

IN THE SUPREME COURT STATE OF NEVADA

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

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

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**JOINT  
APPENDIX ON APPEAL  
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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 9<sup>th</sup>, 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           A     Well, they had to be replaced and -- and  
2     actually, I don't know if they were damaged or if  
3     they just took them out and -- in the course of  
4     drying the area, because the speakers were mounted  
5     in the ceiling.

6           Q     Okay.

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

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

18               MR. GALLIHER: Objection. Misstates his  
19    testimony.

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

22    BY MR. GRAF:

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

25          A     Something that I guess from a medical

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

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

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

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

11 A No.

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

14 MR. GALLIHER: Foundation. Speculation.

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

17 BY MR. GRAF:

18 Q When you filled this out.

19 A Not that I'm aware of, no.

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

22 MR. GALLIHER: Object to the form.

23 BY MR. GRAF:

24 Q Were you aware of any --

25 A No.

1 Q -- when you filled this out?

2 A No.

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

8 A No.

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

11 Exhibit 4, do you recognize Exhibit 4,  
12 Doctor?

13 A Yes.

14 Q What is Exhibit 4?

15 A This is the residential purchase  
16 agreement.

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

19 A No.

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

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

1 MR. GALLIHER: Twelve.

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

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

6 BY MR. GRAF:

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

10 A Yes.

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

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

16 A I believe so, yes.

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

19 A I believe so, yes.

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

23 A That this was it in its entirety?

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

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

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

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

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

16           Q     Okay. All right.

17                  All right. A couple of other background  
18     issues.

19                  Have you ever been convicted of a crime,  
20     Doctor?

21           A     No.

22           Q     Okay. Have you ever served in the  
23     military?

24           A     No.

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



1 ahead and mark these as next.

2 (Exhibit No. 5 was marked for  
3 identification.)

4 BY MR. GRAF:

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

8 Do you recognize that document, Doctor?

9 A Yes.

10 Q What is that document?

11 A It's my curriculum vitae.

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

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

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

19 BY MR. GRAF:

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

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

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

1 expert?

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

4 MR. GRAF: Yes.

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

7 BY MR. GRAF:

8 Q Federal rules and the state rules now  
9 require it. So that's -- and I'm not positive  
10 that it required it in '16, but I'm just asking,  
11 does that CV that was updated in 2016 or as of  
12 2016, did it contain a list of the cases that you  
13 had been retained and/or been deposed on as an  
14 expert?

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

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

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

24 BY MR. GRAF:

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

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

5                    Do you have such a list?

6           A     Yes.

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

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

12                   Are you aware of that?

13          A     Yes.

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

19                   (Discussion off the record.)

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

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

25                   (Exhibit Nos. 9, 10, and 11 were

1 marked for identification.)

2 BY MR. GRAF:

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

12 Do you see that?

13 A Yes.

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

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

18 A Yes, I do.

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

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

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

1           A     Yes, it is.

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

5           A     Yes.

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

9           A     Yes.

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

14          A     Yes.

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

19          A     Yes.

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

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

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

5 Do you see that?

6 A Yes.

7 Q So the first time that you became aware,  
8 according to this interrogatory, is August 2nd,  
9 2015.

10 Do you see that?

11 A Yes.

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

14 A No, I'm not.

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

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

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



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

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

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

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

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

13          A     I believe so, yes.

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

16          A     Yes.

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

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

21          Q     So how did you come to have that  
22   information?

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

1 Q Okay.

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

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

9 A No.

10 Q Okay.

11 A It was covered under warranty.

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

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

16 A Yes.

17 Q With whom or with what entity did you  
18 contract?

19 A With Blue Heron.

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

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

25 Q Okay.



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

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

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

10                    MR. GALLIHER: Form. Foundation.

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

13     BY MR. GRAF:

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

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

18           Q     In-house where?

19           A     With Blue Heron.

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

22           A     Not to my knowledge, no.

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

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

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

9 Q Okay. Anything else?

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

13 Q Sure.

14 A I can't think of anything.

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

20 Do you see that?

21 A Yes.

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

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

1 fitting came loose under the sink.

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

12 Do you see that?

13 A Yes.

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

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

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

23 BY MR. GRAF:

24 Q Okay.

25 A -- to get to the water to allow the

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

6 Q All right. What about the cabinets?

7 A It was just the kick plate on the  
8 cabinet.

9 Q Okay.

10 A It was put back in place.

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

15 Is that an incorrect assumption?

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

19 Q Okay.

20 A So that may be an error.

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

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

1 plate back.

2 Q So --

3 A So I guess that would be --

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

7 A Not that I recall, no.

8 Q Okay.

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

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

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

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

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

1 house.

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

7 Do you see that?

8 A Yes.

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

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

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

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

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

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



1 a wall cavity; correct?

2 A No.

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

5 BY MR. GRAF:

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

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

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

16 MR. GALLIHER: Foundation. Speculation.

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

20 BY MR. GRAF:

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

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

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

3 Q Okay.

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

6 Q Okay. Was it the water supply line?

7 A Yes.

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

11 MR. GALLIHER: Foundation.

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

15 BY MR. GRAF:

16 Q It's a flexible piping --

17 A Yes.

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

21 A Right.

22 Q Yeah.

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

25 Q Okay. Did -- did you ever ask Rakeman



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

4 MR. GALLIHER: Objection. Form.

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

14 BY MR. GRAF:

15 Q Do you know how those fittings are  
16 tightened?

17 A No.

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

20 A No.

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

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

2           Q     Okay.

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

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

10               MR. GALLIHER: Asked and answered.

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

15     BY MR. GRAF:

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

20               MR. GALLIHER: Incomplete hypothetical.  
21     Speculation. Foundation.

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

24     BY MR. GRAF:

25           Q     Or anywhere. A similar plumbing fitting

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

5 MR. GALLIHER: Hold on. Form.  
6 Foundation. Speculation. Incomplete  
7 hypothetical.

8 Go ahead.

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

14 BY MR. GRAF:

15 Q Okay.

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

21 Q Okay.

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

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

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

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

8 Q Okay.

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

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

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

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

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

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

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

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

3                   MR. GALLIHER:   Foundation.   Speculation.

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

7     BY MR. GRAF:

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

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

19           A     Yes.

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

23           A     Yes.

24           Q     Do you see that?

25                   And you would agree with me that that's

1 two separate incidents of water loss?

2 A Yes.

3 Q Okay. And that occurred August 2nd,  
4 2015, and it says "the carpet" -- and that's the  
5 one that we just talked about?

6 A Yes.

7 Q Okay. So let's move on to B. And then  
8 it says, "Hot water recirculating pump leak in the  
9 single garage, 8/3/2015."

10 Do you see that?

11 A Yes.

12 Q So just want to make sure that I'm  
13 reading this right. That's the next day after A?

14 A Yes.

15 Q Okay. Were you living on a day-to-day  
16 basis in the 42 Meadowhawk property in or about  
17 August of 2015?

18 A Yes.

19 Q Okay. And in terms of the hot water  
20 recirculating pump leak, did -- could you see the  
21 pump?

22 A It was up in the ceiling, so I crawled  
23 up there to see what was leaking, and I don't  
24 recall actually seeing the pump, but --

25 Q You saw the water leak?



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

4           Q     There's two in the single garage?

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

7           Q     Okay.

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

9           Q     Yep.

10          A     -- and the one in the single garage.

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

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

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

18          A     Early in the morning.

19          Q     Okay.

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

23          Q     And who is that?

24          A     Her name is Alexa Warren.

25          Q     Okay. And when you say she came in

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

3 A I think she came in through the garage  
4 door.

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

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

9 A No, I don't believe so.

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

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

14 Q How big was the puddle or whatever it  
15 was?

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

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

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



1 assisted. I just don't remember.

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

5 A Yes.

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

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

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

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

14 Q So --

15 A I think some of the paint bubbled.

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

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

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

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

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

7 A Yes.

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

11 A Not that I recall, no.

12 Q Okay.

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

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

18 A Yes.

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

21 A They were replaced.

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

25 A Yeah.

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

3           A     I didn't mean to talk over you.

4           Q     No, you're fine.

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

7           Q     And the water had shorted it out or  
8     something?

9                     MR. GALLIHER: Speculation. Foundation.

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

13     BY MR. GRAF:

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

17           A     Not that I recall, no.

18           Q     All right. Did you -- so on August 3rd,  
19     2015, had you already had Rakeman Plumbing go and  
20     inspect all of the other plumbing fixtures that  
21     they could see?

22           A     I'm sorry, on which date?

23           Q     So this loss occurred on August 3rd,  
24     2015. In your previous response to Interrogatory  
25     No. 4, the last sentence, you say that you asked

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

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

6             A     I think it was subsequent to this.

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

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

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

15            Q     Okay. So the --

16            A     I'm sorry, can I back up?

17            Q     Sure.

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

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

25            A     They can tell you, yes.

1 Q Exactly.

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

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

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

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

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

21 MR. GALLIHER: Foundation. Speculation.

22 BY MR. GRAF:

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

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

3           Q     Okay.

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

6           Q     Okay.

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

10          Q     Okay.

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

12          Q     And who did you talk to at Rakeman  
13     Plumbing?

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

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

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

25          A     I'm guessing probably he had someone



1 else answering, although I don't know.

2 Q Okay. We're also deposing Rocky Gerber.

3 Does that refresh or ring any bells in  
4 your mind?

5 A No.

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

9 Are you aware of that?

10 A Yes.

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

13 A No.

14 Q Okay. Now, Mr. Hawley --

15 A Well --

16 Q Go ahead.

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

23 Q Okay. All right.

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

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

7 Do you see that?

8 A Yes.

9 Q So where was this exactly?

10 A So this was back in the master closet.

11 Q In the same area as to A?

12 A Yes.

13 Q Okay.

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

16 Is that what you said?

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

19 BY MR. GRAF:

20 Q A on this response, which would be page  
21 4 of 13 --

22 A Yes.

23 Q -- as to Interrogatory No. 5.

24 A Yes.

25 Q And actually A is two losses, the



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

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

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

9           MR. GALLIHER: Foundation. Speculation.

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

13     BY MR. GRAF:

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

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

18          A     Yes.

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

22          A     I don't.

23          Q     And --

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

1 have been in some kind of proximity.

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

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

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

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

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

21 A Yes, underneath the cabinet.

22 Q Okay.

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

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

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

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

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

13           A     Rakeman paid for it.

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

16                   MR. GALLIHER: Foundation. Speculation.

17                   THE WITNESS: I do now.

18 BY MR. GRAF:

19           Q     How do you know now?

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

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

25           A     That's okay.

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

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

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

9                     MR. GALLIHER: Foundation. Speculation.

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

12     BY MR. GRAF:

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

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

20           Q     Yep.

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

23           Q     Okay. So --

24           A     And --

25                     MR. GRAF: Is that the stuff you

1 produced yesterday, Jeff?

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

4 MR. GRAF: With the previous production.

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

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

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

12 BY MR. GRAF:

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

15 MR. GALLIHER: Can we take a quick  
16 break?

17 MR. GRAF: Yeah, might as well.

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

20 (Whereupon, a recess was taken.)

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

23 BY MR. GRAF:

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

1 A Yes.

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

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

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

15 Q Okay.

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

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

23 A Yes.

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



1 closet when she came to work at my house."

2 That was your statement; correct?

3 A Yes.

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

6 MR. GALLIHER: Speculation. Foundation.

7 THE WITNESS: Do I know now?

8 BY MR. GRAF:

9 Q Sure.

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

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

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

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

21 A I did.

22 Q And what did they say to you?

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

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

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

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

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

10 A Possibly.

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

13 (Exhibit No. 12 was marked for  
14 identification.)

15 BY MR. GRAF:

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

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

22 Do you recognize that document, Doctor?

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



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

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

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

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

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

19           A     Yes.

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

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

25           Q     Okay.

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

4           Q     Such as what?

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

7           Q     And which page are you on, Doctor?

8           A     That's page two, make interior repairs.

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

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

12          Q     And that's an interior repair?

13          A     Yes.

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

19          Q     And you're saying that was repaired?

20          A     Yes.

21          Q     Okay.

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

25          Q     Is that the same patio slider that

1 wouldn't latch when the house was sold --

2 A Yeah.

3 Q -- in November of 2017?

4 A Yeah.

5 Q That was never really fixed; right?

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

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

11 Do you know if that was repaired?

12 A Where do you see that?

13 Q Where it says "repair exterior."

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

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

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

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

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

13 BY MR. GRAF:

14 Q Okay. And, Doctor, you would agree with  
15 me that this report put you on notice that there  
16 are leaks in the recirculation pumps in May of  
17 2015; right?

18 MR. GALLIHER: Object to the form.  
19 Foundation.

20 THE WITNESS: Puts me on notice?

21 BY MR. GRAF:

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

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

1 Q And you received this report; correct?

2 A Apparently, yes.

3 Q Okay. You produced this report?

4 A Yes.

5 Q Okay. And you would agree with me,  
6 right, Doctor, that if this condition -- the leaks  
7 at the recirculation pumps existed from May of  
8 2015 through August of 2015, that would be a  
9 chronic condition, wouldn't it, Doctor?

10 MR. GALLIHER: Object to the form.

11 BY MR. GRAF:

12 Q Using your definition.

13 MR. GALLIHER: Foundation.

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

16 BY MR. GRAF:

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

22 MR. GALLIHER: Form. Foundation.  
23 Speculation.

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

1 BY MR. GRAF:

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

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

7 THE WITNESS: Okay.

8 MR. GRAF: Thank you.

9 (Whereupon, the record was read.)

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

12 BY MR. GRAF:

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

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



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

4           MR. GALLIHER: Based on the  
5     hypothetical?

6           MR. GRAF: If that occurred.

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

10    BY MR. GRAF:

11           Q     Okay.

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

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

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

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

25           A     Yes.

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

4           A     Yes.

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

7           A     To the best of my knowledge, yes.

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

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

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

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

18                MR. GRAF: Yeah.

19                THE WITNESS: I'm just telling you --  
20     BY MR. GRAF:

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

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

25          Q     None of those thousands of documents



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

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

11            A        No.

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

14            Q        Sure.

15            A        Many of those documents precede that  
16   date.

17            Q        Okay. You would agree with me, though,  
18   that January 15 of -- excuse me, January 1st of  
19   2015 is prior to May of 2015; right, Doctor?

20            A        That I won't argue with.

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

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

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

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

7 A Not as I sit here.

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

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

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

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

19 A No.

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

1 MR. GALLIHER: Speculation.

2 THE WITNESS: Yes.

3 BY MR. GRAF:

4 Q Your answer was?

5 A Yes.

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

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

10 Do you see that, Doctor?

11 A Yes.

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

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

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

19 A No, I did not.

20 Q Why not?

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

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

25 A I would have had them repair that leak,

1     yes.

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

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

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

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

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

20          A     I don't recall.

21          Q     You don't recall what, Doctor?

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

1 Q Okay.

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

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

8 Do you see that?

9 A Which page are you on?

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

12 A Yes.

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

15 Do you see that?

16 A Yes.

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

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

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

24 MR. GALLIHER: Foundation.

25 THE WITNESS: I would have to look, but

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

3 BY MR. GRAF:

4 Q Okay. Do you know what water hammer is?

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

7 Is that what you're asking me?

8 Q Yes.

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

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

13 A Yes.

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

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

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

22 Do you see that?

23 A Yes.

24 Q Do you know if that was repaired?

25 A Yes.



1 Q Was it repaired?

2 A Yes.

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

4 A Yes.

5 Q "The whirlpool tub is not GFCI  
6 protected."

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

9 A Yes.

10 Q Do you know if that condition exists  
11 today?

12 A I do not.

13 Q Do you know if it was repaired or  
14 remedied?

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

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

20 A I know of no specific document.

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

25 Do you see that?

1 A Yes.

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

7 MR. GALLIHER: Foundation. Speculation.

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

12 BY MR. GRAF:

13 Q Okay. I'm just trying to qualify.

14 Do you know if that condition was ever  
15 repaired?

16 A I can only presume so.

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

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

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



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

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

9 Q Okay.

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

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

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

20 Do you see that?

21 A Where are you looking?

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

24 A Okay.

25 Q It says "repair garage firewall."

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

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

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

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

11          A     I don't recall.

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

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

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

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

1 any other issues with the swimming pool or the  
2 equipment?

