

IN THE SUPREME COURT, STATE OF NEVADA

<p>JACK GAAL, an individual; and JACK'S PLACE BAR AND GRILL LLC,</p> <p style="text-align: center;">Appellants,</p> <p>vs.</p> <p>LAS VEGAS 101 INC., A NEVADA CORPORATION DOING BUSINESS AS FIRST CHOICE BUSINESS BROKERS, LAS VEGAS 101,</p> <p style="text-align: center;">Respondents.</p>	<p>Supreme Court No.: 8133 Case No. A-18-776982-C Department XXVII</p> <p>Electronically Filed Feb 07 2022 10:26 a.m. Elizabeth A. Brown Clerk of Supreme Court</p>
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from the Eighth Judicial District Court, Clark County
The Honorable Nancy Alf, District Judge
D.C. Case No. A-18-776982-C

APPELLANT'S APPENDIX VOLUME 2

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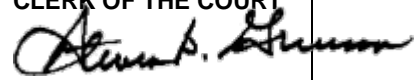
Attorneys for Appellants

IN THE SUPREME COURT, STATE OF NEVADA

<p>LAS VEGAS 101 INC., A NEVADA CORPORATION DOING BUSINESS AS FIRST CHOICE BUSINESS BROKERS, LAS VEGAS 101, Plaintiff,</p> <p>JACK GAAL, individually; JACK'S PLACE BAR AND GRILL LLC; DOES 1 through X; and ROE CORPORATIONS XI through XX, Defendant.</p>	<p>Case No.: A-18-776982-C Department: 27</p>
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A	Complaint	6/29/2018
B	Answer to Complaint	5/22/2019
C	Order Re-Setting Civil Bench Trial and Calendar Call	8/27/2020
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F	Notice of Entry of Order	6/21/2021
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J	Notice of Entry of Judgment	9/1/2021
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AC	Exhibit 25 - Letter from Johnson to Gaal dated 3/16/18	
AD	Email Re: Appraisal	
AE	Appraisal	



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 LAS VEGAS 101,
9 Plaintiff,

10 vs.

11 JACK'S PLACE BAR AND GRILL,
12 LLC; JACK GAAL,
13 Defendants.

7)
8) CASE#: A-18-776982-C
9) DEPT. XXVII
10)
11)
12)
13)

14 BEFORE THE HONORABLE NANCY ALLF
15 DISTRICT COURT JUDGE
16 TUESDAY, JUNE 1, 2021

17 RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 1

18 APPEARANCES:

19 For the Plaintiff:

ASSLY SAYYAR, ESQ.
MICHAEL ROCK ROCHELEAU, ESQ.

20 For the Defendants:

DAVID J. WINTERTON, ESQ.

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25 RECORDED BY: BRYNN WHITE, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, June 1, 2021

2
3 [Case called at 10:04 a.m.]

4 THE COURT: Please remain seated. Please be seated.

5 MS. SAYYAR: Thank you, Your Honor.

6 MR. ROCHELEAU: Thank you, Your Honor.

7 THE COURT: Calling the case of Las Vegas 101 Inc. v. Gaal
8 and Jack's Place Bar and Grill LLC. Let's take appearances, please,
9 starting first with the Plaintiff.

10 MS. SAYYAR: Good morning, Your Honor. Assly Sayyar on
11 behalf of the Plaintiff.

12 THE COURT: Thank you.

13 MR. ROCHELEAU: Rock Rocheleau, 15315, on behalf of the
14 Plaintiff.

15 MS. SAYYAR: We also have our client representatives
16 present in the courtroom with us.

17 THE COURT: Thank you and welcome. And who is with
18 you?

19 MR. ROCHELEAU: This is also our representative of Las
20 Vegas 101, Phil Neuenswander.

21 THE COURT: Thank you.

22 MS. SAYYAR: And this is Jeff Nyman.

23 THE COURT: Thank you. Mr. Winterton

24 MR. WINTERTON: Yes. David Winterton on behalf of the
25 Defendant. And I'm hoping Jack Gaal is on the Zoom phone call. We

1 gave him the information, and he was going to try to check in.

2 THE COURT: Mr. Gaal, are you with us? Let's take a short
3 recess so you can give him a call and help him navigate, because I don't
4 want him to miss.

5 MR. WINTERTON: Okay.

6 THE COURT: We'll just take a brief recess. I'll remain in
7 place.

8 MR. WINTERTON: Okay.

9 [Recess from 10:06 a.m. to 10:12 a.m.]

10 THE MARSHAL: Court is back in session.

11 THE COURT: Thank you. Please remain seated. Mr.
12 Winterton, is your -- Mr. Gaal on the phone now?

13 MR. WINTERTON: I believe Mr. Gaal is on the phone now.

14 THE COURT: Mr. Gaal, are you there?

15 MR. GAAL: Yes, I'm on the phone.

16 THE COURT: Very good. Thank you.

17 All right. So this is a bench trial on this case. The complaint
18 goes back to June of 2018. It deals with a listing contract for sale of a
19 business. And are there agreed exhibits?

20 MS. SAYYAR: Your Honor, we have exchanged our totality
21 of exhibits between each other, and I believe there are some that have
22 been stipulated to that I'm willing to make the record of right now if Mr.
23 Winterton is ready.

24 MR. WINTERTON: Sure.

25 MS. SAYYAR: Looking at Plaintiff's list of exhibits, which is

1 in the beginning of the binders that we have provided, the most up to
2 date one, Your Honor, Plaintiff is offering Proposed Exhibit 1. It's my
3 understanding that Mr. Winterton, on behalf of Defendants, has
4 stipulated to that.

5 MR. WINTERTON: That is correct.

6 THE COURT: Why don't you run through the numbers, and
7 then I'll give him a chance. It will just save some time.

8 MS. SAYYAR: Okay. Of the ones that we are offering today,
9 we are offering number 1 that is stipulated to, number 3 that is stipulated
10 to, number 4 that is stipulated to, number 7 that is stipulated, and
11 number 10 that has been stipulated to at this point in time.

12 THE COURT: Is it correct, Mr. Winterton, that 1, 3, 4, 7, and
13 10 can be admitted?

14 MR. WINTERTON: Yes, Your Honor.

15 THE COURT: Okay.

16 [Plaintiff's Exhibits 1, 3, 4, 7, and 10 admitted into evidence]

17 MR. WINTERTON: There is a couple of other issues that I
18 think we can stipulate to get taken care of.

19 Number 11, I'm willing to stipulate to.

20 MS. SAYYAR: At this point in time, we're not sure if we're
21 going to be offering that, Your Honor.

22 MR. WINTERTON: Oh, okay.

23 And the other one is really -- Exhibit 6, what it is, is you have
24 a contract, and then there's an addendum to the contract. I think they
25 need to be all part of one exhibit, but I have no objection to it. That's

1 Exhibit number 6. So we can deal with it separately, so I would stipulate
2 to that, but, technically, it's all one contract within itself. That would be
3 in Exhibit 1. Does that make sense?

4 MS. SAYYAR: Yes, Your Honor. There are some documents,
5 unfortunately, and we do apologize in the conversion between are we
6 doing virtual, are we doing in person. Some documents got separated in
7 interesting ways, but they're all Bates numbered and disclosed. And I do
8 take Mr. Winterton's point that certain documents might be divided in
9 separate exhibit numbers, but are in fact to be treated, arguably, as one
10 document.

11 And vice-versa, some of our exhibits, which were
12 productions of just bulk documents might have multiple different
13 exhibits in them, and we do apologize for that lack of coordination, but
14 we will offer Exhibit 6 and have that stipulated to.

15 MR. WINTERTON: Yes.

16 THE COURT: Okay. So Exhibit 6 will then be admitted.

17 MR. WINTERTON: Yes.

18 [Plaintiff's Exhibit 6 admitted into evidence]

19 MS. SAYYAR: And then, Your Honor, one correction on the
20 binder list that we provided, which was the most up to date, Proposed
21 Exhibit 15, the description is incorrect. It says it's a letter from David J.
22 Winterton. It's actually a letter from Jared R. Johnson. We're not
23 offering it yet. Obviously, we need to put witnesses on, but I just wanted
24 to make that correction, Your Honor, for the record.

25 THE COURT: Okay. Very good. Are there -- is anyone

1 invoking the exclusionary rule?

2 MS. SAYYAR: We would like to move forward with the
3 exclusionary rule on behalf of the Plaintiff, Your Honor.

4 THE COURT: Okay.

5 MR. WINTERTON: Same with the Defendant.

6 THE COURT: Very good.

7 Are any of Defendants' exhibits stipulated to?

8 MS. SAYYAR: Your Honor, when we were looking at
9 Defendants' exhibits, we found that a great number of them were
10 duplicative, which is fine, but of the ones that were not duplicative, at
11 this point in time, there was exhibit -- Proposed Exhibit 18, which is our
12 Exhibit 8, but I don't know if Mr. Winterton is offering it at this point in
13 time, but we were willing to stipulate Exhibit 18 -- Proposed Exhibit 18 of
14 the Defendants and -- hold on, Your Honor. Court's indulgence. I just
15 want to make sure. I believe their Proposed Exhibit 22 is the same as our
16 Proposed Exhibit 15. We don't have a problem either offering our 15 or
17 agreeing to their Proposed Exhibit 522.

18 And then -- so 518, 522, even though they're duplicative of
19 our exhibits -- and I need to see if there was anything else. Those were
20 the two, Your Honor, that, at this point in time, we would move to
21 stipulate to if they're being offered or if we would like to just stipulate to
22 our versions of the them in our exhibit binder, whichever Mr. Winterton
23 might prefer.

24 MR. WINTERTON: I think out of convenience, we'll use their
25 book at this time.

1 There are a few others that are duplicative. For example,
2 their Exhibit 3 is my 503. Their Exhibit 4 is my 504. Their Exhibit 6 is
3 520. Their Exhibit 7 is 517. Their Exhibit 10 is my 500. So there are
4 quite a few that are duplicative. So I'm thinking let's -- I'm going to focus
5 on theirs, because there are a lot of duplicates, and we'll just get them
6 admitted maybe through that way.

7 THE COURT: Well, does that mean then that you stipulate to
8 admit Plaintiff's 8, which is the same thing as your 18?

9 MR. WINTERTON: No, we want testimony on that.

10 THE COURT: And the Defendants' 22, which is the Plaintiff's
11 15, needs a foundation

12 MR. WINTERTON: Correct.

13 THE COURT: Okay. Did the Defendant have any other
14 exhibits that you wanted -- that there's a stipulation on?

15 MR. WINTERTON: I don't believe so, but as we progress we
16 probably will enter into more.

17 THE COURT: Okay. Very good.

18 All right. Any other housekeeping matters before I hear your
19 openings?

20 MS. SAYYAR: I don't believe so, Your Honor. One moment.
21 No problem, Your Honor, to move forward with openings at this time.

22 THE COURT: Okay.

23 MR. WINTERTON: Just a couple of things, more out of
24 housekeeping of what's going on. Mr. Gaal has some medical --
25 something medical this afternoon, so he may miss part of this

1 afternoon's hearing. We're still willing to go forward, but he may have
2 to drop off. Also, on Wednesday, he's not sure what time he's on-call, so
3 he'll miss part of Wednesday. And then Thursday morning at 8:30 he
4 will be out, and then he'll be back in.

5 I guess what I'm telling the Court is he's going to be in and
6 out. We probably will have him testify by Zoom, so we will have to
7 coordinate the time that he will testify so that we can make sure we
8 coordinate the equipment and all of that.

9 THE COURT: Okay.

10 MR. WINTERTON: And so that we go from there. The only
11 other thing is we do have one of the witnesses here, so if we have our
12 opening, I would like the witness excluded.

13 MS. SAYYAR: Which witness?

14 MR. WINTERTON: Don't you have your representative here?

15 MS. SAYYAR: We have two representatives -- Your Honor,
16 we have two representatives from our client Plaintiff, because depending
17 on how long this trial goes, one of them might not be available next
18 week. We have Mr. Nyman, and we have the licensee. So we have them
19 both here as representatives.

20 THE COURT: You object to that?

21 MR. WINTERTON: I do because one of them is a witness --
22 well, they're both going to be witnesses. I don't think they need two
23 representatives.

24 THE COURT: I'm going to overrule your objection --

25 MR. WINTERTON: Okay.

1 THE COURT: -- since they're company representatives, and
2 I'll allow both to be here the entire time.

3 MR. WINTERTON: Okay.

4 THE COURT: And you guys know that Thursday afternoon
5 I'm not available?

6 MS. SAYYAR: Yes, Your Honor.

7 MR. WINTERTON: Yes.

8 MS. SAYYAR: My understanding was Thursday we were
9 dark, and Wednesday we are starting in the afternoon after Mr.
10 Winterton's hearing, I believe.

11 THE COURT: Yeah, that's correct.

12 MR. ROCHELEAU: And then Friday is a full day. Friday is a
13 full day.

14 THE COURT: Friday is a full day.

15 MS. SAYYAR: Yeah.

16 THE COURT: And then if you need to, you come back on the
17 10th or 11th.

18 MS. SAYYAR: Yes, Your Honor. And then we're hoping we
19 have -- we have one witness today, and then our second witness,
20 because we were anticipating most likely, barring evidentiary issues, two
21 witnesses. Our second witness, Mr. Soto, isn't available until tomorrow
22 afternoon. Unfortunately, with changing the trial date that that's the only
23 day he's available, Your Honor.

24 THE COURT: That's fine. It's a bench trial. It does not need
25 to be consecutive days.

1 MS. SAYYAR: Thank you.

2 THE COURT: I keep really good notes, and I keep a running
3 tab of potential findings, so good enough.

4 MS. SAYYAR: Okay.

5 THE COURT: Are you all now ready for your openings?

6 MS. SAYYAR: Yes.

7 MR. WINTERTON: Yes.

8 THE COURT: Okay. Plaintiff.

9 MR. ROCHELEAU: Judge, you prefer the table or the
10 podium?

11 THE COURT: Wherever you're most comfortable. I think we
12 learned during COVID that comfort is important.

13 MR. ROCHELEAU: I'll be really brief with the opening.

14 PLAINTIFF'S OPENING STATEMENT

15 MR. ROCHELEAU: Today we have Plaintiff First Choice
16 Business Brokers, that we're going to refer to a lot as First Choice, is a
17 licensed business broker. And then we have a Defendant that owns a
18 bar and restaurant called Jack's Place in Boulder City. And what we
19 really have here was a win/win situation.

20 The evidence will show that the Plaintiff and the Defendant,
21 Mr. Gaal, entered into a valid listing agreement to list and sell his
22 business. They then went out and procured a buyer who was Angel
23 Soto, a willing and able buyer, to purchase the business along with the
24 building. Then Mr. Soto and Jack Gaal entered into a valid agreement --
25 purchase agreement to sell that business to each other, and it was a

1 win/win situation. Jack would get to sell his business, Angel would get
2 to run it, and First Choice would get their commission for doing such.

3 From there, if you're wondering why we're here today, and
4 the evidence will show that we really don't exactly know why we're here
5 and why it went wrong, and why the seller didn't go through with the
6 purchase, didn't go through with producing the documents, as the
7 evidence will show, that he was supposed to produce to Mr. Soto. And
8 so Mr. Soto, based on the terms of the agreement, validly left the
9 agreement and decided not to purchase the business.

10 We still don't know why all the documents was not
11 produced. We don't know exactly what happened on Jack's Place side.
12 And so our client is owed the commission and would like to seek that
13 commission. Thank you, Your Honor.

14 THE COURT: Thank you.

15 DEFENDANTS' OPENING STATEMENT

16 MR. WINTERTON: Thank you, Your Honor. I appreciate this.
17 Sometimes I'm a little soft, so if you can't hear me please ask me to
18 speak up.

19 I wish everything was always as simple as it states, but it's
20 not as simple as was just presented. If I may begin by, there are two
21 causes of action that are being brought here. One is for breach of
22 contract, the other is for breach of covenant, and good faith, and fair
23 dealing. There is no fraud, there is no negligence, there is no
24 misrepresentation. So all of those -- if they say my client misrepresented
25 certain things, that's not here today. It's only under the contract.

1 Now, also, what we're dealing with is NRS 645.320, the
2 requirement for an exclusive agency relationship for the sale of real
3 estate. NRS 645 deals with the regulation of realtors. So let's go over
4 the facts and let's see what we have here.

5 First off, Mr. Gaal was a -- he's a contractor in Boulder City.
6 He's been doing construction for a long time. And he reached the point
7 where he decided, you know, I want to slow down, and I want to retire a
8 little bit. So what he did is he built himself a building or remodeled it,
9 fixed it up, and then he put a bar in it. And Jack basically retired and at
10 the end of the day, he would go shoot the breeze with his friends, and so
11 on.

12 Now he had some professionals setting it up, a law firm here.
13 And the way they did it is they put the building into a trust. It is the Jack
14 Gaal Trust. We'll give you the exact name, but the building is in a trust
15 with Mr. Gaal and his wife, Jackie, are the trustees of the trust. Also,
16 Jack's Bar and Grill, the bar, is a separate entity, and they are an LLC,
17 limited liability company.

18 So now Jack's been -- he's trying to retire. People come and
19 ask can you help me with this, but he's basically been retired. He
20 reaches a point in time where he says, you know what, maybe I want to
21 sell the bar too.

22 So he's had a real estate friend of his for years, and he's
23 going to come in and testify, and his name is Gene Northup. At the time
24 of this transaction, Gene Northup was the owner of Synergy Sotheby's
25 International. He had all five franchises here in Southern Nevada. And

1 he was basically running the company.

2 Well, Jack approaches him, and Jack and Gene have done
3 business together. And he approaches Gene and says, Gene, I'm
4 thinking of selling the bar and thinking of getting out. So Gene says,
5 well, things are a little different because --

6 MS. SAYYAR: Your Honor, I'm going to object to improper
7 argument. This is hearsay masquerading under improper argument for
8 an opening. None of this is in evidence.

9 THE COURT: Objection is overruled. It's just an opening.
10 And if the facts don't come out the way that they're being conveyed to
11 me now.

12 MS. SAYYAR: Thank you, Your Honor.

13 MR. WINTERTON: So then what happens is Gene says, let
14 me get ahold of someone who specializes in selling businesses. So he
15 gets a hold of Phil Neuenswander of First Choice. And they work out a
16 deal wherein they're going to work together to sell this property, and
17 Gene is supposed to get a referral. Mr. Northup is going to testify that
18 he is entitled to 40 percent of the commission, of which Gene will testify
19 that he was just going to give it back to Jack because they're that good
20 friends, and the rest of the 60 percent would go to First Choice.

21 Well then they fill out the contract, the listing agreement.
22 They only put the bar. We're going to have testimony from the Plaintiffs
23 in this case, and they will testify that the contract only states the LLC.
24 The contract does not identify, at all, the real property. Then what
25 happens is the owner of the real property, the trust, since they're not

1 even named in the listing agreement, they don't even list -- have a place
2 to sign, they don't even sign the listing agreement.

3 Then what happens is we have the -- he does sign to sell the
4 bar. So he goes out, and the listing agreement states he only wants a
5 cash buyer, nothing else. Well, then a contract comes, and it says --
6 there's financing in it. It's not fully what he agreed, and he -- Mr.
7 Neuenswander calls up Gene and says, I would like to have a meeting
8 with you and Jack, and I would like to sign the sales agreement.

9 So they get together, and in the meeting, Mr. Northup says,
10 this isn't -- there's something wrong here. You're not dealing with the
11 real property. And Mr. Neuenswander says, I have done this for years
12 and years, and this is how we do it. And Mr. Northup says, this is not the
13 proper procedure. There is nothing with the party that owns the real
14 property. So they're on notice that things are not right.

15 Then they try to negotiate to get all this worked out. It
16 doesn't get worked out and, in fact, through the sale they're saying, Mr.
17 Northup you'll just get a little bit of a commission, whatever we decide,
18 because, you're not a licensed business broker. So -- and that's not the
19 rules with the Division of Real Estate and if the business goes together
20 you don't need a business broker's license.

21 But anyway -- so the evidence is going to show that that's
22 why this fell apart is because they did not comply with what they were
23 supposed to do. They did not provide proper exclusive agency
24 representation.

25 The evidence is going to show as follows. NRS 645.320

1 states it must be in writing. We don't have a writing to sell the real
2 property.

3 Number two, you have to set forth in the terms a definite,
4 specific, and complete termination.

5 Number three, it says contain no provision, which requires
6 the client who signs the brokerage to notify the broker of the client's
7 intention to cancel the exclusive features of the brokerage agreement
8 after the termination of the brokerage agreement.

9 Number four, to be signed by both the client his
10 representative -- authorized representative, and the broker and his or her
11 authorized representative to be enforceable. And we do not have a
12 contract by an authorized representative or by a client to sell the real
13 property, and now they're asking for a commission.

14 We are going to show that they did not do their duty, did not
15 do their job, and the property has not been sold. Also, which is very
16 important to the facts, the evidence will show the property has never
17 been sold, the bar has never been sold. There's never been a disposition
18 of the property. Jack still has his bar and shut down due to COVID, but
19 he still has it, and they're going to start operating and go again.

20 So based upon this and by the terms that we'll point out in
21 the contract, they're not entitled to a commission and that's why the sale
22 did not go through, and that's why they did not obtain their commission.
23 Thank you.

24 THE COURT: Thank you. Plaintiff, please call your first
25 witness.

1 MS. SAYYAR: Yes, Your Honor. Plaintiff calls Philip
2 Neuenswander to the stand, please.

3 THE MARSHAL: Sir, would you please step up in the stand
4 and face the Clerk over there?

5 THE CLERK: Raise your right hand.

6 PHILIP NEUENSWANDER, PLAINTIFF'S WITNESS, SWORN

7 THE CLERK: Please have a seat and state and spell your
8 name for the record.

9 THE WITNESS: Philip Val Neuenswander.

10 THE CLERK: Can you spell it?

11 THE WITNESS: P-H-I-L-I-P V-A-L N-E-U-E-N-S-W-A-N-D-E-R.

12 THE COURT: Thank you. Go ahead, please.

13 MS. SAYYAR: Thank you, Your Honor. Just a matter of
14 housekeeping, does the witness have one of our -- Plaintiff proposed
15 exhibit binders in front of him? Thank you.

16 THE COURT: During the trial, both counsel have the ability to
17 move about freely in the courtroom. You need not ask to approach.

18 MS. SAYYAR: Thank you, Your Honor.

19 MR. WINTERTON: Thank you.

20 THE COURT: Let me make one other housekeeping rule. If
21 anyone, for any reason, needs a recess, for any reason, just let me know.
22 We'll always take a short recess.

23 MS. SAYYAR: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. SAYYAR:

1 Q Mr. Neuenswander, are you familiar with Las Vegas 101, Inc.,
2 doing business as First Choice Business Brokers?

3 A Yes.

4 Q And how did you -- how do you come to know First Choice?

5 A Jeff hired me about 16 years ago, and I've been with First
6 Choice for 16 years working with them.

7 Q Would Jeff be Jeff Nyman?

8 A Yes.

9 Q And what positions have you held with First Choice in the
10 last 16 years?

11 A Sales associate.

12 Q What licenses, if any, do you hold to act as a sales associate?

13 A I hold an active Nevada real estate license and a Nevada
14 business broker permit.

15 Q Prior to coming to work with First Choice Business brokers
16 had you had prior experience in this field?

17 A I had prior experience owning business myself.

18 Q And who is your broker while working with First Choice
19 Business Brokers?

20 A Jeff Nyman.

21 Q Okay. In the past 16 years, how many listings have you done
22 representing a seller or a buyer?

23 A Well, over 100.

24 Q Okay. Have you done listings where you've represented both
25 seller and a buyer at the same time?

1 A Yes, many.

2 Q Are you familiar with a person named John or sometimes
3 referred to Jack Gaal?

4 A Yes.

5 Q And when did you first come to know Mr. Gaal?

6 A I came to know Mr. Gaal when Gene Northup introduced me
7 to him for the purpose of listing his business.

8 Q Okay. Do you recall when that was?

9 A That was about a month prior to listing the -- taking the
10 listing.

11 Q Okay. When was the first time -- did you first speak with Mr.
12 Gaal on the phone, email, in person? How did that first communication
13 happen?

