

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 3

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Attorneys for Appellants:

CARRIE E. HURTIK, ESQ.

Nevada Bar No. 7028

JONATHON R. PATTERSON

Nevada Bar No. 9644

HURTIK LAW AND ASSOCIATES

6767 West Tropicana Ave., Suite #200

Las Vegas, NV 89103

(702) 966-5200

Email: churtik@hurtiklaw.com

jpatterson@hurtiklaw.com

Attorneys for Respondent:

Brian W. Boschee, Esq.

Nevada Bar No. 7612

HOLLEY DRIGGS, WALCH, FINE, WRAY,

PUZEY & THOMPSON

Third Floor, 400 S 4th St,

Las Vegas, NV 89101

(702) 791-0308

Email: bboschee@nevadafirm.com

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12.	Exhibit 560-Contract Between In-Lo and Desert Valley Contracting 8.14.2021	N/A	JNT001137- JNT001138
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EXHIBIT 7

Steven D. Grierson

1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 DESERT VALLEY CONTRACTING,
8 INC.,

CASE#: A-16-734351-C

9 Plaintiff,

DEPT. XV

10 vs.

11 IN-LO PROPERTIES, LLC,

12 Defendant.

13 BEFORE THE HONORABLE JOSEPH HARDY
14 DISTRICT COURT JUDGE
WEDNESDAY, APRIL 10, 2019

15 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 3**

16
17 APPEARANCES:

18 For the Plaintiff:

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

19
20 For the Defendant:

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

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24 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER
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1 Las Vegas, Nevada, Wednesday, April 10, 2019

2

3 [Case called at 10:59 a.m.]

4 THE CLERK: Desert Valley Contracting versus In-Lo

5 Properties, LLC.

6 THE COURT: Who do we have this morning?

7 MR. BOSCHKE: We've got some third-party witnesses this
8 morning --

9 THE COURT: Okay.

10 MR. BOSCHKE: -- that we should be able to get through
11 pretty quickly, I hope. Except Carrie's in the hallway so we might need
12 the seconds. I'll get her.

13 We just lost opposing counsel, they'll come back.

14 [Pause]

15 MS. HURTIK: I apologize, Your Honor.

16 THE COURT: That's okay.

17 MR. BOSCHKE: Well, you know more now than you did then.

18 MS. HURTIK: He must go tomorrow. He's trying to
19 rearrange everything.

20 MR. BOSCHKE: That's fine.

21 MS. HURTIK: He's supposed to be in Flagstaff tomorrow.
22 We thought he would end up going today, but he's trying to rearrange
23 everything.

24 MR. BOSCHKE: Is he going to be able to, are we going to be
25 able to go tomorrow?

1 MS. HURTIK: I'm pretty sure.

2 MR. BOSCHÉE: Okay.

3 So we've got one, apparently one other kerfuffle in addition
4 to HyBar, the HyBar witness, Ms. Hurtik's client is going to have to go in
5 for more nasal surgery, so he is not going to be able to come, and we
6 don't want him bleeding all over the courtroom, because that would be
7 awkward for all of us. So we're going to have to -- we're not going to be
8 able to finish this week in any respect. We're just going to need to find
9 one day on Your Honor's schedule and our schedule, maybe in the next
10 few weeks to get, I guess, it will just be Dennis and finish up the witness
11 from HyBar, and then do a brief closing. So maybe a half day or, you
12 know, short trial, you know --

13 THE COURT: Okay.

14 MR. BOSCHÉE: -- a civil union which turns into a short day.

15 MS. HURTIK: Actually my client wanted to be present, but he
16 had surgery last week, and it didn't go well. And so then he was
17 supposed to be okay to come today and that they had to take him back
18 and they're going to have to go back in.

19 THE COURT: Having had nasal surgery before I can
20 empathize, although luckily I didn't -- well, I did have a -- but anyway. No
21 worries.

22 MR. BOSCHÉE: It's not fun in any event.

23 THE COURT: No.

24 MR. BOSCHÉE: So the plan, the intended plan, as we sit here
25 today, is going to be we've got two third-party subcontractor witnesses.

1 Hopefully this morning, we may spill into the afternoon. Mr. Ramirez is
2 coming this afternoon. I'm hoping to finish -- we're hoping to finish him
3 up this afternoon, so we can get Mr. Inose finished this afternoon. If not,
4 he may spill into the morning. And then tomorrow we'll bring Danny in
5 and I think Danny will finish in one -- I mean, I don't -- I hope he'll finish
6 in one day, but he should finish tomorrow.

7 And then, in lieu of going on Friday, we'll just find another
8 day in Your Honor's calendar or in our calendar that works in the next
9 few weeks. I know I can't next week.

10 THE COURT: I can't either.

11 MR. BOSCHEE: It's spring break.

12 THE COURT: I won't be here.

13 MR. BOSCHEE: I know exactly. I'll be here for a day, but
14 then we're down.

15 So then we'll find a day in the next couple of weeks after that
16 and just basically one day to get Dennis and the witness and closings.

17 THE COURT: Okay.

18 MR. BOSCHEE: Then, obviously, if, you know, if you have
19 any questions or want closing briefs, you know, we can deal with that at
20 that point as well. But as you sometimes do. So we are ready to go with
21 our witness.

22 THE COURT: All right.

23 MR. STORY: Defense calls Steve Raleigh.

24 [Jury in at 11:05 a.m.]

25 STEVE RALEIGH, DEFENDANT'S WITNESS, SWORN

1 THE CLERK: State and spell your first and last name.
2 THE WITNESS: Excuse me?
3 THE CLERK: Please state and spell your first and last name.
4 THE WITNESS: Steve, S-T-E-V-E Raleigh, R-A-L-E-I-G-H.
5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. STORY:

8 Q Hello, Steve. We've met. My name is Sean Story. I
9 represent Eugene Inose and In-Lo Properties with regards to this dispute.
10 And I understand you are here in respect to your association with the
11 company Desert Home Electric, correct?

12 A Yes.

13 Q Okay. And what's your association with Desert Home
14 Electric?

15 A I'm the owner.

16 Q Okay. And how long have you been the owner of Desert
17 Home Electric?

18 A About 22 years.

19 Q Okay. And does Desert Home Electric do work in custom
20 homes?

21 A Yes.

22 Q Okay. And so they've done more than one?

23 A Yes.

24 Q Okay. And are you familiar with the residential property
25 located at 587 Saint Croix Street, in Henderson?

1 A Yes.

2 Q Okay. And you understand that to be Eugene Inose's
3 residence?

4 A Yes.

5 Q Okay. And Desert Home performed work at the property?

6 A Yes.

7 Q Okay. And you may or may not know that the work done in
8 2014 to 2016 was the result of a flood that occurred at the property, were
9 you aware of that?

10 A Yes.

11 Q Okay. And so what type of work did Desert Home Electric do
12 there?

13 A We basically checked out all the wiring before the drywall
14 was put back on. And then we did miscellaneous re-installation of stuff
15 that was taken down because of the floods.

16 Q Okay. And would you describe that property as a custom
17 home?

18 A Yes.

19 Q Okay. And the general contractor on the site, that was Desert
20 Valley Contracting?

21 A Correct.

22 Q Okay. And had Desert Home Electric worked with Desert
23 Valley Contracting prior to this restoration?

24 A No.

25 Q Okay. And you're familiar with Eugene Inose, you've met

1 him before?

2 A Yes.

3 Q Okay. And when Desert Home Electric was retained to do the
4 work at the property, who originally retained Desert Home Electric?

5 A Desert Valley.

6 Q Okay. And there was a contract?

7 A Yes.

8 Q Okay. And it's been admitted in evidence here, if you recall,
9 it was updated October 2014, does that sound about right?

10 A Yeah, yes.

11 Q Okay. And during the course of the work that Desert Home
12 Electric did at the property, who did Desert Home Electric primarily take
13 its direction from?

14 A I don't remember off the top of my head. There was a lot of
15 different people we dealt with.

16 Q Okay. Were they people that worked for Desert Valley
17 Contracting?

18 A Yes.

19 Q Were there any people that worked for anyone else?

20 A No.

21 Q Okay. So Desert Home Electric primarily took its direction
22 from Desert Valley?

23 A Yes.

24 Q Okay. Did Desert Home Electric ever take direction directly
25 from Eugene Inose?

1 A Yes.

2 Q Okay. Now, I understand at some point Desert Valley
3 Contracting left the job, was no longer the general contractor. Did Desert
4 Home Electric ever take direction from Eugene Inose prior to that
5 occurring?

6 A No.

7 Q Okay. And did Desert Home Electric provide estimates of
8 cost to complete their job originally?

9 A Yes.

10 Q Okay. Where was the information received, from who was it
11 received that Desert Home Electric was able to prepare an estimate of
12 what it needed to do?

13 A We walked the job with representatives from Desert Valley.

14 Q Okay. And so between walking the job and interactions with
15 Desert Valley Contracting, Desert Home Electric was able to provide an
16 estimate of a cost to complete?

17 A Yes.

18 Q Okay. During the course of the project were there any
19 changes to the original scope of work that was to be done?

20 A Yes.

21 Q Is this normal?

22 A Yes.

23 Q Okay. Were any of these changes ever done verbally?

24 A Maybe a few small ones.

25 Q Okay.

1 A You know if somebody wanted to move something 12
2 inches, you know, it was, like, okay we'll just go ahead and do that, and
3 deal with it later.

4 Q Okay.

5 A But big things were definitely in writing and submitted.

6 Q Okay. So anything substantial was documented in writing in
7 terms of changing from the original scope?

8 A Yes.

9 Q Okay. And what is a change order, a brief explanation of
10 your understanding of what a change order is?

11 A Well, it's just you're on the job and something comes up that
12 wasn't part of the original scope of work, so we go over it with Desert
13 Valley, write up the list of what we talked about, send it over to them,
14 they sign it, and we go ahead and do it.

15 Q Okay. So it's a written documentation of some change from
16 your original proposal, is that sort of a fair layman's explanation?

17 A Yes.

18 Q Okay. And there were change orders on this job?

19 A Yes.

20 Q Okay. Now, if you recall, I understand that this was a while
21 back, do you know if there were any change orders prior to July of 2015?

22 A No, I don't know that.

23 Q Okay. There is a series of binders behind you. They have
24 volume numbers; you see the black ones across. If you can grab Volume
25 8 for me, please. And turn for me to Exhibit 576, you see the tabs there

1 eon the right?

2 A Okay.

3 Q All right. And down there on the bottom right of the

4 document you're looking at, you'll see that there's a number stamped on

5 it, it says IN-LO followed by digits, do you see that? You should be

6 looking at 255. The very bottom of the document on the right. In the

7 lower margin.

8 A Lower IN-L00203?

9 Q 203 would have been an early --- are you on 576?

10 A That's the first page in that one. There's 203.

11 Q Okay. And if you can flip for me within that document to 255,

12 please. Or within that exhibit, sorry

13 A Okay.

14 Q Okay. And can you tell me what this is?

15 A That looks like some changes that came up as far as wiring

16 goes, and then adding a wine room chiller.

17 Q Okay. So would this be what we were describing before as a

18 change order?

19 A Yes.

20 Q Okay. And can you read for me the date there at that top,

21 please?

22 A 12/24/14.

23 Q Okay. And towards the bottom it's stamped approved and

24 right above it it says accepted by. Can you read that name for me that

25 has a signature?

1 A Daniel Merritt.

2 Q Okay. So when I asked you earlier if you recalled -- and you
3 didn't -- if Desert Home Electric had done any change orders prior to July
4 of 2015, does this refresh your memory that there was at least one prior
5 to July of 2015?

6 A Yes.

7 Q Okay. So there was at least one, right?

8 A Yes.

9 Q Okay. And this particular change order, as we discussed,
10 was approved by Daniel Merritt. Was that common on this job?

11 A Yes.

12 Q Okay. So the change orders that Desert Home Electric
13 received during this project back approved were primarily -- were all
14 approved by Desert Valley Contracting?

15 A Yes.

16 Q Okay. And based on your 20 years' experience in working on
17 jobs like this or in custom homes, why would Desert Home Electric want
18 to document a change in a change order written?

19 A So we get paid.

20 Q Okay.

21 A And you know, one other things is, you know, we write this
22 up based on our job walk. Because it's all verbal.

23 Q Okay.

24 A So when we're submitting it we're saying is this what you
25 agreed that we walked the job with.

1 Q Okay. So if original proposal was submitted and Desert
2 Home Electric was to do work without any type of written documentation
3 or change order, there might be issues of getting paid; is that accurate?
4 A Right.
5 Q Okay. And if you can flip for me to -- give me one sec here --
6 568, please.
7 A Okay.
8 Q Okay. And you should be looking at a document numbered
9 60 on the bottom right, do you see that?
10 A Six-zero?
11 Q Yes.
12 A Yes.
13 Q Okay. And if you look here in the middle -- and I will submit
14 to you this has already been submitted into evidence -- this is, as you will
15 see at the bottom an email and you see in the from line where it says
16 Daniel Merritt?
17 A Yes.
18 Q Okay. If you can flip for me to 64, please, a few pages back?
19 A Okay.
20 Q Okay. And right there the second sort of grouping of text it
21 says Desert Home Electric. Can you go ahead and read those numbers
22 for me?
23 A Desert Home Electric in our bid \$51,304.77, total \$63,543.78.
24 Q Okay. So based on what we were discussing here regarding
25 change orders, based on your understanding of this, the difference isn't

1 what was in the original bid versus the cost, the total cost would have
2 been to account for change orders?

3 A Yes.

4 Q Okay. All right. I'm going to have you flip back to 562,
5 please.

6 A Okay.

7 Q Okay. And have you seen one of these before?

8 A I mean an unconditional release, yes.

9 Q Okay. You see here at the bottom this was presented by, in
10 the signature line, by Desert Valley Contracting, you see that?

11 A Yes.

12 Q Okay. And up here at the top, can you read that handwritten
13 portion for me?

14 A No change orders as of 7/3/2015.

15 Q Okay. So based on our discussions here, including our
16 review of a change order as far back as December of 2014, does this
17 conflict with what we discussed that there were no change orders on this
18 job as of July 2015?

19 A Yes.

20 Q Okay. So we were talking earlier about -- so let's discuss, so
21 Desert Valley at some point left the project, correct?

22 A Yes.

23 Q Okay. And did Desert Home Electric remain on the project
24 beyond that?

25 A Yes.

1 Q Okay. So talking in the period while Desert Valley was still in
2 the project, when they were the general contractor, were there any
3 scheduling issues that you ran into?

4 A Scheduling was pretty weak.

5 Q Okay.

6 A As far as giving us notice and stuff like that.

7 Q Okay. Talk to me about the notice issue. Too short of notice
8 for expectations to be on site, or is that --

9 A Yes. Too short a notice, and not giving us, if we were
10 waiting for another subcontractor to get done with something that was
11 going to affect us, you know, no -- weak notification on stuff like that.

12 Q Okay. And how would you describe the supervision
13 generally by Desert Valley Contracting?

14 A Poor.

15 Q Okay. Can you elaborate on that? What were some of the
16 reasons it was poor?

17 A It was just, you know, they didn't -- there was a lot of
18 different guys that were classified as supervising the job or watching the
19 job. And the general understanding was that these guys really didn't
20 know what they were doing.

21 Q Okay. And based on your, you know, 20 years of
22 experience, can, you know, poor supervision and sort of scheduling
23 issues result in cost overruns?

24 A Well, yeah. I mean it cut into my profit margin; you know.
25 But there were no extra charges for stuff like that.

1 Q Okay. Now, let's go ahead and turn to the period after Desert
2 Valley was no longer on the property. Did you receive any
3 correspondence from Desert Valley regarding that they would no longer
4 be on the property?

5 A You know, something kind of sticks in my head that we got
6 the notification, but I really can't -- I wouldn't swear to it.

7 Q Okay. Can you turn for me to 567, please, in that same book.

8 A Okay.

9 Q Okay. Go ahead and take a look at that, review it. Let me
10 know when you're ready.

11 A Okay. Yeah, this kind of rings a bell.

12 Q Okay. So is this a letter that Desert Home Electric received
13 from Desert Valley Contracting?

14 A You know, I can't swear to that, but this kind of is what I was
15 saying where it's like something kind of sticks in my head that we got
16 notification and this looks familiar. But whether we actually got this or
17 not, I couldn't say.

18 Q Okay. So it looks familiar at least to you --

19 A Yeah.

20 Q -- but you can't a hundred percent say this is the exact?
21 That's fair.

22 A Yeah, I remember kind of some of the terminology right here
23 that they're using.

24 Q Okay. Do you recall if Desert Home Electric had any
25 response from a business perspective on this on how to handle the

1 project? Or if they responded at all to it?

2 A No, we just pretty much were sitting back to see what was
3 going to happen.

4 Q Okay. And at some point after Desert Valley left the project
5 you recommenced work; is that correct?

6 A Yes.

7 Q Okay. And that was through direct communications with Mr.
8 Inose?

9 A Yes.

10 Q Okay. At the time that Desert Valley Contracting left the
11 project, had Desert Home Electric been paid in full?

12 A No.

13 Q Okay. So it was still owed money?

14 A Yes.

15 Q And based on your understanding at the time, being still
16 owed money, did it, therefore, have lien rights?

17 A I believe so.

18 Q Okay. And Desert Home Electric ultimately ended up
19 completing the job on the property, correct?

20 A Yes.

21 Q Okay. And after Desert Valley Contracting left the property,
22 was Desert Home Electric paid directly by Eugene Inose?

23 A Yes.

24 Q Okay. And by the time the job was completed, and whatever
25 the number of payments received from Mr. Inose, was at that point

1 Desert Home Electric paid in full?

2 A Yes.

3 Q Okay. And during the time -- jumping back a little bit. During
4 the time prior to Desert Valley Contracting leaving the property, when
5 you had contracted with them and they were the general contractor on
6 the property, what was your understanding for who was responsible for
7 paying Desert Home Electric?

8 A Desert Valley.

9 MR. STORY: Okay. I'll pass the witness.

10 CROSS-EXAMINATION

11 BY MS. HURTIK:

12 Q Hey, Mr. Raleigh. You were asked if you ever took any
13 direction from Eugene Inose on this project -- and we're just going to say
14 project, we know that's it's a single home, custom home. Did you ever
15 receive direction from Eugene Inose at any point, any stage during your
16 job on the project?

17 A Yes, at the tail end.

18 Q Okay. And were you one of the original contractors that
19 worked on the house when it was originally built?

20 A No.

21 Q So when you were retained to do the work on this project,
22 who contacted you initially?

23 A Desert Valley.

24 Q Okay. And I think you were asked this, had you ever worked
25 with Desert Valley before?

1 A No.

2 Q So did you walk the property in order to bid your estimate?

3 A Yes.

4 Q Okay. And who walked that property? Was it you or did you

5 have a lead installer?

6 A It was me and one of my guys.

7 Q Okay. And when you were -- once you were retained and

8 hired, who was on the project while you were performing the work? Did

9 you -- were you there every day?

10 A No.

11 Q Okay. So did you have a lead person, a lead installer who

12 was on the project?

13 A I had a few. There was different guys.

14 Q Okay. So how often were you on the project?

15 A Probably twice a week.

16 Q Twice a week? Okay. Did you attend any contractor

17 meetings at the house?

18 A I wouldn't really classify them as meetings.

19 Q Were there meetings once a week with DVC and some of the

20 other subs?

21 A No.

22 Q Never?

23 A Let's put it this way: there was never anything scheduled. If

24 they had a meeting up there we weren't like given a formal meeting

25 notification.

1 Q Okay. And did you -- if there was a meeting, would you have
2 attended it or would it have been your installers?

3 A Fifty-fifty. Depends on what my schedule is.

4 Q Okay. So you're not -- you can't say if there were meetings
5 that you did not attend?

6 A Right.

7 Q Okay. So you said you walked the job with DVC, and your
8 original scope of work was based on walking the job, correct?

9 A Yes.

10 Q And you entered into a contract with Desert Valley
11 Contracting?

12 A Yes.

13 Q If you would pull out Binder 1, the binders are behind you.
14 And you can put that other one back, if you want.

15 A Number 1?

16 Q Uh-huh. Okay. And then I'm going to have you turn to, it
17 will be Exhibit 6 -- I'm sorry. Exhibit 59. Actually, that's not right. I'm
18 sorry. I'll have you turn to that after.

19 It's actually Exhibit 86.

20 A Okay.

21 Q Okay. So this is a subcontract between Desert Valley
22 Contracting and Desert Home Electric, dated 10/2/2014. Is that your
23 recollection that that is the contract that you signed before you started
24 work on the house?

25 A Well, my initials are on it; so I'd say, yes.

1 Q Okay. And so are you the only one -- to you have an
2 estimator that estimates on the project or are you the only one that
3 estimates?

4 A I'm the winner.

5 Q Okay. So you did all the estimating for this house?

6 A Yes.

7 Q Okay. Now, this also says there is a scope at the end on the
8 last page, which is DVC113, at the top it says, Attachment A, the
9 subcontractor shall perform the work as indicated and required by the
10 contract documents as listed in Attachment C, specified below for all
11 labors, materials, and equipment.

12 So you had a specific scope of work, correct?

13 A Yes.

14 Q Okay. Do you recall what your specific scope of work was?

15 A Well, number one, we were going to tone out -- we were
16 going to certify all the wiring in the house, so that's where you hook up a
17 piece of test equipment to each individual wire and make sure that's it's
18 good.

19 Q Okay.

20 A That's number one. And then there was installation of
21 recessed lights, wiring that was removed or damaged and plugs and
22 switches and stuff like that.

23 Q So you said that DVC -- we're going to say that Desert
24 Valley's DVC for ease of saying it. So anyway, was DVC the
25 superintendent or supervisors on site, do you know who that was?

1 A No.

2 Q Okay. Do you know who Rob Ramirez is?

3 A No.

4 Q You never spoke to Rob Ramirez?

5 A I might have. I don't remember -- I don't remember really

6 anybody's name like on that one that was signed by Daniel, I remember

7 his; and maybe if I saw some other names I might remember, but that

8 name doesn't ring a bell.

9 Q Okay. So we're going to go to Exhibit 87, which is right after

10 the one you just looked at.

11 A Okay.

12 Q Now, this is a two page document, it's dated DVC00114 and

13 115. And on the second page is that your signature above the name

14 Steve Raleigh?

15 A Yes.

16 Q And it's dated 11/18/2014, correct?

17 A Yes.

18 Q So this is a change order, correct?

19 A I think this is the original --

20 Q Scope of work?

21 A One of them, yeah.

22 Q Okay.

23 A You see this just says, this says high voltage, put house back

24 together, high voltage.

25 Q Uh-huh.

1 A There was another one for low voltage.

2 Q Okay. So I just want to make sure. So this one -- I don't see
3 where it says change order anywhere, and your contract was dated in
4 October of 2014, so I'm just trying to figure out is this actually your
5 original scope?

6 A You know, when you say original. The thing that -- number
7 one thing that started this was the low voltage wiring.'

8 Q Okay.

9 A That was the first thing that got us in on the job.

10 Q Okay.

11 A Because we have the special test equipment that can tone
12 out these wires.

13 Q Okay. So when you were bidding, you were bidding just the
14 low voltage at first or after you walked the job, then it became that you
15 were going to do more stuff on the project?

16 A Yeah, I think that's -- it definitely started with the low voltage.
17 And I can't remember whether there was the low voltage and the, the
18 next day, we came in with the high voltage, or a week later, or what the
19 progression was on that.

20 Q Okay. And the reason I'm asking you is because you were
21 asked some questions about was your original bid \$51,304.47. That was
22 out of an email, that wasn't out of any documentation other than an
23 email.

24 A Wait a minute. I didn't think the question was was that my
25 total. Because I don't know what the total was, I just read off what the

1 numbers were.

2 Q Okay.

3 A So as far as saying that your original bid was \$51,000, I don't
4 know.

5 Q Okay. And that's what I want to clarify. That wasn't your bid,
6 that's just an email that somebody had numbers in, correct?

7 A Right, uh-huh.

8 Q Okay. So --

9 A Let me interject one thing. That sounds about right, because
10 I know that the high voltage and the low voltage were a lot of money for
11 both of them.

