10 A. Yeah.

11 Q. More than 2,000 homes?

12 A. That's where I couldn't tell you. More
13 than a thousand, yes.

14 Q. So four figures of homes that were re-piped
15 by Rakeman Plumbing.

16 So had Rakeman Plumbing participated as a
17 subcontractor performing re-piping of Uponor
18 plumbing system houses?

19 A. Say that again.

20 Q. Had Rakeman ever participated as a
21 re-piping subcontractor in -- to replace or to
22 install new Uponor type plumbing systems?

23 A. We used Uponor to replace Kitec.

24 Q. Okay. So in this instance, the original
25 construction, did you have an understanding as to

1 what system was used, either Kitec or Uponor?

2 A. Kitec's been gone for a long time.

3 Q. Is it your belief that the 42 Meadow Hawk
4 had Uponor installed in it originally?

5 A. Well, only from what I seen when I got to
6 the property.

7 Q. Okay. And we're going to go through this
8 document and if you noticed, so the fourth page
9 which is 1053 is a photograph, and it's identified
10 as attachment one.

11 A. Fifth page?

12 Q. Do you recognize that?

13 A. As an Uponor fitting and pipe, yes.

14 Q. And it says 42 Meadow Hawk on it.

15 Do you see that?

16 A. Yes.

17 Q. Who would have written that?

18 MR. GALLIHER: Foundation, speculation.

19 THE WITNESS: I don't know.

20 BY MR. GRAF:

21 Q. So it's my understanding that this is the
22 failed fitting in the 42 Meadow Hawk residence.

23 Do you have an understanding as to that?

24 A. No.

25 Q. Did you participate in removing this

1 fitting at the 42 Meadow Hawk residence?

2 A. I don't know if this is the fitting. I
3 honestly don't remember what the fitting was that
4 was removed.

5 Q. So do you have an understanding as to who
6 at Rakeman did the repairs in November of 2017?

7 A. I don't remember.

8 Q. If we look at the documentation here, so
9 beginning say 1055, there's an invoice or what
10 purports to be an invoice from Rakeman Plumbing
11 invoice No. 232809.

12 Do you see that?

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

14 Q. No, you're good.

15 A. What page was that?

16 Q. So on 1055 --

17 A. 55. Okay.

18 Q. Do you recognize that document, sir?

19 A. This is a Rakeman invoice.

20 Q. Okay. What's the invoice date?

21 A. 6/22 of '17.

22 Q. Well, I'm seeing the invoice date is
23 5/23/2017.

24 A. Sorry. That's the due date, yeah, 5/23/17.

25 Q. Okay. So would that have been the date

1 that you went out and did the work?

2 A. That would be --

3 MR. GALLIHER: Foundation, speculation.

4 THE WITNESS: I wouldn't know.

5 BY MR. GRAF:

6 Q. So this appears to be from an earlier leak
7 not from the November 2017 leak. This invoice is
8 dated May 23, 2017, and it says, The tech found a
9 three-quarter-inch Uponor T leaking on the hot side
10 of the plumbing system.

11 And then it goes on to say, Cut out leaking
12 fitting and replace with new fitting and restore
13 water with no further leaks. Rakeman had to remove
14 toe kicks on built-in and cabinet and closet. Cut
15 out wet drywall, carpet pads. Place equipment to
16 dry out closet.

17 A. This is the one I remember going to. So it
18 must not have been November. This must be the one I
19 went to because this sounds more familiar.

20 Q. Okay. I'm not trying to mislead you
21 because this happened more than once.

22 A. Okay. Well, this one sounds more familiar.
23 But like I said, I couldn't tell you exactly which
24 one I went to.

25 Q. Okay. So do you -- so there's a bill for

1 2496, and then if you keep looking in these
2 documents there is a transmittal letter and a check
3 which is at 1058 and 1059 from Uponor.

4 Do you see that?

5 A. Yes.

6 Q. Oh. This work was completed by Rakeman and
7 then it was paid for by Uponor; correct?

8 A. Yes, that's what it looks like.

9 Q. Okay. I'll have to show you -- so
10 that's -- if you look at 1050, in this claims type
11 software material where it says failure date at the
12 bottom left, it says February 16, 2017.

13 Do you see that?

14 A. Yes.

15 Q. Do you recall being out at 42 Meadow Hawk
16 during or about February of 2017?

17 A. No.

18 Q. Okay. Let's look at --

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

21 (Exhibit 2 Documents Bates No. PLT 1014 - 1041
22 marked.)

23 BY MR. GRAF:

24 Q. All right. So you've been handed what's
25 been marked as Exhibit 2 for purposes of your

1 deposition here today.

2 Do you recognize that document?

3 A. Do I recognize it?

4 Q. Yes.

5 A. No.

6 Q. Okay. Let me ask you a couple of
7 foundational questions on that.

8 Do you ever communicate directly with
9 anybody at Uponor regarding warranty repairs made by
10 Rakeman or -- and submitted to Uponor?

11 A. No.

12 Q. Who would do that at Rakeman?

13 A. A series of different people.

14 Q. Would Rhonda Hawley?

15 A. Possibly.

16 Q. So this appears to be -- if we look at page
17 Plaintiff's 1015, it says failure date November 7,
18 2017.

19 Do you see that?

20 A. Yes, I do.

21 Q. So that then there is some other notes as
22 to the work that's going to be done in there.

23 If you look at the bottom of 1015, it says,
24 Customer perspective. It says 42 Meadow Hawk Lane,
25 Las Vegas, Nevada. It's a single-family home and

1 contains 6,633 feet and was built in 2015 and it
2 contains five bedrooms and seven bathrooms.

3 Is that an accurate depiction of that
4 house?

5 A. I don't know.

6 Q. Okay. If you look at starting on 1032 and
7 going for a couple of pages, there are some
8 thumbnail photographs, and in particular if you
9 would turn to beginning on 1037, there's a series of
10 internal images of pipe and sections of pipe.

11 Would Rakeman when they would come and do
12 repairs as to this type of plumbing situation, would
13 they remove the portions of the Uponor plumbing that
14 had failed for inspection and/or testing by Uponor?

15 A. I believe that's their warranty. We cut
16 out the fitting and ship it back. That's part of
17 their protocol.

18 Q. And that's what I'm asking. I just want
19 you to confirm that.

20 When you would come across an Uponor
21 plumbing system and there was a failure, did you --
22 was it part of your course and conduct to remove the
23 portion that failed and send that to Uponor for
24 further testing?

25 A. Yes.

1 Q. Okay. Did that happen at 42 Meadow Hawk?

2 A. I believe so, yes.

3 Q. Okay. So if you look at like say the
4 second photograph that is identified as 748395, No.
5 7, as received, 7, like in the bottom of the
6 right-hand side of that fitting where it looks like
7 it's splitting horizontally, is that what would have
8 caused the leaking in the residence?

9 MR. GALLIHER: Speculation, foundation.

10 THE WITNESS: I don't know.

11 BY MR. GRAF:

12 Q. Okay. Then if we look at -- turn to 1039.
13 Do you see like behind the piping and that sort of
14 thing where there's some sort of like calcification
15 or something like that?

16 Do you see that?

17 MR. GALLIHER: Which photo are you looking
18 at?

19 MR. GRAF: Any one of those that's on the
20 bottom of 1039.

21 THE WITNESS: I can't even barely tell what
22 this photo looks like, to be honest with you.

23 BY MR. GRAF:

24 Q. All right. Did you take any photographs
25 for Rakeman Plumbing when you were out there in

1 November of 2017?

2 A. I don't remember.

3 Q. Would you have normally taken photographs
4 in the ordinary course of doing your supervision for
5 Rakeman Plumbing on a repair job?