14 A Yes, Gene Northup introduced me to Jack, and his wife, and
15 his restaurant Jack's Place.

16 Q Okay. How long was that first initial meeting of introduction?

17 A About an hour-and-a-half.

18 Q Were -- was Mr. Gaal and his wife present for the entire
19 meeting?

20 A Yes.

21 Q And were you at the location -- the physical location where
22 the business operated that he was interested in listing?

23 A Yes.

24 Q And where is that business?

25 A In Boulder City.

1 Q Okay. Did Mr. Gaal express to you, at that time, his interest
2 regarding selling his business?

3 A Yes, he did.

4 Q What was your understanding or what did Mr. Gaal say
5 about what he was interested in selling?

6 A He stated, specifically, that he was interested in selling his
7 business and the property, and he was looking to retire.

8 Q Okay. Did Mrs. Gaal express any information at that time?

9 A She was supportive of the decision. She was there at the
10 meeting.

11 Q Okay. At that meeting, did Mr. Gaal or Mrs. Gaal provide you
12 any documentation or information specifically related to the business?

13 A No, not at that time. It was an introductory meeting.

14 Q Okay. By the end of the hour-and-a-half introductory
15 meeting, was it your impression that Mr. Gaal was interested in utilizing
16 your services?

17 A Oh, he had planned on that, and he said he would like to go
18 forward after hearing from me.

19 Q Okay. During that hour, hour-and-a-half meeting were any
20 particular listing terms discussed, in general, between you and Mr. and
21 Mrs. Gaal?

22 A Yes, we talked a little bit about valuation, and we talked a
23 little bit about the duration of the contract and how the contract works.

24 Q Were there -- did Mr. Gaal ask you to do anything at the
25 conclusion of the meeting to move the process forward?

1 A No.

2 Q Did there come a point in time when Mr. Gaal asked to
3 formally list the business for sale?

4 A Did he ask me that?

5 Q Yes.

6 A Yes. Yeah, he said he would specifically like to list the
7 business and the property.

8 Q When did you move forward preparing listing arrangements?

9 A Immediately after he made the commitment to list and sell
10 his business and property.

11 Q Okay. Did he have, during that introductory meeting, any
12 specific questions of the process that you can recall, as you sit here
13 today?

14 A Yeah.

15 Q Any concerns?

16 A No, he asked about the process of selling, and how long it
17 would take, and asked what his prospects were in terms of selling the --
18 his bar and the property.

19 Q Was Mr. Northup also present at that meeting?

20 A Yes.

21 Q What was your understanding of Mr. Northup's involvement
22 in this process, at that time?

23 A Jack and Gene had done multiple business transactions
24 together, and Gene was there simply as an advisor.

25 Q Do you recall Mrs. Gaal expressing any questions or

1 concerns regarding the process?

2 A No, she was very supportive of the decision also.

3 Q Okay. Did you prepare any documents at that introductory
4 meeting with Mr. and Mrs. Gaal present?

5 A No, because we needed more information.

6 Q Okay. Were -- did you leave the meeting expecting Mr. Gaal
7 to send you that information or that you expected there would be
8 subsequent communications?

9 A Both.

10 Q Okay. Did there come a point in time where you received
11 information sufficient to start a listing process on behalf of Mr. Gaal?

12 A I'm sorry, say that again.

13 Q Did there come a point in time when you received
14 information sufficient to move forward with the listing?

15 A Yes.

16 Q When and how did that occur?

17 A That occurred about a month after our meeting, and I was
18 given information, enough to finish the listing for the business and
19 property.

20 MS. SAYYAR: I would like you to turn the binder in front of
21 you to what has been marked as Proposed Exhibit 5, identified by two
22 different Bate stamp numbers for reference. The Bate stamp number in
23 the center bottom of the page is pages 11 and 12, and that's what we
24 would call the virtual citation to the digital copy of the documents. But in
25 terms of the paper copy of Proposed Exhibit 5, we're looking at Bate

1 stamp number D000007. We'll refer to it as D-7, Your Honor, for ease of
2 reference.

3 [Plaintiff's Exhibit 5 marked for identification]

4 BY MS. SAYYAR:

5 Q Are you there at Proposed Exhibit 5?

6 A I just had a question. I wanted to make sure this was the
7 right document.

8 MS. SAYYAR: I'm going to approach.

9 THE COURT: You may.

10 MS. SAYYAR: Yes, you're at the right place.

11 THE WITNESS: Okay.

12 BY MS. SAYYAR:

13 Q Mr. Neuenswander, have you seen Proposed Exhibit 5
14 before?

15 A Yes.

16 Q Is this a document that you had a hand in preparing?

17 A Yes.

18 Q This document has handwriting on it. Do you recognize the
19 handwriting?

20 A Yes.

21 Q Whose handwriting is it?

22 A That would be mine.

23 Q Okay. When, roughly, was this prepared?

24 A This was prepared at the -- once we had a contract in place
25 as a template for escrow, to open up escrow.

1 Q Okay.

2 MS. SAYYAR: Your Honor, I move for the admission of
3 Proposed Exhibit 5.

4 THE COURT: Any objection?

5 MR. WINTERTON: No objection, Your Honor.

6 THE COURT: Exhibit 5 will be admitted.

7 [Plaintiff's Exhibit 5 admitted into evidence]

8 BY MS. SAYYAR:

9 Q Now we're jumping ahead a little bit in time --

10 THE COURT: Let me just ask you, do you have an extra set of
11 documents?

12 MS. SAYYAR: Yes, Your Honor. We provided you an extra
13 binder.

14 THE COURT: Okay. Good. Thank you. Just so that you
15 know it's a bench trial, and I don't look at them unless they're admitted.
16 Go ahead, please.

17 MS. SAYYAR: Thank you, Your Honor.

18 BY MS. SAYYAR:

19 Q We're jumping ahead in time a little bit. What is the date of
20 Exhibit 5?

21 A 1/25/18.

22 Q So this is a document that you would have prepared after
23 you had obtained a buyer?

24 A Yes.

25 Q Okay. And there's some notes at the bottom of this

1 document. Can you please read them?

2 A Yes. It indicates the parcel number and the address. It's the
3 parcel number for Jack's property.

4 Q Okay. Was it your understanding when you were preparing
5 the listing agreement that you were selling stock, real property, personal
6 property? What was your understanding?

7 A It was crystal clear that -- and it shows on the listing
8 agreement -- that the real property was included with the sale of the
9 business. The parcel number was included on the contracts, and it was
10 crystal clear that the real property was included as part of the sale -- as
11 part of the listing agreement. That was your question, right?

12 Q Yeah.

13 MS. SAYYAR: Let's look at the listing agreement that is
14 admitted as Exhibit 10. It's been stipulated to be admitted. If you turn in
15 the binder to Exhibit 10. And this is identified by Bates numbers D-20
16 through 25. Also, by virtual numbers 29 through 35.

17 BY MS. SAYYAR:

18 Q Are you there, sir?

19 A Uh-huh.

20 Q Is this the listing agreement that you were just referring to?

21 A Yes.

22 Q Looking at the last page, what signatures appear?

23 A That would be the signature of the authorized seller, Jack
24 Gaal.

25 Q Okay. Does your signature also appear?

1 A Yes.

2 Q Does anyone else's signature appear on this document?

3 A The broker's signature, which would be Jeff Nyman.

4 Q Okay. Is it your custom, as a licensee, to prepare listing
5 agreements without being asked?

6 A No.

7 Q Did you prepare this document?

8 A Yes.

9 Q How did you gather the information necessary to prepare
10 this document?

11 A Jack provided some initial financial information that was
12 handwritten, in terms of sales forecast, and we have a questionnaire that
13 we go through to get the rest of the information to prepare the listing.

14 Q Okay. Were there any other meetings, other than the
15 introductory meeting that we've talked about that happened in person to
16 help prepare the listing agreement?

17 A Yes, we had met in person to go over the contract at the time
18 of signing.

19 Q Okay. How long was that meeting?

20 A Over an hour.

21 Q Where did that meeting take place?

22 A At Gene Northup's office.

23 Q Who was present at that meeting?

24 A It would have been myself, Jack, and Gene Northup.

25 Q So let's look at the document. At the very top line, what is

1 the business name, as identified?

2 A Jack's Place including real estate.

3 Q Now there's an address that appears below it, 544 Nevada
4 Highway, Boulder City, Nevada 89005. Is that the location where you
5 had your introductory meeting with Mr. and Mrs. Gaal?

6 A Yes.

7 Q Who is listed in the seller line, sir?

8 A Jack Gaal.

9 Q Does it say anything else on that line? The first page, top.

10 A A you asking for the fifth line down?

11 Q Yes.

12 A Jack Gaal, managing member.

13 Q And then further tabbed over?

14 A Jack's Place Bar and Grill LLC.

15 Q Okay. Now this document includes a series of definitions on
16 page -- virtual page 34, Bate stamp number D-24. Let's start at the
17 definitions before we go through this document. Paragraph 40 on page
18 D-24, virtual page number 34. Are you there, sir?

19 A Yes.

20 Q Okay. There is a definition for seller. Can you please tell us
21 what that says?

22 A Paragraph 4?

23 Q Yeah, subparagraph 4 of main paragraph 40.

24 A "The owners of the above-named business, who are offering
25 the above-named business for inclusive sale, by and through FCBB 1010,

1 the term seller also includes, but is not limited to, all principals, owners,
2 shareholders, partners, officers, and directors of the business, executors,
3 and administrators."

4 Q Okay. And there's also a definition of what business means
5 on subparagraph 5. Can you please read that, sir?

6 A "Business. The business named within this agreement,
7 which is offered for sale, which includes, but is not limited to, real
8 property, personal property, assets and royalties, other businesses,
9 which are part of the main business offered for sale by the seller, by and
10 through the agreement."

11 Q Okay. There is also a definition for transaction under
12 subparagraph 6, which is very long, but if you can read the first part of it
13 before we get to subsection A, please?

14 A Sure. "Transaction, a disposition of the business. The sale
15 or other change of the ownership of the business, whether or not
16 through the efforts of FCBB 101 during the term of this agreement or
17 extension thereof and/or where some of a purchase agreement is
18 entered into by seller and/or.

19 Q All right. It says, where some form of a purchase agreement
20 is entered into by seller.

21 Did there come a point in time where the Defendants entered into a
22 purchase agreement in this case?

23 A Yes.

24 Q Purchase agreement is defined on subparagraph 11, please.
25 Can you please read that?

1 A "Purchase agreement. Any and all agreements by and
2 between the seller and the buyer memorializing the transaction
3 including, but not limited to, an offer to purchase a letter of intent,
4 memorandum of understanding, asset purchase agreement, stock sale,
5 or any similar document for the lease, exchange, or purchase and sale of
6 the above businesses or related business, its capital, stock, or assets, or
7 any portion thereof, either as an individual member, member of a
8 partnership, officer, director, employee, stock holder of a corporation, or
9 in any other capacity."

10 Q Okay. Then there's a definition for transacted value under
11 subparagraph 14. If you can read the first sentence of that definition,
12 please.

13 A "Including without limitation, inventory, equipment, fixtures,
14 leasehold improvements, credit lines, loans, cash, notes, assumptions of
15 notes, real property, purchase agreements, lease agreements, debts,
16 consulting agreements, value of pensions, retirement plans, aggregate
17 amount of all leases, equipment leases, assumption of discharge or relief
18 of debts, contingent payments, licensing agreements, royalty
19 agreements, payments based on future sales of profits, deferred
20 compensation, employment or management agreements, consulting,
21 non-compete agreements, option agreements, capital investments,
22 assumption of discharge or relief of personal guarantees, all liabilities
23 and/or other obligations included with the sale retained by the
24 businesses or assumed by the buyer." Would you like me to keep going
25 or?

1 Q I think we're enough, but thank you. So these are the
2 definitions for the terms used in this listing agreement; is that correct?

3 A Yes.

4 Q And did Mr. Gaal initial at the bottom of this page where it
5 says seller initials?

6 A Yes.

7 Q Isn't it true he in fact initialed all the pages?

8 A Yes.

9 Q All right. Going now to the actual terms of the agreement.

10 MR. WINTERTON: Your Honor, I know this isn't a jury trial,
11 but, boy, there's been tons of leading, and I would ask that counsel
12 refrain. This is her witness.

13 THE COURT: Well, you can always lead on foundation, but
14 I'll ask you to -- it's a caution not to lead.

15 MR. WINTERTON: Thank you.

16 MS. SAYYAR: Thank you.

17 BY MS. SAYYAR:

18 Q Looking at this document, the first page of Exhibit 10, is there
19 a term?

20 A Are you asking for paragraph 2?

21 Q I'm just asking, is there a term of time frame for the length of
22 the life of the contract?

23 A Yes. From October 10th, 2018, to October 9th, 2000 -- excuse
24 me. It's October 9th, 2017, for a period of 12 months ending on October
25 10th, 2018.

1 Q Does this agreement set forth any compensation terms to
2 First Choice Business Brokers?

3 A Yes.

4 Q What paragraph would they be located in?

5 A That would be paragraph 6.

6 Q And what compensation would First Choice Business Brokers
7 be entitled to under the terms of the contract upon proper performance?

8 A It would be ten percent of the total transaction price.

9 Q Where do you see the ten percent listed?

10 A That's in paragraph number 41.

11 Q All right. Thank you. Under the terms of the listing
12 agreement, when is First Choice Business Broker entitled to its fees?

13 A When the offer is accepted by the seller. When we present
14 an offer, and they've accepted it.

15 Q Where in this contract does it say that?

16 A I believe that's paragraph 8.

17 Q Can you point and read the exact section you're referring to
18 in your testimony, sir?

19 A All -- yes, paragraph 8. "All fees owed to FCBB 101,
20 regardless of whether it's owed for the sale of the business, land
21 improvements, or the land or the leasing or agents, will be fully earned
22 at the time of acceptance by seller of any type of purchase agreement."

23 Q Does the contract set forth when payment is due to First
24 Choice?

25 A Yeah, at the time of an accepted agreement.

1 Q And where does it say that in the contract?

2 A I believe I just read that.

3 Q Okay.

4 A Paragraph 8.

5 Q Okay. What marketing did First Choice Business Brokers do
6 to help find a buyer for this business?

7 A We marketed on eight national websites, and posted ads and
8 paid for those ads to be posted to bring buyers to the business.

9 Q How long was this property -- excuse me, how long was this
10 business listed with First Choice Business Brokers before an offer was
11 made on the property and the business?

12 A About four-and-a-half months.

13 Q Okay. Is that time frame unreasonably long or short in your
14 experience as a business licensee?

15 A No.

16 Q It's unreasonably long or unreasonably short?

17 A Well, it's about average.

18 Q Okay. What duties did the seller have under the terms of this
19 agreement if a buyer was presented?

20 A Well, they have a duty to work with the buyer and to
21 cooperate with them, such as producing due diligence documents.

22 Q Okay. If we look at paragraph 11 of Exhibit 10. Can you
23 point out where it refers to the seller's duties as you've testified?

24 A I sure can. At paragraph 11, first line, within ten business
25 days of the date of this agreement, seller agrees to provide FCBB 101 the

1 following documents, complete set list of equipment, vehicles, or other
2 assets to be included or excluded in the sale.

3 Q Okay. Did the seller have any duties to provide things to a
4 potential buyer?

5 A Yes.

6 Q Is that also contained in paragraph 11?

7 [Witness reviewing document]

8 A Yes, it's in the second paragraph.

9 Q Okay. In --

10 A Seller -- would you like me to read it?

11 Q Yes, please.

12 A "Seller also agrees to provide the buyer with any and all
13 requested documentation within the agreed upon time period between
14 the seller and the buyer set forth in a purchase agreement that has been
15 entered into between the parties."

16 Q Okay.

17 A It also goes on to say, "the fee, based upon the accepted
18 purchase agreement amount will be owed to FCBB if the seller fails to
19 deliver documents in the agreed upon time period, whether or not such
20 notion also constitutes default for a material breach of the purchase
21 agreement by the seller."

22 Q In this instance, did the seller timely provide documents to
23 the buyer at buyer's request?

24 A The seller did not provide one single document. Not a single
25 due diligence document. Not one. There was a list of over 30 items for

1 him to provide. He did not provide one single requested document.

2 Q I would like you to turn to page -- virtual page 32, Bate stamp
3 number D-22 of this exhibit. And I would like you to take a moment to
4 read paragraph 26, please.

5 A Where it says training? I may have the wrong paragraph.

6 MS. SAYYAR: I will approach and point out paragraph 26.

7 THE WITNESS: Oh, I'm sorry, right here. Authority to enter
8 into agreement personal guarantees, correct?

9 MS. SAYYAR: Correct.

10 BY MS. SAYYAR:

11 Q If you could please read that, sir?

12 A Yes. "Seller warrants that seller or the natural person who
13 signed on behalf of the entity has the legal right, power, and authority to
14 enter into and perform this agreement, and warrant that seller is not
15 under the jurisdiction of any bankruptcy court. The natural person or
16 persons who signed this agreement personally guarantees performance
17 of this agreement and the payment to FCBB 101 of all commissions due."

18 Q Do you want to finish reading that paragraph?

19 A Yes. "If seller is a corporate entity, seller, evidenced by a
20 corporate resolution that he or she has the authority to act on behalf of
21 the corporation, and its officers and directors, agrees that all officers,
22 directors, and/or members of the corporate entity, currently or in the
23 future, personally guarantee performance of this agreement."

24 Q Did Mr. Gaal ever tell you, prior to signing this listing
25 agreement, that he was not the authorized person?

1 A No.

2 Q Did Mr. Gaal, when you went through this agreement with
3 Mr. Northup, prior to him signing, express any concerns about any of the
4 terms in this agreement?

5 A No.

6 Q Did he raise any questions regarding the terms of this
7 agreement?

8 A No.

9 Q You said the meeting lasted over an hour, what was
10 discussed during that meeting?

11 A Our approach to approaching buyers, understanding the
12 listing agreements, expectations.

13 Q As Mr. Gaal initialed and signed this document, did he ask
14 any particular clarifying questions of any particular section of this
15 agreement?

16 A No.

17 Q Paragraph 29 of this agreement refers to real property. Did
18 Mr. Gaal express any concerns regarding real property being part of this
19 agreement?

20 A Not one single concern.

21 Q Was there any indication when this listing agreement was
22 signed that some other person needed to also approve this listing?

23 A Yes. When we did the corporate resolution, his wife came up
24 on that, and we had Jack along with his wife sign the corporate
25 resolution to sell.

1 Q Okay. When this listing agreement was signed in October
2 2017, did you have any reason to believe that Mr. Gaal did not have the
3 authority to list and sell both the property and the business assets?

4 A Absolutely not.

5 Q Now in the beginning of this agreement, at paragraph 6, it
6 mentions a 12 percent commission fee of the transacted value, but as
7 you pointed out in your earlier testimony, paragraph 41 of this exhibit
8 reduces that to ten percent. How did that come about?

9 A Well, we wanted to work with the seller to make sure it was a
10 win/win for everybody, and we recognized it was a large transaction.
11 And typically on a large transaction, we will offer a discount of a point or
12 two. That resulted in the ten percent agreed upon fee.

13 Q Now after this listing agreement was signed, did the seller
14 have an obligation to provide more information to you?

15 A Yes.

16 Q I would like you to look at paragraph 31, on virtual page 33,
17 Bate stamp number D-23 of this exhibit. What promises did seller make
18 regarding information that he was going to provide, according to the
19 document?

20 A Well, in paragraph 31, the seller represents that he was doing
21 1.150, \$1,150,000, in gross sales and an adjusted net profit of \$224,000 to
22 the bottom line.

23 Q Is there anything else that he promised --

24 A Yeah, to provide --

25 Q -- in that paragraph?

1 A -- to provide financials that would back that up.

2 Q All right. And I believe it says, seller agrees that the
3 confidential business questionnaire, all worksheets and their contents
4 attached are part of this agreement, and they're incorporated herein by
5 reference. What are confidential business questionnaire and
6 worksheets?

7 A Detailed information about the business.

8 Q Okay. And did Mr. Gaal provide that?

9 A Initially, he provided initial information in terms of what we
10 needed to do, the listing.

11 Q Now earlier you testified that the fee was fully earned, when
12 you were reading paragraph 8 of this document, at the time of
13 acceptance by seller of any type of purchase agreement. When does
14 First Choice Business Broker usually get paid if the fee is fully earned
15 when there's a purchase agreement?

16 A At the close of escrow.

17 Q Now we just saw, and you were just talking about additional
18 worksheets and confidential business questionnaires. Did you prepare
19 those documents in this matter?

20 A Yes.

21 Q All right. I would like you to go to what's been marked as
22 proposed Exhibit 13.

23 BY MS. SAYYAR:

24 Q Specifically, to page -- virtual page 117, Bate stamp number
25 D-104.

1 A Can you repeat which page number again, please?

2 Q Let's go by the one at the bottom center, which is 117.

3 A Okay.

4 Q And I want you to look at that portion of proposed Exhibit 13,
5 that makes up three pages.

6 MS. SAYYAR: And for the Clerk, that's virtual page number
7 117, 118, and 119.

8 BY MS. SAYYAR:

9 Q Sir, have you seen this document before?

10 A Yes.

11 Q Is this the confidential business questionnaire that you were
12 just discussing on the listing agreement?

13 A Yes. This is always a part of our listing package.

14 Q Okay. Do you recognize the handwriting on this document?

15 MR. WINTERTON: Excuse me, Your Honor. I'm just kind of
16 lost to where she was -- what page.

17 MS. SAYYAR: Oh, I apologize, Mr. Winterton. We're on
18 proposed Exhibit 13, which, unfortunately, is a big bundle of documents,
19 and we are looking at virtual page 117, Bate stamp number D-104. If you
20 need me to come over and --

21 MR. WINTERTON: I was at 117.

22 MS. SAYYAR: Under --

23 MR. WINTERTON: Got it.

24 MS. SAYYAR: Got it? Perfect.

25 MR. WINTERTON: Thank you.

1 MS. SAYYAR: No worries. I apologize for that references.
2 So this is a three page, pages, Mr. Winterton, 117, 118, and 119 that
3 make up proposed Exhibit 13.

4 BY MS. SAYYAR:

5 Q Is this questionnaire something that you regularly prepare as
6 part of the listing process?

7 A Yes.

8 Q Does your handwriting -- I'm sorry if I asked this already, but
9 I got -- is your handwriting appearing on this document?

10 A No, that would be the handwriting of the -- there are some --
11 questions 6 and 7, that would be my handwriting, and then that's
12 initialed by the seller.

13 Q Okay.

14 A And then the seller has signed at the bottom of the page.

15 Q Thank you.

16 MS. SAYYAR: Your Honor, for ease of reference we move to
17 admit Exhibit 13 and refer to this as Exhibit 13A, which will be page
18 numbers 117, 118, and 119.

19 THE COURT: Any objection?

20 MR. WINTERTON: No objection, Your Honor.

21 THE COURT: Exhibit 13 will be admitted, the whole exhibit.
22 13A, pages 117, 118, and 119.

23 [Plaintiff's Exhibit 13A admitted into evidence]

24 MS. SAYYAR: And I do apologize, Madam Clerk, for the not
25 being broken out. That is my mistake. I apologize to the Court as well

1 for that.

2 BY MS. SAYYAR:

3 Q So looking at this confidential business questionnaire, it
4 appears to be signed at the bottom of all three pages. Do you recognize
5 the signatures?

6 A Yes.

7 Q Whose signatures are there?

8 A Jack Gaal.

9 Q Does your signature also appear on this document?

10 A Yes, on the last page.

11 Q Page 119?

12 A Yes.

13 Q When was this prepared?

14 A This was prepared at the time of the listing.

15 Q So when you were going through the listing agreement,
16 Exhibit 10, you would have been preparing this simultaneously?

17 A Yes.

18 Q So who was present at that time?

19 A That would be Jack, Gene Northup, and myself.

20 Q Okay. And what is the business name listed on the top of
21 this business questionnaire?

22 A Jack's Place, including real estate.

23 Q And does number 14 -- what does number 14 reflect?

24 A For 14 it says, "if owned parcel, the parcel number is listed
25 along with the parcel size of 0.8 acres."

1 Q Now there's some handwriting that appears on line 13.
2 Whose handwriting is that?

3 A That would be mine. It stands for "NA, business owner owns
4 land."

5 Q And why did you write that there?

6 A Because there's no lease in place because the owner owned
7 the property.

8 Q And did you write this into this form while Mr. Gaal was
9 present in the room with you?

10 A Yes. And the reason why that's written that way is for a
11 buyer to understand that the owner owns the property and that there is
12 no lease in place.