12 Q Okay.

13 A So if this is -- if this number right here for \$22,000 was the
14 high voltage, the low voltage was a big number also.

15 Q Okay. So this document -- the \$22,494, you would say that
16 that is your, probably close to your original bid, the rewire that was not
17 low voltage?

18 A Correct.

19 Q Okay. And in fact, this was approved, you can see in the
20 lower corner, approved; and you actually signed it, correct?

21 A Yes.

22 Q Okay. So in the top of this, the first line, it says, put house
23 back together, high voltage. The first line says, wine room, kitchen,
24 pantry, rewire these areas, use what we can that's available. Need
25 cabinet details.

1 So at this time you're bidding this, this is your bid based on
2 what you have, but you were going to need more information to be able
3 to give an absolute accurate end price, correct?

4 A Well, basically, it was more like if the cabinet details
5 changed, from what we could see was the original stuff in the house,
6 then there would be -- then there would be a change order. And it would
7 be something that you would be able to know rock solid that, hey, this is
8 what the original cabinets were, and this is what the new cabinets are.
9 So there's a change right there.

10 Q Okay. So as you go through this, then next it says replace all
11 plugs, switches, plates, match what is in existing part of the house. They
12 used an upgraded plate. Note: Any special Crestron switches going on
13 will be addressed later.

14 So is it fair to say that the Crestron switches were not
15 addressed in this bid?

16 A Yes.

17 Q Okay.

18 A At the very end of the quote, I have installation of Crestron
19 switches to be determined.

20 Q Okay. Just give me a second because you said something
21 that there would have been another scope that would have showed low
22 voltage, correct?

23 A Yes.

24 Q Okay. If you go to Exhibit 88 and that is in, you're still in
25 Volume 1, that says -- this is October 28th, 2014. Volume 1, so did you

1 do this testing while you were walking the project for the scope?

2 A No, we were hired to do that. That testing was -- that's
3 probably like two weeks' worth of work.

4 Q Two weeks of work. Okay. And this was part of your
5 contract, right?

6 A Not that contract we were just looking at.

7 Q But this was part of the low voltage contract?

8 A Yeah, this is like after we did all the work, then we gave them
9 a report saying this is what we found.

10 Q Okay. So let's go back to that. So this is October 28th, 2014,
11 and you said after you did all the low voltage work -- and correct me if
12 I'm wrong -- after you did all the low voltage work you did testing, and
13 so this was --

14 A No. The low voltage work was the testing.

15 Q So you were just doing testing for the low voltage work?

16 A Uh-huh.

17 Q Okay.

18 A So in other words, like when the testing gets done we just
19 walk away going, okay, you're all good. No, we put something in writing
20 to say this is what we found.

21 Q Okay. All right. So you marked four items, according to this,
22 that failed, correct?

23 A Yes.

24 Q And so we'll give you a separate price for replacing the wires
25 it says. So was that additional --

1 A Yes.

2 Q -- was that additional?

3 A Yes. It's kind of like you're going through, let's say you're
4 going through testing all these wires. When you're doing the test on
5 them, you have no idea if one wire's going to fail or two hundred wires
6 are going to fail. So the testing is the price to start with, and then once
7 the testing is done, then we say, okay, this wire from here to here needs
8 to be replaced; that wire needs to be replaced. And we give them a
9 separate price for doing that.

10 Q Okay. See, I should know all this, my husband's an electrical
11 contractor.

12 A Really?

13 Q Oh, yeah.

14 A All right.

15 Q Master. So but I'm not quite there.

16 A No problem.

17 Q Okay. So this says once those are replaced, after you
18 replaced the four, we will retest and update this paperwork.

19 So was the retesting additional cost, or was it part of your
20 original contract?

21 A That would have been -- retesting would have been included
22 in the -- like, let's say, in this case there's only -- out of all the wires in
23 that house, only four of them had a problem. So whatever price I gave
24 somebody for replacing those four wires, I would have probably thrown
25 in the testing as part of the thing. Because we knew we would have had

1 to do it.

2 Q Okay. And that's pretty good, isn't it, that only four --

3 A Yes.

4 Q -- were bad?

5 So then I'm going to have you go to Exhibit 89. And this is --

6 there's three pages, it's 117, it's Bates stamped on the bottom, DVC117

7 to 119.

8 Is this the actual test results that indicate where the four wires

9 failed?

10 A Yes.

11 Q Okay. So where did the wires fail? Do you know?

12 A No.

13 Q Okay. Because this doesn't really say, it just says all the ones

14 the circuits that are okay, correct?

15 A Well, it says, over on the far right-hand side, on the first

16 page, it says fail.

17 Q Okay. So on the first page DVC117, the wine room, the wine

18 lights and the garage lights, it says okay, but then slash failed. So the

19 garage lights were failed?

20 A The wiring.

21 Q Okay. So I'm going to ask you a question about that,

22 because was there any water damage in the garage?

23 A I don't know.

24 Q Okay. Because this all --

25 A I see where you're going with that. So the garage lights, that

1 wire, comes from a spot outside the garage. It might go all the way
2 through the house to the garage. So all we're saying is that the wire that
3 goes to that garage failed. Where it failed, we don't know.

4 In other words, when we're doing the test, we don't know
5 where it failed. We know that piece of wire going from Point A to Point B
6 needs to be replaced.

7 Q Okay. But garage lights -- and you can correct me, I'm just
8 asking the question -- so you're saying the wire that is making the garage
9 lights turn on and off, somewhere failed.

10 A Well, when you say turn it on and off, you're talking about
11 the switch, which would be in the garage.

12 Q Yeah, is this the switch?

13 A This would be from the circuit breaker panel.

14 Q From the circuit breaker panel?

15 A Yes, where it says the circuit number in there, 246, blah, blah,
16 blah --

17 Q Yes.

18 A -- that's coming from the subpanel.

19 Q So where was it? Do you know where the subpanel was in
20 this house? Because I'm assuming there were quite a few panels.

21 A Yeah, there was a few, yeah --

22 Q It's a large house.

23 A -- . But I don't remember where it was coming from.

24 Q Okay. But -- and the reason I'm asking you this -- this was a
25 rebuild related to water intrusion on the interior of the house. So this

1 probably wasn't related to that water intrusion, if it was in the house,
2 correct?

3 MR. STORY: Objection, Your Honor. Misstates testimony.

4 MS. HURTIK: I'm asking a question.

5 THE COURT: You just recharacterized testimony.

6 MS. HURTIK: Well, I'll --

7 THE COURT: So rephrase.

8 MS. HURTIK: I'll rephrase that.

9 BY MS. HURTIK:

10 Q So let's go back. So this job started out as a reconstruction
11 because there was a lot of flood in the house, in the main house. So this
12 particular item is garage lights. So that's -- would that have been
13 related? Can you tell me that it was related to the water intrusion in the
14 house?

15 A No.

16 Q Okay. Then I see the next -- on the next page, DVC118, down
17 towards the bottom, the third one up, it says laundry GFI and it was the
18 thousand volts fail.

19 A Right.

20 Q So that was in the interior and so you had to replace wires
21 for the laundry room. So that would have been related, correct?

22 A I really can't say. I can't speak to what was damaged by the
23 water and what wasn't. I don't know.

24 Q Okay. And then I'm just looking, because you said four, and
25 I'm trying to find any other fails on this --

1 A Yeah. I was looking at the same thing. I don't know --
2 Q It doesn't say, right?
3 A -- what happened on that. Yeah.
4 Q Okay. So you can't testify where the other fails were because
5 it isn't in here?
6 A Well, you know what it might have been, the wiring for the
7 laundry room GFI as an example, could be two wires going in two
8 directions, but we're just zeroing in on that.
9 Q Okay. So then let's go -- we're just kind of going to go in
10 order, Exhibit 90. And now this is circled, and it says change order 2,
11 and this is actually October 14, 2014, so that's pretty early on when you
12 were beginning the job, correct?
13 A Yes.
14 Q Okay. And this is low voltage wire check and it was a step by
15 step breakdown on how the job needs to be done to be able to call this
16 wiring out own. So it also says, then any low voltage contractor data pH
17 TV camera lighting control security, et cetera, can come in and be sure
18 the wiring backbone is ready to use and also have a plan to know where
19 all the wiring goes.
20 So did you ever have any discussions with the contractor
21 that would have done the security, the other low voltage items?
22 A Maybe a little bit of interaction, but nothing major.
23 Q Do you recall who that was?
24 A I think it was Eagle Century.
25 Q And do you recall who you would have spoken with?

1 A No.

2 Q Okay. So would that be pretty important that you speak to
3 them and try to coordinate a little bit so they knew where things were?

4 A Not necessarily, no. Our number one thing was just to be
5 able to say, hey, whoever you have come in and, you know, hang that TV
6 knows if he has a problem with that TV it's not the wiring.

7 Q Okay.

8 A And basically you just say the house is good, go for it.

9 Q Okay. So this says there are approximately 400 wires to
10 certify, I figure about three weeks to do this, and this total is \$13,750. So
11 that's a change order on top of what your original low voltage amount
12 would have been, would that be correct?

13 A No, this looks like the low voltage contract.

14 Q This is the actual low voltage contract?

15 A Yeah. This looks like -- Yeah, I mean, this is like what I was
16 talking about, you know, when I said like two weeks' worth of work.

17 Q Okay.

18 A You know, this would be the low voltage.

19 Q Okay.

20 A And they have it, you know, somebody marked that change
21 order 2, I don't know about change orders or anything like that. All I
22 know is that they asked us to give them a price on something, so here it
23 is.

24 Q Okay. So this is the low voltage contract, it's \$13,750, and
25 then the one that I previously showed you was \$22,494, that was for --

1 those were your two scopes, correct?

2 A Yeah, the big ones.

3 Q The big ones. Okay. And that was before any change orders,
4 despite what this says?

5 A Yeah.

6 Q Okay. That's fine. Just give me a minute, because I want to
7 make sure --

8 A Sure.

9 Q -- I don't --

10 A I'm comfortable.

11 Q -- confuse myself. Okay. So at some point there started
12 being some change orders, correct?

13 A Yes.

14 Q And who --how did those come about? Was somebody
15 telling you there needed to be something additional done, or did you
16 discover that something needed to be done or added?

17 A Some like a combination of both. Like on one of the change
18 orders that I looked at it said something about a pocket door. So
19 obviously, not remembering, but the general gist of the thing would be
20 somebody says, okay, we're not going to have this standard swinging
21 door with hinges, we're going to put a pocket door in. So that means
22 there's some electrical that might be in the way that needs to be moved.
23 Okay? So normally that's what we write up a change order.

24 Q Okay. So you recall there were some changes because there
25 were some design changes?

1 A Yes.

2 Q Okay. Did you ever speak to the designer on the project?

3 A Not to my recollection. I don't remember anything about a

4 designer.

5 Q Okay.

6 A But I could be wrong.

7 Q Okay. So hold on a minute. Okay. So I'm going to have you

8 go to Exhibit 60.

9 A Okay.

10 Q Okay. So this one is Bates stamped DVC82, and it is an

11 invoice from Desert Home Electric, and it says performed certification

12 test. And the invoice is for \$7,950, and it was performed October 21st it

13 was invoiced, 2014, correct?

14 A It was performed when?

15 Q It was not performed, but it was invoiced October 21st.

16 A Yes.

17 Q Okay. Do you recall if you got paid for that?

18 A Well, my -- as far as I know, we got paid for everything.

19 Q Okay. So if you go to Exhibit 62, we're going to go back to

20 that exhibit you have, but go to -- instead turn to Exhibit 63.

21 A Okay.

22 Q Now, this is an invoice from your company and its dated

23 December 5th, 2014, and this one says low voltage wire check, and it

24 says proper spilling due 50 percent in the description area and it says

25 \$6,875; is that correct?

1 A Yes.

2 Q Okay. And that matches, kind of, what the contract had said
3 that we showed you previously, that it was going to be \$13,750?

4 A Yes.

5 Q Okay. Then, if you go to Exhibit 62.

6 A Okay.

7 Q This is a check from Desert Valley Contracting made out to
8 Desert Home Electric on December 19th, 2014, and this is in the amount
9 of \$6,875; is that correct?

10 A Yes.

11 Q So you were paid for your share initial 50 percent for the low
12 voltage from DVC, correct?

13 A Yes.

14 Q Okay. And then if you go to Exhibit 58 --

15 A Okay.

16 Q -- this is the check that is -- well, it's there's a couple of
17 things on this. There's the scope of work at the bottom of this page, the
18 DVC 80, but at the top is a copy of a check and I can't tell the date at the
19 top, it was in 2014, but it almost looks like it says -- I'm not sure --
20 December, it's December of 2014, I think, and they transposed the
21 numbers. I'm not really sure.

22 But it says \$7,950 payable to Desert Home Electric, correct?

23 A Yes.

24 Q Okay. So now, if you go back to Exhibit No. 60 -

25 A Okay.

1 Q -- the invoice for your certification was \$7,950 that you did in
2 October. So that was paid in full by Desert Valley as well, correct?

3 A Yes.

4 Q Okay. So you were initially in the beginning, you were
5 getting paid by Desert Valley, correct?

6 A Yes.

7 Q Okay. Now if you go to Exhibit 54.

8 A Okay.

9 Q Okay. This is an invoice from Desert Home Electric and this
10 is for completed high voltage repairs, per attached PO, it's only the PO is
11 not attached, but it actually it does have this invoice and it says \$1,250; is
12 that correct?

13 A Yes.

14 Q And this was In December of 2014.

15 A Yes.

16 Q So if you go to Exhibit 53 -- it's just right before it.

17 A Okay.

18 Q This is a invoice, AP invoice history, but it identifies a check
19 number in February 18th, 2015 and this is from Desert Valley Contracting
20 in the amount of \$1,250. Do you believe you were paid for this invoice
21 by DVC?

22 A Yeah, you know, I would say, yes; but I don't remember each
23 individual invoice and I don't know when we started getting paid from
24 the owner.

25 Q Okay. So let's go to Exhibit 55.

1 A Okay. There you go.

2 Q So this is conditional waiver and release upon final payment

3 and it's in the amount of \$1,250, December 16, 2014. So does this --

4 A Yes.

5 Q -- refresh you?

6 A Uh-huh, yep.

7 Q So you were paid for that by DVC as well?

8 A Uh-huh.

9 Q And is that your wife that would have signed that?

10 A Yes.

11 Q Okay. So I'm going to also, while we're just in this area, go

12 to Exhibit 52.

13 A Okay.

14 Q Okay. So this is a check to Desert Home Electric and it's for

15 an invoice in June of 2015, and at the top in the center it says, the date of

16 the check was 7/9/2015 and it shows \$3,280. And this is for an invoice

17 512168. So you were still being paid by Desert Valley in 2015, correct?

18 A Looks like it.

19 Q So you weren't really having problems with receiving

20 payments from Desert Valley, were you?

21 A It was like pulling teeth --

22 Q Well, you were getting paid every month.

23 A -- to be honest with you.

24 THE COURT: Well, hold on. Just because you don't like the

25 start of his answer, don't cut him off.

1 MS. HURTIK: Okay. Sorry.

2 THE WITNESS: It was a challenge, but we were getting paid.

3 BY MS. HURTIK:

4 Q You were getting paid. And when you say it was a challenge,
5 it seems like when you're looking at these checks, they're all within a
6 month of being invoiced, would that be correct?

7 A I couldn't say to that unless we went through all of them. . I
8 just know I personally take care of the collections.

9 Q Okay.

10 A And there were call, after call, after call.

11 Q Well, did you understand that there were -- were there any
12 conversations with anybody from Desert Valley telling you that they
13 were having issues with getting funds from Mr. Inose?

14 A I don't remember that, no.

15 Q No? You're a contractor, do you normally a big job like this?

16 A Well, for a period of time.

17 Q For a period of time.

18 A Yeah.

19 Q Okay. And you don't generally -- do you subcontract out any
20 of your work?

21 A No.

22 Q Okay. So you're usually not the person that if you're under a
23 general, you're not having to carry the job, correct?

24 A Well, even though we're billing the general, you know,
25 sometimes we got to wait, you know, 45 days to get paid. So you could

1 say we're carrying the job during that period of time.

2 And you know, in this case right here, there were so many
3 change orders, and so many things going on that my whole position was
4 I don't want to get stretched out on these change orders. So it's like you
5 want me to go back and do more work, I need to get paid.

6 Q Right. And because you, as a contractor, you do want to be
7 paid because you know that if it gets stretched out it's going to be harder
8 to collect, right?

9 A Right, Uh-huh.

10 Q Okay. So -- okay. Give me just one second because I'm
11 going to try to wrap you up here. Okay?

12 Okay. So let's have you go to Exhibit 887. Just tell me when
13 you're there.

14 A Okay.

15 Q Okay. So this is dated 12/24/2019, it says changes per Inose.

16 A What was that date?

17 Q 12/24 -- well, it may be 29, it's up at the top, 2014. Are you on
18 DVC87?

19 A No.

20 MR. BOSCHKE: Neither am I.

21 BY MS. HURTIK:

22 Q Exhibit 65.

23 A Okay.

24 Q What did I tell you?

25 A 87.

1 Q Oh, I'm sorry. You know what I did, I transposed the B
2 numbers, sorry.

3 A That's fine. Exhibit 65?

4 Q Exhibit 65. No wonder you're all looking confused.

5 MR. BOSCHEE: We're all looking at Exhibit 87 like uh-huh.

6 MS. HURTIK: It's okay. I haven't even been drinking. So
7 anyway -- okay.

8 BY MS. HURTIK:

9 Q This is dated 12/24/14, is this a change order from your
10 original?

11 A Yes.

12 Q And is this a change from the low voltage -- did you specify
13 low voltage versus the other contract, the high?

14 A No, this would be -- but this would be high voltage. You
15 know, I probably should have put that on there, but it's obvious that it's
16 high voltage.

17 Q Obvious for you.

18 A Right. Uh-huh.

19 Q Okay. All right. And so this is the total was \$2,605, correct?

20 A Yes.

21 Q And it says it was approved and accepted by Daniel Merritt,
22 correct?

23 A Right.

24 Q So did the side on the side of this, do you see that
25 handwriting where it says remove/nose needs to pay?

1 A Yes.

2 Q Is that your handwriting?

3 A No.

4 Q So do you know who wrote up this change order?

5 A The change order with everything listed, that's me.

6 Q Okay. Because, you know, I can't --

7 A My little signature on the bottom, Steve.

8 Q Yep, and I see that. Let me try to get this kind of so you can

9 read, but when you're looking on that, the remove and Inose needs to

10 pay, so you're saying that you don't believe that your company wrote

11 that?

12 A I know we didn't.

13 Q Okay. So do you know who instructed you -- did you give

14 this to Desert Valley or did they instruct you to do this, somebody

15 instruct you to do this?

16 A Well, the starting point was on the job, somebody instructed

17 us that this is what's going to happen and give us a price on it.

18 Q Okay. So this is when the wine chiller is added. It says

19 wine -- in the middle of this it says wine chiller added.

20 A Yes. I mean there's multiple -- you know, we're doing

21 something in the dining room, the powder bath by the kitchen, the

22 powder bath by the gym , and the wine room.

23 Q Okay. And so I have a question -- maybe you know this and

24 maybe you don't --it says wine chiller needs to be added. Was there a

25 wine chiller or do you know whether there was a wine chiller originally in

1 there?

2 A No.

3 Q Okay. So you don't know whether this was something that
4 was added?

5 A Well, it was definitely something that was added, but
6 whether there was a wine chiller there originally --

7 Q That's the question.

8 A -- I don't know.

9 Q All right. And this also you kind of talked about the pocket
10 doors.

11 A Right.

12 Q This also says relocate miscellaneous boxes due to pocket
13 door. Do you know whether that pocket door was a change that wasn't
14 previously original?

15 A Right. It was a change. Because if the pocket door was
16 there, there wouldn't be any -- if the pocket door was there originally,
17 there wouldn't be any wiring in the way.

18 Q Okay. So that was a difference that the home owner wanted
19 to change potentially. Okay. We're going to go to -- let me just figure
20 out which binder this exhibit's in.

21 Okay. I want you to go back to Volume 8.

22 A Are we done with this one?

23 Q For now, yeah.

24 A So I might use it again.

25 Q You might, but I'll try to -- like I said, I'm going to try to finish

1 you up here.

2 A Okay.

3 Q Okay. So let's go to Exhibit 557.

4 A Okay.

5 Q And I want you to go to, it's Bates stamped IN-LO11.

6 A Okay.

7 Q And this says -- it's an unconditional waiver and release and
8 progress payments. It's general, isn't it? It doesn't say anything about
9 Desert -- I want you to look at it. Is your name, your company's name in
10 this waiver and release?

11 A No.

12 Q Okay. And you were asked a question earlier, it says no
13 changes as of 7/3/2015, correct? Do you recall that?

14 A Yes.

15 Q Does that indicate to you that no changes were ever made?
16 No change orders were ever made?

17 A Well, if I'm just reading this as it is, somebody's saying that
18 nothing changed with the original contract as of 7/3.

19 Q It doesn't say original contract, does it?

20 A Well, change orders to me would be over and above the
21 original contract. So you got the original contract, so there's a lot of jobs
22 that would go on that you got the original contract, you know, \$20,000,
23 and we go from Point A to Point Z with no changes.

24 Q Okay. Throughout the project, as trades finished certain
25 things, even you on certain portions of your work that were separate on

1 conditional waivers and releases and progress payments that were
2 entered into, correct?

3 A Yes.

4 Q Okay. So there are several of these throughout the life of a
5 project, correct?

6 A Right, um-hum.

7 Q Okay. So that says no change orders as of 7/3/2015, it
8 doesn't say there were no change orders throughout the job, does it?

9 A Right.

10 Q Okay.

11 A Correct.

12 Q Because, obviously, there was. You had change orders,
13 correct?

14 A Uh-huh.

15 Q Okay. And Desert Valley was approving and signing those
16 change orders, weren't they?

17 A Yes.

18 Q Okay. But not all of them? Were all of your change orders
19 approved?

20 A Well, you know, I think all of them were approved. I don't
21 think we have anything go in there that wasn't necessary.

22 Q Okay. But do you know that for sure, that there were?

23 A No, I don't know that for sure, but I'll tell you right now, you
24 know, the stuff that we have change orders on were almost things that
25 weren't optional.

1 In other words, the pocket doors there, it's framed in, it's
2 going to be put in, we need to move the wiring out of the way, give them
3 a price. They're not going to come back -- well, I mean they could, but
4 they're not going to come back and say, oh, never mind, we're going to
5 rip that framing out that we just did for the pocket door and leave it as is.

6 So all of the change orders were things that were basically
7 needed, not optional.

8 Q Right. But there were changes happening on the project --
9 the pocket door you testified, wasn't original, correct?

10 A Right.

11 Q So there were change orders based on change orders based
12 on changes in the construction, correct?

13 A Right. But the question I thought was were all my change
14 orders approved. In other words, did I send a change order off and they
15 rejected it or said we're not doing it. I don't remember anything like that
16 happening.

17 Q Okay. Were all your change orders signed by DVC?

18 A Off the top of my head I would say yes, because this was
19 definitely a job that, you know, I don't have any relationship with that
20 company, so we don't want to do anything unless it's signed.

21 Q Okay. And so when you talk about relationships, have you
22 ever done any jobs after this job with Mr. Inose?

23 A No.

24 Q Now, at some time you said that you were, you knew that
25 Desert Valley was terminated from the project, correct?

1 A Yes.

2 Q And at that time, that's the first time you started dealing
3 directly with Mr. Inose?

4 A Yes.

5 Q And were you dealing with -- you don't recall Rob Ramirez; is
6 that correct?

7 A You know, now that you keep saying that name, I think I do
8 remember that name.

9 Q Okay. Do you know who he was?

10 A I think -- was that the owner's representative?

11 Q I think so.

12 A Uh-huh.

13 Q So did he contact you after DVC left the job or did Mr. Inose?
14 If you can --

15 A Mr. Inose.

16 Q All right. So if you can go back to the binder that is Volume
17 8, you can kind of --

18 A Yeah, I got it.

19 Q If you want to put the other one back, you can if it makes it
20 easier for you?

21 A Yep, I'm good.

22 Q Okay. So if you can go to Exhibit 589.

23 A Okay.

24 Q Okay. Now, these are a series of checks and they go, it's
25 from Bates stamps that are IN-LO 435 to 438, and these were paid to

1 Desert Home Electric by Mr. Inose.

2 Q Did you collect these checks?

3 A Well, I know I got some checks from him, but I mean, I can't

4 say I collected this check. I don't --

5 Q Okay. So the first one is for \$8,997.60, and it gives an invoice

6 number 15209.

