

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESERT VALLEY CONTRACTING,
INC. a Nevada corporation,

Appellant,

vs.

IN-LO PROPERTIES, a Nevada limited
liability company; EUGENE INOSE, an
individual; JEFFREY LOUIE, an
individual; DOES 1 through 10; and ROE
ENTITIES 1 through 10,

Respondents,

CASE NO. 83338

JOINT INDEX TO APPENDIX
DATE ORDER

VOLUME 2

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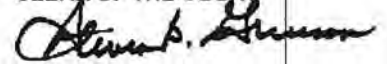
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1.	Complaint by Desert Valley Contracting 3.31.2016	3.31.2016	JNT000001- JNT000019
2.	Eugene Inose's Answer to Complaint and Counterclaim 6.07.2016	6.07.2016	JNT000020- JNT000047
3.	Desert Valley Contracting's Answer to Eugene Inose's Counterclaim 7.08.2016	7.08.2016	JNT000048- JNT000065
4.	Defendant In-Lo Properties' Answer to Complaint 8.04.2016	8.04.2016	JNT000066- JNT000084
5.	Bench Trial Transcript Day One 4.8.2019	2.10.2020	JNT000084- JNT000208
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6.	Bench Trial Transcript Day Two 4.9.2019	2.10.2020	JNT000209- JNT000345
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7.	Bench Trial Transcript Day Three 4.10.2019	2.10.2020	JNT000346- JNT000527
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10.	Volume VI		
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11.	Bench Trial Transcript Day Seven 6.21.2019	2.10.20	JNT001020- JNT001136

12.	Exhibit 560-Contract Between In-Lo and Desert Valley Contracting 8.14.2021	N/A	JNT001137- JNT001138
13.	Exhibit 274 DVC Job Cost and Billing Detail Report 4.25.2017	N/A	JNT001139- JNT001160
14.	Findings of Fact and Conclusions of Law 9.3.2019	9.3.20219	JNT001161- JNT001179
15.	Notice of Entry of Order of Findings of Fact and Conclusions of Law 9.3.2019	9.4.2019	JNT001180- JNT001201
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17.	Supreme Court Order of Reversal and Remand	3.3.2021	JNT001205- JNT0012010
18.	Amended Order of Findings of Fact and Conclusions of Law Following Remand 7.1.2021	7.1.2021	JNT001211- JNT001217
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20.	Notice of Appeal 8.05.2021	8.05.2021	JNT001228 JNT001230
21.	Amended Judgment Against Desert Valley Contracting	9.13.2021	JNT001231- JNT001232

EXHIBIT 6



1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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DESERT VALLEY CONTRACTING,
INC.,

CASE#: A-16-734351-C

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Plaintiff,

DEPT. XV

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vs.

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IN-LO PROPERTIES, LLC,

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Defendant.

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BEFORE THE HONORABLE JOSEPH HARDY
DISTRICT COURT JUDGE
TUESDAY, APRIL 9, 2019

14

15

RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 2

16

17

APPEARANCES:

18

For the Plaintiff:

CARRIE E. HURTIK, ESQ.
JONATHAN PATTERSON, ESQ.

19

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For the Defendant:

BRIAN W. BOSCHEE, ESQ.
SEAN E. STORY, ESQ.

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RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, April 9, 2019

2

3 [Case called at 10:48 a.m.]

4 MS. HURTIK: I'm not going to --

5 MR. BOSCHEE: Well, be quick, Sean.

6 MR. STORY: Yeah.

7 MR. BOSCHEE: That's a take-home point.

8 THE COURT: All right.

9 MR. BOSCHEE: When witness gets here we'll rifle through
10 them, if we can.

11 MS. HURTIK: So, Eugene, we'll have you go up, and then
12 we'll just --

13 MR. BOSCHEE: We'll go --

14 MS. HURTIK: -- get to a cutting point, when he shows up.

15 MR. BOSCHEE: Yeah.

16 MS. HURTIK: Because we won't have --

17 THE COURT: It's your job.

18 MS. HURTIK: Sorry, just give me a minute.

19 THE WITNESS: Okay.

20 THE COURT: Well, you're --

21 MS. HURTIK: Because I'm going back where I wasn't going.

22 [Counsel confer]

23 EUGENE INOSE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

24 BY MS. HURTIK:

25 Q Okay. Mr. Inose, can you grab Binder 2, behind you. So if

1 you can turn to Exhibit 224 in Binder 2, and just let me know when you're
2 there.

3 A I'm there.

4 Q We had a discussion the other day about your driveway
5 getting cracked, and there was subsequently a pool deck area that you
6 also had repaired, correct?

7 A Yes, correct.

8 Q Okay. And the subcontractor that did that, what was their
9 name?

10 A I believe it was West Coast Concrete.

11 Q Okay. So this exhibit, Bate Stamp DVC-410, is a bid proposal
12 and contract agreement with West Coast Concrete, and it says that --
13 have you ever seen this before?

14 A No, I have not.

15 Q Okay. And it says, "A new slab to be dowelled rebar, it's # 4,
16 rebar 18 inch, on center with epoxy. Price based on two movants."
17 Okay. Do you know whether this was your driveway, or was this your
18 pool deck?

19 A I have no idea what this is for.

20 Q And it says "exclusions" if you look down at the bottom, kind
21 of, and up from the signature it says, "Exclusions." Underneath
22 exclusions it gives something's laid out, and then it says:
23 "Compensation of West Coast Concrete not to exceed \$1,850." Do you
24 have any idea what that would have been for?

25 A I have zero idea what this is for.

1 Q Okay. And then if you turn the next page, to Exhibit 225,
2 there's a conditional waiver and release, a progress payment. Have you
3 ever seen this before?

4 A No, I have not.

5 Q Okay. And you haven't even reviewed any of these
6 documents prior today, in preparation for trial?

7 A This one, no, I have not; I did not see this one.

8 Q Okay. And you said that when you spoke to the
9 subcontractors directly, that you had them show you what they had been
10 paid previously by Desert Valley or DVC, and then they told you what
11 was left, and that's how you determined what to pay them, correct?

12 A That is correct. The ones that I did speak with, and I was able
13 to go either down to their office, or they were able to meet me at my
14 house. This particular contractor we only spoke on the phone.

15 Q Okay. So this particular contractor -- this conditional waiver
16 and release progress payment, can you look at that and tell me what the
17 amount it says that they were paid by DVC?

18 A It says here \$18,476, I believe.

19 Q Okay. And we went through some checks yesterday that you
20 had paid out, and you had a check which was Exhibit 592, and it was
21 dated 1/29/16, for \$10,000. Do you know what the \$10,000 was for?

22 A When I spoke with the gentleman, I don't remember his
23 name at West Coast Concrete, on the phone, he had told me that DVC
24 did pay a certain amount, and I cannot remember what it is so far. He
25 gave me a balance of what that was, and then I negotiated on that

1 balance down to the \$10,000 amount.

2 Q Okay. Do you recall what the balance he said was left?

3 A It was -- I mean, this is approximation, but I believe it was
4 around \$15,000.

5 Q Okay. And so who was the gentleman, do you recall his
6 name?

7 A No, I do not recall his name at all.

8 Q So you believe that they were owed \$15,000 for your
9 driveway, and for your pool deck?

10 A As far as I know it was the driveway. I don't know exactly,
11 because I never seen exactly what it was all for. But on the check that I
12 recall from yesterday, it said "driveway" on there.

13 Q Uh-huh. Well, I'm asking because Desert Valley paid,
14 according to this waiver and release, \$18,476. You're saying you
15 negotiated and paid them \$10,000, correct?

16 A That is correct. The check that I paid them yesterday was
17 \$10,000.

18 Q The check we discussed?

19 A I'm sorry, the check that we discussed from yesterday was
20 \$10,000.

21 Q If you want to hand out checks, I'm right here? Just kidding,
22 I'm just kidding. Okay. So if you take those together the 10,000 you paid
23 and 18,000 that there's a waiver and a release for right here, that's
24 28,476; is that correct?

25 A Yes. If -- yes.

1 Q Okay. And we had gone through a breakdown yesterday of
2 what the insurance had allocated based on Mr. Merritt's estimate for the
3 pool deck and for your concrete, correct?

4 A I don't recall that right now, but if I look at it I'll probably
5 recall it. We went through a lot of stuff yesterday.

6 Q Okay. I'm going to get to that page. So if you can pull out
7 Volume 8, you can move that to side, or you can put it behind, if you
8 want. So can you go to Exhibit 571, and go to IN-LO-154. All right. Just
9 let me know when you're there?

10 A I am there right now.

11 Q Okay. So I want you to go down from the top. The first
12 section is "building." The next section on the left you'll see these little
13 boxes, and I'm actually bring I up there and put it on the Elmo.

14 MS. HURTIK: Oh, it's not -- how do I get it clearer.

15 THE COURT: Doesn't it auto focus?

16 MR. PATTERSON: Yeah. There's a button on there that says
17 auto focus.

18 MS. HURTIK: Worked fine yesterday. Okay, let's see. Auto
19 tune?

20 THE COURT: There you go.

21 MS. HURTIK: Okay. All right.

22 BY MS. HURTIK:

23 Q So if you go down and you see --

24 A "Driveway repairs" --

25 Q I lost it.

1 A Right there.
2 Q Driveway?
3 A Yeah. Yes.
4 Q It's under "other structures"?
5 A Yes.
6 Q Okay. There's an estimate of the loss for that, for \$42,186; do
7 you see that?
8 A Yes, I do. So do you recall whether or not the concrete
9 company was actually paid, West Coast Concrete was actually paid
10 42,186?
11 A I don't know the total amount that was paid. It looks like they
12 had a progress payment of 18,476 from DVC and \$10,000 from me.
13 Q Uh-huh. That doesn't add up to 42,000. Okay. So --
14 A But --
15 Q Hold on a minute, just give me a minute.
16 Okay. So I want you to go to binder Number 1.
17 A Can I put this --
18 Q Yeah. You can put that back.
19 A I'm going to put this one away.
20 Q Uh-huh.
21 A Can I put 2 away, also?
22 Q Yeah. Go ahead, put them all back.
23 A Okay.
24 Q We'll just pull out, it's easier, if the two cards are left hanging
25 out.

1 A Okay.

2 MR. STORY: What exhibit are you looking at.

3 MS. HURTIK: I'm on Volume 1.

4 MR. BOSCHEE: We have it.

5 MS. HURTIK: I'm on Exhibit 35.

6 THE WITNESS: You said Volume 1, correct?

7 BY MS. HURTIK:

8 Q Yes. Volume 1 --

9 A And?

10 Q -- and Exhibit 35.

11 A 35, okay. Okay. I just got to 35.

12 Q Okay. So this says West Coast Concrete. The first -- there's

13 two pages, and it's DVC, Bate Stamp DVC, we're going to skip the zeros,

14 56 and DVC-57.

15 A Okay.

16 Q Can you look at both of those proposals, and then tell me

17 when you're done.

18 Okay. So the first proposal says: "Clean and seal exposed

19 advocate, 5500 square feet."

20 And it says: "Clean and stain and seal concrete bands,

21 approximately 1700 square feet. Remove and replace up to 240 square

22 feet of four colored concrete."

23 These amount to \$23,305; is this for the driveway?

24 A I believe it is. I'm not a 100 percent sure, but it doesn't say.

25 Q Okay. And then the next one says: "Pool coping patch, skim

1 coat with micro topping, stain and seal up to 500 square feet, and this is
2 \$4,288." Have you ever seen that?

3 A No, I have not.

4 Q So if you take those two together, that's all that was
5 supposed to be done out there by West Coast Concrete, correct?

6 A I do not know. I do not contract them at all.

7 Q Well, you testified that they just did the driveway and the
8 pool, right, the pool decking?

9 A But I don't know if this is all -- if this is everything; I don't
10 know.

11 Q Well, the reason I'm asking you is, those two total \$27,593.
12 The waiver shows they were paid 18,476 by DVC, and then you said you
13 negotiated 10,000, for a total of 28,476, which is a little bit over what
14 their contract says. So this is over what the contract says, you said you
15 negotiated it down, so you must have known what you were negotiating
16 for, correct?

17 A No. They told me what was owed, on the phone, and I
18 negotiated down from there.

19 Q Okay. So --

20 A I do not know these people at all, whatsoever.

21 Q Okay. So you contacted all the subcontractors, correct?

22 A I contacted all the subcontractors after DVC was fired, and I
23 wanted to find out what was owed, because I did not want to have any
24 other contractors come back and try to put a lien on my house.

25 Q Okay. And so when you contacted this subcontractor, they

1 told you how much was owed?

2 A I do not recall the exact amount that they told me what was
3 owed.

4 Q Well, you just said it was 15,000 and --

5 THE COURT: Whoa, hold on. I mean, I'm listening and
6 taking notes, so he essentially said he wasn't sure. He thinks it was
7 something, 15,000 or so, he negotiated down to 10. So I guess we're
8 re-asking him to characterize what he's already said.

9 MS. HURTIK: Okay.

10 BY MS. HURTIK:

11 Q So based on a review of what your testimony was, and the
12 Judge's notes, you said that you thought it was about 15,000, you
13 negotiated them down to 10, correct?

14 A That's correct.

15 Q Okay. Did they go back on the property and do any work
16 after DVC was gone?

17 A I don't remember the timeline, if it was before or after DVC
18 was gone, or fired. I cannot recollect right now, as far as if they did any
19 work after DVC was gone; I cannot remember that right now.

20 Q Okay. Well, let's go, and I want to kind of finish this so we
21 can get your other witness out of here, but go back to Volume 8, because
22 I don't want to quit when we're in the middle of something.

23 A I'm just going to leave this here, then.

24 Q Okay.

25 MR. BOSCHEE: Which, exhibit binder?

1 MS. HURTIK: Volume 8.
2 MR. BOSCHEE: No, which exhibit, though?
3 MS. HURTIK: 592.
4 MR. BOSCHEE: Okay.
5 BY MS. HURTIK:
6 Q Okay. So are you at Exhibit 592?
7 A Yes, I am.
8 Q Okay. On 592, this is a check dated 1/29/2016, for \$10,000,
9 and what does it say in the memo?
10 A It says: "Final driveway."
11 Q Okay. So did they come back out? Does this refresh your
12 memory, did they come back out on the property after DVC left?
13 A No, it does not. DVC left the property at the end of 2015. It
14 may have taken me a little bit of time to negotiate with them. I do not
15 recall exactly the timeline, as far as whether the work was done prior to
16 DVC being fired, or after. I'm sure that a majority, if not all of the work
17 was done prior to DVC getting fired, but I cannot 100 percent say that
18 that is the truth.
19 Q Okay. So what percentage of the work do you believe, in
20 your opinion, was complete, prior to DVC getting terminated?
21 MR. BOSCHEE: Objection. Relevance and asked and
22 answered; he just said he didn't know.
23 MS. HURTIK: No, I --
24 THE COURT: So in terms of -- I thought it was vague. Are
25 you focused on the project overall, or the work that WCC did?

1 MS. HURTIK: Well, based on what he just said, I'm focused
2 on he just -- I want to know what percentage of the entire project was
3 done --

4 MR. BOSCHEE: Okay.

5 THE COURT: That's why I asked you to clarify, because we're
6 talking about WCC, and now you're saying "the entire project," which is
7 fine. So rephrase, based on the entire project, see if you can answer.

8 BY MS. HURTIK:

9 Q Okay. So based on your testimony just now what percentage
10 of the house was completed at the time that DVC was terminated?

11 A And this is for DVC's work?

12 Q No. This is for the entire house.

13 A For the --

14 Q What percentage of the house was completed?

15 A I'm not an expert, but I would look at it and probably think
16 about 70 percent.

17 Q Were any trades complete at the time that DVC was
18 terminated?

19 A I don't know. I cannot say of any trades, but I know a lot of
20 trades were not. I don't know. Like I think the framers were done,
21 obviously, the people like were done, yes.

22 Q Okay. And earlier we showed you some final inspections
23 from the city, for permits. So there were some finals in December of
24 2015. So some things were completed in December, correct, of 2015?

25 A When you say "completed" ma'am, are you talking about

1 complete, complete for a custom home, or are you talking the bare
2 minimum to pass an inspection?

3 Q Okay. You've got final inspections on plumbing, mechanical,
4 those are just two of the items that we discussed yesterday --

5 A Uh-huh.

6 Q -- they were final inspections; that does not mean bare
7 minimums. So was the plumbing and the mechanical, pursuant to the
8 scope of work, completed in December of 2015?

9 A Okay. If you're talking about -- like I said, I'm a layman, but if
10 you're talking like if one toilet and a sink was in there, and stuff like that,
11 then, yes, it did meet the minimum, however, my house was not near
12 completion at all.

13 Q Okay. So as you sit here today, do you know if West Coast
14 Concrete did further work after DVC was terminated, or you don't know?

15 A I cannot recall right now the timeline, as far as what West
16 Coast Concrete did exactly before DVC was fired, and if any work was
17 done afterwards as far as them finishing up; I cannot recall that right
18 now, whatsoever.

19 Q But you just paid them \$10,000, without confirming what was
20 completed or not?

21 A No. By the time I paid them in January of 2016 it was
22 complete; by January 29, 2016. Now I don't --

23 Q Okay. Let's go back to that.

24 A I don't know what -- if they had completed everything prior to
25 DVC leaving, or after; I cannot recall that whatsoever --

1 Q Okay.

2 A -- as far a timeline goes.

3 Q Okay, let's clarify. So you said that they were? West Coast
4 was complete in January of 20 --

5 A Yes. When I'm referring to this particular -- when I say "they"
6 I meant West Coast Concrete on this particular -- not DVC, I'm talking
7 about West Coast Concrete, specifically.

8 MS. HURTIK: We'll break here so that we can call the other
9 witness, then we'll come back to this.

10 [Pause]

11 THE MARSHAL: Stand and face the clerk.

12 THE CLERK: Please raise your right hand.

13 RUSSELL BARLOW, DEFENDANT'S WITNESS, SWORN

14 THE CLERK: For the record please state and spell your first
15 and last name.

16 THE WITNESS: Russell Barlow, R-U-S-S-E-L-L B-A-R-L-O-W.

17 THE MARSHAL: And please --

18 DIRECT EXAMINATION

19 BY MR. STORY:

20 Q Hello, Barlow. Can I call you "Russ"?

21 A Yeah.

22 Q My name is Sean Story, and I represent Eugene Inose and
23 IN-LO Properties with regards to this dispute. Do you understand you're
24 here as a result of your association with HyBar Windows & Doors?

25 A Yes.

1 Q Okay. And how are you associated with HyBar?
2 A I own the company.
3 Q Okay. And how long have you owned HyBar?
4 A Thirty years.
5 Q Okay. And so you were the owner in 2014, '15 and '16?
6 A Yes.
7 Q Okay. And, HyBar, does it do work with custom homes?
8 A Yes.
9 Q Approximately how many projects as HyBar done with
10 custom homes?
11 A Oh, maybe --
12 THE COURT: Over 30 years?
13 THE WITNESS: Yeah, 2,000 --
14 BY MR. STORY:
15 Q Okay.
16 A -- 3,000, I don't know.
17 Q So a considerable number --
18 A Enough.
19 Q -- it's fair to say? Okay. And are you familiar with the
20 residential property located at 587 St. Croix, in Henderson?
21 A Yes.
22 Q Okay. So for purposes of our time here, if I refer to "the
23 property" can we agree, that unless I specify otherwise, I'm talking about
24 587 St. Croix?
25 A Yes.

1 Q Okay. And would you describe the property as a custom
2 home?

3 A Yes.

4 Q Okay. And were you involved at all, was HyBar involved with
5 any work done on this property?

6 A Yes.

7 Q Okay. Now I understand that the property was originally
8 constructed sometime during the period of 2005 to 2008. Was HyBar
9 involved with that construction?

10 A Yes.

11 Q And then there was a restoration that took place
12 approximately 2014, all the way into 2016. Was HyBar also involved with
13 that restoration --

14 A Yes.

15 Q -- of the property? Okay. And are you familiar with Desert
16 Valley Contracting?

17 A Yes.

18 Q Okay. And I understand that Desert Valley Contracting was
19 the general contractor in the 2014 to 2016 restoration of the property; is
20 that correct?