6 A. Sometimes. It's not a every time thing.
7 Sometimes I would. Just really depends if I felt I
8 needed to.

9 Q. Okay.

10 MR. GRAF: So go ahead and mark this as
11 next.

12 (Exhibit 3 Documents Bates No. SWANSON 0140 - 0141
13 marked.)

14 BY MR. GRAF:

15 Q. You've been handed what's been marked as
16 Exhibit 3 for purposes of your deposition. It
17 purports to be an affidavit of Aaron Hawley.

18 Have you ever seen this document before,
19 Mr. Gerber?

20 A. No.

21 Q. So if you look at paragraph eight, it says,
22 Rakeman technician, William Rocky Gerber, went to 42
23 Meadow Hawk to repair the reported leak.

24 Do you see that?

25 A. Yes.

1 Q. Is that an accurate statement?

2 A. Yes.

3 Q. Well, I thought you testified here today
4 that you didn't do any of the repairs at 42 Meadow
5 Hawk?

6 A. I didn't do the repair, but if you talk to
7 me and say, Who went out and did the repair, I would
8 always say we, me, but my guys. I didn't physically
9 make the repair, no.

10 Q. Okay. Who did?

11 A. I couldn't remember which one of my guys
12 did it.

13 Q. Okay.

14 MR. GRAF: All right. We're going to have
15 to take a break here for a second because I have the
16 wrong invoice, so I have to get the correct invoice.

17 MR. GALLIHER: I'm ready when you are.

18 MR. GRAF: Let's keep going for a bit.

19 We've only been going for a half hour; right?

20 MR. GALLIHER: Yes.

21 BY MR. GRAF:

22 Q. All right. Sorry. It says, Mr. Gerber met
23 a person at the residence who informed Mr. Gerber
24 that she was Dr. Todd Swanson's assistant.

25 That assistant that was Nicole Whitfield

1 who I asked you if you had ever met or talked to
2 her?

3 A. Okay.

4 Q. Does this document help to refresh your
5 recollection as to whether you met her or talked to
6 her?

7 A. I met somebody up there. I can't remember
8 who it was. I can't remember who it was.

9 Q. Short, slender, brunette?

10 A. Possibly. I couldn't tell you the color of
11 her hair. I do these things every day.

12 Q. It says, Onsite Mr. Gerber found the
13 following and took the following corrective action.
14 It says, Tech found three-quarter-inch Uponor T
15 leaking on the hot side of the plumbing system. Cut
16 out leaking fitting and replaced with a new fitting
17 and restored water with no further leaks. Rakeman
18 had to remove the toe kicks.

19 This is pretty much the same language as we
20 looked at on Exhibit 1; correct?

21 A. Yes. Yeah. That's why I said this one
22 sounded more familiar, whichever one it was that we
23 looked at sounded more familiar.

24 Q. Okay. And if we compare the affidavit to
25 this, and in particular Exhibit 1 Bates stamp PLT

1 1055, to the affidavit, it's the exact same
2 language, isn't it?

3 A. Sounds that way, yes.

4 Q. Okay. So it says, Then the May 23, 2017,
5 leak was fully and completely repaired. I invoiced
6 Uponor, manufacturer. As such, nothing further was
7 conveyed to Dr. Swanson other than the leak was
8 repaired and that we remediated the damage to the
9 drywall paint carpet. That's paragraph ten.

10 Do you see that?

11 A. Yes.

12 Q. So this is for the May 23rd leak?

13 A. Yes.

14 Q. Okay. I was confused. I apologize.

15 A. Yeah, that sounds more familiar.

16 MR. GRAF: It says the May 23rd leak in
17 paragraph ten.

18 BY MR. GRAF:

19 Q. Okay. So were you aware of another leak in
20 the master bathroom that had occurred in 2015?

21 A. No, not that I can remember.

22 Q. Okay. So what would have been done to
23 repair this leak?

24 A. Which one?

25 Q. May 23rd.

1 A. This one we're talking about here?

2 Q. Yeah.

3 A. Cut out the leaking fitting and replace
4 with a like fitting.

5 Q. Do you recall if Rakeman Plumbing or CPI
6 Restoration did any of the water remediation?

7 A. We dried out -- I know we put blowers
8 there.

9 Q. So can you tell by any of the documentation
10 that we've looked at thus far as to whether or not
11 any type of mold testing was conducted as a result
12 of the May 2017 leak?

13 A. If this is the one that -- like I said, I
14 can't remember exactly when I was there. But I know
15 one of the times I was there we had an air test done
16 just to make sure the area was --

17 Q. Who would have done the air test?

18 A. I couldn't remember the company.

19 Q. Did you guys use Infinity Environmental
20 Services back then?

21 A. Yes, we've used them, yes.

22 MR. GRAF: Okay. Let's take a break so we
23 can go over the November stuff real quick.

24 THE VIDEOGRAPHER: Off the record at 10:00.

25 (Thereupon, a break was taken.)

1 (Exhibit 4 E-Mail Chain marked.)

2 THE VIDEOGRAPHER: Back on the video record
3 at 10:13.

4 BY MR. GRAF:

5 Q. You're aware you're still under oath,
6 Mr. Gerber?

7 A. Yes, sir.

8 Q. Okay. We went off the record and I went
9 and actually I pulled these, but needed a break
10 anyway.

11 You've been handed what's been marked as
12 Exhibit 4 for purposes of is this deposition.

13 Do you recognize this document?

14 A. No.

15 Q. Okay. The first two pages PLT 54 and 55
16 appear to be on e-mail chain between Nicky Whitfield
17 and Aaron Hawley, and it's discussing some mold
18 testing and/or some work that has to be completed
19 during or about November of 2017.

20 A. Okay.

21 Q. Then if you look at PLT 56, there's a
22 November 16, 2017, letter from Rakeman Plumbing
23 Aaron Hawley to Dr. Swanson.

24 Do you see that?

25 A. Yes.

1 Q. Did you have anything to do with the
2 preparation of that letter?

3 A. I don't remember. I don't think so. I
4 don't remember to be honest.

5 Q. Then let's keep going. Let's look at PLT
6 57. That appears to be a work order, and it's going
7 to be for work at the 42 Meadow Hawk, the Swanson
8 residence and it's going to be billed to Uponor.

9 Do you see that?

10 A. Yes.

11 Q. Okay. And this is work that's scheduled to
12 occur on January 5, 2018.

13 Do you see that?

14 A. Yes.

15 Q. So then at the bottom there's description
16 of what had happened.

17 Do you see that?

18 A. Yes.

19 Q. Who would have typed in that information?

20 A. It says Allison here.

21 Q. Who is Allison?

22 A. She was a secretary in our office or admin
23 in our office.

24 Q. Okay. There is some identical language
25 that is in the handwritten invoice form on PLT -- or

1 excuse me, 58.

2 Do you see that?

3 A. Yes.

4 Q. Do you know whose handwriting that is?

5 A. Mine.

6 Q. Did you fill this document out?

7 A. Yes.

8 Q. Okay. So this -- this is what I'm trying
9 to clarify, Mr. Gerber. So before we go over what's
10 handwritten in here, turn the page to the next
11 invoice.