7 A Two invoices, right?

8 Q Yeah. Well, I can't -- 15101 and 15209.

9 A Okay.

10 Q And it says final. So that was just for two invoices, were you

11 complete with your work in December 15, 2015?

12 A I don't remember.

13 Q Okay. Have you been paid in full for this job?

14 A Yes.

15 Q And did you take any discounts on this job after Desert

16 Valley Contracting, Inc. got it?

17 A I don't remember.

18 Q Okay. And do you remember receiving any correspondence

19 from Desert Valley Contracting saying hold all work because we're

20 having some -- we need everybody to hold all work right now?

21 A Well, I think I saw that one letter that was in here previously.

22 That's the only thing I -- just reading that letter I don't remember it.

23 Q Okay. And your contract was with Desert Valley, right?

24 A Yes.

25 Q And when a general contractor -- and this is a general

1 question. When a general contractor tells you to stop when you're on a
2 job, do you stop or do you keep on going?

3 A No, we would stop.

4 Q Because what does that indicate to you?

5 A That there's a problem with the money.

6 Q Did anybody tell you there was a problem with the money?

7 A I don't remember.

8 Q Okay.

9 A It might have been assumed.

10 Q Okay. So in this same exhibit there is a check that is on
11 Bates stamped IN-LO438, and that date appears to be 8/16/2016. Were
12 you called back to do anything after you were completed with your work
13 several months later?

14 A Maybe.

15 Q Okay. The reason I'm asking you is these checks are -- first
16 checks are December and January of 2016, but this is almost seven
17 months later.

18 A Uh-huh. You know, I think we had some light fixtures --

19 Q Okay.

20 A --that we still needed to hang that hadn't come in yet.

21 MS. HURTIK: Okay. Just give me one second. Okay. I don't
22 have any further questions at this time.

23 REDIRECT EXAMINATION

24 BY MR. STORY:

25 Q All right. So I just have a couple of things for you real quick.

1 So we talked about the wire testing from the wire that led,
2 you said you didn't recall which one that led from a junction box all the
3 way to the garage. Do you recall that? There was one of the wires that
4 failed.

5 A Yes.

6 Q And I believe Counsel asked you if you could tell her
7 unequivocally that it was related to the flood, and you said you could
8 not. Do you recall that?

9 A Yes.

10 Q Can you tell us unequivocally that it was not related to the
11 flood?

12 A No.

13 Q You're uncertain, correct?

14 A Right, uh-huh.

15 Q Okay. And there was -- you said that when you received the
16 letter that indicated to you that there were problems with -- there were
17 likely problems with money, that's typically the case --

18 A Yes.

19 Q -- when you got the letter to cease work.

20 Did you have any problems with getting paid by Mr. Inose?

21 A No.

22 Q Okay. And you did say that the work that they performed,
23 even the work that was included in the change orders, in your opinion,
24 was work that was necessary, even if it was because a change in another
25 trade was made, that it was work that was necessary for you to complete

1 the scope.

2 A Yes.

3 Q Okay. Just things you learned later that needed to
4 additionally be done?

5 A Uh-huh.

6 Q Okay.

7 MS. HURTIK: Objection. Mischaracterizes his testimony.

8 THE COURT: Overruled.

9 BY MR. STORY:

10 Q Okay. To the best of your memory, all of the change orders
11 that Desert Home Electric performed prior to Desert Valley Contracting
12 leaving the project were approved by Desert Valley?

13 A Yes.

14 MR. STORY: Okay. Nothing further, Your Honor.

15 THE COURT: Thank you, sir.

16 THE WITNESS: All right. That wasn't too painful.

17 MR. BOSCHEE: Thanks for coming in.

18 MS. HURTIK: Thank you.

19 MR. BOSCHEE: Well, since I sent the other witness out to
20 lunch, I guess we have to -- now's a good time to break.

21 THE COURT: Yes. Come back at 1:30.

22 MR. BOSCHEE: Okay.

23 [Recess at 12:17 p.m., recommencing at 1:35 p.m.]

24 THE COURT: Who's next?

25 MR. BOSCHEE: We've got our witness here.

1 THE COURT: Okay.

2 MR. STORY: Yeah. The Defense calls Miles Francis.

3 THE MARSHAL: Please stand and face the clerk.

4 THE CLERK: Please raise your right hand.

5 MILES FRANCIS, DEFENDANT'S WITNESS, SWORN

6 THE CLERK: For the record please state and spell your first
7 and last name.

8 THE WITNESS: Miles Francis, M-I-L-E-S F-R-A-N-C-I-S.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. STORY:

12 Q Miles, thanks for coming out today. I mean you outside. My
13 name is Sean Story. I represent Eugene Inose and IN-LO Properties with
14 regard to this dispute that we're in today.

15 A Okay.

16 Q And you understand you're here as a result of your
17 association with Summit Tile and Stone?

18 A Yes.

19 Q Okay. And what is your association with Summit Title and
20 Stone?

21 A I'm one of the parties.

22 Q Okay. So you're one of the owners in the company?

23 A I am.

24 Q Okay.

25 A That is correct.

1 Q And how long have you been associated with Summit Tile
2 and Stone?

3 A For a little over four years.

4 Q Okay. And for purposes of here today if I say Summit, unless
5 I specify, otherwise can we just agree that we're --

6 A Yeah.

7 Q -- talking about a company? Okay. And so were you
8 associated with Summit in 2014 and 2015?

9 A In 2015 I came on.

10 Q Okay, okay. And I understand here, I'll submit to you it's
11 admitted into evidence, a contract that's dated in May of 2015 between
12 Summit and a company called Desert Valley contracting.

13 A Uh-huh.

14 Q Were you associated with Summit by that time?

15 A Yes, I was.

16 Q Okay, okay. And in the time you've been associated with
17 Summit, does Summit have experience with custom homes?

18 A Yes.

19 Q Okay. And are you familiar with the residential property
20 located at 587 Saint Croix Street in Henderson?

21 A I am.

22 Q Okay. And so if I call that the property we can understand
23 that I'm talking about that address unless I specify otherwise; is that fair?

24 A Yes.

25 Q Okay. Now would you describe that property as a custom

1 home?

2 A Yes.

3 Q Okay. And what -- and Summit was retained to do work at
4 that property in or around the time I described May of 2015; is that
5 correct?

6 A That is correct.

7 Q Okay. What type of work was Summit --

8 A Tile and stone work.

9 Q Okay. And I mentioned the contract being with Desert Valley
10 Contracting. Are you familiar with Desert Valley Contracting?

11 A I am.

12 Q Okay. And had Summit to your knowledge worked with
13 Dessert Valley prior to this project?

14 A I don't believe so.

15 Q Okay. And are you familiar with Eugene Inose?

16 A I am.

17 Q Okay. And but your understanding he's the owner of the
18 home that this project took place at?

19 A Yes.

20 Q Okay. Now during the course of the work, now I understand
21 sometime during the project that DVC, Desert Valley left the job; was no
22 longer associated with it. So for our purposes here until we get there I'm
23 just talking about periods prior to that, okay?

24 A Okay.

25 Q So in that period prior to that who did Summit takes its

1 direction from?

2 A From Desert Valley.

3 Q Okay. And do you recall any specific individuals with
4 Summit that --

5 A I do not.

6 Q Okay. Does the name Daniel Merritt ring a bell?

7 A No.

8 Q Okay. But you generally recall that there were
9 representatives of Desert Valley that were giving directions --

10 A Yes.

11 Q -- to Summit?

12 A Yes.

13 Q Okay. To your knowledge prior to Desert Valley leaving the
14 project, did Summit ever take direction directly from Eugene Inose?

15 A Not to my knowledge.

16 Q Okay. And in initially being involved with the project, did
17 Summit provide an estimate?

18 A Yes.

19 Q Okay. And how was the information gathered to provide that
20 estimate?

21 A I believe it was a field measure.

22 Q Okay. When you say field measure, can you expand on that
23 a little bit?

24 A Go to the house and physically measure every area that's
25 going to need work, our work.

1 Q Okay. And so is that done in conjunction with any other
2 parties or companies?

3 A You know, Gordy Serrette [phonetic], my old business
4 partner, was the one that performed all that.

5 Q Okay. And was this done at all with Desert Valley's input or
6 would they just give you, you know, this is what needs to be done and
7 you take measurements?

8 A I assume Desert Valley was part of that process.

9 Q Okay. But you weren't there for that?

10 A I was not there, no.

11 Q Okay. Okay. During the course of this project do you recall if
12 there were any -- or let's start with -- strike that. Let's start with this.
13 What is a change order?

14 A A change order is something that wasn't on the original
15 contract that's beyond -- above and beyond what we had originally
16 talked about.

17 Q Okay. And are change orders typically in writing?

18 A Yes, they are.

19 Q Okay. And the process of getting a change order approved,
20 does that need to typically be approved by someone else?

21 A Yes.

22 Q Okay. And in this instance who would that have been?

23 A The contractor or the home owner.

24 Q Okay. So either Desert Valley or Mr. Inose would have had to
25 have approve a change order?

1 A That is correct.

2 Q Okay. And what is the reason for wanting to obtain a signed
3 written change order?

4 A Just to protect ourselves that the work is going to be
5 performed and that we're going to get paid at the end of the work.

6 Q Okay. So a signed written change order is essentially your
7 basis to get paid for work done in additional -- in addition to the original
8 scope?

9 A That is correct.

10 Q Okay. Now do you know if Summit had any change orders
11 on this particular project?

12 A You know, I'm not positive. I believe there were some
13 change orders.

14 Q Okay.

15 A And typically on a house that size there are change orders.

16 Q Okay. And to your knowledge were there any change orders
17 that were not signed or approved that Summit still did the work?

18 A Not to my knowledge, no.

19 Q Okay. Okay. There's a series of binders behind you.

20 A Uh-huh.

21 Q They're labeled in volumes. You'll see them on the shelf.
22 Actually, two of them are in front of you from --

23 A Okay.

24 Q -- before you were here with us. I'm going to ask you to pull
25 volume number 8. It may be one of the two in front of you.

1 A Okay.

2 Q Okay. And give me one sec here to find a document to direct
3 you to. If you can open this to Exhibit 568, you'll see the tabs there on
4 the right.

5 A Okay.

6 Q Okay. And on the very bottom right there's a stamped
7 number and it should say 60; do you see that?

8 A Yes.

9 Q Okay. So right here in the middle if you'll see begin
10 forwarded message right below that. I'll submit to you that this is
11 already admitted into evidence. This is an email and you'll see here that
12 in the from line that it's from Daniel Merritt and the -- after the ad it says
13 Desert Valley Co., do you see that?

14 A Uh-huh.

15 Q Okay. So I'm going to submit to you that this is an email
16 submitted by Desert Valley regarding some of the differences in costs
17 from the original to what the actual cost ended up being.

18 A Okay.

19 Q And if you could turn for me to the second page here, 61.

20 A Okay.

21 Q And if you'll see there right towards the middle it actually
22 mentioned, you referenced Gordy was your previous partner.

23 A Yes.

24 Q You see there it starts with "Gordy" --

25 A Uh-huh.

1 Q -- and it has a cost to install and cost for remainder of the
2 project. And then if you see right below there it says "cost total for
3 Gordy", gives a total and then describes what was in the estimate and
4 provides a difference.

5 A Uh-huh.

6 Q Based on this understanding to the extent these numbers,
7 and I understand your invoices may be different or your change orders,
8 but to the extent these numbers are different, would -- in your opinion
9 would that represent that there were change orders on this project --

10 A Yes.

11 Q -- as to why the actual cost would be different? Okay.

12 A Yes.

13 Q Okay. And while DVC, Desert Valley was the general
14 contractor on the property in that same time period, did Summit
15 experience any scheduling issues?

16 A Yeah. There were definitely some scheduling issues. We
17 weren't getting any direction.

18 Q Okay. And can you elaborate on that? What do you mean by
19 that?

20 A You know, go to the job and nobody -- no supervision --

21 Q Okay.

22 A -- for our workers. You know, being told what areas to start,
23 you know, where to begin; where to end.

24 Q Okay. So did Summit have its own supervisor of its own
25 work to be done, but and my understanding there was no one above

1 them to sort of dictate --

2 A Right.

3 Q -- what portions were necessary for the product as a whole?

4 A Right.

5 Q Okay.

6 A That is correct.

7 Q And this was pretty regular?

8 A Yes. At least with my dealings.

9 Q Okay.

10 A What Gordy was dealing with I'm not sure --

11 Q Understood.

12 A -- on that one.

13 Q Understood. Were there any other issues with the -- I had

14 mentioned scheduling and you brought up lack of supervision. Were

15 there any other issues with the supervision? I mean, I imagine lack

16 thereof is probably --

17 A Yeah. There were definitely. We just -- we were never being

18 told, do this area first, then go here, then go here. That's normally what

19 takes place on a job site.

20 Q Okay. So this lack of supervision and this lack of being told

21 what areas to do at certain times is not typical?

22 A No. Not for --

23 Q Okay.

24 A -- that size of a home.

25 Q Okay. In your opinion did this result in any cost over runs for

1 you?

2 A No. We continued to work. We just did it in the order that
3 we thought it needed to be done.

4 Q Okay. Now I talked about a period of time before Desert
5 Valley left the project.

6 A Uh-huh.

7 Q Now let's go to the time when they actually did. Do you --
8 would you consider the project complete at the time that Desert Valley
9 left the project?

10 A No.

11 Q Okay. So there was still work to be done by Summit?

12 A Yes.

13 Q Okay. And still work to be done as a whole on the house?

14 A Yes.

15 Q Okay. And was Summit paid in full at this time for all the
16 work that it had done?

17 A To that point I don't believe so, no.

18 Q Okay. If you can turn for me to the exhibit right before that,
19 Number 567 please. Go and take a look at that for a second. Let me
20 know when you're ready to talk about it.

21 A Okay.

22 Q Now have you seen this before?

23 A I don't believe so.

24 Q Okay. And you see there on the to line. Can you read that --
25 what that says for me?

1 A "To all subcontractors".

2 Q Okay. So is it possible this was sent to you and you either
3 don't recall or just never actually saw it?

4 A Yeah. Or possibly it went to Gordy.

5 Q Okay. So after Desert Valley left the project, did Summit
6 perform work at the property after that?

7 A Yes.

8 Q Okay. And I believe you said at the time that to the best of
9 your knowledge that you were not paid in -- Summit was not paid in full
10 at the time that Desert Valley left, correct?

11 A That is correct.

12 Q Okay. Was Summit paid after that for any work done?

13 A Yeah. After we completed --

14 Q Okay.

15 A -- all of the work.

16 Q And was that by Mr. Inose directly?

17 A It was.

18 Q Okay. And so the work was ultimately completed in terms of
19 Summit at the property --

20 A Yes.

21 Q -- the job?

22 A Yes.

23 Q Okay. And was Summit paid for the work that it completed,
24 the rest of what it was owed --

25 A Yes.

1 Q -- by the end?

2 A Yes.

3 Q Okay. All right.

4 MR. STORY: I'll pass the witness. Thank you.

5 CROSS-EXAMINATION

6 BY MS. HURTIK:

7 Q So we're going to keep some of the binders you have up
8 there already. And I'm going to have you go through a few things, okay?

9 A Okay.

10 Q So you -- I just have a few questions before we do that
11 though. So you first came on with Summit in 20 -- May -- approximately
12 May of 2015?

13 A I started with Summit on January 1 --

14 Q Okay.

15 A -- 2015.

16 Q January 1. And where had you been previously before that?

17 A I had owned my own contracting company, Palisade Marble
18 and Granite.

19 Q Okay. So when you came on the -- we're going to call it the
20 Inose house or the project.

21 A Uh-huh.

22 Q So when you were -- when you first came in had the contract
23 already been signed between DVC or Desert Valley Contracting and
24 Summit?

25 A Yes. When I first started with Summit?

1 Q Uh-huh.
2 A I don't believe so, no.
3 Q Okay. So you had already been employed and the contract
4 was signed with DVC?
5 A Yes.
6 Q Okay. And you were not involved in walking the project, it
7 was actually your partner?
8 A That is correct.
9 Q Okay.
10 A It was his job.
11 Q It was -- and his name's Gordy?
12 A Serrette.
13 Q Serrette.
14 A Gordon Serrette.
15 Q And Gordon is no longer with Summit anymore?
16 A No, he's not.
17 Q Okay. And when did Gordon leave?
18 A He left at the end of 2015.
19 Q Okay. And so did Gordon see this job through to the end or
20 not?
21 A No.
22 Q Okay. And so did you take over once --
23 A I did.
24 Q And do you know what month you took over?
25 A I do not. I don't remember.

1 Q Okay. So were you actually on site during all of the work
2 once you took over the project or did you have lead installers or --

3 A We had installers that were there.

4 Q Okay. So how often were you on site?

5 A I probably was on site once every week or two during the
6 transition of Gordy leaving.

7 Q Okay. So did you have anything to do with only change
8 orders or the contract as well?

9 A I had really nothing to do with either --

10 Q Okay.

11 A -- of those items.

12 Q So all of those had been completed, signed before you ever
13 were a party to the company, or before you ever were on this project?

14 A No. You know, I don't know about what change orders there
15 were. Gordy had run the job and basically once he left that's when I took
16 it over. My business partner Clayton Maxfield [phonetic] --

17 Q Uh-huh.

18 A -- he knew more about the project than I did. So he had went
19 there a few times, but he had his own things going and I just said well,
20 I'll take it over and I'll finish the job.

21 Q Okay. And are you currently doing any work for Mr. Inose?

22 A No.

23 Q Are you currently doing any work for any companies that Mr.
24 Inose owns?

25 A No.

1 Q And have you done any work for Mr. Inose or any companies
2 he may own, or have a percentage of since the completion of this house?

3 A No.

4 Q So if I was to show you the contract, do you even know what
5 the scope was?

6 A I know basics of the scope. I mean, I definitely looked at the
7 contract, but it wasn't -- I didn't write the contract.

8 Q Okay. And when did you guys -- when you actually took over
9 the job what percentage of your work was actually done?

10 A I would say maybe 50, 60 percent. Just guessing.

11 Q Okay. And just so that I understand. So you took over the
12 job from Gordy. And at that point when you take over somebody else's
13 job what do you do? Kind of go through the process. When you're
14 coming into a project that's 50, 60 percent done, what did you do?

15 A Walked the job, look at what the scope of the work is, try to
16 figure out what areas weren't being modified and what areas we were
17 working on.

18 Q Okay. And was your crew throughout the time period from
19 the beginning of the contract, did you have the same crew out on that
20 job?

21 A No.

22 Q Okay. How much of a turnover did you have that you didn't
23 have the same crew?

24 A We have multiple crews. So guys bounce around from job to
25 job.

1 Q Okay. Do you know who was running this job?
2 A As far as?
3 Q Day to day basis.
4 A You know what, I don't off the top of my head.
5 Q Okay.
6 A No.
7 Q So you wouldn't have had any contact with DVC supervisor
8 on site; would you have?
9 A I -- no. I never had.
10 Q Okay. And you worked day to day. So whoever you had day
11 to day on site, they would have been the contact with DVC, correct?
12 A Yeah. I -- we dealt with someone named Robert and I had
13 originally thought that he was DV employee. And you know, after I was
14 there for a month I find out that no. He works for Mr. Inose.
15 Q Okay. So Mr. Ramirez was directing you on the job?
16 A Yes.
17 Q Okay. And do you know whether he was directing your guys
18 to do change orders after the contract?
19 A I don't know the answer --
20 Q Okay.
21 A -- to that question.
22 Q All right. Okay. So one more minute. So I'm actually going
23 to have you go to -- well, let's do your contract first. So if you can go to -
24 - I'm going to have you go to binder number 2. Actually, wait a minute.
25 Let me make sure I got the right number. Yes. It's binder number 2.

1 And if you can go to Exhibit Number 198. Now this is DVC -- it's bade
2 stamped on the bottom, 324, 325 and 326. And if you go to the last page
3 there's a signature, Daniel Merritt and it says 5/14/2015.

4 A Uh-huh.

5 Q Do you see that? And then on the first page it says Robert --
6 at the top it says April 29th, 2015 RS Design Consulting. And then it
7 says, "Robert, please find below the floor proposal for the Inose
8 residence. The tile for the project will be provided by others". Have you
9 ever seen this document before?

10 A I have.

11 Q Okay. Was this basically if you look through it, your scope of
12 work on the house?

13 A This was the flooring portion.

14 Q Okay. So this flooring portion -- and explain what was
15 exactly your scope of work?

16 A So we did flooring, granite countertops. We did I believe
17 some showers, tile backsplashes.

18 Q Okay. Did you do any work in the wine room?

19 A I believe we did a floor in there.

20 Q Any walls or any countertops?

21 A Possibly, yeah. I'd need to look at that contract.

22 Q Sure. And we'll kind of go through, okay. So this is just the
23 flooring -- excuse me, the flooring?

24 A Yes.

25 Q Okay. And --

1 A Oh, there is kitchen, powder, wall plat. Wall plat just means
2 wall tile.

3 Q Okay.

4 A Like an accent wall.

5 Q Okay. And also on the second page 325 it says, "pull bath
6 wall clad, pull bath shower".

7 A Uh-huh.

8 Q Okay. Was that part of the main house or was it separate
9 from the main house?

10 A It's part of the house.

11 Q But was it a separate -- it wasn't attached to the house, was
12 it?

13 A Honestly I don't know.

14 Q Okay.

15 A I mean, those houses are so big it's -- it all just seems like
16 one area. I don't know if it was a detached pool house.

17 Q Okay. So let me just ask you. The rebuild was being done.
18 Were you aware of why the house was being redone?

19 A Because of a flood.

20 Q Uh-huh.

21 A Yes.

22 Q So were you aware of whether or not the flood actually went
23 into the pool house area?

24 A I do not know that.

25 Q Okay. And you weren't initially in the house until about May

1 of 2015?

2 A I was in later than that because I don't think I came on until
3 October, November --

4 Q Okay.

5 A -- I believe is when I came on. No. The house -- we had been
6 working on the house for a couple of months.

7 Q Okay.

8 A Before I came on.

9 Q And were there any change orders that were made that were
10 given to you that were -- let's strike that. Okay. You had a contract with
11 DVC, correct?

12 A Uh-huh.

13 Q Okay. So after DVC was off of the project did you have any
14 changes that were made by Mr. Inose?

15 A I would need to look at the -- at our file to see that.

16 Q Okay. So hold on one minute because I'm going to have you
17 go to a different binder.

18 A Okay.

19 Q And do you know, because you came on later than the other
20 people, do you know whether Desert Valley had paid Summit any
21 money?

22 A I believe they paid the deposit portion.

23 Q Okay. So I'd like you to -- hold on one minute. Just a
24 second. Go to binder 9.

25 A Okay.

1 Q And if you can go to Exhibit 630. Okay. So there's a series of
2 invoices here. And they go from IN-LO 832 to IN-LO 849 and then at the
3 very end there's on conditional waiver and release, which actually does
4 not appear to belong to you, but it's in here. So IN-LO 849 appears to be
5 -- these all appear to be Summit Tile and Stone invoices with a waiver in
6 between here. Can you just kind of leaf through and make sure that
7 those are all your invoices?

8 A They are --

9 Q Okay.

10 A -- with the exception of 850.

11 Q Okay. So if you go to IN-LO 846, there's an invoice 1503.
12 And this is dated, it says "project labor 11/4/2015". And it lists several
13 areas.

