

IN THE SUPREME COURT STATE OF NEVADA

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<p>JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual,</p> <p style="text-align: center;">Appellant,</p> <p>v.</p> <p>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,</p> <p style="text-align: center;">Respondent.</p>	<p>Case No. 81252</p>	<p>Elizabeth A. Brown Clerk of Supreme Court</p>
<p>JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual,</p> <p style="text-align: center;">Appellant,</p> <p>v.</p> <p>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,</p> <p style="text-align: center;">Respondent.</p>	<p>Case No. 81831</p>	

**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  
VOLUME XVII OF XIX  
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### **CERTIFICATE OF SERVICE**

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

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 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  
2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4  
5 JOSEPH FOLINO, an )  
6 individual; et al., )  
7 Plaintiffs, )  
8 vs. ) CASE NO.: A-18-782494-C  
9 TODD SWANSON, an ) DEPT. NO.: XXIV  
10 individual; et al., )  
11 Defendants. )  
12  
13  
14  
15  
16  
17 VIDEO DEPOSITION OF AARON HAWLEY  
18 LAS VEGAS, NEVADA  
19 FRIDAY, JANUARY 31, 2019  
20  
21  
22  
23  
24 REPORTED BY: JACKIE JENNELLE, RPR, CCR #809  
25 JOB NO.: 598971B

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

6  
7 APPEARANCES:

8 For the Plaintiff:

9 BLACK & LOBELLO  
10 BY: RUSTY GRAF, ESQ.  
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13 For the Defendants:

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

18 The Videographer:

19 TERRELL HOLLOWAY  
20  
21  
22  
23  
24  
25

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1 LAS VEGAS, NEVADA

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

3 -o0o-

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

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

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

10 (Exhibit 4 E-Mail Chain marked.)

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

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

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

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

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

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

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1 THE WITNESS: Aaron Hawley.

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

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

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

8 Thereupon--

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

12 EXAMINATION

13 BY MR. GRAF:

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

17 Have you ever been deposed before, sir?

18 A. Many times.

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

21 A. No.

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

25 Are you aware of that?

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1 A. Yeah.

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

8 A. Okay.

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

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

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

15 A. No.

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

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

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

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

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

1 Q. Okay.

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

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

6 Anything else that you looked at?

7 A. No.

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

10 A. No.

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

13 A. Months ago. Many months ago.

14 Q. Okay.

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

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

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

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

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

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

4 Q. Okay.

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

7 Q. That's fine.

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

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

10 A. October 19, '66.

11 Q. And are you married?

12 A. Yes.

13 Q. To whom are you married?

14 A. Rhonda.

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

16 A. 23-ish years.

17 Q. Okay. Do you have any children?

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

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

20 A. Western High School Las Vegas.

21 Q. What year did you graduate?

22 A. '84.

23 Q. Did you attend any college?

24 A. No.

25 Q. Do you hold any professional licenses?

1 A. C1 plumbing license, journeyman plumber.

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

3 A. Yeah. You actually have to be somebody I  
4 guess to pass a test anyway.

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

6 BY MR. GRAF:

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

8 A. I'm thinking --

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

10 That was not very artful.

11 You own Rakeman Plumbing?

12 A. Yes.

13 Q. Okay. How long has Rakeman Plumbing had a  
14 C1 license?

15 A. I would say since '79, but I'm not -- we  
16 bought it from somebody, and I'm not sure if they  
17 had it before.

18 Q. Okay.

19 A. "We" as in my father.

20 Q. I was going to say. You didn't start when  
21 you were 13, did you?

22 A. Try not to. Not that smart.

23 Let me turn this down.

24 Q. So let's talk about that. When did you  
25 become or -- strike that. Better question:

1 Are you the qualified employee for Rakeman  
2 Plumbing?

3 A. Yes.

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

6 A. I'm thinking about 2005.

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

9 A. My dad.

10 Q. What's his name?

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

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

16 A. No.

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

19 A. Yes.

20 Q. What type of license does that have?

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

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

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

1 somebody.

2 Q. Okay. Who owns CPI Restoration?

3 A. I do.

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

6 A. No.

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

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

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

14 A. No.

15 Q. Who is?

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

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

20 A. Kills me.

21 Q. Has --

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

23 Q. That's okay.

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

1 A. No.

2 Q. What about CPI Restoration?

3 A. No.

4 Q. What about Rakeman Air?

5 A. No.

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

8 A. No.

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

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

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

18 A. Yes.

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

23 Are you aware of that?

24 A. Yes.

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

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

3 Is that a fair statement?

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

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

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

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

16 A. When was it built?

17 Q. 2015 I believe.

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

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

25 Should we contact her to follow up on the

1 original construction documents?

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

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

5 A. No.

6 Q. Did you ever serve in the military?

7 A. No.

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

9 A. No.

10 Q. When did you start?

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

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

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

20 Q. That you started working exclusively --

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

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

25 So when you were working at Classic

1 Plumbing, what type of plumbing were you doing?

2 Was it residential or commercial?

3 A. Mostly residential new construction.

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

7 Did you do mostly rough or finish?

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

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

12 A. Same thing, residential new construction.

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

15 A. What?

16 Q. What have they mostly done?

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

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

22 A. Yes.

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

25 A. No.

1 Q. Have you ever --

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

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

5 A. No.

6 Q. -- union?

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

10 Is that a fair statement?

11 A. Yes.

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

14 A. Yes.

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

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

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

21 A. No.

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

25 Do you have that understanding?

1 A. Yes.

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

3 Are you aware of that?

4 A. Yes.

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

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

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

10 A. No.

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

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

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

20 A. What work?

21 Q. The repair work --

22 A. The repair work?

23 Q. -- 2017?

24 A. Yeah.

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

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

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

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

9 A. Owner/president.

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

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

14  
15 THE WITNESS: Am I going too fast?

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

18 BY MR. GRAF:

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

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

25 A. No.

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

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

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

6 A. I know the name.

7 Q. Okay.

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

11 Q. Okay.

12 (Multiple parties speaking.)

13 BY MR. GRAF:

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

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

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

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

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

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

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

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

5 Q. Okay. I appreciate that.

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

8 A. Yes.

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

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

12 Q. That's all that I have.

13 A. Yeah. It was long before that.

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

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

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

21 Q. Being present during any of the repairs.

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

1 We always talk about things like that.

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

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

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

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

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

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

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

17 A. Yes.

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

20 A. No, I really don't.

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

25 Do you remember anything about those

1     **conversations?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A. Ten or 15 as of yet.

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

1 A. Yeah. Semi-custom usually.

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

5 A. Not at all.

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

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

12 Do you recognize that document?

13 A. Yes.

14 Q. Now, did you prepare this document?

15 A. No.

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

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

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

20 Does that name ring any bells?

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

22 Q. What about Jay Hopkins?

23 A. Yeah, that names rings a bell.

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

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

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

3 A. Yes.

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

6 A. E-mails.

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

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

11 Q. Okay.

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

14 Q. I'm sorry?

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

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

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

21 Q. Okay.

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

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

1 more.

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

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

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

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

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

14 Q. None taken.

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

18 A. Yeah.

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

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

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

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

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

1 the attorneys for Dr. Swanson?

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

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

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

9 Q. Like what?

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

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

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

21 Do you see that?

22 A. Um-hmm.

23 Q. Is that a yes?

24 A. Yes.

25 Q. Sorry.

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

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

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

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

10 A. Rocky and I.

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

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

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

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

23 What's the purpose of the water test?

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

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

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

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

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

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

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

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

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

23 A. Right.

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

1 in the master bedroom at 42 Meadowhawk.

2 Do you see that?

3 A. Um-hmm.

4 Q. Is it your understanding --

5 A. Yes.

6 Q. That's all right.

7 A. Sorry.

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

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

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

15 Q. I'm looking at your affidavit.

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

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

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

22 Q. Okay.

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

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

1 A. Okay.

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

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

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

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

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

16 Q. Yeah, most definitely.

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

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

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

1 Q. Okay.

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

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

9 I haven't read that incorrectly; correct?

10 A. No.

11 Q. Okay. And you signed this affidavit?

12 A. Right.

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

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

19 MR. GALLIHER: Compound.

20 You can answer.

21 BY MR. GRAF:

22 Q. You can answer.

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

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

2 Is that what you're asking?

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

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

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

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

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

16 Q. Okay.

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

20 Q. Got it.

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

25 That's an accurate statement; right?

1 Rakeman did the original construction?

2 A. Yes.

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

5 Do you see that?

6 A. Yes.

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

9 A. Rocky Gerber or on the invoice.

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

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

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

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

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

25 That's just information that was related to

1 you by Mr. Gerber; right?

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

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

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

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

14 A. Which one?

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

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

18 THE WITNESS: I gotcha.

19 MR. GALLIHER: Next page.

20 BY MR. GRAF:

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

23 A. I thought I missed it.

24 Q. Sorry.

25 A. There's 64.

1 MR. GALLIHER: Right here.

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

4 I was wondering what that number was.

5 BY MR. GRAF:

6 Q. It's a Bates stamp.

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

11 A. Gotcha.

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

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

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

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

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

22 A. Yes.

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

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

1 say probably yes.

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

4 A. Exactly, exactly.

5 Q. Okay.

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

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

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

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

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

24 Do you see that?

25 A. Yes.

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

4 A. Restoration.

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

7 MR. GALLIHER: Foundation.

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

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

14 BY MR. GRAF:

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

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

18 MR. GALLIHER: Foundation, speculation.

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

21 What do you mean by replaced? Brand new?

22 BY MR. GRAF:

23 Q. Yes.

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

1 because it was not our expertise.

2 Q. Okay.

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

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

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

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

11 Q. Okay.

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

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

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

21 Do you see that?

22 A. Yes.

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

25 And that was paid by who?

1 A. This one?

2 Q. Yeah.

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

5 Q. Okay.

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

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

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

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

14 Q. Who would have invoiced Uponor?

15 A. One of the girls in the office.

16 Q. Okay.

17 A. I represent myself I as Rakeman Plumbing.

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

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

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

4 Do you see that?

5 A. Um-hmm, yes.

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

8 MR. GALLIHER: Foundation, speculation.

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

11 BY MR. GRAF:

12 Q. Okay.

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

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

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

25 Do you recognize this document?

1 A. Not this particular one, no.

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

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

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

9 A. Okay. Okay.

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

13 A. Okay.

14 Q. Do you see that?

15 A. Yeah.

16 Q. So --

17 A. Yes.

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

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

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

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

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

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

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

11 A. Okay.

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

15 A. Okay.

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

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

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

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

1 A. Yes.

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

4 A. Um-hmm.

5 Q. Is that a yes?

6 A. Yes.

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

9 (Multiple parties speaking.)

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

12 BY MR. GRAF:

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

15 A. Many, many years, yes.

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

18 A. Yes.

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

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

22 Q. Okay.

23 A. -- for warranty claims.

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

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

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

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

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

8 A. Okay.

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

12 A. As far as right here?

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

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

17 Q. No, I get it.

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

20 Q. Okay.

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

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

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

3           Do you see that?

4       A.    Yes.

5       Q.    Have you ever met Nicky Whitfield?

6       A.    No.

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

8       A.    I might have.

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

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

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

18           What does that e-mail say?

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

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

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

25      A.    I don't know.

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

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

4 A. Do you want me to read this?

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

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

11 Do you see that?

12 A. Yes.

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

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

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

20 A. Okay.

21 Q. Do you recognize Exhibit 5?

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

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

1 results.

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

4 Q. No.

5 A. Okay. Go ahead.

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

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

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

18 Do you see that?

19 A. Yeah.

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

23 A. Um-hmm.

24 MR. GALLIHER: That's a yes?

25 THE WITNESS: Yes.

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1 BY MR. GRAF:

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

4 A. I would say yes.

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

7 A. I don't know.

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

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

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

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

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

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

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

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

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

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

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

5 Q. Okay.

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

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

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

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

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

15 A. Rocky.

16 Q. Okay. All right.

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

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

24 A. No.

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

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

3 Do you see that?

4 A. Yes.

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

7 Do you see that?

8 A. Yes.

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

12 A. As many times as necessary.

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

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

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

22 A. Okay.

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

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

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

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

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

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

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

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

16 A. Yeah. Separate computer system.

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

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

25 But there should be paper somewhere.

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

3 Was it subpoenaed? I don't know.

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

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

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

12 A. Yes.

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

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

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

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

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

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

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

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

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

9 A. Gotcha.

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

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

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

16 A. Gotcha.

17 Q. Yeah.

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

20 A. That's fine.

21 Q. All right. Okay.

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

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

1 to you or how you even got this.

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

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

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

12 A. Okay.

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

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

17 Q. You can just read it to yourself.

18 A. Oh, sorry.

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

20 A. Okay.

21 Q. What was the purpose of this letter?

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

25 So we were called out there. He wanted to

1 do a pressure test on his house.