12 A. Um-hmm.

13 Q. And it appears to be work that was -- or an
14 invoice that's dated 1/26/2017 on page 59?

15 A. Yes.

16 Q. Is that your handwriting also?

17 A. No.

18 Q. Whose handwriting is that?

19 A. I don't know. It says Mic and Hunter on
20 the bottom of the page at the tech signature.

21 Q. Were Mic and Hunter people that worked for
22 Rakeman Plumbing during or about December of 2017?

23 A. Yes.

24 Q. So keep turning and we'll come back to
25 yours.

1 On 60 there appears to be more of a, I
2 don't know.

3 What is that document?

4 A. Looks like our old computer system's call
5 slip I think.

6 Q. Okay. That appears to be for 1/26/2017 at
7 the top left is where I'm seeing that?

8 A. Yes.

9 Q. Okay. Then what was this request about?

10 MR. GALLIHER: Foundation, speculation.

11 THE WITNESS: I don't know.

12 BY MR. GRAF:

13 Q. So at the top left it says request.

14 Do you see that?

15 A. It's kind of cut off, yeah. It says
16 something. I don't know. I don't know if it says
17 Mic or what. Mine's cut off.

18 It says or junior turn off water heater and
19 check --

20 Q. It says turn on water heater?

21 A. Oh, okay. Turn on water heater and check
22 water heater. No hot water. It was turned off. Do
23 whatever is needed to get going.

24 Q. Okay. And there's another handwritten
25 invoice on 61 that's dated November 12, 2017.

1 Do you see that?

2 A. Yes.

3 Q. What -- do you know who filled this one
4 out?

5 A. It says Randy.

6 Q. Randy Waller?

7 A. Walker.

8 Q. Walker?

9 Okay. And we'll go over the specifics
10 there.

11 And then the next one is another one dated
12 November 17th and it's another one of those
13 electronic forms.

14 A. Um-hmm.

15 Q. It says, Pressure test and piping. I think
16 that has to do with the previous invoice.

17 So then on 63, there's a handwritten
18 invoice for May 23, 2017?

19 A. Yes.

20 Q. And this -- it says, Technician signature.
21 It says Rocky.

22 Is that you?

23 A. Yes.

24 Q. All right. Did you prepare this document?

25 A. Looks like it, yes.

1 Q. Okay. Then the next page on page PLT 64.

2 Do you see that?

3 A. Yes.

4 Q. It's dated April 5, 2017.

5 Do you see that?

6 A. Yes.

7 Q. So do you have an understanding as to why
8 this is dated April 5, 2017?

9 A. No.

10 Q. As opposed to May 23rd?

11 A. No. Don't know.

12 Q. It says, Leak in master bedroom; right?

13 A. Yes, it does.

14 Q. So were there two separate leaks on
15 April 5, 2017, and May 23, 2017?

16 A. I don't know.

17 Q. Or is it possible that the leak occurred
18 between April 5, 2017, and May 23rd, 2017?

19 A. I don't know.

20 Q. So if we look at that handwritten invoice
21 on page 63 --

22 A. Yes.

23 Q. -- this appears to the same as what we
24 reviewed in the affidavit and in Exhibit 1, correct,
25 on the invoice, the --

1 A. Reads the same.

2 Q. Okay. So was that the normal course for
3 Rakeman Plumbing?

4 You would prepare a handwritten invoice
5 like this; then they would submit it and create an
6 invoice that would just retype what your notes said?

7 A. I believe so.

8 Q. Okay. So walk me through on this invoice
9 63, what you did.

10 Actually, before you do that, does this
11 document help to refresh your recollection as to
12 whether or not you were the person that did this
13 work?

14 A. Oh, I know I didn't do the work. That's
15 not a question. The timing and that's the question.
16 I didn't physically do any work there.

17 Q. So can you tell by looking at this document
18 who did do the work?

19 A. No.

20 Q. Okay. So talk to me about what this
21 invoice says as to the work that was done?

22 A. I can pretty much read it to you, but I
23 couldn't tell you what, you know -- it just says,
24 Called out for leak in the master bedroom closet at
25 42 Meadow Hawk. Found three-quarter Uponor tear

1 leaking on the hot side of the plumbing system. Cut
2 out leaking fitting and replace with new fitting and
3 restored water.

4 Looks like it says, No further leaks now or
5 no further leaks period. Rakeman had to remove toe
6 kicks on built-in cabinets in closet. Cut out wet
7 drywall, carpet pad, and place equipment to dry out
8 closet.

9 After everything is dry, Rakeman repaired
10 all drywall to match existing texture and color and
11 repaired all damage built-in closet, then reset all
12 carpet.

13 Q. So talk to me about the wet drywall that
14 was cut out. That was thrown away?

15 A. Yeah.

16 Q. It wouldn't have been re-installed; right?

17 A. No.

18 Q. The carpet in this area, was it removed
19 also?

20 MR. GALLIHER: Foundation, speculation.

21 THE WITNESS: What does it say?

22 BY MR. GRAF:

23 Q. It says, Cut out wet drywall, carpet pad,
24 and place equipment --

25 A. It says about pad. Doesn't say anything

1 about carpet. So I don't remember.

2 Q. And then the last line of that invoice
3 says, Then reset all carpet.

4 Do you see that?

5 A. Yes.

6 Q. So now is Rakeman doing that or is CPI
7 Restoration doing that?

8 A. CPI.

9 Q. And then it also says -- the second to last
10 sentence says, And repaired all damaged built-in
11 closets.

12 Do you see that?

13 A. Yes.

14 Q. Do you know what was repaired?

15 A. No. I believe if I'm not mistaken that was
16 done by the original cabinet contractor. I think.
17 Well, no, no. I don't know when it would have been
18 done right now. I couldn't tell you.

19 Q. Do you know if the cabinets themselves were
20 damaged?

21 A. I don't.

22 Q. Okay. All right. Let's go back to your
23 other invoice that you handwrote, which is on 58.
24 So this one is dated January 5, 2018.

25 Do you see that?

1 A. Yes.

2 Q. Did you go back out there on January 5,
3 2018?

4 A. I don't know. I don't remember. That
5 could have been when I wrote this invoice. I don't
6 know.

7 Q. Okay. Is there a way that you can tell?

8 A. No.

9 Q. So tell me what this invoice describes.

10 A. It's describing a leak in the master
11 bathroom closet, that arrived to the house, carpet
12 and drywall had water damage on the opposite wall on
13 the closet. Tech found --

14 Q. So let's stop there. That's a little
15 different than the previous invoice.

16 It just had described that there was a
17 failure quote/unquote on the hot side. It didn't
18 describe a split in the line or anything; correct?

19 A. Correct.

20 Q. So that's a little bit different
21 information?

22 A. Yes.

23 Q. Okay. Go ahead.

24 A. Let's see. The water heaters are located
25 behind the built-in closet for master closet and had

1 to be removed to make repairs due to insulation of
2 small area -- or enclosed small area.

3 After waterline was repaired, all water
4 damaged drywall cabinets and carpet was removed and
5 water was extracted and machines were placed to dry
6 area out.

7 Q. Let me stop you there.

8 So does that mean that the carpet was
9 thrown out?

10 A. I don't know.

11 MR. GALLIHER: Foundation, speculation.

12 BY MR. GRAF:

13 Q. Can you tell by reading that what was
14 damaged as to the cabinets?

15 A. No.

16 Q. And in terms of the water damaged drywall
17 would that have been removed and replaced?

18 A. Yeah. Wet drywall would have been removed
19 and new drywall installed.

20 Q. Okay. Keep reading.

21 A. All dry equipment was in place for six days
22 to dry area out and site of containment master
23 closet, master bath. After area was dry, all
24 drywall that was damaged by water was repaired and
25 the original company that built master closet

1 cabinets had to repair rebuild cabinets to match
2 existing.