14 A Uh-huh.

15 Q And the amount is \$10,871. Was this a change order?

16 A You know what, I don't know. It doesn't -- it normally would
17 say a change order.

18 Q Okay. So when you have a contract -- and I just want to be
19 clear how you operate.

20 A Uh-huh.

21 Q So you have the contract and you have your scope of work?

22 A Right.

23 Q So as you do the scope do you create an invoice and submit
24 it to the general -- is that generally how you do it?

25 A As the work is completed.

1 Q Okay. So are any invoices produced prior to the work being
2 completed?

3 A Typically no. We don't turn it into an invoice until the work's
4 completed.

5 Q Okay. And this one in particular, it just says up at the top
6 project it says "labor".

7 A Right.

8 Q And it has -- so is this only for labor?

9 A Yes, it is.

10 Q Okay.

11 A No materials.

12 Q Okay. And this says "wine room one wall clad". So but this
13 doesn't indicate when this work was performed, does it?

14 A I would assume that 11/4/2015 is when the work was
15 finished.

16 Q Okay. Because you have the date of 11/4/2015?

17 A That's underneath project --

18 Q Uh-huh.

19 A -- that date.

20 Q Yeah. So then it says at the top the invoice date 12/12/2015.
21 So do you invoice once a month? How do you do that?

22 A No. We invoice, you know, throughout the month. There
23 isn't just a set day that we do invoicing.

24 Q Okay. So let's kind of flip forward. We're going to go a little
25 backwards here. IN-LO 845, there's an invoice 7/8/2015. And this one it

1 just says the main floor and it says "sunken living room" and it's a
2 balance for 10,013.35. It actually has payment credit on it. It says,
3 "balance due zero at this time"; do you see that?

4 A Yeah. Because this is a paid invoice.

5 Q So this is paid 8/13/2015, do you see that?

6 A Yes.

7 Q So was that paid by Desert Valley Contracting?

8 A I don't know.

9 Q Do you even know when Desert Valley Contracting was
10 removed from the job?

11 A No.

12 Q Okay. Then there's -- if you go forward again there's IN-LO
13 844. And again this says main floor. And this is for 19,348.20. And this
14 invoice is dated 6/27/2015.

15 A Uh-huh.

16 Q And it says paid 7/10/2015. So this was an invoice that was
17 paid as well, correct?

18 A Yes.

19 Q Okay. And again, you don't know who paid this invoice?

20 A I do not.

21 Q So okay. We'll go from there. Let's go one more. And it
22 says IN-LO 843. And this one shows invoice 1247 "main floor demo tile
23 at stairwell. Option for antifracture membrane". And it's for 20,971.75.
24 This one also says paid in full, but at the top it says, "paid by DVC
25 30,333.50" and at the bottom there's some handwriting that says, "total

1 paid 50,333.50".

2 A Yeah. I believe that's what that number says at the top too.

3 Q The 50, not 30?

4 A Yeah.

5 Q Okay.

6 A Fifty.

7 Q And I'll go with that. That handwriting's a little hard for me

8 to see. So does that make you -- refresh that maybe that Desert Valley

9 paid you for those invoices?

10 A Yes.

11 Q Okay. So you weren't having a problem -- Desert Valley was

12 paying you, correct?

13 A Yeah.

14 Q Okay.

15 A We got paid on that.

16 Q Okay. So now go to IN-LO 00841. Now this invoice is 1503

17 and this invoice is 10,871. And it also shows a payment of 8,896 with a

18 balance due of 1975. This is dated 12/12/2015. Do you know whether or

19 not DV -- Desert Valley was on site at this point?

20 A I don't believe they were.

21 Q Okay. This doesn't give you any detail -- does this give you

22 enough detail to let you know whether or not this was change orders

23 from the original contract?

24 A I don't know.

25 Q So you can't tell?

1 A I cannot.

2 Q Okay. So then if you go forward the next one is IN-LO 840.

3 And this invoice is 11/20/2015.

4 A Uh-huh.

5 Q Do you know whether or not Desert Valley was still on this

6 project at this time?

7 A I don't believe they were.

8 Q Okay. And this is for the pull bath floor and then a family

9 room alcove tops with mitered edge detail.

10 A Uh-huh.

11 Q Is a mitered edge detail usually an upgrade?

12 A No. That's pretty standard.

13 Q For granite?

14 A For granite, uh-huh.

15 Q Okay. And then a master dry bar.

16 A Uh-huh.

17 Q Do you know whether this was a change order, or there's not

18 enough information to let you know that?

19 A There's not enough information.

20 Q Okay. And then there's another invoice just preceding that,

21 IN-LO 839. And this one's 11/20/2015. And this is removing and

22 replacing tile for the center island and adding tile base at the master bath

23 floor. Was Desert Valley Contracting on the job at that time do you

24 believe?

25 A No.

1 Q Okay. And again, do you know whether this was an upgrade
2 or a change order?

3 A I actually remember this one. This one was -- this was a
4 change order because the people that were working on the island had
5 scratched six pieces of flooring when they installed their cabinet or their
6 base piece. And we had to go back in there and replace pieces that were
7 already finished.

8 Q Do you know who that contractor was?

9 A I don't.

10 Q Okay. Do you know when the scratch happened, what month
11 or anything?

12 A I believe in the month of November.

13 Q Okay. And so since you recall this one and Desert Valley was
14 not on the project anymore --

15 A Uh-huh.

16 Q -- was -- were you speaking to Robert Ramirez at this time?

17 A Yes.

18 Q So he was supervising when this happened and occurred?

19 A Yes, uh-huh.

20 Q So you don't know why there wasn't -- was there charge back
21 or anything to the contractor that scratched it?

22 A I believe that there was. That's what we had had
23 conversation about.

24 Q But you're not sure who that sub was?

25 A I'm not, no.

1 Q Okay. And the conversation you had was with Mr. Ramirez
2 and not Mr. Inose?

3 A That is correct.

4 Q Okay. Now if you go one more forward, IN-LO 838. This one
5 is dated 11/20/2015. And this talks about a master bedroom fireplace,
6 master tub base, kitchen splash. And written across it is "final". Would
7 you have written that?

8 A No. That's not my handwriting.

9 Q Okay. And this is dated 11/20/2015. So was this done after
10 Desert Valley was no longer on the project?

11 A I believe so.

12 Q Okay. And was this an upgrade or anything like that?

13 A I'm not sure.

14 Q Okay. And do you know whether it was a change order?

15 A I do not.

16 Q Okay. When you guys do change orders do you usually write
17 change order on it?

18 A Yeah.

19 Q Okay. So do you know why none of these would have --

20 A This was pretty new with me being on board. And we had
21 just, you know, taken on QuickBooks. That's what this is generated out
22 of.

23 Q Okay.

24 A And yeah. There wasn't a lot of -- we were a new company
25 basically. I mean, the company had been around but I was new to it.

1 Q Okay, all right. So I'm going to ask you and I think the pool
2 bath shower, there's IN-LO 834 if you just go forward again. And this
3 says labor 11/4/2015. Do you believe Desert Valley Contracting was still
4 on the project at that point?

5 A I'm not sure.

6 Q Okay. And you don't know whether that was a change order
7 or not?

8 A I don't.

9 Q Okay. Okay. So just give me a second here. I'm going to put
10 you -- if you could go to binder 6. And if you want to get rid of some
11 those --

12 A Yeah.

13 Q -- that other one it may help you just to put it back because
14 it's going to take me a minute too. So just before I start on some of this,
15 so pretty much anything prior to May of 2015 -- or yeah, 2015, you had
16 not been involved in on this house, correct?

17 A That is correct.

18 Q Okay. And did you continue to talk with your partner about
19 things that were going on with this house just after May or no?

20 A No. We did -- I didn't really come onto this house, I believe it
21 was October. September or October once I found out that Gordy was
22 leaving.

23 Q Okay. So I'm going to have you turn to, it's Exhibit 496.

24 MR. BOSCHEE: You know this binder's wrong.

25 MS. HURTIK: The binder's wrong?

1 MR. BOSCHEE: Yeah. All the binders are -- it's all right.
2 MS. HURTIK: How wrong?
3 MR. BOSCHEE: It's got all the wrong documents. It's got the
4 right front page but it's got all -- it's all right. We'll sort it out.
5 MS. HURTIK: Okay.
6 THE COURT: As long as mine and the witnesses are right.
7 MR. BOSCHEE: Well, I was going to say --
8 MS. HURTIK: Well, they should all be the same so --
9 MR. BOSCHEE: I'm just trying to keep track as best I can with
10 that one.
11 MS. HURTIK: Is that the one that was dropped and we tried
12 to --
13 MR. BOSCHEE: No, no. This is just -- it's just completely --
14 it's completely wrong. That's okay, go ahead. I'm sorry.
15 MS. HURTIK: You're in binder --
16 MR. BOSCHEE: I'm binder --
17 MS. HURTIK: -- 6.
18 MR. BOSCHEE: I'm actually in binder 5 which is actually the
19 same as binder 6 it turns out, but that's okay. Keep going.
20 MS. HURTIK: Okay.
21 THE COURT: Just ignore him.
22 MS. HURTIK: Okay.
23 MR. BOSCHEE: I know, yeah.
24 BY MS. HURTIK:
25 Q So binder 6, we're on Exhibit 496. And this is bate stamp

1 1760 and 1761. And then there's additional, but -- so this is an email
2 from Gordy or Gordan --

3 A Uh-huh.

4 Q -- Serrette. And it's regarding slab selections. Have you ever
5 seen this before?

6 A Never.

7 Q Okay. And this is dated -- I'll represent it's dated July 30th,
8 2015. So it says, "please find below the slab quantities and questions".
9 So it says Perla Venata, I'm probably saying it wrong, but it says five
10 slabs?

11 A Right.

12 Q Okay. Then Luminex [phonetic] wine room, one slab. It
13 says, "did not bid theater top".

14 A Uh-huh.

15 Q So that means that that probably wasn't put into the original
16 contract, correct?

17 A Yes.

18 Q Okay. So if -- that would have been a change order down the
19 road probably?

20 A Yes, probably.

21 Q Okay. And then it says, Palisandro.

22 A Uh-huh.

23 Q White kitchen powder, 50-inch broken slab, will not work.
24 Vanity is 51 inches -- or 51 plus lam for edge.

25 A Right.

1 Q So is he saying that what was measured originally they
2 changed the cabinet probably?

3 A No. I'm assuming that means that the slab was broken at 50
4 inches and the top needs to be 51 plus the lam edge, which is another
5 inch and a half. So you don't have enough material to cover the space
6 that needs to be covered.

7 Q So this would have been a material that was selected and
8 then maybe then you had to have something else selected because this
9 wasn't going to work?

10 A It wasn't -- it -- I believe that is correct.

11 Q Okay. And is this something that when it's on a custom
12 home like this, is this an indication that something happened? This is
13 flagged status up at the top. Is this something that happened that on
14 your guys' end that you would have corrected?

15 A No. Most likely it was maybe something from the vendor
16 that supplied the material.

17 Q So you would have gone back to the vendor?

18 A Exactly. And said okay. We got it, but it was broken at 50
19 inches; it does not work.

20 Q Okay. So that's -- okay. So that's not a change?

21 A No.

22 Q Okay. And let me ask you this. So if you have something
23 like that happening and there has to be another selection --

24 A Uh-huh.

25 Q -- and there's an increase in cost, who eats that?

1 A Well, we didn't supply any of the material. We're just giving
2 them quantities needed. So yeah. I don't know who eats that.

3 Q Okay. So --

4 A Not us.

5 Q Okay. So he had -- did Daltile supply some of the tile?

6 A I believe this was -- I think this is Tuscany.

7 Q Tuscany?

8 A Yes.

9 Q Okay. So you --

10 A I believe,

11 Q -- were just providing the labor, not supplying the materials?

12 A Exactly.

13 Q Okay. All right. So you're just telling them this is what we
14 need --

15 A Yes.

16 Q -- is that correct?

17 A That is correct.

18 Q Okay. And you didn't receive cabinet drawings. And then it
19 says, "these have not been bid or contracted". So it says laundry and
20 theater. So does that mean that if there -- in your invoices if this is July
21 of 2015, part of your original contract didn't have the laundry or the
22 theater area bid, correct?

23 A Yes.

24 Q Okay. So those would have been change orders or increases
25 in the contract price, right?

1 A I believe so, yes.

2 Q Okay. And this is July of 2015. So then it also says, "we did
3 not see material specified for the following areas. These are bid and
4 contracted, but it doesn't give you material for the family room, alcove
5 tops, master vanities, master tub deck, no riser master dry bar". So how
6 are these bid and contracted if you do not know what the material is
7 going to be?

8 A Because we know what the labor's going to be to
9 manufacture and then install them.

10 Q So --

11 A So --

12 Q -- it's just pretty much --

13 A Yeah. So basically we bid the actual fabrication and
14 installation --

15 Q Okay.

16 A -- on those, but we're not supplying the material. We just
17 need to know what the material is.

18 Q Okay. Okay. Hold on one -- so were you only at this point
19 from the -- when you took over most of your contact was only with Mr.
20 Ramirez and Mr. Inose?

21 A That is correct.

22 Q And was Mr. Inose pretty hands on?

23 A No. I dealt with Robert.

24 Q You dealt with Robert mostly?

25 A Yes, uh-huh.

1 Q Okay. So any of these items, if you can't tell me what the
2 change orders are specifically, but according to that one email those
3 items would have increased the cost of the contract, correct?

4 A Yes. The laundry and theater.

5 Q Okay. And were you aware that there was a problem with
6 change orders that were being -- were you aware that there were change
7 orders that DVC was having a problem getting signed by the owner of
8 the house?

9 A No.

10 Q Okay. And you don't recall the part about that you guys
11 received a letter saying, cease work right now while we're working
12 things out?

13 A No.

14 Q Okay. And who would have probably dealt with that at the
15 time? Would have that been Gordy?

16 A Probably, yeah.

17 Q Okay. All right. I'm done, thank you.

18 REDIRECT EXAMINATION

19 BY MR. STORY:

20 Q All right. I just have a couple of follow-up questions. I
21 believe you, a little bit earlier in your testimony had said that you
22 thought you came onto the project in October or November and a little
23 bit later you said --

24 A Uh-huh.

25 Q -- September, October. I understand it's not --

1 A Right.

2 Q -- concrete, but it's in that --

3 A Yes.

4 Q -- vicinity, correct?

5 A Uh-huh.

6 Q Okay. And you did testify that when you took over, which

7 was within those few months --

8 A Uh-huh.

9 Q -- that the project was approximately 50 percent complete.

10 Do you recall that?

11 A Something like that. Maybe even a little bit more than that.

12 Q Okay. But obviously not anywhere near, you know, what

13 someone would deem 90 percent or almost done --

14 A No.

15 Q -- in that -- towards the end of 2015?

16 A No.

17 Q Okay. And you also said you dealt primarily with Mr.

18 Ramirez starting about a month after you came on the project. Do you

19 recall that?

20 A Yes. I believe he was actually there from the beginning when

21 I walked onto the job.

22 Q Okay. So in that same towards the end of 2015 period?

23 A Yes.

24 Q Okay.

25 A That is correct.

1 Q Okay. And you said that there was at least one change that
2 involved scratched flooring that had to be redone, correct?

3 A That is correct.

4 Q All right. So this was flooring that was in the original scope
5 of the work. It just had to be done a second time; is that accurate?

6 A That is correct.

7 Q Okay.

8 A It was finished.

9 Q Okay. And I understand you said that you guys had just
10 started using QuickBooks, but you did say that normally a change order
11 would be indicated on an invoice as well, that it would say somewhere
12 that it was change order work?

13 A That is correct.

14 Q Okay. And correct me if I don't recall. Did any of the
15 invoices that counsel had you look at say change order on them?

16 A They did not.

17 Q Okay. So to the best of your knowledge they either didn't
18 indicate or they were not for change orders --

19 A That is correct.

20 Q -- is that accurate?

21 A Yes.

22 Q Okay. Now we talked a little bit and if you can leave that
23 same email open. And I understand we're having you interpret someone
24 else's --

25 A Sure.

1 Q -- email. So you know, indulge me a little bit on the same.
2 We talked about materials that weren't there or material that got
3 broken --

4 A Yes.

5 Q So when you provide your estimate was it Summit's
6 responsibility to place the orders for materials or was that done by
7 Desert Valley?

8 A I believe that was done by Desert Valley.

9 Q Okay. But to the best of your knowledge Summit didn't
10 directly deal with the supplier and place the orders for materials?

11 A No. Not at all.

12 Q Okay. And here in the middle there was a mention with the
13 part that says, "we did not receive cabinet drawings on the following.
14 These have not been bid and contracted". Do you see that?

15 A Yes.

16 Q And it says, "laundry and theater"?

17 A Yes.

18 Q So and you know, as I said, I understand we're interpreting
19 someone else's. To your knowledge was that still -- were you still doing
20 work for items that had been in the house prior, even though they had
21 not yet been bid or contracted since this was a restoration?

22 A I'm sorry; say that one more time.

23 Q I --

24 THE COURT: Don't worry; I didn't follow that either.

25 MR. STORY: No problem. I will rephrase.

1 BY MR. STORY:

2 Q So it says here, "we did not receive cabinet drawings on the
3 following"?

4 A Right.

5 Q Okay. So is it possible that this was work that was still
6 initially supposed to be done, it just wasn't bid or contracted because
7 you had not received cabinet drawings?

8 MS. HURTIK: Objection; calls for speculation.

9 THE COURT: Well, that whole line of questioning on an
10 email that he's never seen calls for speculation.

11 MR. STORY: I would just ask for the Court's indulgence since
12 we're --

13 THE COURT: No. And that's why I'm responding like I am. I
14 mean, he's been asked a myriad of questions including by Ms. Hurtik
15 about an email he's never seen before. So that's overruled because the
16 whole line calls for speculation.

17 BY MR. STORY:

18 Q And I can re-ask if --

19 THE COURT: No. If you remember what he asked you.

20 THE WITNESS: Yeah, no. I believe that yes. That would be
21 part of it. It just -- it would be part of the scope. It just hadn't been bid or
22 contracted.

23 BY MR. STORY:

24 Q Okay.

25 A That is correct.

1 Q And let me ask sort of the inverse. To your knowledge was --
2 do you know unequivocally that either of these things were upgrades or
3 changes from what was originally supposed to be in the scope?

4 A No.

5 Q Okay.

6 MR. STORY: Okay. I have nothing further.

7 THE COURT: Okay. Thank you sir.

8 THE WITNESS: Okay, thank you.

9 MS. HURTIK: So 5 and 6 is the same?

10 MR. BOSCHEE: 5 -- well, 5 and 6 are the same. So I just
11 want to check the witness binder and I want to check the judge's binder
12 because I suspect 5 --

13 THE COURT: I know I had the same one he did.

14 MR. BOSCHEE: What's that?

15 THE COURT: I know mine was the same as his.

16 MR. BOSCHEE: Okay. Well --

17 MS. HURTIK: The --

18 MR. BOSCHEE: This is my number 5. And you can see, I
19 mean, if you just flip to any of them they're the same as -- I mean, they're
20 just --

21 MR. STORY: Yeah. They're the same as what's in --

22 MR. BOSCHEE: What's in 6.

23 MR. STORY: -- 6 right here, but they just have different tabs.

24 MR. BOSCHEE: Different tabs.

25 THE COURT: So someone --

1 MS. HURTIK: Oh, so it's just the index that's wrong?
2 MR. BOSCHEE: No, no.
3 MS. HURTIK: No?
4 MR. BOSCHEE: What is supposed to be an exhibit in binder
5 number 5 is not in binder number 5.
6 MR. STORY: They recopied --
7 MR. BOSCHEE: Which --
8 MR. STORY: -- 6 and put it --
9 MR. BOSCHEE: -- is all of Robert Ramirez's emails.
10 MS. HURTIK: 16 -- hold on a minute. 1697 --
11 MR. BOSCHEE: Which seems important.
12 MS. HURTIK: Hold on a minute, okay. So this is 5 and this is
13 6 and these are both yours?
14 MR. STORY: Yeah.
15 MS. HURTIK: Okay. And so this starts -- the indexes are
16 here. 403, hold on. 403. And so these match, the tabs in the index --
17 [Recess at 2:33 p.m., recommencing at 2:57 p.m.]
18 MR. BOSCHEE: All right. So we still don't -- we -- so our
19 witness that we thought was coming is just checking out of wherever he
20 was admitted yesterday. So we are going to continue with Mr. Inose and
21 hopefully finish him up today and then we can just jump right into the
22 rest tomorrow.
23 THE COURT: Okay.
24 COURT RECORDER: So this is going to be your cross, right?
25 MR. BOSCHEE: I guess. Yeah, it's a little informal but this

1 will be my cross of Mr. Inose.

2 COURT RECORDER: And yeah, Judge, we're on.

3 THE COURT: Okay.

4 MR. BOSCHEE: Okay. I'll let him get settled.

5 THE WITNESS: Yeah, go ahead. Yeah.

6 MR. BOSCHEE: No, no, you're fine. Get settled. Don't --

7 THE WITNESS: Yeah, I just don't want to -- okay.

8 MR. BOSCHEE: This might be a little disjointed. I apologize.

9 I don't typically cross-examine my own client, but we'll go from --

10 EUGENE INOSE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

11 CROSS-EXAMINATION

12 BY MR. BOSCHEE:

13 Q I'm going to start for ease of what we're doing, I'm going to
14 start from my notes from your examination by Ms. Hurtik, and I'm going
15 to kind to take the last part first. And then we're going to kind of scroll
16 back to my outline. At the very end of your testimony, do you recall Ms.
17 Hurtik asking you about the difference between 1,320,429 and 1,123,734?
18 Do you recall that testimony?

19 A Say that one more -- 1,300,000 and 1 million one?

20 Q Yeah. Do you recall when you answered the question about
21 one million three --

22 A Oh, yes. Yes. The difference. Yes.

23 Q Yeah. And you testified it was approximately 197,000 which I
24 think we all agree is approximately right? Do you remember that?

25 A That is correct.

1 Q Okay. And I'm not going to make you go through every
2 check again which you have already done twice I think in this case. The
3 checks that are in evidence that the Judge has total approximately
4 \$256,000; is that right?

5 A Yes, approximately.

6 Q Okay. And of that how much of that was the excess
7 insurance money that you received? Do you recall?

8 A The excess insurance money?

9 Q Sure. You wrote \$256,000 worth of checks, but some of that
10 was writing checks out of the insurance money that you got.

11 A Oh.

12 Q Do you recall about how much insurance money you had? I
13 mean --

14 A Approximately 190,000.

15 Q Right. So --

16 A Approximately.

17 Q So out of pocket, above and beyond the insurance money
18 you received, which we'll take everybody's -- that it's approximately 190,
19 197,000, you wrote another \$60,000 on top of that out of pocket to the
20 subcontractors?

21 A I would say that's definitely in the ballpark.

22 Q Okay.

23 THE COURT: What was that number again?

24 MR. BOSCHEE: It's approximately 60,000, but I'm -- but
25 when we get to the closing argument, I will have an exact number for

1 you because I didn't do that math.

2 BY MR. BOSCHÉE:

3 Q There was also some testimony about your recommendation
4 of subcontractors and supervision. Do you recall that?

5 A Yes.

6 Q Okay. Did you actually choose any of the subcontractors that
7 worked on this house?

8 A You mean was I the final say and did I -- no, I did not.

9 Q Okay. Who was?

10 A Desert Valley Contracting.

11 Q Okay.

12 A DVC.

13 Q Okay. Did -- in your conversations with Mr. Merritt, did you
14 ever have any conversations with him that his estimated cost to
15 complete this house was going to change?

16 A No.

17 Q Did he ever indicate to you that these things that you were
18 working on, the wine room, the doors, that that was going to result in a
19 change in the \$1.32 million number that he had provided to your
20 insurance company?

21 A Absolutely not.

22 Q Okay. We're going to go to that document. In fact, let's just
23 go to it now. Do you have binder number 8? Why don't you grab that?
24 I'm kind of wearing this one out. And go to Exhibit 571. Kind of worn
25 this exhibit out, too.