21 A Yes.

22 Q Had HyBar worked with Desert Valley prior to that project?

23 A Not that I recall.

24 Q Okay. And are you familiar Eugene Inose?

25 A Yes.

1 Q Okay. And you understand that through an LLC, Inose was
2 the owner of the property?
3 A Say that again.
4 Q Through an LLC --
5 A Okay.
6 Q -- Eugene Inose owned the property, the St. Croix property?
7 A Yes.
8 Q Okay. So who originally retained HyBar to perform the
9 reconstruction in 2014 to 2016?
10 A As far as I recall, Desert Valley Construction.
11 Q Okay. And behind you there are a series of binders, if you
12 can go ahead and look back there, and they're labeled with volumes.
13 Can you grab number 8 for me?
14 A Okay.
15 Q And if you could turn to Exhibit 581 for me, please?
16 A Okay.
17 Q Do you recognize this document?
18 A Yes.
19 Q Okay. And what is this, generally?
20 A A subcontract.
21 Q Okay. And this was a contract that HyBar had with Desert
22 Valley, for the reconstruction of the property?
23 A Yes. It appears to be.
24 Q And on that first page there, can you look at the date at the
25 top for me?

1 A Yeah, 10/3/14.

2 Q Okay. So to the best of your recollection was October 3rd,
3 2014, the time that HyBar contracted with Desert Valley to conduct its
4 work at the property?

5 A Yes.

6 Q Okay. And I understand at some point during the project that
7 Desert Valley was no longer associated with the project, but for purposes
8 now, until I specify as otherwise, I'm going to talk about the time period
9 up until that occurred. During the period up until then, who did HyBar
10 take its direction from?

11 A From Desert Valley.

12 Q Okay. Any particular individuals with Desert Valley, that you
13 recall?

14 A I think it was Daniel.

15 Q Okay. Does Daniel Merritt --

16 A Daniel Merritt.

17 Q -- ring a bell?

18 A Yeah.

19 Q Okay. Anyone else that you can think of, as you sit here
20 today?

21 A I think he had an assistant; maybe Rachelle [sic throughout].

22 Q Okay.

23 A Is there a Rachelle that works for Desert Valley?

24 Q There is, yes.

25 A Okay.

1 Q Did Desert Valley take directions directly from Eugene Inose?

2 A Did Desert Valley?

3 Q I'm sorry, did HyBar take its direction ever, directly from
4 Eugene Inose?

5 A I don't think so.

6 Q Okay. And to the best of your recollection would that
7 because the contract that HyBar had was with Desert Valley?

8 A Yes.

9 Q Okay. And HyBar prepared at least one estimate on the
10 project; is that correct?

11 A Yes.

12 Q And in preparing the estimate was it you that prepared it?

13 A Yes.

14 Q Okay. In preparing the estimate where would HyBar have
15 gotten its information; from which parties or individuals?

16 A We would have -- I would have looked at the original contract
17 that we had when the house was built, and I believe there would have
18 been questions from Mr. Inose, and I believe that there was designer
19 involved in the original ad, maybe giving us some information, but I
20 don't know about that for sure.

21 Q Okay. So based on information from the designer for
22 Mr. Inose, and as well from Desert Valley, then HyBar would have put
23 together a proposal, based on what it anticipated needed to be done to
24 complete, you know, whatever information it was given?

25 A Yes. And there wasn't -- actually, the designer was not a part

1 of the restoration estimate. I would have -- I would have referred only to
2 the original contract, and if I didn't have something clarified, I would
3 have asked either Desert Valley, or Mr. Inose.

4 Q Okay. And what specific type of work, and you can give me
5 some general broad categories; what specific type of work did HyBar do
6 during the period of time at the property?

7 A Windows, doors and trim.

8 Q Okay. And during the course of the project, prior to Desert
9 Valley no longer being associated with it, do you recall if HyBar had any
10 change orders?

11 A Yes.

12 Q Okay, did they?

13 A They did, yes.

14 Q Okay. And your understanding with your 30 years in the
15 business, what is a change order, in sort of a short description?

16 A You're asking what was the nature --

17 Q Just what a change --

18 A -- of them?

19 Q Yeah. What's a change order mean?

20 THE COURT: So "generally" is the question.

21 THE WITNESS: Okay.

22 BY MR. STORY:

23 Q Yeah. Just generally, you don't have to get into --

24 A A change order, as a change from the original scope that we
25 proposed, that somebody wanted to change something.

1 Q Okay. And are those typically in writing?

2 A Yes.

3 Q Okay. And why would that be? Why would HyBar want
4 them to be in writing?

5 A We want to get paid.

6 Q Okay. So in a sense it's to create a paper trail --

7 A Yes.

8 Q -- of changes? Okay.

9 And do change orders need to be approved, typically?

10 A Yes.

11 Q Okay. So HyBar would expect that a change order would be
12 approved before it would do work differently than the original scope --

13 A Yes.

14 Q -- is that fair?

15 Okay. Let's take a look on -- we'll stay wit number 8, and let's
16 go towards the very front. I have the --

17 A I'm into binder 8; which number?

18 Q Yes. And I'll give you an exhibit number in one second.

19 Let's turn to Exhibit Number 566, please.

20 A Okay. I'm there.

21 Q Okay. And if you see there at the bottom right, there are
22 small numbers that say "IN-LO," followed by a series of digits, and I'll
23 give you the last two digits, if you can turn to 48 for me, it should be
24 about the fourth page in.

25 A So you're in Exhibit 566?

1 Q Yeah. Then at the very bottom right you should be looking at
2 44.

3 A Okay.

4 Q If you can flip that to 48, please?

5 A Okay.

6 Q Okay. And can you read the date for me at the top here? It's
7 over --

8 A Invoice --

9 Q -- there to the right.

10 A Invoice date 10 -- October 21st, 2015.

11 Q Okay. And down here in the description it says:

12 "Miscellaneous change orders still open." So there were, by my
13 understanding of this, \$11,000 worth of change orders still open," as of --
14 or my apologies. I'm having you look at a different -- you know what, go
15 ahead and strike that. I'll point you to another exhibit here. Can you go
16 to 576 for me, please.

17 A So I don't see a 576 tab.

18 Q Yeah. I'm pulling out another book here.

19 MR. STORY: One second.

20 THE COURT: No, it's not in there. Oh, on the tabs.

21 THE WITNESS: Yeah. The tab jumps from 576 to -- oh, it's
22 right there behind it, 576.

23 BY MR. STORY:

24 Q Yeah. I'm going to have --

25 MR. BOSCHEE: You need binder 1.

1 BY MR. STORY:

2 Q I'm going to have you grab binder 1.

3 [Counsel confer]

4 BY MR. STORY:

5 Q I'm going to have you turn to number 157 for me, please.

6 A I want somebody this organized to keep my office in shape.

7 Q As long as they refer to the correct documents, right?

8 A What was that number again?

9 Q 157, please. It should be just one document. So --

10 A Okay.

11 Q All right. Okay. And what is this, that I'm having you look at
12 here?

13 A A change order.

14 Q Okay. And this is from HyBar?

15 A Yes.

16 Q So this is what we were talking about, this is a document that
17 would have been given to Desert Valley by HyBar, for something that
18 was changed from the original scope?

19 A Yes.

20 Q Okay. And can you read for me up there, there's a couple of
21 dates, just below the invoice number, or change order number. Can you
22 read what it states for me?

23 A Yeah. Change order date is December 18, 2014, and refers to
24 the original of November 5th^h, 2014.

25 Q Okay. So this confirms your recollection that HyBar did in

1 fact have change orders prior to Desert Valley leaving the project,
2 correct?

3 A Yes.

4 Q Okay. And do the best of your recollection did HyBar ever
5 receive any verbal requests to make any changes on the property, prior
6 to Desert Valley leaving the project?

7 A I can't say for sure, but likely.

8 Q Okay. And if it received a verbal request, would that have
9 been memorialized somehow in a change order, or was it HyBar's
10 practice, ever, to just go ahead and do it?

11 A Most of the time it would be memorialized. But occasionally
12 if it was something small or minor we would just do it out of -- because
13 of the essence of time.

14 Q Okay. And when you say "small or minor" can you give me a
15 rough dollar amount that would be considered small; it doesn't have to
16 be exact.

17 A Four or \$500.

18 Q Okay. And would that be a cost that would still be somehow
19 later recouped from Desert Valley, or is that something -- and how would
20 that have happened?

21 A We would have submitted a change order, even though it
22 might not have been proposed beforehand, we would have submitted a
23 change order.

24 Q Okay. So if I'm understanding, correctly, if you were given a
25 verbal request to do something, you may just do it, but it would still later

1 be recouped through a change order in writing?

2 A Yes.

3 Q Okay. So there would not have been an instance, or at least
4 you're not aware of one, where HyBar would have taken a request to
5 verbally do something differently, had just done it, and then never
6 created the change order to recoup the money for it?

7 A Not unless I was feeling like giving away stuff.

8 Q Okay. All right. So let's go back to Volume 8.

9 A I'll close this one for you.

10 Q And if you could turn for me to Exhibit 568, please. And on
11 the second page here, it should have 61, down on the bottom top
12 corner.

13 A Okay.

14 Q Okay. So the first page, I'm going to represent to you that
15 this is an email that's been previously submitted into evidence. And if
16 you'll see here on the first page, towards the bottom, I was sent by
17 Daniel Merritt. And the date of the email is November 23rd, 2015. If
18 you'll turn to 61 there, towards the bottom, it talks about HyBar. Can you
19 read that for me, please, that little section?

20 A "HyBar, their cost for the entire project is 116,000, this
21 includes the latest kitchen steel glass table stand installation. Our
22 estimate if 108,000, the difference is 8,000."

23 Q Okay. So based on your understanding of how -- unless
24 HyBar was feeling gracious, that you know, any changes or increases in
25 costs for HyBar, or increases in its estimate, would be memorialized in a

1 change order. Would it be your understanding that this would be
2 reflected, this \$8,000 difference would have been reflected in change
3 orders over the course of the project?

4 A I would suppose. I can't speak to either one of those
5 numbers directly.

6 Q Okay. And then if you can flip forward for me to 562, please.
7 Okay. And I'm going to represent to you that this has all been admitted
8 into evidence. And this is -- have you seen one of these before?

9 A An unconditional waiver?

10 Q Yes.

11 A Yes.

12 Q Okay. And if you'll see there, at the bottom it was signed by
13 Desert Valley Contracting, by one of their representatives; that may be
14 the Rachelle you're referring to earlier. And you see there at the top, the
15 handwritten part, can you read that for me, please?

16 A The handwritten part, it says: "No change orders as of
17 07/03/2015.

18 Q Okay. And I'm going to represent to you that this was a
19 document that was presented to Mr. Inose by Desert Valley. So based
20 on your understanding of what we discussed and the fact that we
21 actually we looked at a change order dated in December of 2014. Is your
22 understanding that this "no change order" is as of 7/3/2015, is
23 inaccurate?

24 A Yes. I would say that.

25 Q Okay. And if you can turn for me now to 571, please. Are

1 you there?

2 A Yes, I'm there.

3 Q Okay. And this too has been admitted into evidence. And if
4 you'll see there, that this is an email also from Daniel Merritt, do you see
5 there at the top?

6 A I'm on number 71, on --

7 Q I apologize, can you flip to 74 for me.

8 THE COURT: 574?

9 BY MR. STORY:

10 Q No, just 74, within the same --

11 A 70 -- okay.

12 Q Yeah. Bates Number 74.

13 A Okay.

14 THE COURT: Oh --

15 BY MR. STORY:

16 Q Okay. Do you see there at the top, the email from Daniel
17 Merritt?

18 A Yes.

19 MR. STORY: Did I throw you off, Judge?

20 THE COURT: Yes, sorry.

21 MR. STORY: We're at 571, and then we're on Bates Number
22 74.

23 THE COURT: Okay, sorry.

24 BY MR. STORY:

25 Q Okay. And if you can read just that very first sentence, there,

1 under "Brian"?

2 A "Following" --

3 THE COURT: Do you want him to read that out loud.

4 THE WITNESS: Do you want me to read that?

5 BY MR. STORY:

6 Q Yeah. Just the one sentence.

7 A "Following our correspondence for the Inose claim, we are at
8 the above agreed contract amount with no needed change
9 orders, and no more change orders from all the
10 subcontractors, which have submitted their bids."

11 Q Okay. That section there, that they -- the agreed contract
12 amount with no needed change orders. That again conflicts with your
13 understanding that there had been change orders sent by HyBar to
14 Desert Valley?

15 A It appears to.

16 Q Okay. Then let's just go back, I just have one more thing to
17 touch base with you on. Let's go ahead and flip back to Volume 1,
18 please. Okay. Let's go ahead and go back to 157, please, this is the
19 change order you and I discussed previously.

20 A Okay. I'm there.

21 Q Okay. And go ahead and take a sec to look at this, because
22 you would know the areas. If this change order was presented, I know it
23 says "accepted by" down there at the bottom, if you received this back
24 with a signature, based on your memory of how this job went through,
25 who would you have received approval from, or who would it have been

1 accepted by?

2 A Desert Valley Contracting or someone.

3 Q Okay. And if you can flip ahead to 162, please; it's just a
4 couple more pages. It should be DVC-251; do you see that?

5 A Yes.

6 Q Okay. And what is this here?

7 A An invoice.

8 Q Okay. An invoice to HyBar to Desert Valley?

9 A Correct.

10 Q Okay. And if you see there in the middle, it says, "Deposit
11 invoice for CO-1, and for CO-2; what are those?

12 A "CO" means change order number 1, CO-1, and CO-2 is
13 change order number 2.

14 Q Okay. So these were invoices given for deposits, for the
15 work to be done in change orders; is that accurate?

16 A Yes.

17 Q Okay. And can you read that "approved" section for me, on
18 it?

19 A "Approved per Danny, 3/19/15."

20 Q Okay. And do you have any reason to believe that's not
21 Daniel Merritt?

22 A I do not.

23 Q Okay.

24 MR. STORY: I have nothing. Pass the witness.

25 [Pause]

1 CROSS-EXAMINATION

2 BY MS. HURTIK:

3 Q Okay. Are you ready?

4 A Yes.

5 Q Okay. Good morning, Mr. Barlow. My name is Carrie Hurtik,
6 I'm counsel for Desert Valley Contracting. You were asked if you ever
7 received any direction from Mr. Inose on the rebuild of the property; and
8 I'm just going to refer to it as "the property." You said, "No," is that
9 correct?

10 A That I never received direction from Mr. Inose?

11 Q Yeah.

12 A I don't recall saying that. Maybe I did.

13 Q Okay. So I want to clarify. I want to ask you a few questions
14 about -- you said that Danny Merritt was actually the one that you
15 discussed things with, on the job, mostly?

16 A Yes.

17 Q Okay. And you also indicated, you said "Rachelle," but I'll
18 just clarify, her name is Rachelle.

19 A Okay.

20 Q So and you also talked to Rachelle, too?

21 A Yes.

22 Q Did you ever speak to Robert Ramirez?

23 A Yes.

24 Q Okay. So who was directing you on the job? Was it a
25 combination of all three, or would each of them have different context of

1 conversations with you?

2 A They would have each had a different context --

3 Q Okay. And --

4 A -- in conversation.

5 Q Okay. And just to clarify, so Rachelle, was she only mainly
6 speaking to you about invoices and payments, or did she have another
7 role?

8 A I only recall speaking to her about invoicing payments, but
9 I'm not sure about that.

10 Q And so did Robert Ramirez direct you to do work, ever
11 without having a change order signed or approved?

12 A Not that I recall.

13 Q But did Robert Ramirez direct you to do work on the project?

14 A I don't believe so. But I can't recall for sure.

15 Q So you don't recall that Mr. Ramirez was the supervisor on
16 the job?

17 A Mr. Ramirez was the supervisor on the original build, and so I
18 understood that he was there for clarification about things, but to my
19 knowledge he didn't direct us to do work.

20 Q So he would never tell you what to do?

21 A No, I don't think so. Daniel Merritt was generally the person
22 who directed us.

23 Q Okay. So, all right. So were you the one that was onsite,
24 throughout the reconstruction, when HyBar was on the project?

25 A Not always. My guys would have been there working

1 without my supervision at times.

2 Q Okay. So you can't -- how often were in the house, during
3 the reconstruction?

4 A Just frequent visits to just be sure things were moving along,
5 answer questions about things that came up, change orders requested.

6 Q Okay. So on a day-to-day basis you would have had a
7 superintendent of your own on the project?

8 A When we were on the project, yes.

9 Q Okay. And who was that superintendent?

10 A I don't recall.

11 Q Okay. So the superintendent would have been the day-to-
12 day guy that would have had questions about change orders, or
13 day-to-day operations at the project, correct?

14 A The superintendent was just a lead installer. So the lead
15 installer might have had questions about what order to do something in,
16 but he's not authorized to do work without a change order. All change
17 orders would have come through me.

18 Q Okay. So you're not sure if your lead installer was directed
19 by anybody other than Danny Merritt, are you?

20 A I'm not sure.

21 Q Okay. Because you weren't out there every day, correct?

22 A That's correct.

23 Q Okay. I just wanted to clarify that.

24 So when -- you said that you had been originally one of the
25 original contractors on the house; did I get that right?

1 A Yes.

2 Q Okay. So you were one of the original contractors that built
3 the house. When you went back out, after this flood, to do
4 reconstruction, did you have construction meetings onsite with other
5 subcontractors?

6 A There were -- there were subcontractor meetings, and there
7 were other contractors there.

8 Q Okay. And did you have to integrate your work with other
9 subs that were --

10 A Yes.

11 Q -- overlapping?

12 A Yes.

13 Q Okay. And who would those subs have been?

14 A I have no recollection on which -- what the name of those
15 subs are, but they would have been drywall contractors, electrical
16 contractors, framing contractors.

17 Q Okay.

18 A And others.

19 Q Okay. And did you have any conversations with the adjuster,
20 or the third-party adjuster that was on the site for Mr. Inose's insurance
21 company?

22 A I have no recollection of talking to the adjuster.

23 Q Okay. Before you bid the project, were you out there with
24 the other trades, coordinating it, prior to bidding it?

25 A Yes.

1 Q Okay. And was there a plan in place to do certain things
2 different than had been the previous build?

3 A I don't recall that.

4 Q Okay. So let's go to your change order, and we're going to
5 go to Volume 1. It's still down in front of you, right?

6 A Uh-huh.

7 Q And let's go to Exhibit 157.

8 A Okay.

9 Q Okay. So you were asked questions about this change order,
10 previously. And if you look at the top date in the corner, it's dated
11 12/18/2014, and then right underneath that it says, "Original order date:
12 11/5/2014," correct?

13 A Yes.

14 Q Okay. Do you know when you walked the job, to do your
15 original bid?

16 A I do not know that.

17 Q So I'm going to have you turn to Exhibit 158.

18 A 1-5-8?

19 Q Yes. It's right behind the one you're at. That is a proposal, it
20 appears to be, and it's two pages. Can you just look at that for a second?

21 A Yes.

22 Q Okay. And on this it says "revised 2" on the upper top. Is
23 that your handwriting?

24 A No.

25 Q Okay. Did you do the original proposal, or did you have an

1 estimator that worked for you do the proposal?

2 A I did the original proposal.

3 Q Okay. So this is -- is this the original proposal that your
4 contract was formed from?

5 A I don't know for sure. I can't say for sure, because changes
6 may have happened, but --

7 Q Okay.

8 A -- it appears to be.

9 Q Okay. And if you look at the top corner, when was this --
10 what was the date that this was created?

11 A November 5th, 2014.

12 Q Okay. And are you aware of ever being out of the house,
13 after the first initial build, that you participated in, and this day, 11/5?

14 A I'm not --

15 Q I'll make it clear.

16 A -- understanding the question.

17 Q So let me just represent, the flood occurred in August of
18 2014.

19 A Okay.

20 Q So when did you go out the first time to the property, after
21 this flood happens; do you know?

22 A I don't remember the date exactly.

23 Q Do you know what month?

24 A I cannot recall.

25 Q Okay. So how long does it take you to usually turn around

1 to bid -- this is dated 11/5, how long does it usually take you to do a bid
2 like this on a custom home?