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

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

6 Did you prepare this letter?

7 A. Yeah. I wrote this.

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

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

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

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

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

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

19 Q. Okay.

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

25 Q. Okay.

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

5           Q.    Okay.

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

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

9    So --

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

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

12                   MR. GALLIHER:   The letter is 7.

13                   THE WITNESS:    Invoice is 8.

14   BY MR. GRAF:

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

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

23           A.    Do I remember why it was cut?

24                   Is that what you're asking?

25           Q.    Okay.

1 A. Is that what you're asking?

2 Q. Yeah.

3 Is there a different scope of work?

4 Why is there a different amount?

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

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

9 A. Right.

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

12 A. Right.

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

15 Do you know who John is?

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

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

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

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

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

1 marked.)

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

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

6 BY MR. GRAF:

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

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

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

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

18 A. No.

19 Q. What's RMA?

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

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

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

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

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

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

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

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

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

16 A. Right, exactly.

17 Q. And then I cut you off.

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

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

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

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

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

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

8 A. Uponor?

9 Q. Yes.

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

11 Q. Okay.

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

15 Q. All right. So --

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

18 MR. GRAF: We can take a break.

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

21 (Thereupon, a break was taken.)

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

24 BY MR. GRAF:

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

1 Mr. Hawley?

2 A. Yes, sir.

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

5 (Exhibit 10 Home Inspection Report marked.)

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

8 BY MR. GRAF:

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

11 Keep the affidavit handy, yours.

12 A. Okay.

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

18 Do you recognize this document, Mr. Hawley?

19 A. No.

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

23 A. Okay.

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

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

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

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

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

10 A. I don't know.

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

14 A. Okay.

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

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

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

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

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

7 A. No.

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

10 A. No, no.

11 Q. Okay.

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

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

17 A. Gotcha.

18 Good for him.

19 Q. Yeah.

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

23 Do you see those?

24 A. Yes.

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

1     photographs where they're leaking from?

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

3           Q.     What would your guess be based upon?

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

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

11           MR. GALLIHER:   Speculation, foundation.

12           THE WITNESS:   I have not a clue.

13    BY MR. GRAF:

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

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

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

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

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

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

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

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

9 Q. At the fixtures?

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

12 Q. Got it.

13 Like a heating and cooling closed system?

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

16 Q. I understand what you're saying.

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

21 And these aren't color photos?

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

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

1 correct?

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

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

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

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

12 A. Okay.

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

15 Then it says, Fixed by plumber.

16 A. Okay.

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

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

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

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

1 it probably was not addressed.

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

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

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

9 Do you see that?

10 A. Yes.

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

14 A. I would say no.

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

18 A. I'm not aware, no.

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

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

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

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

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

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

6 BY MR. GRAF:

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

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

12 That's your wife?

13 A. Yeah.

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

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

20 Do you see that?

21 A. Yes.

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

24 A. Correct.

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

1 November 24th report from Infinity Environmental, it

2 would have been three days after this e-mail.

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

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

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

13 Do you see that?

14 A. Yes.

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

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

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

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

1 MR. GALLIHER: Speculation.

2 THE WITNESS: My opinion?

3 BY MR. GRAF:

4 Q. Sure.

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

11 Q. Okay.

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

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

16 BY MR. GRAF:

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

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

24 Do you see that?

25 A. Yes.

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

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

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

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

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

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

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

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

22 MR. GALLIHER: Foundation, speculation.

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

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

5 BY MR. GRAF:

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

10 A. No.

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

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

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

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

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

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

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

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

8 A. Something that might look like mold.

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

11 A. 13?

12 Q. No. Exhibit 5 --

13 A. Okay.

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

16 A. Okay.

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

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

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

24 Q. Okay.

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

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

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

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

4 A. No, I'm not either.

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

8 MR. GALLIHER: Object to the form.

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

13 BY MR. GRAF:

14 Q. Okay.

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

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

21 Do you know why that is?

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

1 Q. All right.

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

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

7 A. The warranty service stuff?

8 Q. Yes.

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

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

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

19 A. I'd seen them before.

20 Q. On other projects?

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

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

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

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

9 A. No.

10 Q. Okay.

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

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

15 MR. GALLIHER: Foundation, speculation.

16 BY MR. GRAF:

17 Q. As far as you know?

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

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

20 A. Okay. In my opinion?

21 Q. Yeah.

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

1 coloring that they're having an issue with.

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

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

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

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

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

17 A. No.

18 MR. GALLIHER: Form.

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

22 BY MR. GRAF:

23 Q. So why do you say that?

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

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

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

6 Q. So let me ask you about timing.

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

9 A. I would say yes.

10 Q. Okay.

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

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

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

22 Q. That's here to Boulder City.

23 A. That's crazy.

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

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

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

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

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

10 What do you mean hard file?

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

13 A. Right.

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

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

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

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

1 not.

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

6 Q. Okay.

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

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

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

16 A. That's -- yeah.

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

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

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

23 EXAMINATION

24 BY MR. GALLIHER:

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

1 would.

2 This is it here.

3 A. Okay.

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

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

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

12 A. I don't think so.

13 Q. Okay.

14 A. CPI should have billed Rakeman.

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

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

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

21 BY MR. GALLIHER:

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

23 A. The whole claim?

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

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

3 A. Yes.

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

6 A. Yes.

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

10 A. Yes.

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

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

17 MR. GRAF: Same objection.

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

21 BY MR. GALLIHER:

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

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

1 A. Yes.

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

5 A. No.

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

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

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

18 Do you remember that?

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

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

23 A. Um-hmm, yes.

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

1 retrieve those documents; right?

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

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

8 A. I can't pull up anything.

9 Q. What does that mean?

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

12 Q. Okay.

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

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

23 A. Letters as far as what?

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

1 A. Yeah, yeah. E-mails.

2 Q. You can still get e-mails?

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

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

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

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

9 A. Okay.

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

11 A. Okay.

12 Q. There it is.

13 A. Okay.

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

16 Do you see that?

17 A. Yes.

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

20 A. Make this letter?

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

23 A. I would not know.

24 Q. You don't know? Okay.

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

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

4 BY MR. GALLIHER:

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

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

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

11 Q. Why is it wrong?

12 A. Because you said 23,700.

13 Q. 23 seven thousand.

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

18 Isn't that correct?

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

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

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

25 Q. Well, let me clarify something.

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

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

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

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

9           A.    Right.

10          Q.    But not both; correct?

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

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

14   BY MR. GALLIHER:

15          Q.    Go ahead.

16                  Do you think there were three leaks?

17          A.    I know of two leaks.

18   BY MR. GALLIHER:

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

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

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

23          A.    If I remember it, yeah.

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

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

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

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

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

10 On there it lists multiple RMAs; correct?

11 A. Yes.

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

14 A. Yes.

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

17 A. I would say no.

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

19 So the first one is RMA 744566?

20 A. Um-hmm.

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

23 A. February 5th.

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

1 A. Invoice is --

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

3 THE VIDEOGRAPHER: Off the record.

4 (Thereupon, a break was taken.)

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

7 BY MR. GALLIHER:

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

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

13 A. Yes.

14 Q. Okay. Thank you.

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

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

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

22 A. Okay.

23 Q. Is that 5?

24 A. 5 and 6.

25 Q. Yeah.

1 Okay. So Mr. Graf was asking you questions

2 about why did you have that testing done?

3 Do you recall that testimony?

4 A. Yes.

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

7 A. Yes.

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

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

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

13 A. Okay.

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

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

18 Do you see that?

19 A. Um-hmm, yes.

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

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

25 A. Yes.

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

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

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

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

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

15 A. No.

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

20 MR. GRAF: Objection, lacks foundation.

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

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

1 BY MR. GALLIHER:

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

3 A. Uponor. Rakeman. Uponor through Rakeman.

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

6 Do you know that?

7 A. I heard that.

8 MR. GRAF: Objection.

9 THE WITNESS: I quoted it.

10 BY MR. GALLIHER:

11 Q. Okay.

12 A. But I didn't do it.

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

17 Do you recall that testimony?

18 A. No. Say it again.

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

24 Do you not recall that testimony?

25 A. Yeah, yeah.

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

3 A. No.

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

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

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

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

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

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

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

18 A. I don't think so.

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

23 A. Okay.

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

1 A. Okay.

2 Q. Is that correct?

3 A. Yes.

4 Q. Is that your understanding?

5 A. Yes.

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

9 A. Yes.

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

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

14 A. Yes.

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

18 A. Yes.

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

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

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

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

1 get a clean test afterwards?

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

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

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

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

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

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

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

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

5 Q. All that work --

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

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

10 A. Yes.

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

13 MR. GRAF: Objection, lacks foundation.

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

15 BY MR. GALLIHER:

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

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

19 A. Yes.

20 Q. Who paid for those?

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

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

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

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

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

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

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

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

10 - - - - -

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

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CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

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

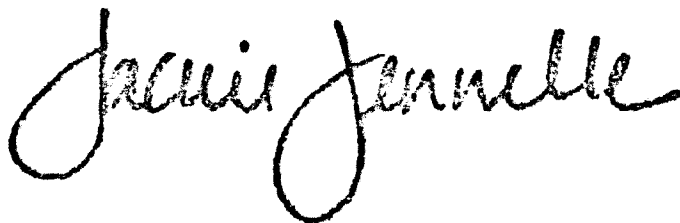
That I reported the deposition of AARON  
HAWLEY, commencing on FRIDAY, JANUARY 31, 2020, at  
11:26 a.m.

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

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

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

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



JACKIE JENNELLE, RPR, CCR #809

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## ERRATA SHEET

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I declare under penalty of perjury that I have read the

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foregoing \_\_\_\_\_ pages of my testimony, taken

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on \_\_\_\_\_ (date) at

7

\_\_\_\_\_ (city), \_\_\_\_\_ (state),

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

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by me at the time and place herein

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above set forth, with the following exceptions:

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DISTRICT COURT  
CLARK COUNTY, NEVADA

JOSEPH FOLINO, an	)	
individual; et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CASE NO.: A-18-782494-C
	)	DEPT. NO.: XXIV
TODD SWANSON, an	)	
individual; et al.,	)	
	)	
Defendants.	)	

VIDEO DEPOSITION OF WILLIAM GERBER  
LAS VEGAS, NEVADA  
FRIDAY, JANUARY 31, 2020

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809  
JOB NO.: 598971A

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

6

7

APPEARANCES:

8

For the Plaintiff:

9

BLACK & LOBELLO  
10 BY: RUSTY GRAF, ESQ.  
10777 West Twain Avenue, Suite 300  
11 Las Vegas, Nevada 89135  
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12 rgraf@blacklobellolaw.com

13 For the Defendants:

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

17

The Videographer:

18

TERRELL HOLLOWAY

19

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## I N D E X

WITNESS: WILLIAM GERBER

## EXAMINATION

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## EXHIBITS MARKED

## EXHIBIT

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Exhibit 6	December 7, 2017, Report - Infinity Environmental Services	65

1 LAS VEGAS, NEVADA

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

3 -o0o-

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

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

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

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

15 THE WITNESS: William Gerber, Rakeman  
16 Plumbing.

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

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

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

23 ///

24 ///

25 ///

1 Thereupon--

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

5 EXAMINATION

6 BY MR. GRAF:

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

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

11 Are you aware of that?

12 A. Yes.

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

15 A. No, sir.

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

21 A. Okay.

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

1 clear and audible record.

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

6 A. Yes.

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

9 Is that a fair assumption?

10 A. Yes.

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

17 A. Understood.

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

22 So you'll have the opportunity in a couple  
23 of days to review this transcript and make any  
24 changes you deem appropriate. One thing that I'll  
25 caution you on, if you make any changes, like if it

1 was an auto accident case and you had testified it  
2 was yellow and then you went back and you reviewed  
3 it, and said, no, it was red, that type of change  
4 could be brought to the attention of a trier of  
5 fact.

6 So whether you think it's material or not.  
7 It can be addressed. Okay?

8 A. Gotcha.

9 Q. All right. So are you taking any  
10 prescribed medications or under a doctor's care?

11 A. No.

12 Q. Any reason medically or physically that you  
13 cannot proceed today?

14 A. No.

15 Q. Have you taken any intoxicating substances  
16 in the last 24 hours?

17 A. No.

18 Q. Okay. Now, are you being represented by  
19 counsel here today?

20 A. No.

21 Q. Just showed up?

22 A. Yeah. I was requested to come in here.

23 Q. All right. And you're aware that you're  
24 being deposed pursuant to a subpoena that we served  
25 on you?

1 A. Correct.

2 Q. All right. Now, Mr. Gerber, are you known  
3 by any other names?

4 A. Rocky.

5 Q. If I call you Rocky during this process, do  
6 you mind?

7 A. Perfect.

8 Q. Okay. One of the other things that we have  
9 to worry about during this deposition is you wait  
10 until I finish my question before you respond  
11 because then the court reporter has a tough time  
12 interlineating who says what and when. Okay?