1 A 571? I am there.
2 Q 571.
3 A Yes, I am there.
4 Q Okay.
5 MR. BOSCHÉE: Give the Judge a second.
6 THE COURT: Okay.
7 MR. BOSCHÉE: Okay.
8 BY MR. BOSCHÉE:
9 Q If you go to IN-LO 92, let's start there. Do you see that?
10 A I am at IN-LO 92, yes.
11 Q Do you see where -- do see about halfway down the page,
12 lounge?
13 A Yes, I do.
14 Q Okay. And that included an allocation for walls and ceiling;
15 didn't it?
16 A I believe so, yes.
17 Q Okay. Now, we discussed some of the extras that you asked
18 Desert Valley to do. But one of the things that Desert Valley did not do, I
19 think you testified to this, was complete the ceiling in the lounge; is that
20 right?
21 A It was actually a dome ceiling in the lounge --
22 Q Right.
23 A -- to be exact.
24 Q What is it now?
25 A Just regular ceiling. I don't -- I don't --

1 Q It's just -- okay.

2 A -- just flat ceiling. I don't know.

3 Q It's just a ceiling? It's not a dome ceiling, right?

4 A It's just a ceiling. Exactly.

5 Q Okay.

6 A It's no longer a dome ceiling.

7 Q So that was a change, and we typically call that a deductive

8 change order, but that was a change from the estimate for something

9 that Desert Valley was going to do but then didn't do; is that fair?

10 A That is correct.

11 Q Okay. And then if you flip the page to IN-LO 93, you see

12 where the total for the lounge was 21,14805?

13 A Yes, I do.

14 Q Okay. But without the dome ceiling, whatever they actually

15 were going to spend on that would have been less than that, right?

16 A Yes.

17 Q Okay. And then coincidentally, right underneath that there's

18 an allocation for a sauna bath. Do you see that?

19 A Yes, I do.

20 Q Okay. Was there one sauna in your original house or two?

21 A There was one sit-down sauna with temperature control.

22 Q Okay.

23 A Multi-person.

24 Q And that was the one that was downstairs, correct?

25 A It was downstairs in the pool bath.

1 Q Right. And so if you look at this sauna bath, is this the one
2 that we're talking about?

3 A Yes, that is correct.

4 Q Okay. And if you go to -- if you flip the page, do you see
5 where the total estimate for the sauna bath is 657401?

6 A Yes, I do.

7 Q Desert Valley didn't do anything, didn't replace the sauna at
8 all; did they?

9 A No, there was no sauna there at all anymore.

10 Q Right. And there was actually a second allocation for sauna
11 right below that. Do you see that?

12 A Yes, I do.

13 Q Okay. And if you flip to IN-LO 95, which is the next page, do
14 you see where that's a 933065 allocation for that?

15 A Yes, I do.

16 Q Same sauna, right?

17 A Same sauna room, yes.

18 Q Still isn't in your house?

19 A Sauna is not in my house.

20 Q Okay. So those are three items to the tune of whatever the
21 actual cost was, and again these are just estimates so that's okay, but
22 these are three items that were in your house before that are not there
23 anymore?

24 A That is true.

25 Q Okay. And I think you testified earlier that part of the reason

1 that they're not in your house anymore is because that was kind of an
2 offset for some of the additions, extras, that you added, the wine room,
3 the doors? That was kind of the give-and-take that you and Danny did,
4 right?

5 A That is correct.

6 Q Okay. Since we're on this exhibit, I might as well -- we might
7 as well flip to it. Flip to IN-LO 127. Do you remember counsel asking
8 you about Green Clean?

9 A Yes, I do.

10 Q Do you remember the three checks you wrote to Green Clean
11 totaling approximately -- just a few dollars under \$4,000?

12 A Yes, I do.

13 Q Okay. Take a look at the estimate about a third of the way
14 down the page, item 642. Do you see that?

15 A Yes, I do.

16 Q That's bid item cleaning, allocated total \$5400. Am I reading
17 that correctly?

18 A Yes, you are.

19 Q Okay. And that was an allocation in the estimate that Desert
20 Valley was going to clean -- was going -- was allocating \$5400 to clean
21 your house, right?

22 A Yes, that appears so.

23 Q Okay. And while we're there, go down to the bottom of the
24 page. There's some exterior cleaning it looks like they were going to do.
25 Item 650 and 651. Do you see those?

1 A Yes, I do.

2 Q Okay. General clean up and then clean up with pressure
3 chemical spray, total 576 and then 3200. And again, those are cleaning
4 items that Desert Valley put in their budget that they were going to do to
5 clean your house, right?

6 A Yes.

7 Q Did they?

8 A No.

9 Q That's in fact the reason why you had to hire Green Clean,
10 right?

11 A That is correct.

12 Q Okay. Now, while we're on this same exhibit, and again, for
13 -- with the interest of trying to be efficient, skipping around my outline a
14 little bit, go to IN-LO 154.

15 A I got it on the first try.

16 THE COURT: I did not. Okay.

17 BY MR. BOSCHEE:

18 Q I want to clarify one thing that I think you answered, but it's
19 been a couple days so I just want to make sure. You weren't actually
20 paid \$1,617,338 by the insurance company, right?

21 A Not directly, no.

22 Q Okay. So with respect to this document, and I can put it on
23 the ELMO if you need -- if anybody needs help seeing it. I can see it, but
24 it's not great. Can everybody read it?

25 THE COURT: I can.

1 MR. BOSCHEE: Or do you want me to put it on the ELMO?

2 THE COURT: I'm fine.

3 BY MR. BOSCHEE:

4 Q Good, Eugene?

5 A I'm -- I think I'm going to be good.

6 Q Okay. Two questions. Desert Valley Contracting driveway
7 repair, 42,186. Remember we talked about that at some length I think it
8 was yesterday?

9 A Yes, we did. I'm so sorry, I'm trying -- oh, there, I just found
10 it right now, yes.

11 Q Yep, other structures.

12 A Yep, I see it.

13 Q Seeing it right now, do you know for a fact whether you ever
14 got \$4200 for the driveway repair?

15 A From the insurance company?

16 Q Yeah.

17 A I do not know.

18 Q Is it possible that they allocated that money and paid
19 someone out directly? Do you know one way or the other?

20 A I do not know.

21 Q Okay. And then you testified, and I don't need you to flip to
22 it, but you testified upon examination for Ms. Hurtik that you also paid
23 another \$10,000 to the concrete company in large part to fix your
24 driveway, right?

25 A That is correct.

1 Q Okay. So that just kind of raises the question in my mind as
2 to why on earth are you paying anything to fix the driveway that
3 SERVPRO cracked?
4 A That --
5 Q If you know.
6 A That sounds like a very reasonable question, yes.
7 Q Do you have any knowledge sitting here today as to whether
8 those claims were ever tendered to SERVPRO's insurance?
9 A I would not -- I do not know.
10 Q Do you sitting here today know whether Desert Valley fixed
11 your driveway?
12 A Desert Valley didn't --
13 Q Did Desert Valley fix your driveway?
14 A No, they did not fix my driveway. Well, West -- the concrete
15 -- I forgot, West Coast Concrete.
16 Q West Coast Concrete?
17 A Yes.
18 Q Okay. And -- but per the documents that we've seen, your
19 insurance and/or you, Eugene Inose, paid West Coast Concrete, right?
20 A That is correct.
21 Q SERVPRO didn't pay them?
22 A Not to my knowledge.
23 Q Even though they did the damage?
24 A Yes.
25 Q Okay. And sitting here right now you don't know why that

1 was? You don't know why you ended up footing the bill for the repairs?

2 I mean the flood didn't cause the driveway damage; did it?

3 A No, the flood did not cause the driveway damage, no.

4 Q You didn't cause the driveway damage; did you?

5 A No, definitely not.

6 Q Okay. So the remediation of the flooding caused the
7 driveway damage, but you paid for it? You and your insurance paid for
8 it?

9 A That -- yes.

10 Q Okay. You also testified that there was -- there was some
11 testimony yesterday about why you closed out the insurance claim when
12 you did. Do you recall that?

13 A I do recall that.

14 Q If you go to the very beginning of this exhibit, of 571, this
15 whole thing starts with an email from Brian Lynch to you? This whole
16 exhibit I should say.

17 A This is on IN-LO 71, correct?

18 Q IN-LO 71, right.

19 A Yes. Uh-huh.

20 Q When you closed out the -- with the insurance company, did
21 you have a final estimate from Desert Valley Contracting to complete the
22 work on your house?

23 A Yes, for the 1.3 some odd million, yes.

24 Q Right. That's the one that he's referencing right here; isn't it?

25 A Oh, yes. Yes. Yes. Correct.

1 Q Okay. And as of June 19th, 2015, you had never seen any
2 change orders --

3 A No, not at all.

4 Q -- from subcontractors; had you?

5 A No. Zero.

6 Q Okay. You had no indication from Desert Valley Contracting
7 that there was going to be any extra money or assets or anything
8 needed to complete the work of the house above and beyond the \$1.32
9 million; did you?

10 A That is correct.

11 Q Okay. You had no reason to believe there was going to be
12 extra work or extra charges incurred to you or the insurance company as
13 of June 19th, 2015; did you?

14 A That is correct.

15 Q Okay. Is that why you closed out the claim?

16 A Yes.

17 Q Okay. And when you closed out the claim, you didn't get the
18 \$1.617 million, they closed you out to 1.32 million, the amount of the
19 estimate, right?

20 A Yes, that would be the -- yes.

21 Q Okay. Counsel asked you a question yesterday about
22 whether you spoke to the insurance -- whether you had spoken to the
23 insurance company after you closed out with them. Do you recall that?

24 A Yes, I do.

25 Q Okay. And my notes are a little unclear on this. Why didn't

1 you call the insurance company after you got the August change order
2 from Danny Merritt or the purported change order, the email, saying hey,
3 by the way, there's some extras and we think you owe us some money?
4 Why didn't you call the insurance and try to reopen the claim?

5 A To reopen the claim?

6 Q Yeah.

7 A Well, Daniel was the point person talking to the insurance
8 company. I never spoke money with the insurance company as far as
9 like I never negotiated money with the insurance company.

10 Q After you closed out the claim, did you have any other
11 contact with them?

12 A I cannot recall ever having contact with them after that.

13 Q Okay. In your experience as just a businessman, if you know,
14 once an insurance claim is closed out, can you go back and say oh, sorry,
15 my bad, you need to reopen it and add some more money?

16 A I would believe that would be very difficult to do.

17 Q You also testified there was a question as to whether your
18 house is completed -- when your house was done, there was questions
19 about the certificate of occupancy and when the work was done and
20 everything else. Sitting here right now today, is -- are there still things in
21 your house that aren't done?

22 A Yes, there is. There is still a few things that are definitely not
23 done yet.

24 Q The vents in the wine room still don't work properly; do
25 they?

1 A The wine room climate control does not work. The vents are
2 no longer -- no -- they're not there. Yeah, there's quite a few things that
3 are still not done.

4 Q Okay.

5 A Yeah.

6 Q There was a lot of questions and some testimony about the
7 missing items and some things that went missing at some point during
8 the construction. Do you remember that? Or the remediation I should
9 say.

10 A Oh, yes, I lived through it. Yes.

11 Q Okay. Do you recall sitting here right now whether any items
12 went missing for the first say eight months up until April of 2015?
13 Whether you had a lot of missing items during that period of time?

14 A That period of time it seemed like everything was copasetic.
15 It seemed liked everything was fairly in good order.

16 Q When did things start disappearing from the house?

17 A Once there was no supervision on the job and they left my
18 house open so anybody could walk in there all throughout the night, day.
19 Anybody could walk in there.

20 Q I want to follow up on that because something was a little
21 unclear to me when you were testifying about this yesterday and I want
22 to make sure that I understand and the Judge understands. When you
23 say the house was left open, obviously, during the day when the
24 subcontractors are coming in and out and doing work, the house is
25 going to be left open. Is that what you were referring to?

1 A No. I'm talking about -- I mean we're talking after 5 p.m. it
2 was left open all night long into the next morning.

3 Q So whoever was in charge of overseeing your house or
4 supervising your house after Mr. Ramirez left just didn't lock up your
5 house at night?

6 A They were not locking up my house at night at all.

7 Q How do you know that?

8 A I know that because I, myself, came into town sometimes just
9 to -- unannounced and I would go to my house and my garage was wide
10 open. My doors were wide open, and, like, I'm scared that someone is
11 going to be in the house. I don't know what's going on.

12 Q Did you address this with Desert Valley?

13 A Multiple times.

14 Q And what did they say?

15 A They said they're going to get somebody on it.

16 Q Okay. And did they?

17 A No. Obviously not, no.

18 Q Was this a recurring problem that you had with Desert Valley
19 all the way up until they left the project?

20 A Absolutely.

21 Q Okay. I want to clarify one other thing, too, because this has
22 been a little -- there's been a little back and forth on this and I just want
23 to make sure that I understand. You terminated Desert Valley at some
24 point, but that was after they had stopped working at your house; wasn't
25 it?

1 A That is correct. The work was no longer progressing
2 whatsoever.

3 Q Okay. But I mean I guess my question is Desert Valley had
4 actually stopped coming to the house and stopped working prior to you
5 terminating them; hadn't they?

6 A That is correct.

7 Q Okay. When did you contact Mr. Ramirez about getting this
8 thing back up and running and trying to get your house done? Was it
9 before or after Desert Valley was fired?

10 A I can't say exactly the exact date. But I believe it was after
11 they were fired, but I cannot say 100 percent sure.

12 Q Okay. There was some testimony also about you -- about
13 Mr. Ramirez paying for somethings and you reimbursing him. Do you
14 recall that?

15 A Yes.

16 Q Okay. And did -- was that out of necessity? Is that
17 something that you needed to do because Desert Valley wasn't buying
18 supplies or -- I'm -- I was a little unclear as to why you had to do that
19 when Desert Valley was still there?

20 A Yeah. So one of them was the duct cleaning that was in
21 question.

22 Q Right.

23 A Like I said, I didn't want a bigger problem. Some of the subs
24 that were on the job told me if you don't get that duct cleaning done,
25 you're going to have a bigger problem. We're going to have to start

1 breaking up walls and getting duct out of there because mold is going to
2 start growing. I begged Danny to get it done. Danny said that he would,
3 and he just never was responsive to it. And I kept asking and so I had to
4 take matters into my own hands. And I asked Rob if he knew any duct
5 cleaning companies in town that we could hire. And by then, I had left
6 Vegas and back to LA, and he hired somebody. But, however, you know,
7 they needed to be paid.

8 Q Right.

9 A And so Rob fronted the money for me.

10 Q The duct cleaning, was that something that you expected
11 Desert Valley to cover?

12 A Oh, 100 -- yes, absolutely.

13 Q Why?

14 A It was part of the -- it was part of the damage from the flood.

15 Q And they just didn't do it?

16 A They -- they just didn't do it.

17 Q So you had to pay -- so even while Desert Valley is on the job
18 still as the general contractor, that's something you had to pay for out of
19 your pocket?

20 A That is correct.

21 Q Okay. There was some testimony yesterday about how
22 much Rob Ramirez was paid by Desert Valley while he was on the job
23 before Desert Valley left. Do you remember that?

24 A Oh, yes.

25 Q And I think someone said 95,000, someone said 70 to 80,000.

1 I'll represent that I think it was about 78.5 thousand, having reviewed the
2 documents. But that said, all that aside, you recommended Rob
3 Ramirez, but you didn't hire him as an employee; did you?

4 A No. I recommended him, but I did not hire -- he was not an
5 employee of mine.

6 Q You played no part in the decision to hire him or how much
7 he was going to get paid by Desert Valley; did you?

8 A No. The only thing I did was I recommended him.

9 Q Okay. And in fact, he was a W-2 employee for Desert Valley;
10 wasn't he?

11 A That's -- from my understanding, yes, that is correct.

12 Q Okay. And they were paying him a salary or whatever they
13 were compensating him that was something that was outside of your
14 control, correct?

15 A Oh, that was between them. I don't know what it was.

16 Q So whatever he got paid for that seven to eight-month period
17 that he was on the job and whatever the insurance company's concern
18 was that we discussed yesterday, that had nothing to do with you; did it?

19 A Yeah, I don't run their company, so yeah, that is a correct
20 statement.

21 Q But Rob Ramirez wasn't even the supervisor on the project,
22 was he, for Desert Valley?

23 A You know, I don't know exactly what his title was.

24 Q Okay. But there were other supervisors out there; weren't
25 there?

1 A Yes. There was -- as far as my memory serves right if it
2 serves me correctly, it's between two or three other supervisors at
3 different times. Like, it was like a rotating -- I was always getting
4 introduced to new people. I don't know their exact names anymore.

5 Q Okay. Were you aware of the profit and overhead split that
6 Desert Valley was getting on this job? Did you have any knowledge of
7 that?

8 A At the time?

9 Q Yes.

10 A No. At the time, no. I --

11 Q Okay.

12 A -- wasn't privy to that.

13 Q Do you understand what ten and ten is on a construction
14 job?

15 A Now I do, yes.

16 Q Okay. We can go dig around the estimate if you want to, but
17 the 10 percent overhead that was allocated in the estimate in, and again,
18 in Exhibit 571, was approximately \$105,000. Does that sound about
19 right?

20 A That sounds about right, yeah.

21 Q Okay. Well, if for the eight months he was there Rob
22 Ramirez, a W-2 employee of Desert Valley, made 78-and-a-half thousand
23 dollars and they had other supervisors out there for the entire time, that
24 would have eaten up all of the 10 percent, the \$105,000 supervision;
25 wouldn't it?

1 A Probably even more.

2 Q Okay. Did you ever express any concern to Desert Valley that
3 they had too many -- I'm not going to quote what Tommy Thompson
4 said yesterday -- but too many cooks in the kitchen perhaps?

5 A Yeah. I didn't understand why we -- there were so many
6 supervisors there, and I just didn't understand it. And yeah. But, you
7 know, it's not my -- I'm not the general contractor. They know what --
8 they were supposed to know what they were doing. So even though I
9 questioned it, I couldn't do anything about it.

10 Q Okay. When Rob Ramirez was let go by Desert Valley, you
11 were privy to that? They -- Danny let you know that he was letting Rob
12 go, right?

13 A Yeah. In fact, I recall the conversation. Danny said that I [sic]
14 was sadden by that and I said Danny, we need a supervisor out there
15 and Danny told me that he's going to be out there every day. And I said
16 you're going to be out there every day, are you sure. And he said, yes, I
17 will be there every day supervising.

18 Q Okay. In addition to the people that they already had out
19 there?

20 A Yeah, I -- yeah, I don't -- like I said, I don't know who these
21 people were. I cannot remember their names.

22 Q Because Danny was also an employee of Desert Valley, right?

23 A Yes.

24 Q Okay. So that would have just added onto the overhead
25 costs, right?

1 A Yes.

2 Q Okay. Was he out there every day?

3 A Absolutely not.

4 Q How close was the house -- now this is in -- when Rob

5 Ramirez was let go, this is in late spring, early summer of 2015, right?

6 A Okay.

7 Q Is that -- does that comport to your recollection?

8 A Yeah, it was around that time. I don't remember the exact

9 month.

10 Q Well, let me ask you this. Was it before or after the April 28th

11 date that Desert Valley said that they were going to have your house

12 done?

13 A Oh, it was before.

14 Q Okay. How close was the house to being done at that point?

15 A Oh, geez.

16 Q At that point?

17 A As a layman looking at it, maybe 35 percent. I don't know, 40

18 percent. I really don't -- yeah, about 35 percent.

19 Q And the estimate aside, you had had -- you specifically had a

20 conversation with Mr. Merritt and the estimate and the amount of condo

21 time that was purchased references eight months. But you had had a

22 conversation about Danny Merritt about how -- the length of this job;

23 hadn't you?

24 A Oh, yeah.

25 Q Well, what did he tell you?

1 A He told -- he said optimistically, six months. But he's, you
2 know, we should have everything done and buttoned up within the eight
3 months, nine months at the worst-case scenario.

4 Q Okay. You testified yesterday upon questions by Ms. Hurtik
5 that you started -- you can't recall exactly when you started talking to the
6 subs, but let me ask it in a more -- a little more kind of a before or after
7 kind of question. Did you start negotiating with the subs to finish the
8 work on your house before or after Desert Valley left?

9 A It was after they left.

10 Q Okay. And at that point, you weren't provided with any of
11 the subcontracts that Desert Valley had with the subs; were you?

12 A No, I was not.

13 Q Okay. And you weren't provided with any of the actual
14 payment information by Desert Valley for what had been paid to the
15 subs; were you?

16 A Oh, no, not at all.

17 Q So --

18 THE COURT: Can I pause you one second?

19 MR. BOSCHEE: Sure.

20 THE COURT: I don't know if you'll get to this at some point --

21 MR. BOSCHEE: Probably, but if there's something you want
22 to ask, I'm certainly --

23 THE COURT: Because so far, you know, we're, I don't know,
24 two-and-a-half days in or whatever, some point is either of both sides
25 going to talk about the actual -- well, I'll call it both allege both DVC

1 allegedly stopping working and DVC allegedly being terminated after
2 stopping work because you've mentioned that one answer. We haven't
3 delved into that at all. If that's going to happen on either of both sides,
4 that's fine. I'll just let it go then. It might be a key point.

5 MR. BOSCHÉE: Once in a while, I mean, let me ask Your
6 Honor. I mean if Your Honor has a question about that for Mr. Inose, I
7 mean, I thought that was -- that was why I asked the question if they
8 stopped working before he terminated them. That was why I asked that
9 question was to get clarification at that point. But it sounds like Your
10 Honor has --

11 THE COURT: So --

12 MR. BOSCHÉE: -- another --

13 THE COURT: Yeah, so I guess --

14 MR. BOSCHÉE: -- has a follow up --

15 THE COURT: -- let me --

16 MR. BOSCHÉE: Sure.

17 THE COURT: -- I mean so you said essentially that you
18 terminated DVC after it stopped working on the house, right?

19 THE WITNESS: That is correct.

20 THE COURT: Okay. At some point in time, that means DVC
21 stopped working at the house. Were you told why or did you have an
22 understanding as to why they stopped working?

23 THE WITNESS: Did -- was that -- was that -- you mean are
24 you asking me did DVC tell me why they stopped working?

25 THE COURT: Yeah or -- yeah. Yes.

1 THE WITNESS: No, yeah, no --

2 THE COURT: Okay.

3 THE WITNESS: -- they never -- I was begging them to finish
4 my house.

5 MR. BOSCHKEE: Well, let me follow up on that because I think
6 we actually have a couple of emails in evidence and I think you may
7 have looked at them.

8 BY MR. BOSCHKEE:

9 Q In August of 2015, you got the -- I mean I call it the email, but
10 I mean it was an email from Danny basically articulating that there were
11 some changes that were going to be coming on the property. Do you
12 recall that?

13 A Yes, I do.

14 Q Okay. In fact, since Judge asked you a good question and
15 now we're at it, let's go to Exhibit 569, I believe.

16 A I am there.

17 Q Okay. Do you remember receiving this email?

18 A Yes, I do.

19 Q Okay.

20 THE COURT: So bear with me one second.

21 MR. BOSCHKEE: Sure.

22 THE COURT: Okay.

23 MR. BOSCHKEE: Okay.

24 THE COURT: So the first page is the --

25 MR. BOSCHKEE: The first page is --

1 THE COURT: -- redacted --

2 MR. BOSCHKE: Yeah.

3 THE COURT: Okay.

4 MR. BOSCHKE: Blank. I think that's --

5 THE COURT: Okay.

6 MR. BOSCHKE: -- probably because it came -- it was an
7 email to me.

8 BY MR. BOSCHKE:

9 Q Do you recall receiving this email?

10 A Yes, I do.

11 Q Is this the first time that you had any information, any
12 knowledge, any inkling that there could be an additional cost charged to
13 you?

14 A That is correct.

15 Q Okay. The subject is change order. I didn't ever see an
16 actual change order attached or attachment that was produced in this
17 case, but this email per your understanding was the quote, unquote
18 change order; wasn't it?

19 A I believe so.

20 Q Okay. But there isn't actually an aggregate price on this
21 email anywhere that says how much you were going to get tagged; is
22 there?

23 A No. I -- round numbers, yeah.

24 Q I mean you can add up a few numbers, but there are a few
25 that are blank, right?

1 A Yes.

2 Q I mean like the wine room doesn't have a number attached to
3 it?

4 A Yes.

5 THE COURT: So --

6 MR. BOSCHÉE: If you go halfway down the page.

7 THE COURT: Yeah, no I --

8 MR. BOSCHÉE: Okay.

9 THE COURT: I mean so far example, well, Mr. Inose, in
10 paragraph -- the first paragraph he says -- starts Eugene, attached is our
11 change order for items da, da, da, da, da. Second paragraph, I have
12 attached the bids and highlighted, da, da, da, da, da. Was it your
13 understanding that there was nothing attached to the email?