3 A These are custom doors, so it could have taken 30 days.

4 Q Okay. And because there's overlap with other trades, do you
5 talk to those other subs to see if there's any special needs that need to be
6 taken care of, such as electrical?

7 A I don't normally talk to the subs directly, I normally just talk
8 to the contractor.

9 Q Okay. Do you recall doing that on -- with regards to this
10 proposal?

11 A Talking to the other subcontractors?

12 Q You said you talked to the contractors.

13 A I talked to the contractor. So what was your question?

14 A Okay. So let me go directly to a place in this proposal, so that
15 maybe it'll help clarify.

16 Q Okay. So on the second page of this proposal, DVC-242,
17 there's line items 136 and 137. Do you see that? I'll put my finger by it;
18 does that help?

19 A One -- yes, okay.

20 Q Okay. So that says "Dual motor set and controls, north
21 motor set and controls. North motor had water in the electronics, the
22 entire system must be replaced to match motors and controls." So
23 would you have had to coordinate, with the electrician, your doors, at
24 this location?

25 A Maybe, maybe not. Because the electron -- the electric --- it's

1 just a plug-in, and if the plug existed already, then I would not have
2 needed an electrician --

3 Q Okay.

4 A -- I would just plug it in.

5 Q Okay. Is there any circumstance on this project that you
6 recall that things had to be torn out, or redone, because it didn't work
7 with another trades' area, scope that overlapped?

8 A I don't recall.

9 Q Okay. So on this proposal, if you go to the end, the last
10 column, it says, "Total investment: \$92,084." So do you recall, is that
11 your original amount you estimated to do -- to build back the house?

12 A I don't recall, but that's the number, that if this is proposal it
13 as built from then.

14 Q Okay. And do you know the total amount that you were paid
15 by Desert Valley Contracting?

16 A I don't know that. I have it in a file, but I don't know that.

17 Q Now on this bid, on the second -- well, let's see. On the first
18 page you have areas where you're doing things, and you have custom
19 truffle lights, which that's the molding, correct? Is that the baseboards
20 and molding?

21 A The one -- it says "True Style"?

22 Q Yeah. Is that what it says, True Style?

23 A Yes. True Style, that's a custom door.

24 Q It's a custom door, okay. Were these custom doors the same
25 that were already in the house when you first built it, or are these

1 different?

2 A No. They're the same brand, same model.

3 Q Okay. So is there anything in this original bid that is different
4 from the original build, that you're aware of?

5 A Not in a material way. There might have been a different
6 trim style, because maybe a trim changed or something, but not that I'm
7 aware of.

8 Q Okay. And if you look at the bottom of this, the proposal on
9 the second page of it, it says: "Accepted by" and a date. That isn't
10 signed by anybody, correct?

11 A Correct.

12 Q So your process? Explain your process when you first bid on
13 the project, what happened? What did you initially -- go through your
14 process to the contract stage.

15 A We would make a site visit, take measurements, and make a
16 list of the materials. We would prepare a bid, and then we would submit
17 it on a form, just like you see here. It's customary that contractors don't
18 sign our form, because they in turn send us a subcontract of their own, it
19 just refers to our proposal.

20 Q Okay. Hold on a minute, let me get one exhibit page this is.

21 Okay. You actually entered into a contract with Desert Valley
22 contracting; did you not?

23 A Yes.

24 Q Okay. And let me see what binder this is? Just give me a
25 minute, I'm going to tell you. You can go to a different binder. Maybe I

1 put it down here.

2 [Pause]

3 BY MS. HURTIK:

4 Q I think you're going to go to binder 4, and I'm going to get rid
5 of some binders in a minute. Okay. So if you can go to binder 4, and
6 you're going to go to Exhibit 388, when you get there.

7 A I'm at 388.

8 Q I've got the wrong one, I'm sorry. I told you the wrong
9 binder.

10 A Okay.

11 Q Go to binder 2, Exhibit 220.

12 A Okay. I'm there.

13 Q Okay. So is this the contract you entered into with Desert
14 Valley Contracting?

15 A It appears to be, yes.

16 Q And if you go to -- this has several pages to it, it's DVC-388,
17 all the way to 396, and I'm only telling you the bottom three numbers of
18 each page. And I'll represent that not all of it is contract, some of it is --
19 there's some fax pages, fax cover. But if you go to DVC-000394, this
20 says that it's an attached signed agreement from Desert Valley, on the
21 Inose residence. "Please return the signed copy of the proposal as soon
22 as possible."

23 So this contract that was entered into on 11/5/2014, is that
24 the contract that you entered into with Desert Valley?

25 A The contractor referring to, which started out at 000388?

1 Q Uh-huh.

2 A It appears to be, yes.

3 Q Okay. And then your scope of work would have been based

4 on the proposal that we were going over a few minutes ago, correct?

5 A Yes.

6 Q Okay. And you said that you had change orders; that's

7 correct right?

8 A Yes.

9 Q Okay. And the change orders, Mr. Merritt is who you

10 discussed the change orders with, every time there would be a change

11 order?

12 A Yes.

13 Q Okay. And did Mr. Merritt approve any change orders?

14 A I think so.

15 Q Okay. So let's go back to your DVC-240, which is Exhibit

16 Number --

17 A 157.

18 Q Exhibit 157.

19 A And that's in a different book?

20 Q Yeah.

21 THE COURT: So I'm going to have to --

22 BY MS. HURTIK:

23 Q And it's going to be in -- I'm sorry.

24 THE COURT: No, I'm sorry. I have to do a presentation.

25 MS. HURTIK: Oh, you've got to leave --

1 THE COURT: It's part of --
2 MS. HURTIK: -- I'm sorry.
3 THE COURT: Yeah. That's okay.
4 MR. BOSCHEE: Well, we've got a witness problem, though.
5 What time is -- you have to catch a plane, don't you?
6 THE WITNESS: This afternoon, yeah.
7 MS. HURTIK: What time?
8 THE WITNESS: 2:00. I need to be home by 1:00 to pick my
9 wife up.
10 MR. BOSCHEE: How much more do you have, Carrie?
11 MS. HURTIK: I've got at least 15, 20 minutes. I don't know. I
12 mean, he cannot go --
13 MR. BOSCHEE: I know, but --
14 MS. HURTIK: I know.
15 MR. BOSCHEE: -- the witness can't miss his flight either. All
16 right. What's --
17 THE COURT: So if we had started at 10:30 this wouldn't be a
18 problem. I don't know what else to say to that, but I don't know.
19 BY MS. HURTIK:
20 Q So you're going to be out-of-town, Mr. Barlow, for?
21 A For the rest of the week.
22 Q The rest of the week. I mean, I can't --
23 MR. BOSCHEE: Well, no, he's going to leave, and neither are
24 going to ask any more questions. So that's the end of the examination. I
25 mean that's how that's going to work. I mean, I don't know what else to

1 do.

2 MS. HURTIK: Well, that's not exactly --

3 MR. BOSCHEE: I mean, but what's plan B, I don't know?

4 MS. HURTIK: I don't know.

5 MR. BOSCHEE: I don't know, that's what I'm struggling with.

6 MS. HURTIK: I mean, I definitely want to go through the
7 change orders. Well, we may not be -- I don't know if we're going to be
8 done by Friday, if that's --

9 THE COURT: Well, we can always resume a bench trial at
10 some later point in time, if we don't finish this week. But I, you know --

11 MS. HURTIK: I know. I don't want to do that. But, I mean, I
12 shouldn't be penalized because we didn't start at 10:30.

13 MR. BOSCHEE: I understand --

14 THE COURT: No, I'm --

15 MR. BOSCHEE: We --

16 THE COURT: I'm going to go.

17 MR. BOSCHEE: Okay.

18 THE COURT: And you guys can figure it out. If you need to
19 catch a flight you're excused. Although you're still subject to a
20 subpoena, and we'll have to coordinate when and if you return.
21 Understood?

22 THE WITNESS: Understood.

23 MS. HURTIK: I'm sorry, Mr. Barlow.

24 [Recess at 11:56 a.m., recommencing at 1:31 p.m.]

25 THE COURT: So sorry about that. I wouldn't have done that,

1 but I was one of the presenters, so --

2 MR. BOSCHEE: That's okay, you got to -- got to do what you
3 got to do, Your Honor. We understand.

4 THE COURT: Okay. So did we understand what we're doing
5 then?

6 MR. BOSCHEE: We're -- we're going to have to figure it out
7 probably when we get to the end, and then --

8 THE COURT: Oh, I just meant for now.

9 MR. BOSCHEE: Oh, for now. No, Eugene's going to --

10 THE COURT: Okay.

11 MR. BOSCHEE: -- we're going to continue with him, and we
12 have another witness coming at --

13 MS. HURTIK: 3:00.

14 MR. BOSCHEE: -- 3:00.

15 THE COURT: Okay.

16 MR. BOSCHEE: Under subpoena, so we'll try and get him on
17 and --

18 THE COURT: Okay.

19 MS. HURTIK: And we'll get him in and out, hopefully.

20 MR. BOSCHEE: It should be -- it should be a lot easier,
21 because I don't think we have any other witnesses coming --

22 MS. HURTIK: No.

23 MR. BOSCHEE: -- that need to catch flights, or --

24 THE COURT: Okay.

25 MR. BOSCHEE: -- leaving town, so.

1 THE COURT: Okay.

2 MR. BOSCHKE: Hopefully, knock on wood. You know, I say
3 that and someone -- a few people stand and tell us they got to get a
4 flight, which, you know, seems to happen.

5 THE COURT: Okay.

6 MR. BOSCHKE: Cool. You get to go back up.

7 MS. HURTIK: So you get to go back up.

8 EUGENE INOSE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

9 DIRECT EXAMINATION

10 BY MS. HURTIK:

11 Q Okay, so Mr. Inose, can you turn to binder volume number 9.
12 So do you recall previously we were going through some of the checks
13 that you had written out to some of the contractors?

14 A What number are we on right now?

15 Q Well, I'm not -- I haven't put you to a number yet.

16 A Oh, okay.

17 Q I've got exhibit -- I'm sorry, I've got binder number 9 in front
18 of you. But do you recall when we were kind of going through the
19 checks that you had written?

20 A Was this yesterday?

21 Q Yesterday.

22 A Yes, I do remember that.

23 Q Okay. So is there anybody that you hired after DVC was
24 terminated from the job? That was a new contractor to the job?

25 A Let me think. I did have the Clean -- we went over Green

1 Clean yesterday, which was a -- for the construction clean up.

2 Q Uh-huh.

3 A And the final clean up. Off the top of my head, at the
4 moment right now, I cannot recall anybody else. I mean I -- I really can't
5 remember anybody right now.

6 Q Okay. So you had some checks that you had written out for
7 Ferguson Enterprises. Do you recall what you purchased at Ferguson?

8 A I could give a general of what I purchased at Ferguson's, yes.

9 Q Okay. And if you go to Exhibit 633. And there is a Bates
10 stamp IN-LO 866. And you'll see there's two sets of numbers at the
11 bottom, but it's the bottom number.

12 A I'm so sorry, I was trying -- 633 and what number were you
13 looking at?

14 Q IN-LO 866.

15 A 866?

16 Q Uh-huh.

17 A And --

18 Q No --

19 MR. BOSCHEE: The bottom number. The larger one.

20 BY MS. HURTIK:

21 Q No, the bottom number, the Bate [sic] number.

22 A Oh, geez, okay, I'm sorry.

23 Q Okay.

24 A Geez.

25 Q And when you get into these -- in this binder at the last set,

1 you're going to see that there's two numbers at the bottom of each
2 lower --

3 A Yeah, I got confused on that, sorry.

4 Q Yeah, so don't -- so there -- just go to the bottom number.

5 A Okay, understood.

6 Q The -- the lowest one.

7 A Understood.

8 Q Okay, so this says Ferguson Enterprises, \$1,770.75. Is this --
9 what kind of a -- is this a credit card receipt? What is this?

10 A This looks like a credit card -- one of my credit card receipts,
11 yes, correct. Statement -- a credit card statement. I'm sorry, a
12 statement.

13 Q A statement. And can you tell me what the date is on that?

14 A It looks like it says August -- oh, I'm -- August, but I don't see
15 a year.

16 Q Okay. Did you purchase anything at Ferguson while DVC
17 was still on the job?

18 A I do not believe so. I cannot recall.

19 Q Okay, so do you have any idea what this payment was for?

20 A This exact payment --

21 Q Yeah.

22 A -- I cannot tell you exactly what it was for, no.

23 Q Okay. And if you were to turn and go to IN-LO 868, and 869,
24 both of these appear to be some kind of statement. And they again both
25 say Ferguson. And there's one for 1,000 -- well, I'm not sure that I can

1 read it. Can you tell me what those amounts are?

2 A It -- it looks to me like it's \$1,213.75. and \$72.24.

3 Q Okay. And do you recall what that was for?

4 A I do not know exactly what that was for at this moment in
5 time.

6 Q Okay, and what is the date on this --

7 A November 20th.

8 Q Okay.

9 A And November -- yeah, both of them are on November 20th.

10 Q Okay, and then if you go to the next page, there's another
11 Ferguson for 786 -- 788.17. And the date is 2/9. Do you recall what years
12 they were?

13 A What years, no, I do not recall the year exactly.

14 Q So could these have been items that were paid for while DVC
15 was still on the project?

16 A It's possible. I have no idea what year it was at this moment
17 in time.

18 Q Okay, and was there items that you paid for out of pocket
19 while DVC was on the project, that were within the scope, or that you
20 wanted to -- that were within the scope of the bid?

21 A Well, I don't know what the scope of the bid was. But,
22 however, I do know -- I'm sorry.

23 Q Excuse me, I'm sorry. I have to approach. I've got to get a
24 Kleenex.

25 A Where was I at. I don't know -- I didn't know what the scope

1 exactly was, however, from Ferguson's I mainly bought -- if I may
2 generalize, I mainly bought like faucets and things like that, that were
3 missing from the job site or sinks that were missing from the job site that
4 we could not, obviously use, because they were missing or they were
5 damaged.

6 Q Okay, when you're saying missing or damaged, okay,
7 missing, how -- can you quantify what items were missing from the
8 jobsite pertaining to sinks?

9 A I cannot be specific on exactly sinks, like -- I don't know like
10 the brand names they were, and I don't know what brand names I
11 bought to -- to replace them. However, there was a plethora of items
12 that were either missing -- I call them missing, I believe that they were
13 stolen, because there was no supervision for many months on the job.

14 Q Okay, but you're speculating as to that, correct?

15 A Well, yeah, I -- as far as speculating is it missing?

16 Q Right.

17 A Well, it wasn't there, so I mean I don't know how you -- what
18 do you mean by --

19 Q When -- when did items such as sinks disappear from the job
20 site? Because you're telling me that --

21 A It was after Robert Ramirez was gone, so I don't know exactly
22 what month that was. But once there was no more supervision by DVC
23 there, they left my house completely open and unlocked all day long.
24 And so -- and I wasn't in town, I was in Los Angeles and/or, you know,
25 around Los Angeles, and yeah, I mean there were just things that were

1 missing.

2 Q Okay. How many -- how do you know that Desert Valley
3 Contracting left your house unlocked?

4 A Well, they were the general contractor and they were
5 supposed to be responsible enough to lock up a home that I had my
6 personal belongings in.

7 Q How do you know they left it unlocked?

8 A Because it was unlocked. I --

9 Q When -- when -- when was it unlocked?

10 A On a daily basis.

11 Q Okay, you're telling me that the house was unlocked while
12 they were -- were -- excuse me. The house was unlocked while work was
13 being performed on the house, correct?

14 A Yes, that's correct.

15 Q So there were workers in the house, correct?

16 A There were subcontractors in the house, yes.

17 Q Okay. So while they were working, the house was unlocked
18 so that the workers could come and go, correct?

19 A That is correct.

20 Q Okay. What did you expect? That they lock the house and
21 lock themselves in?

22 A No, I expected them to either hire a supervisor or for Danny
23 or Rachelle to go by my house to lock it up. And I asked them that, to
24 please -- I go I have things in the house that I don't want stolen.

25 Q And what did they tell you?

1 A They said they were going to do it.

2 Q Okay, so they were locking up the house?

3 A They were not.

4 Q Okay.

5 A Completely wrong.

6 Q So was this a onetime incident, or you're saying that all the
7 time the house was left unlocked?

8 A Repeatedly. Repeatedly.

9 Q Okay, do you have any -- okay, so the -- these -- you have no
10 idea what these invoice -- or these credit card statements, what year they
11 were, or what you were replacing, correct?

12 A Ma'am, I don't recall exactly what these items were
13 specifically, and I cannot tell you, because I don't want to lie about
14 exactly what years they were, because it doesn't say the year. I don't
15 know if it was 2014 or '15, I -- or even -- I don't know what year it was,
16 no.

17 Q Okay, and why would you go out and purchase sinks?
18 Wouldn't that have been part of the bid? If there were six sinks
19 damaged?

20 A I would assume it was going to be part -- I don't know, I
21 didn't see the bid. I don't know exactly what Danny from DVC had on his
22 bids. I don't know.

23 Q Okay. And my question to you is why would you go buy a
24 sink without first talking to the contractor to see if that was included and
25 they would be replacing that stuff?

1 A If, okay, if I had bought it while DVC was still on the job, then
2 I would have spoken to either Daniel or Rachelle about it. And they
3 would have told me to go get the sink, or a faucet, or whatever it may be.

4 Q Okay, so in November -- in November of 2015, was DVC still
5 on the project?

6 A November of -- I -- I don't -- I think I told you this yesterday, I
7 cannot recall exactly what month it was. If it was October or November.
8 When the -- when we let them go. I cannot exactly remember the day.

9 Q Okay, well and -- and so if you go to IN-LO 864, in the same
10 exhibits. We have a credit card statement, but again it doesn't have the
11 year. It just says, I think February 10th, Wilshire Refrigeration out of
12 California, it looks like, \$392.45. What was that for?

13 A This was -- I do remember this one. This was for the
14 dishwasher that was no longer working. When you have a house that
15 hasn't had anything running for over a year and a half, things just don't
16 work. And this one -- particular one, was my Asco dishwasher. Two of
17 them were not working anymore. And they should have been working,
18 but they were not. And so after we got -- got back in the house, as far as
19 like being able to test things out, that wasn't working. Now Wilshire
20 Refrigeration, their credit card bill statement comes out as California,
21 however, their technician was here in Nevada.

22 Q So you're saying that was to replace a dishwasher in the --
23 where at in the kitchen?

24 A No, no, ma'am --

25 Q The --

1 A -- I'm not saying I replaced a dishwasher. It was -- it was like
2 maintenance. I don't even know what it's called. Just to get it working
3 again. I don't -- I guess I'll call it maintenance for better -- lack of word. I
4 don't know.

5 Q Was it under warranty?

6 A No, it was not under warranty.

7 Q Okay, and then IN-LO 865. What's Affordable Openers?

8 A Okay, that is for the garage. Not -- not the remote control,
9 but the actual opener that's on the wall and it was completely destroyed
10 by all the subcontractors and DVC going in there. I guess people were
11 really rough with it, so it cracked. So I had to have it replaced. I did tell
12 Daniel about that.

13 Q Okay. So this is it looks like August 2nd, again there's no
14 year.

15 A Yeah, I couldn't tell you exactly what year it is.

16 Q So you're saying that happened because of the
17 subcontractors?

18 A No, what I said was, it was all the contractors, including the
19 general contractor.

20 Q Okay, so when did you replace this, since you know what it
21 is?

22 A It looks like I got charge in August -- August 2nd.

23 Q But what year?

24 A I --

25 Q Because none of this --

1 A -- ma'am, I don't remember that exactly. I could not tell you
2 if it was 2015 or '16. I cannot recall.

3 Q Okay, let's go to IN-LO 862.

4 A 862. Okay, I'm there.

5 Q These both say Best Buy. You can't really read the dates
6 again. One's for \$4,010 and I can't read it real good, 46 cents maybe.
7 And 96.28. What were these purchases for?