13 A. Yes.

14 Q. Okay. Mr. Galliher may make objections  
15 during the process of this deposition. He's not  
16 your client, so he's not go to instruct you not to  
17 answer, but he'll interject an objection usually  
18 after a question that I pose and it's for purposes  
19 of the record. Okay?

20 A. Yes.

21 Q. Also, I'm entitled to your best testimony  
22 here today. I don't want you to guess.

23 So you can give me a legitimate estimate or  
24 what you think is a rational estimate. An example I  
25 would be I may ask you how long this table is and

1 you could say, Well, it's ten to 12 feet, looks like  
2 something of that nature. Whereas if I asked you  
3 how big or how wide my desk is, you wouldn't know  
4 because you've never been in my office.

5 Do you understand the deference?

6 A. Yes.

7 Q. So if you feel like you have to guess to my  
8 of my responses, please ask me to do so. It isn't a  
9 marathon -- I mean, it is kind of marathon actually.

10 It's not an endurance test though. So if  
11 at any point in time you want to take a break or  
12 just have a second, then please ask to do so and  
13 we'll take that break.

14 The only thing that I'll ask is if there's  
15 a question pending, answer the question and then we  
16 can take the break. Okay?

17 A. Correct.

18 Q. Okay. Do you have any questions about the  
19 process?

20 A. No.

21 Q. Are you ready to proceed?

22 A. Yes.

23 Q. Okay. Other than Rocky and William, any  
24 other names you've been known as?

25 A. No.

1 Q. What is your date of birth?

2 A. 7/18/1981.

3 Q. Okay. Are you married?

4 A. Yes.

5 Q. What is your wife's name?

6 A. Kristina with a K, K-R-I-S-T-I-N-A, Gerber.

7 Q. How long have you been married?

8 A. Since 2016.

9 Q. Do you have any children?

10 A. Yes.

11 Q. How many?

12 A. Two.

13 Q. What are their ages?

14 A. Eight weeks and 19 years.

15 Q. Good spread.

16 All right. What did you do in preparation  
17 for your deposition today?

18 A. Nothing.

19 Q. Did you talk to anybody in preparation for  
20 your deposition?

21 A. No.

22 Q. What about Mr. Holly, did you talk to him  
23 about your deposition?

24 A. Just that we had it today.

25 Q. Okay.

1 A. That's --

2 Q. Did you look at any documents in  
3 preparation for your deposition today?

4 A. No, I haven't.

5 Q. Okay. Have you ever spoken with -- when  
6 actually, strike that.

7 When was the last time you spoke with  
8 Dr. Swanson?

9 A. I believe I only spoke with Dr. Swanson  
10 once and that was at his residence.

11 Q. Approximately when was that?

12 A. Three years ago, if I'm thinking right.

13 Q. And was he still the owner of that  
14 residence?

15 A. Yes.

16 Q. And so the house sold or closed on  
17 November 17, 2017?

18 A. Okay.

19 Q. Does that give you any reference to was it  
20 before or after that date?

21 A. It would have been before that date.

22 Q. What was the occasion that you had to speak  
23 with Dr. Swanson?

24 A. He was just at the home when I went there  
25 with one of my guys to look at the leak. Didn't say

1 much but hello. Didn't have a conversation him.

2 Q. Okay. All right. Let's talk about your  
3 background here just a little bit. Let me ask you  
4 one other question.

5 Have you ever spoken with Nicole Whitfield,  
6 his assistant?

7 A. I couldn't recall.

8 Q. All right. Where did you go to high  
9 school?

10 A. El Dorado.

11 Q. And did you graduate?

12 A. No.

13 Q. When would you have graduated?

14 A. '98.

15 Q. Okay. Did you obtain your GED?

16 A. No.

17 Q. Do you hold any professional licenses?

18 A. No.

19 Q. So you don't have a plumbing license?

20 A. I have a journeyman's license. I do then,  
21 yeah.

22 Q. Okay. And are you a union plumber?

23 A. No.

24 Q. And are you the qualified employee for any  
25 plumbing license?

1 A. No.

2 Q. Where do you currently work?

3 A. Rakeman -- well, Rakeman Plumbing and CPI  
4 Restoration.

5 Q. How do you work at both?

6 A. Same building, same owner.

7 Q. All right. What do you do for Rakeman  
8 Plumbing?

9 A. I'm a supervisor.

10 Q. How long have you worked for Rakeman  
11 Plumbing?

12 A. 19 years.

13 Q. Okay. So fair to say that's who you worked  
14 for for your entire adult career?

15 A. Yes, sir.

16 Q. All right. And CPI Restoration, what you  
17 do you do for them?

18 A. Supervisor.

19 Q. Okay. What does a supervisor do for CPI  
20 Restoration?

21 A. Just oversee the guys coordinate jobs.

22 Q. Okay. Do you have any type of water  
23 remediation license or certifications?

24 A. Me, no.

25 Q. Okay. Talk to me about what you did over

1 the 19 years, what different positions have you held  
2 at Rakeman Plumbing?

3 A. I was a field plumber. I was a field  
4 foreman. Then I was the quality control and safety  
5 manager.

6 Q. And then became a supervisor?

7 A. Yes, and supervisor.

8 Q. Okay. How long did you work as a field  
9 plumber?

10 A. Roughly five years.

11 Q. Okay. And as a foreman?

12 A. Probably roughly around five years.

13 Q. Okay. And then same for quality control?

14 A. I believe that was probably around two  
15 years.

16 Q. So then if my math is right, the last seven  
17 years you've been a supervisor?

18 A. Yeah.

19 Q. Okay. As a field plumber and a field  
20 foreman, what types of plumbing were you doing?

21 A. Mainly finish plumbing.

22 Q. Okay. Explain to me what a finish plumber  
23 does.

24 A. Setting all of the final fixtures, faucets,  
25 toilets, showers, the finished end product of the

1 plumbing.

2 Q. Okay. So did Rakeman Plumbing, did they do  
3 the pre-slab plumbing?

4 A. I'll have to back up there.

5 So Rakeman Plumbing had a secondary company  
6 which was Majestic Plumbing that the owner owned and  
7 that was our field plumbing. We closed the doors on  
8 that roughly 2008.

9 And that was the field plumbing. Rakeman  
10 Plumbing is more -- it's kind of morphed -- Rakeman  
11 Plumbing has always been there, but that was the  
12 service division. And as the tides turned, a few of  
13 us were able to stay.

14 Q. So Majestic did mostly construction stuff?

15 A. Exactly. Majestic was new construction,  
16 yes.

17 Q. And did you work for them for a while?

18 A. Yes. As I say, Rakeman Plumbing, yes, it's  
19 the same company -- not same company, same owner.

20 Q. Okay. So you had previously done new  
21 construction work?

22 A. Yes, yes.

23 Q. All right. So you were familiar with the  
24 Uponor product?

25 A. Yes. It's a product in town, yes.

1 Q. All right. And you -- it's my  
2 understanding that Rakeman was the plumber from  
3 start to finish at 42 Meadow Hawk.

4 Is that a fair statement?

5 A. I believe so.

6 Q. Okay. So Rakeman Plumbing was familiar  
7 with, at least in 2013 to 2015 when this house was  
8 built, with the installation of the Uponor IPEX pipe  
9 and fittings?

10 A. Yes.

11 Q. Okay. Now, did you ever, prior to -- it's  
12 my understanding you did some repair work at the  
13 home in November of 2017.

14 Is that a fair statement?

15 A. If that date is correct, then I made  
16 repair, yes.

17 Q. We'll go through some documents. I'm not  
18 trying to trick you.

19 A. Right.

20 MR. GALLIHER: I'm sorry, Rusty. When you  
21 say you, do you mean him personally or Rakeman?

22 MR. GRAF: I think it was him personally.

23 THE WITNESS: No, sir.

24 BY MR. GRAF:

25 Q. Well, then we'll clarify that.

1 A. Yes.

2 Q. Okay. The point of my question was had you  
3 done or participated in the original construction of  
4 42 Meadow Hawk?

5 A. No.

6 Q. Okay. Do you know who did?

7 A. No.

8 Q. Okay. Did you ever -- when you went out  
9 there to do or supervise the repairs in November of  
10 2017, did you ever ascertain as to who did the work  
11 for Rakeman Plumbing in the original construction?

12 A. No.

13 Q. Can Rakeman Plumbing do that?

14 A. Say that again. I don't understand.

15 Q. Does Rakeman Plumbing have the ability to  
16 go back and look at records or documents as to the  
17 original construction of 42 Meadow Hawk and  
18 determine who at Rakeman Plumbing did that work?

19 A. I don't know.

20 Q. All right. We'll ask Mr. Holly.

21 A. There you go.

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

24 A. No.

25 Q. Did you ever serve in the military?

1 A. No.

2 Q. So in your plumbing career, did you  
3 primarily do residential or did you also do  
4 commercial plumbing work?

5 A. Residential.

6 Q. Okay. Do you still go out and do repairs  
7 on homes?

8 A. Personally?

9 Q. Yes.

10 A. No.

11 Q. When is the last time you did?

12 A. I couldn't even tell you.

13 Q. Five years ago?

14 A. Yeah, five years ago.

15 Q. Back in 2000 -- November 2017 when this  
16 repair that we're talking about occurred, were you  
17 involved in the supervision of those employees that  
18 did that type of work?

19 A. That did the repair?

20 Q. Yes.

21 A. Yes.

22 Q. And how would you supervise them?

23 A. Just kind of oversee the job. Just went  
24 there initially to look and see what the leak was  
25 and instruct to what needs to be done.

1 Q. When you say you went to -- did you bid the  
2 project?

3 A. No.

4 Q. That's another question that I've got. In  
5 2017 was it part of your responsibilities to provide  
6 bids or estimates as to work that was being --  
7 repair work that was being done?

8 A. Yes. I do the bids for some of the work  
9 that I do, yes.

10 Q. Did you do the bids on this project?

11 A. That was not a bid job.

12 Q. What was it?

13 A. That was a service call.

14 Q. Okay. Did you have an understanding that  
15 the work that was going to be completed as to the  
16 repairs in November 2017 at 42 Meadow Hawk would be  
17 submitted for a warranty reimbursement?

18 A. Yes.

19 Q. How did you have that understanding?

20 A. It was called in as a leak and that's  
21 typical with that piping. It's new enough that it  
22 would try to go under a warranty.

23 Q. Okay. So it's my understanding that the  
24 house was completed in early 2015.

25 Did you have that understanding?

1 A. I don't know when it was finished.

2 Q. Okay. And so because of your previous  
3 statement, that's why I'm asking that question.

4 When you would go out and do that type of  
5 repair and given your response, would somebody at  
6 the office or would somebody else check as to when  
7 the work was completed at that property?

8 A. My understanding is Uponor has a 25-year  
9 warranty, so I knew that home wasn't 25 years old.

10 Q. It's my understanding that Rakeman had done  
11 a series of repairs at 42 Meadow Hawk.

12 Other than the November 2017, incident, did  
13 you supervise any of the other repairs at that  
14 property?

15 A. No.

16 Q. Okay. So there were repairs that were done  
17 in August of 2015.

18 Did you -- were you aware of those repairs?

19 A. No.

20 Q. So another question about what you would do  
21 in terms of if you got a call in November of 2017,  
22 would you go back -- excuse me, would you go back  
23 and see if you had done any other previous repairs  
24 at a residence?

25 A. No.

1 Q. Okay. So is it fair to say the first time  
2 you went to 42 Meadow Hawk was in approximately  
3 November of 2017?

4 A. Yes.

5 Q. Okay. Did you have an understanding as  
6 to -- excuse me, a prior relationship between  
7 Rakeman Plumbing or Aaron Hawley and Dr. Swanson?

8 MR. GALLIHER: Object to the form.

9 You can answer.

10 THE WITNESS: No.

11 BY MR. GRAF:

12 Q. Had you ever heard of Dr. Swanson prior to  
13 going out there to do the repairs in November of  
14 2017?

15 A. No.

16 Q. Okay. So let's start -- let's try and use  
17 some records because that will be I think easier to  
18 go through this stuff.

19 MR. GRAF: Let's mark this as 1.

20 (Exhibit 1 Documents Bates No. PLT 01049 - 01052  
21 marked.)

22 MR. GRAF: Jeff, have you seen these yet?  
23 These are the Uponors.

24 We've got four or five productions that  
25 they've got all stacked ready to go. So I don't

1 know why they haven't sent them out yet, but they  
2 will.

3 MR. GALLIHER: I've seen some of this  
4 stuff.

5 MR. GRAF: Yeah. But you haven't seen it  
6 with these Bates stamps.

7 BY MR. GRAF:

8 Q. Mr. Gerber, Rocky, I've handed you what's  
9 been marked as Plaintiff's Exhibit 1 for purpose of  
10 your deposition.