3 A Other than these issues?

4 Q Yes.

5 A No.

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

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

18 A I presume so, yes.

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

23 Do you see that?

24 A Yes.

25 Q Okay. So it's your testimony here today

1 that you would have had those repairs performed;  
2 right?

3 A Yes.

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

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

13 A Yes.

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

16 Do you see that?

17 A Yes.

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

24 Do you see that?

25 A Yes.

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

6                     Do you see that?

7           A     Yes.

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

12                    Do you see that?

13          A     Yes.

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

17                    Do you see that, Doctor?

18          A     Yes.

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

21                    MR. GALLIHER: Eighty.

22                    MR. GRAF: Is it 80?

23                    MR. GALLIHER: Swanson 80.

24    BY MR. GRAF:

25          Q     So Swanson 80, there's a series of

1     **photographs.**

2           A     Okay.

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

7           A     Apparently, yes.

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

11                   Do you see that?

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

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

16    BY MR. GRAF:

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

20           A     I do not.

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

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

25           Q     Do you not see some sort of deformity in



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

3 A Well, I see a couple little spots.

4 Is that what you're referring to?

5 Q Yeah, do you see that?

6 A These spots?

7 Q Sure.

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

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

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

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



1 under the drip."

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

5 Do you see that, Doctor?

6 A Yes.

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

11 A No, because I think it was fixed.

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

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

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

20 A I don't know.

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

23 A No.

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

1 in the basement bathroom?

2 A No, not as I sit here today.

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

5 MR. GRAF: Yeah.

6 THE VIDEOGRAPHER: Off the record at  
7 12:15.

8 (Whereupon, a recess was taken.)

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

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

13 BY MR. GRAF:

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

16 A Yes.

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

23 A Yes.

24 Q So let me talk about those documents  
25 real quick.

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

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

10          Q     Do you know Henry's last name?

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

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

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

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

18   BY MR. GRAF:

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

21          A     Blue Heron.

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

25          A     Sent to whom?

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

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

9           Q     Okay.  So --

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

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

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

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

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

23               THE WITNESS:  That's Exhibit 14, yes.

24     BY MR. GRAF:

25           Q     So Exhibit 12 is the original report,

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

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

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

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

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

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

1 the TVs and whatever.

2 Q Okay.

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

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

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

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

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

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

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



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

3                   MR. GALLIHER: But --

4     BY MR. GRAF:

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

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

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

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

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

19          A     Yes.

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

23          A     Yes.

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



1 A Yes.

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

5 A Yes.

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

9 A Right.

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

13 A Yes.

14 Q So can we --

15 A So I'm guessing --

16 Q Go ahead.

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

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

1 bathroom basement hasn't been fixed?

2 A They couldn't find it.

3 Q Okay.

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

8 Q I have.

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

12 Q Okay.

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

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

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

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

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

8 A Okay.

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

17 A Yes.

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

20 A Yes.

21 Q But there's no cross-outs.  
22 Does that mean it didn't get completed?

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

25 Q Okay.

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

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

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

12                    MR. GALLIHER: Object to the form.

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

16    BY MR. GRAF:

17           Q     Yep.

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

24           Q     Okay.

25           A     So I would have notated that it was

1 fixed by plumber in May.

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

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

7 Q Okay.

8 A Because mine says May.

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

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

13 A Yes.

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

16 A Yes.

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

19 A In a perfect world, yes.

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

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

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

3 Q Well, let's talk --

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

7 Q And you're referring to Exhibit 12?

8 A Yes.

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

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

15 A No.

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

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



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

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

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

15                   Did we mark the request to produce  
16    responses yet?

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

18                   MR. GRAF: I had those.

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

21    BY MR. GRAF:

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

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



1     **responses, which is Exhibit -- I forget which now.**

2     **Six?**

3                   MR. GALLIHER:   Yes.

4     BY MR. GRAF:

5           Q     **Okay.  So --**

6                   MR. GALLIHER:   His personal?

7                   MR. GRAF:   Yes.

8                   THE WITNESS:   So are we putting 14 --  
9     13, 14, and 15 aside?

10                  MR. GRAF:   We can put those aside for  
11     now, and here's two paperclips for you for 13 and  
12     14 so we don't get those mixed up.

13                  THE WITNESS:   Thank you.

14                  MR. GRAF:   And 12 should be stapled.

15                  MR. GALLIHER:   Yeah, 12, 14.

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

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

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

25                  MR. GALLIHER:   So it's got to be

1 somewhere.

2 THE WITNESS: Is that the one?

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

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

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

9 MR. GALLIHER: It's two. Two.

10 BY MR. GRAF:

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

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

20 A Dropbox.

21 Q Okay. And when was that file service  
22 created?

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

25 Q Two or three?

1 A Thereabouts, yeah.

2 Q So 2018 or 2017?

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

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

8 A I'm sorry?

9 Q You have to have a user name for  
10 Dropbox.

11 A Yes.

12 Q What's the user name?

13 A I don't recall offhand.

14 Q Is it your e-mail address?

15 A It may be. I don't know.

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

18 A What do you mean, what were they?

19 Q What were your e-mail addresses back in  
20 2018?

21 A TVS@TSwansonMD.com.

22 Q T Victor?

23 A TVS@TSwansonMD.com.

24 Q Okay. Any others?

25 A TV Swanny.

1 Q S-W-A-N-I?

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

5 Q Is that your work e-mail back then?

6 A Yes.  
7 Swanson hip -- let's see.  
8 TSwanson@Swansonhipandknee.com.

9 Q All one word?

10 A Yes.

11 Q No hyphens or anything?

12 A No.

13 Q Okay.

14 A TSwanson@minitotalhip.com.

15 TSwanson@minitotalknee.com.

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

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

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

8                   So Nicole Whitfield, who is that?

9           A       That's my assistant.

10          Q       Is she still your assistant?

11          A       Yes.

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

14                 MR. GALLIHER: Well, I think it's the  
15   30 -- no.

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

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

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

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

24   BY MR. GRAF:

25          Q       All right. So Nicky was the one that

1      called Rakeman Plumbing for this leak?

2            A      Yes.

3            Q      Okay.

4            A      I was going to school in Denver.

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

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

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

12          A      I audited several classes.

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

16          A      I wasn't taking them for credit.

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

19          A      My son lived there.

20          Q      Which -- which one?

21          A      Adam.

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

1 A No.

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

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

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

9 A Then I don't know how to answer.

10 Q Okay. Did you ever train to --

11 A I understand.

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

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

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

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



1 welcomed me as much as I welcomed the opportunity.

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

5 A University of Denver.

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

8 A Through the audit program, yes.

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

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

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

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

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

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

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

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

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

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

19           A     Yes.

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

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

25           Q     Okay.

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

4           Q     Such as what?

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

7           Q     And which page are you on, Doctor?

8           A     That's page two, make interior repairs.

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

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

12          Q     And that's an interior repair?

13          A     Yes.

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

19          Q     And you're saying that was repaired?

20          A     Yes.

21          Q     Okay.

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

25          Q     Is that the same patio slider that

1 wouldn't latch when the house was sold --

2 A Yeah.

3 Q -- in November of 2017?

4 A Yeah.

5 Q That was never really fixed; right?

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

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

11 Do you know if that was repaired?

12 A Where do you see that?

13 Q Where it says "repair exterior."

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

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

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

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

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

13 BY MR. GRAF:

14 Q Okay. And, Doctor, you would agree with  
15 me that this report put you on notice that there  
16 are leaks in the recirculation pumps in May of  
17 2015; right?

18 MR. GALLIHER: Object to the form.  
19 Foundation.

20 THE WITNESS: Puts me on notice?

21 BY MR. GRAF:

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

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

1 Q And you received this report; correct?

2 A Apparently, yes.

3 Q Okay. You produced this report?

4 A Yes.

5 Q Okay. And you would agree with me,  
6 right, Doctor, that if this condition -- the leaks  
7 at the recirculation pumps existed from May of  
8 2015 through August of 2015, that would be a  
9 chronic condition, wouldn't it, Doctor?

10 MR. GALLIHER: Object to the form.

11 BY MR. GRAF:

12 Q Using your definition.

13 MR. GALLIHER: Foundation.

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

16 BY MR. GRAF:

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

22 MR. GALLIHER: Form. Foundation.  
23 Speculation.

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



1 BY MR. GRAF:

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

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

7 THE WITNESS: Okay.

8 MR. GRAF: Thank you.

9 (Whereupon, the record was read.)

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

12 BY MR. GRAF:

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

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



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

4                     MR. GALLIHER: Based on the  
5     hypothetical?

6                     MR. GRAF: If that occurred.

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

10    BY MR. GRAF:

11           Q     Okay.

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

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

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

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

25           A     Yes.

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

4           A     Yes.

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

7           A     To the best of my knowledge, yes.

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

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

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

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

18                MR. GRAF: Yeah.

19                THE WITNESS: I'm just telling you --  
20     BY MR. GRAF:

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

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

25          Q     None of those thousands of documents

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

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

11            A     No.

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

14            Q     Sure.

15            A     Many of those documents precede that  
16   date.

17            Q     Okay. You would agree with me, though,  
18   that January 15 of -- excuse me, January 1st of  
19   2015 is prior to May of 2015; right, Doctor?

20            A     That I won't argue with.

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

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

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

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

7 A Not as I sit here.

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

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

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

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

19 A No.

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

1 MR. GALLIHER: Speculation.

2 THE WITNESS: Yes.

3 BY MR. GRAF:

4 Q Your answer was?

5 A Yes.

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

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

10 Do you see that, Doctor?

11 A Yes.

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

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

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

19 A No, I did not.

20 Q Why not?

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

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

25 A I would have had them repair that leak,

1     yes.

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

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

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

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

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

20          A     I don't recall.

21          Q     You don't recall what, Doctor?

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



1 Q Okay.

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

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

8 Do you see that?

9 A Which page are you on?

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

12 A Yes.

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

15 Do you see that?

16 A Yes.

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

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

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

24 MR. GALLIHER: Foundation.

25 THE WITNESS: I would have to look, but



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

3 BY MR. GRAF:

4 Q Okay. Do you know what water hammer is?

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

7 Is that what you're asking me?

8 Q Yes.

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

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

13 A Yes.

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

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

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

22 Do you see that?

23 A Yes.

24 Q Do you know if that was repaired?

25 A Yes.

1 Q Was it repaired?

2 A Yes.

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

4 A Yes.

5 Q "The whirlpool tub is not GFCI  
6 protected."

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

9 A Yes.

10 Q Do you know if that condition exists  
11 today?

12 A I do not.

13 Q Do you know if it was repaired or  
14 remedied?

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

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

20 A I know of no specific document.

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

25 Do you see that?

1 A Yes.

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

7 MR. GALLIHER: Foundation. Speculation.

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

12 BY MR. GRAF:

13 Q Okay. I'm just trying to qualify.

14 Do you know if that condition was ever  
15 repaired?

16 A I can only presume so.

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

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

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

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

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

9 Q Okay.

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

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

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

20 Do you see that?

21 A Where are you looking?

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

24 A Okay.

25 Q It says "repair garage firewall."

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

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

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

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

11          A     I don't recall.

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

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

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

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

1 any other issues with the swimming pool or the  
2 equipment?

3 A Other than these issues?

4 Q Yes.

5 A No.

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

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

18 A I presume so, yes.

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

23 Do you see that?

24 A Yes.

25 Q Okay. So it's your testimony here today



1 that you would have had those repairs performed;  
2 right?

3 A Yes.

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

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

13 A Yes.

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

16 Do you see that?

17 A Yes.

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

24 Do you see that?

25 A Yes.



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

6                     Do you see that?

7           A     Yes.

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

12                    Do you see that?

13          A     Yes.

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

17                    Do you see that, Doctor?

18          A     Yes.

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

21                    MR. GALLIHER: Eighty.

22                    MR. GRAF: Is it 80?

23                    MR. GALLIHER: Swanson 80.

24   BY MR. GRAF:

25          Q     So Swanson 80, there's a series of

1     **photographs.**

2           A     Okay.

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

7           A     Apparently, yes.

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

11                   Do you see that?

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

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

16    BY MR. GRAF:

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

20           A     I do not.

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

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

25           Q     Do you not see some sort of deformity in

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

3 A Well, I see a couple little spots.

4 Is that what you're referring to?

5 Q Yeah, do you see that?

6 A These spots?

7 Q Sure.

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

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

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

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

1 under the drip."

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

5 Do you see that, Doctor?

6 A Yes.

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

11 A No, because I think it was fixed.

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

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

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

20 A I don't know.

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

23 A No.

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

1 in the basement bathroom?

2 A No, not as I sit here today.

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

5 MR. GRAF: Yeah.

6 THE VIDEOGRAPHER: Off the record at  
7 12:15.

8 (Whereupon, a recess was taken.)

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

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

13 BY MR. GRAF:

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

16 A Yes.

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

23 A Yes.

24 Q So let me talk about those documents  
25 real quick.

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

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

10          Q     Do you know Henry's last name?

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

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

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

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

18   BY MR. GRAF:

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

21          A     Blue Heron.

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

25          A     Sent to whom?



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

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

9           Q     Okay. So --

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

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

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

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

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

23               THE WITNESS: That's Exhibit 14, yes.

24 BY MR. GRAF:

25           Q     So Exhibit 12 is the original report,



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

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

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

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

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

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

1 the TVs and whatever.

2 Q Okay.

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

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

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

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

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

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

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

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

3                   MR. GALLIHER: But --

4     BY MR. GRAF:

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

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

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

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

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

19          A     Yes.

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

23          A     Yes.

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

1 A Yes.

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

5 A Yes.

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

9 A Right.

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

13 A Yes.

14 Q So can we --

15 A So I'm guessing --

16 Q Go ahead.

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

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

1 bathroom basement hasn't been fixed?

2 A They couldn't find it.

3 Q Okay.

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

8 Q I have.

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

12 Q Okay.

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

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

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

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

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

8 A Okay.

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

17 A Yes.

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

20 A Yes.

21 Q But there's no cross-outs.  
22 Does that mean it didn't get completed?

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

25 Q Okay.



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

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

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

12                    MR. GALLIHER: Object to the form.

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

16    BY MR. GRAF:

17           Q     Yep.

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

24           Q     Okay.

25           A     So I would have notated that it was



1 fixed by plumber in May.

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

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

7 Q Okay.

8 A Because mine says May.

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

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

13 A Yes.

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

16 A Yes.

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

19 A In a perfect world, yes.

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

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

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

3 Q Well, let's talk --

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

7 Q And you're referring to Exhibit 12?

8 A Yes.

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

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

15 A No.

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

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

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

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

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

15                   Did we mark the request to produce  
16    responses yet?

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

18                   MR. GRAF: I had those.

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

21    BY MR. GRAF:

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

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

1     **responses, which is Exhibit -- I forget which now.**

2     **Six?**

3                   MR. GALLIHER:   Yes.

4     BY MR. GRAF:

5           Q     **Okay.  So --**

6                   MR. GALLIHER:   His personal?

7                   MR. GRAF:   Yes.

8                   THE WITNESS:   So are we putting 14 --  
9     13, 14, and 15 aside?

10                  MR. GRAF:   We can put those aside for  
11     now, and here's two paperclips for you for 13 and  
12     14 so we don't get those mixed up.

13                  THE WITNESS:   Thank you.

14                  MR. GRAF:   And 12 should be stapled.

15                  MR. GALLIHER:   Yeah, 12, 14.

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

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

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

25                  MR. GALLIHER:   So it's got to be

1       somewhere.