13 Q Uh-huh. Now the last page of Exhibit 13A, page 119, above
14 Mr. Gaal's signature there is an affirmation that he provided. Do you see
15 that, sir?

16 A Yes.

17 Q Is this standard on the questionnaire?

18 A Yes.

19 Q Why is this there?

20 A To show that he's the authorized seller.

21 Q Does it say anything else in that, the seller has provided
22 information? Anything else why that's there?

23 A Are you asking about the third line on page 119, third from
24 the bottom?

25 Q Yes.

1 A Yeah. It says, "Jack Gaal, managing member of Jack's Place
2 Bar and Grill LLC."

3 Q Oh, I apologize, further above, there's a paragraph of text. I
4 was asking about that. Let me restate my question from the beginning.

5 A Yeah. Sure.

6 Q Do you see that section of text that is bolded?

7 A Yeah, it says, "the seller has provided the information
8 contained herein to the broker and/or broker's agents. The seller
9 warrants that the above information is true and correct to the best of his
10 or her belief and knowledge. Seller specifically agrees that broker and/or
11 broker's agents may provide this information and photograph to any
12 potential buyer. Seller agrees that the broker has not made any
13 independent confirmations and broker does not guarantee its accuracy,
14 completeness, or reliability."

15 Q Okay. I would like you to turn to a different portion of
16 proposed Exhibit 13. I would like you to turn to page 106. Let me know
17 when you're there.

18 A Yeah, I'm there.

19 Q Okay. Have you seen this document before, sir?

20 A Yes. This is a standard document that's put together as part
21 of our listing package.

22 Q Was this a document that was created and during the time
23 that you were meeting with Mr. Gaal and Mr. Northup in person to sign
24 the listing agreement?

25 A Yes, it was signed at the time we signed the listing

1 agreement.

2 Q Okay. And you recognize the signature at the bottom?

3 A Yes.

4 MS. SAYYAR: Your Honor, move to admit as Exhibit 13B,
5 page 106, also known as D-93 only.

6 THE COURT: Any objection?

7 MR. WINTERTON: No objection, Your Honor.

8 THE COURT: Exhibit 13B will admitted, being page 106 of
9 Exhibit 13.

10 [Plaintiff's Exhibit 13B admitted into evidence]

11 BY MS. SAYYAR:

12 Q Do you recall Mr. Gaal having any questions or concerns as
13 you put together this new listing data input sheet?

14 A Zero.

15 Q Okay. How many times on this document -- well, is there any
16 reference on this document to real estate and real property being part of
17 the sale?

18 A Yes. The very top line it says Jack's Place. It tells you what's
19 being sold, Jack's Place, including real estate. It also says in the first
20 paragraph of the business overview that's advertised to every single
21 buyer that looks at the business. It says, now is your opportunity to own
22 one of Nevada's top rated sports bars and grills along with the real
23 estate.

24 Q Any other references on this document to real property and
25 real estate?

1 A Right below that the meta description says high demand
2 opportunity to own your own successful sports bar and grilling including
3 real property.

4 Q And then --

5 A Also, the title tag above that -- so that's the first sentence a
6 buyer would see if they're searching along the internet sites. The first
7 sentence that would come up as the look, like, on BizBuySell, the
8 advertisement says, well established sports bar and grill, non-gaming,
9 including real estate.

10 Q Okay. Any other reference to the real estate on this
11 document?

12 A Yes. Under lease and assets, business owner owns property
13 referenced to that.

14 Q Okay. Now was there any indication given to you by Mr.
15 Gaal or his advisor, Mr. Northup, during the meeting that there was any
16 concerns about listing this property with real estate?

17 A Absolutely zero.

18 Q Excuse me, listing this business.

19 A Absolutely zero. They were satisfied that the contract
20 covered the real estate. Both of them.

21 Q Now you just testified that the information that would appear
22 on Exhibit 13B, the new listing data input sheet, would be part of what a
23 potential buyer would see in the advertisements and marketing of the
24 business, correct?

25 A That's correct.

1 Q I would like you to turn to a portion of proposed Exhibit 13,
2 page 105. Also referred to as Bate stamp number D-92. Let me know
3 when you're there, sir.

4 A I'm there.

5 Q Okay. What is this document?

6 A This is a copy of what a buyer would see -- the actual
7 advertisement that a buyer would see on a website.

8 Q Okay. Is this a document that you helped -- First Choice
9 helped create?

10 A Me along with the administrators at First Choice Business
11 Brokers.

12 Q Okay. Where would this information have been posted?

13 A On eight national websites.

14 Q What websites are those?

15 A BizBuySell, BizQuest, my broker. Many of the national big
16 companies.

17 Q Okay. Would you have taken the informa -- is the
18 information on Exhibit 13B, the new listing data input sheet, put into
19 what is proposed -- part of proposed Exhibit 13, page 105?

20 A Yes.

21 MS. SAYYAR: Your Honor, I move for the admission of
22 Exhibit 13C, which is page 105. Also referred to as D-92.

23 THE COURT: Any objection?

24 MR. WINTERTON: No objection.

25 THE COURT: 13C will be admitted.

1 [Plaintiff's Exhibit 13C admitted into evidence]

2 BY MS. SAYYAR:

3 Q I would like you to turn to that portion of proposed Exhibit
4 13, identified as page 107. Also referred to as Bates stamp number D-94.
5 It's a single page document. Let me know when you're there.

6 A I'm there.

7 Q Do you recognize this document?

8 A Yes.

9 Q Is this a document that First Choice creates?

10 A Yes. This is the preparatory document that First Choice
11 assistants used prior to posting all the ads on the internet, advertising
12 the business and the real estate.

13 Q Okay. Does this contain handwriting that you recognize?

14 A Yes.

15 Q Whose handwriting is this?

16 A That would be mine.

17 MS. SAYYAR: Your Honor, I move for the admission as
18 Exhibit 13D, as in dog, page 107. Also referred to as Bate stamp number
19 D-94.

20 MR. WINTERTON: No objection.

21 THE COURT: Exhibit 13D will be admitted.

22 [Plaintiff's Exhibit 13D admitted into evidence]

23 BY MS. SAYYAR:

24 Q When was this document prepared?

25 A This was prepared after we had gathered together all the

1 listing documents and is the last document that's prepared prior to the
2 business being advertised.

3 Q Okay. And under what categories did you decide to market
4 this business?

5 A Food and beverage and also real estate.

6 Q Does First Choice Business Brokers commonly sell not only
7 the business, but the real property and real estate it's involved in?

8 A Yes. Not only do we commonly sell that, but we've used the
9 exact same listing agreements and purchase agreements in escrow
10 many, many, many times to close transactions.

11 Q Have you, yourself, personally, as a licensee, done sales of
12 businesses, which is -- which have included real property before the
13 instance case?

14 A I have not done something that's included real property.

15 Q I would like you to go to that portion of proposed Exhibit 13,
16 which is a two page section identified by virtual page numbers 125 and
17 126. Also referred to by Bate stamp number D-112 and D-113. Let me
18 know when you're there.

19 A I'm there.

20 Q Do you recognize this document, sir?

21 A Yes.

22 Q Is this a document that First Choice prepares?

23 A Yes.

24 Q What is this document, generally?

25 A This is a seller's statement of income for the business.

1 Q Okay. Was this prepared during the time that you met in
2 person with Mr. Gaal and Mr. Northup to sign the listing agreement,
3 Exhibit 10?

4 A Yes.

5 Q Okay. Does any signature or initials appear on this
6 document?

7 A Yes.

8 Q Whose are they?

9 A Jack Gaal's.

10 MS. SAYYAR: Your Honor, I move for the admission of
11 proposed Exhibit 13E, which is Bate stamp number D-112 and 113, and
12 virtual numbers page 125 and 126.

13 THE COURT: Any objection?

14 MR. WINTERTON: I had the wrong pages. The 125, is that
15 the one with the map?

16 MS. SAYYAR: No.

17 MR. WINTERTON: Okay.

18 MS. SAYYAR: I will --

19 MR. WINTERTON: Okay. It's this one then?

20 MS. SAYYAR: It's this page and this page.

21 MR. WINTERTON: No objection, Your Honor.

22 THE COURT: Exhibit 13E will be admitted, 125 and 126.

23 MR. WINTERTON: Thank you.

24 [Plaintiff's Exhibit 13E admitted into evidence]

25 BY MS. SAYYAR:

1 Q When this was prepared during the in-person meeting on
2 October 9th, 2017, did Mr. Gaal express any concerns regarding
3 documentation related to the seller's discretionary earning's worksheet?

4 A Zero.

5 Q Did you and he ever have any discussions prior to October
6 2017, where Mr. Gaal expressed any concerns regarding providing
7 financial information regarding the business?

8 A I'm not sure I understand the question.

9 Q Let me rephrase. As of the time of the listing, October 9th,
10 2017, had you and Mr. Gaal had any discussions where he expressed
11 concerns regarding providing financials to a potential buyer?

12 A No.

13 Q I would like you to go to page -- a portion of proposed Exhibit
14 13, identified as page 128, D-115. Have you seen this document before,
15 sir?

16 A Yes.

17 Q What, generally, is it?

18 A Our office looks up the LLC that was provided and this is a
19 document to where -- in the event that there's a limited liability company
20 that has multiple managing members, we make sure that all of the
21 members -- all of the managing members sign this document authorizing
22 the sale of the business and/or real estate.

23 Q Okay. And did you prepare this document?

24 A Yes.

25 MS. SAYYAR: Your Honor, I move for the admission of

1 Exhibit 13F, which is page 127, also known as D-114. Oh, I'm sorry, I
2 apologize. I used the wrong Bate stamp number. Let me start over, Your
3 Honor. I apologize.

4 I move for the admission of Exhibit 13F, page 128, D-115.

5 THE COURT: Any objection?

6 MR. WINTERTON: No objection.

7 THE COURT: Exhibit 13F will be admitted.

8 [Plaintiff's Exhibit 13F admitted into evidence]

9 BY MS. SAYYAR:

10 Q Who are the two signatories on this document?

11 A That would be Jack Gaal and his wife, Katherine Gaal.

12 Q Okay. Now this is dated -- this is dated -- actually, it's not
13 dated when it was signed. Do you recall, as you sit here today, when it
14 was signed?

15 A Yes, this was signed at the time of listing. And, actually,
16 there's -- what this corresponds to at the time of the listing, it shows that
17 a meeting was held on the 9th day of October 2017.

18 Q All right. But Ms. Gaal wasn't at the listing meeting, correct?

19 A No.

20 Q All right. I would like you to turn to proposed Exhibit 14,
21 page 219. Let me know when you're there under proposed Exhibit 14.

22 A Uh-huh, I'm there.

23 Q Okay. Take a moment to look at this portion of proposed
24 Exhibit 14. Do you recognize this document?

25 A Yes.

1 Q What is it, generally?

2 A This is an email sent to Jack and the email says, Katy and
3 Jack at cox.net. And it explains to Jack that we need to have him, and
4 his wife sign this resolution to sell to make sure we have all the
5 managing members, anyone that has an interest in the business or
6 property, agreeing to the sale.

7 Q Okay.

8 MS. SAYYAR: Your Honor, I move for the admission of this
9 portion of Exhibit 14, as 14A, page 129. Also referred to as D-205.

10 THE COURT: Any objection?

11 MR. WINTERTON: No objection.

12 THE COURT: Exhibit 14A will be admitted.

13 [Plaintiff's Exhibit 14A admitted into evidence]

14 BY MS. SAYYAR:

15 Q Going back to Exhibit 13. Going back to Exhibit 13F, which is
16 admitted, page 128. Prior to receiving Exhibit 13F, the limited liability
17 company with multiple managing members resolution to sell, was there
18 ever a question or concern raised by Mr. Gaal to First Choice Business
19 Broker about signing this?

20 A Absolutely zero.

21 Q Did Mrs. Gaal express any concerns or questions?

22 A Absolutely none. Might I add, had she expressed any
23 concerns she wouldn't have signed that resolution to sell.

24 Q Let's go to a portion of proposed Exhibit 13, the next page,
25 page 129, D-116. This portion of Exhibit 13, do you recognize this

1 document?

2 A That's page 129, correct?

3 Q Yes.

4 A Yes.

5 Q Is this a document that is regularly prepared by First Choice?

6 A Yes.

7 Q Who prepared this document?

8 A I did.

9 Q Do you recognize the signature that appears on the
10 document?

11 A Yes.

12 MS. SAYYAR: Your Honor, I move for the admission of this
13 portion of Exhibit 13 as Exhibit 13G, page 129. Also referred to as D-116.

14 THE COURT: Any objection.

15 MR. WINTERTON: No objection.

16 THE COURT: Exhibit 13G will admitted.

17 [Plaintiff's Exhibit 13G admitted into evidence]

18 THE CLERK: Was it 14A, page 129?

19 MS. SAYYAR: 14A was page 219/D-205. Exhibit 13G is page
20 129/D-116.

21 THE COURT: I think that -- I have the same notes as Nicole. I
22 think there was an error when we admitted 14A.

23 MS. SAYYAR: Oh, I apologize. I will readmit it then, Your
24 Honor, and clarify the record. I apologize.

25 THE COURT: Let's go back to 14A and clarify the page.

1 MS. SAYYAR: Yes.

2 BY MS. SAYYAR:

3 Q If you will please go to that portion of proposed Exhibit 14,
4 that should be 219. I apologize.

5 THE COURT: And what's the D number?

6 MS. SAYYAR: D-205.

7 BY MS. SAYYAR:

8 Q Sir, is that the email that we were just referring where you
9 emailed Jack regarding the resolution to sell?

10 A Please repeat that. I missed part of that.

11 Q We're now on Exhibit 14, page 219, also referred to as D-205.

12 A Okay. I'm there.

13 Q Is this the email that we were just discussing a moment ago?

14 A Yes.

15 MS. SAYYAR: Your Honor, then for clarification purposes, I
16 move -- I had moved, but I misspoke to admit 14A, which is page 219,
17 which is D-205.

18 THE COURT: Any objection?

19 MR. WINTERTON: No objection.

20 MS. SAYYAR: Okay.

21 THE COURT: So 14A will be admitted, 219, D-205.

22 [Plaintiff's Exhibit 14A admitted into evidence]

23 MS. SAYYAR: Your Honor, I think now might be a good time
24 to take a break with all these page numbers. If we may have a moment.

25 THE COURT: Let's take a short recess. It's 11:34. Let's be

1 back at 11:45.

2 MS. SAYYAR: Thank you, Your Honor.

3 THE COURT: Thank you.

4 [Recess at 11:34 a.m., recommencing at 11:45 a.m.]

5 THE MARSHAL: Court is back in session.

6 THE COURT: Please remain seated, everyone. Thank you,
7 everyone, for being prompt. Go ahead, please.

8 MS. SAYYAR: Yes, one moment.

9 THE COURT: Sure.

10 MS. SAYYAR: So let's go back to where we were before we
11 broke. Thank you, Your Honor.

12 BY MS. SAYYAR:

13 Q We are at admitted Exhibit 13G, which is page 129. So in the
14 binder, if you can be at Exhibit 13, at page 129, D-116. So that's where
15 we were before we broke and after I corrected my error on 14A.

16 What is the business and property that the corporate resolution
17 refers to?

18 A Jack's Place, including real estate on 544 Nevada Highway,
19 Boulder City.

20 Q Okay. I would like you to go to that portion of proposed
21 Exhibit 13, referred to as 116-D 103. Let me know when you're there.

22 A I'm sorry, I was a little confused. Which page do you need
23 again?

24 Q 116.

25 A 116 on section 13?

1 Q Section 13. Exhibit 13. Yes, sir.

2 A Okay.

3 Q Do you recognize this document?

4 A Yes.

5 Q How did this come -- document come to exist?

6 A This is part of our listing package. As part of the listing
7 package, and as the acting broker, we get -- and a licensed holder, we
8 have to declare our license and under Nevada real estate law, present all
9 clients with a consent to act and duties owed form.

10 Q Is this document we're looking at here, this portion of
11 proposed Exhibit 13, related to this case?

12 A Yes, because this shows that I am the agent for Jack Gaal.

13 MS. SAYYAR: Your Honor, I move to admit as Exhibit G -- I
14 think we're on H, Madam Clerk.

15 THE CLERK: This would be H.

16 MS. SAYYAR: G -- Exhibit 13H --

17 THE CLERK: 13H.

18 MS. SAYYAR: -- page 116, D103.

19 THE COURT: Any objection?

20 MR. WINTERTON: No objection.

21 THE COURT: Exhibit 13H will be admitted.

22 [Plaintiff's Exhibit 13H admitted into evidence]

23 BY MS. SAYYAR:

24 Q Now there's a series of documents that are part of exhibit --
25 proposed Exhibit 13. I'm going to ask you to turn to them and take a

1 moment to look through each of those pages. We're going to be looking
2 at that portion of proposed Exhibit 13, that begins on page 131 and goes
3 to page 139. If you could take a moment to look at those pages, please.
4 131 to 139. Also referred to as D-118 through D-126.

5 [Witness reviews document]

6 A Okay.

7 Q Have you taken a moment to look through these documents?

8 A Yes.

9 Q Have you seen these documents before?

10 A Yes.

11 Q How did they come to be in front of you to be seen?

12 A These are the documents that were provided to me at the
13 time of the listing and prior to the listing to have information to advertise
14 the business.

15 Q Okay. Who provided you this information?

16 A Jack did.

17 Q Okay.

18 MS. SAYYAR: Your Honor, I move for the admission of that
19 portion of -- which we will refer to as Exhibit 13J, from page 131 to page
20 139. Also referred to as page D-118 through D-126.

21 THE COURT: I believe that will be I.

22 MS. SAYYAR: Oh, H-I. You're right, Your Honor. I
23 apparently have failed the alphabet today. I apologize.

24 THE COURT: No problem. You know, this is only my third or
25 fourth bench trial this year, and every time I feel like I'm so rusty and the

1 lawyers do such a good job. So, was there any objection?

2 MR. WINTERTON: No objection, Your Honor.

3 THE COURT: All right. So 13I will be admitted.

4 MS. SAYYAR: Okay.

5 [Plaintiff's Exhibit 13I admitted into evidence]

6 THE CLERK: What page number was that?

7 BY MS. SAYYAR:

8 Q So looking at --

9 THE COURT: 131 through 139, D-118 through 126.

10 MS. SAYYAR: Thank you, Your Honor.

11 BY MS. SAYYAR:

12 Q So the first four pages of Exhibit 13I, what was your
13 understanding of what these were?

14 A That would be equipment list and assets to be conveyed
15 inside the building.

16 Q Okay. And how did this come to be in your possession?

17 A Jack provided them --

18 Q Okay.

19 A -- provided them to me.

20 Q Also part of Exhibit 13I, we have two hand -- excuse me, two
21 handwritten pages, pages 135 and 136. Do you recognize the
22 handwriting on this document?

23 A Yes.

24 Q Whose handwriting is it?

25 A It's Jack's.

1 Q Okay. There also appears to be an initial in the upper right
2 hand corner of page 135. Do you recognize that initial?

3 A Yeah, it's Jack Gaal's initial.

4 Q Did he initial this in front of you?

5 A Uh-huh.

6 Q Did he go through Exhibit 13I with you when you were going
7 through the listing agreement?

8 A Yes.

9 Q Did he have any questions or concerns as he was turning
10 over this information to you?

11 A No.

12 Q Did you have any questions for him regarding more formal
13 profit and loss documents beyond the documents provided in Exhibit
14 13I?

15 A I prepared him that we are going to need to validate these
16 numbers with any potential buyer, through profit and loss, through tax
17 returns, and that we needed to be prepared to turn those over to a
18 potential buyer to validate what he had handwritten down.

19 Q Okay. Also part of Exhibit 13I, pages 137 and 138, what was
20 your understanding of these documents, why Mr. Gaal provided them to
21 you?

22 A Yeah, that's an outline of the dimensions of the property.

23 Q Okay. Are you familiar with a person known as Angel Soto?

24 A Yes.

25 Q How did you first come to know Mr. Soto?

1 A Mr. Soto contacted me from seeing one of our
2 advertisements on the national website. I believe it was through
3 bixbuysell.com, and he contacted me for more information.

4 Q Okay. How did he contact you? By what means of
5 communication?

6 A I believe it was an email. He said -- stated his interest in the
7 business and property.

8 Q Did you respond to that email?

9 A Yes.

10 Q What information did you provide him?

11 A Initially providing with a non-disclosure agreement. We have
12 that -- this is the first thing we provide to protect the interest of the seller.
13 And once the buyer completes that -- once Angel completed that, we did
14 provide him with an executive summary.

15 Q I would like you to turn to what has been marked proposed
16 Exhibit 2 in the binder.

17 MS. SAYYAR: And, Mr. Winterton, I have corrected some of
18 the paging issues that were on our earlier table of contents of this
19 document. And so proposed Exhibit 2 is identified as numbers 4 through
20 6 and Bate stamp numbers D-2 through D-4.

21 BY MS. SAYYAR:

22 Q Sir, is this the confidentiality agreement you were just
23 referring to?

24 A Yes.

25 Q Did Mr. Soto sign this document?

1 A He initialed each page and signed it, yes.

2 Q Okay.

3 MS. SAYYAR: Your Honor, I move for the admission of
4 Exhibit 2 identified by Bates numbers D-2, 3, 4, and virtual page numbers
5 4 through 6, though they are, unfortunately, out of order because of
6 virtual issues.

7 THE COURT: Any objection?

8 MR. WINTERTON: No objection. I just would like to know if
9 he saw him sign it personally or does he recognize his signature. Other
10 than that, I'm fine.

11 THE COURT: Okay. Just complete some extra foundation.

12 MS. SAYYAR: Yes, Your Honor.

13 BY MS. SAYYAR:

14 Q Was this signed in your presence?

15 A Yes, I believe we met together in my office.

16 Q Okay.

17 MR. WINTERTON: No objection.

18 THE COURT: Exhibit 2, D-2 through 4 will be admitted.

19 [Plaintiff's Exhibit 2 admitted into evidence]

20 MS. SAYYAR: Thank you.

21 BY MS. SAYYAR:

22 Q How long did you meet with Mr. Soto, in person, before he
23 signed Exhibit 2?

24 A About an hour.

25 Q Okay. Prior to that in person meeting, had you had any other

1 communication with Mr. Soto, other than him contacting you in
2 response to the advertisement placed?

3 A No.

4 Q I would like you to turn to Exhibit 1, which has been admitted
5 via stipulation in this case. Have you seen this document before?

6 A Yes.

7 Q Who prepared this document?

8 A I'm sorry?

9 Q Who prepared this document?

10 A Angel prepared that document.

11 Q Okay. Was it done in your presence?

12 A I believe so.

13 Q Okay. Did you meet with him? This is dated 12/21/2017. Is
14 that the day that you met in person, if you recall?

15 A Yes.

16 Q Okay. So Mr. Gaal signed the listing agreement, Exhibit 10,
17 October 9th, 2017. When did Angel first contact you regarding
18 purchasing or interest in purchasing that business?

19 A That would have been on or about late December, just prior
20 to signing the non-disclosure agreement.

21 Q Okay.

22 MS. SAYYAR: Court's indulgence while I find the right page
23 numbers.

24 THE COURT: No problem.

25 BY MS. SAYYAR:

1 Q I would like you to turn first to proposed Exhibit 14, at page
2 180.

3 THE COURT: Was that 14?

4 MS. SAYYAR: Yes, Your Honor. Proposed Exhibit 14, the
5 section that begins 180.

6 BY MS. SAYYAR:

7 Q Are you there, sir?

8 A Yes, uh-huh.

9 Q Have you seen this document before?

10 A Yes.

11 Q Who created this document?

12 A I did.

13 MS. SAYYAR: Your Honor, I move for the admission of
14 Exhibit 14B, page 180. Also referred to as D-166.

15 THE COURT: Any objection?

16 MR. WINTERTON: No objection.

17 THE COURT: Exhibit 14B will be admitted.

18 [Plaintiff's Exhibit 14B admitted into evidence]

19 BY MS. SAYYAR:

20 Q So what was the purpose of this document, 14B?

21 A Yes. The buyer had completed the buyer profile and the non-
22 disclosure agreement. I saw that he was qualified -- well qualified. And
23 so as a follow-up step, I sent him the executive summary and invited him
24 to visit with me to see the restaurant in person to get some lunch.