3 Q. Let me stop you there.

4 So does that tell you that the cabinets had
5 to be removed and replaced?

6 MR. GALLIHER: Same objection.

7 BY MR. GRAF:

8 Q. Or at least of portion of them?

9 A. That says that they had to be repaired or
10 rebuilt. I couldn't remember what was wrong with
11 them though.

12 Q. Okay. Do you recall whether or not they
13 were constructed of a press-board type cabinet
14 material?

15 A. I don't remember. I couldn't remember what
16 color they were. I know that there was -- I
17 remember cabinets. I know the toe kicks had to be
18 had removed, but I don't remember much more than
19 that.

20 Q. You would agree with me though that the
21 cabinets are constructed of that white melamine type
22 of construction, if it gets wet, it usually swells
23 and will change its configuration to a certain
24 extent?

25 MR. GALLIHER: Speculation, foundation.

1 THE WITNESS: Depending on what the water
2 could hit.

3 BY MR. GRAF:

4 Q. If it gets to the end grain where the
5 pressboard is actually in, it will change; right?

6 A. Well, if the water hits that toe kick, it's
7 not going to affect that cabinet if it's a separate
8 piece of wood.

9 Q. Okay. You're referring to --

10 A. Pointing to the bottom of your cabinets
11 here in your office.

12 Q. Okay. Why do you say that?

13 A. If it's a separate piece of wood, that
14 water's not going to -- typically the water is not
15 going to transfer.

16 Q. You'd agree with me though that in this
17 instance, at least according to your depiction, this
18 is from the hot water heater that's inside the wall
19 cavity that is behind the cabinets; correct?

20 A. Correct.

21 Q. Okay. So did you observe as to how high up
22 on the wall the actual water heaters were?

23 A. If I remember right, the water heaters
24 are -- the bottom of the heaters may be three to
25 four feet off the floor level. And I believe the

1 leak was down maybe within -- because they were
2 underneath them, I'd say it would be a foot off of
3 ground level maybe.

4 Q. Okay. And you'd agree with me that a toe
5 kick is only going to be three or four inches?

6 A. Yes.

7 Q. Okay. So if it's anywhere six inches or
8 above, then there's a potential that it goes into
9 the back of the cabinets; correct?

10 MR. GALLIHER: Speculation, foundation.

11 THE WITNESS: I couldn't tell you where the
12 water went, but typically water goes down. So it
13 would go to the floor first, get the floor wet.
14 Hence why the carpet I believe was wet.

15 So I couldn't tell you that the cabinets
16 themselves were damaged. I do know that the toe
17 kicks I believe would have had to been removed due
18 to carpet being, wet but I couldn't remember what
19 was damaged on the cabinet, no, sir.

20 BY MR. GRAF:

21 Q. Okay. So keep reading. All drywall.

22 A. All drywall was done to match Grade 5
23 smooth finish wall texture and color.

24 Q. So let me stop you there.

25 What's a Grade 5 smooth finish wall?

1 A. Just a smooth to touch finish. It's
2 like -- this is a -- looks like knockdown texture on
3 the drywall in this room.

4 Smooth finish is what it says; it's just a
5 smooth finish. No feel to it. No texture to it.

6 **Q. So the grades, so Grade 5 that's a high-end**
7 **residential?**

8 A. Well, I wouldn't say a high-end residential
9 home. It's just a higher smooth finish. You can
10 put that finish in any home. You can put in a motor
11 home if you wanted to. It's just a smooth finish.

12 **Q. And what we have here on these walls is**
13 **more of an orange peel --**

14 A. Yeah. Orange peel, knockdown style
15 texture, yes.

16 **Q. All right. Go ahead.**

17 A. All new carpet and pad had to be installed
18 in master closet after all repairs were made.

19 **Q. Okay. So if we go back to the affidavit of**
20 **Aaron Hawley, it only talks about the May 23, 2017;**
21 **correct?**

22 A. Let's see. It says here in Section 6 on
23 that -- that's the only date that I see on this
24 paper.

25 **Q. Okay. So let's go back to Exhibit 4, which**

1 is the beginning of that in the e-mails. So these
2 are e-mails between Nicole Whitfield and Aaron
3 Hawley.

4 So it starts off on the second page by
5 saying, This is a letter I sent to Mr. Swanson this
6 morning. No timeframe has been given as I don't
7 know the results of the air spore test and I do not
8 run the closet organizer company and can't speak for
9 them.

10 Do you see that?

11 A. Yes.

12 MR. GRAF: So let's go ahead and mark this
13 as next.

14 (Exhibit 5 November 24, 2017, Report - Infinity
15 Environmental Services marked.)

16 BY MR. GRAF:

17 Q. Mr. Gerber, you've been handed what's been
18 marked as Exhibit 5 for purposes of this deposition.
19 It purports to be an November 24, 2017, report
20 prepared by Infinity Environmental Services.

21 Are you aware as to who Infinity
22 Environmental Services is?

23 A. They're an environmental air testing
24 company.

25 Q. They're the industrial hygienist that

1 performed the mold and spore tests at the various
2 locations where CPI does water remediation?

3 A. Okay.

4 Q. No. I'm asking you.

5 A. Yes. That's who we've used on this one
6 then yes.

7 Q. So at the top it says, Subject fungal
8 indoor air quality assessment report.

9 Do you see that?

10 A. Yes.

11 Q. Have you seen these types of reports
12 before?

13 A. Possibly.

14 Q. Okay. And then in the first paragraph it
15 says, To whom it may concern. In accordance with
16 your request and authorization for services -- and
17 this is addressed to whom it may concern at Rakeman
18 Plumbing.

19 Do you see that?

20 A. Yes.

21 Q. All right. For services Infinity
22 Environmental Services, LLC, Infinity of Las Vegas,
23 Nevada provided the subject services on November 17,
24 2017.

25 Do you see that?

1 A. Yes.

2 Q. In your capacity as a supervisor for
3 Rakeman Plumbing, would you have been present when
4 they conducted their services on November 17, 2017?

5 A. No. For this company, no.

6 Q. Who would have been responsible at either
7 Rakeman or CPI Restoration to call the Infinity
8 Environmental to come out and do their tests?

9 A. Possibly one of the girls in the office.

10 Q. Who would tell the girls in the office to
11 call them to say, Hey, we're ready for them to come
12 out and do their testing?

13 A. Me or one of the other supervisors or
14 something like that.

15 Q. When would you do that? At what point in
16 the repair or remediation process?

17 A. Would you call to have them tested?

18 Q. Yes.

19 A. When you felt the time was right. It may
20 be if containment was up or -- no. To have an air
21 test before -- if you see something, it's -- every
22 case is different when you would need an air test or
23 not.

24 So on this one, it may have been because of
25 location of the water leak and not being able to see

1 behind the wall.

2 Q. Okay. And I think it goes on to say, The
3 visual, airborne, and surface fungal assessment,
4 FIAQA -- was requested to assess for possible fungal
5 levels in the master bathroom and master closet of
6 the subject residence.

7 Infinity was also asked to provide a fungal
8 remediation operating procedure for the remediation
9 activities.

10 Do you see that?

11 A. Yes.

12 Q. What is that that's being described in the
13 second part, the fungal remediation operating
14 procedures?

15 A. Sound like a repair, course for repair.

16 Q. All right. So it appears that the scope
17 and services is they would do a fungal -- they did a
18 fungal assessment of the master bathroom and closet.

19 Do you see that at the bottom on page 1?

20 A. Yes.

21 Q. Then they did air sampling and they did
22 surface sampling?

23 A. Um-hmm, yes.

24 Q. Okay. So then on page 2, the results of
25 the airborne samples, it says, During our visual

1 inspection of the master closet, we found suspect
2 visible fungi on lower wall under the closet cabinet
3 that is adjacent to the master bathroom water
4 heater.