2                   THE WITNESS:   Is that the one?

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

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

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

9                   MR. GALLIHER:   It's two.   Two.

10       BY MR. GRAF:

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

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

20           A       Dropbox.

21           Q       Okay.   And when was that file service  
22       created?

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

25           Q       Two or three?

1 A Thereabouts, yeah.

2 Q So 2018 or 2017?

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

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

8 A I'm sorry?

9 Q You have to have a user name for  
10 Dropbox.

11 A Yes.

12 Q What's the user name?

13 A I don't recall offhand.

14 Q Is it your e-mail address?

15 A It may be. I don't know.

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

18 A What do you mean, what were they?

19 Q What were your e-mail addresses back in  
20 2018?

21 A TVS@TSwansonMD.com.

22 Q T Victor?

23 A TVS@TSwansonMD.com.

24 Q Okay. Any others?

25 A TV Swanny.



1 Q S-W-A-N-I?

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

5 Q Is that your work e-mail back then?

6 A Yes.  
7 Swanson hip -- let's see.  
8 TSwanson@Swansonhipandknee.com.

9 Q All one word?

10 A Yes.

11 Q No hyphens or anything?

12 A No.

13 Q Okay.

14 A TSwanson@minitotalhip.com.

15 TSwanson@minitotalknee.com.

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

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



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

8                   So Nicole Whitfield, who is that?

9           A     That's my assistant.

10          Q     Is she still your assistant?

11          A     Yes.

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

14               MR. GALLIHER: Well, I think it's the  
15   30 -- no.

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

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

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

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

24   BY MR. GRAF:

25          Q     All right. So Nicky was the one that

1      called Rakeman Plumbing for this leak?

2            A      Yes.

3            Q      Okay.

4            A      I was going to school in Denver.

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

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

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

12          A      I audited several classes.

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

16          A      I wasn't taking them for credit.

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

19          A      My son lived there.

20          Q      Which -- which one?

21          A      Adam.

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

1           A     No.

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

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

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

9           A     Then I don't know how to answer.

10          Q     Okay. Did you ever train to --

11          A     I understand.

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

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

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

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

1 welcomed me as much as I welcomed the opportunity.

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

5 A University of Denver.

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

8 A Through the audit program, yes.

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

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

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

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

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

1                   So again, I'll ask you those same lines  
2   of questions. Was the carpet replaced as a result  
3   of this loss or water damage?

4           A     No, not to my knowledge.

5           Q     Okay. So the baseboards in this  
6   instance that are listed here, were they replaced?

7           A     No. I think that's the -- the kick  
8   panels again.

9           Q     So the kick boards or, excuse me, the  
10   kick panels, toe kicks --

11          A     Yeah.

12          Q     -- to the cabinets replaced as a result  
13   of this water loss?

14          A     They weren't replaced as new -- as if  
15   new ones were put in. They were just put back in  
16   place.

17          Q     Okay. Any of the cabinets replaced?

18          A     Not to my knowledge.

19          Q     And any drywall that was replaced?

20          A     Not to my knowledge.

21          Q     It says, "I immediately called Ivan  
22   Sher."

23                   Who is Ivan Sher?

24          A     He's the broker that I had basically  
25   contracted with to sell my house.

1 Q So he was your broker?

2 A Yes.

3 Q Okay. "And who notified the buyers'  
4 agent of the water leak, and I made a written  
5 disclosure of the leak to the buyer."

6 So when you say you "made a written  
7 disclosure of the leak to the buyer," that's one  
8 of those addendums where you said there's been a  
9 water leak and you signed it and you sent it off?

10 A Yes.

11 Q Okay. Now why did you do that?

12 A Because my understanding was that if  
13 there is an active, ongoing problem, that needs to  
14 be disclosed to the buyer.

15 Q Okay. And you didn't do a similar  
16 addendum to the SRPD as to A, B, or C; correct?

17 A Those problems were not active at the  
18 time, so I did not.

19 Q Okay. And going to Interrogatory  
20 No. 10, it says, "Please state with specificity  
21 the reason or reasons you marked no on the  
22 seller's real property disclosure form for the  
23 question asking are you aware of, in quotes,  
24 previous or current moisture conditions and/or  
25 water damage, period, end quote."



1                   And what was your response there,  
2    Doctor?

3           A     I think we had a long discussion about  
4    that earlier.

5           Q     I know. What was your response here in  
6    this verified document?

7           A     It was my understanding -- you want me  
8    to read this?

9           Q     I do.

10          A     "It was my understanding that if there  
11    were no ongoing problems with the property I --  
12    i.e., any prior problem had been fully repaired,  
13    that the proper way to answer the question on the  
14    SRPD was no."

15          Q     Okay. So as to the water leak in  
16    Exhibit 12, which is the report that Criterion  
17    prepared, in the basement bathroom, though, that  
18    one you would agree was never repaired?

19          A     Well, I don't know if there ever really  
20    was a leak, even though they --

21          Q     The report says there was a leak,  
22    though; right, Doctor?

23          A     I could never find evidence of it, nor  
24    could anyone else.

25          Q     You couldn't find any other evidence



1 other than the puddle of water on the ground in  
2 the bathroom; right?

3 A I never found a puddle of water on the  
4 ground. I was down there literally four or five  
5 times a week using that bathroom, and I don't  
6 recall any water, so I don't --

7 Q You would agree --

8 A I mean, I wish -- I wish I could explain  
9 it to you, but -- I don't know what they saw, but  
10 it wasn't --

11 Q Well, if we look at Exhibit 12, and I  
12 think it's pictures -- and even if we look in  
13 Exhibit 14 or -- or, there, I've got 13 in my  
14 hand, but if we look at pictures six and seven,  
15 they have a description that says, "there's a  
16 plumbing leak in the ceiling of the bathroom," and  
17 then seven says "this is the water on the floor  
18 under the drip." So somebody saw some water from  
19 a drip from the ceiling; right?

20 A I don't know what they saw. We don't  
21 know where that water on the floor came from.  
22 I -- I can't say where it came from. Maybe the  
23 toilet over -- it overflowed and there was some  
24 water on the floor. I have no idea.

25 But I lived in the house for two years,

1 and I can tell you there was never any water  
2 dripping from that ceiling.

3 Q Okay. So Interrogatory No. 11 states,  
4 "Please state your rationale for why a repaired  
5 leak does not qualify as a pre -- in quotes,  
6 previous, end quote, moisture condition." And  
7 that response says, "Objection, calls for a legal  
8 conclusion and invades the attorney-client  
9 privilege."

10 I previously asked you whether or not  
11 you sought the assistance of an attorney in  
12 preparing the SRPD; correct?

13 A Yes.

14 Q So when you filled out this form, when  
15 it asked you if you're aware of the following, and  
16 it says "previous or current moisture conditions  
17 and/or water damage." So if you read this in the  
18 disjunctive, you could say previous water damage.

19 So why didn't you mark yes for the fact  
20 that there was previous water damage?

21 MR. GALLIHER: Objection. Asked and  
22 answered.

23 THE WITNESS: Where -- which one are you  
24 reading? Which interrogatory are we on?

25

1 BY MR. GRAF:

2 Q Number 11.

3 A So -- and what was your question?

4 Q Well, the question is, "Please state  
5 your rationale for why a repaired leak does not  
6 qualify as a previous moisture condition."

7 You say it calls for a legal conclusion  
8 and invades the attorney-client privilege. And  
9 I'm just trying to verify a couple of things  
10 foundationally.

11 You did not seek the assistance of an  
12 attorney to fill out the SRPD; correct?

13 A No.

14 Q So your interpretation is your  
15 interpretation; right?

16 A Yes.

17 Q Okay. So my question is -- if you read  
18 that very simple sentence, "previous water  
19 damage," because it says "previous or current  
20 moisture conditions and/or water damage." It's a  
21 pretty broad statement, and if you read it without  
22 the "or current moisture conditions," you say  
23 previous water damage. So previous moisture  
24 condition.

25 How would those conditions that we've

1     talked about this morning not be responsive to  
2     that?

3                 MR. GALLIHER: Okay. I'm going to  
4     object to the question -- hold on -- and the  
5     problem with this -- with Interrogatory No. 11 is  
6     it asks for current rationale, not the rationale  
7     when he filled out the SRPD. His current  
8     rationale relies in large measure on conversations  
9     he's had with his attorney and, therefore, this  
10    question invades attorney-client privilege and I'm  
11    going to instruct him not to answer.

12                MR. GRAF: I'm not trying to seek that,  
13    so I want to make sure we're clear here on the  
14    record. I'm trying to seek what his rationale was  
15    for saying that it wasn't a previous -- I could  
16    care less what he thinks today. This is all  
17    relevant as to when you filled out the SRPD.

18    BY MR. GRAF:

19                Q     So I want to know what your rationale  
20    was as to why that wasn't a previous moisture  
21    condition back in October 24, 2017.

22                MR. GALLIHER: Okay. Same instruction,  
23    because that's the same question as Interrogatory  
24    No. 10, so it's asked and answered. Interrogatory  
25    No. 10 asks the reasons or reasons --

1 MR. GRAF: And if that's your response,  
2 then that's your response. You didn't think you  
3 had to tell -- tell or identify previous moisture  
4 conditions?

5 MR. GALLIHER: Misstates his testimony.

6 THE WITNESS: Well, I think we had a  
7 long discussion about that this morning. I think  
8 I answered that question.

9 BY MR. GRAF:

10 Q Okay. And what was that response,  
11 Doctor?

12 MR. GALLIHER: Objection. Asked and  
13 answered.

14 BY MR. GRAF:

15 Q You can still answer, Doctor.

16 A I understood a previous moisture  
17 condition to be something that was ongoing, not an  
18 acute water leak that was identified immediately,  
19 fixed, and had no lingering consequences.

20 Q Okay. So you said a lot of things  
21 there, but when you say "ongoing," you're  
22 referring to ongoing as of the date and time that  
23 you signed the SRPD; correct?

24 A Yes.

25 Q Okay. You have an understanding that

1 previous would mean in the past; right?

2 A Yes.

3 Q Okay. So that means that if there was  
4 water damage in the past, why wouldn't you  
5 identify or mark yes?

6 MR. GALLIHER: Objection. Asked and  
7 answered. It's an incomplete hypothetical. It  
8 seeks a legal conclusion and assumes facts not in  
9 evidence.

10 BY MR. GRAF:

11 Q You can still answer, Doctor.

12 A I don't know of any water damage, unless  
13 you want to say that the electronics weren't  
14 working, which I'm not even sure that's true, but  
15 they were replaced, because of the water.

16 Otherwise, I know of no other damage and my  
17 understanding in general of the SRPD is that it is  
18 to protect the buyer from something that would  
19 cause long-term harm to them, reduce the value of  
20 the home, and certainly replacing electronics with  
21 brand-new electronics would have no effect on  
22 that.

23 Q Okay. So in Interrogatory No. 14, we  
24 asked you to identify each and every lawsuit to  
25 which you've been a party. Do you see that?



1 A Yes.

2 Q Okay. So there's no response there, and  
3 it says that it's publicly available. It's --  
4 that's not the standard as to whether or not you  
5 provide it, so I'll ask you again here.

6 So which lawsuits have you been a party  
7 to?

8 MR. GALLIHER: I'll object to the --  
9 that it's -- to the relevance to that and that it  
10 potentially invades attorney-client privilege.

11 But go ahead, tell him what you know.

12 THE WITNESS: Well, let's see.

13 MR. GALLIHER: Hold on, before you --  
14 but I am going to instruct you that if you're  
15 under any type of confidentiality requirement or  
16 nondisclosure agreement with respect to any of  
17 those, I'm going to instruct you not to answer  
18 those.

19 MR. GRAF: No. And if that's the case,  
20 we're going to have to call the discovery  
21 commissioner because that's not how it's applied.  
22 At all. This is a legal proceeding. He has a  
23 responsibility to come here and testify. And most  
24 of those provisions are going to have a carve-out  
25 for purposes of testifying in a setting like this.



1 MR. GALLIHER: I'm not saying if there's  
2 a -- if there's a -- well, I'm not saying if  
3 there's a settlement agreement and the -- and the  
4 terms of settlement are confidential.

5 MR. GRAF: Yeah.

6 MR. GALLIHER: That's not what I'm  
7 talking about.

8 MR. GRAF: Okay. But the actual  
9 existence of a lawsuit that's been filed in a  
10 public forum, I don't think you can instruct him  
11 not to answer.

12 MR. GALLIHER: I can if -- if the  
13 lawsuit has been sealed, and I don't know if  
14 that's the case, but I think he doesn't have to  
15 testify about a sealed lawsuit. That's the  
16 purpose of getting a lawsuit sealed. So that's  
17 the purpose of my instruction. If he is involved  
18 in a lawsuit that's been sealed, he doesn't need  
19 to disclose that.

20 MR. GRAF: No. I don't think that's  
21 accurate. I think the purpose of sealing it is  
22 sealing it from the public record. That does not  
23 disparent -- does not cut off his obligation to  
24 testify as to the information. That's two  
25 different things. Sealing a record is something

1 that's done as to the official record of whatever  
2 county or city or -- excuse me, city or state.  
3 It's not whether or not he has an obligation to  
4 testify here today.

5 MR. GALLIHER: Okay.

6 MR. GRAF: So --

7 MR. GALLIHER: Let him answer the  
8 question and see where it goes.

9 MR. GRAF: All right.

10 THE WITNESS: Okay. Well, I don't have  
11 a problem answering it. It just may take a little  
12 while.

13 BY MR. GRAF:

14 Q Okay.

15 A Let's see, malpractice lawsuits, so I  
16 had --

17 Q You said five or six?

18 A Yeah.

19 Q So do we know -- as you sit here today,  
20 do you know the names of any of those people that  
21 filed the malpractice cases?

22 A Yes, I know -- I think I probably know  
23 them all.

24 Q Okay.

25 A Glen Davis, that was in California.

1 Q Yep.

2 A Let's see. Francis Fotius, don Ware,  
3 Frank Marone.

4 Q Do you know how to spell Ware? Is it --

5 A W-A-R-E.

6 Frank Marone. The last one I only know  
7 are -- her last name, Elisi-Magnovero. It's a  
8 hyphenated name. Elisi-Magnovero. Nilson.

9 Q How do you spell that?

10 A N-I-L-S-O-N.

11 And then I was just served, believe it  
12 or not, even though I'm not practicing, with a  
13 lawsuit, and I can't remember his name other than  
14 it starts with an S.

15 Q Here in -- is the lawsuit in Clark  
16 County?

17 A Yes.

18 Q Okay.

19 A And then in our dealings with CLS during  
20 the sale, they sued us for -- well, I don't know  
21 if you want to hear the details. It doesn't have  
22 much relevance.

23 Q Did you get personally sued?

24 A Yeah.

25 Q Or did your entity get sued?

1           A     I always get personally sued, never an  
2     entity gets sued. Let's see.

3           Q     And is that case ongoing, the CLS?

4           A     No, no, we just resolved it.

5                     I was sued by two CEOs of a hospice we  
6     were invested in, John Bettencort and Dan  
7     Granderath.

8           Q     How do you spell that last name?

9           A     G-R-A-N-D-E-R-A-T-H.

10          Q     And where is that?

11          A     Here in Las Vegas.

12          Q     And was this -- the CLS lawsuit in  
13     Las Vegas, also?

14          A     Yes.

15          Q     Okay. Thank you.

16          A     Troy Herbst.

17          Q     What's that one about?

18          A     Over a construction defect on a house  
19     that I presumably built as an owner/builder,  
20     although I didn't know it until after the fact.

21          Q     Oh, did he buy a house that you had had  
22     built or spec'd?

23          A     Yeah.

24          Q     Okay.

25          A     We were involved in a -- a lawsuit from

1 mold which you had questioned me about I think  
2 somewhere.