11 It has a Bates stamp at the bottom right.  
12 There's a PLT and then a numeric sequencing number  
13 on each page.

14 So as we go through this, I'll direct you  
15 to those page numbers so that way we have a clear  
16 record. Okay?

17 A. Yes.

18 Q. So I've handed you what's been marked for  
19 Exhibit 1 for purposes of this deposition and it has  
20 Bates stamps PLT 1049 through 1059. These are  
21 documents that were produced to my office pursuant  
22 to a subpoena from Uponor.

23 You haven't seen these documents before?

24 A. No.

25 Q. Okay. So it appears that this an e-mail

1 and then kind of a claims log printout on the first  
2 two pages -- three pages I should say, and it has  
3 the information here Rakeman Plumbing, Aaron Hawley.

4 He's the individual that owns and operates  
5 Rakeman Plumbing?

6 A. Yes.

7 Q. Okay. And does Rakeman Plumbing still  
8 operate at 4075 Losee Road?

9 A. Yes.

10 Q. One thing I forgot to ask you, Mr. Gerber,  
11 is what is your home address?

12 A. 2686 Spring Stone Street. That's Las  
13 Vegas, Nevada 89142.

14 MR. GALLIHER: 89 --

15 THE WITNESS: 142.

16 BY MR. GRAF:

17 Q. Okay. So going back to Exhibit 1, this is  
18 an e-mail from a Stacey Beissel at Uponor to Nicole  
19 Whitfield talking about the repair and/or some other  
20 repairs that were going to be necessary at the home.

21 Did you subsequently become aware that that  
22 house was going to be re-plumbed?

23 A. Yes.

24 Q. Okay. When I say re-plumbed, do you have  
25 an understanding as to what I mean by that?

1 A. Water piping.

2 Q. Let me be a little bit more specific. So  
3 did that -- so let me backtrack. Bad question.

4 Did Rakeman do any re-plumbing work on the  
5 Uponor or Kitec cases?

6 A. Yes.

7 Q. If I use Uponor or Kitec or yellow brass  
8 cases kind of denomination or phrase, do you know  
9 what I'm talking about?

10 A. They're all different, but yes.

11 Q. Okay. So Uponor, you're aware that there  
12 was a class action that was filed as to the Uponor  
13 plumbing system?

14 A. No.

15 Q. Oh, okay. You weren't aware of that?

16 A. No, sir.

17 Q. All right. Were you aware that there was a  
18 Kitec construction defect defect type -- defective  
19 product type litigation?

20 A. Yes.

21 Q. Okay. Did Rakeman Plumbing participate as  
22 a re-pipe subcontractor following the Kitec case?

23 A. Yes.

24 Q. Okay. Approximately how many houses do you  
25 think Rakeman re-plumbed as a result of that case?

1 A. I don't know.

2 Q. This is a point where I don't want you to  
3 guess obviously, but if you can given me an  
4 estimate.

5 Like is it more than a hundred homes?

6 A. Yes.

7 Q. More than 500 homes?

8 A. Yes.

9 Q. More than a thousand homes?

10 A. Yeah.

11 Q. More than 2,000 homes?

12 A. That's where I couldn't tell you. More  
13 than a thousand, yes.

14 Q. So four figures of homes that were re-piped  
15 by Rakeman Plumbing.

16 So had Rakeman Plumbing participated as a  
17 subcontractor performing re-piping of Uponor  
18 plumbing system houses?

19 A. Say that again.

20 Q. Had Rakeman ever participated as a  
21 re-piping subcontractor in -- to replace or to  
22 install new Uponor type plumbing systems?

23 A. We used Uponor to replace Kitec.

24 Q. Okay. So in this instance, the original  
25 construction, did you have an understanding as to

1    what system was used, either Kitec or Uponor?

2           A.    Kitec's been gone for a long time.

3           Q.    Is it your belief that the 42 Meadow Hawk  
4    had Uponor installed in it originally?

5           A.    Well, only from what I seen when I got to  
6    the property.

7           Q.    Okay. And we're going to go through this  
8    document and if you noticed, so the fourth page  
9    which is 1053 is a photograph, and it's identified  
10   as attachment one.

11          A.    Fifth page?

12          Q.    Do you recognize that?

13          A.    As an Uponor fitting and pipe, yes.

14          Q.    And it says 42 Meadow Hawk on it.

15                Do you see that?

16          A.    Yes.

17          Q.    Who would have written that?

18                MR. GALLIHER: Foundation, speculation.

19                THE WITNESS: I don't know.

20   BY MR. GRAF:

21          Q.    So it's my understanding that this is the  
22   failed fitting in the 42 Meadow Hawk residence.

23                Do you have an understanding as to that?

24          A.    No.

25          Q.    Did you participate in removing this

1 fitting at the 42 Meadow Hawk residence?

2 A. I don't know if this is the fitting. I  
3 honestly don't remember what the fitting was that  
4 was removed.

5 Q. So do you have an understanding as to who  
6 at Rakeman did the repairs in November of 2017?

7 A. I don't remember.

8 Q. If we look at the documentation here, so  
9 beginning say 1055, there's an invoice or what  
10 purports to be an invoice from Rakeman Plumbing  
11 invoice No. 232809.

12 Do you see that?

13 A. I'm sorry. Say that again.

14 Q. No, you're good.

15 A. What page was that?

16 Q. So on 1055 --

17 A. 55. Okay.

18 Q. Do you recognize that document, sir?

19 A. This is a Rakeman invoice.

20 Q. Okay. What's the invoice date?

21 A. 6/22 of '17.

22 Q. Well, I'm seeing the invoice date is  
23 5/23/2017.

24 A. Sorry. That's the due date, yeah, 5/23/17.

25 Q. Okay. So would that have been the date

1     that you went out and did the work?

2           A.     That would be --

3                   MR. GALLIHER:   Foundation, speculation.

4                   THE WITNESS:    I wouldn't know.

5     BY MR. GRAF:

6           Q.     So this appears to be from an earlier leak  
7     not from the November 2017 leak.   This invoice is  
8     dated May 23, 2017, and it says, The tech found a  
9     three-quarter-inch Uponor T leaking on the hot side  
10    of the plumbing system.

11                   And then it goes on to say, Cut out leaking  
12    fitting and replace with new fitting and restore  
13    water with no further leaks.   Rakeman had to remove  
14    toe kicks on built-in and cabinet and closet.   Cut  
15    out wet drywall, carpet pads.   Place equipment to  
16    dry out closet.

17           A.     This is the one I remember going to.   So it  
18    must not have been November.   This must be the one I  
19    went to because this sounds more familiar.

20           Q.     Okay.   I'm not trying to mislead you  
21    because this happened more than once.

22           A.     Okay.   Well, this one sounds more familiar.  
23    But like I said, I couldn't tell you exactly which  
24    one I went to.

25           Q.     Okay.   So do you -- so there's a bill for

1 2496, and then if you keep looking in these  
2 documents there is a transmittal letter and a check  
3 which is at 1058 and 1059 from Uponor.

4 Do you see that?

5 A. Yes.

6 Q. Oh. This work was completed by Rakeman and  
7 then it was paid for by Uponor; correct?

8 A. Yes, that's what it looks like.

9 Q. Okay. I'll have to show you -- so  
10 that's -- if you look at 1050, in this claims type  
11 software material where it says failure date at the  
12 bottom left, it says February 16, 2017.

13 Do you see that?

14 A. Yes.

15 Q. Do you recall being out at 42 Meadow Hawk  
16 during or about February of 2017?

17 A. No.

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

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

21 (Exhibit 2 Documents Bates No. PLT 1014 - 1041  
22 marked.)

23 BY MR. GRAF:

24 Q. All right. So you've been handed what's  
25 been marked as Exhibit 2 for purposes of your

1 deposition here today.

2 Do you recognize that document?

3 A. Do I recognize it?

4 Q. Yes.

5 A. No.

6 Q. Okay. Let me ask you a couple of  
7 foundational questions on that.

8 Do you ever communicate directly with  
9 anybody at Uponor regarding warranty repairs made by  
10 Rakeman or -- and submitted to Uponor?

11 A. No.

12 Q. Who would do that at Rakeman?

13 A. A series of different people.

14 Q. Would Rhonda Hawley?

15 A. Possibly.

16 Q. So this appears to be -- if we look at page  
17 Plaintiff's 1015, it says failure date November 7,  
18 2017.

19 Do you see that?

20 A. Yes, I do.

21 Q. So that then there is some other notes as  
22 to the work that's going to be done in there.

23 If you look at the bottom of 1015, it says,  
24 Customer perspective. It says 42 Meadow Hawk Lane,  
25 Las Vegas, Nevada. It's a single-family home and

1 contains 6,633 feet and was built in 2015 and it  
2 contains five bedrooms and seven bathrooms.

3 Is that an accurate depiction of that  
4 house?

5 A. I don't know.

6 Q. Okay. If you look at starting on 1032 and  
7 going for a couple of pages, there are some  
8 thumbnail photographs, and in particular if you  
9 would turn to beginning on 1037, there's a series of  
10 internal images of pipe and sections of pipe.

11 Would Rakeman when they would come and do  
12 repairs as to this type of plumbing situation, would  
13 they remove the portions of the Uponor plumbing that  
14 had failed for inspection and/or testing by Uponor?

15 A. I believe that's their warranty. We cut  
16 out the fitting and ship it back. That's part of  
17 their protocol.

18 Q. And that's what I'm asking. I just want  
19 you to confirm that.

20 When you would come across an Uponor  
21 plumbing system and there was a failure, did you --  
22 was it part of your course and conduct to remove the  
23 portion that failed and send that to Uponor for  
24 further testing?

25 A. Yes.

1 Q. Okay. Did that happen at 42 Meadow Hawk?

2 A. I believe so, yes.

3 Q. Okay. So if you look at like say the  
4 second photograph that is identified as 748395, No.  
5 7, as received, 7, like in the bottom of the  
6 right-hand side of that fitting where it looks like  
7 it's splitting horizontally, is that what would have  
8 caused the leaking in the residence?

9 MR. GALLIHER: Speculation, foundation.

10 THE WITNESS: I don't know.

11 BY MR. GRAF:

12 Q. Okay. Then if we look at -- turn to 1039.  
13 Do you see like behind the piping and that sort of  
14 thing where there's some sort of like calcification  
15 or something like that?

16 Do you see that?

17 MR. GALLIHER: Which photo are you looking  
18 at?

19 MR. GRAF: Any one of those that's on the  
20 bottom of 1039.

21 THE WITNESS: I can't even barely tell what  
22 this photo looks like, to be honest with you.

23 BY MR. GRAF:

24 Q. All right. Did you take any photographs  
25 for Rakeman Plumbing when you were out there in

1 November of 2017?

2 A. I don't remember.

3 Q. Would you have normally taken photographs  
4 in the ordinary course of doing your supervision for  
5 Rakeman Plumbing on a repair job?

6 A. Sometimes. It's not a every time thing.  
7 Sometimes I would. Just really depends if I felt I  
8 needed to.

9 Q. Okay.

10 MR. GRAF: So go ahead and mark this as  
11 next.

12 (Exhibit 3 Documents Bates No. SWANSON 0140 - 0141  
13 marked.)

14 BY MR. GRAF:

15 Q. You've been handed what's been marked as  
16 Exhibit 3 for purposes of your deposition. It  
17 purports to be an affidavit of Aaron Hawley.

18 Have you ever seen this document before,  
19 Mr. Gerber?

20 A. No.

21 Q. So if you look at paragraph eight, it says,  
22 Rakeman technician, William Rocky Gerber, went to 42  
23 Meadow Hawk to repair the reported leak.

24 Do you see that?

25 A. Yes.

1 Q. Is that an accurate statement?

2 A. Yes.

3 Q. Well, I thought you testified here today  
4 that you didn't do any of the repairs at 42 Meadow  
5 Hawk?

6 A. I didn't do the repair, but if you talk to  
7 me and say, Who went out and did the repair, I would  
8 always say we, me, but my guys. I didn't physically  
9 make the repair, no.

10 Q. Okay. Who did?

11 A. I couldn't remember which one of my guys  
12 did it.

13 Q. Okay.

14 MR. GRAF: All right. We're going to have  
15 to take a break here for a second because I have the  
16 wrong invoice, so I have to get the correct invoice.

17 MR. GALLIHER: I'm ready when you are.

18 MR. GRAF: Let's keep going for a bit.

19 We've only been going for a half hour; right?

20 MR. GALLIHER: Yes.

21 BY MR. GRAF:

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

25 That assistant that was Nicole Whitfield

1 who I asked you if you had ever met or talked to  
2 her?

3 A. Okay.

4 Q. Does this document help to refresh your  
5 recollection as to whether you met her or talked to  
6 her?

7 A. I met somebody up there. I can't remember  
8 who it was. I can't remember who it was.

9 Q. Short, slender, brunette?

10 A. Possibly. I couldn't tell you the color of  
11 her hair. I do these things every day.

12 Q. It says, Onsite Mr. Gerber found the  
13 following and took the following corrective action.  
14 It says, Tech found three-quarter-inch Uponor T  
15 leaking on the hot side of the plumbing system. Cut  
16 out leaking fitting and replaced with a new fitting  
17 and restored water with no further leaks. Rakeman  
18 had to remove the toe kicks.