8 A I don't know exactly what the Ferguson's was for, for \$96.
9 But I believe the Best Buy one was for televisions.

10 Q Well these -- okay, so for televisions. But how -- how do we
11 know what these are, because you don't have any dates. This could be
12 for many a year?

13 A Yeah, but unlike Ferguson's, ma'am, Best Buy I think I only
14 went there once or twice. Ferguson's I went there multiple times. When
15 we learned that certain things were missing, so we had to buy them to
16 replace, or else I wasn't going to have a sink, or a faucet, or whatever it
17 may be. Best Buy it was completely different, as I could almost -- I'm
18 very -- I mean I'm pretty damned sure that Best Buy was for televisions.

19 Q So IN-LO 863. You have another Best Buy January 12th, it
20 looks like. Again, we don't know what year. \$617 and something. What
21 was that for?

22 A That might have been the same thing. Like I said, once we
23 got it all up, we might have been missing one. And it could have been --
24 once again, it was some kind of electronic. More than likely a television.

25 Q Okay, so if you're purchasing these items, and you're

1 claiming that it's part of this claim, why wouldn't you produce the
2 invoices that go with these?

3 A The invoice -- there -- Best Buy is a retail store that they just
4 give you a receipt.

5 Q Uh-huh.

6 A I did not keep those receipts.

7 Q So you paid for items that you can't tell me for sure what
8 they were, but you can tell me they were for this house. You can't tell
9 me -- you're sure they were for this house?

10 A One hundred percent sure they were for this house.

11 Q But they gave you receipts, but you can't produce those?

12 A No, I cannot. I -- I do not keep -- usually keep my receipts. I
13 do keep my credit card statements, though.

14 Q You don't keep receipts for warranty purposes for TV's and
15 electrical equipment?

16 A Typically not. They have pretty good records at the -- like
17 places like Best Buy, if I have an issue, I just go back and they have it
18 right there in the computer system. When I bought it, how much I
19 bought it for. The day I bought it. Everything.

20 Q Okay, so when you -- when you put the house back together,
21 you were really concerned that you not pay for anything extra; is that
22 correct?

23 A Can you clarify that as far as like I did not want to pay
24 anything -- with the contractor are you talking about?

25 Q Let's ask it a different way. So you had a contractor, a

1 general contractor, who bid an estimate to put your house together.

2 That's correct, right?

3 A That is correct.

4 Q And you picked the contractor that you were going to use to
5 rebuild the house, correct?

6 A That is correct.

7 Q Okay. And you testified that you picked Desert Valley
8 because they'd been recommended and that they were familiar with
9 insurance claims; is that a correct statement?

10 A Yes.

11 Q Okay. So you choose them, but you direct and tell them that
12 you want them to use your original subcontractors that -- to build the
13 house. Is that correct?

14 A No, what -- I think we went over this yesterday. What I did
15 was I recommended to them that whoever was still around from when I
16 had originally built the house it would -- I think -- in my opinion, it would
17 be wise for them to reach out to those subcontractors and see who was
18 still in business, as they knew the house. They knew the in's and outs of
19 the house, because they built it, and they were very familiar with the
20 custom home.

21 Q So you also, though, for all of the subcontractors that you
22 could locate, that were original --

23 A Uh-huh.

24 Q -- had them walk the job to bid the project, correct?

25 A Yes, of the very few that were left, I did.

1 Q Okay, and did you walk the house with them?

2 A Oh, I cannot recall that. I told Daniel to -- he was the point
3 person. I don't know what he did with them, or who was there or
4 anything like that.

5 Q Did you provide him pictures of what the house looked like
6 before the flood?

7 A Did I provide Daniel or the subcontractors?

8 Q Any of the subcontractors, any -- or Daniel? Did you provide
9 any of the contractors pictures of what the property looked like before
10 the flood?

11 A The subcontractors, I don't think so because -- because they
12 knew how the house used to look like, because they did work on the
13 house. Daniel, I cannot recall if I did or not. I did have a brochure from
14 before. You know, showing the house, how it used to look. But I do not
15 know if I -- I cannot recall 100 percent if I showed that to Daniel or not. I
16 thought I did, but I cannot say 100 percent I did.

17 Q Okay, so when you were given the bid, you wanted to make
18 sure that the bid was -- that was the amount they were going to stick to,
19 correct?

20 A You're talking about the final like 1.3 some odd million?

21 Q Correct.

22 A Yes.

23 Q Okay. So but in some instances, you had indicated that you
24 would pay for some additional things, correct?

25 A I cannot recall any of the instances like that. As far as --

1 Q So there was nothing that you added to the house or
2 upgraded that you told Daniel or sent an email to Daniel, that you said I
3 understand this is extra, there's nothing like that, correct?

4 A I don't recall anything like that. I'm trying to think. I don't
5 recall anything like that at the moment. Yeah, I don't -- I'm sorry, I'm
6 drawing a blank right now as far as that goes. I don't think so.

7 Q Okay.

8 A If you have -- if you know something --

9 Q So if I was to show you some emails that you had actually
10 said I understand that this is outside of the scope, and -- and it will cost
11 more, then you would defer that you actually did that?

12 A Absolutely, yeah. I -- I just can't recall at this moment off the
13 top of my head.

14 Q Okay. So let's stay in the binder that you're in. I think you're
15 in -- let's make sure, you're still in 9, right?

16 A Yes.

17 Q Okay. Let's go to Exhibit 634. Who's Alejandro -- I'm not
18 sure how to say the last name?

19 A I don't know it either. But so this person, while DVC was on
20 the job, they were using one of my garages a lot. And opening and
21 closing it. And my garage door on that particular one, it stopped
22 working. It -- it just made a terrible noise. And Daniel had one his
23 mechanics come out and take a look at it and try to fix it. However,
24 unfortunately, he made it worse. And I found out later that the guy was
25 just a general kind of mechanic guy. Didn't really know garages. So I

1 found this guy that knew garages, and he was able to fix the garage at
2 the time. So then we needed that garage to be able to bring in and out
3 materials and stuff like that. Daniel said it was imperative to have that
4 garage working, or they could not continue working, because they
5 needed that garage to get items in and out of the house.

6 So I had a vested interest in making sure that garage was
7 being able to work. Because I did not want any excuses on why they
8 couldn't finish my house.

9 Q Okay, so you paid this while DVC was still on the project?

10 A Yes, because he felt that he tried and that's the only person
11 that he could get. And I just wanted to get my house finished. And I just
12 said, you know what, I'm going to go ahead and get this garage fixed, so
13 there is no excuses that they cannot move materials or items in and out
14 of my house.

15 Q Okay, so you're claiming that they should be responsible for
16 this \$280, because your garage quit working?

17 A Yes, I mean like I said, they were --

18 Q Opener.

19 A -- the ones using, okay.

20 Q Your garage door opener was it, was that what quit working?
21 Or the door?

22 A No, this is the actual -- like I said, the garage door opener
23 wouldn't make a crazy noise. This was my actual garage door. But it's
24 not -- it's a garage door that's like maybe about 18 feet tall or something.
25 I don't know exactly the -- the height. But it's -- it's -- it's not your normal

1 sized garage.

2 Q So you were really succinct that you didn't want to pay for
3 anything extra, but you went and paid this while they were still on the
4 garage, correct?

5 A For \$280 to get my house fixed, yes, I did.

6 Q Okay. So we're going to go to the next one. It's IN-LO 871.
7 And this is Artesia Kitchen and Bath. Can you tell me how much that's
8 for?

9 A Sixteen-hundred dollars.

10 Q And what's the date of that?

11 A It is 5 -- I think it says 20, 2016.

12 Q Okay, so when did your house -- was it completed? What
13 was the date?

14 A It was -- it was probably sometime near this range.

15 Q So to complete the house, you think everything was done in
16 May of 2016?

17 A I -- I said it was around that time, ma'am. I -- I don't know the
18 exact month or the exact date.

19 Q Is the house currently listed for sale?

20 A It is currently listed for sale, yes.

21 Q Okay. And when did you originally -- how long has it been
22 listed for sale?

23 A It has been listed, I could not tell you the exact amount of
24 time. But I do know that my contract is over now and so it's been at least
25 a year.

1 Q Has the house been listed since the beginning of this
2 litigation?
3 A No, it has not.
4 Q Did you list the house immediately after the house was
5 completed?
6 A I don't recall what month it was. I cannot tell you that
7 truthfully, no. I cannot remember the -- the month or the year.
8 Q Okay. Go to the next one. IN-LO 872. This says a final
9 payment. And this is in March of 2016 to Custom Landau. What was this
10 for?
11 A I believe that we went over Custom Landau yesterday and
12 that was for the stainless steel cladding.
13 Q Uh-huh.
14 A That was missing throughout the house.
15 Q Okay. But these are all in March, and so what work wasn't
16 done after March?
17 A I -- I --
18 THE COURT: So -- so hold on one second. So you said these
19 are all in March. These meaning what?
20 MS. HURTIK: Okay.
21 THE COURT: Is the one we looked at on September 871 is
22 probably May.
23 MS. HURTIK: I can rephrase it here.
24 BY MS. HURTIK:
25 Q So in between you have a check that is on IN-LO 871, dated

1 3590. And that is written in May. And that is written to Artesia Kitchen
2 and Bath, correct?

3 A That is correct.

4 Q Okay. Then following that, the next two pages you have two
5 checks that are written to Custom Landau and I believe we did discuss
6 these yesterday. And these are written in March of 2016. So what part
7 of the house wasn't complete after March --

8 A Are you --

9 Q -- of 2016?

10 A Are you speaking just in terms of Custom Landau, or are you
11 speaking generally about the whole house?

12 Q Generally about the whole house.

13 A Ma'am, there is no way I can remember off the top of my
14 head what wasn't complete after March. There was still quite a bit that
15 wasn't complete.

16 Q But you can't tell me the exact date when you completed?

17 A Like I said, it was sometime mid-2016. I cannot tell you the
18 exact date.

19 Q And the reason I'm asking you is, if you go -- you have
20 checks throughout of 2016 and 2015, correct? Is that correct? That you
21 have checks?

22 A That appears so, yes, absolutely.

23 Q Okay. And if you go to IN-LO 875, this is a check written to
24 Dyba Interior and it says proposal, and it's April, and you're going to
25 have to correct me if I'm wrong, but is this April of 2016? I can't read --

1 A Yes, it looks like it's April the 5th of 2016.

2 Q And it's for 2,400 -- \$2,442.73.

3 A That's correct.

4 Q But it says it's for a proposal. So were you changing some
5 things or doing some things different?

6 A No, not at all. I believe what this was for, it was for light
7 pendants in my master closet that were no longer there. That they were
8 there before, and obviously I want master pen -- pendants in my master
9 closet. So I ordered them from Dyba Interior Concepts.

10 THE COURT: What are -- is it pendants?

11 THE WITNESS: They're lights that hang down from the
12 ceiling.

13 THE COURT: Okay.

14 BY MS. HURTIK:

15 Q So there would be an invoice from Dyba that matches this
16 amount, correct?

17 A I don't know if she gave me an actual invoice, but she gave
18 me a proposal, which I have referred to as Proposal Number 160, so that
19 way I paid for the light pendants, yes.

20 Q Okay. So this was not part of the original contract with DVC,
21 correct?

22 A I do not know that, ma'am. But I do know that it was missing,
23 and it was no longer around in the house. And so I had to -- they were
24 there before, and I just wanted it there again.

25 Q So you testified earlier that you used Ring Clean to do the

1 final cleaning in the house; is that correct?

2 A I used them for the construction clean and the final clean.
3 That is correct.

4 Q Okay, and that you had to make a deposit and you had to pay
5 them ahead of time; is that correct?

6 A If memory serves me correctly, yes, I believe I had to pay
7 them 50 percent for the construction clean, to save a date. Construction
8 clean is -- it takes a full day. And -- and I believe I paid them the balance
9 when they were done, yes.

10 Q Okay. So there's IN-LO 881, and it's dated 7/13.

11 A Hold -- hold on one second. Yes, okay, go ahead.

12 Q 7/13/2016.

13 A Yes.

14 Q That is only for \$495.

15 A Yes, and we went over this yesterday, and I believe that was
16 for the final clean, because my house -- a construction clean is
17 completely different than a final clean. A construction clean is it's super
18 filthy, it's dirty, it's -- it's just a lot more work. A final clean, it's -- it's just
19 like maintenance clean. I don't know what to call it.

20 Q Well --

21 A But it's not as intensive as a construction clean.

22 Q Okay, so does that -- so actually you had that final clean.
23 Your characterization of the difference between the cleans is that this
24 final clean occurred in -- sometime in July of 2016, correct?

25 A Yes, it must have happened very close to -- I mean, I don't

1 know, sometimes I pay the check like let's say two weeks later. I don't
2 know exactly what day the clean happened, but it was definitely before
3 July 13, 2016. I don't know what day exactly was the final clean.

4 Q So turn to IN-LO 887. What's Instant Temple?

5 A It's Instant Jungle. They're a landscaping company.

6 Q Instant Jungle. Okay. Landscaping. So this wasn't part of
7 the original bid, was it?

8 A I don't -- I don't believe so. What happened on this
9 particular one was a transformer was stolen off my property. And I
10 talked to Daniel about this. And Daniel told me that he was going to
11 cover it, because he -- he knows that he didn't have the proper
12 supervision. And somebody came and stole my transformer.

13 Q What kind of transformer?

14 A I'm not an electrician. I didn't even know it was called a
15 transformer until I had these people come out and replace it. And they
16 told me it was a transformer.

17 Q Where was this transformer that was stolen in the house?

18 A I don't know exactly where in the house it was, ma'am, I just
19 know that it was -- it -- it -- things were not working in the lights for the
20 house, for the outside of the house. So I don't know if this transformer is
21 in the house or outside the house. All I know it was a transformer. And
22 that's the reason why my landscaping lights were not working.

23 THE COURT: What -- what Bates again, 57?

24 MS. HURTIK: It's IN-LO 887.

25 THE COURT: 80, oh, thank you.

1 BY MS. HURTIK:

2 Q So you're saying this check was written for a landscaper,
3 because lights weren't working?

4 A Yes, on this particular one, from what I recall, it was my
5 landscaping lights that turn on -- they're on the timer. And they normally
6 would turn on. And for quite a while, while DVC was still on the project,
7 they weren't working. And I didn't understand why it wasn't working
8 until we had the landscaping company come out and said, well,
9 someone stole your transformer. That's why it's not working.

10 Q So this is dated February 1, 2016, correct?

11 A That is correct.

12 Q So DVC has been gone off of the job since sometime in
13 November, correct?

14 A I don't know exactly what month, but it was -- it was late
15 2015, yes.

16 Q Okay, so this is something you did additionally later?

17 A No, ma'am. So what happened is, is that I told Danny about
18 it while he was still -- he was still hired by me. He was still the general
19 contractor on the job. I can't tell you exactly what month the transformer
20 got stolen. I don't know if it was August or September, or even before
21 that. However, it wasn't a high priority to me at that moment. Because I
22 was like, Danny, can you take care of it. And he said absolutely, we're
23 going to take care of it. You know, just get me an estimate and we're
24 going to take care of it.

25 And, you know, after they got fired, it just wasn't a high

1 priority for me. Like getting my house back together was more high
2 priority than making sure my landscaping lights worked. However, in
3 the whole scope of things, I mean I do want my landscaping lights to
4 work. So I needed to replace that transformer.

5 Q So did you enter into new contracts with all the subs for
6 additional work on the project, after DVC was gone?

7 A I cannot recall. I may have had a couple here and there to
8 finish off the house. I cannot recall exactly. But I believe that I paid --
9 most of it were from the DVC's original contracts.

10 Q So you didn't have -- you didn't have any new agreements
11 with the subcontractors after Desert Valley Contractors left --

12 A That -- that is not what I said. I said --

13 Q Let me finish.

14 A Okay.

15 THE COURT: No, so, so hold on. I mean he answered your
16 question.

17 MS. HURTIK: I wasn't done with the question.

18 THE COURT: So you asked him a question. And he
19 answered your question. And then you were following up with an
20 additional question, wherein you were assuming -- you were
21 mischaracterizing his answer. And we all -- I thought you were done
22 with your second question, obviously he did, too. But your second
23 question that you say you didn't finish was mischaracterizing what his
24 answer to you was. So that second question that you weren't done
25 asking you can rephrase.

1 MS. HURTIK: Okay.

2 MR. BOSCHEE: I didn't think she was done, because I didn't

3 object yet, but --

4 MS. HURTIK: Yeah.

5 THE COURT: I thought she was done. That's okay.

6 BY MS. HURTIK:

7 Q So okay, we're going to go back and -- and please let me

8 finish the question.

9 A Understood.

10 THE COURT: Well --

11 MS. HURTIK: Well, okay, I know Your Honor --

12 THE COURT: Why are we arguing with the witness?

13 MS. HURTIK: I'm not. I'm just --

14 THE COURT: Yes, you are. Why -- why do that? So I just

15 said, literally just now, I thought you finished. He thought you finished.

16 So why are you arguing with him?

17 MS. HURTIK: Your Honor, I'm going to rephrase the

18 question.

19 THE COURT: Okay, that's fine. And -- and he'll do like he's

20 done and wait for you to finish. And -- and if he thinks you've finished,

21 then he's probably going to try and answer it.

22 MS. HURTIK: Okay.

23 BY MS. HURTIK:

24 Q So, Mr. Inose, did you enter into any invoice with any

25 subcontractors after DVC left the project?

1 A I don't recall of any. I may have entered in a couple here and
2 there, I do not recall. However, I believe that it was all the original
3 contracts that were from the subcontractors to DVC.

4 Q And I know that this has been asked, but I just want to clarify,
5 because I'm a little confused. You stated several times that you did not
6 know what the original contract's scope of work was. Is that correct?

7 A That is correct.

8 Q Okay. So Desert Valley is off of the job. You terminate them
9 sometime in the fall of 2015; is that correct?

10 A Fall or winter, yes.

11 Q Okay. So you start talking to all of the subcontractors
12 sometime in the fall of 2015, to complete your house; is that correct?

13 A Once DVC was fired, I did talk to the subcontract -- as many
14 as I could, I talked to them, yes.

15 Q Did you talk to any of the subcontractors prior to terminating
16 Desert Valley Contracting?

17 A When you define subcontractors, do you mean the workers
18 at my house that were working?

19 Q You have several subcontractors. Some that tile, you have
20 high bar, you have -- there's a whole -- a variety. So did you talk to any
21 individuals from any of those companies prior to terminating Desert
22 Valley Contracting?

23 A Okay, ma'am, so if -- if you're talking about some of the
24 workers that were inside my house, yes, I did say hello to them. I mean I
25 -- I had some small talk with them. Yes, I did.

1 Q Did you talk to any of the subcontractor companies, the
2 principals, or anybody that would have had signing authority as to scope
3 of work on the contracts?

4 A Not about the contracts at all, no.

5 Q Did you talk to any of those contractors about what needed
6 to be done to complete your house?

7 A Only if they were at my house, I may have said, you know,
8 how quickly can we get this done. But that's probably the extent of it.

9 Q And did you approach any of the subcontractors and told
10 them not to deal with Desert Valley Contracting, that you wanted them
11 to from this time forward, whatever time it was, sometime in the fall of
12 2015, that you wanted them to deal directly or only with you?

13 A I cannot remember exactly the phrase that I used. After DVC
14 was fired, I did want the subcontractors to come back and finish off the
15 house.