3 Q That's the Planting Fields house?

4 A The Planting Fields Place.

5 Q Okay. That's Trophy Homes you sued?

6 A Trophy Homes, yeah.

7 I may have missed one or two. I  
8 can't -- I can't remember as I sit here, but --

9 Q So you were involved in a lawsuit in  
10 South Dakota?

11 A Oh, yeah, yeah. How could I forget that  
12 one.

13 Q And who sued you?

14 A Richard Jones.

15 Q Has that been resolved?

16 A Oh, yeah.

17 Q Okay. So that's resolved and closed?

18 A (Nodding head.)

19 Q Okay. And did you get -- did you get  
20 divorced in Clark County?

21 A Yes.

22 Q Okay. And any other suits?

23 A I can't think of them as we sit here.  
24 You've got a list probably, so ...

25 Q I know of one more.

1           So did you have litigation outside of  
2   your divorce with your wife, your ex-wife?

3           A     We went back one time when I was sick  
4   with my ulcerative colitis to try to get the  
5   alimony payment reduced.

6           Q     No, this wasn't a family court case.

7                   Did you guys have a case between the two  
8   of you alleging damages?

9           A     Between the two of us? Other than the  
10   divorce?

11          Q     Yeah.

12          A     Not that I know of.

13          Q     Okay. It's back in 2005, case A502401,  
14   Todd Swanson versus Julie Swanson.

15          A     I think that was -- the only thing I  
16   recall is going back for the reduction in alimony,  
17   because my divorce attorney -- is that the one  
18   that went to appeal?

19          Q     Don't know.

20                   MR. GALLIHER: I don't think it has a C  
21   case number if it was in family court, though.

22                   MR. GRAF: No, it wouldn't. So that's  
23   why I know it's not.

24                   THE WITNESS: It's what?

25                   MR. GALLIHER: It wouldn't have a C

1 before the case number if it was in family court.

2 This would be -- this is in civil-criminal court.

3 THE WITNESS: I sued her in -- well,  
4 you're going to have to give me some hints,  
5 because I don't know what it is offhand. That's  
6 the year that our divorce was finalized. I don't  
7 know why I would sue her for anything that year.

8 BY MR. GRAF:

9 Q Okay. What about Shannon Mathis?

10 A I don't know who that is.

11 Q It's Case No. 04 -- 4-A-478713.

12 A Shannon Mathis.

13 Q Spelled M-A-T-H-I-S.

14 A Is it a -- a malpractice or something  
15 else?

16 Q I don't think so. I couldn't find  
17 anything specific on that.

18 A I don't even know who that is. I don't  
19 recognize the name.

20 Q All right. We talked about Frank  
21 Marone, so -- all right.

22 Of those cases, did you testify or get  
23 deposed in any of those cases that we just talked  
24 about? So let's just go through them, and you  
25 tell me if you testified or got deposed.



1                   **So Glen Davis?**

2           A       No.

3           Q       **Francis Fotius?**

4           A       I don't recall if I got deposed. I  
5 think -- I don't think so, but I don't recall.

6           Q       **Don Ware?**

7           A       Yes.

8           Q       **Frank Marone?**

9           A       No.

10          Q       **Elisi-Magnovero?**

11          A       No.

12          Q       **Nilson?**

13          A       No.

14          Q       **The CLS case?**

15          A       No.

16          Q       **The Bettencort/Granderath case?**

17          A       No.

18          Q       **The -- I know you got deposed in the**  
19 **Planting Fields case; right?**

20          A       Yes.

21          Q       **Versus Trophy Homes.**

22                   **What about in the Herbst case?**

23          A       Yes.

24          Q       **Is the Herbst case still going --**

25          A       No.

1 Q -- or has that been resolved?

2 A We resolved that a long -- a couple  
3 years ago. A few years ago.

4 Q Did you get deposed in the South Dakota  
5 case?

6 A Yes.

7 Q All right. And then did you get deposed  
8 in your divorce case?

9 A Yes, I'm sure I did.

10 Q Okay. So just in turn -- let's talk  
11 about the Planting Fields case. You -- you were a  
12 party to that litigation; correct?

13 A Yes.

14 Q You and your wife were the plaintiffs?

15 A Yes.

16 Q Now, I can't find another caption. I  
17 can only find the deposition transcripts.

18 Were the children parties to that case  
19 or you as guardians of the children?

20 A Yes.

21 Q Okay. And was there -- was there a  
22 third-party complaint that was filed in that case  
23 by the Trophy versus all of the subs?

24 A Probably.

25 Q Okay. So do you remember getting

1     deposed on or about October 22nd, 2004?

2             A     Over that case?

3             Q     Yes. It appears there were two volumes  
4     of your deposition. I'm not trying to confuse  
5     you, so I want to make sure we're clear going into  
6     this. You had two -- two different sessions of  
7     your deposition: One dated October 22nd, 2004,  
8     and then one dated November 12, 2004.

9                     Do you recall that?

10            A     I don't recall them specifically, no.

11            Q     Okay. What -- let's talk about that  
12     case generally.

13                     What was that case about?

14            A     We had -- we had hired Trophy Homes to  
15     build kind of a semi-custom home, which they built  
16     for us. And we moved in and I just started having  
17     headaches, and I just assumed that it was  
18     something with work or something else. And I had  
19     had some sinus problems, but after living there  
20     for a couple of years, we noticed a little water  
21     around our shower. So we asked them to come and  
22     take a look at it. And they basically tore out  
23     the drywall and there was mold inside the wall and  
24     so they found mold there. There was a second leak  
25     under the French door right next to my bed where

1     apparently they found mold, and not just in the --  
2     the mold wasn't just in the floor or the wall; it  
3     was in the air.

4             And then a third place was a window that  
5     they had installed wrong, so there was water  
6     seeping into the wall there. And so we were  
7     advised to move out and we had to leave -- had to  
8     destroy or leave or have cleaned, especially a  
9     bunch of our belongings, but anyway basically  
10    filed a -- a construction defect case and a  
11    personal injury case for the mold.

12            Q     And that case is resolved and closed?

13            A     Yes.

14            Q     Okay. So had you previously -- previous  
15    to the Planting Fields Place, had you been sued --  
16    you or your wife been sued by a subsequent  
17    purchaser of one of the homes that you had sold?

18            A     Yes. The very first home we owed --  
19    owned, when we sold it, we had drapes hanging in  
20    one of the rooms. And we talked to our Realtor,  
21    they said the drapes -- the things that aren't  
22    attached, like blinds or something, are not part  
23    of the house, so we took the drapes because we  
24    thought we could use them in our next house. And  
25    they sued us for that and so we went to court and

1 we won the case.

2 Q Was there any allegation as to roof  
3 leaks in that case?

4 A No.

5 Q Did you have another lawsuit that  
6 involved roof leaks? You -- you getting sued for  
7 roof leaks?

8 A We -- us getting sued?

9 Q Yes.

10 A For roof leaks? Not that I recall.

11 Q Okay.

12 A At that house? Or any one?

13 Q Another house. Not the Planting Fields  
14 residence.

15 A Us getting sued for roof leaks? Not  
16 that I recall. I mean, if you tell me the -- what  
17 you've got, I'll tell you if we did or not. I  
18 just don't recall anything.

19 Q So there appears to be some testimony on  
20 page 18 of volume one of your deposition in that  
21 case. "The other one was a case where we, Julie  
22 actually did most of the legwork on this, but we  
23 had hired someone to take care of a couple of  
24 water leaks. When it rained" --

25 A This is --

1           Q     -- "we had a leak in our roof and then  
2     we" --

3           A     Is this at --

4           Q     -- "had some leaks around the balcony.  
5     And so it was a company called Ajax, I believe,  
6     that came in and did the work and never really  
7     fixed the problem. The roof still leaked, the  
8     deck still leaked so we took that to small claims  
9     court and basically I don't think either party  
10    prevailed."

11          A     Yeah. So I thought you -- I thought you  
12    said did someone sue us.

13          Q     Oh, I'm sorry, I must have misspoke. I  
14    apologize.

15          A     Yeah. So I don't remember the roof  
16    leak, but I remember we hired someone -- there was  
17    some water leakage around a deck, so we hired this  
18    company -- I think Ajax is the name of the  
19    company -- and they charged us to fix it. They  
20    fixed it, but it still leaked, so we took them to  
21    small claims court. And I don't think -- I don't  
22    think we got anything out of it. It was a waste  
23    of time.

24          Q     And that was involving the 2870 Elk  
25    Canyon Court?



1 A Yes.

2 Q Okay. So in the Planting Fields  
3 residence, it appears that there were a series of  
4 four different leaks in that house.

5 A Three that I recall.

6 Q Okay. So there was a water pipe that  
7 had a nail in it that had worked free.

8 Do you recall that leak?

9 A What part of the house? Does it say?

10 Q It doesn't say.

11 A So I don't recall that specifically.

12 Q Okay. So the French doors leaked?

13 A That was one, yes.

14 Q And then around the bathroom shower  
15 panels, those leaked?

16 A Yes. Yes.

17 Q And then you had a window that was  
18 installed improperly?

19 A Yes.

20 Q Okay. So those four leaks and  
21 everything else, when you sold the Planting Fields  
22 residence, did you fill out an SRPD?

23 A I didn't sell the house because my then  
24 ex-wife moved back into the house, waited for the  
25 market to come -- well, I can't remember. She



1 moved in and -- anyway, after our divorce in '05,  
2 real estate was doing very well, and she was a  
3 Realtor, so she took advantage of it and sold it,  
4 and made pretty good money on it, from what I  
5 heard.

6 Q And you didn't have to sign off on the  
7 SRPD?

8 A No.

9 Q Okay.

10 A She got the house in the divorce.

11 Q Okay. What about the Elk Canyon  
12 property, did you sign off on the SRPD on that  
13 property?

14 A I presume so, if there was an SRPD then,  
15 which there was.

16 Q Okay. So in this case, you were asked  
17 some questions about some of the furniture that  
18 was left in the house, and then I guess  
19 subsequently the furniture got donated or  
20 something like that. There were some questions as  
21 to whether or not you were aware that the  
22 furniture could or couldn't be cleaned.

23 Do you recall any of that?

24 A In the Planting Fields Place?

25 Q Yes.

1           A     I don't recall that.  What --

2           Q     So at some point in time -- on page 125  
3     of the October deposition, it says, "Did anybody  
4     tell you that there were items that could not,  
5     under any circumstances, be cleaned?"  And your  
6     answer was, "Yes, Linda Stetzenbach, as I said,  
7     told us basically that anything with a cushion  
8     thicker than an inch, to the best of my  
9     recollection, could not be sufficiently cleaned."

10                   Do you recall that?

11          A     I don't recall that, but I wouldn't  
12     question --

13          Q     Okay.

14          A     -- if she said that.

15          Q     So in that instance, in terms of the  
16     cleaning and that sort of thing, so there was at  
17     least four instances of water losses in the master  
18     bedroom in the 42 Meadowhawk property; right?

19          A     We're back to 42 Meadowhawk now?

20          Q     I am.

21          A     Okay.  There were at least four what?

22          Q     Instances of water, moisture conditions  
23     that existed in that master bathroom; correct?

24          A     Well, I don't consider them moisture  
25     conditions for the reasons we just talked about,

1 but there were four -- one, two, three -- there  
2 were four water leaks prior to the -- to the final  
3 leak.

4 Q Okay. And in each instance, the carpet  
5 was made wet and never replaced; right?

6 A Yes.

7 Q Okay. All right. So did we ever  
8 ascertain as to whether or not the trust is the  
9 manager of Lyons Development?

10 A It is.

11 Q It is. Okay.

12 And you're the trustee or the cotrustee  
13 of the trust; correct?

14 A Yes.

15 Q Okay. Does anybody else have any  
16 ownership interest in Lyons Development?

17 A No.

18 Q Okay. Has Lyons Development ever been  
19 sued?

20 MR. GALLIHER: Other than this case?

21 MR. GRAF: Other than this case.

22 THE WITNESS: No.

23 BY MR. GRAF:

24 Q Okay. What, if anything, does Lyons  
25 Development own today?

1           A     Today, it owns nothing.

2           Q     Was -- Lyons Development was in  
3     existence when you purchased the lot at 42  
4     Meadowhawk; correct?

5           A     Yes. Well, I think your old partner,  
6     Gary Schnitzer, created the LLC for the purpose of  
7     putting that piece of land in the LLC.

8           Q     Lyons Development?

9           A     Yes.

10          Q     Or Lyons Development, LLC?

11          A     Yes.

12          Q     I keep adding an S. It's no S; right?

13          A     There is an S, yes.

14          Q     Oh, there is.

15          A     It's because I went to school in Lyons,  
16     South Dakota, and you got to pick a name.

17          Q     Okay. So then what is Tiger's Tail  
18     Management Trust?

19          A     That's another irrevocable trust that is  
20     the member of many of my LLCs.

21          Q     Okay. Does it have or has it had in the  
22     past any ownership interest in Lyons Development?

23          A     Yes.

24          Q     Okay. When?

25          A     I don't know the specific dates, but

1 it's the -- it's the member now. It has been for,  
2 I don't know, quite some time, several years.

3 Q Okay. And you say that that's an  
4 irrevocable trust?

5 A Yes.

6 Q Okay. And who is the trustee?

7 A Same as the Shiraz Trust, myself and  
8 Shannon Evans.

9 Q Do you receive any financial  
10 compensation from Tiger's Tail Management Trust?

11 A No.

12 Q Who was the original -- what entity was  
13 the original purchaser of the 42 Meadowhawk  
14 property?

15 A I think it was Lyons Development.

16 Q So I guess there's a period of time from  
17 July 29, 2013, to February 3rd, 2014, that you  
18 personally were the owner of the lot at 42  
19 Meadowhawk.

20 Is that an accurate statement?

21 A I think those are the correct dates,  
22 yes.

23 Q Okay.

24 A I provided them to you.

25 Q So what was the purpose of transferring

1 the property into your name?

2 A Because banks either won't lend or  
3 they'll charge premium --

4 Q To trustees?

5 A -- to lend to an LLC versus an  
6 individual. So they recommended I transfer it  
7 into my name for the purpose of getting finance,  
8 and then they -- once the financing -- the  
9 construction loan is in place, they allowed me to  
10 transfer it back into the LLC.

11 Q So there was a change in the use of the  
12 property during that time period, i.e., you  
13 developed the property. And then once the home  
14 was complete, you transferred it into the name of  
15 Lyons Development?

16 A No. I -- well, I transferred it in -- I  
17 transferred it back into the name -- I transferred  
18 it back to Lyons Development just shortly after  
19 construction was underway.

20 Q Okay. So you did it during  
21 construction? You didn't wait until after it was  
22 constructed?

23 A No.

24 Q Okay.

25 A The construction loan rolled into my



1 permanent financing.

2 Q Oh, so you didn't have to refinance?

3 A No.

4 Q Okay. When the property was owned by  
5 Lyons Development, did you make any rental  
6 payments to Lyons Development when you occupied  
7 it?

8 A Yes, I did for a while. And that was  
9 Gary that suggested I do that too. But I don't  
10 know if I was making those rental payments at the  
11 time of sale or not, but at least for a while, I  
12 was.

13 Q Okay. And what was the purpose of --  
14 what was your understanding of making the rental  
15 payments?

16 A Because Lyons Development is an entity  
17 that was set up for the investment property, and  
18 so this investment property I was renting from  
19 Lyons.

20 Q Okay.

21 A In the end, I don't know that it made  
22 any difference.

23 Q So when we went through the various A  
24 through D in response to Interrogatory No. 5, the  
25 water leaks that we talked about -- so it's A

1 through D, but it actually is five water leaks,  
2 because A was two water leaks.

3 So were you the one -- and actually they  
4 indicate or the response in the interrogatory  
5 indicates whether you found them or in I think one  
6 instance your assistant found it.

7 A (Nodding head.)

8 Q Okay. Did -- and I think we have some  
9 of those e-mails.

10 One of the other things that you had  
11 prepared -- and let's go ahead and mark this as  
12 next.

13 (Exhibit No. 15 was marked for  
14 identification.)

15 BY MR. GRAF:

16 Q You have been handed what's been marked  
17 as Plaintiffs' 15 for purposes of this deposition.  
18 It purports to be a letter dated November 16,  
19 2017, from Nova Geotechnical and Inspection  
20 Services.