19 This is pretty much the same language as we  
20 looked at on Exhibit 1; correct?

21 A. Yes. Yeah. That's why I said this one  
22 sounded more familiar, whichever one it was that we  
23 looked at sounded more familiar.

24 Q. Okay. And if we compare the affidavit to  
25 this, and in particular Exhibit 1 Bates stamp PLT

1 1055, to the affidavit, it's the exact same  
2 language, isn't it?

3 A. Sounds that way, yes.

4 Q. Okay. So it says, Then the May 23, 2017,  
5 leak was fully and completely repaired. I invoiced  
6 Uponor, manufacturer. As such, nothing further was  
7 conveyed to Dr. Swanson other than the leak was  
8 repaired and that we remediated the damage to the  
9 drywall paint carpet. That's paragraph ten.

10 Do you see that?

11 A. Yes.

12 Q. So this is for the May 23rd leak?

13 A. Yes.

14 Q. Okay. I was confused. I apologize.

15 A. Yeah, that sounds more familiar.

16 MR. GRAF: It says the May 23rd leak in  
17 paragraph ten.

18 BY MR. GRAF:

19 Q. Okay. So were you aware of another leak in  
20 the master bathroom that had occurred in 2015?

21 A. No, not that I can remember.

22 Q. Okay. So what would have been done to  
23 repair this leak?

24 A. Which one?

25 Q. May 23rd.

1 A. This one we're talking about here?

2 Q. Yeah.

3 A. Cut out the leaking fitting and replace  
4 with a like fitting.

5 Q. Do you recall if Rakeman Plumbing or CPI  
6 Restoration did any of the water remediation?

7 A. We dried out -- I know we put blowers  
8 there.

9 Q. So can you tell by any of the documentation  
10 that we've looked at thus far as to whether or not  
11 any type of mold testing was conducted as a result  
12 of the May 2017 leak?

13 A. If this is the one that -- like I said, I  
14 can't remember exactly when I was there. But I know  
15 one of the times I was there we had an air test done  
16 just to make sure the area was --

17 Q. Who would have done the air test?

18 A. I couldn't remember the company.

19 Q. Did you guys use Infinity Environmental  
20 Services back then?

21 A. Yes, we've used them, yes.

22 MR. GRAF: Okay. Let's take a break so we  
23 can go over the November stuff real quick.

24 THE VIDEOGRAPHER: Off the record at 10:00.

25 (Thereupon, a break was taken.)

1 (Exhibit 4 E-Mail Chain marked.)

2 THE VIDEOGRAPHER: Back on the video record  
3 at 10:13.

4 BY MR. GRAF:

5 Q. You're aware you're still under oath,  
6 Mr. Gerber?

7 A. Yes, sir.

8 Q. Okay. We went off the record and I went  
9 and actually I pulled these, but needed a break  
10 anyway.

11 You've been handed what's been marked as  
12 Exhibit 4 for purposes of is this deposition.

13 Do you recognize this document?

14 A. No.

15 Q. Okay. The first two pages PLT 54 and 55  
16 appear to be on e-mail chain between Nicky Whitfield  
17 and Aaron Hawley, and it's discussing some mold  
18 testing and/or some work that has to be completed  
19 during or about November of 2017.

20 A. Okay.

21 Q. Then if you look at PLT 56, there's a  
22 November 16, 2017, letter from Rakeman Plumbing  
23 Aaron Hawley to Dr. Swanson.

24 Do you see that?

25 A. Yes.

1 Q. Did you have anything to do with the  
2 preparation of that letter?

3 A. I don't remember. I don't think so. I  
4 don't remember to be honest.

5 Q. Then let's keep going. Let's look at PLT  
6 57. That appears to be a work order, and it's going  
7 to be for work at the 42 Meadow Hawk, the Swanson  
8 residence and it's going to be billed to Uponor.

9 Do you see that?

10 A. Yes.

11 Q. Okay. And this is work that's scheduled to  
12 occur on January 5, 2018.

13 Do you see that?

14 A. Yes.

15 Q. So then at the bottom there's description  
16 of what had happened.

17 Do you see that?

18 A. Yes.

19 Q. Who would have typed in that information?

20 A. It says Allison here.

21 Q. Who is Allison?

22 A. She was a secretary in our office or admin  
23 in our office.

24 Q. Okay. There is some identical language  
25 that is in the handwritten invoice form on PLT -- or

1     excuse me, 58.

2             Do you see that?

3     A.     Yes.

4     Q.     Do you know whose handwriting that is?

5     A.     Mine.

6     Q.     Did you fill this document out?

7     A.     Yes.

8     Q.     Okay. So this -- this is what I'm trying  
9     to clarify, Mr. Gerber. So before we go over what's  
10    handwritten in here, turn the page to the next  
11    invoice.

12    A.     Um-hmm.

13    Q.     And it appears to be work that was -- or an  
14    invoice that's dated 1/26/2017 on page 59?

15    A.     Yes.

16    Q.     Is that your handwriting also?

17    A.     No.

18    Q.     Whose handwriting is that?

19    A.     I don't know. It says Mic and Hunter on  
20    the bottom of the page at the tech signature.

21    Q.     Were Mic and Hunter people that worked for  
22    Rakeman Plumbing during or about December of 2017?

23    A.     Yes.

24    Q.     So keep turning and we'll come back to  
25    yours.

1           On 60 there appears to be more of a, I  
2   don't know.

3           What is that document?

4           A.   Looks like our old computer system's call  
5   slip I think.

6           Q.   Okay. That appears to be for 1/26/2017 at  
7   the top left is where I'm seeing that?

8           A.   Yes.

9           Q.   Okay. Then what was this request about?

10           MR. GALLIHER: Foundation, speculation.

11           THE WITNESS: I don't know.

12   BY MR. GRAF:

13           Q.   So at the top left it says request.

14           Do you see that?

15           A.   It's kind of cut off, yeah. It says  
16   something. I don't know. I don't know if it says  
17   Mic or what. Mine's cut off.

18           It says or junior turn off water heater and  
19   check --

20           Q.   It says turn on water heater?

21           A.   Oh, okay. Turn on water heater and check  
22   water heater. No hot water. It was turned off. Do  
23   whatever is needed to get going.

24           Q.   Okay. And there's another handwritten  
25   invoice on 61 that's dated November 12, 2017.

1 Do you see that?

2 A. Yes.

3 Q. What -- do you know who filled this one  
4 out?

5 A. It says Randy.

6 Q. Randy Waller?

7 A. Walker.

8 Q. Walker?

9 Okay. And we'll go over the specifics  
10 there.

11 And then the next one is another one dated  
12 November 17th and it's another one of those  
13 electronic forms.

14 A. Um-hmm.

15 Q. It says, Pressure test and piping. I think  
16 that has to do with the previous invoice.

17 So then on 63, there's a handwritten  
18 invoice for May 23, 2017?

19 A. Yes.

20 Q. And this -- it says, Technician signature.  
21 It says Rocky.

22 Is that you?

23 A. Yes.

24 Q. All right. Did you prepare this document?

25 A. Looks like it, yes.

1 Q. Okay. Then the next page on page PLT 64.

2 Do you see that?

3 A. Yes.

4 Q. It's dated April 5, 2017.

5 Do you see that?

6 A. Yes.

7 Q. So do you have an understanding as to why  
8 this is dated April 5, 2017?

9 A. No.

10 Q. As opposed to May 23rd?

11 A. No. Don't know.

12 Q. It says, Leak in master bedroom; right?

13 A. Yes, it does.

14 Q. So were there two separate leaks on  
15 April 5, 2017, and May 23, 2017?

16 A. I don't know.

17 Q. Or is it possible that the leak occurred  
18 between April 5, 2017, and May 23rd, 2017?

19 A. I don't know.

20 Q. So if we look at that handwritten invoice  
21 on page 63 --

22 A. Yes.

23 Q. -- this appears to be the same as what we  
24 reviewed in the affidavit and in Exhibit 1, correct,  
25 on the invoice, the --

1 A. Reads the same.

2 Q. Okay. So was that the normal course for  
3 Rakeman Plumbing?

4 You would prepare a handwritten invoice  
5 like this; then they would submit it and create an  
6 invoice that would just retype what your notes said?

7 A. I believe so.

8 Q. Okay. So walk me through on this invoice  
9 63, what you did.

10 Actually, before you do that, does this  
11 document help to refresh your recollection as to  
12 whether or not you were the person that did this  
13 work?

14 A. Oh, I know I didn't do the work. That's  
15 not a question. The timing and that's the question.  
16 I didn't physically do any work there.

17 Q. So can you tell by looking at this document  
18 who did do the work?

19 A. No.

20 Q. Okay. So talk to me about what this  
21 invoice says as to the work that was done?

22 A. I can pretty much read it to you, but I  
23 couldn't tell you what, you know -- it just says,  
24 Called out for leak in the master bedroom closet at  
25 42 Meadow Hawk. Found three-quarter Uponor tear

1 leaking on the hot side of the plumbing system. Cut  
2 out leaking fitting and replace with new fitting and  
3 restored water.

4 Looks like it says, No further leaks now or  
5 no further leaks period. Rakeman had to remove toe  
6 kicks on built-in cabinets in closet. Cut out wet  
7 drywall, carpet pad, and place equipment to dry out  
8 closet.

9 After everything is dry, Rakeman repaired  
10 all drywall to match existing texture and color and  
11 repaired all damage built-in closet, then reset all  
12 carpet.

13 Q. So talk to me about the wet drywall that  
14 was cut out. That was thrown away?

15 A. Yeah.

16 Q. It wouldn't have been re-installed; right?

17 A. No.

18 Q. The carpet in this area, was it removed  
19 also?

20 MR. GALLIHER: Foundation, speculation.

21 THE WITNESS: What does it say?

22 BY MR. GRAF:

23 Q. It says, Cut out wet drywall, carpet pad,  
24 and place equipment --

25 A. It says about pad. Doesn't say anything

1 about carpet. So I don't remember.

2 Q. And then the last line of that invoice  
3 says, Then reset all carpet.

4 Do you see that?

5 A. Yes.

6 Q. So now is Rakeman doing that or is CPI  
7 Restoration doing that?

8 A. CPI.

9 Q. And then it also says -- the second to last  
10 sentence says, And repaired all damaged built-in  
11 closets.

12 Do you see that?

13 A. Yes.

14 Q. Do you know what was repaired?

15 A. No. I believe if I'm not mistaken that was  
16 done by the original cabinet contractor. I think.  
17 Well, no, no. I don't know when it would have been  
18 done right now. I couldn't tell you.

19 Q. Do you know if the cabinets themselves were  
20 damaged?

21 A. I don't.

22 Q. Okay. All right. Let's go back to your  
23 other invoice that you handwrote, which is on 58.  
24 So this one is dated January 5, 2018.

25 Do you see that?

1 A. Yes.

2 Q. Did you go back out there on January 5,  
3 2018?

4 A. I don't know. I don't remember. That  
5 could have been when I wrote this invoice. I don't  
6 know.

7 Q. Okay. Is there a way that you can tell?

8 A. No.

9 Q. So tell me what this invoice describes.

10 A. It's describing a leak in the master  
11 bathroom closet, that arrived to the house, carpet  
12 and drywall had water damage on the opposite wall on  
13 the closet. Tech found --

14 Q. So let's stop there. That's a little  
15 different than the previous invoice.

16 It just had described that there was a  
17 failure quote/unquote on the hot side. It didn't  
18 describe a split in the line or anything; correct?

19 A. Correct.

20 Q. So that's a little bit different  
21 information?

22 A. Yes.

23 Q. Okay. Go ahead.

24 A. Let's see. The water heaters are located  
25 behind the built-in closet for master closet and had

1 to be removed to make repairs due to insulation of  
2 small area -- or enclosed small area.

3 After waterline was repaired, all water  
4 damaged drywall cabinets and carpet was removed and  
5 water was extracted and machines were placed to dry  
6 area out.

7 Q. Let me stop you there.

8 So does that mean that the carpet was  
9 thrown out?

10 A. I don't know.

11 MR. GALLIHER: Foundation, speculation.

12 BY MR. GRAF:

13 Q. Can you tell by reading that what was  
14 damaged as to the cabinets?

15 A. No.

16 Q. And in terms of the water damaged drywall  
17 would that have been removed and replaced?

18 A. Yeah. Wet drywall would have been removed  
19 and new drywall installed.

20 Q. Okay. Keep reading.

21 A. All dry equipment was in place for six days  
22 to dry area out and site of containment master  
23 closet, master bath. After area was dry, all  
24 drywall that was damaged by water was repaired and  
25 the original company that built master closet

1 cabinets had to repair rebuild cabinets to match  
2 existing.