16 Q So you had to have conversations with the subcontractors to
17 get them to complete the house; is that correct?

18 A I definitely had conversations with the subcontractors after
19 DVC was fired, yes.

20 Q But none prior?

21 A Ma'am, I told --

22 THE COURT: Yeah, I mean I'm paying attention. So rephrase
23 your question.

24 BY MS. HURTIK:

25 Q Okay, so Rob Ramirez, was he on the project when you let

1 DVC go?

2 A At some point he was brought back, yes.

3 THE COURT: Well, that doesn't answer her question that
4 time, so --

5 THE WITNESS: Oh, that didn't answer her question?

6 THE COURT: No.

7 MS. HURTIK: No.

8 THE WITNESS: Oh.

9 THE COURT: But you can ask it again because he didn't
10 answer that one.

11 BY MS. HURTIK:

12 Q So was Rob Ramirez on the project when you terminated
13 DVC?

14 A At some point he did come -- I did ask him to come back, yes.

15 THE COURT: So -- so yeah, you've asked that question
16 appropriately twice and I'm not --

17 MS. HURTIK: Yeah.

18 THE COURT: -- I'm not sure you're understanding, but --

19 THE WITNESS: Oh.

20 THE COURT: -- so was -- was Rob Ramirez on the project
21 when you fired DVC; that's the question, right?

22 MS. HURTIK: Right.

23 MR. BOSCHEE: Back on the project, I think was the --

24 THE COURT: Was he --

25 MR. BOSCHEE: I think that's what counsel asked him.

1 THE COURT: That's what he --
2 MS. HURTIK: That's what, yeah.
3 THE COURT: -- saying.
4 MR. BOSCHEE: Okay.
5 THE COURT: But -- but she's asking, okay, when you fired
6 DVC, was Rob Ramirez on the project at that moment in time, right?
7 MS. HURTIK: Yes.
8 THE COURT: That's your question.
9 MS. HURTIK: Yes.
10 THE COURT: Okay.
11 THE WITNESS: Okay, I'm sorry. I -- I did not understand that
12 question. I do not --
13 MS. HURTIK: Okay.
14 THE WITNESS: Oh.
15 BY MS. HURTIK:
16 Q Okay, let's --
17 A Okay.
18 THE COURT: But, but so answer the --
19 MS. HURTIK: Answer --
20 THE COURT: I mean if you want to answer it.
21 THE WITNESS: Okay, I do not believe that Robert Ramirez
22 was there while DVC was there at all, in that -- if we're talking about that
23 timeframe, around when DVC was being fired. After DVC was fired, I did
24 ask Robert Ramirez to come back and help put the house back together.
25 ///

1 BY MS. HURTIK:

2 Q Okay. And let's go back a little bit. When you first started
3 putting the house together, you -- did you recommend, highly
4 recommend that -- to the insurance company and to Danny Merritt that
5 Rob Ramirez needed to be on-site as a supervisor, because he knew the
6 house? Would that be correct?

7 A When we -- you're talking about when I first got the flood
8 damage, correct?

9 Q Yep, uh-huh.

10 A Okay, so when I first got the flood damage, Danny asked me
11 who knew the house the best, and I told him Robert Ramirez knew the
12 house the best and he was my supervisor when we built the house.

13 Q Okay.

14 A And I --

15 Q Okay. And --

16 A And I gave him his phone number and they contacted each
17 other.

18 Q So did Rob Ramirez, to your knowledge, get paid to
19 supervise the project?

20 A I'm not 100 percent privy to that information, but I believe
21 DVC was paying him, or else I don't think he would have been there.

22 Q Do you know how much he was paid?

23 A I looked over the receipts -- not receipts, but invoices, and I
24 did see -- I don't know how much he was being paid at the time, but I
25 saw now, how much he was paid, yes.

1 Q How much was he paid?
2 A I didn't add that up, exactly. But I think it was like around
3 between 70 and 80,000, I believe.
4 Q Do you think it's more like 95,000?
5 A Ma'am, I -- I don't know. I did not sit there and add that up.
6 Q Okay.
7 A But I just -- I just -- you asked me if I saw it, and I did see it.
8 Q Okay, and how many months are you -- were you aware that
9 Mr. Ramirez was on the project supervising?
10 A I believe he was on there between anywhere from seven to
11 nine months, I believe.
12 Q Okay. So he was on there anywhere from seven to nine
13 months, you believe.
14 A Under -- you're talking while he was employed by DVC,
15 correct?
16 Q Did -- but you strongly recommended that they have him as
17 the supervisor, correct?
18 A I recommended him, absolutely.
19 Q Okay. So at some point he leaves the project, correct?
20 A Yes.
21 Q Okay.
22 A I don't know what month.
23 Q Do you know why?
24 A I don't know the -- I do not know 100 percent why, no.
25 Q Okay, so --

1 THE COURT: Do you have an understanding as to why?

2 THE WITNESS: Somehow, somehow they had a discussion
3 and he was no longer going to get paid.

4 BY MS. HURTIK:

5 Q So -- and -- and I just want, from what you recall, because we
6 can look at documents, he worked approximately, you said how many
7 months on the project?

8 THE COURT: Seven to nine.

9 BY MS. HURTIK:

10 Q Okay, seven to nine, and he was paid somewhere around 75
11 -- 70 to 85,000?

12 A From my recollection, yes.

13 Q Okay. So that's a lot of money, correct?

14 A I do not know how much supervisors get paid.

15 Q Okay. So you didn't question that?

16 A I didn't think it was my job to question that, no.

17 Q And did -- since you recommended him, and you -- you did
18 want him on the project, correct?

19 A Yes, I -- I definitely wanted him on the project.

20 Q Okay. So when he left the project, did he tell you that? Did
21 he advise you that he was leaving the project?

22 A Yes.

23 MR. BOSCHEE: Objection -- well, objection, calls for hearsay,
24 but okay.

25 THE COURT: No, that is, -- so that's overruled. So he did tell

1 you?

2 THE WITNESS: Yes, Robert Ramirez did tell me that he was
3 no longer going to be the supervisor on this job.

4 BY MS. HURTIK:

5 Q Okay, and did Mr. Ramirez report to you on a daily, weekly,
6 or monthly basis, what was going on with the house?

7 A It wasn't consistent, but he did -- he did tell me what was
8 going on the job. Not day to day, but like I said, it varied when he would
9 tell me what's going on, yes.

10 Q Okay, and since you were having discussions with Mr.
11 Ramirez, about what was going on with the job, how often do you
12 believe he was on the job site?

13 A I believe he was there every day.

14 Q You believe he was there every day for the first seven to nine
15 months?

16 A I believe so, yes.

17 Q Okay, so we're in Exhibit 634. There's Bates stamp IN-LO 890
18 to 894. Can you look at those?

19 A Sure. Absolutely.

20 Q Okay, are you ready?

21 A Yes, I am ready.

22 Q Okay, so the first -- so at some point, you call Rob Ramirez
23 and you tell him I need you back on the project. Is that -- would that be
24 correct?

25 A That is correct.

1 Q Okay. So these checks date, and -- and excuse me, but I have
2 a hard time with your handwriting a little bit. The check that is Bates
3 stamped 890 to Robert Ramirez is dated 8/3 --

4 A 2015.

5 Q -- 2015.

6 A That's correct.

7 Q Wasn't DVC still on the project at that point?

8 A They were on the project at the point, yes.

9 Q So you had him come back before they were terminated?

10 A No, ma'am. This is for duct cleaning, HVAC duct cleaning.
11 And I think we went over this yesterday. That was right in the middle of
12 monsoon time over here. And it was very -- it was humid. And I was
13 talking to some trades in there. Everyone was saying you have to -- and
14 even the HVAC guy was saying you have to get your duct cleaning done,
15 or we're going to have bigger issues, and you're going to have bigger
16 issues, if you don't get this cleaning done after a flood.

17 I told Danny about it. He kept telling me he was going to do
18 it. He was going to do it. Days went by, a week went by. And I just had
19 Robert Ramirez find someone for me that was a duct cleaning company.
20 And he paid them for me, because I wasn't in town. He paid them for
21 me, and I reimbursed Robert Ramirez for that cleaning.

22 Q So --

23 A Because he paid the sub for me. In my absence.

24 Q Okay, so this entire check was only for reimbursement for
25 duct cleaning. None of it went to Rob Ramirez for supervising this?

1 A That's -- he -- it was just a pass-through deal. Like I said,
2 because I was not in town, I could not cut these guys a check. He fronted
3 the money for me, and I just paid him back.

4 Q Okay, didn't -- now if you know this, you can answer it. And I
5 think you did kind of say this previously. Didn't he leave the job because
6 he was no longer getting paid?

7 A Yes, I believe so.

8 Q So why is he now willing to do things for you, and he's not
9 getting paid?

10 A Robert Ramirez and I -- we have a good relation, and I asked
11 him for a favor, to find me a duct cleaning person, because I did not want
12 to tear up my house even further to re -- have to redo my ducting,
13 because there was going to be mold in there and stuff like that. I just
14 need it to be -- I just wanted this to be done.

15 Q Okay, so then there's -- we'll go kind of in order of the dates.
16 There's two checks that are dated December 12th, 2015. Let's go with
17 the 3422, which is Bates stamped 891. And this is -- says it's to Ramirez
18 Services. It's not Robert Ramirez. It's Ramirez Services; is that correct?

19 A That is correct.

20 Q Okay, why is this one written to Ramirez Services?

21 A I cannot recall exactly why it's written to Ramirez Services.
22 However it went to Rob. Same person. It's -- it's his company name,
23 instead of his personal name. That's -- that's the only difference.

24 Q Okay, it says in the memo, wallpaper labor.

25 A That is correct.

1 Q So did -- and then it has somebody's name.

2 A Gary Bridgeman.

3 Q Okay, so at this time, is DVC still on the project?

4 A No, they are no longer on the project.

5 Q So what is Rob Ramirez doing here?

6 A So on that one, there was wall -- wallcoverings in my house
7 and DVC did not get to it, so obviously the places that needed
8 wallcovering that had it before, someone had to put it up. And so Gary
9 Bridgeman was the person that we hired. However, Gary wanted to be
10 paid immediately right after the install. I was not here in town. Robert
11 Ramirez fronted me the money, to pay Gary out of his own pocket, and I
12 reimbursed him.

13 Q How long have you known Robert Ramirez?

14 A Well, I built the house. Probably about approximately 12 to
15 13 years now.

16 Q And is it common that you would have somebody else front
17 money to do repairs on your house, and then you'd reimburse?

18 A There's not very many people that I know that would do that
19 for me, however, he is one person that does that for me.

20 Q Does Robert Ramirez still work for you in any capacity?

21 A If I ever have any issues at the house, then I -- he's usually
22 my first person I call to see if he can replace this, or help me with this, or
23 whatever it may be, yes.

24 Q Does he work for you presently in any other capacity?

25 A No, zero.

1 Q And did he after this house was completed?

2 A Like I said from this house was completed, there may be
3 some minor issues that come up from time to time, that I ask him to fix.

4 Q So this check is Bates -- this is Bates stamped 892, and this
5 one is Ramirez and Services. This one is for 1,235 and it's dated, can't
6 tell 12/15/15.

7 A Yes, it appears that it's 12/15/15, correct.

8 Q What is this for?

9 A I could not tell you exactly what this is for. Invoice number
10 15315 -- there's a 15 -- it looks like 153, 159 and 158. That's what it looks
11 like to me.

12 Q Is this for work that Mr. Ramirez performed?

13 A Yes, this is probably some sort of installation or something. I
14 could not tell you exactly. It may have been for materials that he
15 purchased for me. I could not tell you unless I see the invoices.

16 Q So Mister -- after DVC left the project, was Mr. Ramirez
17 supervising anything?

18 A As far as for me?

19 Q Yes.

20 A Yes, I asked him to come back onto the house project, so we
21 could get the house finished.

22 Q Did you pay him to supervise?

23 A Yes, I did.

24 Q So these checks you're saying are for payment to others for
25 supplies. Would that be correct? Or labor?

1 A Possibly, yes.

2 Q Okay, so what did you pay him for his services?

3 A I can't remember the exact amount. I believe when I was
4 looking over the documents, I believe it was \$10,000 to finish up the
5 house. But I don't want to 100 percent say that. That was -- if that was
6 completely it, I don't know. But I think it was right around there. I'm not
7 100 percent sure.

8 Q Okay, and then this is IN-LO 894. It's a check to Ramirez
9 Services, and this is -- appears to be 1/29/2016; is that correct?

10 A Yes, 1/29/2016, correct.

11 Q What was this for?

12 A It says there it's for the trash bin and the laborer.

13 Q Trash bin and laborer for what?

14 A So trash bin because when you're doing construction, you
15 need a trash bin outside the house. There's a lot of waste that does not
16 go in a normal regular trashcan. So we had to rent out a trash bin. DVC
17 had one the whole time while there was house construction going on.
18 And we had to get our own, because DVC obviously removed theirs.
19 And the laborer was because there was so much junk and trash outside
20 of the house, that we had to throw inside, into the trash bin.

21 Q Then you have in -- IN-LO 893 and it's a check in February of
22 2016 for \$675. What is this for?

23 A It's for carpet, installation of carpet.

24 Q Where at?

25 A I'm not 100 percent sure, but I believe that this is for the

1 master closet, because that just hits -- it just rings my -- I recall that there
2 was completely no carpet in my master closet when there should have
3 been carpet in my master closet. And so I believe it was for installation.
4 And this may have been for installation of other parts of the house that --
5 so were supposed to have carpet installed and it didn't have installed.

6 Q So you believe that this payment was for work that was
7 supposed to be part of the original scope of the contract with DVC?

8 A That is correct.

9 Q Okay. So any amounts that you paid any subcontractors
10 after DVC was terminated, you're saying none of those were for
11 upgrades or -- or changes to the original scope?

12 A Yes, it was just to put my house back and get it presentable
13 again.

14 Q And -- and my question is you said you didn't even look at
15 the contracts, you didn't know what was the scope; is that correct?

16 A Between DVC and their -- the -- the subsequent
17 subcontractors?

18 Q Yes.

19 A Yes, correct.

20 Q Okay, so how would you know whether or not this was
21 additional, what you were paying, or whether it was part of the original,
22 and should have been under the original?

23 A Yeah, like I said, it's whatever was missing in my house. I
24 just wanted it to be put back. Like if lights were missing, flooring was
25 missing, carpet was missing. Black backsplash missing, stainless steel

1 trim missing. That was all there before, which whether or not it was in
2 the original contract, it was there before. So therefore I just wanted it
3 back.

4 Q Okay. So we're staying in the same binder. I want you to go
5 to Exhibit 618. Okay, so who was your designer for the project?

6 A Her name was Tina Dyba.

7 Q Okay, and did she continue to make changes from when you
8 first did design choices?

9 A Yes, we went over this yesterday. Sometimes colors
10 changed, materials have to change, because the manufacturer or the
11 local supplier does not have them.

12 THE COURT: What was her last name again?

13 THE WITNESS: Dyba, D-Y-B-A.

14 THE COURT: D-Y-B-A.

15 THE WITNESS: B as boy A.

16 THE COURT: Oh, D-Y-B-A, okay.

17 BY MS. HURTIK:

18 Q So this is IN-LO 717 through -- 717. So this is an email from
19 Daniel Merritt and it says subject Rob Ramirez time. And it's sent to you,
20 Eugene Inose and Robert Ramirez and Rachel Allison [phonetic] and
21 Doug Zachary are cc'd. Can you read that -- read through this email
22 real quick.

23 A Sure. Did -- did you want me to read it out loud, or just --

24 Q Nope.

25 A Okay.

1 Q I want you to read it first --
2 A Okay.
3 Q -- before I ask you some questions. Tell me when you're
4 ready.
5 A Okay.
6 Q Okay. So does this refresh your memory as to how much
7 Rob Ramirez was actually paid?
8 A Yes, it says here \$75,800.
9 Q And what was the problem? Was -- who was having a
10 problem with him being paid that kind of money?
11 A The insurance company had a problem -- well, this job was
12 earmarked for nine months, and we're at the nine month time.
13 Q Doesn't say that, though, does it? It says that I'm reaching
14 out to you guys to let you know we can no longer support the
15 supervision charges for Rob, as the -- for Rob. Let's stop there. Okay.
16 A Okay.
17 Q So Rob was supervising the project for the first nine months,
18 correct?
19 A he was a supervisor there, yes, at -- at my house for DVC.
20 Q Yep. And you said daily, correct?
21 A You asked me if I felt that he was there daily, and I said yes, I
22 believe he was there daily.
23 Q Okay, so during those first nine months, was the house
24 unlocked?
25 A I do not recall that portion of it, no.

1 Q Okay.

2 A I believe it was locked.

3 Q Okay, but you weren't there, were you?

4 A I was not there, but when I would come into town, and it was

5 at night time, it was locked. When DVC did no longer have Robert

6 Ramirez there, when I came into town, it was always unlocked, and some

7 doors were just wide open.

8 Q Okay. So you did have a supervisor on the job. DVC had a

9 supervisor on the job, according to this email, and you agree with that,

10 correct?

11 A DVC had Robert Ramirez on the job as -- as an employee.

12 And they also had their own supervisor on the job.

13 Q So they had more than one supervisor on the job, correct?

14 A Yes.

15 Q Okay. So it goes on to say, and I've kind of got my finger

16 where it is. The insurance company will not, will not pay any more

17 monies towards it. This is a charge we cannot incur because we're

18 already in the red on this job, as far as the extras were given. So there

19 were extras that were given, or there were extras that were being added

20 to the project, from the initial start point, correct?

21 A Yes. What Danny is referring to there is the -- certain things

22 that we switched around. We took out -- didn't do the sauna. Instead we

23 did the glass in the wine room. Stuff like that.

24 Q Eugene, I will send you these estimates, showing you that we

25 have no more money left. We're trying -- we're trying the best we can to

1 help you on those -- on these extra items. But it's in black and white that
2 we have no more money left. Do you recall this email to you?

3 A It is refreshing my memory that I'm reading it now, yes.

4 Q Okay. So we need to know is Rob, kind of weird how this --
5 so what we need to know is Rob, are you okay with continuing this job
6 for like another month, off of the funds we're given. We paid you
7 already 75-8, some odd dollars. The insurance company is looking at
8 this like that's high allowance for a supervisor for nine months of work,
9 and they will not justify any more funds. Do you see that?

10 A Yes, I do.

11 Q So it doesn't say the job had to be completed in nine months,
12 does it?

13 A Not in this email, it does not.

14 Q Okay, but it says that Rob Ramirez's fees are high. The
15 insurance company is saying they're high for this job. Is that -- is that
16 your interpretation?

17 A This is what Daniel is saying in the email, yes.

18 Q Okay. So go on down and there's a little paragraph after
19 that, and then there's another one. So the next paragraph says if there
20 are any other charges coming through, we have to get any change
21 orders, or anything else through now, otherwise it's going to be near
22 impossible to get payment. So let's get with Tina, see whatever else --
23 whatever else we got. Because right now the buck stops with my
24 estimate that I'm sending on Friday.

25 A Uh-huh.

1 Q So what -- what do you believe Danny was telling you there?

2 A I believe that he was getting the final numbers together for
3 the insurance company. And that anything -- that he needed to get as
4 much supporting documents from everybody in to make sure that the
5 insurance was going to cover that amount.

6 Q Okay. And then it goes on the next one to day, Tina tried to
7 make a change order, but they shot that down, because she was told she
8 needs to have all of her numbers up front initially. They will not support
9 or change order because it was way after the fact. Do you see that?

10 A Yes, I do.

11 Q So were there continuing change orders that the insurance
12 company said that's an upgrade, and they were not going to pay for
13 that?

14 A That I do not know. What I believe he was talking about here
15 was, like I said that Tina may have had to make a change in material, as
16 far as the color or a maker, a brand or whatever it may be, and that she
17 was supposed to get her ducks in a row, to make sure that she had the
18 exact model number, color, everything in there, and the price from the --
19 wherever she was getting it from. That's what I believe that this says.

20 Q Okay, and let's go back to that little bit about Tina. So it
21 doesn't say anything about colors, what she's picking. It just says she
22 needs to have all of her numbers up front initially. So isn't that really
23 more about the money?

24 A I believe Danny was concerned about the money. I was very
25 concerned about, you know, making sure that we're picking stuff that is

1 tasteful for the house.

2 Q Okay, and this email is dated what date?

3 A May the 12th, 2015.

4 Q Okay. How often have you worked with Tina?

5 A Just two times. This time when I first originally built the
6 house, and then this time when we had the reconstruction.