21 Do you see that?

22 A Yes.

23 Q And this is addressed to you to the  
24 attention of Nicky Whitfield?

25 A Yes.

1           Q     What's the -- what was the purpose of  
2     having this report prepared?

3           A     I think this was prepared because on  
4     the -- the buyer's inspection, there was a concern  
5     of some offset of tiles on the back patio where a  
6     channel drain ran to funnel water off the patio.  
7     And so the question was, is there some shifting of  
8     the -- of the ground or the -- or something  
9     underneath the tile. And so I think these people  
10    were brought in to address that.

11          Q     Okay. Did you ever get a signed copy or  
12    version of this document?

13          A     I -- a signed copy?

14          Q     Yep. Because this is Bates-stamped  
15    Swanson 391 and 392. On 392 it's got the stamp of  
16    the engineer, Mark Jensen, but it also says not  
17    official until signed, and it isn't signed. So I  
18    was wondering if you ever got a signed version of  
19    this document?

20                MR. GALLIHER: Well, hold on. I'm going  
21    to object to the characterization, because it says  
22    respectfully Nova Geotechnical Inspections  
23    Services, Mark D. Jensen, P.E.

24                Are you suggesting that nonofficial  
25    until signed means it has to have a wet signature

1 on it, like a handwritten signature?

2 MR. GRAF: Some sort of signature, yeah,  
3 I am representing that.

4 MR. GALLIHER: In addition to the stamp?

5 MR. GRAF: Yeah.

6 MR. GALLIHER: Okay.

7 MR. GRAF: Because that's why you put  
8 that other stamp on the nonofficial until signed,  
9 because it's like a draft report type of thing.  
10 It's the way I understand these engineering  
11 reports to work.

12 MR. GALLIHER: So your question is, did  
13 he ever receive a copy of this had that a --

14 MR. GRAF: An actual signature from the  
15 engineer.

16 MR. GALLIHER: -- a hand signature on  
17 it. Okay.

18 THE WITNESS: I don't know offhand. I  
19 was in Denver at the time, so Nicky would have  
20 taken care of that.

21 BY MR. GRAF:

22 Q There are some recommended repairs in  
23 this letter.

24 Do you know if these repairs were ever  
25 completed?

1           A     I don't know if they were repaired or  
2     not.

3                     Are you talking about the cracked  
4     tiles --

5           Q     The cracked tiles and then in the fourth  
6     full paragraph on Swanson 391, it says, "If it is  
7     desired to bring the displacement back to level,  
8     it is our recommendation that the row of panels on  
9     the lower side be removed and reset using standard  
10    construction techniques appropriate to the type of  
11    material at the same level as the panels on the  
12    high side."

13                    Do you know if that repair was ever  
14    made?

15          A     I -- I do not. Well, I don't think that  
16    repair was made. I think we presumably provided  
17    this to the seller, and if they -- because I  
18    think, if I remember correctly, they extended  
19    their due diligence because their inspector had  
20    found this and one other problem, so we got the  
21    report, and then eventually they closed so I  
22    assumed they were okay with this report.

23          Q     Okay. So -- all right. Why was -- in  
24    terms of the water damage in November of 2017, why  
25    was Rakeman Plumbing chosen to repair those leaks?

1           A     The -- the last leak in 2017?

2           Q     Yes.

3           A     Because they were the ones that had  
4     installed the plumbing. We assumed that it was  
5     still under warranty by them, and they had done a  
6     good job repairing the other leaks. They were  
7     prompt. They were thorough. They brought in, you  
8     know, the water remediation people to dry the  
9     place -- to dry the Sahara desert, and so we  
10    thought they were doing a great job, so why  
11    wouldn't we call them for the leak.

12          Q     Did Rakeman Plumbing ever tell you about  
13    any defect lawsuits regarding Uponor fittings or  
14    piping?

15          A     Not at that time. I learned of that  
16    probably in December.

17          Q     So --

18          A     And let me back up. I'm not sure I even  
19    knew about a lawsuit. Did you say a -- a lawsuit  
20    or class-action lawsuit? What did you ask me?

21          Q     I asked about defects.

22          A     Defects?

23          Q     Yeah.

24          A     Yeah. I'm not sure he even mentioned  
25    that. He just said -- he e-mailed me and asked me



1 to call him. I called him, and he said he had  
2 sent the pipe to Uponor, and frankly I didn't know  
3 who Uponor was or maybe I did by that point. But  
4 he said they're recommending repiping the house.  
5 I don't know that they -- that he said anything  
6 about, you know, there being defects with other  
7 pipe other than this house.

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

10 MR. GALLIHER: Just so we're clear, when  
11 you're saying "he," who are you referring to?

12 MR. GRAF: Aaron Hawley?

13 THE WITNESS: Aaron Hawley, yes.

14 MR. GALLIHER: Thank you.

15 BY MR. GRAF:

16 Q That's who you meant as he?

17 A Yes. Yes, he's the one that contacted  
18 me.

19 (Exhibit No. 16 was marked for  
20 identification.)

21 BY MR. GRAF:

22 Q So I've handed you what's been marked as  
23 Exhibit 16 for purposes of this deposition.

24 Have you ever seen this document before?

25 A Not that I recall, no.

1           Q     Okay. So this -- this e-mail is dated  
2     December 13, 2017, from a Stacey Beissel, Beissel,  
3     at Uponor. First off, have you ever had any  
4     communications directly with Uponor?

5           A     No.

6           Q     Okay. Did you instruct Rakeman to have  
7     any conversations with Uponor on your behalf?

8           A     No.

9           Q     Did you ever understand that any of the  
10    previous leaks that we've talked about were  
11    submitted to Uponor for warranty reimbursement?

12          A     I wasn't aware, although I found a  
13    receipt that referenced Uponor on the February  
14    leak.

15          Q     February of what?

16          A     Of 2017.

17          Q     Okay.

18          A     But as with many documents that were  
19    coming through at that time, I saw that it was  
20    paid for. Probably my usual and customary way of  
21    handling any correspondence would be to put it in  
22    Nicky's scan and file folder or basket, I should  
23    say. And so I presume she scanned it and put it  
24    in my documents, and that's how I was able to find  
25    it for the document request that you requested.

1 But I was not aware of any Uponor problem before  
2 December.

3 Q So this document purports to be the  
4 e-mail with the results or the -- the  
5 documentation regarding the Uponor claim as to  
6 February of 2017. You're aware of that?

7 MR. GALLIHER: Wait. What are we  
8 talking about?

9 MR. GRAF: This e-mail.

10 MR. GALLIHER: Okay.

11 MR. GRAF: And the second full paragraph  
12 says, "Per your request, below please find the  
13 information associated with the initial claim  
14 submitted to Uponor in February of 2017."

15 MR. GALLIHER: Okay. And what's the  
16 question?

17 BY MR. GRAF:

18 Q I'm asking him if he knew about the  
19 warranty claim that was submitted to Uponor in  
20 February of 2017.

21 A I know now that Uponor paid for it,  
22 because I found that information in my document  
23 search. I don't know that I knew about it at the  
24 time, because I probably didn't pay attention to  
25 those documents when they came through.

1           Q     Okay. And if you look at -- I think  
2     it's on page three, which is Plaintiffs' 51. In  
3     the second reference, it appears that there's --  
4     one, two, three, four, five -- six different  
5     references to products that were tested and/or  
6     examined by Uponor.

7                     Do you see that?

8           A     Are you talking about these?

9           Q     So the first one is the Q4751775  
10    description, ProPEX EP reducing tee.

11          A     Yes.

12          Q     And that there's a problem of the tube  
13    split at fitting.

14                     Do you see that?

15          A     Yes, I see that.

16          Q     And then it says review result, no  
17    failure on that one.

18          A     Okay.

19          Q     And then on the next one, it says  
20    F2060750 at the three-quarter-inch AquaPEX red  
21    300-foot coil, and it says problem tubing split at  
22    fitting, and then it says review result  
23    manufacturer.

24                     Do you see that?

25          A     Yes.

1           Q     And that seems to be the reference that  
2     she's making in the e-mail as to the fact that --  
3     in the second sentence of the e-mail it says, "As  
4     discussed, Uponor has identified the limited  
5     manufacturing-related issue with the tubing  
6     samples return to our office for evaluation and  
7     are recommending replacement of all red and blue  
8     AquaPEX tubing currently installed in your home  
9     with new Uponor AquaPEX."

10                   Do you see that?

11           A     Yes.

12           Q     Okay. So this original problem -- and  
13     if you look to the last page of this document, it  
14     has a tee fitting of the tubing and pipe that was  
15     sent to them. It's your testimony here today  
16     under oath that you didn't receive any notice of  
17     the fact that there was a manufacturing defect  
18     identified as to the tubing installed in your home  
19     in February of 2017?

20           A     No. I couldn't have told you who Uponor  
21     was in 20 -- February of 2017.

22                   MR. GRAF: Okay. Let's mark this as  
23     next.

24                                 (Exhibit No. 17 was marked for  
25                                 identification.)

1 BY MR. GRAF:

2 Q You've been handed what's been marked as  
3 Exhibit 17 for purposes of this deposition. I  
4 believe we produced it, but I think we reproduced  
5 it after it was used as an exhibit, and that's why  
6 it's got the file stamp --

7 MR. GALLIHER: Okay.

8 MR. GRAF: -- at the top. Or somebody  
9 used it as an exhibit and that's the copy that  
10 we're using here. I just don't want to confuse  
11 anything. Okay.

12 MR. GALLIHER: It doesn't matter. It's  
13 Bates-stamped.

14 BY MR. GRAF:

15 Q So this is some e-mail exchanges between  
16 Nicky Whitfield and Aaron Hawley. The last of  
17 which is dated Friday, November 17, at 12:09. It  
18 says, "Thank you. I have informed the buyer's  
19 agent." And then Aaron's e-mail a couple of  
20 minutes before that, it says "two weeks maximum,  
21 I'm pretty sure that I should be about one week,  
22 but Thanksgiving is next week and that changes a  
23 lot of things."

24 These -- this e-mail exchange is  
25 discussing the water leak that occurred in



1 November; correct, of 2017?

2 A I believe so, yes. Yes.

3 Q So then you got a letter -- or prior to  
4 this, you got a letter dated November 16, 2017,  
5 beginning on Plaintiffs' 56.

6 Do you see that letter?

7 A Yes.

8 Q Did you receive this letter, Doctor?

9 A Yes, I did.

10 Q Okay. So I had some questions about the  
11 content of the letter.

12 So it says, "As I discussed with you on  
13 the telephone" -- so at least on or before  
14 November 16, 2017, you had a phone conversation  
15 with Mr. Hawley?

16 A Yes, I must have.

17 Q And then it says, "Rakeman Plumbing will  
18 take responsibility to rebuild the damages that  
19 arose from the recent leak on the Uponor piping at  
20 the access panel. The repairs will be strictly  
21 limited to the repairs only from the latest leak."

22 Do you see that?

23 A Yes.

24 Q Do you have any understanding, as you  
25 sit here today, from your recollection of the

1 telephone conversation with Mr. Hawley as to what  
2 other leaks were being referred to in that  
3 sentence?

4 A No. I think that the buyers -- I think  
5 we closed the following day, on the 17th, but  
6 before we closed, the buyers wanted a letter from  
7 Rakeman assuring them that everything was going to  
8 be fixed. And I think that's the reason that I  
9 probably called Aaron Hawley to request the  
10 letter, and that's where this letter -- that's why  
11 this letter was sent.

12 Q So it says the damages are in the closet  
13 and affect the carpet, the base of the closet,  
14 organizer, baseboard and possibly paint and  
15 drywall.

16 Do you see that, Doctor?

17 A Yes.

18 Q It says, "Further, Rakeman Plumbing has  
19 also authorized to have an outside hygienist do an  
20 air spore test."

21 Do you see that?

22 A Yes.

23 Q Is it your understanding that that was  
24 going to be third-party unrelated industrial  
25 hygienist or company that was going to do that air

1 spore test?

2 MR. GALLIHER: Foundation.

3 THE WITNESS: Well, versus Rakeman, you  
4 mean?

5 BY MR. GRAF:

6 Q Yeah. Or Aaron Hawley or one of his  
7 related entities.

8 A Well, I know -- quite sure Aaron Hawley  
9 doesn't do mold testing. So I think I had sent an  
10 e-mail to Nicky that we had worked with Linda  
11 Stetzenbach previously, and then I think she  
12 somehow communicated back to me that Rakeman had  
13 already retained someone, which was whoever it  
14 was, to do the -- the testing.

15 Q Do you know who that was?

16 A Well, I know it was a company -- there's  
17 a CPI Restoration.

18 Q Okay. And are you aware, as you sit  
19 here today, as to whether or not CPI Restoration  
20 is owned by Aaron Hawley?

21 A I have no idea.

22 Q And if I told you that it was owned by  
23 Aaron Hawley or a related entity that was owned by  
24 Aaron Hawley, would that be the first time you've  
25 heard it?

1           A     Yep.

2           Q     Okay.

3                   MR. GRAF: Can we have this marked as  
4 next.

5                           (Exhibit No. 18 was marked for  
6 identification.)

7           THE WITNESS: Excuse me, did you say --  
8 just so I know, is CPI owned by Rakeman or is this  
9 Infinity Environmental Services owned by Rakeman?  
10 BY MR. GRAF:

11          Q     I think it's CPI, the restoration  
12 remediation company.

13          A     So they're the ones that remediated and  
14 then Infinity did the testing, the final testing?

15          Q     Yep.

16                   Do you recognize Exhibit 18, Doctor?

17          A     Yes, I've seen this document.

18          Q     And what is this document?

19          A     This is the results of the final mold  
20 test, I believe. Let me just check to be sure.

21                   Yeah, this was the final mold -- mold  
22 test, I believe.

23          Q     Okay. So on the first paragraph, second  
24 sentence of this December 7, 2017, document, it  
25 says, "The visible and airborne fungal post

1 remediation verification, PRB, was requested to  
2 assess visual and airborne fungal levels in the  
3 above-mentioned water and fungal damaged areas of  
4 the subject residence after CPI Restoration  
5 performed the fungal remediation activities."

6 Do you see that?

7 A Yes.

8 Q Okay. Was it your understanding that  
9 there was mold or fungus that was being  
10 remediated?

11 A I tried to find documentation regarding  
12 that, and I couldn't find any, but it seems that  
13 at some point, I had heard that there was surface  
14 mold, but I don't recall there being airborne  
15 mold. But --

16 Q Okay.

17 A That's to the best of my recollection.

18 Q So if we go back to Exhibit 3 and we go  
19 to page two of five and line item seven that's  
20 fungi and mold, "any previous or current fungus or  
21 mold," and you marked no; correct?

22 A Yes.

23 Q Okay. And is it your --

24 A This is filled out on 10/24.

25 Q Understood.

1                   So this is filled out on 10/24. This  
2   is -- the area that was being tested here on  
3   December 5th, 2017, that was the water loss from  
4   November of 2017?

5           A     Yes.

6           Q     And that's after the October 24, 2017,  
7   SRPD; correct?

8           A     Yes.

9           Q     The area that was being tested here, is  
10   that still the master closet?

11          A     I presume so, yes.

12          Q     Okay. So the other water losses that  
13   occurred in February of 2017 and in August of  
14   2015, did you have mold or visible and airborne  
15   fungal post-remediation verification tests  
16   performed?

17          A     No.

18          Q     Okay. So going back to the Rakeman  
19   letter in Exhibit 17, do you know what the result  
20   of the Rakeman pressure test was that's referenced  
21   in paragraph two of this letter?

22          A     I saw some correspondence that it had  
23   passed a 70-pound-per-square-inch test for ten  
24   minutes or something like that.

25          Q     Okay. And then the third full paragraph



1 says, "Rakeman will do a simple walk-through  
2 visual inspection of all plumbing fixtures and  
3 piping in the house."

4 Again, that's the similar request  
5 previously. That's only the visible fixtures and  
6 fittings; right? No walls were opened up, nobody  
7 tried to determine anything like that; right?

8 A Correct. I think the buyers had  
9 requested both of these.

10 Q So then the second-to-the-last sentence  
11 in the third paragraph begins, "Rakeman Plumbing  
12 will not make any repairs at this time unless  
13 authorized by you after the inspection," and by  
14 "you" they mean you, Dr. Swanson.