25 Q Okay. I would like you to turn to page -- well, let me -- before

1 we do, looking at Exhibit 14B, you don't have an attachment to this
2 document; do you?

3 A No, because there was a link that had the executive
4 summary.

5 Q Okay. So I would like you to go to proposed Exhibit 13,
6 beginning at page 149 and going to page 169. Take a moment to look
7 through those documents. Also referred to as D-136 through D-156.
8 Take your time. Let me know when you're done.

9 A I'm there.

10 Q All right. Looking at this section of proposed Exhibit 13, what
11 page is made up -- what pages of this proposed -- portion of proposed
12 Exhibit 13, were part of that link that you sent to Mr. Soto in Exhibit 14B?

13 A Pages 149 through 169. So section 13, pages 149 through
14 169, were the executive summary.

15 Q Okay.

16 MS. SAYYAR: Your Honor, I move for the admission of that
17 portion of Exhibit 13, which will be -- that will be Exhibit 13J, unless I'm
18 very off, page 149 to 169, referred to as D-136 to D-156.

19 THE COURT: Any objection?

20 MS. SAYYAR: And I know it's lengthy. I don't mind waiting
21 for counsel to check.

22 MR. WINTERTON: I can't wet my fingers.

23 THE COURT: Let me know when you've had a chance to look
24 at everything.

25 MR. WINTERTON: Okay.

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[Counsel reviews document]

MR. WINTERTON: I have no objection.

THE COURT: Exhibit 13J will be admitted.

[Plaintiff's Exhibit 13J admitted into evidence]

BY MS. SAYYAR:

Q After Mr. Soto received the executive summary, did there come a point in time where he met with Mr. Gaal?

A Yes. After he had the summary, me and him went up -- had lunch at the business, so he could see the business, and then he said he would like to meet the seller to get some visual information and to ask some questions, and we set up a follow-up meeting.

Q All right. So when you went -- when you and Mr. Soto went to Jack's Place Bar and Grill for a meal, did you tell Mr. Gaal you were coming, or you just went as customers?

A I believe we mentioned that we would be stopping by, but it was a low profile visit as we are careful not to interrupt any business interruption -- any business activities.

Q Okay. During that low profile meal with you and Mr. Soto at Jack's Place, was there any conversation between Mr. Soto and Mr. Gaal?

A No, I don't believe so, other than saying hi --

Q Okay.

A -- as a guest.

Q Okay. After that low profile meal at Jack's Place, what -- did Mr. Soto desire to do anything further with regard to this listing?

1 A He told me this was exactly the business he was looking for,
2 and that he was -- wanted to go forward with making an offer. He asked
3 if any other buyers had made offers, and he said --

4 MR. WINTERTON: I'm going to object. This is all hearsay.

5 THE COURT: Rephrase.

6 MS. SAYYAR: Okay.

7 BY MS. SAYYAR:

8 Q Did Mr. Soto -- did you receive any impressions from Mr.
9 Soto after the informal visit as to what he wished to do next with the
10 listing?

11 A He made it clear he would like to make an offer, that this was
12 the business he was looking for, and that he would like to do due
13 diligence and move forward for the acquisition.

14 Q Okay. Did you communicate this informally to Mr. Gaal?

15 A Yes.

16 Q How did you communicate it to Mr. Gaal?

17 A I reported the visit went well and that as a follow-up we
18 should all meet together.

19 Q Okay. Did an in person follow-up meeting altogether
20 happen?

21 A Yes.

22 Q Where did it happen?

23 A At Gene Northup's office.

24 Q Okay. Who was present at that meeting?

25 A Angel Soto, myself, Jack Gaal, and Gene Northup.

1 Q Okay. How long was the meeting?

2 A Probably about an hour-and-a-half.

3 Q Okay. During that meeting were any documents signed?

4 A No, this was an exploration meeting to gather information.
5 Angel was asking Jack questions. No documents were signed at that
6 time.

7 Q Okay. What was the demeanor of Mr. Gaal during that
8 meeting?

9 A Very pleasant.

10 Q Okay. Were there -- was the meeting, in your opinion,
11 positive?

12 A Yes.

13 Q Do you recall Mr. Gaal expressing a desire to sell to Mr. Soto
14 during that meeting?

15 A Mr. Gaal expressed a desire to sell to any buyer that would
16 close the transaction.

17 Q Okay.

18 A Including Angel Soto.

19 Q Was there any discussion about due diligence during that
20 initial exploratory meeting?

21 A Yes. The buyer made it clear that he needed to validate the
22 numbers that the seller represented in the handwritten notes.

23 Q Okay. Did Mr. Gaal express any concerns about the seller's
24 desire for more validation and due diligence?

25 A No.

1 Q Was the real property discussed during the meeting?

2 A Yes.

3 Q What was the nature of the discussion between the parties?

4 A Well, Jack actually mentioned that he knew somebody that
5 could help him get a loan on the real property and even mentioned the
6 interest rate that would be offered on the real estate.

7 Q Did -- during this exploratory meeting, did Mr. Gaal express
8 any concerns about this deal being done via financing rather than an all
9 cash offer?

10 A Not any concerns that would have stopped the deal from
11 going forward.

12 Q After the meeting, did Mr. Gaal express any preference for
13 Mr. Soto making an offer or a desire not to receive an offer from Mr.
14 Soto? Any preferences of any kind?

15 A He said, let's see what he comes up with.

16 Q Okay. This sort of informal visit to the business, and then an
17 exploratory meeting, is that part of your job as a licensee to help sell a
18 business?

19 A Not all licensees do that. I do that because I like to have
20 personal interaction, have my buyers and sellers informed, and to give
21 information to both the seller and the buyer, and to get a real feel for
22 whether a business is a fit for somebody. So I go above and beyond
23 what most real estate agents would do, because I like to get people nose
24 to nose to where a full disclosure can take place, and that eventually
25 leads to a high -- I have a very high closing rate for deals that I put into

1 escrow because we go forward in a very straight manner or way where
2 everything is disclosed, and people can be in a position to ask anybody
3 any questions they would like.

4 Q Were there any red flags during that initial exploratory
5 meeting that Jack Gaal expressed to you either during the meeting or
6 after the meeting?

7 A Well, obviously, the deal was contingent upon financing, but
8 all of us felt that that deal could be financed because of the buyer's
9 background and, also, the bulk of the deal was secured by real estate, so
10 that would be a layout for a bank -- financial institute to finance because
11 70 percent of the proposed deal structure was backed by real estate. So
12 the deal was pretty much guaranteed by property.

13 Q Okay. You testified that Mr. Gaal even suggested a potential
14 financial officer or lender. Did he provide that information to Mr. Soto at
15 the meeting?

16 A Yeah, he said his own bank, which he's done banking with
17 for many years, he feels that he could talk to somebody, and they would
18 be able to help him with the loan for the real property, and he even
19 mentioned an interest rate.

20 Q Do you recall what interest rate he mentioned, as you sit here
21 today?

22 A I don't recall the exact rate, but it was very competitive. It
23 was a credit union. It was Boulder City Credit Union.

24 Q Okay. After that exploratory meeting were there any other in
25 person meetings between Mr. Soto and Mr. Gaal that you are aware of

1 before this went to purchase agreement?

2 A Before the purchase agreement was signed?

3 Q Yes.

4 A No, that was it. There was meetings after.

5 Q Okay. Did there come a point in time where Mr. Soto
6 directed you to prepare an offer to purchase the business?

7 A Yes.

8 Q I would like you to go to Exhibit 7, which is admitted, in the
9 binder. Did First Choice prepare this document?

10 A Yes.

11 Q At whose request was it prepared?

12 A The buyer's request. I prepared the document.

13 Q Okay. Did Mr. Soto have a chance to review it before signing
14 it?

15 A Yes.

16 Q Do Mr. Soto's initials or signatures appear anywhere on this
17 document?

18 A Yes. There at the --

19 Q If you can point them out.

20 A -- there at the bottom of every page, and also on the last
21 page the document where he signed it.

22 Q Okay. Now on paragraph 3(b) of the first page of the asset
23 purchase agreement, Exhibit 7, it says, "bank loan on real estate."
24 Whose handwriting is that?

25 A Mine.

1 Q Okay. Paragraph 10 of this document, on page 17 says,
2 quote, "An itemized physical inventory will be taken by buyer and seller,
3 or their mutually agreed upon third-parties prior to closing." Did this
4 actually occur?

5 A No.

6 Q Why didn't it occur?

7 A We never got to that point. The seller refused to turn over
8 any due diligence items.

9 Q Let's go to page 19 of Exhibit 7. There's a section regarding
10 due diligence. What was it that the buyer requested in making this offer
11 in the way of due diligence?

12 A He provided a specific list of items that he wanted as part of
13 the due diligence to validate the financials that the seller represented.

14 Q Okay. Paragraph 37 on page 20 of this exhibit refers to an
15 addendum. Is that list part of that addendum?

16 A Yes.

17 Q I would like you to turn to what has been marked as
18 Plaintiff's proposed Exhibit 9. Take a moment to look at that document.

19 A Okay.

20 Q Have you seen this document before?

21 A Yes.

22 Q I believe you testified that Mr. Soto had a list of documents
23 he was requesting. Is that reflected in proposed Exhibit 9?

24 A Yes.

25 MS. SAYYAR: Your Honor, I move for the admission of

1 proposed Exhibit 9.

2 THE COURT: Any objection?

3 MR. WINTERTON: No objection.

4 THE COURT: Exhibit 9 will be admitted.

5 [Plaintiff's Exhibit 9 admitted into evidence]

6 BY MS. SAYYAR:

7 Q So Exhibit 9, which is handwritten at the top 1A, is an
8 addendum to the asset purchase agreement, and it appears to have both
9 typewritten words, and handwritten words, and initials. So before we
10 get back to the asset purchase agreement, who typed this document up?

11 A The buyer typed the document up and all of the handwritten
12 notes on this were provided by the seller.

13 Q Okay. Did you physically see the seller write these
14 handwritten notes?

15 A I believe it was done prior to me meeting with them.

16 Q Okay. Do you recognize the signatures or initials that appear
17 on addendum 1A of Exhibit 9?

18 A Yeah, that's -- this due diligence document was initialed by
19 both the buyer and the seller as part of being entered into the contract.

20 Q Okay.

21 A So the seller agreed -- so with this due diligence list --

22 MR. WINTERTON: Objection. There's no question pending.

23 BY MS. SAYYAR:

24 Q So what was the purpose --

25 THE COURT: All right.

1 MS. SAYYAR: Sorry.

2 THE COURT: I'm going to sustain the objection. Go to your
3 next question, please.

4 MS. SAYYAR: Thank you, Your Honor.

5 BY MS. SAYYAR:

6 Q Looking at Exhibit 9, what was the purpose of this addendum
7 1A?

8 A It was to validate the financials that had been represented by
9 the seller to validate the business claims so the buyer could feel
10 comfortable in closing the transaction.

11 Q Okay.

12 A And also allowing the chance to get his financing to close the
13 transaction.

14 Q Okay. Prior to Mr. Gaal providing you this document with his
15 initial and/or signatures at the bottom, Exhibit 9, did he express to you
16 any concern about providing the documents listed in 1A?

17 A No. Everything that was listed on there he was comfortable
18 with providing because those were his notes stating what he was willing
19 to provide.

20 Q Was Mr. Soto satisfied with 1A, as marked up by Mr. Gaal?

21 A Yes, and he initialed it at the bottom of the page.

22 Q Okay. Is it typical for parties to prepare sort of their own
23 separate due diligence lists to attach to an asset purchase agreement?

24 A Sure.

25 Q Why?

1 A Well, because they -- each individual buyer has their own
2 way of validating a business.

3 THE COURT: Ms. Sayyar, is this a good time for our noon
4 recess?

5 MS. SAYYAR: This might be a perfect time. Yes, Your
6 Honor.

7 THE COURT: Okay. It's 12:18. How long does everyone
8 need for lunch? Plaintiff?

9 MS. SAYYAR: I'm thinking an hour.

10 MR. ROCHELEAU: An hour.

11 THE COURT: One hour.

12 MR. WINTERTON: Yeah.

13 MR. ROCHELEAU: Or we can do 1:30.

14 THE COURT: Okay. Let's be back then at 1:20. Thank you,
15 everyone.

16 MS. SAYYAR: Thank you, Your Honor.

17 THE COURT: Have a nice lunch.

18 [Recess from 12:18 p.m. to 1:22 p.m.]

19 THE COURT: Thank you. Please remain seated. Please
20 come back to the stand.

21 Counsel, are there any housekeeping matters we need to
22 take up before we get back to the direct?

23 MS. SAYYAR: Your Honor, at some point in time, we will be
24 going -- probably just before we pass the witness, just verify our exhibit
25 list, but not at this point in time, Your Honor.

1 THE COURT: Very good. Anything from the Defendant in
2 housekeeping?

3 MR. WINTERTON: Nothing, Your Honor.

4 THE COURT: Thank you both. And please proceed.

5 MS. SAYYAR: Thank you. Your Honor, would it be possible
6 for me to sit?

7 THE COURT: Of course.

8 MS. SAYYAR: Okay. Thank you. And if you need me to
9 speak louder, sir, just let me know.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. SAYYAR:

12 Q So before we broke for lunch, we were talking about the
13 asset purchase agreement. I would like you to turn back to admitted
14 Exhibit 7 in the binder, please. Now we were talking, and we were
15 referring to Exhibit 9, which is the addendum to the asset purchase
16 agreement, 1A. We were talking about due diligence and the documents
17 that Mr. Soto and Mr. Gaal agreed Mr. Gaal was going to produce.

18 How many days under the contract did Mr. Gaal have to produce
19 documents?

20 A Ten days.

21 Q All right. And how much time did the buyer have, Mr. Soto,
22 to evaluate those documents?

23 A Sixty days.

24 Q Okay. I would like you to turn to paragraph 40 on page 21 of
25 Exhibit 7. To your recollection, sir, do you recall --

1 MS. SAYYAR: Let me back up. Strike that.

2 BY MS. SAYYAR:

3 Q Was this offer presented to Mr. Gaal after Mr. Soto signed it?

4 A Yes.

5 Q Did Mr. Gaal review the document?

6 A Yes.

7 Q Were you present when he reviewed it?

8 A No, I don't believe I was present.

9 Q Okay. Did he, prior to -- did he contact you regarding any
10 questions related to the document?

11 A No.

12 Q Did his adviser, Mr. Northup, contact you with any questions
13 prior to signing the document?

14 A No.

15 Q Okay. Paragraph 40 of this document says that upon receipt
16 of the agreed upon purchase price and terms, seller warrants and will
17 deliver to buyer good and marketable title to the assets of the business
18 free and clear of all liens, encumbrances. When this listing -- excuse me,
19 this asset purchase agreement was provided to Mr. Gaal, did he express
20 to you, at any point in time, prior to signing it, any concerns he had
21 about providing good and marketable title?

22 A No.

23 Q What assets were included in this asset purchase agreement?

24 A It would have been the -- obviously, the property is number
25 one. The second would have been the equipment and fixtures that

1 would have been in there that had been part of tenant improvements
2 were part of it. So those were the three big items.

3 Q Okay. I would like you to turn to page 22 of Exhibit 7.

4 A Also one other thing if I could add too.

5 Q Oh, yeah.

6 A Inventory --

7 Q Inventory.

8 A -- would be included along with that as an asset.

9 Q Okay. I would like you to turn to page 22 of Exhibit 7. I
10 would like you to look at paragraph 51, authority. "Buyer and seller each
11 warrant to the other that they respectively have the full power and
12 authority to enter into this agreement and are not under the jurisdiction
13 of any federal bankruptcy court, and are able to complete the transaction
14 described here, and no contract or agreement to which either buyer or
15 seller is a party to prevents the other of them from completing this
16 transaction described herein, nor is the consent of any government
17 authority or third-party required."

18 Do you see that, sir?

19 A Yes.

20 Q At the time that you presented this document to Mr. Gaal, did
21 he communicate to you any concern of any lack of authority prior to
22 signing this document?

23 A No. He stated from day one that he always had the authority
24 to sign everything, and he came across very clearly that he had all the
25 authority to sign everything.

1 Q Did Mr. Northup ever communicate to you, in any fashion,
2 any concerns about lack of consent or authority?

3 A No.

4 Q Looking at page 23 of Exhibit 7, who are the agents -- the real
5 estate agents involved in this transaction?

6 A I served as a dual broker. I represented both the buyer and
7 the seller. I was the broker to the transaction. Gene Northup was not
8 involved as a principal in this transaction. He simply served as an
9 advisor. I was the broker to both the buyer and the seller.

10 Q Was there ever any agreement entered into by and between
11 yourself and Mr. Northup related to this transaction, in writing?

12 A No. We had discussed a referral fee, but there was never an
13 agreement in writing.

14 Q Okay. Looking at page 24 of this agreement, of Exhibit 7,
15 what date did Mr. Soto sign this document?

16 A January 25th.

17 Q Okay. And what date did Mr. Gaal sign this document?

18 A February 2nd.

19 Q Now is there any counteroffer referenced in this document?

20 A Yes.

21 Q Where is it referenced?

22 A In the middle of page 24, paragraph 70, the box is checked
23 that said counteroffer. "Seller accepts the terms of this agreement
24 subject to the attached counteroffer number 1, dated 1/31/18."

25 Q All right. I would like you to turn to proposed Exhibit 6,

1 please. Oh, no, 6 is admitted. Excuse me. I would like you to turn to
2 admitted Exhibit 6, please. Is this the counteroffer referenced in that
3 asset purchase agreement?

4 A Yes, it is.

5 Q Okay. Were you present when this document was signed by
6 either party?

7 A No, I was not.

8 Q Okay.

9 A I was present for the buyer signing it -- the buyer accepting it.

10 Q Okay. And when was it accepted?

11 A February 2nd.

12 Q Okay. Earlier today we looked at the definition of a
13 disposition of a business and the listing agreement Exhibit 10. As you sit
14 here today, did a disposition of the business occur under the terms of the
15 listing agreement?

16 A Meaning did the business turn over?

17 Q Let's go back to Exhibit 10, please. And I would like you to
18 go to page 34 of admitted Exhibit 10, in the definition section. Do you
19 see that, sir?

20 A At page 34?

21 Q Yes, of Exhibit 10. The definition of a transaction and the
22 definition of a disposition of a business.

23 A Paragraph 6, "the sale or other change of the ownership of
24 the business whether or not through the efforts of FCBB 101 during the
25 term of this agreement or extension thereof, and/or where some form of

1 purchase agreement is entered into the seller."

2 Q Did there come a point in time where Mr. Gaal, as seller,
3 entered into some form of a purchase agreement?

4 A Yes

5 Q And what date would that have been?

6 A That's shown on the counteroffer that we were just looking
7 at.

8 Q So looking back at Exhibit 6, February 2nd?

9 A Yes.

10 Q Okay. Are you familiar with the phrase, procuring cause?

11 A Yes.

12 Q What does procuring cause mean?

13 A Procuring cause means, like, in my example -- with an
14 example for me would be that I was responsible -- the responsible party
15 for bringing a buyer to the table or a first choice. That would be the
16 procuring cause, meaning in a potential transaction, I brought the buyer
17 to the table. I'm responsible for that.

18 Q Okay. In the transaction that is the subject of this lawsuit,
19 who brought Mr. Soto to the table?

20 A I did.

21 Q Okay. Looking still at the asset purchase agreement, going
22 back to page 23, where it talks about the representation. I believe you
23 testified that you were both the buyer's agent and the seller's agent. Is
24 there any language there defining who the procuring cause is?

25 A Which paragraph on 23?

1 Q Sixty-one.

2 A Yes. It reads, "buyer warrants and agrees that unless
3 otherwise stated in this agreement, First Choice Business Brokers Las
4 Vegas 101, is the sole procuring cause," yes, "of this transaction."

5 Q Now looking at a combination of Exhibit 7, the asset
6 purchase agreement, Exhibit 6, the counteroffer, and Exhibit 9, the 1A
7 addendum, where -- is there any reference in these documents about Mr.
8 Soto purchasing the land upon which Jack's Place Bar and Grill
9 operates?

10 A Yeah, absolutely. If we go to counteroffer number 1, I would
11 like to explain how counteroffer 1 came about. So --

12 Q All right. So backing up for a second, let me ask you a
13 question. Whose idea was counteroffer number 1?

14 A The seller.

15 Q Okay. Why did the seller want this counteroffer?

16 A Well, because he was proposing the terms he would accept
17 as part of the counteroffer.

18 Q And what does that have to do with the real estate?

19 A Well, it's very important because the counteroffer number 1,
20 is written up exactly in the seller's language that he asked me to write it
21 up in the terms that he was willing to accept the deal. If I may read it. It
22 says, "the purchase price will be reduced from 1.1 million to 1 million."
23 And here's the key, in the seller's own words that he wrote -- asked me
24 to write this counteroffer for him, the seller stated, "the deal structure
25 will be payable as follows: 30,000 earnest money deposit, 700,000 bank

1 loan for the real property, and \$270,000 cash at closing, equal \$1
2 million."

3 So the seller made it crystal clear the real estate was involved and,
4 in fact, proposed the terms on the counteroffer that it was involved.

5 Q All right.

6 A So I don't see where this other argument of it being -- real
7 estate not being included is valid.

8 Q So when Mr. Gaal instructed you to prepare counteroffer
9 number 1, which was fully executed, did he, at any point in time say,
10 wait, wait, wait, I need to get consent from someone to sign this first?

11 A No.

12 Q Did he, at any point in time, give you any indication that he
13 did not have full authority to offer these terms and to sell the real estate?

14 A No. In fact, the timing of this is highly suspect because I've
15 closed about 80 deals, and when I work with sellers, we're on a team,
16 and we're working to accomplish the same goal. And out of the 80
17 transactions, sellers don't give me the wrong information, because we
18 end up not being successful. And so the idea was to be successful with
19 this.

20 Had there been any other information that the seller needed to
21 provide for me, in the rare instance where that might be the case, they
22 typically give that to you at the time of the listing, not when somebody is
23 presenting an offer, and they don't want to do a deal.

24 Q Okay. And was there anything presented to you at listing
25 regarding Mr. Gaal not having the authority to list or sell the property?

1 A No. He stated over and over again in conversations and also
2 on several documents that he had the authority to sell it.

3 MS. SAYYAR: Court's indulgence. One moment.

4 BY MS. SAYYAR:

5 Q I would like you to turn to what has been marked as
6 proposed Exhibit 8. Let me know when you're there.

7 A Uh-huh. I'm there.

8 Q Have you seen Exhibit 8 before -- proposed Exhibit 8 before?

9 A Yes.

10 Q What is it, generally, without going into the specifics?

11 A Well, typically, as part of being an experienced agent, we like
12 to get a substantial earnest money deposit down when we get an offer
13 because that validates the offer, it validates the buyer. And \$30,000 is
14 some good cash on the barrel head to let the seller know that the buyer
15 is serious.

16 Q Okay.

17 A So that's an earnest money deposit that's presented as part
18 of what we open up escrow with once we have the signed offer.

19 Q Okay.

20 MS. SAYYAR: So, Your Honor, I move for the admission of
21 Exhibit 8.

22 MR. WINTERTON: No objection.

23 THE COURT: Exhibit 8 will be admitted.

24 [Plaintiff's Exhibit 8 admitted into evidence]

25 BY MS. SAYYAR:

1 Q So who wrote this check?

2 A The buyer, Angel Soto.

3 Q And what's the date?

4 A January 15th.

5 Q So that would have been before Mr. Gaal actually accepted
6 the offer and the counteroffer, correct?

7 A Uh-huh.

8 Q Is that a yes for the record?

9 A Yes.

10 Q Thank you. And I believe you said -- and if we look at the
11 counteroffer, Exhibit 6 -- the final sales price was \$1 million, correct?

12 A Yes.

13 Q How much is a ten percent First Choice Business Broker
14 commission on a \$1 million purchase price?

15 A One hundred thousand.

16 Q Now when this offer was -- when the asset purchase
17 agreement was signed, all the parts of it, the counteroffer, the asset
18 purchase agreement, the Exhibit 1A that we've looked at, what happened
19 next in terms of the process? What happened next to move forward?