7 Q And you've never worked with her since?

8 A No, I have not.

9 Q Is there a reason?

10 A No, I don't need a designer for anything else. I have office
11 buildings, I don't need a designer.

12 Q So how often did you talk to the insurance company?

13 A Wow. How often did I speak to them? You mean via phone,
14 email or both?

15 Q Both.

16 A Wow. How often did I speak to them? I mean I think Brian
17 Lynch would call me maybe -- I mean I'm generalizing here. Maybe once
18 every week to two weeks, once the job started getting going. Just to
19 make sure -- Fireman's Fund is a very -- I mean in my opinion, they're
20 very good. They treated me like -- really, really well. And, you know, he
21 just wanted to make sure that things were going okay. I was happy with
22 the process. I was comfortable in the condo that they were paying for.
23 Yeah, things like that. I mean he was a very nice guy.

24 Q Okay, and did you ever discuss the numbers, what it was
25 costing to put the house back together with Mr. Lynch or Mr. Matchen

1 [phonetic]?

2 A The -- with Brian Lynch. Not with Mr. Matchen, no. With
3 Brian Lynch, the final number that him and Danny came to an agreement
4 on was told to me by Brian. And he told me that -- what the final number
5 was. Once the -- Danny had previously told me that he and Brian had
6 come to an agreement on a number, and that Brian would be calling me,
7 or emailing me, to let me know what that number is, and that Danny was
8 good with it. Once Brian gave me that number, I double-checked with
9 Danny to make sure that he was still good with that number, and Daniel
10 confirmed yes, he was.

11 Q Okay, did you settle with the insurance company prior to
12 having the house completed?

13 A Yes, I did.

14 Q Why did you do that?

15 A Daniel told me to.

16 Q Is there any emails or any evidence you have that shows that
17 Daniel Merritt told you to close the claim before the claim was
18 completed?

19 A I may have a text message. I don't know of any other email.
20 It might have been through a phone call. It's -- those kind of
21 conversations -- for me and Daniel at that time, we were talking a lot
22 throughout the day and weeks. And that may have just been something
23 in conversation that we had on a phone conversation, I mean.

24 Q So why would you close a claim, an insurance claim, without
25 everything being completed first?

1 A Daniel told me that he was going to get the number to
2 something that he was comfortable with and that once we get to that
3 number, he wanted me to close it out. Daniel was 100 percent talking to
4 the insurance company about that, and he was directing me what to do.

5 Q You had lots of things happen during the rebuild of this
6 house, where -- let me rephrase that. So as this house was being rebuilt,
7 subs came in, and work had to be redone, because the electronics, or
8 there was something that was not anticipated in the original bid. Is that
9 correct?

10 A That is correct. I believe so.

11 Q Okay. So why would you -- your experiences, you have lots
12 of properties. You have commercial properties, residential, why would
13 you close something up when there were things that were -- had been
14 occurring, that was costing additional money, and the house was not
15 completed?

16 A Okay, I closed this out back -- it was going to be sometime
17 probably in June or July of 2015. This is prior to any of the issues that
18 we had with any type of low voltage, electrical, or any things -- any items
19 that were missing. That's first of all. Second of all, this is the very first
20 time I've had any type of homeowner's insurance claim and I was getting
21 led by Daniel. Daniel's the one with the experience. Daniel's the one
22 that told me he was my advocate. He was -- he was a wealth of
23 knowledge on how to handle insurance companies, and how to deal with
24 them. I was a neophyte. This was the very first time, and I got thrown in
25 the fire. It was not a small claim, it was a huge claim. And therefore, I

1 was -- I was following Daniel's lead. Daniel told me exactly what to do.

2 Q Okay. I think we have our other witness here, and I'm sure
3 you don't want him to keep on going while he's sitting there.

4 MR. BOSCHEE: Not necessarily, no. I mean I don't know
5 how much more you have left with him -- with -- if you have a lot more
6 with him, then you should call your subpoenaed witness. If you have
7 two more minutes, then --

8 MS. HURTIK: I don't have two more minutes.

9 MR. BOSCHEE: Okay.

10 MS. HURTIK: So let's --

11 MR. BOSCHEE: Okay.

12 MS. HURTIK: Let's call --

13 THE COURT: So let's take a break, too.

14 MS. HURTIK: Yeah.

15 THE COURT: I was just looking for my jury admonishment to
16 read, which I don't need to read, because this is a bench trial, so --

17 MR. BOSCHEE: You can feel free to admonish us, Judge.

18 THE COURT: I've had a jury the last two weeks, but let's
19 come back at five after 3:00 with this --

20 [Recess at 2:47 p.m., recommencing at 3:12 p.m.]

21 THE COURT: Who are we calling?

22 MS. HURTIK: Tom Thomsen.

23 THE COURT: All right. Come on up.

24 THE CLERK: Please raise your right hand?

25 THOMAS THOMSEN, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: For the record, please state and spell your first
2 and last name.

3 THE WITNESS: Thomas Thomsen, T-H-O-M-A-S
4 T-H-O-M-S-E-N.

5 DIRECT EXAMINATION

6 BY MS. HURTIK:

7 Q So, Mr. Thomas Thomsen, behind you there are binders and
8 those binders are labeled 1 through 9, and we're going to refer to some
9 of those, there are exhibits within them, and the exhibits --

10 MS. HURTIK: Can I approach, Your Honor?

11 THE COURT: Sure.

12 BY MS. HURTIK:

13 Q So we're going to start with Binder 1, and I'll just show you
14 and then I'll leave -- I'll leave it to you. So, in the front of these binders
15 are -- is an index, but all you have to look at is I'll tell you to go to
16 exhibit --

17 A Okay.

18 Q -- and you'll just turn to the exhibit, and at the bottom there's
19 Bate Stamp numbers. So within an exhibit, I may refer to certain pages,
20 okay?

21 A Okay.

22 Q So we'll go from there. So, Mr. Thomsen, are you familiar
23 with Mr. Inose?

24 A I am.

25 Q Okay. And how do you know him?

1 A Through projects at his house.

2 Q Okay. And do you know the -- did you -- were you one of the

3 original subcontractors that worked on his home --

4 A We were.

5 Q -- when he first built it?

6 A We were.

7 Q Okay. And do you know the address of that home?

8 A Not off the top of my head, no.

9 Q Okay. So we're going to refer to the house, it's 587 St. Croix,

10 in Henderson, Nevada. We're going to refer just to the project, okay?

11 A Okay.

12 Q When you -- Mr. Inose built the house in the beginning, what

13 did you guys do for him? What was your trade? What's your trade?

14 A We are a low voltage systems integration company, which

15 basically means we integrate local systems, including, but not limited to

16 security alarms, structured cable, phone, data, surveillance, home

17 theatre, surround sound, audio/video, home automation, lighting control,

18 shade control, anything low voltage we do.

19 Q Okay. So when you worked on the home when it was first

20 built, did you get paid the entire amount of your contract when you

21 completed your job?

22 A We did not.

23 Q Okay. Did Mr. Inose, how much did he owe you

24 approximately?

25 A About \$8,419.

1 Q And why didn't he pay you?

2 A The change over wasn't signed.

3 Q Okay. And is it -- was Mr. Inose, did he control -- was he the
4 project manager? Did he do an owner build or did he have somebody
5 else on the site when you guys worked on the house?

6 A If memory serves, it was an owner build, but he had his own
7 internal superintendent, or project manager.

8 Q Do you remember who that was?

9 A Just first name, Robert.

10 Q Okay. So you finished the job, he doesn't pay you in full, do
11 you guys lien the house?

12 A We did not.

13 Q Okay. So fast forward, it's several years later, 2014 Mr. Inose
14 has a leak, a flood in his house. Who contacts you?

15 A I believe Desert Valley Contracting contacted one of our sales
16 folks because the original salesperson was no longer there.

17 Q Okay.

18 A A new salesperson took it on and said we would take this
19 project on. It didn't get over to my desk until it was already in a contract
20 form. I was hesitant to sign that contract, and I brought it to the new
21 salesperson's -- he wasn't new, he had been with us for years, but new
22 on the Inose project. I let him know that I was hesitant because we were
23 not paid \$8,500 in previous change orders.

24 The owner at the time said well, let's go ahead and do it.
25 We're going to the general contractor, I'm sure we'll get paid, and I said

1 that's not a guarantee, and I just made sure that the new salesperson
2 had every single change order signed.

3 It was difficult, it was hectic in the very first project. There
4 was a lot going on. Eugene was there. I was there on one particular
5 occasion when Eugene was there and he was telling my salesperson this
6 has to happen, this has to happen, you know, you didn't tell me in time
7 before these walls go up, we need this and this, and my salesperson is
8 writing things down, and Robert was there and my salesperson negated,
9 or actually couldn't get a signature, but Eagle Sentry being Eagle Sentry
10 we just did the work. And there was probably three or four
11 conversations and some of them emails from Robert back in 2007, 2008,
12 and again, it's a long time ago. I'm just going based on memory that he
13 said I know you did the work, you will get paid, and it turns out we didn't
14 get paid.

15 Q Okay. So now when you go to the house to take on the new
16 project, when he's going to do the rebuild, did you get paid in full on this
17 time, this time around?

18 A I can't answer that 100 percent. I know we got paid 50
19 percent from Desert Valley, there was a hold up in the project. Desert
20 Valley was -- did not want Eagle Sentry to go through and visit, and
21 rather, complete the work, rather, at the request of Mr. Inose. And there
22 were a number of emails going, letters going back, certified letters going
23 back between myself and the owner of Desert Valley Contracting. And I
24 just let him know, you know, times are tough, it's the economy, I've got
25 to get our guys paid. We did discounts and things, it wasn't a lot, it was

1 a -- it was an arrangements between Gene and myself. I think we had to
2 upper hand because we are a specialty trade. You know, these
3 programmers are not a dime a dozen. The technologies are quite often
4 changing. If they continue with their continued education, they cannot
5 complete the programming. And when you have a house of this
6 magnitude, with a lot of moving parts, it's not easy.

7 Q Okay. So I'm going to have you turn in Binder 1, which is in
8 front of you, and I'm going to have you turn to Exhibit 142. Once you're
9 there, just let me know.

10 A I'm here.

11 Q Okay. So this is Bate Stamped a DVC 209 through 212. Is
12 this the original? I'll let you look at it and then just let me know, is this
13 the original contract that you entered into in 2014 with Mr. Inose?

14 A My recollection was about 41,000, but again, I didn't get
15 involved in the final contract was there, this is just a proposal, it's not a
16 contract.

17 Q Uh-huh.

18 A I believe it was probably originally -- I'm just assuming that it
19 was originally 59, there were some change orders to get down to 40,
20 because the contract I signed with Desert Valley Contracting, when it did
21 come to fruition, was about 41 or 40, and I believe our deposit was 20.

22 Q Okay. So if you look at DVC 212, that's the amount on this
23 proposal for 59,025.57?

24 A Yes.

25 Q But this isn't signed and you just believed that this was the

1 original proposal?

2 A Bid proposal.

3 Q Bid proposal, okay. And then if you go to the next exhibit,
4 which is Exhibit 143, there is a -- this is dated 9/19/2014, and this says
5 that it is -- it's an amount for 4,080. So was this something that was
6 being proposed in addition to the 59,000?

7 A Yes.

8 Q Okay. So do you recall when Desert Valley -- was Desert
9 Valley Contracting on the site when you were working on the house?

10 A Once again? I'm sorry.

11 Q Sorry. Was Desert Valley Contracting, was there a supervisor
12 that was present when you were working on the Inose house?

13 A Yes.

14 Q Okay. And who was that supervisor?

15 A I couldn't tell you.

16 Q Okay. Did Desert Valley Contracting have a supervisor?

17 A You just asked that question.

18 Q Right. You don't -- but somebody was there, though?

19 A Desert Valley Contracting had a super -- a project manager
20 on site most times that would deal with other trade subcontractors,
21 project managers, such as Eagle Sentry, yes.

22 Q Okay. And was Rob Ramirez one of the -- was he a
23 superintendent that was on the project as well?

24 A I think he was more, at that point in time, and I only spoke to
25 him a few times during that period. I don't even believe he was onsite or

1 even there the entire time. He may have been a consultant for Eugene,
2 maybe working personally for Eugene. I don't think he was working for
3 Desert Valley, but he was onsite.

4 Q Okay. So at the time, were you aware -- you were aware that
5 Desert Valley Contracting was terminated by Mr. Inose, correct?

6 A Yes.

7 Q Okay. Was most of your work completed when Desert Valley
8 Contracting was terminated?

9 A I would say 70, 75 percent, if not a little higher.

10 Q Okay. So Desert Valley Contracting gave you an initial
11 deposit, correct?

12 A Yes.

13 Q Do you recall how much that deposit was?

14 A It was about 20 grand.

15 Q Okay. So, if you look in that binder and you go to Exhibit
16 145, this is a check made out to Eagle Sentry. Is that the original
17 deposit?

18 A Yes.

19 Q Okay. Then if you -- so after Desert Valley was off of the
20 project, were they contacting you to say that they didn't want you to
21 complete the work?

22 A Yes.

23 Q Okay. And who was your contract with?

24 A Desert Valley Contracting.

25 Q Okay. And so you were in a quandary as to what to do?

1 A Absolutely.

2 Q Okay. So you eventually finished the job, right?

3 A We did.

4 Q Okay. Did Inose pay you the full amount?

5 A Pretty close. We negotiated some things here and there.

6 There were some other change orders on top of the original -- let me
7 back up a second. The original contract had additional change overs
8 through Desert Valley contracting. Once that relationship was over with,
9 we were dealing directly with Eugene, and there may have been a few
10 change orders here and there. There may have been some discounts.
11 There were some discounts, but I kind of kept it to a minimum only
12 because I knew the previous \$8,500 that we had to run off as a bad debt,
13 2008, 2009.

14 Q Okay. So you said previously that you had change orders
15 that you had an experience with Mr. Inose that he didn't want to sign
16 change orders; is that correct?

17 A Yes.

18 Q So when you finished up the project this time, would he sign
19 your change orders?

20 A Yes.

21 Q Okay. So, did you not do the work until the change orders
22 were signed?

23 A Well, I wouldn't say all the change orders, there were a
24 couple of them that were signed, and looking back now, I thought I
25 shouldn't have done that, but I had an email confirmation, so, to me, that

1 was as good as gold.

2 I do recall the very end of the project, and again, we're a
3 specialty trade with the programmers. A lot -- we spend all this money,
4 thousands of dollars, but until that programmer goes in there and
5 touches that enter button, it can't work. So I was required by my owner,
6 the owner, to hold off on our workers going there to finish the last eight
7 hours of programming to make everything work and everything
8 integrate together, until I had a check in hand. So, I was required to go
9 to the jobsite, I believe it was MacDonald Highlands, and when Eugene
10 handed me the check, my guys went to work and completed it.

11 Q Okay. So you were leery of proceeding to complete the work
12 until you were actually paid, correct?

13 A Yes.

14 Q Okay. So do you recall whether or not there were upgrades
15 that Mr. Inose did on the project from the original?

16 A There were some upgrades that weren't required, but most
17 of them were required because the technology changes, and so you may
18 have a processor that was good and a keypad, or a touch panel that was
19 good in 2007, did the manufacturer, and I believe it was Lutron, maybe it
20 was Crestron, no longer provided service for, or no longer provided
21 technical firmware, software updates. So there was a need for some. I
22 believe there were some other upgrades that the salesperson informed
23 me of after the fact.

24 Q Okay. Okay, just one second. I'm going to show you some
25 change orders. So if you go in that binder to exhibits, 135, and if you

1 turn to DVC 191.

2 A Okay.

3 Q Okay. So this is a proposal, October 16th, 2014, a change
4 order. So is this something that -- it goes all the way to DVC 00193, is
5 this something that was added after the initial estimate?

6 A It looks like a lot of changes based on product numbers
7 through a manufacturer.

8 Q Okay.

9 A So just from changes that are backing out one and including
10 another one. Maybe it's because it was a manufacturer change.

11 Q Okay. So these were mainly because of just maybe who you
12 were using, the product? Is that -- would that be a correct statement?

13 A Well, you have few areas here where nothing was taken out,
14 so there may have been some items that were not initially put into the
15 house that were -- ended up being in the home during the restoration.

16 Q Okay. So then if you go to Bate Stamp 194, there's another
17 change order that's November 13th, 2014. And this actually shows a
18 deduction of 18,413.21. Would that have probably brought your number
19 down to the 40-something thousand that you were talking about?

20 A Yes, this could have taken it from 59 down to 40, 41, yes.

21 Q Okay. So you recollect that you, your total amount that you
22 were owed was approximately 41,000?

23 A We originally contracted for 41,000, not that we were owed.
24 It was the original contract.

25 Q Okay. So I'm going to have you turn to Exhibit 136.

1 A Okay.

2 Q Okay. So this DVC 200, and this is a change order for 1360.

3 A Yes.

4 Q Now this isn't signed. Do you know whether or not you got
5 paid for that?

6 A I can't tell you, not off the top of my head, no.

7 Q Okay. But this was in December of 2014, and then there's
8 another change order if you flip to the next page for 201, and this one is
9 the same date, December 17th, 2014, and this is for 8,974.45.

10 A Yes.

11 Q Do you recall doing that work?

12 A I recall doing both the work, but I can't tell you whether or
13 not, off the top of my head, if we did or did not get paid, other than what
14 I previously said, that there was a negotiation toward the end.

15 Q Okay. And then if you go one more exhibit, 137, DVC 202.
16 This is another change order for 2,631.76. So you would have
17 done -- did you do that work? This is June -- January 5th, 2015.

18 A We did this work and we got paid on this work. This is the
19 one where I said I'm holding the check until we get this. This is some of
20 the final programming.

21 Q Okay. So do you know when you actually completed your
22 work out at Mr. Inose's house?

23 A I know it was cold.

24 Q It was cold?

25 A It was cold outside, but I was standing out there and it was

1 up in the mountain there in MacDonald Highland.

2 Q Okay. So I'm going to take you to Exhibit 140.

3 A Okay.

4 Q This is Bate Stamp 207, and this is actually dated July 28th,
5 2015, and it's Change Order 7. This is quite a while after that other one.
6 So did he have you come back and do additional items outside of the
7 original contract?

8 A He could very well have. If we did, I don't recall, but if we
9 did, I would have instructed my salesperson that we get paid up front.

10 Q Okay.

11 A And that's not uncommon when you talk about a low voltage
12 integration company going in and doing all this work and it has to be
13 one or two changes, and those one or two changes have to be added to
14 the mainframe, the server of that particular manufacturer. It's not
15 uncommon for someone to call us back individually after we -- with a GC
16 or builder because why pay someone else to reinvent the wheel.

17 Q Right. And this change order is actually signed, correct?

18 A Yes.

19 Q Do you know whose signature that is?

20 A Not off the top of my head, no.

21 Q Okay. And then if you go to Exhibit 141, there's another
22 change order. It says Change Order Number 8, and that's July 28th,
23 2015, and that's for 1,020. So that's in the same timeframe, and that is
24 also signed. So you would have gotten paid on this one as well?

25 A Yes.

1 Q So you had, at a very minimum eight change orders if you
2 look at this one dated July 28th, 2015, correct?

3 A It sounds about right.

4 Q Okay. And again, you had to negotiate with Mr. Inose after
5 DVC left the project?

6 A Absolutely.

7 Q Okay.

8 MS. HURTIK: I'm going to pass the witness, Your Honor.

9 THE COURT: Okay.

10 CROSS-EXAMINATION

11 BY MR. BOSCHEE:

12 Q Good afternoon, Mr. Thomsen. I think you -- you don't
13 remember me. We have spoken on the phone a couple times. My name
14 is Brian Boschee. I think I actually met you a couple time with Don
15 DiMaggio at a couple events, but anyway, neither here nor there.

16 I represent Eugene Inose and IN-LO Properties. I just have a
17 few questions.

18 First, I want to talk about the first instance when you guys
19 didn't get paid on the original construction of the property. Were you
20 hired directly by the owner or were you hired by another general
21 contractor? Do you recall?

22 A I don't recall.

23 Q Okay. Do you recall if there was an issue between
24 you -- between Eagle Sentry and the general contractor before the
25 change order ever got to Mr. Inose? Does that ring a bell at all?