15 Did they inform you of any other  
16 necessary repairs?

17 A So what is the question?

18 Q Did they ever inform you that there were  
19 any additional necessary repairs subsequent to  
20 this letter?

21 A No, not that I recall.

22 Q Okay. So there's -- if you look in the  
23 next page, Plaintiff 57, have you ever seen this  
24 work order?

25 A No, I don't believe so.

1           Q     So at the bottom, there's notes by  
2     Allison Brooks dated January 12, 2018.

3                     Do you see that?

4           A     Yes.

5           Q     And you may not know this actually. Is  
6     this a note from an inspection that was performed  
7     on or about January 12, 2018?

8                     MR. GALLIHER: Objection. Foundation.  
9     Speculation.

10                    THE WITNESS: I have no idea when --  
11    when it was performed. That's what the date says  
12    there.

13    BY MR. GRAF:

14           Q     So at the -- and I'm not trying to  
15    confuse anything. I'm just trying to make sure I  
16    understand what's happening here.

17                    At the top of this, it says scheduled,  
18    rocky by route No. 2 -- number zero two rocky, it  
19    says "scheduled January 5th, 2018."

20                    Do you see that at the -- kind of top  
21    right of this document? And then --

22           A     Yes --

23           Q     -- if you turn the page, there's some  
24    handwritten notes dated January 5th, 2018. So  
25    are -- and this is -- appears to be some sort of

1 invoice with a total of \$14,459, and it seems to  
2 have the same or very similar information as that  
3 note on the previous page. So I'm trying to  
4 figure out when Rakeman did this work.

5 Is this another leak that occurred in  
6 January of 2018 or you don't know that?

7 A I don't know. This is the first I've  
8 heard of this.

9 Q Okay. All right.

10 A I assumed they were -- were -- they  
11 repaired the leak immediately when we informed  
12 them in November of 2017, and I presume the  
13 remediation -- I'm just trying to think. I lived  
14 in that house for not quite a week after that.  
15 I'm trying to think if it had been remediated by  
16 then or not, and I -- I can't remember. But this  
17 certainly looks like a much more extensive  
18 remediation than the November leak would have  
19 required.

20 Q Okay. And then if you turn to  
21 Plaintiffs' 61, which appears to be another  
22 Rakeman invoice, which is invoice No. 236151, this  
23 appears to be some issue with the backyard hose  
24 bib on November 12, 2017.

25 A Yes.

1 Q Do you -- and this is on November 12,  
2 2017.

3 A Yes.

4 Q So my question is on this, was this told  
5 to the Folinos, this condition?

6 MR. GALLIHER: Object to the form.

7 THE WITNESS: Was what told? The  
8 pressure test or --

9 BY MR. GRAF:

10 Q No. The fact that there was -- the hose  
11 bib on the backyard and the hose bib on the front  
12 yard were removed and replaced or that the -- the  
13 hose bib in the backyard was removed and replaced  
14 because it was leaking?

15 A I have no idea, because I don't recall  
16 being informed of this. I only knew that -- I  
17 only heard -- and I can't remember which  
18 document -- that it had passed the 70 PSI pressure  
19 test.

20 Q Was this the document that's -- you got  
21 that said that --

22 A No, I -- no, I haven't seen this  
23 document.

24 Q So then if you turn to Plaintiff 63, and  
25 this is invoice No. 232809, and the date -- and

1     this is where my confusion lay. The date -- the  
2     handwritten date is 5/23/17, and we haven't talked  
3     about any leak or anything that occurred in May of  
4     2017.

5           A     I think that's the date the invoice was  
6     sent, because I was confused about that too,  
7     whether the date -- whether the leak occurred in  
8     February or March. But I finally was able to  
9     narrow it down by looking through enough  
10    documents.

11          Q     All right. We'll talk to Rakeman about  
12    that.

13                   All right.

14          A     I may have to take a little boy -- old  
15    man break at some point.

16          Q     Just whenever. Just tell me.

17          A     Okay.

18                   MR. GRAF: Do you want a break? Let's  
19    go.

20                   MR. GALLIHER: Yeah.

21                   MR. GRAF: Off the video record at 3:29.

22                               (Whereupon, a recess was taken.)

23                   THE VIDEOGRAPHER: Back on the video  
24    record at 3:41.

25                               (Exhibit No. 19 was marked for

1 identification.)

2 BY MR. GRAF:

3 Q Dr. Swanson, we're back on the record.

4 You're aware you're still under oath?

5 A Yes.

6 Q You've been handed what's been marked as  
7 Exhibit 19 for purposes of this deposition. It's  
8 an e-mail from you to Ivan Sher.

9 Do you recognize this document?

10 A Yes.

11 Q Okay. Did you prepare this document?

12 A Yes.

13 Q Was it sent?

14 A Yes.

15 Q Okay. What was the purpose of this?

16 A Because I had just learned of the  
17 problem with the piping, and I thought I should  
18 inform him as my broker what was going on. And I  
19 think Aaron Hawley had told -- told me -- I don't  
20 know if he spoke directly with Ms. Folino or not,  
21 but that she was threatening lawsuits. And so I  
22 was just telling him what I had been told by  
23 Mr. Hawley.

24 Q Okay. So this is dated December 15,  
25 2017. And our letter that we talked about in



1 Exhibit 17 was dated November 16, 2017.

2 MR. GALLIHER: Wait. Say that again.

3 What are the dates you just said?

4 MR. GRAF: The letter is dated  
5 November 16, 2017.

6 MR. GALLIHER: Okay.

7 MR. GRAF: This is dated December 15,  
8 2017.

9 BY MR. GRAF:

10 Q The information that you state in here,  
11 this is the information that Aaron Hawley gave  
12 you?

13 A Yes.

14 Q Okay. And that includes taking a month  
15 with multiple, over 200, drywall holes?

16 A That's what he told me.

17 Q Okay. And do you know, did this replumb  
18 happen?

19 A I presume it did, but I've not been in  
20 the house, so I don't know.

21 MR. GRAF: Okay. Let's go over this  
22 one.

23 (Exhibit No. 20 was marked for  
24 identification.)

25

1 BY MR. GRAF:

2 Q So you've been handed what's been marked  
3 as Exhibit 20 for purposes of this deposition.

4 Do you recognize this document?

5 A Yes.

6 Q And did you -- or, yeah, did you prepare  
7 this document?

8 A Yes.

9 Q Okay. And what's the purpose of this  
10 document?

11 A So I think that the Folinos wanted a  
12 pressure test and a visual inspection, but I also  
13 felt that since there was another leak, that maybe  
14 they should do another pressure test, so I think  
15 we both had the same idea. So I don't know -- I  
16 don't know who -- maybe we both came up with the  
17 idea to do a pressure test at the same time.

18 Q And I just --

19 A Or, actually, it says we will need that  
20 to close. Oh, so this is -- I think I know what  
21 this is. So I think Mrs. Folino, the Folinos  
22 wanted to do the pressure test.

23 Q Okay.

24 A And so I was passing this onto Nicky,  
25 since I was in the middle of my final exams, to

1 contact Rakeman and set that up.

2 Q All right. So it says, "Can you ask  
3 Rakeman if there's a test they can do with the  
4 plumbing to ensure there are no other weak spots  
5 in the water lines that may result in another  
6 leak."

7 So what is the other leak that you're  
8 talking about? Is that the November 2017 leak?

9 MR. GALLIHER: Object to form.

10 THE WITNESS: May result in another  
11 leak? I'm saying --

12 BY MR. GRAF:

13 Q So that denotes that there was a  
14 previous leak. So is the previous leak that  
15 you're referencing there, is that the  
16 November 2017 leak or is it some other leak?

17 A No, it's the November leak.

18 (Exhibit No. 21 was marked for  
19 identification.)

20 BY MR. GRAF:

21 Q Okay. You've been handed what's been  
22 marked as Exhibit 21 for purposes of this  
23 deposition. It's some e-mail exchanges between  
24 Rhonda Hawley and Nicky Whitfield. Nicky  
25 Whitfield, again, is your assistant?

1 A Yes.

2 Q And these are dated Tuesday,  
3 November 21st.

4 So what is the purpose of this e-mail  
5 exchange?

6 MR. GALLIHER: Foundation. Speculation.

7 THE WITNESS: I don't know. Maybe -- I  
8 would just be speculating. I kind of have an idea  
9 what it might be, but I'm not sure, and I haven't  
10 discussed this with Nicky to know. This was  
11 apparently between Rakeman and Nicky and  
12 regarding --

13 BY MR. GRAF:

14 Q It appears to be talking about the  
15 results of the pressure test.

16 A But there's also something about an  
17 invoice. So they say we will not provide a copy  
18 of the invoice unless we get something in writing  
19 letting us know we can send a copy to them. So I  
20 think that I paid for the -- for the pressure  
21 test -- it was like \$125 or something for the  
22 pressure test. Maybe that's it. I don't know.

23 Q Okay.

24 (Exhibit No. 22 was marked for  
25 identification.)

1 BY MR. GRAF:

2 Q So you've been handed what's been marked  
3 as Exhibit 22 for purposes of this deposition. It  
4 purports to be an e-mail between you and Henry  
5 Regnault, and it cc's Chris Myers.

6 Who is Chris Myers?

7 A He is I think Henry's boss.

8 Q Okay. And those are the people at Blue  
9 Heron; correct?

10 A Yes.

11 Q All right. What was the purpose of this  
12 e-mail? And really I'm just referring to the top  
13 part.

14 A Yeah.

15 Q Yeah.

16 A It's just letting Henry, so the  
17 construction supervisor that we've talked about,  
18 telling him that everything is dry and that he  
19 needs to have the people come in to put things  
20 back together.

21 Q So let me -- let me ask you a couple of  
22 foundational questions.

23 You prepared this e-mail; correct?

24 A Yes.

25 Q And that's your electronic signature box

1 at the bottom of this?

2 A Yes.

3 Q And you were responding to Henry and it  
4 says, "Well, everything is dry at 42 Meadowhawk."  
5 That's the property we're talking about that the  
6 Folinos purchased; correct?

7 A Yes.

8 Q And some of the repairs are being done.  
9 It says, "The drywallers came in last week to  
10 start fixing the water damage in the garage."

11 Do you see that?

12 A Yes.

13 Q Does that sentence help to refresh your  
14 recollection as to whether or not there was water  
15 damage in the garage?

16 A There must have been something that they  
17 needed to fix, according to this.

18 Q So you state in this e-mail, "The items  
19 I need addressed, in paren, that I know of, due to  
20 the water leaks." So this is repairs that are  
21 needed because of the water leaks; right?

22 A Yes, these are things that need to be  
23 done.

24 Q Okay. And No. 1 is "finish drywalling  
25 and painting the garage and install new access



1 panel to the attic area."

2 Do you see that?

3 A Yes.

4 Q Okay. And this is purportedly as to the  
5 water damage in the garage; right?

6 A Yes.

7 Q It says, "Replace the electronics that  
8 were ruined in my garage previously sent to you  
9 but I'm attaching again." And those that -- we  
10 already talked about those electronics; correct?

11 A Yes.

12 Q And then it says "install new carpet in  
13 my master closet."

14 Do you see that?

15 A Yes.

16 Q Does that help to refresh your  
17 recollection as to whether or not the carpet was  
18 replaced?

19 A Yes, but I don't think it was. I think  
20 they just put it down.

21 Q So you asked them to replace it, and  
22 they didn't do it?

23 A Well, I asked him to install new carpet  
24 in my master closet. I think when the carpet  
25 people came in, they said this carpet is fine.

1 They put it back down again, to my knowledge.

2 Q Okay.

3 A I don't remember that carpet ever being  
4 replaced.

5 Q All right. And then it says, "Fix the  
6 built-in cabinets in my master closet. Some of  
7 the base pieces had to be ripped out to access the  
8 water."

9 A Those are those kick panels or toe --  
10 toe panels.

11 Q Toe kicks?

12 A Yeah.

13 Q Okay. It says, "Touch up some faux  
14 paint in the master bedroom that got scratched by  
15 something, possibly a dehumidifier there. Fairly  
16 minor."

17 So there was some painting that was done  
18 as a result of the repairs?

19 A Yeah, probably getting one of their  
20 drying equipment pieces in and out or something.

21 Q So then it says, "Paint the stucco that  
22 was repaired on the side of the house."

23 Do you see that?

24 A Yes.

25 Q So where the recirculating pump was that

1 is, I believe, the subject of this water loss or  
2 is this because of the fitting that came undone  
3 under the sink, or is it both?

4 A Which -- which part of this?

5 Q Any part of this e-mail.

6 A I think it was probably both.

7 Q Okay. So was there a portion of the  
8 stucco on the exterior of the house that had to be  
9 removed to access either the fitting underneath  
10 the sink or the recirculating pump?

11 A Not the sink, for sure, and the  
12 recirculating pump was in an access panel.

13 Q Okay.

14 A So the only thing -- I don't know what  
15 that's referring to, other than maybe they  
16 didn't -- when they came that night, it was dark.  
17 They didn't open the access panel and look there  
18 first, so maybe they punched a hole in the stucco,  
19 perhaps.

20 Q Is it possible that they punched a hole  
21 in the stucco to dry the interior wall cavity?

22 MR. GALLIHER: Speculation, foundation.

23 THE WITNESS: It would be unlikely,  
24 because all of the drying was done from inside the  
25 house.

1 (Exhibit No. 23 was marked for  
2 identification.)

3 BY MR. GRAF:

4 Q Okay. You've been handed what's been  
5 marked as Exhibit 23 for purposes of this  
6 deposition. It purports to be an affidavit of --  
7 by you, and then on -- and it's Bates-stamped  
8 Swanson 195 to 197. And then on 197, it has a  
9 signature above Todd V. Swanson, M.D.

10 Is that your signature?

11 A Yes.

12 Q Okay. And was this notarized on or  
13 about August 13 of 2018?

14 A Yes.

15 Q And this affidavit, the first line or  
16 sentence on 195 says, "Todd V. Swanson, M.D.,  
17 being first sworn, deposes and says under penalty  
18 of perjury as follows."

19 Do you see that?

20 A Yes.

21 Q So you agree that you were under oath  
22 and/or subject to the penalties of perjury when  
23 you signed this document; correct?

24 A Yes.

25 Q All right. Did you prepare this

1 document?

2 A I assisted with it.

3 Q Okay. So this was prepared after the  
4 lawsuit was filed, correct, in this case?

5 A Yes.

6 Q Do you know what the purpose of this  
7 affidavit was?

8 MR. GALLIHER: Object to the form.

9 THE WITNESS: I'm assuming maybe for the  
10 mediation, although I don't recall for sure.

11 BY MR. GRAF:

12 Q Okay. And is it your understanding that  
13 the information that's contained herein is true  
14 and accurate to the best of your knowledge?

15 A Yes.

16 Q All right. So it goes through a series  
17 of information about the -- the home and different  
18 leaks. So let's go through some of this stuff.

19 So you would agree you moved into the  
20 property in approximately April of 2015?

21 A Yes.

22 Q Okay. And then August 2nd, 2015, there  
23 were two leaks in the master closet and bedroom?

24 A Yes.

25 Q Okay. And then there was also -- in the

1 next paragraph you say, I also experienced another  
2 recirculating pump leak in the garage?

3 A Yes.

4 Q Okay. It says "all leaks were repaired  
5 by Rakeman Plumbing"?

6 A (Nodding head.)

7 Q Is that a "Yes," Doctor?

8 A Yes. Yes.

9 Q Sorry.

10 A Or at least they were coordinated by  
11 Rakeman Plumbing. Rakeman Plumbing wouldn't have  
12 done the cabinet work or carpet work.

13 Q All right. And then on the next page,  
14 the first full sentence it says, "To my knowledge,  
15 the water leak problem was completely repaired by  
16 Rakeman Plumbing."