14 THE WITNESS: There was nothing attached to this email.

15 THE COURT: Okay.

16 MR. BOSCHÉE: Well, and if you look at the body of the email
17 where you typically have the little attachment thing, even if the
18 attachment isn't part of it --

19 THE COURT: So you're the attorney. You can look at it, but I
20 -- that's why I asked him --

21 MR. BOSCHÉE: Right.

22 THE COURT: -- that you --

23 BY MR. BOSCHÉE:

24 Q Do you -- to the best of your recollection, was there anything
25 attached to this email?

1 A No, there was not.

2 Q Okay. Do you recall ever getting the attachments that are
3 referenced in this email, the change orders --

4 A No.

5 Q -- and everything?

6 A No.

7 Q Okay. But this is the first time that you're aware that there
8 might be additional costs, right?

9 A This is the first time I felt like oh-oh, something is going
10 wrong.

11 Q Okay. Now, after this email, did DVC continue to work on the
12 project for a short period of time?

13 A Yes, they did.

14 Q Okay. Do you recall how long after this email they stopped
15 working?

16 A Off the top of my head, I can't tell you an exact date, no.

17 Q Okay. Well, let me just ask the question. Was the reason
18 that they stopped working on the house because there wasn't any more
19 money coming from you?

20 A They wanted full payment on everything, and I gave them
21 two \$25,000 checks to try to placate them. That wasn't enough I guess.
22 And after that, they just kind of went away.

23 Q Well, when you say full payment, let me follow up on that.
24 Was full payment going to be more than the -- I guess it's I don't know
25 what the -- the \$197,000 that was still --

1 A That's --

2 Q -- the difference?

3 A That is what they wanted was 190 some odd thousand
4 dollars, correct.

5 Q Well, in full -- in fact, did they want the 197,000 or did they
6 want more than that? They wanted money for the extras, too; didn't
7 they?

8 A Oh, that's -- if you're referencing this email, yes, that is
9 correct.

10 Q Okay. And --

11 THE COURT: So I'm struggling.

12 MR. BOSCHEE: Okay.

13 THE COURT: Maybe it's -- so explain what you're saying. I
14 mean they wanted -- you gave them 25,000 and they wanted more. I'm
15 not --

16 THE WITNESS: So --

17 THE COURT: -- following.

18 THE WITNESS: -- throughout the whole project, I was -- oh,
19 can I talk or no?

20 THE COURT: Yes, please.

21 MR. BOSCHEE: Yeah.

22 THE WITNESS: Okay.

23 MR. BOSCHEE: Yeah.

24 THE WITNESS: Throughout the whole project, I was giving
25 them progress payments. And when it was coming in -- sometime in

1 fall, late fall, or somewhere in that time, they had asked me can you just
2 pay us the rest of the insurance money. I think it was referenced as
3 around \$197,000.

4 THE COURT: So pause one second.

5 THE WITNESS: Okay.

6 THE COURT: How much -- did -- what's the --

7 THE WITNESS: It was approximately \$197,000. I don't know
8 what the exact is.

9 THE COURT: So late fall 2015?

10 THE WITNESS: Yes. It was I would probably say September
11 or October --

12 THE COURT: Okay.

13 THE WITNESS: -- I would guess.

14 THE COURT: Okay.

15 THE WITNESS: Somewhere in that range.

16 THE COURT: So they asked for the remainder of the
17 insurance proceeds. And I cut you off so --

18 THE WITNESS: Yes. Of a hundred -- they asked and they
19 said give us the rest of the money, \$197,000. And I said I'm not going to
20 do that. I mean, you know, this is now -- we're in month 16 and my
21 house is not even close to being done. And I'm not going to be, you
22 know, paying you guys in full and hopefully you guys will finish up my
23 house. So I said no, I cannot do that.

24 BY MR. BOSCHEE:

25 Q But the 197 wasn't going to even get your house done; was

1 it? That was going to get them to go back out and work on your house
2 with the idea that whatever it was going to cost to finish it was going to
3 cost to finish, right?

4 A That is correct.

5 Q Okay. Because -- well, we'll get to that. There was a
6 subsequent email with differences and prices that we'll get to in a
7 second. But basically, the 197 gets them back out on the project but that
8 doesn't finish your house, right?

9 A No.

10 Q Okay.

11 A There was so many missing items and yeah. No.

12 Q Well, it was going to cost more? They -- it was going -- they
13 -- you were going to have to pay them more than just the insurance
14 proceeds to finish the house. That was going to get them back, but then
15 you were going to have to pay --

16 THE COURT: Well --

17 BY MR. BOSCHEE:

18 Q -- them more to finish?

19 THE COURT: -- so, so, so, so you're sort of kind of on cross,
20 but not really.

21 MR. BOSCHEE: Yeah.

22 THE COURT: So direct, you know, he's obviously not hostile
23 to you. So try not to ask such a leading question.

24 MR. BOSCHEE: Well, I'm trying not to. I'm trying to just
25 short circuit like what is --

1 THE COURT: I know, but I'd rather hear from him --

2 MR. BOSCHÉE: -- going to be a long --

3 THE COURT: -- than you.

4 MR. BOSCHÉE: I understand. I understand.

5 BY MR. BOSCHÉE:

6 Q So did you have an understanding at that point what it was
7 going to take to even finish the house in terms of cost?

8 A It -- I didn't know the exact amount. No, I can't say I knew the
9 exact amount.

10 Q Okay.

11 A But I knew it was going to be -- it was going to be definitely
12 over the 190 some odd thousand dollars, yes.

13 Q Okay. And at what point after that did DVC say okay, well,
14 then we're not going to out there and work anymore?

15 A After I gave them those payments -- I gave them two checks
16 for \$25,000. If memory serves me correctly, it was in late September.
17 But please don't quote me on that. I -- it was around that time. After
18 that, they just were not motivated to come back. And I -- my house was
19 not going to get -- I could definitely see that my house was not going to
20 get done. I was already six months -- 16 months into this. And I just
21 wanted to get back to my house.

22 Q Okay. There was -- at that point, there were some items that
23 were, when you kind of got back out there and kind of got your arms
24 around it, that were missing; is that fair?

25 A Yes.

1 Q Okay. What was missing when you went back out and kind
2 of -- Desert Valley had left, and now you go back out and are trying to
3 piece it together. What was missing?

4 A Oh, geez. Lutron switches throughout the house, televisions,
5 microwave oven, a refrigerator that goes into my kitchenette in the
6 master bedroom. Just there was so much stuff that was -- sinks, faucets,
7 just -- I can't even -- yeah, I can't remember everything right now. But it
8 just seemed like I was uncovering missing stuff all the time out there.

9 Q Okay. So once Desert Valley left and you made the decision
10 to terminate them, what did you do next? What was your next step?

11 A After I terminated --

12 Q Yes.

13 A -- DVC? I called the subs and said, you know, what is it going
14 to take to get you back on so I could be back in my house.

15 Q Okay. And the information that you had to complete your
16 house came directly and solely from the subcontractors, right?

17 A Yes. I met with the subcontractors or I talked to them on the
18 phone.

19 Q And you didn't have their contracts with Desert Valley or
20 their payment history with Desert Valley from any other source but the
21 subs, right?

22 A That's correct. I was not privy to that information.

23 Q Okay. So that's what you had to rely on to get your house
24 done?

25 A Yes.

1 Q Okay. Were they reluctant to come back?

2 A Everybody was fine except for Eagle Sentry was a little bit
3 hesitant.

4 Q Okay. But they all wanted to get paid, right?

5 A Oh, yeah. Absolutely. They definitely wanted to get paid.

6 Q Reluctant maybe was the wrong word there. There was a lot
7 of questioning about invoices matching up to checks. Do you remember
8 that? Over the last two days.

9 A The invoice --

10 Q Looking at checks and looking at invoices and pairing them
11 up.

12 A Okay.

13 Q Okay?

14 A Okay.

15 Q If there was an item missing that had to be replaced, there
16 wouldn't be an invoice number associated with that would there?

17 A No.

18 Q Okay. If you had to go to Best Buy to buy a TV to replace the
19 TV that was missing from your house, there wouldn't be an invoice
20 number for that; would there?

21 A No. Huh-uh.

22 Q Did you have to do that?

23 A No.

24 Q TV that was missing from your house, there wouldn't be an
25 invoice number for that; would there?

1 A No.

2 Q Did you have to do that?

3 A No. I just kept the credit card statements. I did not keep the

4 receipts.

5 Q My question, that was a bad question in my notes.

6 A I'm sorry, I'm sorry, I'm sorry.

7 THE COURT: It's not your fault.

8 BY MR. BOSCHEE:

9 Q Totally my fault.

10 A I'm sorry.

11 Q Did you have to go to Best Buy to buy TV's, to replace TV's

12 that were lost?

13 A Lost or missing, yes.

14 Q How many?

15 A I could not tell you the exact number. Maybe around five or

16 six. I don't know the exact number, so.

17 Q But whatever, whatever it is, those are the checks to Best Buy

18 and the credit card statements to Best Buy that we've seen; is that right?

19 A Oh, that is correct, yes.

20 Q Okay. Have you ever bought anything at Ferguson that did

21 not go into this house?

22 A No.

23 Q Ferguson isn't a typical stop shopping point?

24 A That's not my normally, no.

25 Q All right. Do you have an understanding as to why this

1 project took so much longer than the eight months; do you know?

2 A You want my personal opinion?

3 Q No. I'm asking you, do you have an understanding from
4 some source, from any source, as to why it took so long?

5 A I just hear multiple -- I mean that DVC was not qualified to do
6 a custom home like this.

7 Q When you say qualified to do a custom home, what are you
8 inferring by that?

9 A That this was -- they were just way over their head.

10 Q Okay. When DVC left and you came back in, was there
11 damage that had to be repaired by these subcontractors?

12 A Yes.

13 Q Okay. What kind of damage was there?

14 A Well, the flooring, there were areas of the flooring that were
15 damaged that we had to replace. And we had to put in like this one table
16 that was there before and had posts, so we had to -- I think that's what
17 Miles was talking about earlier from Summit from the flooring is that
18 they had to redo that whole area right there because these posts had to
19 go down into the -- into the flooring. There was missing flooring,
20 carpeting, paint was horrible. I mean my stain doors had overspray. I
21 mean there was just missing stainless steel. There was just so many
22 things. Missing switches, missing TV's, missing toilets, missing -- I
23 mean just so many things.

24 Q Warranty items?

25 A Warranty items?

1 Q Warranty items that you would have expected Desert Valley
2 to correct had they been on the job?

3 A Oh, yeah. I mean yeah. I mean they would have had to be
4 responsible for this, yes.

5 Q But they didn't; did they?

6 A No, not at all. I paid for it.

7 Q In fact, the subs had to do it and you had to pay for it, right?

8 A That's correct.

9 Q Okay. I'm still working my way through the questions from
10 the last couple of days. The shades, the blinds, do you remember
11 testifying about those?

12 A Yes, I do.

13 Q This actually goes back a couple days. Help me out. What
14 exactly was wrong with the blinds; what was the issue that had to be
15 corrected by Harry's Home Services?

16 A Well, the shades were not reusable anymore. They were
17 torn, they had a bunch of debris all over them, just stuff all over it. It just
18 wasn't reusable any more at all.

19 Q Were the shades damaged all by the flood; do you recall?

20 A Not by the flood, no.

21 Q No. Okay. They got damaged after the work started for flood
22 remediation, right?

23 A That is correct.

24 Q Okay. And that was while Desert Valley Contracting was the
25 general contractor at the house?

1 A That is correct.

2 Q Okay. I think we covered that. I think we covered that. You
3 have a bunch of wallcovering and tile in your garage; don't you?

4 A Yes, I do. Eight pallets of limestone and I could sell anybody
5 wallcovering if they need it because I have a lot of wallcovering, too.

6 Q Why do you have so much of that in your garage?

7 A Because Daniel over ordered.

8 Q When all this extra material was sitting there, did you ask
9 Desert Valley why they ordered so much?

10 A Yes, I did. In fact, for the wallcovering, Daniel told me, he
11 said I thought that --

12 THE COURT: Square foot versus square yard.

13 THE WITNESS: Yes, exactly. That's exactly right.

14 BY MR. BOSCHEE:

15 Q That was the note that I couldn't read from my handwriting.

16 THE COURT: A totally separate question that just popped
17 into my head. But going back to closing out the claim on the insurance
18 issue, and either side you're welcome to object to this question if you
19 deem it inappropriate, because normally this wouldn't come in at trial,
20 but how much coverage -- what was the amount of coverage that you
21 had for this?

22 THE WITNESS: You know, I could not answer that truthfully.
23 I don't know the exact amount of my coverage that I had.

24 THE COURT: Do you know if it was in excess of 1.3 or 1.6
25 million?

1 THE WITNESS: Oh, yes, definitely.

2 THE COURT: Okay.

3 BY MR. BOSCHÉE:

4 Q Sitting here right now, I'm going to follow up on that
5 question. I'm not going to object to it because I don't know who would
6 sustain or overrule it, but to follow up on that question, do you have any
7 knowledge one way or the other whether the insurance company would
8 have allocated more money to the claim had any of these extra costs
9 been presented to them?

10 A No, I don't.

11 Q Okay. And some of the things, and again we testified about
12 this, the wine room and the doors and some of the things that you did
13 differently, to the best of your understanding, none of that was ever even
14 presented to the insurance company; was it?

15 A No. That was Daniel making the call.

16 Q Right. The insurance company, as best as you knew, thought
17 that you guys were following the estimate as was submitted to them.

18 MS. HURTIK: I'm going to object to speculation.

19 THE COURT: That's her objection.

20 BY MR. BOSCHÉE:

21 Q Okay. You don't have any knowledge one way or the other
22 as to whether Mr. Merritt's told the insurance company anything about
23 what was -- about these extras; do you?

24 A I don't know. I don't know.

25 Q So did you ask Desert Valley to send this material back and

1 get some of the money back for it?

2 A Yeah. I didn't even know what to do with this material. I
3 mean it's actually a hindrance to me right now sitting in my garage, it's
4 eight pallets, and yeah, I don't know what to do with it. So, yeah, I don't
5 know. I did call Tuscany (phonetic throughout) or somebody back and
6 say will you guys take it back because Desert Valley wasn't going to take
7 it back, they weren't going to give me a refund for it. And the best that
8 Tuscany could do is say we'll put it on consignment for you.

9 Q Have you done that?

10 A They asked for a sample. I gave them a sample of it, but
11 yeah, they have not sold it.

12 Q Okay. So if they did sell it, that would be something that
13 would offset -- that would mitigate your damage, but they haven't?

14 A Yeah. No, they did not sell it.

15 Q So it's all still in your garage?

16 A It is. So if anyone needs it, please let me know.

17 Q All right.

18 THE COURT: What is it?

19 THE WITNESS: It's flooring.

20 MR. BOSCHEE: I thought the same thing.

21 BY MR. BOSCHEE:

22 Q Just bear with me for a second going through my notes
23 again. I asked about that. I asked about that. Did you -- we went
24 through -- we went through the estimate and we looked at the three
25 items that were taken out, the two sauna line items and the lounge and

1 the cost. Do you have any idea or did you ever have any idea how
2 much, if anything, it was going to cost extra to change the wine room
3 and these doors to the one room?

4 A No, I never. If you're asking if I ever saw an estimate or
5 anything like that, no, no.

6 Q Okay. Did Danny ever quote you a price, say okay, we can
7 redo your wine room, but it's going to cost this?

8 A No, never.

9 Q We can put new doors on into this room, but it's going to
10 cost this?

11 A Never.

12 Q Okay. One other thing that popped into my head when we
13 were talking about damage and missing items, at some point you --
14 some Fleetwood doors were left open at your house and you had to mop
15 up some rain?

16 A Yes, yes, yes.

17 Q Can you explain that?

18 A So at the time that Desert Valley was on the job and there
19 was no supervision there, like I said, my house was left open all the time.
20 The Fleetwood doors, which are probably about, I don't know, 30 feet
21 long and about 16 feet high, were open during the rain, during a terrible
22 storm.

23 And I happened to be in town that night. And I came in and I
24 find half my great room flooded with water. And me and my friend
25 Rommel [phonetic], we got push brooms and started pushing that water

1 out. And I was calling Daniel. And I said Daniel, how can you guys leave
2 my Fleetwood doors open. I just went through a flood and I cannot
3 believe you guys are doing this, like I cannot believe that you guys are
4 this irresponsible that you guys would do this. And like I said, my great
5 room was flooded with water.

6 And Daniel did come down with fans, I think it was the next
7 morning. But to go through that, I mean I was devastated. I mean I
8 could not believe I may have to go through this again.

9 Q Well, and as uncomfortable as I'm sure it was to sweep the
10 rain out of the great room, the question that popped into my mind about
11 that was, the Fleetwood doors to the outside were open?

12 A They were open.

13 Q And someone could have just come through them in the rain
14 and --

15 A They could have came in through there, through the garage,
16 the open doors, or through the back -- anywhere. It was open.

17 Q Okay. We talked a lot about the inspections, the final
18 inspections; do you recall that?

19 A Yes.

20 Q Okay. Was the flooring done on 12-17 of '15, the top floors,
21 was it complete at that point?

22 A I don't think it was complete.

23 Q Okay. Do you have -- were you part of passing the inspection
24 process?

25 A Was I personally part of it?

1 Q Yeah.

2 A No.

3 Q Okay. But even though a faucet may have been attached to

4 pass the water inspection or the plumbing inspection, whatever else,

5 there was still a considerable amount of work to be done as of December

6 17, 2015, on the house to get it done; wasn't there?

7 A Oh, to make it a custom home again, absolutely.

8 Q You didn't get to see a C of O on December of 2015; did you?

9 A No, I did not.

10 Q That was still several months away?

11 A I don't remember the exact month --

12 Q Okay.

13 A -- but it was some time away. I don't remember when.

14 Q You talked a little bit, and I'm actually going to finally get to

15 my outline, you talked a little bit yesterday, you actually talked quite a bit

16 two days ago, about the contract, do you remember that, we went

17 through the contract?

18 A Yes, I do remember that.

19 Q Some ambiguous wording in there here and there. But that

20 said, there is a provision in there that says that the work has to be done

21 in a reasonable workmanlike manner; wasn't it?

22 A I believe that was towards the beginning, yes.

23 Q It's actually the second line of the paragraph.

24 A Okay.

25 Q Did Desert Valley do their work on your house in a

1 reasonable and workmanlike manner?

2 A No. No.

3 Q Okay. And I'm doing rough math here. So, again, before I
4 get to my outline. The difference between 1.32 million and 1.187 million,
5 I come out to as being about 84 percent, 84, 85 percent. One number is
6 85 percent of the other. When Desert Valley left the job, was your house
7 85 percent done?

8 A Oh, no, definitely not.

9 Q Okay. Did have a C of O at the time the doors were left
10 open?

11 A The time that -- are we talking the referencing the Fleetwood
12 doors?

13 Q Yes.

14 A Oh, no, no, no.

15 Q Okay. So, again, per your understanding you couldn't move
16 back into the house until you had a C of O; could you?

17 A That's what I understand is the rules, yes.

18 Q Okay. So with respect to the doors being left open and all
19 these things that happened after -- you know, after Robert Ramirez left,
20 you had no ability to do anything about that because you couldn't even
21 move into the house; could you?

22 A No. No, I could not move back in the house.

23 Q Okay. You built the house, I think you testified, now I'm
24 finally slowly meandering back into what I was going to ask you, you
25 built the house in 2004, 2005; somewhere in that range?

1 A No. I started I believe it was around 2006 and they finished
2 in around 2008, mid-2008.

3 Q Okay. Was that the first experience you had building a
4 house?

5 A Yes.

6 Q Okay. Was this the first custom house that you had built?

7 A Yes.

8 Q Okay. Nobody really asked you this, but I mean with respect
9 to what you do professionally, what you do for a living, does that have
10 anything to do with construction?

11 A No. I'm an automotive parts distribution -- I own an
12 automotive parts distribution company.

13 THE COURT: So not that anybody was wondering what you
14 actually do for a living. So say that again because --

15 THE WITNESS: Oh, do you want me to say my answer
16 again?

17 THE COURT: Yes.

18 THE WITNESS: Automotive parts distribution company.

19 BY MR. BOSCHEE:

20 Q Okay. And with respect to your business, you don't have --
21 that has nothing to do with building homes, dealing with contractors,
22 dealing with suppliers, any of that; does it?

23 A No.

24 Q Okay. You talk about -- we talked about the house being
25 damaged a lot. How exactly did the flooding happen?

1 A It was the angle -- well, from what I understand, I think the
2 term is angle stop on the women's toilet upstairs in the master
3 bathroom, which was right above the kitchen and the wine room.

4 Q Okay.

5 A And the sauna bath.

6 Q Okay. When did you find out that this damage had occurred?

7 A I can't remember the exact date, but it was right around
8 August, early August, like August maybe 2nd or 3rd or somewhere in
9 that range.

10 Q Okay. And then I think you testified you called the
11 insurance?

12 A I did. I called. You know, yes, I did call my insurance
13 company, yes.

14 Q And then SERVPRO got out there?

15 A SERVPRO got out there that night.

16 Q Okay. And then shortly thereafter you met Danny, right?

17 A Shortly thereafter I met Danny, yes.

18 Q How did that introduction happen?

19 A SERVPRO recommended DVC, Desert Valley Contractors.
20 They recommended them. And I did ask around to other custom home
21 builders and asked if they could do something for me and help me out
22 here. And they said if it's an insurance job, we don't touch it.

23 Q Okay. Now, putting aside the fact that they are clearly
24 separate and distinct companies, did anybody at SERVPRO reference any
25 affiliation that they had with Desert Valley Contracting during that initial?

1 A The only thing is that George, who was my guy that I talked
2 to initially before Daniel, he did say that there was -- they had a
3 relationship. He didn't specify what that relationship was. I didn't know
4 what that meant.

5 Q Okay. Danny Merritt came out to his credit, came out right
6 away and met with you on the property; is that fair?

7 A Yes, he did.

8 Q Okay. And you guys walked the property?

9 A Yes, we did.

10 Q Okay. And what did you discuss when you were walking the
11 property?

12 A The damages and we just kind of walked the whole property.
13 And he wanted to see all the different rooms and basically yeah, he was
14 just writing things down. I don't know exactly what he was writing
15 down. I can't say what he was writing down, but just writing stuff down.

16 Q Okay. And did you have concerns or questions about Mr.
17 Merritt and DVC's ability to handle a job like this, a custom home?

18 A Oh, yes, I did, definitely.

19 Q Okay. And what were your concerns?

20 A If they are -- I guess I don't want to say qualified again, but I
21 wanted to make sure that they had the experience and the know-how,
22 the knowledge to do custom homes. A custom home is way different
23 than commercial buildings, office buildings, warehouses, regular homes.
24 It's just a completely different animal.

25 Q And what did he tell you?

1 A He said yes.

2 Q Okay. Did he tell you that they had done other custom
3 homes?

4 A He said that he would let me meet the owner, Dennis, and
5 that Dennis would kind of allay my concerns and fears.

6 Q Okay. And did you meet Dennis?

7 A I did.

8 Q And did Dennis reassure you that they could do this job?

9 A Yes, he did.

10 Q Did Dennis mention any affiliation that he had with
11 SERVPRO?

12 A He didn't mention it, no.

13 Q Okay. But what did he tell you specifically about their ability
14 to handle a house of this type?

15 A Oh, I mean he kind of just said, you know, we do these kind
16 of things all the time, this is -- you know, he referenced some -- I can't
17 remember the addresses. He had some point of references I did this, I
18 did this, I did that. You know, yeah, this is not a problem.

19 Q Okay. Were you involved with Desert Valley and the
20 insurance company putting together the initial estimate?

21 A Was I involved --

22 Q Yes.

23 A -- personally? No, I was not involved.

24 Q Okay. So after you walked the property with Danny, that was
25 kind of it. You let him and the insurance do what they had to do?