20 A Well, after we had the signed counteroffer, we had a contract
21 in place. The meeting of minds had taken place. The next step in the
22 process that we do is to allow the buyer his due diligence period to
23 validate the business and the sales of the business. At this point, Jack
24 had ten days to produce those documents to me, where I could give that
25 to the seller for him to do his due diligence.

1 Q Okay.

2 A At this time, when I went to the seller to let him know, and
3 the emails are in here, hey, we need to produce these documents, he 100
4 percent completely avoided my phone calls, avoided meeting with me,
5 and completely stonewalled me. He absolutely disappeared when I was
6 trying to complete a deal for him.

7 Q Okay. We're going to look at those documents in a moment.
8 What was Mr. Soto doing at this time period while he was waiting for
9 documents, in the beginning?

10 A Well, he was very concerned. He was wondering why hasn't
11 he given me any of the documents that he agreed to give me, and that
12 he initialed and signed that he would give me. The interesting thing is, is
13 sometimes if somebody has any intent on completing the deal, they'll
14 come to me as a broker and say, Phil, I've got this much ready for you.
15 I'll have this much here. We need some more time. None of that
16 happened. He didn't produce one single document.

17 So he had zero intention of completing this deal. Now I would like
18 to add his strategy was if I don't produce any documents, the buyer will
19 get frustrated and go away, therefore, I don't have to sell the business.
20 That was 100 percent what he was banking on, otherwise, he would have
21 kept communication open with me. He would have produced some
22 documents. It was very clear what happened.

23 Q Okay. So let's look -- I would like you to go to proposed
24 Exhibit 14. And we're going to go to a section in proposed Exhibit 14,
25 that is page 213. Let me know when you're there, sir. Have you seen

1 this document before?

2 A Yes.

3 Q Who prepared this document?

4 A I did.

5 Q And who did you send it to?

6 A I sent it to Jack and his wife.

7 Q Okay. Anyone else was it sent to?

8 A Gene Northup was cc'd.

9 MS. SAYYAR: Your Honor, I move for the admission at 14C,
10 page 213, also referred to as D-199 into evidence, Your Honor.

11 THE COURT: Any objection?

12 MR. WINTERTON: No objection.

13 THE COURT: Exhibit 14C will be admitted.

14 [Plaintiff's Exhibit 14C admitted into evidence]

15 BY MS. SAYYAR:

16 Q Now what is the date of your email -- this email, Exhibit 14C?

17 A February 20th --

18 Q Okay.

19 A -- 2018.

20 Q When did the ten days run on these time period that the
21 seller was to produce documents under the asset purchase agreement?

22 A Upon acceptance of the contract, which is February 2nd.

23 Q Okay. So that puts us, what, February

24 A 12th --

25 Q -- 12th.

1 A -- where they were due.

2 Q Okay. So between February 2nd and February 20th, is this
3 the only email that you sent?

4 A I had tried several phone calls.

5 Q Okay.

6 A I said, hey, how are we coming along? What's going on? I
7 was completely stonewalled.

8 Q Did you actually get to speak to him --

9 A No.

10 Q -- or did you have to leave messages?

11 A I had to leave messages.

12 Q Okay. So you sent this email on February 20th, 2018, and at
13 this point in time, when you're sending this email, how is Mr. Soto's
14 demeanor?

15 A Well, I felt I did a good job keeping him in. And I said, maybe
16 he's been out of town or maybe there's been a reason why he hasn't
17 been able to produce them, but as an agent, I felt it important to warn
18 him in writing, with this email, that he's jeopardizing the deal, and he's
19 burning the buyer and killing the deal by not providing any documents.

20 In fact in this email, I even suggested if you need more time give
21 me what you have and that way we can at least show some good faith to
22 say, hey, we still would like to do the deal. Were' still interested. Not
23 only did he not produce one single due diligence document, he never
24 responded to me as his broker, who was doing a fabulous job for him.

25 Q Did Mr. Northup respond in any way?

1 A Actually, Gene went to him as an advisor, and he said, hey,
2 look, you need to turn over these due diligence documents, and Jack told
3 Gene, quote, "you go talk to my attorney."

4 Q And did Gene tell you this conversation took place?

5 A Yes.

6 Q When did he tell you that?

7 A Right about the time this email was sent.

8 Q Okay. Now after you received no response to your messages
9 and such, was there any effort made by you or Mr. Soto to physically go
10 to Jack's Place Bar and Grill during this time period, at the end of
11 February?

12 A No, because we don't believe in harassing anybody. Mr.
13 Soto went up and visited a couple times to eat, hoping to run into Jack.
14 And what was interesting was Mr. Soto was there hoping to talk to Jack
15 to keep the spark live on the deal, and Jack completely ignored him
16 while he was bussing tables.

17 Q Okay. I would like you to what has been marked as proposed
18 Exhibit 22. Sir, did there come a point in time where you received
19 correspondence from attorneys related to this case?

20 A Yes.

21 Q Okay. Were the letters addressed to you or addressed to you
22 in care of someone else?

23 A The letter was addressed to me.

24 Q Okay. Looking a proposed Exhibit 22, do you recognize these
25 letters?

1 A Yes.

2 Q Generally, without going into the content of them, what are
3 they?

4 A Well, once Jack had made it clear that he wasn't going to
5 speak to me as his broker, and I have no known reason why he wouldn't
6 do that, he went the legal route.

7 Q Okay.

8 A And so understanding that, I happened to know David
9 Winterton, so I made an effort, in good faith, to go over and talk to David
10 to say, hey, look, let's make this a win/win for everybody. Let's complete
11 the deal. This is what everybody wants to do.

12 Q So are these letter -- proposed Exhibit 22 letters that you
13 received from an attorney?

14 A Well, the letter dated February 23rd, is an acknowledgement
15 of the meeting I had with David. And David understood and agreed that
16 his client needed to produce those due diligence documents, and that's
17 what was meant there when -- on the letter it says, I've spoken to Jack
18 and explained the situation, meaning you need to turn over those due
19 diligence documents.

20 Q Okay.

21 MS. SAYYAR: Your Honor, I move for the admission of the
22 entirety of Exhibit 22.

23 THE COURT: Any objection?

24 MR. WINTERTON: I have no objection, Your Honor.

25 THE COURT: Exhibit 22 will be admitted.

1 [Plaintiff's Exhibit 22 admitted into evidence]

2 BY MS. SAYYAR:

3 Q So let's look at the second page of Exhibit 22 or, technically,
4 page 343. This is a letter dated February 22nd, 2018, sent to you via
5 email. It starts, "I represent one of the trustees of the John A. Gaal
6 Family Trust." Who is John A. Gaal?

7 A That's Jack Gaal. I would like to just add in one more note to
8 the last letter.

9 Q Well, there's no question pending. We'll get to the other
10 letter in just a second.

11 A Okay.

12 Q So, but -- yeah. But that's Jack Gaal?

13 A Yes.

14 Q Okay. Prior to receiving this February 22nd, 2018 letter from
15 Mr. Winterton's office, had Mr. Jack Gaal ever mentioned to you that he
16 needed consent from a trust to move forward with the listing and sale of
17 the business?

18 A No. In fact, had that been the case, the appropriate time to
19 say that would have been at the time of the listing.

20 Q Okay. Prior to receiving this February 22nd, 2018 letter, did
21 Mrs. Gaal, in the times that you met and spoke with her, ever mention or
22 disclose to you that some sort of consent needed to be provided by a
23 trust to move forward with the listing and sale?

24 A No. She did not say that.

25 Q At any time prior to receiving this February 22nd, 2018 letter,

1 did Mr. Northup ever communicate to you on behalf of Mr. or Mrs. Gaal,
2 that there was a trust that needed consent or authority to move forward
3 with the sale on the listing?

4 A No.

5 Q When you received this February 22nd letter from Mr.
6 Winterton, what was your reaction?

7 A I was absolutely stunned. Absolutely stunned.

8 Q Can you take us through why this letter was so stunning?

9 A Yeah. Well, first of all, his -- Jack's business is not an easy
10 business to sell because he's got a sports bar with no gaming. Any
11 buyer that's looking to buy a sports bar in Las Vegas wants gaming. So
12 it was a very tough sale. Very tough. Nevertheless, I brought him a
13 ready, willing, and able buyer, and the guy completely disappeared. I
14 don't know what his reasons were, but he became very secretive. He
15 didn't want to communicate with anybody.

16 And had there been validity to what he's saying about the family
17 trust, the time to bring that up would have -- again, would have been at
18 the listing point, not as a way to get out of a sale, as using a backdoor,
19 by bringing up the trust.

20 Q Any other reasons why it was surprising to receive this letter
21 when you did?

22 A Yes, because everybody involved, and I -- including counsel,
23 understood that if he did not turn over those due diligence documents he
24 was going to owe First Choice a fee, but, more importantly, the objective
25 was to complete the transaction to make it a win/win for the seller and

1 buyer. I represented both of them. I wanted everybody to be happy.
2 And I was not able to do that. I was not able to finish my job, because he
3 completely stonewalled us by not giving us any documents. No
4 communication. No effort, at all, and then coming up with a story about
5 a trust once we're already in contract. The time to disclose that would
6 have been much sooner.

7 Q Okay. Any other reason why this sudden trust and the need
8 for some sort of consent was so surprising when it came?

9 A Well, yeah. The obvious plan was to come across -- and
10 again, and again, and again, and again, and again Jack mentioned that
11 he was authorized seller again, and again, and again, and again. By
12 coming up with this trust situation, I believe that was their backdoor way
13 of trying to exit the contract.

14 Q Okay. Were you ever provided a copy of the trust?

15 A No.

16 Q Were you ever provided any sort of certificate of trust or any
17 portion of the trust, of any kind, to verify its terms?

18 A No. In fact, we don't typically get involved with trusts. As
19 agents, we don't have access to that information, and I was never
20 provided with a copy of that trust by opposing counsel.

21 Q Okay. Was there any other reason why, based on the
22 conduct of Mr. and Mrs. Gaal, this was so surprising?

23 A I don't know. Maybe they had something to hide. That's -- I
24 don't know. Maybe they were afraid of turning over their financials or
25 whatever it was, but -- you know, all I ever ask with my clients is that

1 they communicate with me, because I can help everybody involved if I
2 know what's going on. He went and hid under a rock, completely
3 disappeared. In fact, they're asking -- it's my opinion, they're asking for a
4 new contract because if I issue a new contract, that gives him a reason to
5 slide out of the existing contract.

6 Q Okay.

7 A It gives him a backdoor. We don't need to do that because
8 our contract has held up several times in all kinds of instances through
9 escrow where the business and the property has been closed in escrow
10 as a result of our listing agreement and asset purchase agreement. No
11 other contract was needed.

12 Q Now when you received this letter, I believe you testified you
13 actually went to see Mr. Winterton; is that correct?

14 A Yes.

15 Q Now is that unusual for a real estate licensee to actually go to
16 bat and go talk to the attorney?

17 A Well, I'm a pretty dedicated person. I get something on the
18 radar, and I like to close transactions. There's a reason why I've been
19 doing this for 16 years. I go see people, and I talk to them.

20 Q So did Mr. Winterton agree to meet with you?

21 A He did.

22 Q And did you meet in person?

23 A We did.

24 Q And who was present during that meeting?

25 A Just me and him.

1 Q Okay. Did you bring any documents with you?

2 A Yes. I brought in the listing agreement and the asset
3 purchase agreement.

4 Q How long was the meeting?

5 A Probably about an hour.

6 Q Okay. Did Mr. Winterton go through the documents that
7 your brought?

8 A Yes.

9 Q Did he ask you questions?

10 A Yes. He was asking questions in terms of what's the time
11 period for due diligence and some general questions about the
12 transaction.

13 Q Okay. Did Mr. Winterton provide you any information about
14 the trust during that meeting?

15 A He did mention -- he did mention, I believe, that there was a
16 trust or something to that effect, but that didn't change the equation that
17 we had an existing signed contract by an authorized seller that refused to
18 turn over any documents. In fact, Mr. Winterton agreed that if he didn't
19 turn over those documents, he was going to owe us our fee.

20 Q And he came -- he took that position during your meeting?

21 A Yes.

22 Q At the end of the meeting, what was your understanding of
23 where the deal stood?

24 A Mr. Winterton was going to do everything he could to get the
25 due diligence documents, because he knew there was an urgency in

1 getting those documents to me, otherwise, he was going to be breaching
2 his contract, and burning the buyer, and killing the deal.

3 Q Okay. And is page 342, Bate stamp number D-320, the letter
4 that Mr. Winterton sent to you after meeting?

5 A Yes.

6 Q And what was your understanding of this letter?

7 A Well, I think it was a good letter that he wrote. He explained
8 to Jack, look, you need to turn over those documents. It says in the
9 letter, "I've spoken to Jack and explained the situation. I believe he
10 understands, and he will be getting you the documents so the buyer can
11 complete his due diligence and close the sale of the business as soon as
12 possible."

13 Q So --

14 A We never received anything.

15 Q Well, before we get into that point, when you received this
16 letter, this February 23rd letter, did you believe the matter regarding the
17 alleged trust was resolved?

18 A That was an issue that would not have stopped the deal from
19 closing. Escrow -- if there was a trust, it was on different name or
20 something that's there. That's why we have escrow. They would have
21 ran that, and they would have seen it, and that would have been taken
22 care of, but we never got a chance to get to that escrow because the
23 buyer never provided the due diligence for the buyer to sign off that he
24 had completed his due diligence. Therefore, we could not go to escrow
25 to close it.

1 Q Okay. Now after you received the February 23rd letter, after
2 you had met with Mr. Winterton, what happened next?

3 A Well, I was under the assumption that he was going to
4 eventually turn over the due diligence documents. And as it turns out,
5 we got three different stories on what happened.

6 Q All right. Let's go through what stories you got, when, and
7 from who? So story number one, what was the first story you received?

8 A That he was going to turn over the documents to his
9 attorney.

10 Q Okay. And how did you come to hear that story?

11 A Well, that's what Mr. Winterton told me, was that he would
12 turn over -- get those documents organized and turn them over.

13 Q Okay. And was anything provided to you from Mr.
14 Winterton?

15 A Zero. Nothing.

16 Q What was story number two?

17 A Story number two was he supposedly gave the documents to
18 Gene Northup who wasn't even his agent.

19 Q Okay. And did Mr. Northup ever -- were you ever able to
20 confirm whether or not Mr. Northup received anything?

21 A He never received anything.

22 Q Did Mr. Northup --

23 A Because when he inquired about receiving them, he was told
24 to his attorney.

25 Q Okay. And did you -- did Mr. Northup, at any point in time,

1 after February 23rd, provide you documents?

2 A No.

3 Q What was story number three?

4 A Story number three, he was just waiting for the buyer to
5 come up and visit him at his place of business, and he would turn over
6 the due diligence documents to the buyer in person. Well, the buyer
7 actually did go up to visit him and to have dinner, to show his friends
8 that he was trying to buy the place, and the seller completely
9 stonewalled him, ignored him, and went right by him as he was bussing
10 tables.

11 Q So how did you come to hear that Mr. Gaal was willing to
12 turn over due diligence documents if Mr. Soto showed up in person?
13 How was that communicated to you?

14 A I believe that was in the depositions or that was my
15 understanding.

16 Q Okay. I would like you to go to proposed Exhibit 26. I would
17 like you to look at the body of a forwarded email message that makes up
18 page 354 of this proposed exhibit. This is a two page exhibit.

19 MR. WINTERTON: Your Honor, I've got to object. This here
20 is blatant settlement discussions, and settlement negotiations are not
21 admissible into evidence. It gives three choices, which were being
22 negotiated, and it's -- it's just inadmissible into evidence.

23 MS. SAYYAR: Then I will withdraw, Your Honor.

24 THE COURT: Okay.

25 MS. SAYYAR: I apologize. I didn't read the email the same

1 way Mr. Winterton did, but I will take his point and withdraw --

2 THE COURT: Okay.

3 MS. SAYYAR: -- looking at that document.

4 BY MS. SAYYAR:

5 Q Turning away from that document. I would like you to turn
6 to exhibit -- proposed Exhibit 25. But before we look at that, what was
7 Mr. Soto's behavior after these three stories fell through?

8 A Well, he was just as shocked as I was that not only was he
9 not providing the documents, he was -- a nice to put it -- was
10 misrepresenting himself as to when they were delivered.

11 Q Is it typical for a buyer to wait as long as Mr. Soto did?

12 A No. Typically, a buyer in a situation after the due diligence
13 period has been extinguished, the ten days, they leave, and they go look
14 for another business. Sometimes they might hang on for a little bit
15 longer because of hope, but nevertheless, I kept the buyer in the deal a
16 month-and-a-half after the due diligence period extended to do, which is
17 very rare to keep somebody in a deal that long when they haven't been
18 given any documents.

19 That shows how much the buyer was deadly serious about
20 purchasing the business. And if I may say, it showed that I did a good
21 job holding the deal together, trying to keep some glue on the deal,
22 when in fact I explained what happened.

23 Q Yeah. What efforts did you take to try and hold Mr. Soto in
24 the deal as long as you did?

25 A I told him to go up and visit the store, and to get a feel for the

1 flow of the business, and see if they're still doing well, and take a look at
2 validating the business potentially another way by watching the crowd
3 that comes in and out of the business. But that's not enough to satisfy
4 due diligence on a million dollar deal. And trying to -- and I just assured
5 him as his broker, I was going to do everything I possibly could to get
6 him the items that were agreed to be given to him.

7 Q Okay. At some point in time, did you receive a letter from
8 another attorney in this case?

9 A Yes.

10 Q Looking at proposed Exhibit 25, is that the letter that you
11 received from another attorney?

12 A Yes, because at this point the buyer -- and you'll notice the
13 date on that, it's March 16th. So considering the purchase agreement
14 was signed on February 2nd, I held the buyer into this deal for two
15 months after the due diligence was extinguished. So anything to say
16 that I didn't do a great job trying to close this transaction, that's highly
17 unusual for a buyer to stay in a deal for two months after the due
18 diligence period has expired.

19 Q And was this letter addressed -- was sent to you care of
20 someone or sent to you directly?

21 A I believe this was sent to David Winterton along with me at
22 the same time. The buyer's attorney was asking for -- rightfully asking
23 for his due diligence money back.

24 MS. SAYYAR: Your Honor, I move for the admission of
25 Exhibit 25.

1 MR. WINTERTON: No objection.

2 THE COURT: Exhibit 25 is admitted.

3 [Plaintiff's Exhibit 25 admitted into evidence]

4 BY MS. SAYYAR:

5 Q Now when you received this letter did you make any effort to
6 communicate with Mr. Gaal?

7 A At this point, I was communicating with David Winterton,
8 because he was not returning my phone calls, he would not see me, and
9 David was responding back to me.

10 Q Okay. I would like you to turn to proposed -- a section of
11 proposed Exhibit 14. I would like you to go to page 172. Let me know
12 when you're there.

13 A I'm there.

14 Q Okay. Were you ever provided a copy of Mr. Winterton's
15 response to the Jared R. Johnson letter that Mr. Soto's counsel sent?

16 A Yes, Angel Soto provided that to me.

17 Q Okay.

18 MS. SAYYAR: Your Honor, I move for the admission of 14D,
19 which will be page 172, Bate stamp number D-158.

20 THE COURT: Any objection?

21 MR. WINTERTON: I'm just going to take a minute to look at it
22 here.

23 [Counsel reviews document]

24 MR. WINTERTON: Is it D-172?

25 MS. SAYYAR: No, page 172, it's D-158.

1 MR. WINTERTON: Okay.

2 MS. SAYYAR: I'm so sorry, Mr. Winterton.

3 MR. WINTERTON: Okay. I was saying, it doesn't fit. Oh, this
4 one here. No objection, Your Honor.

5 THE COURT: Exhibit 14D will be admitted.

6 [Plaintiff's Exhibit 14D admitted into evidence]

7 BY MS. SAYYAR:

8 Q So this is a letter from Mr. Winterton where he says he
9 represents Jack's Place. And what is your understanding of what
10 happened as a result of this March 23rd, 2018 letter?

11 A Well, my job, understanding I'm also representing the buyer
12 as a dual broker, was -- it's very clear and escrow understood that the
13 buyer was entitled to his earnest money deposit back. However, the
14 buyer was not releasing him of any liability and the buyer inquired if he
15 could sue the seller for specific performance.

16 Q Okay. And that would be found on Exhibit 25, the letter from
17 Mr. Soto's attorney?

18 A Yes.

19 Q Okay. And when Mr. Winterton sent a response to Mr.
20 Johnson, which is 14D, the March 23rd letter, what happened to the
21 earnest money then?

22 A I called escrow and explained the situation, and escrow
23 clearly saw the buyer was in the right and released the money without
24 having the buyer sign off to give any sort of relief to the seller, to relieve
25 them of any responsibility. It was so crystal clear with escrow; they

1 didn't even ask me for those instructions. Typically, when an earnest
2 money deposit is given back, they have the buyer and the seller both
3 sign it agreeing to give it back. They didn't even bother to go to the
4 seller on this, because they saw it was a clear breach of the contract.

5 Q Okay.

6 MS. SAYYAR: Your Honor, Court's indulgence. I need a
7 break, if that's all right.

8 THE COURT: It's 2:10. Let's be back at 2:20. Thank you.

9 MS. SAYYAR: Thank you.

10 [Recess from 2:10 p.m. to 2:20 p.m.]

11 THE COURT: You may be seated. Come on back up, please.

12 MS. SAYYAR: Your Honor, just a moment. Your wonderful
13 Clerk has provided us sort of an updated list. We're just double checking
14 it.

15 THE COURT: They're both pretty wonderful. They're all
16 pretty, pretty wonderful.

17 MS. SAYYAR: Oh, they are. They are. Excellent. Excellent.
18 So we're just checking our notes before we keep going, Your Honor, to
19 speed this up.

20 [Pause]

21 THE COURT: I don't see 12 admitted.

22 MS. SAYYAR: Yeah. Your Honor, the only correction we had
23 was Exhibit 12 was admitted with no objection. Otherwise, the list by
24 your amazing staff --

25 THE COURT: Neither one of us have 12 as being admitted.

1 MS. SAYYAR: Okay.

2 MR. ROCHELEAU: Okay.

3 MS. SAYYAR: Thank you. We will go back over that if there
4 was a problem. That's why we check, Your Honor. Oh, no, that's right.
5 12 was the one we decided not to offer. That's fine. No, you're right. 12
6 is not on offer. It's listed as something --

7 [Counsel confer]

8 MS. SAYYAR: So 12, you're right. That is correct. The list as
9 provided is correct, Your Honor. Thank you.

10 THE COURT: Uh-huh.

11 MS. SAYYAR: Okay. All right. We are going to continue.

12 BY MS. SAYYAR:

13 Q After escrow had returned Mr. Soto's earnest money deposit,
14 do you believe that First Choice Business Brokers is still owed a fee?

15 A Absolutely.

16 Q Who should the fee be paid by?

17 A The seller.

18 Q Okay. And why is the seller responsible to pay the fee?

19 A Because he clearly breached the contract. As was explained
20 earlier, he had an obligation to turn over the due diligence items and
21 seller knew if he didn't turn them over the buyer would go away.

22 Q Let's go to the listing agreement, Exhibit 10. And I would like
23 you to go to paragraph 11. I believe you read this portion into the record
24 earlier. "The fee based upon the accepted purchase agreement amount
25 will be owed to First -- FCBB if the seller fails to deliver documents in the

1 agreed upon time period, whether or not such action also constitutes a
2 default or material breach of the purchase agreement by seller."

3 Looking under 13 -- paragraph 13, were there any other breaches
4 or violations by the seller?

5 A Specifically, what do you mean?

6 Q If you want to look at paragraph 13, is there any section of
7 the listing agreement there that has also been violated, if any?

8 [Witness reviews document]

9 A Yes, paragraph C.

10 Q Okay. Now did First Choice Business Brokers make any sort
11 of demand upon the seller for payment of the fee?

12 A Yes.

13 Q How much was the fee in principal?

14 A \$100,000.

15 Q Does the listing agreement call for any interest?

16 A Yes.

17 Q And how much interest does it call for?

18 A Eighteen percent.

19 Q Okay. Does the listing agreement call for any other amounts
20 that the seller has to pay in the event of material breach?

21 A Attorney's fees.

22 Q Did First Choice Business Brokers retain an attorney in this
23 matter?

24 A Yes.

25 Q Has First Choice Business Brokers paid its attorney in this

1 matter?