1 A No.

2 Q Okay. The change order wasn't signed, though, right?

3 A The change order was not signed, correct.

4 Q The \$8500 that you guy weren't paid on that?

5 A It was after two separate change orders totaling \$8500.

6 Q Okay. Walk me through this. Did you submit them to the
7 general contractor first to submit to the owner for payment, or were they
8 submitted --

9 THE COURT: So I'm going to pause.

10 MR. BOSCHEE: I'm sorry.

11 THE COURT: You're talking about the original.

12 MR. BOSCHEE: Original.

13 THE COURT: You are referring to a general contractor, when
14 was that?

15 MR. BOSCHEE: That's a good question.

16 BY MR. BOSCHEE:

17 Q Do you recall who the general contractor was?

18 A I don't recall, because I believe everything was going directly
19 through Mr. Inose.

20 Q Okay.

21 A And I know that because I was onsite with Duncan, our
22 project manager. We had to store some T.V.s in a nook of the garage
23 and we took extra effort to cover those up. As we were walking through
24 the house, I happen to be there doing a quality assurance walk on the
25 wire locations and make sure that they met our standards for heights,

1 locations. And as we were walking down the stairs, Eugene was kind
2 of -- it was hectic, the house was being built, trades everywhere, he's
3 telling our salesperson, Jeff, I need this and this and this, and we've got
4 two weeks before this drywall goes up. I need to make sure I have
5 control so the lights will be here and the shades will be here. Jeff's
6 jotting things down and Robert's following us in tow. That's how I even
7 told Robert, and I got probably upset with Robert, because -- darn it,
8 Robert, you were there, you were there. Now, yes, that's why -- I didn't
9 have a legal leg to stand on. We didn't get a signature, and shame on
10 our salesperson for not doing that, and Jim on me for not following up
11 on it.

12 Q And that's fair. I'm just -- I'm just trying to get in my mind
13 straight what happened here. And so there were two change orders.
14 How much was the total amount of work that you did initially on the
15 house, do you remember, ballpark?

16 A If I had to guess it was probably 65 to 75,000.

17 Q Okay.

18 A Again, I'm guessing.

19 Q And do you recall what the two change orders were for?

20 A Added wire locations, pre-wires. So we had the ability to
21 have volume controls and touch panels, and controls for this integrated
22 system at different locations throughout the house.

23 Q Okay. And they were -- those two change orders were
24 submitted directly to Eugene?

25 A Yes.

1 Q Okay. And did he tell you why he -- did he give you a reason
2 why he wouldn't sign them and the work was done, I guess.

3 A I never spoke to Eugene until the second project. It was all
4 through Robert.

5 Q Okay. And so you were -- I think you testified you were leery
6 to go back there. You weren't real excited about going back to this
7 property because --

8 A I was not excited going back to this client.

9 Q Okay. But you did, and then there were -- I think you testified
10 eight change orders, give or take, on this project? You can correct me if
11 I'm wrong, but I don't believe any of them that we just looked at were
12 signed by Eugene Inose. Am I -- am I correct about that?

13 A I can't -- what I'm looking at, there are some things signed
14 here.

15 Q Sure.

16 A I'm not sure what -- I don't know what Eugene's signature
17 looks like.

18 Q Okay. Do you recall specifically -- I mean from your dealings
19 on the project the second time, do you recall specifically ever dealing
20 with Eugene Inose while DVC was still on the property?

21 A While DVC was on the property, no. It wasn't until -- as I
22 recall, it wasn't that -- he reached out to me and said can you deal
23 directly -- directly with me. I was concerned about breach of contract
24 with DVC. My concern of breach of contract and getting sued by DVC
25 was outweighed by getting my employees paid. We were that far into

1 the contract where -- and the recession was there.

2 Q Right.

3 A Construction companies were going down left and right. I
4 was concerned about getting my guys paid. So it was a plea. I went,
5 you know, he took kindly to me. I said I'll do this, but we've got to be
6 above board on everything.

7 Q Well, if you remember, I think actually you spoke to me as
8 well.

9 A I don't recall. I don't recall.

10 THE COURT: Probably not a bad thing.

11 MR. BOSCHEE: Probably not.

12 BY MR. BOSCHEE:

13 Q So in terms of this -- of this project, we went over the
14 contract and we went over the original estimate. Do you recall that?

15 A Yes, just now.

16 Q There is no contract with -- yeah. Carrie's asking about them.

17 A Yes.

18 Q Do you remember how you put those numbers together ?
19 Did you work with Mr. Inose or did you work directly with Desert Valley?

20 A I was not involved when the contract was in front of my desk,
21 so I don't know.

22 Q Okay. So you weren't involved in the estimating at all until it
23 got to contract stage.

24 A The original, 59K.

25 Q Right.

1 A And the change over, 18. I was not involved with because
2 that was the contract that ultimately got put on my desk for about 40,
3 41,000.

4 Q Okay. So I want to clarify one thing that I thought I heard, I
5 may correct -- got correctly. DV -- well, DVC was on the project while
6 they were there and you were there. There was a supervisor -- a
7 superintendent on the property, but it wasn't Rob Ramirez. Rob Ramirez
8 was just kind of there, but he wasn't supervising anything. Is that --

9 A The way he was working directly for Eugene, not through
10 DVC.

11 Q Okay.

12 A Because he said do you remember me? I said I remember
13 you told me I was going to get paid, we didn't paid, Robert.

14 Q I'm sure that conversation was a lot of fun for everybody.
15 But Robert was -- Rob Ramirez wasn't supervising anything that you
16 guys were doing out there at that point, was he?

17 A I have no idea.

18 Q Okay. Were you -- how often were you on the property
19 working on the site, you?

20 A Probably three times total.

21 Q Okay.

22 A Twice during the restoration.

23 Q Okay. There was someone else on the property more -- more
24 often, wasn't there? I can't remember his name off the --

25 A Duncan Coons was our project manager.

1 Q Okay.

2 A And Roy Heaton was our salesperson the second time.

3 Q Okay. And so while you were doing work, do you have -- do
4 you have binder -- which binder do you have in front of you, is that
5 Number 4?

6 A Number 1.

7 Q Could you grab Number 4 for me? I'm going to ask you a
8 couple general questions, but you might as well have Binder Number 4
9 ready to go. Let me just take a look here at which number it is. It looks
10 like it's all the way to the back. It looks like it's 401, so I'll give you a
11 second to flip to that.

12 A Here it is. Got it.

13 Q Give me a second. Let me ask you a general question. Do
14 you recall at some point while you guys were working on the project,
15 that some Lutron switches just went missing?

16 A I do.

17 Q What happened there, if you recall?

18 A I recall and I wasn't on site during this period, but as we have
19 our project management discussions, I know we're not involved as a
20 general manager unless there's some quality of work that was misdone
21 or there were some -- it was a challenging project, but I kind of stayed in
22 touch with this on the project managements between the salesperson
23 and the project manager, and what I recall was that we had to do an
24 estimate for more Lutron switches and it -- my project manager said
25 there was a lot of finger pointing going on and everything didn't look

1 above board, that's all he said.

2 Q Everything didn't look above board?

3 A It was kind of sketchy. I don't remember his correct terms,
4 and I just said well, we're not replacing them until we get paid for them.

5 Q Uh-huh. Based on -- and that's where I'm -- that's where I'm
6 going with the email exchange. It looks like there's an email exchange
7 here, and I don't know if you've ever seen this, that's why I'm going to
8 ask you generally. And it starts back at -- I think it's 1295. It's a little bit
9 an odd email exchange, but it's between Roy and Rob Ramirez and
10 Daniel Merritt.

11 THE COURT: So, what -- are we on 402 or --

12 MR. BOSCHEE: I'm sorry, we're on 402, yes.

13 THE COURT: Okay.

14 THE WITNESS: 1290?

15 BY MR. BOSCHEE:

16 Q Yeah, I would go all the way to the back and just take and
17 just skim through these emails and just let me know if you've ever seen
18 them before, because it doesn't look like you're copied on most of them
19 or any of them, but they're all between Roy predominately, and mostly
20 Daniel.

21 A Roy and Daniel or Roy and Robert?

22 Q Both, actually, and then there's some Rachelle [phonetic]
23 mixed in here and we got a lot of folks, except you, unfortunately, but
24 you're the only witness I have from Eagle Sentry. So I'm going to ask
25 you about it, and if you don't know, you don't know.

1 A I recall the discussions of this -- these items in one of our
2 project meetings.

3 Q Okay. That's where I'm -- that's all I want to know is what
4 you know about this. It seems like, again, from reading emails, that
5 there was some -- there was going -- there was a change order about --
6 boxes, and a change order that was submitted to Desert Valley and
7 wasn't approved. Is that consistent with your recollection?

8 A My recollection it wasn't approved because DVC didn't want
9 to take anything on this size because of change orders not getting paid
10 for.

11 Q Okay. Now, to that point, all the change orders that you had
12 submitted, had been submitted to DVC, right? Desert Valley?

13 A Even by looking at these dates, I can't tell you for sure, but I
14 know there was a time where we went directly with Eugene.

15 Q Okay. But you didn't go directly with Eugene until DVC was
16 off the project, did you?

17 A Correct, but it doesn't mean that DVC approved every change
18 order.

19 Q Right.

20 A They wouldn't even let us submit it.

21 Q I totally understand that. I guess what I'm saying is, while
22 DVC was on the property, all the change orders were submitted to Desert
23 Valley, not directly to the owner, right?

24 A The bid proposal change orders, yes.

25 Q Okay. And then after Desert Valley left and there were some

1 discussions and -- well, let me ask you this, you got a letter at one point,
2 and I think you referenced certified mail that was going back and forth,
3 you got a letter from Desert Valley basically saying we don't want you to
4 have any contact with the homeowner on this project. Do you recall
5 that?

6 A It was a cease and desist certified letter, and that's exactly
7 what it said.

8 Q Okay. And at that point when you got that letter,
9 Desert -- or Eagle Sentry hadn't been paid for all the work that you had
10 done on the project have you?

11 A Only a \$20,000 deposit.

12 Q Right. And --

13 THE COURT: So, essentially, half of the contracted note?

14 THE WITNESS: Had it gone up to, with all the change orders,
15 it may have been 64, 65. I can't really --

16 MR. BOSCHEE: It was less than half, it was about a third.

17 THE WITNESS: Yeah, it was a third, but we were already 80
18 percent into it.

19 THE COURT: Gotcha. Thank you.

20 BY MR. BOSCHEE:

21 Q And you've been in the business a little while, haven't you?

22 A Does it show the gray?

23 Q I can say that because --

24 A That's why it's gray.

25 Q I can say that because I've got that same gray hair in my

1 beard.

2 At that point, Eagle Sentry had lien rights with protective
3 property, didn't you? I mean if you didn't get paid, you could have
4 liened the property, right?

5 A Actually, we couldn't have because we hadn't been on the
6 properties for 90 days since the last actual installation of product and
7 labor. We had been there for service, so technically, I could have, but I
8 was trying to work some things out. I was in a -- I was torn, where we
9 have an opportunity to possibly get sued by DVC for breach of contract,
10 but I have to get our guys paid, and by liening the property, that doesn't
11 always work. And from what I've gone through, go through someone
12 else and their attorney could have said you know what, you lien the
13 property, it's not technically a mechanics lien because you're outside of
14 the limits.

15 So, I was like, you know I could do this and threaten the
16 homeowner. Eugene's a smart business man, or he has access to
17 attorneys, you're a smart attorney, you would said -- I use that term
18 loosely, I'm sorry, but --

19 Q No offense taken.

20 A But no, basically it was at I had done a number of liens over
21 22 years and sometimes you have know when you can push the
22 envelope and sometimes you have know when not to. This was a time
23 where I couldn't do it. I felt it wasn't in the company's best interest.

24 Q But to be fair, you did have a contract. I mean you were well
25 within the timeframe, the six year timeframe. You had a contract with

1 Desert Valley and they still owed you money under that contract; is that
2 right?

3 A They did. We could have went after Desert Valley, at what
4 cost?

5 Q Sure.

6 A We would throw bad money after good during a recession?

7 Q Right.

8 A So, I mean these are things that we deal with every day when
9 you're trying to, you know, rob from Peter to pay Paul to get your
10 employees paid first, and, you know, do you pay your employees, pay
11 your venders, you know. I had a restaurant and unfortunately I had to
12 sell it, but it came down to do I pay my American Express or pay my
13 employees. I don't pay my American Express, I don't get any more
14 product. So this -- take that on a much larger scale and this is what
15 you're going through on a day -- weekly basis.

16 Q I totally understand and I remember that time well. I guess
17 my question is, though, you had -- I mean there were claims available to
18 you to get this money back if you wanted to pursue them, you just didn't.
19 You chose not to, right?

20 THE COURT: Well, he's answered that question.

21 MR. BOSCHEE: Okay. Okay.

22 THE WITNESS: And if I may add, I think -- I can't remember,
23 but it may have said in the contract, because some of these contracts say
24 it, it's not common now, but it was common between 2006 and 2014,
25 where general contractors were put in the contract you will get paid

1 when we get paid. That doesn't necessarily hold in court, but it doesn't
2 mean they can't put it in the contract.

3 BY MR. BOSCHEE:

4 Q Right. Do you recall when DVC, when Desert Valley left the
5 project? Do you recall when that date was?

6 A I do not.

7 Q Okay. How long after, or around when you got the cease and
8 desist letter, did Eugene Inose reach out to you to come back to the
9 project, and was it Eugene Inose that reached out to you, I guess I should
10 ask that first.

11 A I believe it was Robert that reached out to me.

12 Q Okay.

13 A And I told him I was only going to deal with Eugene, because
14 when I last spoke to Robert and he gave me his word, he didn't come
15 through.

16 Q Okay. At that point, when you started dealing directly with
17 Robert, and then Eugene, how much money was Eagle Sentry owed,
18 give or take?

19 A Somewhere between 30 and 37,000, I'm guessing. We had
20 been paid on the 20. I believe as a good faith, we took another 7,000 to
21 get us to 50 percent, and Eugene was -- we were discounting, Eugene
22 was paying some here and there.

23 Q And that included the change orders that had been submitted
24 to Desert Valley prior to them leaving the project, right, the 37 that you
25 were owed? That included those change orders, correct?

1 A Yes.

2 Q Okay. And while I appreciate that there was some, I'll call it
3 horse-trading, some negotiation, there's some stuff that goes on, you did
4 ultimately finish the work at Eugene's house; is that right?

5 A Yes.

6 Q And with maybe a discount here or there, you were paid in
7 full, weren't you?

8 A With negotiating a discount here and there, we were paid in
9 full.

10 Q Sure.

11 A At the cost of me showing up on site and holding back my
12 programmers to doing the work, and that was what my -- the owner told
13 me that you will do this, Tom, or, you know, we're not going to finish it.

14 Q I understand that. I guess what I'm saying is you didn't have
15 to pursue any legal action or contract claim or lien rights to get your
16 money paid, right?

17 A I could have. At that point in the game it was more of a
18 gentleman's word for word. Eugene, I'll do this if you do this and we
19 both kind of stood our ground and things got done.

20 Q Okay. You had, at one point, Exhibit 135 in front of you. I
21 think it's in that other binder over there. Sorry.

22 A No problem.

23 Q If you look at Exhibit 135, let's start with that one.

24 A Okay.

25 Q We looked at this earlier. This was the original -- the original

1 estimate that the \$59,000 that ultimately -- that was reduced later on, do
2 you remember that?

3 A Yes.

4 Q Okay. Do you see where Eugene Inose's name is printed
5 here and then scribbled out and written Daniel Merritt?

6 A Yes.

7 Q And then Danny Merrick actually signed it, didn't he?

8 A I couldn't tell you whose signature that is.

9 Q All right. Do you have any idea who did the scribbling out
10 and writing in there?

11 A In -- it's not uncommon for the salesperson to put the
12 responsible party, and for an authorized agent and/or general -- in our
13 business it is common, so.

14 Q Okay.

15 A I see it all the time.

16 Q Okay, that's fair. You testified a little bit about you were only
17 on site a handful of times. Did you have any issues with scheduling or
18 getting out there and getting your work done with the other trades that
19 you recall --

20 A I do, and some of the project managers and --

21 Q Walk me through those, what you recall.

22 A It kind of went both ways, you know, we are low voltage
23 integration -- low voltage wire company, but through certain codes and
24 basically the NECA, the National Electronic Organization, they will -- any
25 voltage, high voltage, low voltage, they set the standards. They set the

1 height of those outlets and things like -- we come after and we have to
2 make sure we match up with them.

3 So there was some difficulty with, if I recall in the project
4 management, us not being able to get out there. There was difficulty
5 with getting product in because certain change overs weren't signed in a
6 timely fashion. There was difficulty by some of those Lutron switches
7 that were, I believe stolen. That held the project, I want to say, for nine
8 or 12 weeks, because you just can't call a manufacturer like Sears and
9 say get me a new oven out here. These are -- these are, you know, high
10 end. So it kind of went both ways.

11 We were in a position at the time where, you know, we went
12 from 140 employees in 2008 -- 2009, down to 26, 27, and we were tight
13 on -- logistically, on manpower and vehicles. So our schedules during
14 the few years there, yeah. We couldn't get out there, it may have been
15 four or five days before we get back out there. It was the nature of the
16 game in any contractor's world in southern Nevada.

17 Q Sure. And I guess that's where I was going with it. Without
18 enough lead time, it was tough for you to get back out to the house, you
19 know, day to day, because you just didn't have -- you didn't have as
20 much staff as you had previously, right?

21 A Correct.

22 Q Okay. To that end, from what you experienced, again,
23 with -- before DVC left, were there delays on the project? Was it -- did it
24 take longer to get everything done because just logistics of getting all the
25 trades out there and coordinating and getting things together?

1 A In as much as we went through a time period where, you
2 know, a lot of stuff was having issues getting done, from what I recall,
3 this was a challenging project from day one. Our fault, their fault,
4 nobody's fault, whether it's Eugene's or his people, or DVC, or Eagle
5 Sentry, or the manufacturers, it just -- nothing seemed to run smoothly
6 with this project.

7 Even though, at the time, we were experiencing some issues
8 with other larger projects that were standalone projects not necessarily a
9 build or rebuild, you know, a hundred houses and a tractor, or whatnot.
10 It did not run as smoothly as most projects did at that time.

11 Q Well, you have a lot of experience, again, I don't mean to say
12 a lot of experience, but you've got a fair amount of experience with
13 custom homes; is that fair?

14 A We do.

15 Q Yeah. And would you say that this project was more
16 challenging than your typical custom home remodel?

17 A Yes.

18 Q And I guess, in addition to what you just said, can -- why,
19 what was it about this project that caused you some --

20 A Too many moving parts. Too many moving parts, too many
21 finger-pointing. I'll be the first to say also, if we had to get a specific guy
22 out there, he may have been eight weeks out, because he was our only
23 lighting programmer. We went down from four to one, and we're doing
24 so many projects. So other items didn't get done in a timely fashion,
25 you know, the homeowner had to wait, and some of it fell on us, but for

1 the most part, I believe there was too many moving parts, you got too
2 many chiefs and not enough Indians, and it was -- just seemed to be no
3 flow, whether it was the -- even the one or two times I was on the job
4 site. I actually had two project managers on the job site. I had Duncan
5 Coons, and I had another, Rob Belzer, who kind of took over towards the
6 end, works more to the high stuff, high end things, and it just -- nothing
7 in the project meetings, it was just nothing seemed to run smoothly.

8 Q Okay. Who was -- who was running or present at the project
9 meetings from the general contractor most of the time, if you recall?

10 A I didn't get involved with the weekly project management
11 until DVC was out of the picture, because it was a request of my owner
12 to make sure that we crossed our t's and dot our i's.

13 Q Understand. As of, just from a timing perspective, and I can
14 go over the specific change orders if I need to, as of the 4th of July, 2015,
15 Eagle Sentry had submitted several change orders to Desert Valley for
16 work that you guys had done, hadn't you?

17 A I believe so, yeah. We were probably up to five or six before
18 DVC left the jobsite, and we had another two or three at the end for
19 programming and hanging additional T.V.'s I think, and verifying the
20 Category 5 and Category 6 continuity of the wire.