1 A They're the experts. I don't handle that stuff.

2 Q Okay. You testified -- sorry about that. You testified earlier
3 that you had an understanding it was going to be a six to eight month
4 project. Was that just from Danny or was that also from Dennis?

5 A From what I remember, it was Daniel that was always
6 referencing that.

7 Q Okay.

8 A And the insurance company.

9 Q Now, I think I got this number right. Of the subcontractors
10 that you recommended that had worked on the house previously, there
11 are only four left that were still in business; is that right?

12 A I think it was three, maybe four.

13 Q I think it was three and then Mr. Ramirez, so that may be
14 right.

15 A Oh, okay. Okay.

16 Q When did Rob Ramirez first start coming to the property?

17 A Are we talking about the original build or are we talking
18 about this particular --

19 Q Well, let me ask it. That's probably --

20 THE COURT: It's a good question.

21 BY MR. BOSCHEE:

22 Q That's a really good question. Rob Ramirez was involved in
23 the original build; wasn't he?

24 A He was involved in the original build, yes.

25 Q Okay. What was his -- I had all these questions prepared for

1 Rob and I just thought they were out there already. What was Rob
2 Ramirez' position with the original construction?

3 A He was a supervisor for me.

4 Q Okay. And you recommended him to come back out and
5 help with the remodel, right?

6 A I did.

7 Q Okay. When did he first come back, I guess, to the house to
8 kind of look and see what was needed to be done?

9 A I know Danny -- I don't know exactly the date Danny called
10 him to come out. I couldn't tell you exactly the date.

11 Q Okay.

12 A But it was definitely close to the early August, like August
13 4th, 3rd, 5th, 6th, I don't know exactly what date, but it was --

14 Q Okay. He wasn't at that point, he wasn't an employee of
15 Desert Valley, right?

16 A No, not -- when he initially came out? No, he was not an
17 employee of DVC, no.

18 Q Okay. And let me ask you this. There's some testimony, I
19 think it was on Monday, about the contract and the documentation that
20 you signed. You don't deny sitting here right now that you signed a
21 contract with DVC to do this work, right?

22 A That is my signature and that is my printed. I just -- I think
23 before I was asked do you remember signing this, I don't. My head was
24 just all scrambled at the time. Yeah, so I don't remember exactly signing
25 it, but looking at the documents now that is my signature and that is my

1 printed. That's my handwriting.

2 Q Okay. This isn't a contract that was prepared by you; is it?

3 A Oh, no, no.

4 Q It's a contract that was prepared by Desert Valley, right?

5 A Yes. Somebody, yes, but not me.

6 Q Right. And presented to you for signature at some point?

7 A In the beginning, yes.

8 Q Right. Now, after you signed it, presumably you gave it back
9 to somebody at Desert Valley, right?

10 A Yes. I believe it was Daniel.

11 Q Right. The next time you saw this contract was shortly
12 before litigation commenced; wasn't it?

13 A It was either shortly before or shortly after, yes.

14 Q Okay.

15 A It took a while.

16 Q Did you ask for it?

17 A Yes, many times.

18 Q Why were you asking for the contract?

19 A Because they said I signed a contract and I said I don't recall
20 ever signing a contract. I go could you please send it to me.

21 Q Okay. When you and Danny Merritt were -- Daniel. When
22 you and Daniel Merritt were discussing the extras and the changes to
23 the, if you will, to the wine room and the doors and the things that you
24 were doing that were different than the estimate, did he ever provide
25 you with a copy of this contract?

1 A No, never.

2 Q Did he ever tell you that there was anything in the contract

3 that says that -- that said that you might be responsible for additions or

4 changes if it went above and beyond the insurance?

5 A Definitely not.

6 Q Did he ever tell you that any of these changes or extras were

7 going to go above and beyond the insurance?

8 A Definitely not.

9 Q Okay. But when you were talking to Mr. Merritt about the

10 changes for the wine room, the changes to the doors, getting rid of the

11 sauna, getting rid of the ceiling, you didn't have a copy of the contract;

12 did you?

13 A I did not.

14 Q Okay. So let's go back. Did you ever get a copy of the initial

15 insurance estimate that Daniel Merritt sent to your insurance company?

16 A The initial?

17 Q Yeah, the estimate that got the job started.

18 A Yeah, I'm pretty sure I did.

19 Q Okay. You got a -- you had a copy of it?

20 A I'm pretty sure I did.

21 Q Okay. And so did you have a copy of that insurance estimate

22 when the work commenced?

23 A Are we talking about the initial still or --

24 Q Yeah. I'm talking about Desert Valley, you get them going,

25 according to them, around the 24th of August of 2014?

1 A Right.

2 Q And shortly thereafter Mr. Merritt walks the property with the
3 insurance and he puts -- and he gets bids from all the subcontractors and
4 he puts together the initial estimate for how much it's going to cost to
5 put your house back together?

6 A Right.

7 Q Did you get a copy of that?

8 A Yes.

9 Q Okay. Did you have any questions or concerns about that
10 estimate?

11 A As far as to the insurance company or to Daniel?

12 Q Well, to either. Did you understand what Desert Valley was
13 going to be doing and how much it was going to cost?

14 A Yes. I understood the cost of it, yes.

15 Q Okay. And what was your goal, objective -- I'll say objective.
16 What was your objective for the work that Desert Valley was going to be
17 doing to this house; what did you want to happen?

18 A I wanted my house to be put back together so I could get
19 back in there.

20 Q Okay.

21 A And I wanted the workmanship to be similar as what I had
22 before.

23 Q Okay. How often did you visit the property, and the property
24 being your house, how often did you use the property after Desert Valley
25 started their work?

1 A That varied. Sometimes I would come out, you know, three
2 days here, a week there. It just all varied. It just depended on how busy
3 I was at my office.

4 Q Okay. You used the same designer that you had originally
5 used, I think you testified yesterday?

6 A Yeah. Her name is Tina, yes.

7 Q Tina, right. Were you involved in choosing the materials
8 with Tina and Desert Valley?

9 A Yes, I was.

10 Q Okay. How often did you engage in choosing materials?

11 A Tina would give me suggestions. Basically, a lot of times it
12 would be like three things. She'd be do you want this, this, or that. And
13 I said I liked this one. And she'd go out and source it out and make sure
14 it was still in stock or available, so, yeah.

15 Q How many times did you and Tina and Desert Valley sit
16 down to pick out materials?

17 A Not very many times.

18 Q Okay. Of the materials that you selected during this one or
19 two meetings that you had with the designer and Desert Valley, how
20 many materials were upgraded from what you had in the house
21 originally; if any?

22 A How many materials were upgraded?

23 Q Yeah.

24 A None. No materials were upgraded.

25 Q Okay. So the materials, the -- how about the appliances; did

1 you upgrade any of the appliances in the house?

2 A The appliances in the kitchen I reused them. There were
3 some replacements I had to do, like the microwave I just testified to
4 maybe an hour ago I had to replace because it was missing. A
5 refrigerator in my kitchenette I had to replace because it was missing.
6 Stuff like that, but they weren't upgrades, they were just to replace.

7 Q Okay. Were you concerned at any point about any of the
8 extras or changes that we discussed, the wine room, the doors, end up
9 costing you money; was that a concern that you had?

10 A I mean of course I would. I'm a very careful person as far as
11 that goes and I definitely asked Daniel many times, I said hey, we're
12 definitely okay, right, we're everything's cool. And Daniel always
13 reassured me that don't worry, he goes everything's fine, everything's
14 absorbed or fine.

15 Q Would you have done the extra, would you have changed the
16 wine room or the doors or the other couple minor things had you known
17 that there was going to be potentially a cost to you above and beyond
18 the insurance?

19 A No, absolutely not.

20 Q Was everything that was done on the project in terms of
21 materials, extras, revisions, whatever you want to call them, cleared with
22 Danny before they were done?

23 A Could you repeat that, please?

24 Q Was everything that was picked out, the materials, the
25 revision to the wine room, the doors, was it all cleared with Danny

1 before it was done?

2 A Yeah. Oh, you mean the work? Yeah, absolutely.

3 Q Okay. Did you, prior -- we looked at the August email that's
4 called a change order, but I don't know, I didn't see a change order, but
5 before that email did you ever, and you've been sitting in the courtroom
6 for the last three, almost three days, and you've heard a lot about
7 change orders --

8 A Yes.

9 Q -- and you've seen a lot of change orders in the subs?

10 A Yes.

11 Q Did you ever see any change orders from any subcontractors
12 prior to getting that August 25th email?

13 A None, zero.

14 Q In fact, and we've looked at this document several times
15 during this case, Danny Merritt actually signed one of the conditional
16 waivers and said that as of July 3rd there were no change orders; didn't
17 he?

18 A Yes, he did.

19 Q Did you ask him to do that?

20 A Yes, I did.

21 Q Why?

22 A Because I learned -- I was a complete neophyte when I did
23 the house the first time and, yeah, change orders are a big thing. And to
24 make sure that change orders -- there are no change orders is a huge
25 thing. And I wanted to assure myself, because I'm a worry wart and I

1 wanted to make sure that nothing was going to come and bite me in the
2 butt later, so I asked him to please -- I go sign this because I need to
3 make sure that we do not -- even though he's verbally saying there are
4 none, there are none, there are none, don't worry, don't worry, I just
5 wanted the peace of mind to make sure that hey, you know what, there
6 are no change orders.

7 Q Okay. And so he was -- one at a time here. He told you there
8 were no change orders as you were going through this project, right?

9 A Yes.

10 Q As of June, when the final estimate is submitted to the
11 insurance company for the insurance, for the same estimate price, there
12 were no change orders denoted on that estimate; were there?

13 A Not that I know of.

14 Q As of July 3rd Danny Merritt signs a document saying there
15 are no change orders, right?

16 A That is correct.

17 Q And you had never actually seen or received any of the
18 change orders, correct?

19 A That is correct.

20 Q So even if there were extra costs being incurred on this
21 project, as of July 3rd you had no idea what those costs were or what
22 they were being attributed to; did you?

23 A That's correct.

24 Q In April of 2015 did you have concerns about the progress of
25 the house?

1 A Can you repeat the date, please?

2 Q April of 2015.

3 A April of 2015, oh yes.

4 Q Yeah. Again, I think you testified only 30, 35 percent done?

5 A Yes, around. Around, approximately.

6 Q Okay. And this was pretty close to when Mr. Ramirez was let
7 go. I think he was let go a month later; is that fair with your recollection?

8 A I would say that's a good approximation, yes.

9 Q Okay. What did Danny do at that point to alleviate your
10 concerns about whether this house was ever going to get done; he just
11 let one of the supervisors go and he was not even halfway done with the
12 house.

13 THE COURT: Okay, hold on.

14 MR. BOSCHEE: Okay.

15 THE COURT: Ask him a non-leading, non-argumentative
16 question.

17 BY MR. BOSCHEE:

18 Q What did Danny -- what, if anything, did Danny tell you in
19 April to alleviate your concerns that despite all these other things
20 happening, that you were -- that the house was going to get done in
21 fairly short order?

22 A He told me at that time that he was going to be there, don't
23 worry, he's going to be there daily and he's going to be the one
24 supervising and that this house is going to get put back together and
25 we'll be fine.

1 Q Was it?
2 A No.
3 Q Was it done even a year after that? That would be April
4 2016?
5 A No, it still wasn't done.
6 Q Okay. Now, we talked about after DVC left the project and
7 after you ultimately terminated them, we looked at it earlier. I think you
8 saw it, I think the Judge saw it. There was a letter that was sent out to
9 the subcontractors; do you remember that?
10 A Yes, I do.
11 Q Okay. And the letter, paraphrase, the letter advised the
12 subcontractors to stop working on your house, fair?
13 A Yes, it did.
14 THE COURT: What was the exhibit number; do you know?
15 MR. BOSCHEE: I'll find it. It is -- no, that's not it.
16 [Counsel confer]
17 MR. BOSCHEE: I think it's Exhibit 567, what's left to it.
18 BY MR. BOSCHEE:
19 Q Did you see a copy of this letter when it was sent out?
20 A I saw it shortly thereafter.
21 Q Okay. Was this letter a hindrance to you getting the subs to
22 finish your house?
23 A Oh, most definitely.
24 Q Why?
25 A It basically says it'd be better not to -- basically, stay away

1 from me.

2 Q Okay. When the subs that you contacted went back to work
3 on your house, were any of them at that point paid in full?

4 A No.

5 Q And you ultimately paid them to get them to come back and
6 continue working on your house, right?

7 A That is correct.

8 Q And when the work was finished, as best as it could be with
9 the subs at that point, you paid them in full; didn't you?

10 A Yes, I did.

11 Q Okay.

12 A Each and every one of them.

13 Q And you paid them with the remainder of the insurance
14 money that you had, right?

15 A Plus more, yes.

16 Q Plus between 60 and \$70,000 the exact amount that you
17 calculated at some point fairly shortly hereafter out of your pocket, right?

18 A That is correct, yes.

19 Q And I want to be clear about something because this may
20 have been a mistake in my trial brief. The damages that you're seeking
21 in this case are not the full \$256,000 that you paid, you're just seeking
22 the difference between what was left of the insurance money and what
23 you had to pay out of your pocket, the damages that you had to incur,
24 Eugene Inose, paying the subs to finish the work on your house, correct?

25 A Everything, the dollars that came out of my pocket, above

1 and beyond.

2 Q Right. Okay. Did any of the subcontractors, to the best of
3 your knowledge, record mechanics liens against your house?

4 A Oh, not that I could remember right now. Was there one?
5 There might have been one.

6 Q Before you paid them?

7 A No. Those got -- no, no.

8 Q Okay. As of today there are no mechanics liens regarding
9 your house; are there?

10 A No. It's clean.

11 Q None of the subcontractors sued either IN-LO or Desert
12 Valley for nonpayment under their subcontracts; did they?

13 A For me i could tell you no. I don't know, I cannot answer
14 about DVC, but I do not -- I do not think so.

15 Q You're not aware of any?

16 A I'm not; definitely not aware of any.

17 Q And you haven't been named in any lawsuits?

18 A No, I have not.

19 Q And --

20 A Well, other than this one.

21 Q Right. And as of today's date, none of the subcontractors
22 that you worked with or that worked on this house have any outstanding
23 payment demands or claims against you; do they?

24 A Not against me, no.

25 MR. BOSCHEE: I'll pass the witness, Judge. Thank you.

1 THE COURT: Thank you.

2 REDIRECT EXAMINATION

3 BY MS. HURTIK:

4 Q Mr. Inose, I want to just go back to one of the last -- just one
5 of the last questions that you were asked. You said none of the subs
6 were paid in full when DVC was terminated from the project. Previously
7 you testified there were some subs that were done, completed, and paid.
8 So you're saying everybody -- nobody was paid?

9 A No, ma'am. How I took that reference was the people that
10 were still left on the job, that's what I referenced.

11 Q Well, there's a difference. You have ten, 20 subs working on
12 it, you've got five or six left, so were there subs that were paid and there
13 were only a few remaining that were not paid in full when DVC was
14 terminated?

15 A I'm sure there were other subcontractors that were already
16 paid and done as their work was done.

17 Q Okay. So I also want to kind of -- you were asked questions
18 about what you did for a living. So you own a company called
19 Promotion Properties, LLC, correct?

20 A Yes, I do.

21 Q And how long have you owned that company?

22 A It's a real estate holding company that I've owned -- I can't
23 remember when I --

24 Q Since 1997, would that refresh your memory?

25 A Possibly. I don't recall the year that I started that company.

1 '97 sounds a little bit early, but it could be. I cannot remember.

2 THE COURT: Has it been over a decade, however?

3 THE WITNESS: Yeah, it's been over a decade, yes.

4 BY MS. HURTIK:

5 Q And so what does that company -- you said it's a real estate
6 holding company. How many properties are commercial properties;
7 what percentage?

8 A On Promotion Properties?

9 Q Uh-huh.

10 A All of them.

11 Q What does your website say? How many are commercial,
12 how many are residential, and how many are resorts?

13 A Well, the website is just my own personal website as far as
14 my real estate properties that I do own, but that doesn't mean that's a
15 part of Promotion Properties, per se.

16 Q So if Promotion Properties, LLC website says you own 40
17 percent residential, 40 percent commercial, and 20 percent resorts, that's
18 not true?

19 A That doesn't necessarily mean it's Promotion Properties. I'm
20 talking about all my properties that I have.

21 Q Okay. So the question is, Promotions Properties, LLC's
22 website, if it states 40 percent -- that Promotion Properties, LLC owns 40
23 percent commercial, 40 percent residential, and 20 percent resorts, that
24 would be incorrect?

25 A That's a little bit of puffery, ma'am.

1 Q That's a little bit of what?

2 A It's puffery. It's not necessarily under Promotion Properties.
3 Like the houses in there, it's not under Promotion Properties, it's under
4 IN-LO Properties.

5 Q Okay. But that's your company and that's one of the things
6 you do, correct?

7 A Promotion Properties is a real estate holding company, yes.

8 THE COURT: So I think there's a disconnect, so re-ask that
9 question, please.

10 BY MS. HURTIK:

11 Q So Promotions -- Promotion Properties, LLC is owned by you,
12 correct?

13 A That is correct.

14 Q Okay. And it is a real estate holding company for resorts,
15 residential, and commercial properties, correct?

16 A That is my web designer's terminology, not mine, but yes.

17 Q You have no say in what's being put out there in the ether
18 world that everybody sees?

19 A No. He made that and it was fine by me. It sounded good.

20 Q But it's not true you're saying?

21 A The resort is Brian Head. I have a condo up in Brian Head
22 that I own. I don't know if that's considered a resort, but it's a small
23 condo I own in Brian Head. He put it and qualified it as being a resort.

24 Q Okay. So you own properties in what States?

25 A California, Nevada. I own the Brian Head in Utah. And have

1 a small condo in Hawaii.

2 Q Okay. So you characterized earlier that you really didn't
3 know much about construction. You actually do; don't you? You've
4 actually owned a lot of properties since 1997; isn't that true?

5 A I've owned quite a few properties, but I bought quite a bit of
6 them brand new.

7 Q And you may have only built this custom home for the first
8 time in around 2008 you testified. Some were 2006, 2008.

9 A 2006 to 2008, correct.

10 Q But you've had a lot of experience because you've bought
11 other properties in Nevada that you've done work on, as well, correct?

12 A Nothing even close to that. Paint, carpet, very easy T.I. stuff.

13 Q You've dealt with contractors before?

14 A I've dealt with contractors, yes.

15 Q And you've dealt with change orders before, correct?

16 A Not before I built the house in 2006 and 2008. That was a
17 new terminology for me.

18 Q Okay. And, in fact, you terminated the general contractor on
19 that first time around, correct?

20 A That is correct.

21 Q And then you did an owner build. And so you were very
22 familiar with working with the subcontractors, correct?

23 A I learned very quickly after I fired the original general
24 contractor because he had kept my money and was not dispersing it to
25 the subcontractors. And I learned about that when I walked the job and

1 the subcontractors were coming up to me, asking me as the owner,
2 saying do you know when we could all get paid. And I said what do you
3 mean by that. I've given the general contractor X amount of dollars, how
4 could you guys not be getting paid. And they said well, the general's
5 saying you never even gave him a dime.

6 Q Okay. So you were very concerned that with the bottom line
7 and that the change orders, you in fact sometimes didn't sign change
8 orders because you knew, you thought that they all had to be signed,
9 otherwise they wouldn't have to be paid; isn't that correct?

10 A No, that is not correct at all, no.

11 Q So you never met with Danny Merritt or Rachelle Elliston
12 from DVC to discuss change orders that you would not sign?

13 A I don't recall that meeting at all, but maybe after the email
14 maybe they wanted me to sign change orders. I cannot recall that for
15 sure right now.

16 Q Okay. So I want you to go to binder number six. Or,
17 actually, no, no, don't do that.

18 A I hope it's eight.

19 Q It's eight, it's eight.

20 A Thank you.

21 THE COURT: Oh, good.

22 BY MS. HURTIK:

23 Q Okay. It's binder number eight and Exhibit 569. Okay.

24 A Wait, 569, okay, I got it.

25 Q Yes, 569. And if you can go to IN-LO 68.

1 A Okay, I'm there.

2 Q Okay. So you were asked about this email regarding change
3 orders that was sent from Danny Merritt. And you produced this. And
4 the top is blacked out and it's a forwarded message, correct?

5 A When you say I produced it, I did not. I'm not the one that
6 wrote this email.

7 Q Okay. No. Let me -- I'll ask it a different way. Okay. So on
8 the bottom of each one of these documents there's numbers. This one
9 says IN-LO. IN-LO means you produced it. You produced it in this
10 litigation.

11 A Okay. Okay. I did not know that, but okay.

12 Q Okay. In fact, this is a forwarded -- up here it says forwarded
13 message.

14 A Okay.

15 Q So it came from somebody, probably to your counsel, to be
16 produced. And it is an email from Danny Merritt. So you're saying you
17 didn't produce this?

18 MR. BOSCHEE: Objection. He didn't say that.

19 THE COURT: He did not.

20 MS. HURTIK: Okay. I'm asking a question, I'm sorry. I'll
21 restate it.

22 THE COURT: Hold on, hold on. I mean your responses in
23 asking a question while you're --

24 MS. HURTIK: Okay, I'll fix it.

25 THE COURT: Okay. Thank you.

1 BY MS. HURTIK:

2 Q So did you produce this document to your counsel?

3 A Yes, I did. I did give this to my counsel.

4 Q Okay. And earlier you testified that this email had no
5 attachments; is that correct?

6 A Not that I know of.

7 Q Okay. I want you to go to binder number four.

8 MS. HURTIK: I apologize, Your Honor.

9 THE COURT: No, that is okay.

10 THE WITNESS: Do you want me to keep this one open still
11 or no?

12 BY MS. HURTIK:

13 Q No. You can close that.

14 A Okay.

15 Q So go to Exhibit 401.

16 THE COURT: Which one again?

17 THE WITNESS: 401.

18 THE COURT: It's the original email, hopefully?

19 MS. HURTIK: Yeah.

20 THE COURT: What number did you say?

21 MS. HURTIK: Let me try to make it so you can --

22 THE COURT: No, exhibit number?

23 MS. HURTIK: Oh, it's Exhibit Number --

24 MR. BOSCHEE: 401.

25 MS. HURTIK: -- 401. And it starts with DVC 1278 and it

1 actually goes to 1289, several pages.

2 THE COURT: So my 401 starts with 1277, but certainly --

3 MS. HURTIK: It might start with 1277.

4 THE COURT: 1278's the second page in there.

5 MS. HURTIK: Yeah, 1278.

6 THE COURT: Okay.

7 MS. HURTIK: Let me look at the index to make sure there's
8 not an issue, because what I'm looking --

9 THE COURT: I think you're fine. I mean it looks like 1278's
10 the original email.

11 BY MS. HURTIK:

12 Q Okay. So are you there, Mr. Inose?

13 A Yes, I am.

14 Q Okay. So 1278 to 1289. And if you look in the -- let me move
15 it over. If you look in the subject and if you look at the top, this is from
16 Daniel Merritt, August 25th, 2015, the same email you were looking at
17 before. And this says sent to Eugene, Promotion Properties dot com.
18 And it does also cc Dennis Zachary and Rachelle Elliston. It says change
19 order not including materials for bathroom walls, attachments. And
20 there's several attachments. Do you still say that you didn't receive any
21 attachments?

22 A Well, I could not recall that I received any attachments. I
23 have not looked at these things for many, many years, but when I was up
24 here I do not recall getting these, but it looks like they were sent to me
25 according to this document here.

1 Q Well, this is -- and you can pull up that other binder that we
2 had up before, which is volume eight, and you can go to Exhibit 569
3 again. And just tell me when -- it will be 569 IN-LO 00608. So are you
4 there?

5 A I am there, yes.

6 Q Okay. So if you compare the two, the only difference in IN-
7 LO 68 and DVC 1278, appears to be, and correct me if I'm wrong, is that
8 IN-LO 68 was a forwarded email, which attachments do not only show in
9 forwarded emails. Would that be -- do you think that's correct?