2 A Yeah.

3 Q So have you done any calculation of the interest that is due
4 and owing on the \$100,000 commission and fee?

5 A Yes. It works out to be 156,000 with 18 percent added on
6 each year.

7 Q Okay. And for the sake of the Court and the record, I'm going
8 to give you a calculator and if you could let us know what the per diem
9 amount is.

10 A So if I take 100,000 times .18, of course, that's 18,000 a year.
11 So if I take 118,000 divided by 365, equals out to be about \$49 a day in
12 interest. And then if you take that over the course of almost three years,
13 it gets to be 156,000.

14 Q When did interest begin to accrue?

15 A After the proposed closing date.

16 Q When was First Choice Business Brokers fee earned?

17 A On acceptance of the contract.

18 Q And when was the contract accepted?

19 A February 2nd.

20 Q Okay. So would it be fair to say the interest should accrue
21 since then?

22 A Well, we picked the closing date, but, yes, technically.

23 Q Okay. As you sit here today, and you think back on your
24 communications and conversations with Mr. Gaal, do you have any idea
25 or any indication as to perhaps why he failed and/or refused to provide

1 due diligence documents?

2 A No.

3 Q Did he ever say anything to you that may be a reason as to
4 why he was reluctant or refused to provide due diligence documents?

5 A I think he may have been concerned about how he was
6 paying some of his employees, because they were paid cash.

7 Q Did -- what did he --

8 MR. WINTERTON: Objection. Speculation.

9 THE COURT: Objection sustained.

10 BY MS. SAYYAR:

11 Q Did Mr. Gaal ever represent to you anything in particular
12 about the manner in which he paid his employees?

13 A Yes.

14 Q And what did he say, specifically?

15 A That some of them were paid cash.

16 Q Okay. As you sit here today, has anyone paid the fee and
17 commission due and owing to First Choice Business Brokers?

18 A No.

19 MS. SAYYAR: Court's indulgence. One moment.

20 [Counsel confer]

21 MS. SAYYAR: Your Honor, at this time reserving the right to
22 recall this witness in our rebuttal and, of course, reserving the right for
23 any redirect. We pass the witness.

24 THE COURT: Thank you. All right. It's 2:29. Mr. Winterton,
25 cross-examination.

1 MR. WINTERTON: Yes.

2 CROSS-EXAMINATION

3 BY MR. WINTERTON:

4 Q Okay. Since I've known you for a number of years, can I call
5 you Phil?

6 A Please.

7 Q Thank you, Phil. Okay. You and Mr. Northup go way back;
8 don't you?

9 A We've known each other --

10 Q You've known each other for a long time? But he knew you
11 before you even got involved in selling businesses? Yes?

12 A Yes, he did.

13 Q Sorry, you have to answer.

14 A Sorry. Yeah. Yes, he did.

15 Q Okay. And so you knew Mr. Northup, who is in real estate
16 business and sold real estate?

17 A I'm sorry, could you repeat that?

18 Q You knew Mr. Northup was in the real estate business?

19 A Yes.

20 Q Okay. And so did he encourage you to get into this type of
21 business or is it something you found?

22 MS. SAYYAR: Objection. Relevance.

23 THE WITNESS: No, he didn't.

24 THE COURT: It's foundational. Overruled. Just let me rule.

25 THE WITNESS: I'm sorry.

1 THE COURT: That's okay.

2 THE WITNESS: Forgive me.

3 BY MR. WINTERTON:

4 Q So have you -- prior to this time, did you and Gene ever do
5 any business together? Selling a business in real estate?

6 A I don't believe so.

7 Q Okay.

8 A Well, he had -- he had actually showed me a long time ago
9 some properties that I was looking at, at one time to buy with him before
10 I was with First Choice, but I had never done any business with him.

11 Q Okay. Was Jack Gaal involved in those properties that you
12 were looking at?

13 A No.

14 Q Okay. Now there came a point in time where Gene contacted
15 you about assisting Jack Gaal, yes?

16 A Yes, uh-huh.

17 Q Yeah. Sorry you have to answers out --

18 A I didn't know it was a question, sorry.

19 Q Yeah. And I apologize if I sound like I'm yelling. I'm trying to
20 talk over this mask.

21 A Sure.

22 Q Because I'm -- anyway. So Gene called you and said -- he
23 said he knew Jack Gaal, correct?

24 MS. SAYYAR: Objection. Hearsay.

25 THE COURT: It's foundational. Overruled.

1 THE WITNESS: Yes.

2 BY MR. WINTERTON:

3 Q Okay. And Jack -- and he told you about the bar?

4 A Yes.

5 Q And he told you about the property?

6 A Yes.

7 Q Okay. And prior to meeting him, did you meet with him? I
8 mean, do an investigation as to the property?

9 A Would you clarify that question?

10 Q Sure. Sometimes realtors, licensees, do a little background
11 check prior to meeting with the client. Like, for example, they say, so
12 and so owns this property, he's interested in selling it. They do a
13 background check.

14 A We did. We went out, and we had lunch together.

15 Q Okay. Prior to the lunch, did you do any background check?

16 A No, because we didn't know whether or not it was going to
17 be a listing or not until we've met with the seller.

18 Q Okay. And when you were there, what did you -- you looked
19 at the business, you talked about what was going on?

20 A Yes.

21 Q And did they talk to you about -- well, let me take a step back.
22 So in my opening argument, I talked -- or statement, I talked about Gene
23 and Jack were pretty tight; is that correct?

24 A Yes.

25 Q And they've done multiple dealings together?

1 A Yes.

2 Q And isn't it true that Jack contacted Gene and said, I would
3 like to sell the bar and the property?

4 MS. SAYYAR: Objection. Calls for speculation. Assumes
5 facts not in evidence.

6 THE COURT: Overruled.

7 BY MR. WINTERTON:

8 Q If you know.

9 THE COURT: You can answer.

10 THE WITNESS: Yes.

11 BY MR. WINTERTON:

12 Q Okay. And that's how Gene ended up getting ahold of you?

13 A Yes.

14 Q Okay. So after -- so you sat down, had this meeting. What
15 did they -- what did you guys discuss at that meeting?

16 A Which meeting are you referring to?

17 Q The very first foundational meeting that you had.

18 A We discussed the possibilities of selling the bar and the real
19 estate.

20 Q Okay. And did he talk to you about the valuation of the real
21 estate?

22 A Yes.

23 Q And, in fact, he had an appraisal done; isn't that correct?

24 A That's correct.

25 Q And he ended up giving you a copy of the appraisal?

1 A He did.

2 Q Okay. So what I would like to do is turn to Exhibit number
3 12. And is this a copy of the appraisal that you received?

4 A I believe so.

5 Q Okay. And this was -- you used this when you were doing
6 the listing agreement to figure out how much the property and the
7 business would be worth; is that correct?

8 A I'm not sure if he provided that at the time of the listing
9 agreement or not.

10 Q Okay. But you previously said, yes, and now when you look
11 at it you're changing; isn't that correct?

12 A I don't know when he gave me the appraisal.

13 Q But isn't it true that the appraisal says, Jack A. -- John A.
14 Gaal and Katherine B. Gaal, Trustees to the John A. Gaal Family Trust?

15 MS. SAYYAR: Your Honor, Exhibit 12 is proposed. It's not
16 been moved to be admitted. He can't read from it until we have that
17 done, Your Honor.

18 THE COURT: Objection sustained.

19 MR. WINTERTON: Okay.

20 BY MR. WINTERTON:

21 Q I wonder if you could look at this exhibit and tell me if this is
22 a true and accurate copy of the appraisal you received? Go ahead and
23 look at Exhibit 12.

24 [Witness reviews document]

25 A Yes.

1 Q Okay. And this came from Jack?

2 A I believe so.

3 Q Okay.

4 MR. WINTERTON: Your Honor, we would move for
5 admission of Exhibit number 12.

6 MS. SAYYAR: We object, Your Honor. It is a purported
7 appraisal. There's no named expert in this case. If it's offered for the
8 truth of the matter asserted, it's hearsay. This is supposedly prepared in
9 June of 2017, well before any meeting or discussion, according to the
10 evidence so far admitted, with my client. I still believe we don't have
11 foundation, nor can my client have the personal knowledge to
12 authenticate this document.

13 THE COURT: May I have a response, please?

14 MR. WINTERTON: Yes. He has already authenticated that
15 this was an appraisal that was done, that he had received, and that this
16 was a document that was used in regards to the selling of this property.
17 So as a result, Your Honor, we believe that it should be admitted.

18 THE COURT: I'm going to sustain the objection. First of all,
19 it's hearsay. It wasn't provided -- it might have been provided to him,
20 but it was not prepared for him, and there's no one here to authenticate
21 it. So objection sustained.

22 MR. WINTERTON: Okay.

23 BY MR. WINTERTON:

24 Q Did you read this appraisal prior, at any point in time?

25 A Like when are you asking me that I read it?

1 Q Yeah. Well, when Jack gave it to you, did you review it?

2 A Yeah, we thumbed through it and mainly -- our main point of
3 that was to look at the price.

4 Q Okay. But you went through it?

5 A We thumbed through it.

6 Q Okay. And after -- okay. So now you've talked to Jack and,
7 let's see, you were given this appraisal. Did you go back to the office
8 and start preparing documents, a listing agreement or something like
9 that?

10 A Like I said, I don't know when this was given to me.

11 Q That's not my question. After you had that meeting, you
12 went back to your office, and did you start preparing documents to list
13 this property?

14 A Yes.

15 Q Okay. And what documents did you have to prepare the
16 listing documents?

17 A I had his handwritten financials that we had reviewed earlier,
18 and I had an equipment list.

19 Q Okay. Anything else?

20 A He also gave us some dimensions of the property, because
21 we have to advertise the square feet available, and I believe that was
22 covered in my earlier testimony.

23 Q Okay. So he gave you that. How did you know the name of
24 the business?

25 A Well, for one I went there and saw it was named Jack's Place,

1 but, also, we searched it under their LLC.

2 Q Okay. How did you find out it was under an LLC? You
3 searched it?

4 A Because when he signed as an authorized seller, that's the
5 information he provided to us.

6 Q Okay. Now this is prior to that. How did you know to draw
7 up the documents that he is this authorized person? Did he tell you?

8 A We researched the business license, and the name comes up
9 under him or the office staff does, so that was validated.

10 Q Okay.

11 A We -- again, we went with the information he gave us as the
12 authorized seller.

13 Q Okay. Now did you -- okay. And did you do any of that
14 search yourself or was it just the office?

15 A The office.

16 Q The office. Okay. Now there came a point in time where the
17 office did a research on the real property; isn't that correct?

18 A Uh-huh.

19 Q And they pulled up the APN; isn't that correct?

20 A Yes.

21 Q And how did they research it, through the County Records
22 Office?

23 A Yes.

24 Q And the County Records Office would show that a trust owns
25 the real property; isn't that correct?

1 A It would show the individuals were there, Jack and his wife,
2 as the owners is my understanding.

3 Q Okay. Let's go ahead and turn to -- okay, there may be a
4 book up there.

5 THE COURT: He has the book.

6 MR. WINTERTON: Oh, okay. And it's Exhibit 521.

7 THE WITNESS: I just got numbered up to 29.

8 THE COURT: We have up to 29. The second book.

9 THE WITNESS: Thank you.

10 BY MR. WINTERTON:

11 Q And on the top right hand corner it's dated February 13th,
12 2018; isn't that correct?

13 MS. SAYYAR: Your Honor, I'm going to object again to Mr.
14 Winterton reading from a document that has not been offered into
15 evidence.

16 THE COURT: Objection sustained. You can lay a foundation,
17 but you can't use it without its admission.

18 MR. WINTERTON: Okay. Could I use it to refresh his
19 recollection is what I'm hoping to do?

20 THE COURT: Well, yeah, you can use anything to refresh
21 recollection, but you have to establish that he needs to be refreshed.

22 MR. WINTERTON: Sure.

23 BY MR. WINTERTON:

24 Q Have you seen the County records back in 2018?

25 A Is this -- this is -- is this 529 you're talking about?

1 Q No, I'm sorry, it's 521.

2 A Okay. I'm there.

3 Q Okay. Now this is the property 544 Nevada Way; isn't that
4 correct?

5 MS. SAYYAR: Your Honor, same objection. We haven't
6 established that there's a question that my client needs his memory
7 refreshed upon.

8 THE COURT: The objection is sustained.

9 BY MR. WINTERTON:

10 Q Phil, do you recall who, at the time of this transaction,
11 actually owned the property?

12 A I'm sorry, David, I didn't hear you. Could you repeat that?

13 Q Yeah, I'm sorry. I'll try to do better. I don't like to yell, but --

14 A You're okay.

15 Q -- it's hard with this mask. So I apologize. Sure.

16 Do you -- does this refresh your recollection as to who actually
17 owned the real property at the time of this transaction?

18 MS. SAYYAR: Your Honor, again, I have to -- based on the
19 wording of the question, have to raise the same objection. It hasn't been
20 established he needs his memory refreshed.

21 THE COURT: Objection sustained.

22 MR. WINTERTON: Okay.

23 BY MR. WINTERTON:

24 Q Phil, did you at some point in time learn who actually owned
25 the real property?

1 A The seller stated again and again that he owned it, and
2 signed paperwork stating that he owned that real property.

3 Q Okay.

4 A That's on all the agreements.

5 Q When did -- isn't it true that you later learned that he did not
6 own the real property?

7 A Well, I think that point was brought up, but that's something
8 that -- that's not anything that escrow could fix in the closing documents.
9 That's typically what an escrow does, is they ensure that everything is
10 accurate.

11 Q Okay.

12 A But that was no reason to stop the deal.

13 Q But the question I have for you is, isn't it true that the trust
14 owned the real property when you signed the list -- when the listing
15 agreement was signed?

16 A Well, that's not what the seller represented. The seller
17 represented -- he was asked specifically who was the owner of the
18 property and the business, and he signed the documents as the
19 authorized seller of the business and the property. He's the one that
20 signed the documents, not me.

21 Q That's not my question.

22 A Well, I'm answering your question. He represented that he --

23 Q Okay.

24 A -- was the authorized seller.

25 Q Do you know who actually owned the property on the day

1 that the listing agreement was signed?

2 A No.

3 Q Okay. Did you ever, as a realtor, or your office, make an
4 effort to find out who owned the real property?

5 A I think they might have tried to look at that, but I was not
6 informed at the time of the listing that that was different from what the
7 seller put down as the authorized seller.

8 Q So the office may have done it, but you were not informed;
9 isn't that correct?

10 A I'm not exactly sure how that went down. I really don't.

11 Q But isn't it true that someone had to do the research to get
12 the APN number?

13 A The seller provided us with the APN number. It's the seller
14 that provided it to us.

15 Q What documents do you have to show that the seller
16 provided you the APN number?

17 A I don't remember exactly what it was, but he provided the
18 APN number. I mean, you can go -- it's not hard to look up a APN
19 number.

20 Q Right. And when you looked up the APN number, it tells who
21 the owner is; isn't that correct?

22 A Well, typically, sellers tell me the truth when they sign listing
23 agreements, and they say I'm the authorized seller and this is the party. I
24 rely upon them. We're working together as a team. There's no reason
25 why they would want to tell me anything different. Why would he not

1 want to tell me the correct name? That's -- and if he did make that
2 mistake, then that's nothing escrow couldn't have corrected to still close
3 the transaction.

4 Q Okay. But the -- so you do not dispute that at the time the
5 listing agreement was signed, John A. Family Trust --

6 A I do dispute that --

7 Q -- owned the property?

8 A -- because I didn't know that. I do dispute that. I rely upon
9 the information the seller gives us.

10 Q Okay. And -- okay. And do you rely upon the information
11 your staff gives you?

12 A Yes, but before the staff sees anything, the seller provides
13 the information first.

14 Q Okay.

15 A So the seller is the one that misrepresented himself.

16 Q So what's the APN number of your house?

17 A Of my house?

18 Q Yeah.

19 A I don't have that memorized.

20 Q Well, people don't have it at the top of their heads; do they? I
21 don't know the APN number of my house either.

22 A Well, if --

23 Q So people don't --

24 A -- I was listing --

25 Q -- typically have it.

1 A -- the business just like an EIN number, I would probably
2 would have that memorized if I was listing it.

3 Q Okay. But we're talking about the APN number, correct?
4 Okay. Now you're saying that Jack -- so Jack, he didn't have a talk with
5 his head; did he?

6 A I don't remember how that went down.

7 Q And so -- okay. You don't remember when the appraisal was
8 given, but the appraisal would have an APN number; wouldn't it?

9 A Sure it would.

10 Q Okay. And it would also identify who the true owner was;
11 wouldn't it?

12 A Well, once again, Jack signed all the documents as the
13 authorized seller.

14 Q Okay. So you go ahead after the meeting -- oh, let me take a
15 step back. You keep saying Jack said he's authorized seller. You're not
16 suing Jack for fraud or misrepresentation; are you?

17 A No, but he's guaranteed performance of the contracts --

18 Q Okay.

19 A -- as we read earlier.

20 Q The question I had is you're not suing Jack for fraud or
21 misrepresentation; isn't that correct?

22 A Well, I think actually there is a clause in there if we wanted
23 to, but he -- no, we're -- he's --

24 Q In this lawsuit?

25 A He's being sued for performance of the contract, which we

1 feel he breached.

2 Q Okay. So you're suing him for breach of contract. What
3 contract is Jack -- are you suing Jack under?

4 A Well, he breached the listing agreement and the asset of
5 purchase agreement.

6 Q Before I get to that, I want to build a little bit more
7 foundation.

8 So Gene and Jack have done a lot of business together. Jack says,
9 Gene, I want to sell this place. Gene gets hold of you. You have the
10 meeting at the store. You go back, start preparing documents. You
11 check the LLC. Somehow your office checked to get -- I don't know
12 where the APN -- nobody knows where the APN came up. And then
13 what did you do next?

14 A We did the listing agreement.

15 Q Okay.

16 A You're talking after the initial meeting?

17 Q Now when Gene talked to you about his involvement, wasn't
18 it true that Kyle was with him, Kyle Northup?

19 A No, he -- Kyle was not -- Kyle was not present at any of the
20 meetings. Kyle was not present at any of the meetings with the seller.
21 He was not present at any of those.

22 Q I'm talking about a meeting between you and Gene?

23 A No, he was not present.

24 Q Okay. And didn't you and Gene talk about receiving
25 compensation together?

1 A We did discuss a referral agreement.

2 Q And isn't it true that that referral agreement was 40 percent?

3 A No.

4 Q What was the referral agreement?

5 A I actually went to his office and presented him with a referral
6 agreement that our office presents. We talked about it, because I wanted
7 to have something in writing, but he didn't -- we didn't agree to that.
8 There's no signed agreement to that. That's just what he's claiming.

9 Q Okay. But there -- so between you as friends, did agree on
10 some type of compensation?

11 MS. SAYYAR: Your Honor, I'm going to interpose an
12 objection to this line of questions to the extent that it's being offered in
13 some sort of strange way to add affirmative defenses or claims under
14 NRCP 15. This is not a case involving Mr. Northup suing my client. To
15 that extent, we object to this line of questioning.

16 THE COURT: Overruled.

17 THE WITNESS: Please repeat the question.

18 BY MR. WINTERTON:

19 Q Sure. Isn't it true that you and Gene talked about some type
20 of compensation together?

21 A We talked about a referral fee.

22 Q And how much did you guys talk about at that time?

23 A Well, he brought up a number, but I -- we would never agree
24 to that type of fee, because if another agent came in our office and sold
25 the business, he would get half of that commission, and then if Gene had

1 the other 40 percent of the commission, that would leave me as the
2 listing agent with ten percent of the commission. There's not a real
3 estate agent on this planet who would agree to such a split because the
4 guy that does all the work ends up with ten percent of the commission
5 from what -- the idea you're throwing out, so that doesn't make any
6 sense.

7 Q So Gene talked about 40 percent?

8 A Yeah, but that wasn't agreed to. And you're --

9 Q So when I presented in my opening that there was
10 discussion of 40 percent, that was --

11 A Yeah, but you're --

12 Q -- correct?

13 A -- you're claiming 40 percent of the total commission, not of
14 one side. There's a big difference.

15 Q Okay. So would it be 40 percent of one side if you didn't sell
16 both -- if you didn't -- if you only had one side?

17 A It doesn't matter whether I did or didn't sell both. We never
18 came to a written agreement.

19 Q Okay. So you're saying Gene's not entitled to anything
20 because there was no written agreement?

21 A No, he -- had there been a successful sale of the business, I
22 would have paid him a referral fee, but we're not talking about a
23 successful of the business. Your client blocked that.

24 Q Okay. And how much would you have paid?

25 A We would have sat down and worked it out.

1 Q So you didn't come to a number?

2 A No.

3 Q And don't you think that issue needed to get worked out?

4 A I'm the one that offered him the referral agreement, a piece
5 of paper. I handed it to him, our standard referral agreement. I offered it
6 to him.

7 Q But didn't Gene not agree to that and wanted --

8 A Well, Gene had some costs that were in that he did pay for in
9 terms of a brochure and other things like that that we needed to get
10 together, but that's the way it is.

11 Q Okay. Now let's talk about it. You said Gene was an advisor,
12 but Gene did more than just advise; didn't he?

13 A He provided his office for meetings, if that's --

14 Q Gene advertises high end properties; doesn't he?

15 A Yes.

16 Q He has got contacts and in his office he's got abilities to
17 make brochures to very high end advertising; isn't that correct?

18 A Yes.

19 Q He has the ability to get high quality photographs and
20 pictures; isn't that correct?

21 A Yes.

22 Q And Gene actually helped create the marketing brochure in
23 this case?

24 A Yes.

25 Q And Gene has got a high end printer. I think it cost 155 --

1 MR. WINTERTON: Just strike that.

2 BY MR. WINTERTON:

3 Q That could create those brochures for you to hand out?

4 A Yes.

5 Q And Gene thought he was going to be compensated for a
6 referral fee --

7 MS. SAYYAR: Objection. Calls for speculation.

8 BY MR. WINTERTON:

9 Q -- isn't that correct?

10 THE COURT: Objection sustained. He can't testify as to what
11 Gene thought.

12 MR. WINTERTON: Okay.

13 BY MR. WINTERTON:

14 Q From your understanding, Gene was supposed to be
15 compensated for some of the work that he was doing?

16 A Yes.

17 Q And that issue never really got worked out; did it?

18 A We never closed the business.

19 Q Okay. Now you created an exclusive right to list the listing
20 agreement; isn't that correct?

21 A Yes.

22 Q Now I want you to look at Exhibit number 10?

23 A In your book?

24 Q No, in the Plaintiff's book.

25 A Okay. Sure. Okay.

1 Q Where in this listing agreement does it state the trust, the
2 John A. Gaal Trust?

3 A Once again, Jack provided the information as the authorized
4 seller.

5 Q That's not my question. Where in Exhibit 10 does it say the
6 John A Gaal Trust?

7 A It's not there.

8 Q Okay. Let's turn to Exhibit 10, page 35, D-25. That's the last
9 page of Exhibit 10. Okay. Where is --

10 MR. WINTERTON: Strike that.

11 BY MR. WINTERTON:

12 Q Isn't it true there is no signature of the trustee on this listing
13 agreement?

14 A Jack is one of the trustees. He's the authorized seller.

15 Q Where does it state here Jack Gaal, Trustee?

16 A Once again, he's the one that provided the information.

17 Q Okay. So I take it from your evasiveness that this contract --
18 nowhere in this contract is it signed as Jack Gaal, Trustee?

19 A Jack Gaal signed as an authorized seller guaranteeing
20 performance of this contract.

21 Q Okay.

22 A If there's a difference in name, then that's him. He was fully
23 aware of how he was completing the contract. So he signed as an
24 authorized seller.

25 Q Okay. Let's keep going then. On Exhibit 10, page 35, D-25, it

1 says seller's name and title, Jack Gaal, managing member. So you've
2 got managing member there. What does that mean?

3 A Well, it's another title for an authorized seller.

4 Q So is that used for an LLC?

5 A Sure.

6 Q Okay. So he's signing as managing member of the LLC; isn't'
7 that correct?

8 A Yes.

9 Q There is no signature for the trust here; is there?

10 A No. Once again, he signed as an authorized seller --

11 Q Authorized seller for --

12 A -- with the information that he provided to me.

13 Q Okay. He's signing as an authorized seller, as managing
14 member for Jack's Place Bar and Grill LLC; isn't that correct?