21 Q Okay. And the change orders you had at the end, I want to
22 talk about those two or three. Those were to -- those were continuity
23 things, you had to get the wiring right, hang a couple T.V.'s, things like
24 that. Was that kind of in conjunction with getting the house back to
25 where it was supposed to be, just extra work that was required

1 technically?

2 A I couldn't answer that.

3 Q Okay.

4 A We could hang things in different rooms and the wires could
5 have been sent to different rooms. So I couldn't --

6 Q Okay. Thank you for your time, Mr. Thomsen.

7 MR. BOSCHEE: I have no further questions.

8 THE WITNESS: Thank you.

9 THE COURT: Any follow-up?

10 MS. HURTIK: I think that --

11 REDIRECT EXAMINATION

12 BY MS. HURTIK:

13 Q So, Mr. Thomsen, I just want to ask you a few questions
14 about what you were paid. So, you had, in Binder 9 over there, and I
15 don't know whether that's one of the one's you have out. And it would
16 be Exhibit Number 624, actually, it's towards the back.

17 A Aren't they all?

18 Q Yeah.

19 THE COURT: Yes, seriously.

20 THE WITNESS: At least in my case.

21 MS. HURTIK: And it's hard to turn.

22 BY MS. HURTIK:

23 Q So, this is a non-conditional waiver and release, and there's
24 several invoices, and it's for 41,729.39, and this is dated 1/25/2016. So
25 were you paid this amount by Mr. Inose?

1 A Yes.

2 Q Okay. And then if you -- so Mr. Inose did pay the final -- all
3 the amounts that you negotiated in the end, correct?

4 A Yes.

5 Q Okay. And there was some discussion about logistics on the
6 job and you said that this job had a lot of moving parts, but did Desert
7 Valley, were they not paying you and stopping everybody because they
8 were concerned about getting paid. Do you know that?

9 A Yes. A cease and desist because they weren't, you know,
10 that type of level, a general contractor's going to take on 13 or 14 subs.
11 It's their job to collect the money and progress bill. I'm not sure what
12 their contractor or negotiating was with the homeowner, Eugene here,
13 and typically they do maybe some kind of AIA billing, American Institute
14 of Architect, where they say the entire project is this, and you've got this
15 category sub, this category sub, this category sub. We pay them a
16 deposit, you give us, as that progress billing comes in, we expect
17 payments on maybe a monthly system, monthly way, voucher system.
18 Every contractor is going to negotiate it differently, but --

19 Q Okay.

20 A -- once you get it to a certain point, you're going say okay,
21 I'm not getting paid, I've got to pull out and I'll, you know, take my
22 losses.

23 Q Okay. All right.

24 MS. HURTIK: I don't have anything further.

25 MR. BOSCHEE: I'm good. Nothing further. Thank you.

1 MS. HURTIK: Thank you so much for your time today.

2 [Court addresses unrelated matter]

3 THE COURT: Thank you.

4 MS. HURTIK: Your Honor, is it okay if we take like a five
5 minute break?

6 THE COURT: Sure.

7 MS. HURTIK: Okay. Sorry.

8 THE COURT: That's okay. That's fine.

9 [Recess at 4:00 p.m., recommencing at 4:11 p.m.]

10 THE COURT: Are we back on?

11 MS. HURTIK: We're back on.

12 THE COURT: Great.

13 EUGENE INOSE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

14 DIRECT EXAMINATION

15 BY MS. HURTIK:

16 Q Sir, Mr. Inose, is your house completed as of today?

17 A It is pretty much completed, yes.

18 Q What do you mean pretty much completed?

19 A I mean there's still a couple items I want to get done, but yes,
20 for the most part it is complete.

21 Q Okay. And it's current -- and you testified that it's currently
22 on the market, correct?

23 A That is correct.

24 Q Okay. All right. So after DVC was terminated from the
25 project, did you have any conversations with the insurance company, or

1 any of the adjusters?

2 A Not to my recollection, no.

3 Q Okay. And did you ever go back to the insurance company
4 or the adjusters and say that you thought some things needed to be
5 added or accounted for that were not?

6 A Are we still referring to after, when DVC was fired?

7 Q Yes.

8 A No, I do not recollect that whatsoever.

9 Q Okay. And did Daniel Merritt tell you that as the project was
10 going on -- let me strike that, okay?

11 Did Daniel Merritt tell you that the estimate would change
12 somewhat based on if there were changes in the scope of work
13 throughout the process?

14 A While DVC was on the job, I do not recall him using that type
15 of phrase, no, I do not remember that exact phrase, no.

16 Q What do you remember?

17 A If you could ask me a question like what are you -- like what
18 are you exactly referring to?

19 Q So when you started putting the house back together, DVC
20 told you that they were going to get the subcontractors out there to give
21 estimates to put the house back together. Would that be correct?

22 A That is correct.

23 Q All right. So any subcontractors that were not original
24 subcontractors, did you approve those subs?

25 A So you're -- okay, we're talking about the original contractors

1 that were from my house when I originally built it.

2 Q Uh-huh.

3 A If they were on this job if I approved them or not?

4 Q No, no, no. The question is, okay, you said that not all of the
5 subcontractors that were used on the rebuild were original contractors
6 from the original construction, correct?

7 A Got it, okay.

8 Q Okay. So anybody that wasn't an original contractor from
9 the original build, did you interview them and decide who you were
10 going to use or did DVC pick those contractors?

11 A DVC had the final pick on everybody.

12 Q Okay. So after DVC left the project and was terminated, was
13 there only a certain amount of trades or a certain amount of
14 subcontractors that you dealt with?

15 A That is correct.

16 Q Okay. And about -- it was only a handful of subs still that
17 remained to complete the house when DVC was terminated, correct?

18 A I couldn't tell you the exact amount, but yes, it wasn't -- it
19 wasn't like a lot of people, no. It wasn't like a lot of trades.

20 Q Okay. And so those contractors, do you know, could you
21 recite the contractors that had work remaining after you got rid of DVC?

22 A I could do my best to try to recollect them. I may not get all
23 of them --

24 Q Uh-huh.

25 A -- but I could try. Hybar, Artesia Cabinets, Green Clean,

1 Sunrise Plumbing -- I don't know exact what Sunrise -- I forgot what they
2 called it, but it's a plumbing division, Sunrise Plumbing, Eagle Sentry.
3 That's all I can remember at this exact moment right now.

4 Q Okay. And you just stated Green Clean, but -- and I want to
5 clarify because you testified earlier that you retained them afterwards.
6 They weren't in the original scope.

7 A Oh, I'm so sorry. Yes, I was thinking about who was still
8 there after DVC was fired that -- I'm so sorry, yes, you're right.

9 Q Okay. So I just want to clarify a few things. So we looked at
10 a release earlier that was approximately 1.6 million dollars, and you
11 stated it was an insurance release, and you stated that you did not
12 receive all of those funds, correct?

13 A That is -- if I remember the -- this is from yesterday.

14 Q Well, actually, we looked at it today.

15 A Oh, we did?

16 Q Yesterday and today we looked at it.

17 A Okay, okay. But yes, I did not directly receive all those funds,
18 correct.

19 Q Okay. And so if you go to Exhibit, make sure I have the right
20 number, 571 in Binder Number 8. Are you there?

21 A 571, yes, I am.

22 Q Yes. Okay. So I want you to go to Pages IN-LO 154 and 155.
23 So let's go to 155 first.

24 A Okay.

25 Q Okay. This is the policy holders release, and in the

1 second -- first and second lines, it says that the total claimed payment
2 was 1,617,300.38. Is that what the total claim was that you settled with
3 Fireman's Fund?

4 A At this moment in time, I cannot remember the exact
5 amount. I think we went over this before that. I was more concerned
6 about the 1.3-some-odd-million. I do not recall exactly how much was
7 paid for the condos, and stuff like that, the ancillary costs that Fireman's
8 Fund paid for.

9 Q Okay, and that's not the question.

10 A Okay.

11 Q The question is, there's a total claim paid out, whether or not
12 you received the funds, whether they paid it directly to contractors, or for
13 your rent, whatever was done. This release, it's not signed, but is this
14 the total amount that you resolved with Fireman's Fund for or --

15 A That's what I'm trying to say to you. That number does not
16 stick out to me at this moment right now. I cannot remember that
17 number. I remember the 1.3 million a lot more clearly.

18 Q Okay. So let's go to 154, and the Bate Stamped IN-LO 154.
19 So the additional living expenses, those amounts, those were paid
20 directly to CRS Rental, TownePlace Suites, were they?

21 A So TownePlace Suites was a hotel room or motel room. I
22 don't know what it's considered, right by the house that -- the insurance
23 companies had to stay there for right now. It was, I think, for one or two
24 nights, and then afterwards it said once I get settled back in and back
25 into town, they would like to get me a condo and they rented out

1 furniture for the condo, like beds, tables, plate ware, sheets, the whole
2 bit. So I believe the CRS -- so TownePlace is completely separate than
3 CRS. TownePlace is like run by Marriott, I believe.

4 Q Uh-huh.

5 A Whereas CRS is like a full service. They set up executives and
6 other people when they move or they have like temporary housing, and
7 stuff like that, from what I understood, and that they're the ones that
8 managed this whole living situation for me for the condos, and like I
9 said, it paid for not only the condo, but also the furniture, the bedsheets,
10 just everything, so that way I was comfortable there.

11 Q Okay. And so these amounts were paid directly, all of these
12 payments under the ALE expenses. There's a total agreed loss. Do you
13 see that? Let me push it up. There's a total agreed loss.

14 A Okay.

15 Q And it gives for ALE \$123,621.83. Do you see that?

16 A I do see that, yes.

17 Q Okay. So this amount was paid directly for your living
18 expenses to other entities?

19 A I believe so, yes.

20 Q Okay. So then there is a, right under that, an agreed claim,
21 1,374,997.23, and right next to that, an amount for 51,870 -- is it?

22 A Eight.

23 Q -- eight-ninety-three for contents. Were you paid directly
24 \$51,878.93 for contents?

25 A I was paid for contents. I could not tell you right now the

1 exactly amount that I was paid for contents by the insurance company.

2 Q Well, this right here is the final packet that was sent by the
3 insurance company. So you don't think this is correct?

4 THE COURT: No, he didn't, he didn't say that. He --

5 MS. HURTIK: I'm asking him does he think it's correct,
6 because he told me that he wasn't sure.

7 MR. BOSCHEE: Well, I'm going to object. I think he asked
8 that same exact answer I think under the State's testimony.

9 THE COURT: It does. So you can rephrase the
10 question certainly.

11 MS. HURTIK: Okay. Okay. I'll rephrase the question.

12 BY MS. HURTIK:

13 Q This says that you were paid 51,878.93 approximately for
14 contents; is that correct?

15 A It does state that, yes.

16 Q And you testified, and tell me if I'm incorrect, that you were
17 paid for the contents?

18 A I was paid yes, for the contents by the insurance company.
19 That is correct.

20 Q Okay. And do you believe this is the correct number?

21 A Ma'am, that's -- I was paid out by them five years ago or so, I
22 do not recall the exact amount. I could not tell you if it was 40,000,
23 60,000 or 50. I do not know.

24 Q Okay. So let's go to other structures. Do you see that?

25 A Yes, I do.

1 Q Forty-two-thousand-one-hundred-and-eighty-six-dollars. Do
2 you know what that was for?

3 A I do not know what \$42,000 is for, no. Not looking at this
4 spreadsheet, no, I do not.

5 Q Do you know whether or not you were paid that amount
6 directly?

7 A I could not tell you that right now. I don't recall anything like
8 that. Just looking at this type of spreadsheet, I could not tell you. I don't
9 know what they define as other structures. I'm not 100 percent sure.

10 Q All right. So, up at the top, in the third column -- or second
11 column, where it has the table. There's some amounts for -- a total for
12 Desert Valley Construction repairs. It says \$554,508.41. Were you paid
13 the amounts that were to be paid to Desert Valley Contracting or were
14 they paid directly?

15 A I was paid those -- I was paid directly from the insurance
16 company, the checks came to me.

17 Q Okay. So you received this -- these funds?

18 A Without verifying the exact amounts, I could not say, but I'm
19 saying that yes, the insurance company definitely did pay me directly.

20 Q Okay. And if we go down and we kind of talked about this
21 the other day, and I just -- if we go down and you see where my finger is,
22 on the Desert Valley Contracting driveway repairs, \$42,186, and if you go
23 down to other structures, that amount is the same amount.

24 A Oh, okay. Then that's what it was -- it's more than likely it's
25 funds for the driveway.

1 Q And were you paid those funds from Fireman's funds?

2 A I would have to believe so, yes, because if it's on this
3 statement as far as them -- if Desert Valley claimed it and the insurance
4 company is saying we paid for it, then I would have to believe that the
5 insurance company paid me for it.

6 Q Okay. So looking at this breakdown and the agreed upon
7 claim and agreed upon loss, the only portion that you believe you
8 weren't paid directly is the additional living expenses of \$123,621.83?

9 A I would have to take a much better look at all this. Well,
10 there's some things in here that said pay direct. It says Macrotec
11 [phonetic] invoice paid direct. Servpro fund will be paid from advance.
12 Macrotec paid from -- there's certain things that were paid, it looks like,
13 from -- directly from the insurance company to those particular people.

14 Q Okay. So I'm going to ask it another way.

15 A Okay.

16 Q Were you paid 1,320,429.28? Were you paid one-million-
17 three-hundred-thousand-twenty-dollar -- 1,320,429.28?

18 A I would say that would be very close. I cannot tell you that
19 that is the exact amount I was paid, but I could tell you that that sounds
20 like a very close figure.

21 Q And we went through the numbers yesterday, and you
22 actually had paid Desert Valley, that was their bid, but that is not what
23 you actually paid them, correct?

24 A I believe I testified yesterday I paid them over 1.1 million.

25 Q Uh-huh.

1 A Somewhere between 1.1 and 1.2 million, that's what I
2 believe, yes.

3 Q So did you have remaining about 493,565.49?

4 MR. BOSCHEE: Objection, that's State's testimony.

5 MS. HURTIK: I'm asking the question. I didn't say he
6 testified to that. I said did you have remaining.

7 MR. BOSCHEE: Okay.

8 THE COURT: So, re-ask, because I was writing something
9 and I generally hear the -- that one I missed, I apologize.

10 MS. HURTIK: Okay, sure. That's fine.

11 BY MS. HURTIK:

12 Q So did you -- after you paid the funds to Desert Valley, did
13 you have remaining \$493,565.49?

14 A No, I don't know where you're coming with that figure. I had
15 the difference between -- about approximately 1.32 million, and
16 approximately 1.1 to \$1.2 million, I paid to Desert Valley, which back of
17 the napkin, I remember it being somewhere between 170 to 190,000,
18 somewhere in that range, that I had left.

19 Q Okay. So let's turn you to Exhibit 585, which would be in
20 Binder Number 8.

21 THE COURT: Which exhibit again?

22 MS. HURTIK: It's Binder 8, and it's Exhibit 585.

23 BY MS. HURTIK:

24 Q Are you there?

25 A Yes. Yes, ma'am, I am.

1 Q Okay. So we went through these yesterday and there is 1,2,
2 3, 4, 5, 6, 7 checks made out to Desert Valley Contracting, and they total,
3 we've added it up, your counsel confirmed, 1,123,734.89. Do you recall
4 that?

5 A I do recall that from yesterday. Yes, ma'am.

6 Q Okay. And so you paid Desert Valley, and your bid -- your
7 amount from the insurance company, according to the -- what I just -- we
8 just went through, that you received was at a minimum, the 1320, right,
9 approximate?

10 A I wouldn't say that's the minimum, but it was right around
11 1.32 million. Yes, ma'am.

12 Q Okay. So if you took the 1320, and I just want to know if this
13 is the 1,320,429.28, and you took out the, what you paid Desert Valley,
14 1,123,734.89, that left about, approximately 197,000. Is that correct? Is
15 that what you had left?

16 A Yes. I estimated it to be between 170 and 190, but if you're
17 saying it's 197, then -- you have a calculator right there, so yes, I believe
18 that to be more accurate than my back of the napkin type of math.

19 Q Okay.

20 MS. HURTIK: I'm going to pass the witness right now.

21 MR. BOSCHEE: Your call, Judge. I don't know whether you
22 want me to go or not.

23 THE COURT: So, let me just ask. I mean, so we have
24 Wednesday, Thursday, Friday left. Who else do we have? Do we need
25 to get, you know, 20 minutes now, or should that -- that's the case, then

1 that's fine.

2 MR. BOSCHEE: I don't mind -- I don't mind doing it. It's
3 completely up to Your Honor. We have two subcontractors, and Robert
4 Ramirez under subpoena to be here tomorrow. Daniel Merritt, I believe,
5 is here from Florida. He needs to testify. I think counsel was planning to
6 call two other -- Rachelle [phonetic] and --

7 MS. HURTIK: Dennis Zachary.

8 MR. BOSCHEE: -- Dennis Zachary, maybe, but they're
9 both -- I think --

10 MS. HURTIK: They're maybe.

11 MR. BOSCHEE: -- the two subcontractors, Dennis and
12 Rachelle, are offshore witnesses. They're going to be like Eagle Sentry, I
13 think, maybe 45 minutes to an hour. Danny's going to be a little longer, I
14 suspect, and then --

15 THE COURT: I suspect a little longer is probably an
16 understatement.

17 MR. BOSCHEE: -- Rob Rachelle is going to be a little longer.

18 THE COURT: If I would to guess.

19 MR. BOSCHEE: It might be a little longer, but Rob
20 Ramirez -- well, okay, let me point to everybody -- contacts. Rob
21 Ramirez will be a little longer, not a lot longer, a little longer. Danny
22 Merritt will be a lot longer. Danny Merritt will be more along the lines of
23 Mr. Inose.

24 So I've got a little bit of a scheduling problem on Thursday,
25 and then the same scheduling problem on Friday, I would need to

1 adjourn, you know, 3:30 or 4:00 on both days.

2 But I don't think we'll have any problem getting done. The
3 only other problem we've got is now we do have a witness that's in
4 the -- either up in an airplane somewhere, that counsel did get a chance
5 to finish cross-examining. I didn't get a chance to finish redirecting. So
6 we may have to kick this. I mean I guess what I'm saying is if we decide
7 that we want to finish HyBar, and that's -- we'll have to figure that out,
8 then we're under really no time constraint because we're going to have
9 to do closing arguments at some point probably, when Your Honor can
10 find a half a day for us.

11 Anyway, but if not, then I think we can finish probably on
12 Thursday, but I don't know.

13 THE COURT: So, I have jury Friday, but I think it makes sense
14 to break for the day and given everything and, yeah. Let's do that
15 because I have to prepare for tomorrow's hearing still.

16 MR. BOSCHEE: Is tomorrow going to be another one of
17 those days on your civil calendar that we can optimistically appear at
18 10:30 and then --

19 THE COURT: Sadly enough, bear with me. I don't even
20 know. Let me take a look.

21 [Counsel confer]

22 THE COURT: Tomorrow would, knock on wood, should be
23 done by 10:30.

24 MR. BOSCHEE: Okay.

25 MS. HURTIK: Okay.

1 THE COURT: Yeah, it's not that long, so. Yeah, plan on
2 tomorrow at 10:30.

3 [Counsel confer]

4 THE COURT: Well, I will see you all tomorrow at 10:30.

5 MS. HURTIK: Okay. Thank you, Your Honor.

6 MR. BOSCHEE: We'll be here. Thank you, Your Honor.

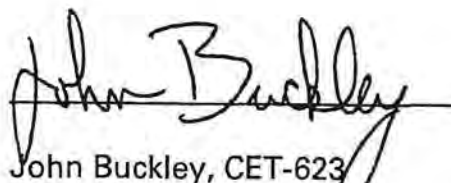
7 MR. STORY: Thank you. Your Honor.

8 THE COURT: Thank you.

9 [Proceedings adjourned at 4:37 p.m.]

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12
13 ATTEST: I do hereby certify that I have truly and correctly
14 transcribed the audio/video proceedings in the above-entitled case to the
15 best of my ability.
16

17 
18 John Buckley, CET-623
19 Court Reporter/Transcriber
20
21

22 Date: February 4, 2020
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