5 Do you see that?

6 A. Yes.

7 Q. Okay. And then that next paragraph talks
8 about the results.

9 Are you familiar with -- do you know how to
10 read the results regarding this --

11 (Thereupon, an off-the-record discussion was had due
12 to speaker overlap.)

13 BY MR. GRAF:

14 Q. Okay. So do you know what that lower
15 paragraph says?

16 MR. GALLIHER: Object to the form.

17 THE WITNESS: I can read it, but I wouldn't
18 know what any of these -- I'm not a hygienist. I
19 wouldn't know what any of this mean.

20 BY MR. GRAF:

21 Q. All right. So me it says, The results of
22 the Air-O-Cell cassette sample indicated that the
23 total fungal genera detected in the indoor samples
24 were higher than the concurrent outdoor genera
25 levels with elevated levels of -- and then it goes

1 forward as to just various forms of mold and fungus;
2 right?

3 A. That's what it says, yes. I don't know
4 what those words -- if those words are for mold and
5 fungi. I couldn't tell you.

6 Q. Page 3 it talks about the surface or swab
7 tests?

8 A. Yes.

9 Q. Okay. And in the Results and Discussion
10 Section, it says, The surface swab sampling results
11 of the discolored area previously described are
12 disclosed in the attached forensic report titled
13 Non-Viable Bulk Fungal Analysis.

14 Do you see that?

15 A. Yes.

16 Q. And then in the next paragraph the second
17 sentence says, Infinity considers the fungal spores
18 detected in the sample to be indicative of active
19 fungal growth.

20 Do you see that?

21 A. Where do you see that at?

22 Q. The last sentence in the paragraph that
23 says No. 1 under Results and Discussion on page 3.

24 A. Okay. Yes, I see that.

25 Q. So then on page 4 there's a series of

1 recommendations?

2 A. Yes.

3 Q. So it says in the master bathroom that it
4 should be placed under a negative containment system
5 to include the closet.

6 Do you know if that was done?

7 A. I would say -- I can't remember, but if
8 that's what was requested, then I would say that's
9 what was done. But I can't remember.

10 Q. Okay. Who would have that information?

11 A. I don't know honestly.

12 Q. Would CPI have that information?

13 A. Possibly. I don't -- possibly.

14 Q. Would CPI have installed the negative
15 containment system?

16 A. Yes.

17 Q. The next recommendation says the cabinets
18 adjacent to the master bathroom water heater should
19 be removed.

20 Do you see that?

21 A. Yes.

22 Q. Do you take that to mean that they're going
23 to be removed and re-installed?

24 A. That's what I would take it as. Because it
25 says that they need to be removed for the

1 remediation of the walls.

2 Q. Okay. Then it says No. 3, Due to the spore
3 level detected of penicillium aspergillus in the air
4 sample collected from the master bathroom and not
5 detected in the air sample in the swab samples
6 collected in the closet, Infinity recommends that
7 after the bathroom has been placed under the
8 containment center system, excuse me, an inspection
9 of the wall adjacent to the closet and water heater
10 should be performed.

11 Do you see that?

12 A. Yes.

13 Q. Do you know if the wall adjacent to the
14 water heater in the bathroom was opened up to be
15 able to visualize whether or not there was any other
16 indications of mold?

17 A. I don't remember now.

18 Q. Who would have that information?

19 A. I'm not sure.

20 Q. So this report asks that the reader follow
21 the fungal remediation operating procedures that are
22 contained on the next couple of pages, one through
23 five?

24 Do you see that?

25 A. Yes.

1 Q. Have you seen that type of remediation
2 operating procedures report before?

3 A. Yes.

4 Q. Is this a standard report?

5 A. Yes.

6 Q. Okay.

7 THE WITNESS: Sorry. Can you give me one
8 second? I'm sorry.

9 MR. GRAF: Sure.

10 We can go off the record.

11 THE VIDEOGRAPHER: Off the record at 10:42.

12 (Thereupon, an off-the-record discussion was had.)

13 THE VIDEOGRAPHER: Back on the video record
14 at 10:43.

15 BY MR. GRAF:

16 Q. So then that report for the remediation
17 operating procedures goes on to talk about beginning
18 on page 3 the remediation activities that should
19 occur in the closet in the bathroom?

20 A. Um-hmm.

21 Q. And then No. 3 on step six says, Removal of
22 the mold and water damaged walls should occur to a
23 point at least one foot above and beyond the visible
24 contamination.

25 Do you see that?

1 A. Yes.

2 Q. If you look at -- do you know if that
3 occurred actually?

4 A. I don't remember.

5 Q. Okay. Who would have that information?

6 A. I don't know.

7 Q. Somebody at CPI have that information?

8 A. Possibly.

9 Q. Okay. If you look at the last two pages of
10 this exhibit, there's some -- a series of four
11 photographs.

12 A. Yes.

13 Q. Does that area look familiar to you?

14 A. No.

15 Q. Okay. Did you look underneath the cabinets
16 in the closet when you went out to the house in or
17 about November 2017?

18 A. I don't remember if I did or not.

19 Q. But these photographs and the descriptions
20 next to them -- so the first one at the top of the
21 second to last page says, The surface swab sample
22 was collected from the lower wall under the closet
23 cabinet.

24 Do you see that?

25 A. Yes.

1 Q. And then the picture below the description
2 is the water and fungal damaged lower wall located
3 under the closet cabinet adjacent to the water
4 heater in the bathroom.

5 Do you see that?

6 A. Yes.

7 Q. So when there's water damage like this, is
8 there normally drywall that would deteriorate or
9 come away and show the lower framing member as it is
10 in that -- those two pictures?

11 MR. GALLIHER: Foundation, speculation.

12 BY MR. GRAF:

13 Q. Or is this depicting a condition that that
14 drywall has been removed to visualize those framing
15 members?

16 A. I don't know that would -- no. I don't
17 know why that's removed like that.

18 Q. Okay. On page 3 of this report, step No. 6
19 in paragraph six where it says the closet, it says,
20 The carpeting should be removed and discarded. The
21 clothing should be laundered by a company
22 specializing in the cleaning of fungal contaminated
23 textiles.

24 Do you see that?

25 A. You said on page 3?

1 Q. So page 3 of the fungal remediation
2 operating procedures.

3 A. Okay.

4 Q. Where it says the carpeting should be
5 removed and discarded, would that be for the entire
6 closet?

7 MR. GALLIHER: Speculation.

8 THE WITNESS: I don't know.

9 BY MR. GRAF:

10 Q. Who would know?

11 A. Probably the man who wrote this.

12 Q. So I just need to make sure I understand
13 your involvement in this process.

14 So would you normally -- as the supervisor
15 for CPI and Rakeman Plumbing from November and 2017
16 to January of 2018, would you get these reports?

17 A. Yes.

18 Q. And would you normally read the reports?

19 A. Yes.

20 Q. Okay. So if the report said that you
21 needed to remove and discard the carpet, would you
22 remove and discard all of the carpet in the closet
23 or just in the affected area?

24 A. I would do what it says. And if it was a
25 small -- if it's a small closet, then yes, you would

1 just remove that small piece of carpet. If it was a
2 room, it all depends if it could be matched. Every
3 case, like I said, is different.

4 Q. Okay. You'd agree with me though this
5 November 24, 2017, report states that there is
6 active mold growth in this closet?

7 A. That's what it says.

8 Q. Okay. In that type of condition, would CPI
9 perform a follow-up test to make sure that the mold
10 had been remediated?

11 A. We would hire an environmentalist to make
12 sure it was clear.

13 Q. So if we look at --

14 (Exhibit 6 December 7, 2017, Report - Infinity
15 Environmental Services marked.)