17 Do you see that?

18 A Yes.

19 Q And what you're referring to there is  
20 only the leaks that you're referencing in this  
21 affidavit?

22 A Well, let's see. I reference the 2015  
23 leaks, and then I say "to my knowledge the water  
24 leak problem was completely repaired by Rakeman  
25 Plumbing." So I'm assuming that probably refers



1 to the 2015 leaks because I go on to talk about  
2 the 2017 leaks -- or leak.

3 Q And then I have another question on  
4 that.

5 So the next paragraph says, "In  
6 January 2017, I discovered a small pinhole leak in  
7 one of the plastic water pipes in the wall."

8 Do you see that?

9 A Yes.

10 Q So that's not the date that we have in  
11 response to Interrogatory No. 5.

12 So was there another leak in January of  
13 2017?

14 A No. I think there was a lot of trouble  
15 pinning down the date of that February leak, but  
16 the date was February 17th or 18th or something  
17 like that, I think. Or 7th or 8th.

18 Q So C in response to Interrogatory No. 5  
19 says February 16, 2017.

20 A That sounds correct.

21 Q Okay. And then -- so in this affidavit,  
22 you say, "When I prepared the disclosures, I knew  
23 there had been two previous water leaks."

24 Do you see that?

25 A Yes.

1           Q     Okay. Which two previous water leaks  
2     are you referring to there, Doctor?

3           A     Well, I think I'm referring to the  
4     August leaks and the February leak.

5           Q     Okay. And then the second-to-the-last  
6     paragraph of your affidavit says, "About one month  
7     after the closing, on or about December 12, 2017,  
8     Aaron Hawley of Rakeman Plumbing informed me that  
9     the Folinos were claiming the entire house needed  
10    to be replumbed."

11                   Do you see that?

12          A     Yes.

13          Q     Is it your understanding that the  
14    Folinos were claiming that the house needed to be  
15    replumbed or was that Uponor?

16          A     No, I think that's kind of misstated.  
17    It -- well, the Folinos were saying I think that  
18    they had been told by Rakeman, who had been told  
19    by Uponor, that the house needed to be repiped.

20                   MR. GRAF: Let's go ahead and mark that  
21    as next.

22                               (Exhibit No. 24 was marked for  
23                               identification.)

24    BY MR. GRAF:

25          Q     Do you recognize this document, Doctor?

1 A Yes.

2 Q Who is Frank Cruz?

3 A He is an HVAC technician.

4 Q So it says "repair leaks in media room,  
5 mini split air conditioner system."

6 Do you see that?

7 A Yes.

8 Q What leaks are those?

9 A There's a line set that goes between the  
10 unit in the media room and the condenser on the  
11 outside, and they had trouble maintaining the  
12 pressure in those -- those pipes. So he had to  
13 come out and fix that.

14 Q And I'm just asking, what kind of leak  
15 was that?

16 A Whatever --

17 Q Was it water? Was it air?

18 A No, no, no.

19 Q Was it --

20 A Whatever material, Freon or whatever  
21 they use in an air-conditioner.

22 Q Okay. And those -- okay. Got it. It's  
23 from the outside condenser to the inside forced  
24 air units; right?

25 A Yes.

1 (Exhibit No. 25 was marked for  
2 identification.)

3 MR. GRAF: Let's do all of these  
4 together.

5 MR. GALLIHER: You're going to include  
6 this in 25?

7 MR. GRAF: No, because they're not  
8 together in the production, actually.

9 MR. GALLIHER: You're going to do all  
10 the invoices together?

11 MR. GRAF: I'm going to do all three of  
12 them just as three consecutive whatchamacallit.  
13 So -- wait, what did I do? That one is yours.

14 So the e-mail should be 25, the \$6,000  
15 is 26, and the \$845 is 27.

16 (Exhibit Nos. 26 and 27 were  
17 marked for identification.)

18 BY MR. GRAF:

19 Q So first off, the e-mail dated  
20 August 5th, 2015, is from you to Henry Regnault  
21 again at Blue Heron. And again, copy C. Myers.  
22 And it says, "Received this invoice from EH Design  
23 for replacing the damaged electrical equipment. I  
24 assume Rakeman will take care of this. Can they  
25 pay directly, or do I -- I prefer the former."

1 And then there's two invoices for the touch  
2 screen, the other touch screen switch, and the  
3 in-ceiling speaker. And then the -- the labor,  
4 the -- the final invoice is for the labor to do  
5 all of that, it looks like.

6 So --

7 A Yes.

8 Q -- this is consistent with what you  
9 previously testified, right, that the touch screen  
10 had to be replaced and that one of the speakers  
11 had to be replaced, and that work was done?

12 A Yes.

13 Q And you wanted Rakeman to pay for this?

14 A Well, my assumption was it was all  
15 covered by Rakeman.

16 Q And why is that?

17 A Because everything was still under  
18 warranty.

19 Q Okay. And what -- is it because it was  
20 also a result of the water loss?

21 A Yes.

22 Q Okay. That's his. Sorry. She will  
23 give you the copy. I apologize.

24 MR. GALLIHER: And this is 28?

25 (Exhibit No. 28 was marked for

1 identification.)

2 BY MR. GRAF:

3 Q You've been handed what's been marked as  
4 Exhibit 28 for purposes of this deposition, and it  
5 is the defendants' motion to dismiss plaintiffs'  
6 second amended complaint with the exhibits.

7 This motion on page six asserts certain  
8 undisputed facts. The first line item was that  
9 there was a previous water leak at the property.

10 Do you see that?

11 A Yes.

12 Q Okay. There was more than one previous  
13 water leak at the property; right, Doctor?

14 A Yeah.

15 This is dated what?

16 Q September 24, 2019.

17 A Yes.

18 Q And then in the next line item, it says  
19 that a licensed plumbing contractor, Rakeman  
20 Plumbing, came to the property on May 23rd, 2008  
21 -- '17, excuse me, and completely repaired the  
22 leak.

23 Do you see that, Doctor?

24 A Yes.

25 Q But there were previous leaks in 2015;



1 correct?

2 A Yes, and that date is wrong.

3 Q And the date is wrong; right?

4 A Yes.

5 Q So none of -- that's not an undisputed  
6 fact, is it, Doctor? It's not a true fact,  
7 actually?

8 A Well, the date is off, yes.

9 Q Okay. And the previous statement is off  
10 because there were at least two prior leaks?

11 MR. GALLIHER: No, I'm going to object  
12 to the question, to the form of it. A previous  
13 water leak would still be a true statement, even  
14 if there were multiple previous water leaks.

15 MR. GRAF: Okay. Fair.

16 BY MR. GRAF:

17 Q But then the last statement says that  
18 the defendants did not disclose the previous water  
19 leak in their October 24, 2017, SRPD.

20 Do you see that, Doctor?

21 A Yes.

22 Q That is in the singular; correct?

23 A Yes.

24 Q And you also didn't disclose the water  
25 leaks, at least three water leaks, that occurred

1 in 2015; correct?

2 A Correct.

3 Q And so then if we look at Exhibit A,  
4 which is the affidavit of Aaron Hawley, the  
5 affidavit of Aaron Hawley in paragraph six reads,  
6 "On May 23rd, 2017, my company received a call  
7 regarding a plumbing leak in the master bedroom."

8 Do you see that, Doctor?

9 A Yes.

10 Q That's not accurate, is it, Doctor?

11 A I don't believe so, unless my dates are  
12 off. Because I keep seeing this date, but I think  
13 that was the date of the invoice.

14 Q Okay. And the actual leak occurred  
15 sometime in February of 2017, didn't it, Doctor?

16 A Yeah, to the best of my knowledge.

17 Q Okay. Well, and I guess that begs the  
18 question, Doctor, were there two leaks in early  
19 part of '17? Did one occur in January or February  
20 of 2017 and then there was a subsequent leak in  
21 May of 2017?

22 A No.

23 Q Okay.

24 A There was one leak.

25 Q You would agree, though, that there's

1 documentation that states those three time  
2 periods; correct?

3 A There's a lot of confusion about the  
4 date of the leak; yes.

5 Q Okay. I -- and that's what we don't  
6 want to be, is confused about the dates of any of  
7 these leaks occurring.

8 So it's your understanding that the leak  
9 occurred somewhere in the time period of January  
10 or February of 2017; correct?

11 A Yes. I -- I saw these dates and I found  
12 some documents that were pretty persuasive that  
13 the date was in February, whatever that date was,  
14 February 8th or whatever.

15 Q What documents are you referring to that  
16 were fairly persuasive -- you said fairly  
17 persuasive?

18 A Yeah.

19 Q Okay.

20 A Well, I can't remember, just in the  
21 process of preparing for this.

22 Q So what types of documents? Invoices?  
23 E-mails? What were they?

24 A I can't remember. All I know is that I  
25 kept seeing this date and it didn't make sense,

1 and so I -- I tried to find the correct date.

2 Q Okay.

3 A And that's what I came up with.

4 Q So this -- this affidavit goes further  
5 to state in paragraph nine that Mr. Gerber found  
6 the following and took the corrective action. "A  
7 tech found a three-quarter-inch Uponor tee leaking  
8 on the hot side of the plumbing system. He cut  
9 out the leaking fitting and replaced with a new  
10 fitting to restore water with no further leaks."

11 Do you see that?

12 A Yes.

13 Q Do you know where that was?

14 MR. GALLIHER: Hold on. Let me make  
15 sure -- I want to make sure I understand the  
16 question.

17 You're saying where in the house the  
18 leak was or where this is written down?

19 MR. GRAF: No, where in the house this  
20 was. I appreciate the qualification, because  
21 you're right, it was a little murky.

22 THE WITNESS: So this refers to the  
23 February leak that they're calling a March leak,  
24 and that was in --

25

1 BY MR. GRAF:

2 Q Or May. May. They're calling it May.

3 I don't want to confuse things any further.

4 A So that's the fourth date we've seen  
5 now.

6 Q Okay.

7 A Okay. Anyway, that was in the master  
8 closet.

9 Q Okay. So in -- let's say in November  
10 after the -- in 2017 when the fourth or fifth,  
11 depending on how you count these, the leaks had  
12 occurred, did you ever ask Rakeman Plumbing if  
13 there was a problem with the Uponor product?

14 A Well, I wouldn't have asked about the  
15 Uponor product because I didn't know what Uponor  
16 was, but I don't recall. I may have asked them,  
17 like -- like why are these leaks occurring or  
18 something like that. I don't remember.

19 Q So let's go back to Exhibit 28, and in  
20 particular, I want you to look at the Exhibit A to  
21 the affidavit, which is the invoices. And those  
22 have another date on them.

23 A Which exhibit is it?

24 MR. GALLIHER: That one and the next --  
25 well, hold on. Go one more. Okay. That's

1 Exhibit B, you want the -- one more. There you  
2 go.

3 BY MR. GRAF:

4 Q So attached to the affidavit are two  
5 invoices. It's invoice No. 232809. It's two  
6 pages, I guess, of an invoice. And it says -- on  
7 first page, it says "customer Uponsor."

8 Do you see that?

9 A Yes.

10 Q Did you ever receive a copy of this  
11 invoice, Doctor?

12 A I had a copy of this in my files, yes.

13 Q Okay. Did you ever question Rakeman as  
14 to why the customer was being listed as Uponsor?

15 A No.

16 Q Okay. You would agree with me that this  
17 invoice is dated May 23rd, 2017; correct?

18 A Yes.

19 Q Okay.

20 A At that point I couldn't have cared less  
21 who paid for it as long as it was under warranty  
22 and it wasn't me. I was busy and -- like I did  
23 with most documents, I would have Nicky scan it  
24 and file it, so I may not have even read this  
25 thing.



1           Q     Do you know if the previous work that  
2     was conducted by Rakeman at the house in 2015 was  
3     similarly submitted to Uponor for warranty repair  
4     reimbursement?

5           A     And which leak are we referring to?

6           Q     The leak under the sink in the master  
7     bedroom -- the master bathroom, excuse me. The  
8     leak adjacent to the recirculating pumps. Do you  
9     know if any of those were submitted to Uponor for  
10    reimbursement?

11          A     I don't.

12          Q     Okay. Did you ever have any  
13    conversations with my clients regarding the water  
14    leaks at any time?

15          A     I only spoke with Mrs. Folino once.

16          Q     When was that?

17          A     That was -- that was after I learned of  
18    Uponor's suggestion that the house be repiped, so  
19    I --

20          Q     And we looked at that e-mail. It's like  
21    December 17th of --

22          A     Yeah. I think it was mid December.

23          Q     And what was the content of that  
24    conversation?

25          A     So I just called her -- I don't think

1 she and I had ever spoken, and so I wanted to just  
2 reach out to her and tell her that, you know, if  
3 there's anything that I could do -- in fact, I  
4 don't live in my house because I was going to  
5 school. I offered her that -- you know, if it  
6 would make it easier for them while they were  
7 repiping, they could stay in my house.

8 Q Do you have any -- any way of  
9 determining what day that conversation took place?

10 A I could look at my cell phone records, I  
11 suppose. I don't know that I took any record of  
12 it.

13 Q Do you still have the same cell phone  
14 carrier that you had back in 2017?

15 A Yes.

16 Q And which carrier is that?

17 A Verizon.

18 Q Do you still have the same cell number?

19 A Yes.

20 Q What's your cell number?

21 A (702) 249-9219.

22 Q Okay.

23 MR. GALLIHER: Did we establish the  
24 phone call happened on a cell phone?

25

1 BY MR. GRAF:

2 Q Did you talk to her on your cell phone?

3 A Yes.

4 Q I assumed that, because you said I could  
5 look at my cell phone bill and determine it.

6 MR. GALLIHER: Yeah, so I did. I just  
7 wanted to make sure.

8 BY MR. GRAF:

9 Q He's right. We should verify it.

10 So you believe you had that call on your  
11 cell phone?

12 A Yes.

13 Q Okay. And you think it happened after  
14 the closing?

15 A Yes.

16 Q Now, did you ever -- you as an  
17 individual or as trustee of the trust or as owner  
18 of Lyons Development, did you ever get any e-mail  
19 or other contact by Uponor?

20 A No.

21 Q Okay. Did Rakeman ever forward you any  
22 e-mails, letters, or other contact from Uponor  
23 regarding any of the leaks that we've talked about  
24 today?

25 A Only the documents that I forwarded to

1     you.

2           Q     Okay.  So let's -- let's talk about that  
3     a little bit here.

4                     So you have several e-mails.  Does each  
5     e-mail have its own Dropbox?

6           A     No.

7           Q     So what providers -- let me -- let me  
8     strike that.

9                     Did you house those e-mails out of your  
10    server that was at your house that we talked about  
11    previously?

12          A     The e-mails?

13          Q     Yeah.

14          A     Well, the e-mails were either on the  
15    server or now I think they have a different system  
16    where it doesn't have to go through a server.  
17    It's on Outlook.

18          Q     Okay.  So -- and that's my next  
19    question.  Is there -- nowadays, there's providers  
20    either through Google for Gmail.  Outlook, you can  
21    designate whatever you want or anything like that.

22                     Are all of those e-mails serviced or  
23    housed on Outlook?

24          A     Yes.

25          Q     Okay.  Did they each have their own

1      separate account or are they all under your name?

2      How is that done?

3            A      Well, are you talking about all of those  
4      e-mail addresses?

5            Q      Yes.

6            A      So they all feed into Outlook, yes. So  
7      I guess they would all be housed in Outlook.

8            Q      Okay. Did you have any responsibility  
9      in picking the subcontractors for the original  
10     construction of the 42 Meadowhawk property?

11          A      Very little. There were only a couple  
12     that I had worked with previously that I asked if  
13     they could submit bids.

14          Q      Like who?

15          A      That would have been Ed Hogan, who I had  
16     worked with previously, and the electrician,  
17     Harry -- I can't remember Harry's last name  
18     offhand.

19          Q      So what about the -- what about Rakeman?

20          A      No.

21          Q      Had you had any experience with them  
22     prior to this house?

23          A      Not to my knowledge. I don't think he  
24     had done the plumbing on any other house.

25          Q      So your understanding that we've talked

1 about a couple of times and your attorney has  
2 objected a couple of different times to this  
3 question, but I want to make sure that I have an  
4 understanding as to something.