3 Q. Let me stop you there.

4 So does that tell you that the cabinets had  
5 to be removed and replaced?

6 MR. GALLIHER: Same objection.

7 BY MR. GRAF:

8 Q. Or at least of portion of them?

9 A. That says that they had to be repaired or  
10 rebuilt. I couldn't remember what was wrong with  
11 them though.

12 Q. Okay. Do you recall whether or not they  
13 were constructed of a press-board type cabinet  
14 material?

15 A. I don't remember. I couldn't remember what  
16 color they were. I know that there was -- I  
17 remember cabinets. I know the toe kicks had to be  
18 had removed, but I don't remember much more than  
19 that.

20 Q. You would agree with me though that the  
21 cabinets are constructed of that white melamine type  
22 of construction, if it gets wet, it usually swells  
23 and will change its configuration to a certain  
24 extent?

25 MR. GALLIHER: Speculation, foundation.

1 THE WITNESS: Depending on what the water  
2 could hit.

3 BY MR. GRAF:

4 Q. If it gets to the end grain where the  
5 pressboard is actually in, it will change; right?

6 A. Well, if the water hits that toe kick, it's  
7 not going to affect that cabinet if it's a separate  
8 piece of wood.

9 Q. Okay. You're referring to --

10 A. Pointing to the bottom of your cabinets  
11 here in your office.

12 Q. Okay. Why do you say that?

13 A. If it's a separate piece of wood, that  
14 water's not going to -- typically the water is not  
15 going to transfer.

16 Q. You'd agree with me though that in this  
17 instance, at least according to your depiction, this  
18 is from the hot water heater that's inside the wall  
19 cavity that is behind the cabinets; correct?

20 A. Correct.

21 Q. Okay. So did you observe as to how high up  
22 on the wall the actual water heaters were?

23 A. If I remember right, the water heaters  
24 are -- the bottom of the heaters may be three to  
25 four feet off the floor level. And I believe the

1 leak was down maybe within -- because they were  
2 underneath them, I'd say it would be a foot off of  
3 ground level maybe.

4 Q. Okay. And you'd agree with me that a toe  
5 kick is only going to be three or four inches?

6 A. Yes.

7 Q. Okay. So if it's anywhere six inches or  
8 above, then there's a potential that it goes into  
9 the back of the cabinets; correct?

10 MR. GALLIHER: Speculation, foundation.

11 THE WITNESS: I couldn't tell you where the  
12 water went, but typically water goes down. So it  
13 would go to the floor first, get the floor wet.  
14 Hence why the carpet I believe was wet.

15 So I couldn't tell you that the cabinets  
16 themselves were damaged. I do know that the toe  
17 kicks I believe would have had to been removed due  
18 to carpet being, wet but I couldn't remember what  
19 was damaged on the cabinet, no, sir.

20 BY MR. GRAF:

21 Q. Okay. So keep reading. All drywall.

22 A. All drywall was done to match Grade 5  
23 smooth finish wall texture and color.

24 Q. So let me stop you there.

25 What's a Grade 5 smooth finish wall?

1           A.     Just a smooth to touch finish.  It's  
2     like -- this is a -- looks like knockdown texture on  
3     the drywall in this room.

4                 Smooth finish is what it says; it's just a  
5     smooth finish.  No feel to it.  No texture to it.

6           **Q.     So the grades, so Grade 5 that's a high-end**  
7     **residential?**

8           A.     Well, I wouldn't say a high-end residential  
9     home.  It's just a higher smooth finish.  You can  
10    put that finish in any home.  You can put in a motor  
11    home if you wanted to.  It's just a smooth finish.

12          **Q.     And what we have here on these walls is**  
13    **more of an orange peel --**

14          A.     Yeah.  Orange peel, knockdown style  
15    texture, yes.

16          **Q.     All right.  Go ahead.**

17          A.     All new carpet and pad had to be installed  
18    in master closet after all repairs were made.

19          **Q.     Okay.  So if we go back to the affidavit of**  
20    **Aaron Hawley, it only talks about the May 23, 2017;**  
21    **correct?**

22          A.     Let's see.  It says here in Section 6 on  
23    that -- that's the only date that I see on this  
24    paper.

25          **Q.     Okay.  So let's go back to Exhibit 4, which**

1 is the beginning of that in the e-mails. So these  
2 are e-mails between Nicole Whitfield and Aaron  
3 Hawley.

4 So it starts off on the second page by  
5 saying, This is a letter I sent to Mr. Swanson this  
6 morning. No timeframe has been given as I don't  
7 know the results of the air spore test and I do not  
8 run the closet organizer company and can't speak for  
9 them.

10 Do you see that?

11 A. Yes.

12 MR. GRAF: So let's go ahead and mark this  
13 as next.

14 (Exhibit 5 November 24, 2017, Report - Infinity  
15 Environmental Services marked.)

16 BY MR. GRAF:

17 Q. Mr. Gerber, you've been handed what's been  
18 marked as Exhibit 5 for purposes of this deposition.  
19 It purports to be an November 24, 2017, report  
20 prepared by Infinity Environmental Services.

21 Are you aware as to who Infinity  
22 Environmental Services is?

23 A. They're an environmental air testing  
24 company.

25 Q. They're the industrial hygienist that

1 performed the mold and spore tests at the various  
2 locations where CPI does water remediation?

3 A. Okay.

4 Q. No. I'm asking you.

5 A. Yes. That's who we've used on this one  
6 then yes.

7 Q. So at the top it says, Subject fungal  
8 indoor air quality assessment report.

9 Do you see that?

10 A. Yes.

11 Q. Have you seen these types of reports  
12 before?

13 A. Possibly.

14 Q. Okay. And then in the first paragraph it  
15 says, To whom it may concern. In accordance with  
16 your request and authorization for services -- and  
17 this is addressed to whom it may concern at Rakeman  
18 Plumbing.

19 Do you see that?

20 A. Yes.

21 Q. All right. For services Infinity  
22 Environmental Services, LLC, Infinity of Las Vegas,  
23 Nevada provided the subject services on November 17,  
24 2017.

25 Do you see that?

1 A. Yes.

2 Q. In your capacity as a supervisor for  
3 Rakeman Plumbing, would you have been present when  
4 they conducted their services on November 17, 2017?

5 A. No. For this company, no.

6 Q. Who would have been responsible at either  
7 Rakeman or CPI Restoration to call the Infinity  
8 Environmental to come out and do their tests?

9 A. Possibly one of the girls in the office.

10 Q. Who would tell the girls in the office to  
11 call them to say, Hey, we're ready for them to come  
12 out and do their testing?

13 A. Me or one of the other supervisors or  
14 something like that.

15 Q. When would you do that? At what point in  
16 the repair or remediation process?

17 A. Would you call to have them tested?

18 Q. Yes.

19 A. When you felt the time was right. It may  
20 be if containment was up or -- no. To have an air  
21 test before -- if you see something, it's -- every  
22 case is different when you would need an air test or  
23 not.

24 So on this one, it may have been because of  
25 location of the water leak and not being able to see

1 behind the wall.

2 Q. Okay. And I think it goes on to say, The  
3 visual, airborne, and surface fungal assessment,  
4 FIAQA -- was requested to assess for possible fungal  
5 levels in the master bathroom and master closet of  
6 the subject residence.

7 Infinity was also asked to provide a fungal  
8 remediation operating procedure for the remediation  
9 activities.

10 Do you see that?

11 A. Yes.

12 Q. What is that that's being described in the  
13 second part, the fungal remediation operating  
14 procedures?

15 A. Sound like a repair, course for repair.

16 Q. All right. So it appears that the scope  
17 and services is they would do a fungal -- they did a  
18 fungal assessment of the master bathroom and closet.

19 Do you see that at the bottom on page 1?

20 A. Yes.

21 Q. Then they did air sampling and they did  
22 surface sampling?

23 A. Um-hmm, yes.

24 Q. Okay. So then on page 2, the results of  
25 the airborne samples, it says, During our visual

1 inspection of the master closet, we found suspect  
2 visible fungi on lower wall under the closet cabinet  
3 that is adjacent to the master bathroom water  
4 heater.

5 Do you see that?

6 A. Yes.

7 Q. Okay. And then that next paragraph talks  
8 about the results.

9 Are you familiar with -- do you know how to  
10 read the results regarding this --

11 (Thereupon, an off-the-record discussion was had due  
12 to speaker overlap.)

13 BY MR. GRAF:

14 Q. Okay. So do you know what that lower  
15 paragraph says?

16 MR. GALLIHER: Object to the form.

17 THE WITNESS: I can read it, but I wouldn't  
18 know what any of these -- I'm not a hygienist. I  
19 wouldn't know what any of this mean.

20 BY MR. GRAF:

21 Q. All right. So me it says, The results of  
22 the Air-O-Cell cassette sample indicated that the  
23 total fungal genera detected in the indoor samples  
24 were higher than the concurrent outdoor genera  
25 levels with elevated levels of -- and then it goes

1 forward as to just various forms of mold and fungus;  
2 right?

3 A. That's what it says, yes. I don't know  
4 what those words -- if those words are for mold and  
5 fungi. I couldn't tell you.

6 Q. Page 3 it talks about the surface or swab  
7 tests?

8 A. Yes.

9 Q. Okay. And in the Results and Discussion  
10 Section, it says, The surface swab sampling results  
11 of the discolored area previously described are  
12 disclosed in the attached forensic report titled  
13 Non-Viable Bulk Fungal Analysis.

14 Do you see that?

15 A. Yes.

16 Q. And then in the next paragraph the second  
17 sentence says, Infinity considers the fungal spores  
18 detected in the sample to be indicative of active  
19 fungal growth.

20 Do you see that?

21 A. Where do you see that at?

22 Q. The last sentence in the paragraph that  
23 says No. 1 under Results and Discussion on page 3.

24 A. Okay. Yes, I see that.

25 Q. So then on page 4 there's a series of

1 recommendations?

2 A. Yes.

3 Q. So it says in the master bathroom that it  
4 should be placed under a negative containment system  
5 to include the closet.

6 Do you know if that was done?

7 A. I would say -- I can't remember, but if  
8 that's what was requested, then I would say that's  
9 what was done. But I can't remember.

10 Q. Okay. Who would have that information?

11 A. I don't know honestly.

12 Q. Would CPI have that information?

13 A. Possibly. I don't -- possibly.

14 Q. Would CPI have installed the negative  
15 containment system?

16 A. Yes.

17 Q. The next recommendation says the cabinets  
18 adjacent to the master bathroom water heater should  
19 be removed.

20 Do you see that?

21 A. Yes.

22 Q. Do you take that to mean that they're going  
23 to be removed and re-installed?

24 A. That's what I would take it as. Because it  
25 says that they need to be removed for the

1 remediation of the walls.

2 Q. Okay. Then it says No. 3, Due to the spore  
3 level detected of penicillium aspergillus in the air  
4 sample collected from the master bathroom and not  
5 detected in the air sample in the swab samples  
6 collected in the closet, Infinity recommends that  
7 after the bathroom has been placed under the  
8 containment center system, excuse me, an inspection  
9 of the wall adjacent to the closet and water heater  
10 should be performed.

11 Do you see that?

12 A. Yes.

13 Q. Do you know if the wall adjacent to the  
14 water heater in the bathroom was opened up to be  
15 able to visualize whether or not there was any other  
16 indications of mold?

17 A. I don't remember now.

18 Q. Who would have that information?

19 A. I'm not sure.

20 Q. So this report asks that the reader follow  
21 the fungal remediation operating procedures that are  
22 contained on the next couple of pages, one through  
23 five?

24 Do you see that?

25 A. Yes.

1           Q.    Have you seen that type of remediation  
2   operating procedures report before?

3           A.    Yes.

4           Q.    Is this a standard report?

5           A.    Yes.

6           Q.    Okay.

7           THE WITNESS:  Sorry.  Can you give me one  
8   second?  I'm sorry.

9           MR. GRAF:  Sure.

10          We can go off the record.

11          THE VIDEOGRAPHER:  Off the record at 10:42.

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

13          THE VIDEOGRAPHER:  Back on the video record  
14   at 10:43.

15   BY MR. GRAF:

16          Q.    So then that report for the remediation  
17   operating procedures goes on to talk about beginning  
18   on page 3 the remediation activities that should  
19   occur in the closet in the bathroom?

20          A.    Um-hmm.

21          Q.    And then No. 3 on step six says, Removal of  
22   the mold and water damaged walls should occur to a  
23   point at least one foot above and beyond the visible  
24   contamination.

25                Do you see that?

1 A. Yes.

2 Q. If you look at -- do you know if that  
3 occurred actually?

4 A. I don't remember.

5 Q. Okay. Who would have that information?

6 A. I don't know.

7 Q. Somebody at CPI have that information?

8 A. Possibly.

9 Q. Okay. If you look at the last two pages of  
10 this exhibit, there's some -- a series of four  
11 photographs.

12 A. Yes.

13 Q. Does that area look familiar to you?

14 A. No.

15 Q. Okay. Did you look underneath the cabinets  
16 in the closet when you went out to the house in or  
17 about November 2017?