16 BY MR. GRAF:

17 Q. Are you all right?

18 A. Yeah. My contact moved. Sorry.

19 Q. You're good.

20 A. Okay.

21 Q. What number are we on?

22 A. Six.

23 Q. You've been handed what's been marked as
24 Exhibit 6 for purposes your deposition here today.
25 It purports to be --

1 A. I'm going to have to take a break.

2 (Thereupon, an off-the-record discussion was had.)

3 THE VIDEOGRAPHER: Off the record at 10:49.

4 (Thereupon, a break was taken.)

5 THE VIDEOGRAPHER: Back on the video record
6 at 10:51.

7 BY MR. GRAF:

8 Q. So you've been handed what's been marked as
9 Exhibit 6 for purposes of this deposition.

10 It purports to be a December 7, 2017,
11 Infinity Environmental Services water -- excuse me,
12 visible and airborne fungal post recommendation
13 verification.

14 Do you see that?

15 A. Yes.

16 Q. And this is the report that would have been
17 prepared to show that the remediation had been
18 completed and there was no further mold growth?

19 A. Yes.

20 Q. Okay. This report indicates that there at
21 least in the Air-O-Cell test on page 2 indicated
22 that there was zero spores detected; right?

23 A. That's what it says here.

24 Q. So here's my question. This is for the
25 work that was done in November at the 42 Meadow

1 Hawk.

2 As to the work that was conducted in May of
3 2017, the other invoices that we looked at the other
4 time that you were out there, was there a mold test
5 that was performed?

6 A. I don't believe so. I don't know. I
7 couldn't tell you if there was or not, but if
8 there's not one here, I would say probably not.

9 Q. Okay. Would there be a reason why there
10 wouldn't have been?

11 MR. GALLIHER: Speculation, foundation.

12 THE WITNESS: Don't know.

13 BY MR. GRAF:

14 Q. So the affidavit of Aaron Hawley says that
15 all work was completed and that all repairs were
16 made; correct?

17 A. I believe so, yes.

18 MR. GALLIHER: What paragraph?

19 MR. GRAF: So if we're looking at Exhibit 3
20 for purposes of this deposition --

21 THE WITNESS: Yes. On 2122 everything is
22 dry --

23 BY MR. GRAF:

24 Q. And then in paragraph No. 10 beginning at
25 line 24, it says, The May 23, 2017, leak was fully

1 and completely repaired and we did not expect any
2 further problems.

3 Do you see that?

4 A. Yes.

5 Q. Okay. But there was no mold remediation
6 report like what we've looked at here as Exhibit 6;
7 correct?

8 MR. GALLIHER: Foundation, speculation.

9 THE WITNESS: I'm not sure, no.

10 BY MR. GRAF:

11 Q. The other thing is, Mr. Gerber, is this
12 affidavit says that you were there and saw all of
13 the work that was completed.

14 I've asked you a couple of questions during
15 this deposition about whether or not cabinets were
16 removed or replaced or carpets were removed or
17 replaced and you didn't know.

18 Is that a fair summary of your testimony?

19 A. In the beginning you said if I didn't
20 remember, don't guess. So I'm going to -- if I
21 don't remember, I'm not going to say yes or no. I'm
22 going to say I don't remember because honestly I
23 don't remember.

24 Q. Okay. And so in this affidavit -- at line
25 20 in paragraph nine it says, Rakeman had to remove

1 toe kicks on built-in cabinets and closet, cut out
2 drywall, carpet pad, and place equipment to dry out
3 closet.

4 Do you see that?

5 A. Yes, I do.

6 Q. Do you know that all that work got done?

7 A. I would say it did. If it says it here,
8 then I would say it did.

9 But I can't confirm on the timing. I can't
10 remember exactly when I was there. I couldn't tell
11 you if it was two to three years ago. I don't
12 exactly remember when I was there, like I told you.

13 Q. And can you state to any degree of
14 certainty based on your personal knowledge here that
15 one foot from every piece of wet drywall was removed
16 and replaced?

17 A. I would say that we done it right. So if
18 anything was wet, it was removed.

19 Q. Okay.

20 A. Just by I know our protocol. But I
21 couldn't tell you this square foot of drywall off of
22 memory was removed, no.

23 Q. Okay. So this is paragraph 11. It says, I
24 invoiced Uponor, the manufacturer of the repaired
25 pipe, because the pipes at the residence were under

1 a 25-year Uponor warranty.

2 That was your understanding also; correct?

3 A. Yeah.

4 Q. Okay. So now we've talked about during
5 this deposition at least two instances of a warranty
6 repair, one that occurred in May of 2017, and one
7 that occurred in November of 2017.

8 Correct?

9 A. I believe so, yes.

10 Q. So when you have two instances of warranty
11 repairs at a house with an Uponor plumbing, would
12 you as a plumber think that you needed to go and
13 inspect the rest of the fittings that were installed
14 in that house?

15 MR. GALLIHER: Speculation, foundation,
16 incomplete hypothetical.

17 THE WITNESS: I don't think so.

18 BY MR. GRAF:

19 Q. Why not?

20 A. I do these leaks all day long. I do them
21 on copper pipe, black iron pipe, galvanized pipe,
22 Wirsbo pipe, PEX pipe. You see it all day long. So
23 for me, no, it's just a -- nothing that I would say
24 need to be inspected.

25 Q. What if there were three more leaks that

1 had occurred in this piping prior to the May of
2 2017 --

3 MR. GALLIHER: Same objections.

4 BY MR. GRAF:

5 Q. So now you've got a total of five different
6 leaks that occurred between 2015 and November of
7 2017.

8 Would that make you as a plumber suspect as
9 to whether or not further inspection should be
10 conducted at this house?

11 MR. GALLIHER: Same objections.

12 THE WITNESS: I think it's more of a --
13 what those leaks were. I'd have to have every
14 single thing in front of me and know what every
15 circumstance was for me to say this needs to be
16 done.

17 So it would have to almost be the exact --
18 I couldn't tell you. But I wouldn't say does the
19 house have five leaks, it should be inspected.
20 Because you could have five completely different
21 leaks. You could have --

22 Just because a home has a leak doesn't mean
23 it's necessarily for one specific reasons, if that
24 makes sense to you.

25 So that's where I would stand with is no, I

1 wouldn't just jump and say this has to be done.

2 BY MR. GRAF:

3 Q. So if there was a leak at the recirculating
4 pump at the master closet in 2015 and then a
5 subsequent leak at the recirculating pump in the
6 master closet in 2017, would those two instances
7 give you cause to maybe think about doing further
8 inspection as to the plumbing system?

9 MR. GALLIHER: Same objections.

10 THE WITNESS: No. Because you first asked
11 me if I would check the pipe and then you just
12 called the recirc pump. So those are two completely
13 situations.

14 You've got different instances. You've got
15 a recirculating pump. You've got piping. So I
16 wouldn't -- you know, if you had a leaking toilet,
17 do you check the kitchen sink? No.

18 So you say you got a piping leak and then
19 you got a recirc pump leak so I wouldn't say no,
20 this needs to be --

21 BY MR. GRAF:

22 Q. Okay. So what if there is a T fitting
23 underneath the sink in the master closet and then
24 another fitting that is being described in the two
25 Uponor warranty submittals that we've looked at

1 today in May and in November of 2017.

2 Does that give you cause for concern that
3 it occurs at the fitting or the joint?

4 MR. GALLIHER: Same objections.

5 THE WITNESS: No.

6 BY MR. GRAF:

7 Q. Why?

8 A. Because it's not for me to deem what's
9 wrong with it, you know, as long as it's tight and
10 everything. That's why we submit to the
11 manufacturer and they give us protocol of what
12 should be done.