5 Your determination to mark no as to  
6 question 1A on the seller's real property  
7 disclosure form, that was your own interpretation  
8 of that question; correct?

9 MR. GALLIHER: Asked and answered.

10 MR. GRAF: Yeah.

11 THE WITNESS: Yes.

12 BY MR. GRAF:

13 Q And it wasn't based upon any memo or  
14 report that was given to you or prepared by any  
15 attorney retained on your behalf?

16 A No. I mean, it was partially based on  
17 advice on how to fill out the reports given to me  
18 by my Realtors in the past.

19 Q Okay. Which Realtor gave you that  
20 information in the past?

21 A Well, I've had a few of them, so I can't  
22 remember.

23 Q That's my question.

24 Do you know which one it was? So Ivan  
25 Sher was your Realtor on this?



1           A     He was the --

2           Q     Was he the one that gave you the  
3     information?

4           A     He was the -- he was the broker.

5           Q     So what Realtor in Ivan's group did you  
6     deal with directly?

7           A     Kelley Contenta.

8           Q     Did Kelley give you that information?

9           A     Not that I recall. And I'm not even  
10    referring to this particular sale. I'm referring  
11    to previous sales.

12          Q     No, I get that. I'm going to work back.  
13    I hopefully don't have to go over all ten houses  
14    that you bought and sold over the years.

15                But who were the other Realtors that you  
16    used?

17          A     So I used Ivan Sher for -- to backtrack,  
18    42 Meadowhawk, 51 Meadowhawk, and 38 Meadowhawk.  
19    And I used Ken Lowman for Promontory.

20          Q     Is Promontory the one that Herbst  
21    bought?

22          A     No, he bought 38 Meadowhawk.

23          Q     He bought 38. Okay.

24          A     And, let's see. I used Pauline -- well,  
25    I bought La Madre, so I don't know who we used for

1 Elk Canyon Court, and I think that's the only  
2 houses I've sold.

3 Q Okay.

4 A Did I leave one out?

5 Q So going through them in your head, does  
6 that help to refresh your recollection as to which  
7 one told you that interpretation?

8 A No.

9 Q Okay. Was anybody else living in 42  
10 Meadowhawk the six months before you sold it in  
11 November of 2017?

12 A No.

13 Q So was your assistant staying there,  
14 living there at any point in time?

15 A She just has an office there, so she  
16 would work there.

17 Q Okay.

18 A But not every day.

19 Q Okay. And that's Nicole Whitfield?

20 A Yes.

21 Q All right. Anybody else living there  
22 with you during that time period?

23 A No.

24 Q So -- and I'm just trying to ascertain  
25 or make certain that you're the one that would

1    have all of the information regarding what  
2    happened at the house and that sort of thing;  
3    right?

4                   MR. GALLIHER:  Object to the form.

5                   THE WITNESS:  Yes.

6   BY MR. GRAF:

7           Q     All right.

8           A     All of the information?  I wouldn't say  
9   I had all the information related to the house,  
10  but I was the only one living in the house.

11          Q     Okay.

12          A     If that's what you're asking.

13          Q     So what's your understanding as to the  
14  purpose of Shannon Evans being the cotrustee of  
15  the Shiraz Trust?

16          A     Can you be more specific?  I don't know  
17  what you're asking me.

18                MR. GALLIHER:  I might -- I think his  
19  confusion is you're saying why is it Shannon Evans  
20  or why you have a cotrustee.

21                MR. GRAF:  No, I -- I understand that  
22  there's a second cotrustee.  I get that.

23  BY MR. GRAF:

24          Q     So why is it Shannon Evans?

25          A     Because she was my first estate planning

1 attorney.

2 Q Yeah.

3 A That's the reason.

4 MR. GALLIHER: I don't do estate  
5 planning.

6 BY MR. GRAF:

7 Q Okay. Does Shannon Evans participate in  
8 the management of the trust?

9 A She does. The -- she has to sign off on  
10 some documents when funds are transferred.  
11 Particularly any funds that are transferred to me  
12 or my family for any personal use, I cannot sign  
13 off on. She has to sign off on that.

14 Q So the beneficiaries of the Shiraz  
15 Trust, you're a beneficiary?

16 A Well, the -- the Shiraz Trust more or  
17 less serves as a manager, but I'm the beneficiary,  
18 yes.

19 Q And then your four children are also  
20 beneficiaries of that trust?

21 A I don't know that they're beneficiaries  
22 of that trust, but the other trust, they are.

23 (Discussion off the record.)

24 MR. GRAF: No, no, no, that's the  
25 response.

1 BY MR. GRAF:

2 Q So in the interrogatory responses by the  
3 Shiraz Trust, we asked the list of beneficiaries.  
4 The beneficiaries were listed as yourself and your  
5 children.

6 Do you have any reason to dispute that?

7 A Oh, well, I may be -- I'm sure I looked  
8 at my trust, so that probably is correct then.

9 Q Okay. On or about the time that the  
10 property was sold, November of 2017, what role did  
11 Tiger's Tail Management Trust have? As the owner  
12 of the membership interest in Lyons Development?  
13 Is that it?

14 A Yes.

15 Q Is there an operating agreement for  
16 Lyons Development?

17 A Yes.

18 MR. GRAF: So I think I'm done. The one  
19 thing that I want to say and put on the record now  
20 is this: It's my understanding that the doctor is  
21 going to do a further search of documents,  
22 quote/unquote, that may be responsive to the  
23 written discovery and/or NRCP 16.1. I think we  
24 have plenty of time left on our ability to depose  
25 the good doctor, so I'm going to not end today.

1 I'm going to end subject to asking him some  
2 additional questions after those additional  
3 documents are produced.

4 MR. GALLIHER: Okay. I think -- I think  
5 you probably have another hour to hour and a half  
6 of time left, estimate, right, based upon the time  
7 we been on the record today. We've been fairly  
8 efficient. We took an hour. It's 4:38 now. We  
9 started at -- right on time at 9:00. We've taken  
10 a few breaks totaling maybe 35 minutes, and then  
11 we took another hour, hour and 25.

12 MR. GRAF: They'll be able to tell us  
13 exactly how long we've been on the record today.

14 MR. GALLIHER: Yeah, I'm just  
15 estimating.

16 MR. GRAF: But I want to make sure that  
17 we're clear on one thing. I agreed to notice up  
18 Dr. Swanson as an individual, as the trustee, and  
19 as the representative of Lyons Development. I  
20 believe under the rules the way I read them, I get  
21 three separate bites. Okay?

22 MR. GALLIHER: Okay.

23 MR. GRAF: So I get what you're saying.  
24 I -- I definitely don't have --

25 MR. GALLIHER: Twenty-one hours.



1 MR. GRAF: Yeah, exactly. I just -- I  
2 want to be able to reserve the right and you've  
3 been very accommodating, so -- so --

4 MR. GALLIHER: I understand what you're  
5 saying.

6 MR. GRAF: -- if he produces documents,  
7 I want to be able to call him back and talk to  
8 him.

9 MR. GALLIHER: I understand and you  
10 understand I'm not stipulating, but I understand  
11 what you're saying.

12 MR. GRAF: Agree.

13 MR. GALLIHER: All right. I have just a  
14 couple of follow-ups that I would like to ask you  
15 about.

16 THE WITNESS: Can we take one quick  
17 break before we start?

18 MR. GALLIHER: I'm talking like five  
19 minutes. Do you want -- yeah, we can take a  
20 break. Yeah, sure.

21 THE VIDEOGRAPHER: Off the video record  
22 at 4:39.

23 (Whereupon, a recess was taken.)

24 THE VIDEOGRAPHER: Back on the video  
25 record at 4:44.

1 MR. GALLIHER: It's my understanding  
2 that -- that Mr. Graf has suspended his  
3 questioning for today, and I don't have any  
4 further questions for the witness.

5 THE WITNESS: Now does that mean I have  
6 to fly back here from Toronto in the next week?

7 MR. GRAF: I don't need you here,  
8 Doctor. We can do it via Skype if we need to.

9 THE WITNESS: Oh, okay. That'd be --

10 MR. GRAF: I'll do it via Skype. I  
11 don't have a problem with that.

12 THE WITNESS: Okay. I've been flying  
13 back and forth, and that's a long flight.

14 MR. GRAF: We can go off the record.

15 THE VIDEOGRAPHER: Off the video record  
16 at 4:45 p.m.

17 (Whereupon, the deposition  
18 concluded at 4:45 p.m.)

19 \* \* \* \* \*

20

21

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## 1 CERTIFICATE OF COURT REPORTER

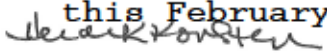
2 STATE OF NEVADA )  
3 ) ss:  
4 COUNTY OF CLARK )

5 I, Heidi K. Konsten, Certified Court Reporter  
6 licensed by the State of Nevada, do hereby certify  
7 that I reported the deposition of TODD SWANSON,  
8 M.D., on January 24, 2020, at 8:58 a.m.

9 Prior to being deposed, the witness was duly  
10 sworn by me to testify to the truth. I thereafter  
11 transcribed my said stenographic notes via  
12 computer-aided transcription into written form,  
13 and that the transcript is a complete, true and  
14 accurate transcription and that a request was not  
15 made for a review of the transcript.

16 I further certify that I am not a relative,  
17 employee or independent contractor of counsel or  
18 any party involved in the proceeding, nor a person  
19 financially interested in the proceeding, nor do I  
20 have any other relationship that may reasonably  
21 cause my impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my  
23 office in the County of Clark, State of Nevada,  
24 this February 3, 2020.

25  Heidi K. Konsten, RPR, CCR No. 845

DECLARATION OF DEPONENT

I, TODD SWANSON, M.D., deponent  
herein, do hereby declare under penalty of perjury  
that I have read the within and foregoing  
transcription of my testimony taken on January 24,  
2020, at Las Vegas, Nevada, and that the same is a  
true record of the testimony given by me at the  
time and place hereinabove set forth, with the  
following exceptions:

## ERRATA SHEET

PAGE	LINE	SHOULD READ:	REASON FOR CHANGE:
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1

## ERRATA SHEET

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PAGE

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Date:

TODD SWANSON, M.D.

24

25

1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE

2 Litigation Services is committed to compliance with applicable federal

3 and state laws and regulations ("Privacy Laws") governing the

4 protection and security of patient health information. Notice is

5 hereby given to all parties that transcripts of depositions and legal

6 proceedings, and transcript exhibits, may contain patient health

7 information that is protected from unauthorized access, use and

8 disclosure by Privacy Laws. Litigation Services requires that access,

9 maintenance, use, and disclosure (including but not limited to

10 electronic database maintenance and access, storage, distribution/

11 dissemination and communication) of transcripts/exhibits containing

12 patient information be performed in compliance with Privacy Laws.

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15 Laws. Litigation Services expects that all parties, parties'

16 attorneys, and their HIPAA Business Associates and Subcontractors will

17 make every reasonable effort to protect and secure patient health

18 information, and to comply with applicable Privacy Law mandates,

19 including but not limited to restrictions on access, storage, use, and

20 disclosure (sharing) of transcripts and transcript exhibits, and

21 applying "minimum necessary" standards where appropriate. It is

22 recommended that your office review its policies regarding sharing of

23 transcripts and exhibits - including access, storage, use, and

24 disclosure - for compliance with Privacy Laws.

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**BLACK & LOBELLO**  
10777 W. Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
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**SUBP**  
RUSTY GRAF, ESQ.  
Nevada Bar No. 6322  
**BLACK & LOBELLO**  
10777 W. Twain Ave., 3<sup>rd</sup> Fl.  
Las Vegas, Nevada 89135  
(702) 869-8801  
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rgraf@blacklobello.law  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSEPH FOLINO, an individual and  
NICOLE FOLINO, an individual,

Plaintiff,

v.

TODD SWANSON, an individual; TODD  
SWANSON, Trustee of the SHIRAZ TRUST;  
SHIRAZ TRUST, a Trust of unknown origin;  
LYONS DEVELOPMENT, LLC, a Nevada  
limited liability company; DOES I through X;  
and ROES I through X,

Defendants.

CASE NO.: A-18-782494-C

DEPT. NO.: XXIV

**NOTICE OF RESCHEDULED VIDEOTAPED DEPOSITION SUBPOENA FOR (1)  
TODD SWANSON, (2) TODD SWANSON AS PMK FOR SHIRAZ TRUST AND (3) TODD  
SWANSON AS PMK FOR LYONS DEVELOPMENT LLC**

**THE STATE OF NEVADA TO:**

**TODD SWANSON, INDIVIDUALLY  
TODD SWANSON AS PMK FOR SHIRAZ TRUST  
TODD SWANSON AS PMK FOR LYONS DEVELOPMENT, LLC  
c/o Christopher M. Young, PC.  
2460 Professional Court, #200  
Las Vegas, Nevada 89128  
Tel: (702) 240-2499  
Fax: (702) 240-2489**

**YOU ARE ORDERED TO APPEAR AS A WITNESS** and give testimony at the  
following date, time and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS, you

1 make an agreement with the attorney or party submitting this subpoena:

2 **Old Date:** January 7, 2020 (Vacated)

3 **New Date:** **January 24, 2020**

4 **Time:** 9:00 a.m.

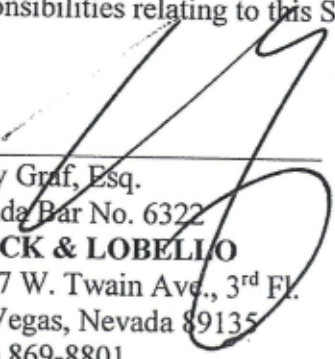
5 **Place:** Black & LoBello, 10777 W. Twain Avenue, Suite 300, Las Vegas, NV, 89135

6 If you are a public or private corporation, partnership, association, or governmental  
7 agency, you are ordered to designate one or more officers, directors, managing agents, or other  
8 persons who consent to testify on your behalf. The persons you designate will be examined, and  
9 are ordered to testify, on the matters set forth below that are known or reasonably available to the  
10 organization. NRCF 30(b)(6).

11 **WITNESS FEES:** You are entitled to witness fees and mileage traveled, as provided by  
12 NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and  
13 mileage, unless issued on behalf of the State or a State agency. NRCF 45(b).

14 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena served  
15 upon that person may be deemed a contempt of the court, NRCF 45(e), punishable by a fine not  
16 exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a  
17 witness disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages  
18 sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS  
19 50.195, 50.205, and 22.100(3).

20 Please see the attached Exhibit "A" for information regarding your rights and  
21 responsibilities relating to this Subpoena.

22 By:   
23 Rusty Graf, Esq.  
24 Nevada Bar No. 6322  
25 **BLACK & LOBELLO**  
26 10777 W. Twain Ave., 3<sup>rd</sup> Fl.  
27 Las Vegas, Nevada 89135  
28 (702) 869-8801  
(702) 869-2669 (fax)  
rgraf@blacklobello.law  
Attorneys for Plaintiff

1-8-2020  
Date



**EXHIBIT "A"**  
**NEVADA RULES OF CIVIL PROCEDURE**

**Rule 45**

**(c) *Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;  
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) *Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 9th day of January, 2020, I caused the above and foregoing document **NOTICE OF RESCHEDULED VIDEOTAPED DEPOSITION SUBPOENA FOR (1) TODD SWANSON, (2) TODD SWANSON AS PMK FOR SHIRAZ TRUST AND (3) TODD SWANSON AS PMK FOR LYONS DEVELOPMENT LLC**; to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.  
Nevada Bar No. 7961  
Jay T. Hopkins, Esq.  
Nevada Bar No. 3223  
Christopher M. Young, PC  
2640 Professional Court, #200  
Las Vegas, Nevada 89128  
Attorneys for Defendants

Jeffrey L. Galliher, Esq.  
Galliher Legal, P.C.  
Nevada Bar No. 8078  
1850 E. Sahara Ave., #107  
Las Vegas, NV 89104  
Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

  
An Employee of Black & LoBello

**BLACK & LOBELLO**  
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Las Vegas, Nevada 89135  
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