15 A Yes.

16 Q Okay. Now isn't it true the Jack can sign as managing
17 member for Jack's Bar and Grill LLC?

18 A Yes, but he signed a contract for the --

19 Q Okay.

20 A -- grill and the real property.

21 Q So he's authorized by the LLC, correct?

22 A Well, he signed as the authorized seller for both.

23 Q Okay. So even though the trust is not mentioned, it's your
24 position he signed it?

25 A Well, why didn't he bring up the trust at that time, because

1 he reviewed the documents? That would have been a perfect time for
2 him to put down the trust, right?

3 Q But again, it hasn't been put down and this is the contract
4 that we're litigating over; isn't that correct?

5 A Well, that's right. But he's the one that provided false
6 information, not me.

7 Q But you're not suing him for fraud or misrepresentation; are
8 you?

9 A But he still guaranteed performance of the contract.

10 Q Okay. We'll get to that. So isn't it true that you do not have a
11 signed --

12 MR. WINTERTON: Strike that.

13 BY MR. WINTERTON:

14 Q Isn't it true that Exhibit number 10 is not signed by the owner
15 of the real property?

16 A That's -- no, I disagree with you.

17 Q Okay. Show me, in the contract, where it's signed --

18 A Jack Gaal is the authorized seller who happens to be a
19 member of that trust. He's the authorized seller. He represented that in
20 this contract, and he signed it as the authorized seller, and that's the way
21 it is. We've already reviewed that today.

22 Q Okay. So when Jack signs it as managing member, he's also
23 signing it as trustee. Is that your position?

24 A No, he's personally guaranteed these contracts regardless of
25 what his title is.

1 Q Okay.

2 A We've already reviewed that.

3 Q Okay. But -- okay. We'll keep [indiscernible]. So don't you
4 agree with me then the only way you're trying to hook this in is by
5 saying Jack Gaal personally guaranteed the performance?

6 A Yes, he's the authorized seller who provided me with the
7 information, and I put down the information that he provided me. If
8 there's an inaccuracy, that's on him, because he didn't give me the right
9 information. He's an intelligent man. He signed these documents as the
10 authorized seller for the business and the property.

11 Q Okay. Isn't it true that you're a licensed real estate agent?

12 A Yes.

13 Q Isn't it also true to get your license you have to take 60 hours'
14 worth of law?

15 A How many hours?

16 Q Sixty.

17 A Six hours.

18 Q Six?

19 A Not 60.

20 Q If you look at the division, it's 60.

21 A Well, when we renew our license. I don't recall having to
22 take 60 hours.

23 Q Yeah, to renew your license it's six, but to get your license
24 you actually have to take 60 hours.

25 A Well, it's been 18 years since I've done that, so.

1 Q Okay. So you're required to learn a little bit about contracts
2 and the law; isn't that correct?

3 A We're not attorneys.

4 Q No, I know. I didn't say you were. But you are required to
5 learn certain basic things; isn't that correct?

6 A Witness nodding head up and down.

7 Q And part of that things that you learn is each entity has got
8 different requirements; isn't that correct?

9 A Sure.

10 Q Okay. And, for example, you knew this was an LLC, so you
11 required a resolution to be signed; isn't that correct?

12 A Yes.

13 Q And that resolution authorized on behalf of the LLC; isn't that
14 correct?

15 A Yes.

16 Q Did you get a certificate of trust to see who has the authority
17 to sign --

18 A No, we were never --

19 Q -- on behalf of the trust?

20 A -- we were never provided with any copies of any trusts.

21 Real estate agents don't have access to trusts. They never do, unless
22 somebody gives it -- gives them a copy of that trust.

23 Q So why didn't you ask for a copy of the trust?

24 A Because Jack adamantly represented that he was the
25 authorized seller. And you said it yourself, he's the one that built out the

1 place. He's the one that has the combination to the safe. The business is
2 even named after him. Why would I think any different? I've closed 80
3 transactions and not once had a seller provided me false information,
4 because we're keen enough to sell the business.

5 Q Okay.

6 A Why would I have a need to do that?

7 Q I'll tell you why. NRS 645.320 says every exclusive listing
8 agreement needs to be signed by the owner. You don't have a signed
9 document by the trustee of the John A. Gaal Trust.

10 A Jack signed the exclusive --

11 MS. SAYYAR: Objection to the extent that --

12 THE WITNESS: -- listing --

13 MS. SAYYAR: -- sorry.

14 THE COURT: Hang on. We have to let her --

15 THE WITNESS: Oh, please.

16 MS. SAYYAR: I'm going to object to the extent I don't think
17 that was the question because Mr. Winterton started with, and I'll tell you
18 why. I'm going to object to the extent that that was a statement by the
19 attorney of -- like he's testifying.

20 THE COURT: Rephrase.

21 MR. WINTERTON: But I concluded with, isn't that correct.

22 THE COURT: Rephrase.

23 MR. WINTERTON: Okay.

24 BY MR. WINTERTON:

25 Q Under the NRS 645.320, it states that every exclusive listing

1 agreement needs to be signed by the owner; isn't that correct?

2 A Yes, and he signed as the authorized seller.

3 Q You're saying he signed as the authorized seller. My
4 question to you is, did he sign as trustee of the Trust?

5 A No, but he personally, personally guaranteed performance of
6 the contract, regardless of what his title was.

7 Q Okay. And so, no, he didn't sign on behalf of the trust. So
8 you admit then the owner did not sign under 645.320, correct?

9 A No, that's not true, because Jack is part of that trust. So he
10 did sign and guarantee it.

11 Q Okay. Now if he did not sign --

12 MR. WINTERTON: Oh, strike that. I think we can move on.

13 BY MR. WINTERTON:

14 Q And I wonder if you could look at Exhibit number 10 and see
15 where --

16 MR. WINTERTON: Strike that.

17 BY MR. WINTERTON:

18 Q On Exhibit 10, page 35, D-25, is this the signature that you're
19 referring to, that you're relying upon that Jack Gaal said he would do it?

20 A That's one of them, but he signed about ten different
21 places --

22 Q Okay.

23 A -- as authorized seller.

24 Q But this is the agreement you're using to enforce in court to
25 get him his permission; isn't that correct?

1 A No, we're also using the asset purchase agreement.

2 Q Okay. We'll talk about that in a minute. Now let's go to
3 Exhibit 10, page 30, D-20. And term number 2 says, "seller agrees to
4 accept cash only." So the offer -- isn't that what Jack wanted was a cash
5 offer?

6 A No, that is put there because when we advertised the listing,
7 we decide whether somebody wants to do seller carry note or how they
8 want to do it. It doesn't mean that they will accept one thing one way or
9 the other. That just means this is how we start the listing now and
10 advertise it. The seller can choose to accept any offer they want to
11 accept.

12 Q But he's not required to accept unless it's cash only, correct?

13 A Well, when he signs an agreement, he has accepted it,
14 regardless of what that title numbered paragraph says.

15 Q But I'm talking about for you to earn a commission, that
16 under your listing agreement you're to bring him a cash offer?

17 A No, that's not correct. Any agreement that he agrees to
18 accept between the buyer and seller holds him in responsibility
19 regardless of what --

20 Q Okay.

21 A -- that definition is. That's irrelevant.

22 Q Now if somebody -- I'm going to go over a little bit about
23 what you were talking about in this agreement. If somebody comes in,
24 and he agrees -- contract's all signed, and the buyer backs out, it's your
25 position the seller still owes you a full commission; isn't that correct?

1 MS. SAYYAR: Objection. Incomplete hypothetical.

2 THE COURT: Rephrase.

3 MR. WINTERTON: Sure.

4 BY MR. WINTERTON:

5 Q Isn't it your position that if somebody comes in and signs a
6 purchase agreement and backs out, that your position is the seller owes
7 you a commission?

8 MS. SAYYAR: Still incomplete hypothetical.

9 THE COURT: Overruled.

10 THE WITNESS: But that's not what happened here.

11 BY MR. WINTERTON:

12 Q That's not my question. If you had a listing agreement to sell
13 a piece -- to sell a business and somebody enters into an agreement to
14 buy it, and he backs out, is it your position that you still are entitled to a
15 commission?

16 A We would be if the seller forced that buyer to back out,
17 absolutely.

18 Q And what if the seller did not force the buyer to back out

19 A Yes, he did.

20 Q This is your contract, and I want to have a clear
21 understanding as to what -- counsel talked about the terms of the
22 contract, but I'm trying to get a clear understanding. So if you have --

23 A Well, David, why -- why don't we use your own words? You
24 told me straight up that the if the seller didn't provide all the due
25 diligence documents, he would owe you your fee. You just answered

1 your own question.

2 Q Okay.

3 A You told me that --

4 MR. WINTERTON: Your Honor --

5 THE WITNESS: -- in our meeting face to face, and you know
6 darn well he breached the contract.

7 THE COURT: There wasn't a question pending. I have to
8 disregard your statement.

9 THE WITNESS: Okay.

10 BY MR. WINTERTON:

11 Q Okay. Mr. -- Phil, the question I have is if you signed an
12 exclusive listing agreement, you're representing a seller, and a buyer
13 comes in, and you -- and a purchase and sales agreement is signed, if
14 the buyer backs out, is it your position that you're still owed a
15 commission?

16 A It all depends on the situation. There's so many different
17 scenarios that can happen in that situation.

18 Q So it could be, in that situation, that he would not be owed a
19 commission?

20 A It would depend on who breached the contract.

21 Q Okay. Tell me a situation where there is a seller, and the
22 buyer backs out, and the seller does not owe you a commission?

23 MS. SAYYAR: Your Honor, can I ask for the question to be
24 repeated? I'm sorry, I don't think I quite understood.

25 THE COURT: Please repeat it.

1 BY MR. WINTERTON:

2 Q If you had -- you're representing a seller, you have a listing
3 agreement, you enter into a purchase agreement with the buyer, and the
4 buyer backs out, you said there are certain scenarios that the seller
5 would not be owed a commission. Could you tell me those situations?

6 A Perhaps if the buyer's earnest money check bounced or
7 didn't clear, because it never would have been a deal put together.

8 Q Okay. Any other example?

9 A Very broad question.

10 Q I'm just looking for any type of answer.

11 A Well, I gave you an answer.

12 Q Okay. And you don't have any other at this time?

13 A Every situation is different.

14 Q Okay.

15 A You're presenting a hypothetical.

16 Q Now if you can't give me an answer, and this is your
17 contract, then how is Jack supposed to know?

18 A I don't under the question.

19 MS. SAYYAR: Objection. Argumentative. He did answer the
20 last question, Your Honor.

21 THE COURT: Objection sustained. Move on.

22 BY MR. WINTERTON:

23 Q Now in paragraph 8, there's a difference of when a
24 commission is earned and when a commission is owed; isn't there? Oh,
25 I'm waiting for an answer.

1 A I didn't hear if you were making a comment or a question.
2 I'm sorry.

3 Q Oh, okay. Isn't it true there's a difference between when a
4 commission is earned and when a commission is owed?

5 A I don't necessarily agree with that.

6 Q Okay. So why does paragraph 8 talks about when fees are
7 owed?

8 A That's a protection for the broker in the event that the seller
9 decides he doesn't want to cooperate.

10 Q Okay. Could you explain to me -- this is your contract that
11 you're using. What is the difference -- so you're saying there's no
12 difference between earned and owed?

13 A I'll go with what's written in the contract.

14 Q Okay. And that's why I'm trying to understand, because it's
15 not clear in my mind, and since this is your contract, could you explain it
16 to me?

17 A I'll explain it as written. That's the best I can tell you.

18 Q Okay. Now what I would like for you to do is turn to Exhibit
19 10, page 32, D-22. And here, Jack Gaal, as a member of the LLC, signed
20 -- the managing member signed it; isn't that correct?

21 And isn't it true that Jack Gaal had authority as a member of the
22 LLC?

23 A Well, he stated he had the authority. He stated he had it.

24 Q And you actually had him sign the resolution to that effect?

25 A Yes.

1 Q Okay. And so he could -- so he's not misrepresenting
2 anything when he signs for the LLC, that he has the authority for the LLC;
3 isn't that correct?

4 A He's personally guaranteed performance of this contract by
5 stating he has the authority to sell the business and the land.

6 Q Okay. And so he personally guaranteed that the LLC could
7 perform --

8 A No.

9 Q -- if he signed on behalf of the LLC?

10 A As we read earlier in the contract, he personally guaranteed.
11 A personal guarantee is different than an LLC guarantee.

12 Q So where did he personally guarantee under this contract for
13 the trust?

14 A He personally guaranteed that he had the authority to sign
15 this contract.

16 Q Okay.

17 MR. WINTERTON: I'm just going over my notes here.

18 BY MR. WINTERTON:

19 Q Okay. What I would like you to do is to go to Exhibit 213,
20 page 117, 104. Okay. Isn't it true that -- I believe this has been admitted.
21 So I believe you testified that you filled this out?

22 A With the seller.

23 Q With the seller. And how did you get the parcel number?

24 A The seller provided it.

25 Q How did the seller provide it?

1 A I don't recall.

2 Q So at the time you were -- filled this out, somehow, again,
3 the parcel number came up. Isn't it true that by knowing how -- the
4 address and this information that the documents -- you're put on
5 constructive notice of the owner of the property at that time?

6 MS. SAYYAR: Your Honor, I object to the extent it calls for a
7 legal conclusion. Assumes facts not in evidence. Calls for expert
8 testimony. Calls for issues of law that the judge is going to decide.

9 THE COURT: Rephrase please.

10 MR. WINTERTON: Sure.

11 BY MR. WINTERTON:

12 Q Now in your real estate training, isn't it important --

13 MR. WINTERTON: Strike that.

14 BY MR. WINTERTON:

15 Q They talk to you about the records and the filing recorder;
16 isn't that correct? And that you have to look at certain deeds of trust;
17 isn't that correct? First time and first right is important; isn't that correct?

18 A Escrow takes care of all of that for us in terms of --

19 Q That's not my question.

20 A -- working all that -- no, I don't -- we don't look at deeds of
21 trust when we take a listing.

22 Q That's not my question. My question is don't they teach you
23 that to get your real estate license?

24 A I don't recall that.

25 Q Okay. In fact, if I recall, you don't really sell real estate, you

1 only sell businesses; don't you?

2 A We sell both.

3 Q You personally?

4 A Yes.

5 Q And how many single real estate transactions have you
6 done?

7 A I think I testified earlier -- I don't recall any right now, but it's
8 an 18-year track record. I think there may have been one or two. I
9 testified earlier that there was zero, but I'm not sure. I think there may
10 have been one or two.

11 Q Okay. And the information that is gathered about how many
12 bedrooms, square feet, and all of that comes from the records of the
13 County Recorder; isn't that correct?

14 A No, actually, it comes from the seller. They provide us the
15 square feet of their business or the square feet of their property or
16 acreage was provided. They give that to us.

17 Q Okay. And do you ever verify the information if it's correct or
18 not?

19 A Well, like I said, I closed about 80 transactions, and if there's
20 anything that's missed, escrow will take care of that. That's why we
21 have a second layer that double checks everything. I -- in all the
22 transactions I've closed, I've -- it's not in the best interest of the seller not
23 to be honest with his agent.

24 Q Do you think Jack was intentionally trying to deceive you and
25 not sell the property when he listed it -- when he was trying to get a

1 listing?

2 A I don't know.

3 Q Okay. I would like you to turn to Exhibit 13, page 135, D-122.
4 And in your testimony you said that you saw Jack Gaal initial this and
5 date it.

6 A I believe so.

7 Q So it's dated June 3rd, 2017. Isn't that prior to the listing
8 agreement?

9 A Well, then I would have been mistaken on that, but that is his
10 initials.

11 Q Okay. And if you turn to the next page, which is page 136,
12 don't you further agree that he had -- it was June 3rd, 2017?

13 A Yes.

14 Q Okay. Do you know why it was dated that date?

15 THE COURT: Mr. Winterton, I'm going to ask for a break at
16 this point for myself.

17 MR. WINTERTON: Sure.

18 THE COURT: I give you guys the right to ask for them, but I
19 need one right now. It's 3:29. Let's be back at 3:45, and we'll go to about
20 4:50 today, because we can't incur overtime. Thanks, everyone.

21 MR. WINTERTON: Thank you.

22 MS. SAYYAR: Thank you, Your Honor.

23 [Recess from 3:29 p.m. to 3:44 p.m.]

24 THE MARSHAL: Court is back in session.

25 THE COURT: Please remain seated. Come on up, Mr.

1 Neuenswander. And thank you all for that courtesy for me.

2 Mr. Winterton, go ahead, please.

3 MR. WINTERTON: Thank you.

4 BY MR. WINTERTON:

5 Q Okay. Now what I would like to do is to turn to Exhibit
6 number 7. Okay. Now Exhibit number 7, this is the asset purchase
7 agreement; isn't that correct? And the parties to the -- excuse me -- asset
8 purchase agreement is Jack's Place Bar and Grill LLC and Angel Soto; is
9 that correct?

10 A Yeah.

11 THE COURT: Verbal answers, please.

12 THE WITNESS: Oh, yes. Thank you.

13 BY MR. WINTERTON:

14 Q Nowhere --

15 MR. WINTERTON: Strike that.

16 BY MR. WINTERTON:

17 Q So John A. Gaal Trust is not a party to this asset agreement;
18 isn't that correct?

19 A Yes.

20 Q Where is -- where does it say John A. Gaal Trust?

21 A Well, we've got the authorized seller again, and again, and
22 again, and that's what we're sticking with.

23 Q Okay. So you cannot show me --

24 MR. WINTERTON: Okay. Strike that.

25 BY MR. WINTERTON:

1 Q So where is -- where does it say authorized seller in this
2 agreement?

3 A I think we reviewed that earlier in my testimony in several
4 places.

5 Q Now that was the listing agreement. I'm talking about this
6 asset purchase agreement you prepared. So I'm wondering where it
7 states that in the asset purchase agreement?

8 [Witness reviews document]

9 A Paragraph 47.

10 Q Okay. So buyer and seller personally guarantees; is that
11 what you're saying?

12 A Uh-huh.

13 Q Okay. So let's go back to the very beginning of the
14 agreement of Exhibit 7, and it says, Jack Gaal, managing member. So
15 isn't true that Jack Gaal, managing member, then guaranteed that Jack
16 Gaal, as manager member, to do this?

17 A No, because we just read right there in the previous
18 paragraph, the seller personally guarantees performance of this
19 agreement. Personal guarantee is different from a managing member.

20 Q Okay. And who's the seller in this case?

21 A It's Jack Gaal. It's his business. His property.

22 Q So it's your position -- using your interpretation, and that's
23 what I'm trying to get, is since it's Jack's business under an LLC, he's
24 personally guaranteeing the business?

25 A Well, right here from what I read that Jack's personally

1 guaranteeing performance of this contract. It had nothing to do with the
2 LLC. Personal guarantee is different than an LLC.

3 Q Okay. Did anybody do a guarantee for the trust?

4 A Had we gotten to that point, escrow would have done that.
5 We would have been assured that any -- if there's any loose ends there
6 they would double checked that before any type of closing.

7 Q What would escrow have done?

8 A Well, to make sure all the entities line up.

9 Q And what if they don't line up?

10 A Well, they do that because they -- that's what their job is.

11 Q Okay. No, the question is if they don't line up, what do they
12 do?

13 A Well, then they would prepare any necessary forms that need
14 to address that.

15 Q Okay. Do you know what that could be?

16 A Well, they could an amendment, they could do a resolution.
17 There's several things they could do.

18 Q Isn't it true it would have been an amendment to the
19 purchase agreement -- asset purchase agreement?

20 A I don't know. I don't know what they would have done,
21 exactly.

22 Q Okay. Let's go to Exhibit number 7, page 24, D-17. Okay.
23 And who are the parties to this contract? Who signed it?

24 A Angel Soto and Jack Gaal.

25 Q Okay. What is your understanding, is Jack Gaal signing

1 personally or as -- for the entity?

2 A Here he's probably signing as the entity, but that doesn't
3 relive him of his personal guarantee. It's in the contract.

4 Q Okay. Now where is the legal description of the real
5 property?

6 A I don't think there's a legal description on there; however, it's
7 clearly referenced in the -- on 3(b) on page 16. And then also in the
8 seller's own language on the counteroffer he made it clear it was for the
9 real estate.

10 Q Okay. Does it say about the APN number?

11 A Escrow would have taken care of that.

12 Q I'm talking about the asset purchase agreement.

13 A Right. Right.

14 Q So when you're saying escrow would have taken care of it,
15 escrow would have requested it, an amendment to this asset purchase
16 agreement --

17 A I'm sorry --

18 Q -- to clarify the issues by --

19 A -- can you repeat that, please?

20 Q Yeah. I'm sorry. These masks, I'm -- it's horrible. So what
21 you're saying then is escrow would have clarified it by creating an
22 amendment to the asset purchase agreement to clear up all of the
23 deficiencies in this asset purchase agreement?

24 A Well, sure. They would have ran the necessary searches to
25 make sure that everything lined up, and that's why we use an escrow

1 company.

2 Q Okay. And then they would have to come back and amend
3 the asset purchase agreement, correct?

4 MS. SAYYAR: Objection. Calls for speculation. Lack of
5 personal knowledge of what the escrow company would or would not
6 do.

7 THE COURT: Overruled.

8 MR. WINTERTON: I'll withdraw the question.

9 THE COURT: If he's dealt with it in the past, he may have
10 information. So you don't have to withdraw the question.

11 MR. WINTERTON: Okay.

12 BY MR. WINTERTON:

13 Q Do you know what the escrow company would have done?

14 A I'm not sure, exactly, what they would have done.

15 Q Now how much -- according to this asset purchase
16 agreement, how much time does the buyer have to do their due
17 diligence and to the title of the property?

18 A Well, all their due diligence, I believe it's 60 days, as specified
19 on the contract.

20 Q And is that to do the due diligence on the title to the
21 property?

22 A That's to do any type of due diligence he feels is necessary.

23 Q Okay. And when is escrow supposed to give them their
24 preliminary title report?

25 A Prior to closing.

1 Q Okay. Is there anything in this asset purchase agreement
2 that talks about that?

3 A No, but that's --

4 Q What happens if there's a defect on the property? How much
5 -- how is that handled in this asset purchase agreement?

6 A Well, again, that would be with escrow. They take the
7 necessary steps to make sure everything is done right.

8 Q So if you don't do it right, you're counting on escrow to make
9 the changes to do it correctly?

10 MS. SAYYAR: Objection. Misstates testimony.

11 THE COURT: Overruled.

12 MS. SAYYAR: Assumes facts not in evidence.

13 Argumentative.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: I did it just as the seller instructed me to do it
16 and the way he asked me to put him down as the authorized seller, so.

17 BY MR. WINTERTON:

18 Q How many businesses, to your knowledge, has Jack sold?

19 A I don't know that answer. I just don't. I don't know that
20 answer.

21 Q Isn't it true that they relied upon you as the expert to make
22 sure this transaction goes smoothly?

23 A And it would have, had he provided the documents.

24 Q Okay. What I would like to do is turn to Exhibit number 9.

25 Before I get to this exhibit, Jack was trying to help to get this sale, as you

1 said, because he even told the buyer where to go to get some financing;
2 isn't that correct?

3 A He gave him a suggestion.

4 Q Yes. And isn't it true that Gene went to the bank for him and
5 talked to the bank about it?

6 A I believe something along that line took effect.

7 Q Yeah. But the buyer never made any effort to go to the bank;
8 isn't that correct?

9 A No, the buyer went with him.

10 Q Oh, he did. Okay.

11 A The buyer was there.

12 Q Okay. Do you know what happened there?

13 A I don't know exactly what happened.

14 Q Oh, okay. Okay. Let's go over Exhibit 9. Now in your
15 testimony you said Jack Gaal signed this and dated it 2/2/218, then you
16 gave it to the buyer, and he initialed it and approved this. You have to
17 answer audibly, sorry.