13 Q. So in December of 2017, if we look at
14 Exhibit 1 --

15 A. Okay.

16 Q. -- that e-mail?

17 MR. GALLIHER: Which page are you on?

18 MR. GRAF: The first page.

19 BY MR. GRAF:

20 Q. Hi, Nicole. I wanted to thank you for
21 taking the time to speak with me today in regards to
22 the Uponor products currently installed in your
23 home. As discussed, Uponor has identified a limited
24 manufacturing related issue with the tubing samples
25 returned to our office for evaluation and are

1 recommending replacement of all red and blue AquaPEX
2 tubing currently installed in your home with new
3 Uponor AquaPEX.

4 Do you see that?

5 A. Yes.

6 Q. So did you have an understanding in or
7 about December of 2017 that there were manufacturing
8 defects with the red and blue AquaPEX Uponor
9 plumbing system?

10 A. No.

11 Q. Okay.

12 A. This doesn't even say a defect. Just says
13 some sort of limited manufacturing issue. But I
14 don't -- I don't know of any defects on Uponor now.

15 Q. Okay. But at least it appears from this
16 e-mail that it is systemwide?

17 A. Well, this came from the manufacturer. So
18 I can't speak on their behalf. I can only read it
19 verbatim like you can. So I couldn't tell you.

20 Q. Well, but this is saying that they're
21 replacing the entire plumbing system for the whole
22 house; right?

23 A. Per -- for their means. I couldn't tell
24 you. Like I said, this is the -- so this is them
25 stating what they want to do in the home. I

1 couldn't tell you why they want to do that.

2 Q. So they ended up spending about \$68,000 to
3 re-plumb this house.

4 Do you think they would want to pay \$68,000
5 to re-plumb the house if there wasn't some
6 systemwide problem?

7 MR. GALLIHER: Speculation, foundation.

8 THE WITNESS: I couldn't answer that.

9 BY MR. GRAF:

10 Q. You're a plumber.

11 A. But I mean, circumstances, I couldn't tell
12 you why.

13 Q. And I just want to make sure I'm clear here
14 because it seems kind of simple to me, but -- and
15 you're the plumber.

16 A. Yes.

17 Q. So it would a manufacturer like Uponor
18 shell out \$68,000 to re-plumb a house if there
19 wasn't a problem with all of the pipe in the house
20 or all of the fittings in the house?

21 MR. GALLIHER: Same objections.

22 THE WITNESS: I don't know. How hard did
23 the homeowner push on this? I couldn't tell you. I
24 don't know why -- like I said, I don't know of a
25 defect. Here they don't say defect. Here it says

1 they've identified a limited manufacturer related
2 issue in the tubing sample.

3 So that's giving the answer there why, but
4 I couldn't tell you.

5 BY MR. GRAF:

6 Q. Well, if we look at page 1051, and then
7 that is -- have you ever seen something like this?

8 A. No.

9 Q. Okay. Then in the second item it says,
10 Tubing split at fitting.

11 Do you see that?

12 A. Yes.

13 Q. And then it says, Review result
14 manufacturing.

15 Do you see that?

16 A. Yes.

17 Q. And then it says, Tubing splitting at
18 fitting. And then again it says, Manufacturing.

19 Right?

20 A. Um-hmm.

21 Q. Okay. And that's both at the blue and the
22 white for the three-quarter-inch and the one-inch
23 AquaPEX?

24 THE WITNESS: This one here says tubes
25 split at fitting. It actually says red. That one

1 says blue.

2 BY MR. GRAF:

3 Q. Okay. Oh. So the white it says no
4 failure.

5 So what is the red and the blue and the
6 white?

7 A. The simple way for it? Plumbing for
8 dummies?

9 Q. So red is hot? Blue is cold?

10 A. You're a plumber.

11 Q. White is both?

12 A. White is universal. I mean, they're all
13 universal. You can put red on cold. You can put it
14 where you want. It's all rated for the same
15 temperature and pressure. It's plumbing for
16 dummies.

17 Q. Okay. So back when Rakeman would do the
18 original install on houses, they didn't care if it
19 was a red for the hot and the blue for the cold or
20 what?

21 A. Well, if you had red and blue, you would
22 use red for the hot and blue for the cold.

23 But I'm just stating to you that it's not
24 necessary that you have to use red on hot. You
25 don't have to use blue on cold. But that is how --

1 that's -- like I told you, it makes it simple. So
2 all your piping on a hot system would be red. All
3 your blue piping would be cold.

4 But I know they don't make -- one of their
5 sizes, the larger sizes, they don't make colored and
6 it's usually in white. That's why that piping comes
7 in white.

8 But I know they have at least half three
9 quarter and one-inch of all three.

10 **Q. And this reportedly shows that there was**
11 **failures at the red and blue piping; correct?**

12 (Thereupon, an off-the-record discussion was had due
13 to speaker overlap.)

14 MR. GALLIHER: Speculation.

15 BY MR. GRAF:

16 **Q. What was the question?**

17 A. You said if there was failures on red and
18 blue piping, I believe is what you asked.

19 Let me see here. Yes, I believe it's shown
20 to be red has one, blue has one, white has a no
21 failure. That one has a no failure. That one has
22 no failure. So it's showing on here that there was
23 a red and a blue with failure.

24 **Q. Okay. Now, it's my understanding that**
25 **there were instructions to perform additional**

1 inspections of the visible fittings in the rest of
2 the house.

3 Do you know who would have performed that
4 type of inspection?

5 A. No.

6 Q. Do you know if that information occurred?

7 A. I don't.

8 Q. Okay. Just to confirm, you didn't perform
9 the repairs that are indicated on the May 23rd,
10 2017, invoice; correct?

11 A. I haven't made any repairs.

12 Q. And as you sit here today, you don't know
13 who did?

14 A. No.

15 Q. Do you have any understanding as to why the
16 leak occurred in May of 2017?

17 A. I don't. I don't.

18 Is it in here?

19 Q. Yeah.

20 A. No. I mean from Uponor. Is their cause in
21 here?

22 Q. No.

23 A. Then I wouldn't know why the leak occurred,
24 no.

25 Q. So we looked at -- did the one conversation

1 that you had with Dr. Swanson, did you have any
2 discussion as to why the leak occurred?

3 A. Not that I recall. I don't even recall our
4 conversation or even if it was even long. I may
5 have only met him in passing. But I know I haven't
6 met him multiple or had long talks with him, not
7 enough to remember, no.

8 Q. Okay. And what about his assistant, the
9 woman, do you recall any of the content of that
10 conversation?

11 A. I believe she's the one that showed us
12 through the house to the bathroom.

13 Q. Okay. Did you ever tell her why the leak
14 occurred?

15 A. Not that I can remember.

16 Q. Has Rakeman had other instances of Uponor
17 plumbing system failures at other new home
18 construction that they've done?

19 A. We've done leaks on all sorts of piping.
20 We've done leaks on Uponor. We've done leaks on
21 copper. That's what we do. We're a plumbing
22 company.

23 Q. No, I get that.

24 But like on houses that you've installed
25 original construction, have there been other houses

1 where Uponor has recommended complete re-piping of
2 the plumbing system?

3 A. Of houses that we've been on?

4 MR. GALLIHER: Foundation, speculation.

5 THE WITNESS: I don't remember. I don't
6 know.

7 BY MR. GRAF:

8 Q. Who would have that information for
9 Rakeman?

10 A. I couldn't tell you. Somebody -- I would
11 imagine somebody at Rakeman if we had any.

12 Q. Okay. Did you ever talk to any of the
13 Realtors for either Dr. Swanson or the Folinos as to
14 your repairs at the 42 Meadow Hawk property?