18 A. I don't remember if I did or not.

19 Q. But these photographs and the descriptions  
20 next to them -- so the first one at the top of the  
21 second to last page says, The surface swab sample  
22 was collected from the lower wall under the closet  
23 cabinet.

24 Do you see that?

25 A. Yes.

1 Q. And then the picture below the description  
2 is the water and fungal damaged lower wall located  
3 under the closet cabinet adjacent to the water  
4 heater in the bathroom.

5 Do you see that?

6 A. Yes.

7 Q. So when there's water damage like this, is  
8 there normally drywall that would deteriorate or  
9 come away and show the lower framing member as it is  
10 in that -- those two pictures?

11 MR. GALLIHER: Foundation, speculation.

12 BY MR. GRAF:

13 Q. Or is this depicting a condition that that  
14 drywall has been removed to visualize those framing  
15 members?

16 A. I don't know that would -- no. I don't  
17 know why that's removed like that.

18 Q. Okay. On page 3 of this report, step No. 6  
19 in paragraph six where it says the closet, it says,  
20 The carpeting should be removed and discarded. The  
21 clothing should be laundered by a company  
22 specializing in the cleaning of fungal contaminated  
23 textiles.

24 Do you see that?

25 A. You said on page 3?

1 Q. So page 3 of the fungal remediation  
2 operating procedures.

3 A. Okay.

4 Q. Where it says the carpeting should be  
5 removed and discarded, would that be for the entire  
6 closet?

7 MR. GALLIHER: Speculation.

8 THE WITNESS: I don't know.

9 BY MR. GRAF:

10 Q. Who would know?

11 A. Probably the man who wrote this.

12 Q. So I just need to make sure I understand  
13 your involvement in this process.

14 So would you normally -- as the supervisor  
15 for CPI and Rakeman Plumbing from November and 2017  
16 to January of 2018, would you get these reports?

17 A. Yes.

18 Q. And would you normally read the reports?

19 A. Yes.

20 Q. Okay. So if the report said that you  
21 needed to remove and discard the carpet, would you  
22 remove and discard all of the carpet in the closet  
23 or just in the affected area?

24 A. I would do what it says. And if it was a  
25 small -- if it's a small closet, then yes, you would

1 just remove that small piece of carpet. If it was a  
2 room, it all depends if it could be matched. Every  
3 case, like I said, is different.

4 Q. Okay. You'd agree with me though this  
5 November 24, 2017, report states that there is  
6 active mold growth in this closet?

7 A. That's what it says.

8 Q. Okay. In that type of condition, would CPI  
9 perform a follow-up test to make sure that the mold  
10 had been remediated?

11 A. We would hire an environmentalist to make  
12 sure it was clear.

13 Q. So if we look at --

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

16 BY MR. GRAF:

17 Q. Are you all right?

18 A. Yeah. My contact moved. Sorry.

19 Q. You're good.

20 A. Okay.

21 Q. What number are we on?

22 A. Six.

23 Q. You've been handed what's been marked as  
24 Exhibit 6 for purposes your deposition here today.  
25 It purports to be --

1 A. I'm going to have to take a break.

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

3 THE VIDEOGRAPHER: Off the record at 10:49.

4 (Thereupon, a break was taken.)

5 THE VIDEOGRAPHER: Back on the video record  
6 at 10:51.

7 BY MR. GRAF:

8 Q. So you've been handed what's been marked as  
9 Exhibit 6 for purposes of this deposition.

10 It purports to be a December 7, 2017,  
11 Infinity Environmental Services water -- excuse me,  
12 visible and airborne fungal post recommendation  
13 verification.

14 Do you see that?

15 A. Yes.

16 Q. And this is the report that would have been  
17 prepared to show that the remediation had been  
18 completed and there was no further mold growth?

19 A. Yes.

20 Q. Okay. This report indicates that there at  
21 least in the Air-O-Cell test on page 2 indicated  
22 that there was zero spores detected; right?

23 A. That's what it says here.

24 Q. So here's my question. This is for the  
25 work that was done in November at the 42 Meadow

1 Hawk.

2 As to the work that was conducted in May of  
3 2017, the other invoices that we looked at the other  
4 time that you were out there, was there a mold test  
5 that was performed?

6 A. I don't believe so. I don't know. I  
7 couldn't tell you if there was or not, but if  
8 there's not one here, I would say probably not.

9 Q. Okay. Would there be a reason why there  
10 wouldn't have been?

11 MR. GALLIHER: Speculation, foundation.

12 THE WITNESS: Don't know.

13 BY MR. GRAF:

14 Q. So the affidavit of Aaron Hawley says that  
15 all work was completed and that all repairs were  
16 made; correct?

17 A. I believe so, yes.

18 MR. GALLIHER: What paragraph?

19 MR. GRAF: So if we're looking at Exhibit 3  
20 for purposes of this deposition --

21 THE WITNESS: Yes. On 2122 everything is  
22 dry --

23 BY MR. GRAF:

24 Q. And then in paragraph No. 10 beginning at  
25 line 24, it says, The May 23, 2017, leak was fully

1 and completely repaired and we did not expect any  
2 further problems.

3 Do you see that?

4 A. Yes.

5 Q. Okay. But there was no mold remediation  
6 report like what we've looked at here as Exhibit 6;  
7 correct?

8 MR. GALLIHER: Foundation, speculation.

9 THE WITNESS: I'm not sure, no.

10 BY MR. GRAF:

11 Q. The other thing is, Mr. Gerber, is this  
12 affidavit says that you were there and saw all of  
13 the work that was completed.

14 I've asked you a couple of questions during  
15 this deposition about whether or not cabinets were  
16 removed or replaced or carpets were removed or  
17 replaced and you didn't know.

18 Is that a fair summary of your testimony?

19 A. In the beginning you said if I didn't  
20 remember, don't guess. So I'm going to -- if I  
21 don't remember, I'm not going to say yes or no. I'm  
22 going to say I don't remember because honestly I  
23 don't remember.

24 Q. Okay. And so in this affidavit -- at line  
25 20 in paragraph nine it says, Rakeman had to remove

1 toe kicks on built-in cabinets and closet, cut out  
2 drywall, carpet pad, and place equipment to dry out  
3 closet.

4 Do you see that?

5 A. Yes, I do.

6 Q. Do you know that all that work got done?

7 A. I would say it did. If it says it here,  
8 then I would say it did.

9 But I can't confirm on the timing. I can't  
10 remember exactly when I was there. I couldn't tell  
11 you if it was two to three years ago. I don't  
12 exactly remember when I was there, like I told you.

13 Q. And can you state to any degree of  
14 certainty based on your personal knowledge here that  
15 one foot from every piece of wet drywall was removed  
16 and replaced?

17 A. I would say that we done it right. So if  
18 anything was wet, it was removed.

19 Q. Okay.

20 A. Just by I know our protocol. But I  
21 couldn't tell you this square foot of drywall off of  
22 memory was removed, no.

23 Q. Okay. So this is paragraph 11. It says, I  
24 invoiced Uponor, the manufacturer of the repaired  
25 pipe, because the pipes at the residence were under

1 a 25-year Uponor warranty.

2 That was your understanding also; correct?

3 A. Yeah.

4 Q. Okay. So now we've talked about during  
5 this deposition at least two instances of a warranty  
6 repair, one that occurred in May of 2017, and one  
7 that occurred in November of 2017.

8 Correct?

9 A. I believe so, yes.

10 Q. So when you have two instances of warranty  
11 repairs at a house with an Uponor plumbing, would  
12 you as a plumber think that you needed to go and  
13 inspect the rest of the fittings that were installed  
14 in that house?

15 MR. GALLIHER: Speculation, foundation,  
16 incomplete hypothetical.

17 THE WITNESS: I don't think so.

18 BY MR. GRAF:

19 Q. Why not?

20 A. I do these leaks all day long. I do them  
21 on copper pipe, black iron pipe, galvanized pipe,  
22 Wirsbo pipe, PEX pipe. You see it all day long. So  
23 for me, no, it's just a -- nothing that I would say  
24 need to be inspected.

25 Q. What if there were three more leaks that

1 had occurred in this piping prior to the May of  
2 2017 --

3 MR. GALLIHER: Same objections.

4 BY MR. GRAF:

5 Q. So now you've got a total of five different  
6 leaks that occurred between 2015 and November of  
7 2017.

8 Would that make you as a plumber suspect as  
9 to whether or not further inspection should be  
10 conducted at this house?

11 MR. GALLIHER: Same objections.

12 THE WITNESS: I think it's more of a --  
13 what those leaks were. I'd have to have every  
14 single thing in front of me and know what every  
15 circumstance was for me to say this needs to be  
16 done.

17 So it would have to almost be the exact --  
18 I couldn't tell you. But I wouldn't say does the  
19 house have five leaks, it should be inspected.  
20 Because you could have five completely different  
21 leaks. You could have --

22 Just because a home has a leak doesn't mean  
23 it's necessarily for one specific reasons, if that  
24 makes sense to you.

25 So that's where I would stand with is no, I

1 wouldn't just jump and say this has to be done.

2 BY MR. GRAF:

3 Q. So if there was a leak at the recirculating  
4 pump at the master closet in 2015 and then a  
5 subsequent leak at the recirculating pump in the  
6 master closet in 2017, would those two instances  
7 give you cause to maybe think about doing further  
8 inspection as to the plumbing system?

9 MR. GALLIHER: Same objections.

10 THE WITNESS: No. Because you first asked  
11 me if I would check the pipe and then you just  
12 called the recirc pump. So those are two completely  
13 situations.

14 You've got different instances. You've got  
15 a recirculating pump. You've got piping. So I  
16 wouldn't -- you know, if you had a leaking toilet,  
17 do you check the kitchen sink? No.

18 So you say you got a piping leak and then  
19 you got a recirc pump leak so I wouldn't say no,  
20 this needs to be --

21 BY MR. GRAF:

22 Q. Okay. So what if there is a T fitting  
23 underneath the sink in the master closet and then  
24 another fitting that is being described in the two  
25 Uponor warranty submittals that we've looked at

1 today in May and in November of 2017.

2 Does that give you cause for concern that  
3 it occurs at the fitting or the joint?

4 MR. GALLIHER: Same objections.

5 THE WITNESS: No.

6 BY MR. GRAF:

7 Q. Why?

8 A. Because it's not for me to deem what's  
9 wrong with it, you know, as long as it's tight and  
10 everything. That's why we submit to the  
11 manufacturer and they give us protocol of what  
12 should be done.

13 Q. So in December of 2017, if we look at  
14 Exhibit 1 --

15 A. Okay.

16 Q. -- that e-mail?

17 MR. GALLIHER: Which page are you on?

18 MR. GRAF: The first page.

19 BY MR. GRAF:

20 Q. Hi, Nicole. I wanted to thank you for  
21 taking the time to speak with me today in regards to  
22 the Uponor products currently installed in your  
23 home. As discussed, Uponor has identified a limited  
24 manufacturing related issue with the tubing samples  
25 returned to our office for evaluation and are

1 recommending replacement of all red and blue AquaPEX  
2 tubing currently installed in your home with new  
3 Uponor AquaPEX.

4 Do you see that?

5 A. Yes.

6 Q. So did you have an understanding in or  
7 about December of 2017 that there were manufacturing  
8 defects with the red and blue AquaPEX Uponor  
9 plumbing system?

10 A. No.

11 Q. Okay.

12 A. This doesn't even say a defect. Just says  
13 some sort of limited manufacturing issue. But I  
14 don't -- I don't know of any defects on Uponor now.

15 Q. Okay. But at least it appears from this  
16 e-mail that it is systemwide?

17 A. Well, this came from the manufacturer. So  
18 I can't speak on their behalf. I can only read it  
19 verbatim like you can. So I couldn't tell you.

20 Q. Well, but this is saying that they're  
21 replacing the entire plumbing system for the whole  
22 house; right?

23 A. Per -- for their means. I couldn't tell  
24 you. Like I said, this is the -- so this is them  
25 stating what they want to do in the home. I

1 couldn't tell you why they want to do that.

2 Q. So they ended up spending about \$68,000 to  
3 re-plumb this house.

4 Do you think they would want to pay \$68,000  
5 to re-plumb the house if there wasn't some  
6 systemwide problem?

7 MR. GALLIHER: Speculation, foundation.

8 THE WITNESS: I couldn't answer that.

9 BY MR. GRAF:

10 Q. You're a plumber.

11 A. But I mean, circumstances, I couldn't tell  
12 you why.

13 Q. And I just want to make sure I'm clear here  
14 because it seems kind of simple to me, but -- and  
15 you're the plumber.

16 A. Yes.

17 Q. So it would a manufacturer like Uponor  
18 shell out \$68,000 to re-plumb a house if there  
19 wasn't a problem with all of the pipe in the house  
20 or all of the fittings in the house?