18 A I'm sorry. Yes. Yes.

19 Q Okay. But that's not correct; is it?

20 A To my knowledge, I believe that is. They both initialed it at
21 the bottom of the page.

22 Q Let's turn to 502.

23 A Did you say 502?

24 Q 502.

25 A Okay.

1 Q Okay. Now if you look at the top -- have you seen this
2 document before?

3 A Yes.

4 Q Okay. Do you know whose handwriting this is?

5 A That signature is Jack Gaal and his wife, Katherine Gaal.

6 MR. ROCHELEAU: Objection.

7 MS. SAYYAR: I don't think we're on the same document, Mr.
8 Winterton.

9 MR. WINTERTON: 512.

10 MS. SAYYAR: I mean, the witness.

11 MR. WINTERTON: Oh, if I can approach, Your Honor.

12 THE COURT: Yes, of course.

13 THE WITNESS: I'm sorry, I might be on 501. Do we need --

14 MR. WINTERTON: Sure.

15 THE WITNESS: Is it the due diligence listing you need?

16 MR. WINTERTON: Yeah.

17 THE WITNESS: Okay.

18 MR. WINTERTON: Thank you.

19 THE WITNESS: All right.

20 BY MR. WINTERTON:

21 Q Okay. Now I'm looking at both Exhibit 9 and 502, and it's got
22 a signature there.

23 MS. SAYYAR: Your Honor, I'm going to interpose an
24 objection, because I'm not sure which exhibit counsel is referring to
25 when he says it's got a signature there.

1 THE COURT: So --

2 MR. WINTERTON: I'll clarify. I'm sorry.

3 BY MR. WINTERTON:

4 Q Okay. I want you to look at Exhibit 502, and at the very top it
5 says, 1A --

6 MS. SAYYAR: I'm going to object, Your Honor, because this
7 is not admitted into evidence.

8 THE COURT: I have to sustain the objection. You can lay a
9 foundation for it.

10 MR. WINTERTON: Sure. Okay.

11 BY MR. WINTERTON:

12 Q Phil, what is this document?

13 A That is a due diligence list of items to be conveyed from the
14 seller to the buyer.

15 Q And what does 1A stand for?

16 A 1A was put on that document to connect it to the purchase
17 agreement.

18 Q Okay. So, actually, this should have been part of -- to
19 complete the purchase agreement, that should have -- this should have
20 been part of that contract?

21 A It is. It's referenced in the purchase agreement. See
22 addendum 1A, and 1A is labeled at the top of that, and it is part of the
23 purchase agreement.

24 Q Okay. So which of -- and is Exhibit 502 a true and accurate
25 copy of what was attached to the purchase agreement?

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

2 Q So if I were to look at Exhibit 502 and look at Exhibit 9, which
3 one is the one attached to the purchase agreement?

4 A I would go with the one with Jack's initials on it.

5 Q Okay. Then do you know where this other one came from?

6 A I don't.

7 Q Okay. Do you recognize that signature?

8 A No.

9 Q Do you recognize any of that handwriting?

10 A No. It very well could have been a preliminary document
11 that Jack had before he signed the other one and gave it to me.

12 Q Yeah. My question is do you recognize the hand signature?

13 A No.

14 Q Okay. Let's go back to Exhibit 9. Do you recognize those --
15 the handwriting there?

16 A I'm sorry, Dave, which exhibit do you want to go back to?

17 Q 9.

18 A 9?

19 Q Exhibit 9.

20 A I recognize the initials of Jack Gaal matches right up with the
21 purchase agreement.

22 Q Okay. The question I have is there's some writing up top. It
23 says, 2014, 2015, 2016. Do you know whose handwriting that is?

24 A Yeah. That would have been Jack's because that's what he
25 agreed to turn over.

1 Q So Jack wrote, see bank statements?

2 A Uh-huh.

3 Q Okay. And then they crossed out certain lines that were
4 there; isn't that -- like, number 2 is crossed out, supporting
5 documentation for review? So --

6 A I believe Jack crossed those things out.

7 Q Okay.

8 A Yeah.

9 Q What did you tell -- say to Jack when he crossed those out?

10 A Well, that was -- that's what he agreed to turn over, and what
11 he did not want to turn over, and the buyer was fine with that. So that --

12 Q Okay. So, for example, on number 26, copies of inspection
13 reports from the local government agencies, and they're in the office,
14 hanging on the wall. So that was agreed to by the buyer, that he could
15 come and look at that?

16 A Sure. But he was never offered the chance to do that.

17 Q Okay. So Jack was supposed to call the buyer up and say,
18 hey, come look at these?

19 A No, he could have come to me as his broker and said, hey,
20 Phil, some of these items we have hanging on a wall. Can I give you a
21 picture, or would you like to bring the buyer up, or, Phil, would you like
22 to come up and look at it? There was zero communication.

23 Q Okay. In here you said, this is Jack's writing, in office, and
24 this is a document you guy produced, so you have it. Where did you get
25 that?

1 A This what they gave -- this is what Jack gave back to me, as
2 part of with his counteroffer. This is what I would agree to turn over, and
3 Jack provided it.

4 Q Okay. Now that he's turned this over to you, and you've got
5 it, number 16, employee's typical schedule hours posted in the kitchen.
6 So did you tell the buyer, hey, you can go to the place, it's posted in the
7 kitchen?

8 A We typically don't have buyers walk around people's
9 businesses until they're closed. It interrupts the flow of the business.
10 That's the seller's responsibility to get it to the buyer.

11 Q That's not my question. Did you tell the buyer that he could
12 go in the property, look in the kitchen, and see the schedule?

13 A I'm sure we could have done that at the very end, had all the
14 other items been presented, but none of them were presented.

15 Q Okay. And did you present Exhibit 9 back to the buyer?

16 A Yes.

17 Q And what did the buyer say?

18 A He says, fine, I'll work with that. He wanted the restaurant
19 and the property really, really bad.

20 Q Okay. So he was agreeing that those things, for example, on
21 the wall he was saying, that's fine, it's on the wall?

22 A Well, he was agreeing that the items that Jack agreed to
23 produce he was willing to accept them to complete his due diligence.

24 Q Okay. Now what I would like to do is -- there came a point in
25 time where you said you had trouble communicating with Jack and Jack

1 said, go see my counsel, correct?

2 MS. SAYYAR: Misstates testimony, Your Honor, I believe.

3 THE COURT: Overruled.

4 THE WITNESS: No, he told that to Gene Northup. He didn't
5 say that to me, because he didn't talk to me.

6 BY MR. WINTERTON:

7 Q Okay. And then Gene told you that? That's how you knew
8 me, so you came over.

9 A Witness nodding head up and down.

10 THE COURT: And you do need to answer audibly.

11 THE WITNESS: Oh, thanks. Okay. So please -- I'm sorry, I
12 didn't understand the question -- hear him well. Please --

13 MR. WINTERTON: I'll withdraw it. I'll ask you again.

14 BY MR. WINTERTON:

15 Q So what had happened is, I had actually sent you a letter;
16 isn't that correct?

17 A Which letter are you referring to?

18 Q I'm referring to Exhibit 22, 343.

19 A Yes.

20 Q Okay. And with that letter, you came over to my office; isn't
21 that correct?

22 A No. Yes, that's correct.

23 Q Okay. And isn't it true, at this point in time, you were fully
24 informed that the Jack Gaal Trust on the property was not a part of any
25 of these contracts? Isn't that correct?

1 A Yes. You did mention that.

2 Q Okay. So now you testified earlier that you didn't want to do
3 a new contract?

4 A Correct.

5 Q You said that this one has held up several times, correct?

6 A That's correct.

7 Q And what it is, is you're counting on escrow to change
8 everything to include the trust; isn't that correct?

9 A Well, you're putting the horse before the cart. We're not
10 going to get to escrow to do that if your client doesn't supply the
11 documents that he promised to supply. So that's all -- we didn't get to
12 that, because whether it's an amendment or however they want to fix it,
13 that's part of the closing package that escrow puts together. The reason
14 why we're here today was we didn't get to that situation.

15 Q And isn't it true that before Jack was going to turn over all
16 this stuff, he wanted to get this issue all worked out first?

17 A No, I don't necessarily believe that's true.

18 Q Okay.

19 A I believe that was his way of trying to get out of the contract.

20 Q Okay. But you don't deny that there was an issue with not
21 having the trust as part of the contract?

22 A Well, then he should have called me -- contacted me, as his
23 agent. I've done a great job for him. He shouldn't have ignored me for
24 three weeks and had you tell me that, because in the meantime, the
25 buyer could have gone away. He was negligent.

1 Q Okay. Do you think you were negligent by not listing the real
2 property --

3 A No, because I went with the --

4 Q -- with the owner?

5 A -- information he provided to me as the authorized seller.

6 THE COURT: I'll have to ask you two not to talk over each
7 other, please.

8 MR. WINTERTON: Sure.

9 THE COURT: The court recorder --

10 BY MR. WINTERTON:

11 Q Now I would like to turn to Exhibit number 23. Now wasn't
12 there a concern whether or not the buyer could sue for specific
13 performance or not? I believe that's what you testified. Isn't that
14 correct?

15 A Sure there was a concern. The buyer had every right to do
16 that if he wanted to.

17 Q Okay. But also, the buyer, at this point in time, wanted out
18 and wanted its \$30,000 back?

19 A No, the buyer, at this point in time, still wished to have that
20 business. And I think he would testify to that.

21 Q Prior --

22 A At the same time -- go ahead. I'm sorry.

23 Q There was a letter from Mr. Ashworth that demanded his
24 \$30,000 back at this point; isn't that correct?

25 A Yes, but that didn't release him of any liability. It didn't

1 release the seller of any liability.

2 Q And that's not my question. At this point in time the buyer
3 said, I want my \$30,000 back?

4 A Well, sure, because it had been two months that had passed
5 since he was supposed to deliver due diligence documents and that
6 didn't happen.

7 Q And as a result, the seller agreed to let him have his \$30,000
8 back?

9 A It didn't matter, escrow actually released it without even
10 talking to the seller.

11 Q So the escrow released it without talking to the seller; is that
12 -- I'm sorry, I didn't hear your answer.

13 A Yeah. Yeah. Escrow made their decision independently
14 because they saw a clear breach of the contract, and they released the
15 money. Because, typically, escrow would have the seller and the buyer
16 sign a release. It was so obvious; they didn't even ask for that.

17 Q Okay. Now on Exhibit 23, it states here there were a number
18 of issues that --

19 MS. SAYYAR: Your Honor, I have to object. Exhibit 23,
20 unless I'm mistaken, has not been admitted.

21 MR. WINTERTON: Oh, I thought it had been admitted.

22 MS. SAYYAR: I think --

23 MR. WINTERTON: I'll withdraw.

24 THE COURT: It is not admitted.

25 MR. WINTERTON: Okay.

1 BY MR. WINTERTON:

2 Q Okay. Okay. In your testimony, you said that there were
3 three options that the seller had to do or was to do. Turn over the
4 documents, or he said that he gave them to Gene Northup, or the buyer,
5 he was to go over to the place of business. Am I stating it right?

6 A Yes.

7 Q Okay. Wasn't there another option? That you were told to
8 amend the contract?

9 A No. The other option --

10 Q And you --

11 A -- that was made clear to me was that he was going to give
12 the documents to you.

13 Q Okay. Isn't it true that you were told to amend the contract,
14 and you said, no, I'm not going to do a new contract?

15 A No. Actually, you were asking to have a whole new contract
16 written up, not amend the contract, because that would have given him a
17 loop to possibly get out of the first contract. There was no need to write
18 up a new contract.

19 Q So -- well, you used the word new contract in your previous
20 testimony, and you wouldn't agree to a new contract. And I'm talking
21 about just correcting it to bring the proper parties to the table, and you
22 wouldn't agree to that; did you?

23 A Everything needed to line this up for closing was in place,
24 but the fact of the matter is everything stopped because the client didn't
25 produce any of the documents he agreed to produce, and that was the

1 focal point at that point.

2 Q Was Exhibit -- let's see. Okay. Could I have you turn to
3 Exhibit 14, page 172, 158?

4 MR. WINTERTON: Has that been --

5 MS. SAYYAR: Yes, it has been admitted as Exhibit 14D.

6 MR. WINTERTON: Thank you. Yeah, that's -- I'm just making
7 sure. Because that's actually a duplicate of Exhibit -- the one I was trying
8 to admit.

9 BY MR. WINTERTON:

10 Q Okay. So you've seen this letter; haven't you?

11 A I'm sorry, Dave, I didn't hear you. Which exhibit do we --

12 Q Oh.

13 A -- need to be referencing, please?

14 Q Sure. No problem. Exhibit 14, page 172 --

15 A Okay.

16 Q -- D-158.

17 A Got it.

18 Q Now when I was talking about on March 23rd, 2018, the
19 buyer had backed out and wanted his money back; isn't that correct?

20 A The buyer didn't necessarily back out. He just wanted his
21 earnest money back. He still wanted to close the transaction. To this
22 day he still did.

23 Q Okay. And it says here, "there were a number of issues that
24 needed to get resolved, and it is our position that the contract has not
25 been finalized." That is the second to the last sentence of the first

1 paragraph.

2 A Okay. I'm sorry, I don't understand what you're meaning. I
3 just read what you referenced.

4 Q Okay. Isn't it true those issues or the issues in the contract
5 regarding who has authority to sell, the trust or not?

6 A Like I said --

7 MS. SAYYAR: Objection. I'm going to object to the extent it
8 calls for my client to speculate what Mr. Winterton meant in his own
9 letter.

10 THE COURT: It requests a legal conclusion, also. So the
11 objection is sustained.

12 MR. WINTERTON: Okay.

13 BY MR. WINTERTON:

14 Q And it says here that -- to Mr. Johnson it says, "your client
15 wishes to withdraw from the agreement." Does that refresh your
16 recollection that the buyer wanted to back out?

17 A Well, he wishes to withdraw from the agreement, because
18 your client didn't produce any of the documents that he asked for.

19 Q Okay.

20 A He waited over two months.

21 Q Now we've been going through all of these documents that
22 were signed. Have you seen any documents signed by Jack Gaal,
23 trustee?

24 A No. Like I said, he represented himself as the authorized
25 seller, and he never even gave me any documents or you relating to any

1 trust.

2 MR. WINTERTON: Court's indulgence. I'm about to wrap. I
3 just want to see if there's anything else.

4 BY MR. WINTERTON:

5 Q These documents, such as the duties owed, the consent to
6 act, the agency agreement, and the purchase agreement, all that material
7 was drafted by you?

8 A Yes.

9 MR. WINTERTON: I have no further questions, Your Honor.

10 THE COURT: Redirect, please. We'll go to about 4:50.

11 MS. SAYYAR: Thank you, Your Honor. Let's see how much I
12 can get done.

13 REDIRECT EXAMINATION

14 BY MS. SAYYAR:

15 Q Now I believe you testified on cross-examination that there
16 was a point in time where you met with Mr. Northup in person and
17 provided him a proposed referral agreement; is that correct?

18 A Yes.

19 Q And what type of referral agreement was that? Something
20 your drafted? Something --

21 A We have a standard office document that we provide that's
22 20 percent of one side or 10 percent of the total transaction. That's our
23 typical referral fee.

24 Q Okay. Is this the document that you provided in draft form to
25 Mr. Northup?

1 A Yes.

2 Q Did Mr. Northup sign it?

3 A No.

4 Q I would like to take you to Exhibit 10, which is the exclusive
5 right to sell listing agreement. Now there was a line of questions on
6 cross-examination by Mr. Winterton about how Jack is signing -- how
7 Mr. Gaal is signing, how Mr. Gaal is not signing, and you kept
8 referencing a personal guarantee. Looking on page 32 of this exhibit, is
9 there a section of this contract that discussed the authority to enter into
10 agreements?

11 A Yes, paragraph 26 states that.

12 Q Okay. And that's also the paragraph where personal
13 guarantees are mentioned?

14 A Yes.

15 Q Now let's go to the assets purchase agreement, Exhibit 7.
16 There was a line of questioning during cross-examination where Mr.
17 Winterton was asking you for where in the contract it talked about
18 authority, and I believe you read through, and you found, and you
19 pointed to Exhibit 47.

20 A Paragraph 47.

21 Q Excuse me. Thank you. Paragraph 47, personal guarantees,
22 time is of the essence. Turning the page to 22, continuing on to the rest
23 of the agreement, is there anything on this page that also talks about
24 authority or consent?

25 A Yes, paragraph 51, under authority.

1 Q And what does that paragraph say?

2 A "Buyer and seller each warrant to each other that they
3 respectively have the full power and authority to enter into this
4 agreement, are not under the jurisdiction of federal bankruptcy court,
5 and able to complete the transaction described herein, and no contract
6 or agreement to which" -- to which -- I can't read that one word, but
7 "buyer and seller is a party to prevent either of them from completing
8 this transaction described herein, nor the consent of any government
9 authority or third-party -- nor is the consent of any government authority
10 or third-party required."

11 Q All right. And if you continue on to page 23, at the bottom,
12 before the signature page started on 24, Mr. Winterton focused a lot on
13 page 24. But before we get to the signatures, there is one -- there is one
14 paragraph at the bottom about binding effect. If you could read the first
15 sentence of that paragraph, please.

16 A "This is a legally binding agreement upon execution by buyer
17 and seller. This agreement will be absolutely binding and fully
18 enforceable upon the parties and will bind and inure to the benefit of
19 their accessors, assignees, personal representatives, heirs, legeslators of
20 the parties hereto."

21 Q Thank you. Did Mr. Northup -- at any point in time during the
22 period from October 2017 through March 2018, did Mr. Northup ever tell
23 you, you need a trust to sign on this? You're missing the trust? There's
24 a trust involved?

25 A No. To my knowledge, that information came from David

1 Winterton --

2 Q Okay.

3 A -- after the contracts had been signed.

4 Q So let's go to Exhibit 22, the letters that Mr. Winterton
5 drafted, and we'll go to the second -- page 343, the first letter Mr.
6 Winterton signed and sent to you. And I want you to take a moment --
7 and I'm going to read it aloud. The first paragraph in Mr. Winterton's
8 letter says, "I represent one of the trustees of the John A. Gaal Family
9 Trust." Do you see that, sir?

10 A He's representing one person.

11 Q Yeah. Does he ever, anywhere in this letter, identify who that
12 person is?

13 A No.

14 Q Okay. It says -- it goes on and says, "it has come to their
15 attention that Mr. Gaal has been attempting to sell the business known
16 as Jack's Place. Under the trust agreement, it states that it requires
17 unanimous vote in any decision that affects the property of the estate."
18 To this day, do you have any knowledge of what the property of the
19 estate is?

20 A No.

21 Q It continues on. "In this case, there was no unanimous vote
22 to sell the business." And it goes on and says, "as a result there is no
23 authority for the execution of the listing agreement and there was no
24 authority to sell the business." Does it actually ever reference a
25 unanimous vote to sell real property in this first paragraph?

1 A No.

2 Q Okay. Were you provided any documentation that says the
3 trust needs to sign off on the sale of the LLC or the business assets?

4 A No.

5 Q Were you provided any documentation to show that the trust
6 needs to sign off on the sale of real property?

7 A No.

8 Q I believe you testified that to your understanding, at this
9 point in time, the trust is in Mr. Gaal's name, correct?

10 A Yes.

11 Q And to your understanding, who is the trustee of the trust?

12 A Jack Gaal.

13 Q Okay. Now when you went to see Mr. Winterton after
14 receiving this February 22nd, 2018 letter, and thereafter he sent you page
15 342, Exhibit 22, after that point, did Mr. Winterton make any further
16 statement or communication to you regarding any trust?

17 A No.

18 MS. SAYYAR: Court's indulgence. One moment.

19 [Counsel confer]

20 MS. SAYYAR: Your Honor, pass the witness.

21 THE COURT: Okay. Redirect. I'm sorry, recross. Recross.

22 RECROSS-EXAMINATION

23 BY MR. WINTERTON:

24 Q You learned --

25 MR. WINTERTON: Strike that.

1 BY MR. WINTERTON:

2 Q If the trust owns the business, do you know who has the
3 authority to sell that business?

4 MS. SAYYAR: Calls for a legal conclusion, Your Honor.

5 THE COURT: The question said, do you know, so I'll overrule
6 the objection.

7 MS. SAYYAR: Thank you, Your Honor.

8 THE WITNESS: David, could you repeat that question,
9 please?

10 MR. WINTERTON: Sure.

11 BY MR. WINTERTON:

12 Q If the trust owns the business that you're going to sell who
13 has the authority to sign on behalf of the trust, to your knowledge?

14 A That would be the trustee or the person representing the
15 authorized seller.

16 Q And in this case, you learned that the real property was in a
17 trust; isn't that correct?

18 A We learned that -- you informed me of that after the contracts
19 had been signed.

20 Q Okay. And so to sell that real property, somehow, somehow,
21 you're going to have to bring the trust; is that correct?

22 A Escrow would have taken care of that.

23 Q Why wouldn't you want to do it?

24 A Well, we didn't feel there was a need to write up a new
25 contract. The matter at hand was we weren't going to even get to that

1 point, because your client wouldn't supply any documents.

2 Q The point I'm making is 645.320 says it's got to be signed by
3 the owner. And in this case it's not signed by the owner; is it?

4 A Jack Gaal represented himself as the authorized seller over,
5 and over, and over again.

6 Q But he didn't sign as the trustee; did he?

7 A He signed and personally guaranteed performance of the
8 listing agreement and asset purchase agreement.

9 Q It's a yes or no answer. Are you going to answer yes or no?

10 A Well, he did sign as the authorized seller. So if that's your
11 question, the answer is yes, he did sign it as the authorized seller.

12 Q No, my question is did he sign as trustee?

13 A No, he did not.

14 MR. WINTERTON: I have no further questions.

15 THE COURT: Any follow-up, Plaintiff?

16 MS. SAYYAR: Court's indulgence. Reserving the rights we
17 previously reserved. We have no questions for this witness.

18 THE COURT: Okay. Mr. Neuenswander, you may step down.

19 THE WITNESS: Thank you.

20 THE COURT: Okay. Plaintiff, we've got ten minutes, do you
21 want to use it?

22 MS. SAYYAR: Your Honor, considering our next witness said
23 he would be available tomorrow afternoon, I think we don't need to use
24 it other than I might take two seconds to just double check with the Clerk.
25 I don't know if you would like to do that on the record or not.

1 THE COURT: Not on the record.

2 MS. SAYYAR: Okay. Then, Your Honor, we will -- we would
3 request recess until tomorrow. We would just like some confirmation, I
4 understand it's really hard to put you on the spot for this, Mr. Winterton,
5 a rough idea of how long your afternoon hearing will take for what time
6 we should be back here tomorrow.

7 MR. WINTERTON: I forgot what my --

8 MS. SAYYAR: I mean, maybe you have no hearing. That
9 would be great too.

10 MR. WINTERTON: Oh, I do. I didn't remember what type of
11 hearing it is.

12 MS. SAYYAR: I won't hold you to it, some rough idea.

13 MR. WINTERTON: No, I appreciate it. It is -- I don't think it
14 would be that long.

15 MS. SAYYAR: Yeah. I mean, if we wait, it's fine. I respect
16 your time. I know you're going to get here as soon as you can. I just -- if
17 we can have an estimate of when we should be here.

18 MR. WINTERTON: 2:30.

19 MS. SAYYAR: 2:30?

20 THE COURT: So that's the earliest you can be here, you
21 think?

22 MR. WINTERTON: I can try -- I feel bad if I commit earlier,
23 and then it gets tied up, but --

24 MS. SAYYAR: I mean, we're willing to sit and wait. I mean,
25 the point is to be here.

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MR. WINTERTON: I can try to 2:00.

THE COURT: Let's try 2:00. And if they're willing to wait --

MR. WINTERTON: My apologies.

THE COURT: -- and perhaps you can stay in touch with them.

MR. WINTERTON: I will.

MR. WINTERTON: And I apologize if it runs over.

MS. SAYYAR: No, I'm right there with you. That happens
and there's nothing we can do about that. I'll give you my cell phone
number so you can text me.

MR. WINTERTON: Perfect.

THE COURT: Okay, you guys. So everybody stay safe and
healthy overnight, and we'll see you tomorrow, hopefully, at 2:00. Have
a good night.

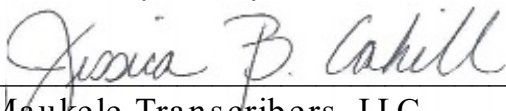
MS. SAYYAR: Thank you very much, Your Honor.

MR. ROCHELEAU: Thank you, Your Honor.

MS. SAYYAR: And thank you to your staff as well.

[Proceedings adjourned at 4:40 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio-visual recording of the proceeding in the above entitled case to the
best of my ability.


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