15 A. I don't believe so.

16 Q. Just to confirm, you didn't assist in the
17 preparation of the documentation for the submittal
18 of the warranty claim at 42 Meadow Hawk?

19 A. I don't understand the question.

20 Q. The paperwork that would be sent to Uponor
21 to get paid.

22 A. Well, to get paid, no. The handwritten
23 invoice that's here in my name, that would have been
24 my part of it, if that's what you want to say is
25 part of the getting paid.

1 No, just I handle the field work and rely
2 my wording to the office and they prepare it.

3 MR. GRAF: I don't have anything further?

4 MR. GALLIHER: I just have a few brief
5 follow-ups.

6 EXAMINATION

7 BY MR. GALLIHER:

8 Q. I want you to take a look at Exhibit 4,
9 specifically PLT 0063.

10 This is your handwritten invoice, invoice
11 No. 232809?

12 A. What's the page of that? I'm sorry.

13 (Thereupon, an off-the-record discussion was had.)

14 BY MR. GALLIHER:

15 Q. You recall looking at this earlier when
16 Mr. Graf was asking you questions?

17 A. Yes.

18 Q. It has a date on it 5/23/17?

19 A. Correct.

20 Q. That doesn't necessarily indicate that the
21 work was completed or that the leak occurred on
22 5/23/17, does it?

23 A. No.

24 Q. In fact, over here on the left side where
25 the continuation of the narrative is, it says, After

1 everything is dry Rakeman repaired all drywall,
2 existing texture and color and repaired all damage
3 to built-in closets, then reset all carpet.

4 Correct?

5 A. Yes.

6 Q. Now, that's not something happens all on
7 the same day that the leak occurs, is it?

8 A. No.

9 Q. If you take a look at Exhibit 1, this is
10 the packet that Mr. Graf showed you where the claim
11 was submitted to Uponor on that 5/23/2017 invoice.

12 A. Okay.

13 Q. Right?

14 A. Yes.

15 Q. Do you have an understanding that's what it
16 is?

17 A. Yes.

18 Q. I want you to go up to the front. Look at
19 the second page, which is marked PLT 001050.

20 A. Yes.

21 Q. And that actually indicates that the
22 failure date for this invoice was actually on 16
23 February 2017, doesn't it?

24 A. That's that it says, yes.

25 Q. All right. So as we sit here today, do you

1 have an independent recollection, do you remember
2 from your own memory whether the -- on what date the
3 leak that was documented in your invoice dated
4 May 23, '17, what date did that leak actually occur?

5 A. I don't know.

6 Q. But based upon Exhibit 1, as you compare it
7 with Exhibit 4, is it possible that this invoice,
8 No. 232809, is documenting work to repair a leak
9 that occurred on February 16, 2017?

10 A. It could, but I don't remember. But it
11 could.

12 Q. I want to ask you a similar question about
13 in Exhibit 4 again and page PLT 0058.

14 A. Yes.

15 Q. Now, that -- and for the record, this is
16 invoice No. 237000; right?

17 A. Yes.

18 Q. That's dated January 5th, 2018; correct?

19 A. Yes.

20 Q. This isn't an invoice for a leak that
21 occurred on January 5, 2018, is it?

22 MR. GRAF: Objection, documents speaks for
23 itself.

24 BY MR. GALLIHER:

25 Q. You wrote this; right?

1 A. Yes, I did.

2 Q. Again, I'll direct your attention to the
3 second column. It says, All dry out equipment was
4 in place for six days.

5 A. Correct.

6 Q. All right. So if you wrote this on
7 January 5, 2018, and you indicate that the equipment
8 was in place for six days, that makes it impossible
9 that this leak actually occurred on January 5th,
10 2018, doesn't it?

11 A. That's what I would think.

12 Q. I'm sorry.

13 A. That's what it looks likes.

14 Q. So doesn't that -- well, let me just ask
15 you, do you sometimes fill these invoices out?

16 A. As for sending to the manufacturer as a
17 summary of what happened, yes.

18 Q. Do you sometimes do that after the fact?

19 A. Yes, it has to be done after the fact.

20 Q. Sometimes weeks after the fact?

21 A. Yes.

22 MR. GALLIHER: That's all I have.

23 FURTHER EXAMINATION

24 BY MR. GRAF:

25 Q. So in regards to the failure occurring

1 February 2017 and the invoice dated May 23, 2017, is
2 what you're testifying to is that that is the same
3 leak?

4 A. I couldn't tell you what leak was what.
5 Like I said, I don't know what dates. I don't even
6 know what date this leak was on.

7 I could tell you I was reading it, but it
8 doesn't state what date it was on.

9 Q. So is it possible -- Mr. Galliher asked you
10 is it possible that the leak occurred in February
11 and the documentation was filled out in May, is it
12 also possible that there were two separate leaks,
13 one in February and one in May?

14 MR. GALLIHER: Speculation, foundation.

15 THE WITNESS: Could be, but like I said, I
16 don't remember.

17 FURTHER EXAMINATION

18 BY MR. GALLIHER:

19 Q. Have you seen any documentation of a leak
20 occurring on February 16, 2017, other than the
21 reference in Exhibit 1?

22 A. Not that I've seen here today, no.

23 MR. GALLIHER: That's all I have.

24 FURTHER EXAMINATION

25 BY MR. GRAF:

1 Q. Mr. Galliher directed you to the leak and
2 the failure in Exhibit 1 that occurred on
3 February 16, 2017; correct?

4 MR. GALLIHER: I'll object. You actually
5 mentioned it earlier in the deposition.

6 THE WITNESS: That's what it states here on
7 their paperwork.

8 BY MR. GRAF:

9 Q. And then you have looked at the invoicing
10 regarding a leak -- at least an invoice that's dated
11 May 23, 2017; correct?

12 A. I believe we did. I'd have to look back
13 through this paperwork and find it.

14 MR. GRAF: Okay. That's it.

15 MR. GALLIHER: Nothing further.

16 THE VIDEOGRAPHER: Off the video record at
17 11:20.

18 - - - - -

19

20 (Proceedings concluded 11:20 a.m.)

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jackie Jennelle, RPR, CCR #809, Clark County, State of Nevada, do hereby certify:

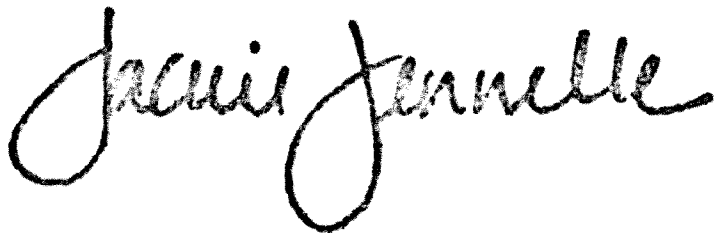
That I reported the deposition of WILLIAM GERBER, commencing on FRIDAY, JANUARY 31, 2020, at 9:00 a.m.

That prior to being deposed, the witness was Duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes.

That prior to the completion of the proceedings, reading and signing of the transcript was not requested by counsel, the witness or any party.

I further certify that I am not a relative or employee of counsel, of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 6th day of February, 2020.



JACKIE JENNELLE, RPR, CCR #809

ERRATA SHEET

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3

4 I declare under penalty of perjury that I have read the

5 foregoing _____ pages of my testimony, taken

6 on _____ (date) at

7 _____ (city), _____ (state),

8

9 and that the same is a true record of the testimony given

10 by me at the time and place herein

11 above set forth, with the following exceptions:

12

13 Page Line Should read: Reason for Change:

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