21 MR. GALLIHER: Same objections.

22 THE WITNESS: I don't know. How hard did  
23 the homeowner push on this? I couldn't tell you. I  
24 don't know why -- like I said, I don't know of a  
25 defect. Here they don't say defect. Here it says

1 they've identified a limited manufacturer related  
2 issue in the tubing sample.

3 So that's giving the answer there why, but  
4 I couldn't tell you.

5 BY MR. GRAF:

6 Q. Well, if we look at page 1051, and then  
7 that is -- have you ever seen something like this?

8 A. No.

9 Q. Okay. Then in the second item it says,  
10 Tubing split at fitting.

11 Do you see that?

12 A. Yes.

13 Q. And then it says, Review result  
14 manufacturing.

15 Do you see that?

16 A. Yes.

17 Q. And then it says, Tubing splitting at  
18 fitting. And then again it says, Manufacturing.

19 Right?

20 A. Um-hmm.

21 Q. Okay. And that's both at the blue and the  
22 white for the three-quarter-inch and the one-inch  
23 AquaPEX?

24 THE WITNESS: This one here says tubes  
25 split at fitting. It actually says red. That one

1 says blue.

2 BY MR. GRAF:

3 Q. Okay. Oh. So the white it says no  
4 failure.

5 So what is the red and the blue and the  
6 white?

7 A. The simple way for it? Plumbing for  
8 dummies?

9 Q. So red is hot? Blue is cold?

10 A. You're a plumber.

11 Q. White is both?

12 A. White is universal. I mean, they're all  
13 universal. You can put red on cold. You can put it  
14 where you want. It's all rated for the same  
15 temperature and pressure. It's plumbing for  
16 dummies.

17 Q. Okay. So back when Rakeman would do the  
18 original install on houses, they didn't care if it  
19 was a red for the hot and the blue for the cold or  
20 what?

21 A. Well, if you had red and blue, you would  
22 use red for the hot and blue for the cold.

23 But I'm just stating to you that it's not  
24 necessary that you have to use red on hot. You  
25 don't have to use blue on cold. But that is how --

1 that's -- like I told you, it makes it simple. So  
2 all your piping on a hot system would be red. All  
3 your blue piping would be cold.

4 But I know they don't make -- one of their  
5 sizes, the larger sizes, they don't make colored and  
6 it's usually in white. That's why that piping comes  
7 in white.

8 But I know they have at least half three  
9 quarter and one-inch of all three.

10 **Q. And this reportedly shows that there was**  
11 **failures at the red and blue piping; correct?**

12 (Thereupon, an off-the-record discussion was had due  
13 to speaker overlap.)

14 MR. GALLIHER: Speculation.

15 BY MR. GRAF:

16 **Q. What was the question?**

17 A. You said if there was failures on red and  
18 blue piping, I believe is what you asked.

19 Let me see here. Yes, I believe it's shown  
20 to be red has one, blue has one, white has a no  
21 failure. That one has a no failure. That one has  
22 no failure. So it's showing on here that there was  
23 a red and a blue with failure.

24 **Q. Okay. Now, it's my understanding that**  
25 **there were instructions to perform additional**

1 inspections of the visible fittings in the rest of  
2 the house.

3 Do you know who would have performed that  
4 type of inspection?

5 A. No.

6 Q. Do you know if that information occurred?

7 A. I don't.

8 Q. Okay. Just to confirm, you didn't perform  
9 the repairs that are indicated on the May 23rd,  
10 2017, invoice; correct?

11 A. I haven't made any repairs.

12 Q. And as you sit here today, you don't know  
13 who did?

14 A. No.

15 Q. Do you have any understanding as to why the  
16 leak occurred in May of 2017?

17 A. I don't. I don't.

18 Is it in here?

19 Q. Yeah.

20 A. No. I mean from Uponor. Is their cause in  
21 here?

22 Q. No.

23 A. Then I wouldn't know why the leak occurred,  
24 no.

25 Q. So we looked at -- did the one conversation

1    that you had with Dr. Swanson, did you have any  
2    discussion as to why the leak occurred?

3           A.    Not that I recall. I don't even recall our  
4    conversation or even if it was even long. I may  
5    have only met him in passing. But I know I haven't  
6    met him multiple or had long talks with him, not  
7    enough to remember, no.

8           Q.    Okay. And what about his assistant, the  
9    woman, do you recall any of the content of that  
10   conversation?

11          A.    I believe she's the one that showed us  
12   through the house to the bathroom.

13          Q.    Okay. Did you ever tell her why the leak  
14   occurred?

15          A.    Not that I can remember.

16          Q.    Has Rakeman had other instances of Uponor  
17   plumbing system failures at other new home  
18   construction that they've done?

19          A.    We've done leaks on all sorts of piping.  
20   We've done leaks on Uponor. We've done leaks on  
21   copper. That's what we do. We're a plumbing  
22   company.

23          Q.    No, I get that.

24                But like on houses that you've installed  
25   original construction, have there been other houses

1 where Uponor has recommended complete re-piping of  
2 the plumbing system?

3 A. Of houses that we've been on?

4 MR. GALLIHER: Foundation, speculation.

5 THE WITNESS: I don't remember. I don't  
6 know.

7 BY MR. GRAF:

8 Q. Who would have that information for  
9 Rakeman?

10 A. I couldn't tell you. Somebody -- I would  
11 imagine somebody at Rakeman if we had any.

12 Q. Okay. Did you ever talk to any of the  
13 Realtors for either Dr. Swanson or the Folinos as to  
14 your repairs at the 42 Meadow Hawk property?

15 A. I don't believe so.

16 Q. Just to confirm, you didn't assist in the  
17 preparation of the documentation for the submittal  
18 of the warranty claim at 42 Meadow Hawk?

19 A. I don't understand the question.

20 Q. The paperwork that would be sent to Uponor  
21 to get paid.

22 A. Well, to get paid, no. The handwritten  
23 invoice that's here in my name, that would have been  
24 my part of it, if that's what you want to say is  
25 part of the getting paid.

1           No, just I handle the field work and rely  
2   my wording to the office and they prepare it.

3           MR. GRAF: I don't have anything further?

4           MR. GALLIHER: I just have a few brief  
5   follow-ups.

6                               EXAMINATION

7   BY MR. GALLIHER:

8           Q. I want you to take a look at Exhibit 4,  
9   specifically PLT 0063.

10           This is your handwritten invoice, invoice  
11   No. 232809?

12           A. What's the page of that? I'm sorry.

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

14   BY MR. GALLIHER:

15           Q. You recall looking at this earlier when  
16   Mr. Graf was asking you questions?

17           A. Yes.

18           Q. It has a date on it 5/23/17?

19           A. Correct.

20           Q. That doesn't necessarily indicate that the  
21   work was completed or that the leak occurred on  
22   5/23/17, does it?

23           A. No.

24           Q. In fact, over here on the left side where  
25   the continuation of the narrative is, it says, After

1 everything is dry Rakeman repaired all drywall,  
2 existing texture and color and repaired all damage  
3 to built-in closets, then reset all carpet.

4 Correct?

5 A. Yes.

6 Q. Now, that's not something happens all on  
7 the same day that the leak occurs, is it?

8 A. No.

9 Q. If you take a look at Exhibit 1, this is  
10 the packet that Mr. Graf showed you where the claim  
11 was submitted to Uponor on that 5/23/2017 invoice.

12 A. Okay.

13 Q. Right?

14 A. Yes.

15 Q. Do you have an understanding that's what it  
16 is?

17 A. Yes.

18 Q. I want you to go up to the front. Look at  
19 the second page, which is marked PLT 001050.

20 A. Yes.

21 Q. And that actually indicates that the  
22 failure date for this invoice was actually on 16  
23 February 2017, doesn't it?

24 A. That's that it says, yes.

25 Q. All right. So as we sit here today, do you

1 have an independent recollection, do you remember  
2 from your own memory whether the -- on what date the  
3 leak that was documented in your invoice dated  
4 May 23, '17, what date did that leak actually occur?

5 A. I don't know.

6 Q. But based upon Exhibit 1, as you compare it  
7 with Exhibit 4, is it possible that this invoice,  
8 No. 232809, is documenting work to repair a leak  
9 that occurred on February 16, 2017?

10 A. It could, but I don't remember. But it  
11 could.

12 Q. I want to ask you a similar question about  
13 in Exhibit 4 again and page PLT 0058.

14 A. Yes.

15 Q. Now, that -- and for the record, this is  
16 invoice No. 237000; right?

17 A. Yes.

18 Q. That's dated January 5th, 2018; correct?

19 A. Yes.

20 Q. This isn't an invoice for a leak that  
21 occurred on January 5, 2018, is it?

22 MR. GRAF: Objection, documents speaks for  
23 itself.

24 BY MR. GALLIHER:

25 Q. You wrote this; right?

1 A. Yes, I did.

2 Q. Again, I'll direct your attention to the  
3 second column. It says, All dry out equipment was  
4 in place for six days.

5 A. Correct.

6 Q. All right. So if you wrote this on  
7 January 5, 2018, and you indicate that the equipment  
8 was in place for six days, that makes it impossible  
9 that this leak actually occurred on January 5th,  
10 2018, doesn't it?

11 A. That's what I would think.

12 Q. I'm sorry.

13 A. That's what it looks likes.

14 Q. So doesn't that -- well, let me just ask  
15 you, do you sometimes fill these invoices out?

16 A. As for sending to the manufacturer as a  
17 summary of what happened, yes.

18 Q. Do you sometimes do that after the fact?

19 A. Yes, it has to be done after the fact.

20 Q. Sometimes weeks after the fact?

21 A. Yes.

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

23 FURTHER EXAMINATION

24 BY MR. GRAF:

25 Q. So in regards to the failure occurring

1 February 2017 and the invoice dated May 23, 2017, is  
2 what you're testifying to is that that is the same  
3 leak?

4 A. I couldn't tell you what leak was what.  
5 Like I said, I don't know what dates. I don't even  
6 know what date this leak was on.

7 I could tell you I was reading it, but it  
8 doesn't state what date it was on.

9 Q. So is it possible -- Mr. Galliher asked you  
10 is it possible that the leak occurred in February  
11 and the documentation was filled out in May, is it  
12 also possible that there were two separate leaks,  
13 one in February and one in May?

14 MR. GALLIHER: Speculation, foundation.

15 THE WITNESS: Could be, but like I said, I  
16 don't remember.

17 FURTHER EXAMINATION

18 BY MR. GALLIHER:

19 Q. Have you seen any documentation of a leak  
20 occurring on February 16, 2017, other than the  
21 reference in Exhibit 1?

22 A. Not that I've seen here today, no.

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

24 FURTHER EXAMINATION

25 BY MR. GRAF:

1           Q.    Mr. Galliher directed you to the leak and  
2   the failure in Exhibit 1 that occurred on  
3   February 16, 2017; correct?

4                   MR. GALLIHER:  I'll object.  You actually  
5   mentioned it earlier in the deposition.

6                   THE WITNESS:  That's what it states here on  
7   their paperwork.

8   BY MR. GRAF:

9           Q.    And then you have looked at the invoicing  
10   regarding a leak -- at least an invoice that's dated  
11   May 23, 2017; correct?

12           A.    I believe we did.  I'd have to look back  
13   through this paperwork and find it.

14                   MR. GRAF:  Okay.  That's it.

15                   MR. GALLIHER:  Nothing further.

16                   THE VIDEOGRAPHER:  Off the video record at  
17   11:20.

18                                   - - - - -

19

20                                   (Proceedings concluded 11:20 a.m.)

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

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

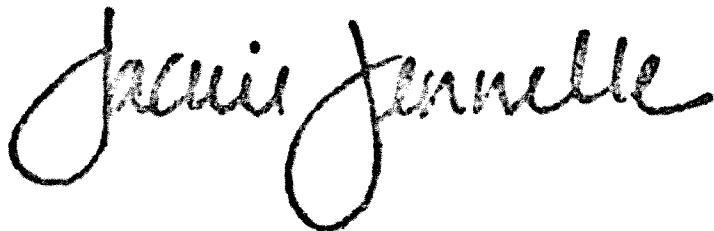
That I reported the deposition of WILLIAM GERBER, commencing on FRIDAY, JANUARY 31, 2020, at 9:00 a.m.

That prior to being deposed, the witness was Duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes.

That prior to the completion of the proceedings, reading and signing of the transcript was not requested by counsel, the witness or any party.

I further certify that I am not a relative or employee of counsel, of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 6th day of February, 2020.



JACKIE JENNELLE, RPR, CCR #809

## ERRATA SHEET

1

2

3

4 I declare under penalty of perjury that I have read the

5 foregoing \_\_\_\_\_ pages of my testimony, taken

6 on \_\_\_\_\_ (date) at

7 \_\_\_\_\_ (city), \_\_\_\_\_ (state),

8

9 and that the same is a true record of the testimony given

10 by me at the time and place herein

11 above set forth, with the following exceptions:

12

13 Page Line Should read: Reason for Change:

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

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ERRATA SHEET				
	Page	Line	Should read:	Reason for Change:
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2				
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