10 A Yes, I guess so. I don't know on that one.

11 Q Okay.

12 A Usually when I forward I thought it included attachments, but
13 maybe not. I don't know.

14 THE COURT: Blame it on the attorney.

15 BY MS. HURTIK:

16 Q Okay.

17 THE COURT: That was a joke.

18 MS. HURTIK: We always get a bad rap.

19 THE COURT: Yeah.

20 BY MS. HURTIK:

21 Q So let's go back to -- so now you're looking at them. Do you
22 agree that this is the same email?

23 A It appears like it is. I mean the font looks different to me, but
24 it appears to, other than the attachment, and but yeah, I mean other than
25 that, it looks very -- it looks very similar, yes.

1 Q Well, if you read it, why don't you read it.

2 THE COURT: I'll tell you as a finder of fact it sure looks like
3 the same email to me, except this one has attachments.

4 MS. HURTIK: Thank you, Your Honor.

5 THE COURT: Okay.

6 BY MS. HURTIK:

7 Q Okay. So now we're going to stay on the Exhibits 401 and
8 the 1278 to the 1289.

9 A Okay, got it.

10 Q You can put the other one away now, for now. It'll make it
11 easier for you.

12 A Okay. Got it.

13 Q So this email says, *attached is a supported change order for*
14 *items that were not in my original estimate for the repairs to the home. I*
15 *will send you over a copy of this original estimate to match this and*
16 *show you where the price difference is. And then it goes on to tell you*
17 *where there's changes. Now, do you recall this email?*

18 A Yes, I do.

19 Q Okay. So when you got this email, what did you do with it?

20 A I read it.

21 Q You read it?

22 A Yes.

23 Q So if your deposition testimony said that you just deleted it
24 because it said change orders, that would be incorrect?

25 A The deleting was incorrect in there as far as what you're

1 referencing. What I did say was that I deleted items in there referencing
2 the bathroom tiles. I did not do it. I used the wrong terminology. Since
3 we're talking about an email, I did not delete the email or else I would
4 not be able to forward that to my attorney.

5 Q But did you tell me in your deposition testimony that
6 because it contained change orders, you deleted it because you weren't
7 going to pay for those?

8 A No. If you could reference the deposition, I could go ahead
9 and clarify that deposition for you. And I used the wrong terminology as
10 far as deleted. I meant the items were deleted, meaning that I never did
11 the wall tile in the bathrooms. And if you look back down in the
12 deposition, I reference that once again and I said I should have not used
13 the word deleted.

14 [Counsel confer]

15 BY MS. HURTIK:

16 Q Okay. So you're saying you didn't delete them. So if we
17 publish your deposition testimony and we read it into the record that I'm
18 not -- that's not correct what I'm saying?

19 THE COURT: Well, he doesn't say that, but you can publish
20 his deposition and impeach him with it. We have it, don't we?

21 UNIDENTIFIED SPEAKER: Do we have it?

22 MS. HURTIK: Yes, we have it. We'll publish it, Judge. Do
23 you want both volumes or --

24 [Counsel confer]

25 ///

1 BY MS. HURTIK:

2 Q Okay. So I'm going to read you your deposition testimony
3 and then I'm going to let you look at it, okay?

4 A Okay.

5 Q So on page 135 of your deposition, line 22, you were asked:
6 "So there were no change orders. Did Danny or Rachelle
7 ever ask you to sign a change order?"

8 You said, "no."

9 Then it says, "sign a change order ever or anything?"

10 And on page 136 you again say no.

11 And the next question was never? "So if I had emails that
12 showed me -- showed that they had, you just don't recall it?"

13 You say, "there was never a change order ever produced to
14 me, in invoice form ever."

15 So I say, "okay, in an invoice form. So there was never
16 change orders from any subcontractors showed to you? "

17 You say no, zero.

18 Okay. Now, we go on to say question, never? Okay. Then
19 let's go to that and then we'll come back to this. You're sure about that?

20 You said, "it's three years ago, I believe so, yes."

21 Then the next question is, "they never had any discussions
22 with you or phone calls that said hey, we need you to look at these
23 change orders. This is an upgrade.

24 You said, they mentioned some change orders in an email
25 and on the phone and I deleted those."

1 A Those.

2 Q Question -- let me finish.

3 A Okay.

4 Q "Q Why would you delete them?

5 "A Because they said it wasn't covered."

6 And I said okay. The question was okay, but these were --

7 there were change orders?

8 You said no, I deleted them.

9 I said, no deleting -- the question was, no deleting them

10 doesn't mean they're not there.

11 You said, they weren't done.

12 And I said, you're saying that the subcontractors provided

13 change orders, but they weren't done, the change orders weren't done?

14 You said, I never -- I didn't see any change orders from the

15 subcontractors. What I'm telling you is the changes that we're going to

16 do and when Danny told me it wasn't going to be covered, I did not do.

17 So is your testimony still that you deleted -- that you didn't

18 just delete?

19 A I said I deleted -- what I meant by deleting them is I deleted

20 the items that he was referencing here, like the tiles. If you read that

21 whole thing and if you keep reading on and on and on, you referenced it

22 back again. You said, you said deleted? And I meant oh -- I don't know

23 exactly what I said, I said it's a bad choice of words. I shouldn't have

24 said deleted, I should say I did not do.

25 Q Okay.

1 A So if you could please read more, I would appreciate it.

2 Q I don't think --

3 THE COURT: Mr. Boschee can do that if he deems it
4 appropriate.

5 THE WITNESS: Oh, okay, okay. I'm sorry, I'm sorry. I don't
6 know how this exactly works, but I'm so sorry.

7 THE COURT: That's okay. That's okay.

8 THE WITNESS: So it was a bad choice of words using the
9 word deleted when referencing email, but what I -- to clarify that --

10 THE COURT: You've been through it.

11 THE WITNESS: Okay.

12 BY MS. HURTIK:

13 Q You're done with that. Okay. So you -- okay. So I want to go
14 back to something else that Mr. Boschee was asking you. You said that
15 this was supposed to only take, I don't know. How long was the house
16 supposed to take to be done; did you say?

17 THE COURT: Six to eight months, nine months at the outset.
18 That's what he said.

19 BY MS. HURTIK:

20 Q Okay.

21 A Thank you.

22 Q And there were delays. Do you know why there were
23 delays?

24 A Did you want my opinion on this?

25 Q No. I want to know if you know why they were delayed, not

1 your opinion. What you know.

2 A From what I saw?

3 Q Uh-huh.

4 A Terrible scheduling, materials not being ordered, no
5 supervision on the job, so giving no direction to the subcontractors who
6 did not know what to do when they were there. I mean there was a --

7 Q Okay.

8 A Yeah, I mean no leadership.

9 Q So was there special tiles that you ordered from Tuscany Tile
10 that was delayed because of a strike in Long Beach by the workers?

11 A Yeah, Rachelle did say that there was -- well, I think it was
12 Rachelle. I don't know if it was either Rachelle or Danny, but somebody
13 from DVC said, did say that there was a little bit of a delay on the
14 limestone tile, yes.

15 Q Did they in fact tell you that there was a two month delay
16 because of the strike in Long Beach?

17 A I cannot recall that one.

18 Q Okay. So if I show you some emails, that would refresh you?

19 A Yes, it would refresh me, but I cannot recall that right now at
20 this time off the top of my head, no.

21 Q Okay. And were there delays because when you ordered the
22 tile from Tuscany it was special tile and it took longer. There was special
23 -- there was a delay from the manufacturer?

24 A I cannot remember the specifics on this particular case on the
25 tile.

1 Q Okay. You seem to remember a lot of other things, so --

2 THE COURT: Okay.

3 BY MS. HURTIK:

4 Q Okay, so --

5 THE COURT: Just ask him a question.

6 MS. HURTIK: Okay.

7 BY MS. HURTIK:

8 Q So all of the materials that you used on this property, did
9 most of them have to be outsourced outside of the State of Nevada?

10 A I couldn't say that. We went to Tuscany and I can't
11 remember what other yard we went to. There were some slabs that we
12 got out of California for the countertops. And as far as I know, that was
13 it.

14 Q Okay. And so you also testified that you only met with your
15 designer a few times?

16 A I think I said not very many times.

17 Q Okay. So didn't she have to fly out to L.A. at least twice to
18 meet with you to make some design decisions?

19 A From what I recall, she met me there for half a day one day.

20 Q Okay.

21 A Half a day.

22 Q Who paid for her to fly to L.A. to meet you?

23 A That I do not know.

24 Q So if Mr. Merritt was to testify that DVC had to come out of
25 pocket for that because you insisted she come out to L.A. to make some

1 design decisions with you, you disagree with that?

2 MR. BOSCHKE: Objection. Assumes facts not yet in
3 evidence without Mr. Merritt.

4 THE COURT: Well, that's overruled because presumably
5 there's a basis for the question that -- an evidentiary basis for the
6 question. And so let's assume that there's an evidentiary basis for it.
7 Overruled. You can ask him again because I forgot the question.

8 THE WITNESS: The same.

9 MS. HURTIK: Okay. The same -- okay.

10 THE WITNESS: No, I'm agreeing with --

11 THE COURT: He doesn't remember the question, either.

12 THE WITNESS: Yes, correct.

13 BY MS. HURTIK:

14 Q Okay. So do you know who paid for your designer, Tina, to
15 come out to L.A.?

16 A I am not sure of that answer, no.

17 Q And if there's an email in here that says DVC had to pay for
18 her to come out to meet with you because the insurance company
19 wouldn't allow that expense, would you have any reason to dispute that?

20 A Not if there was an email, no.

21 Q Okay. And do you think that's something that Desert Valley
22 should have had to cover?

23 A Yes. If it was part of the process, yes.

24 Q A designer?

25 A Yes. A designer was included for my insurance company.

1 The insurance company is the one that said that I should have a designer
2 for this.

3 Q They said you should have a designer for this; the insurance
4 agent told you that or the insurance adjuster told you that?

5 A I don't know if he used that exact word that I should, but he
6 said that I was definitely entitled to have a designer for this.

7 Q And that you didn't have to meet in Nevada where the house
8 was, that you could fly her wherever?

9 A They never said I could fly her wherever, but at that point in
10 time I cannot remember which slab yard we went to, but Tina was not
11 happy with the selection and she said that we would find -- because we
12 had a time constraint and she said we would be able to fly out to -- she
13 would be able to fly out to California and be able to knock this out and
14 find the right coloring and materials for this so we could just knock this
15 thing out.

16 Q Okay. So you talked about tile sitting in your garage or
17 somewhere on your --

18 A It's in my garage.

19 Q Okay. And that tile, was that tile -- where was that supposed
20 to be used, in the bathroom?

21 A No. That is all throughout. That is the great room, that is the
22 foyer, that is the hallways downstairs. Like most kitchen area, that is the
23 main flooring for the downstairs.

24 Q Okay. And was that the original tile that you were going to
25 use or was there a change in tile?

1 A They were both limestone.

2 Q That's not the question. Was that the tile that you ended up
3 using in the house?

4 A The tile in my garage?

5 Q The tile that is sitting that you're saying is extra, is that the
6 same tile that was put back into your house in the great room and you
7 said -- did you say the foyer?

8 A Yes, that was the same.

9 Q Okay. And --

10 A It was the overage of the tile that was used in my house, yes.

11 Q Okay. And the flooring subcontractor didn't measure for
12 that?

13 A I was not there. I do not know exactly who measured for
14 that.

15 Q Okay. And I'm asking you because you testified when Mr.
16 Boschee -- I believe you testified when Mr. Boschee was asking you
17 questions that it was in your garage because Daniel Merritt over-
18 ordered. But you don't know who measured for that; do you?

19 A I believe that we were talking about the wall covering at that
20 moment in time.

21 Q So you have wall covering in the garage, too?

22 A No. That is actually somewhere else because it would -- I
23 don't know the terminology, but kind of warp. It would mess up. It's
24 wood veneer.

25 Q So wood veneer. And who measured for that; it wasn't Tina,

1 your --

2 A Well, from what Daniel told me is that he -- he told me he
3 screwed up, that's what he told me. He told me directly, he goes I
4 screwed up; I thought wall covering was measured in square footage,
5 but it comes in square yardage. I did not know that.

6 Q Okay. So with regards to the tile that's in your garage, is it
7 true that it can't be returned because it was custom ordered, that's the
8 only reason why?

9 A I did not ask Tuscany why I could not return it.

10 Q But did you try to return it?

11 A I tried to ask is there any way and they said there's -- the only
12 thing they could do was put it on consignment for me.

13 Q Did you have a discussion with Rachelle Elliston from Desert
14 Valley Contracting that you actually wanted extra tile so that you could
15 use it in one of your offices?

16 A No, I did not. I cannot use this type of tile in my -- and I
17 would not want to use it in one of my offices.

18 Q So that conversation would never have happened if she
19 testified to that?

20 A No. That -- I would not use this tile in any of my offices. I
21 would have to change around my whole offices.

22 Q Okay. So, now, there was some discussion that you said
23 DVC just quit coming, they just quit coming to the house, correct?

24 A I don't know if I used that term, they quit coming, but yes,
25 they were not -- work was not being done. There was no progress being

1 done.

2 Q But did they tell you why?

3 A Did DVC tell me why?

4 Q Uh-huh.

5 A I cannot recall what their excuse was. It seemed like there
6 was always something. I cannot remember what it was towards the end.

7 Q Okay. Did they tell you that until the change orders were
8 signed and money was paid for those change orders, that they would not
9 continue work?

10 A I cannot recall that exactly, no.

11 Q Okay. And I want to go back because I know that you've
12 been asked this, but I want to be really clear on this, you told Mr.
13 Boschee that you didn't choose the contractors, DVC chose the
14 contractors. So you didn't choose them at all; you had no say?

15 A I think we went over this before. In the beginning Daniel
16 asked me if there were any subs that I would like back on this job that I
17 knew that were still around. So I called around and a lot of them,
18 probably about 85 percent of them, were out of business. But, however,
19 Daniel still had to have the final approval. I could have my favorites, but
20 Daniel's the one that made the call.

21 Q So if you testified in your deposition that you understood if
22 there were upgrades, that you knew that you would have to pay for
23 those?

24 A Could you repeat that one more time? I just want clarity.

25 Q Okay. So you said that there weren't any change orders that

1 you were ever shown, but in your deposition testimony you testified that
2 you understood that if there were upgrades that you would have to pay,
3 that you knew you would have to pay for certain things; is that --

4 A Okay. So if we're referencing the upgrades that we're talking
5 about in this particular email or anything that Daniel and I had done, like
6 the wine room and stuff like that, then no. That was already done. In
7 fact, in this email -- this email's poorly written, but in there it says that
8 this has already been paid for, this has been supported. I mean he goes
9 and refers back to a lot of things that have been absorbed. That's a
10 terminology used a lot. Don't worry, this has been absorbed.

11 Q Okay. So you understood -- so you were working with Mr.
12 Merritt to try to coordinate so that change orders would be absorbed
13 even because you were increasing certain things, you were doing certain
14 things, that were increasing costs, but you were deleting things to try to
15 overcome that?

16 A I'm glad you used the word delete. Thank you. Yes, I was
17 deleting things, I was taking things out like the sauna and the dome in
18 my lounge and there was other items that I was deleting. And in lieu of
19 that we were going and making -- sprucing up some certain other areas.

20 Q Okay. So -- and I know we talked a lot about this, but
21 because Mr. Boschee went through it, you know, there are things that
22 you did that were -- that you paid after DVC left that were not part of the
23 contract and increased the cost, correct?

24 A Okay. The contract -- okay, can you reference which contract
25 we're speaking about right now?

1 Q All of the contracts for the subs that you ended up paying
2 additional funds.

3 A Okay.

4 Q And that would mean that we'd have to go through each one,
5 so I can't really, you know, --

6 MS. HURTIK: So I'm just for the Court 's --

7 THE COURT: But she said "the" contract I think is where he's
8 probably -- because that's what I heard, too, so that's why he's asking, I
9 think.

10 MS. HURTIK: Okay.

11 THE COURT: And now you're saying all of the subcontracts,
12 plural. So just rephrase it.

13 BY MS. HURTIK:

14 Q Okay. So I'll rephrase it. You were given a scope of work
15 that Danny Merritt prepared an estimate and it was -- and I'm not going
16 to give you the exact number because we said it over and over, but it's a
17 1.320, approximately, million.

18 A Okay. Okay.

19 Q Okay. So you agreed and knew that there were certain items
20 -- is it true that you paid for items that were not part of that original
21 scope?

22 A For things that were either not done or that were stolen or
23 missing from my house, yes.

24 Q Okay. And when you say stolen or missing, okay, you
25 testified a lot, a lot about how the house was --

1 THE COURT: Well, counsel, I mean there's no need to form
2 your question as argumentatively as you did.

3 MS. HURTIK: Sure.

4 THE COURT: You can just ask him a question and pretend
5 that I've been listening and taking good notes.

6 MS. HURTIK: I know that you are.

7 THE COURT: Thank you.

8 MS. HURTIK: Okay.

9 BY MS. HURTIK:

10 Q So, Mr. Inose, you testified that the house was open and it
11 was open all the time, okay? You don't know that it was open all the
12 time; do you? You weren't here, were you, all the time?

13 A I was not here all the time; however, Rob Ramirez did some
14 spot-checks for me and then I also had one of my friends, he actually
15 happens to be my commercial broker, go by the house and make sure it
16 was locked up. And many times when it wasn't, he would let me know.

17 Q Okay. So the house is in MacDonald Highlands?

18 A That is correct. It's in MacDonald Highlands.

19 Q Okay. That's guard gated, correct?

20 A It is guard gated.

21 Q Okay. And there's security that drives through the area,
22 correct?

23 A Yes. But there's a lot of construction that's going on up
24 around there and there's a lot of subcontractors all around driving
25 around and yeah, there's a lot of --

1 THE COURT: He answered the question.

2 THE WITNESS: Yes.

3 BY MS. HURTIK:

4 Q Okay. And so do you have -- did you have a security system
5 on your home?

6 A I did have an alarm system.

7 Q Okay. Was it hooked up during the construction?

8 A Yes, it was.

9 Q Okay. So did that security system, is it the type, and I'm just
10 asking because I have one at home, if you open a window, it beeps. It's
11 annoying as crap. If you open a door, it beeps. A kid goes out a slider, it
12 beeps. Does yours do that?

13 A I'm not sure about the windows. The doors and stuff like that
14 it would. The garages I don't have hooked up that way because I want to
15 -- you know, I don't want it to go off every single time. But I'm not sure
16 about the windows. The doors, yes, but this alarm was put in back in
17 2006, so it doesn't have all the bells and whistles that the alarms do now.

18 Q So if a door was left open, and I'm just asking you, if a door
19 was left open and it wasn't locked, would your alarm have been beeping
20 or let's -- is it the kind of alarm that has an alarm company that monitors
21 it?

22 A Yes, there is an alarm company that monitors it and that's
23 my whole point. The alarm wasn't even set at night at all.

24 Q So wouldn't the alarm company -- so they don't monitor it?

25 A No. The alarm company would only know if someone set the

1 alarm and then someone opened something up afterwards. Like if it was
2 never turned back on, the alarm monitoring company would not know
3 that.

4 Q Okay. And so you don't know -- you have testified that you
5 believe things got stolen off the job site during the time that DVC was on
6 the job, but Rob Ramirez was not on the job?

7 A I think I said something to the effect of everything seemed to
8 be fine when Rob was there. It was after the fact that it seemed like a lot
9 of things went missing.

10 Q But you don't know exactly when things that you're saying
11 are missing went missing?

12 A Like I said, it seemed as though everything was fine before
13 when Rob was there. Once there was no supervision there, I just noticed
14 a lot of things just started missing.

15 Q Okay. And just because -- I'm going to ask you to pull out
16 binder 6.

17 A Binder 6, okay. Can I put away binder --

18 MR. BOSCHEE: No, leave it out.

19 THE WITNESS: Leave it out. Okay.

20 MS. HURTIK: Are you serious?

21 MR. BOSCHEE: The one with your email and the
22 attachments, yeah, leave that one out.

23 MS. HURTIK: All right.

24 THE WITNESS: Okay. I just got binder 6.

25 MR. BOSCHEE: My redirect is going to literally take two

1 minutes.

2 MS. HURTIK: Okay. All right.

3 MR. BOSCHEE: Maybe three.

4 MS. HURTIK: Okay.

5 BY MS. HURTIK:

6 Q Okay. So do you know -- did you ever have any dealings
7 with --

8 A I'm so sorry, which exhibit are we on?

9 Q I'm just asking this question.

10 A Oh, I'm sorry. Okay.

11 Q So did you ever have any dealings with anybody from the
12 Tuscany Collection?

13 A Well, and I cannot remember her name, when I wanted to not
14 return, but put on consignment, I talked to somebody over there. I
15 cannot remember her name.

16 Q Okay. Do you remember that there was a problem with
17 some of your floorings being released, that there was some customs
18 issue?

19 A I think you had referenced that like maybe 20 minutes ago,
20 something at the harbor or the customs or the port or something.

21 Q Actually, what I mentioned was that the, I don't know, the
22 longshoremen were on strike.

23 A Okay. Is this the same thing or no?

24 Q No.

25 A Okay, I'm sorry.

1 Q This is a customs hold.

2 A Okay.

3 Q So you were aware that there was a customs hold on a
4 container of your floor -- of marble or the flooring tile?

5 A If we're referencing the flooring, it's limestone. But, you
6 know, right now sitting here today I cannot remember -- I cannot
7 remember that specifically, no.

8 Q Okay. So if you go to Exhibit 475.

9 A Okay.

10 Q And if you go to DVC 1666. And on that note --

11 A Yeah.

12 Q Okay. Are you there?

13 A Yes. Yes, I am.

14 Q Okay. So this is an email from an Olivia Balcus [phonetic],
15 I'm not really sure, to John Bowen [phonetic], who, if you looked at the
16 previous one, appears to be from Tuscany Collection.

17 A Okay.

18 Q And it says in the middle, May 28, 2015, "John, customs
19 placed the container on an intensive hold." They want to further
20 examine it. And then he says, "what's the problem?" And so, anyway,
21 it's just saying that it has to go under -- there's a customs hold. So you
22 recall -- do you recall that some of these delays on the house were
23 related to there was the longshoremen strike and there was also a
24 customs hold on some of your materials; do you recall that?

25 A I'm trying to look. Am I -- am I on this email?

1 THE COURT: Have you seen this email?

2 THE WITNESS: No. I don't know. I don't know.

3 BY MS. HURTIK:

4 Q Okay. But you've never seen the email. Okay. The question
5 is, do you recall any discussions, was it ever explained to you, that there
6 was delays in receiving some of your materials because of the
7 longshoremen strike and --

8 THE COURT: Well, he's already answered that one, so.

9 MS. HURTIK: You're right.

10 BY MS. HURTIK:

11 Q -- and the customs hold?

12 A You know, those are specific questions. I don't recall. There
13 may have been, but I cannot recall that right now, no.

14 Q Okay. So I know that you say that you have not seen that
15 email before, but does it appear to you that there was a hold on some of
16 the materials?

17 A As I --

18 MR. BOSCHEE: Okay. Objection. Okay, sorry.

19 THE COURT: He hasn't seen the -- I mean his testimony was
20 that he hasn't seen the email, so you can't refresh his recollection with
21 something he hasn't seen.

22 MS. HURTIK: Okay. I didn't say refresh his recollection, I just
23 said --

24 THE COURT: I know you didn't say that term, but that's how
25 you're seeking to use it. But he hasn't seen it, so.

1 MS. HURTIK: Okay.

2 BY MS. HURTIK:

3 Q Okay. So, Mr. Inose, you said that you're seeking out-of-
4 pocket approximately \$60,000, correct?

5 A Somewhere in that range. I don't know the exact amount,
6 but it is in that range, yes.

7 Q Okay. And I'm sure we'll get to all of those. But my question
8 is, earlier you were asked there were some rooms that weren't affected
9 by this flood, correct?

10 A Yes.

11 Q And I just -- those rooms were the theater room, correct?

12 A The theater room, except for the brains of the house, which
13 was where the Lutron, Crestron, all those electronics are. That got
14 affected by the flood, but not the actual theater itself; like the seats didn't
15 get damaged, the carpet in there didn't get damaged, the screen did not
16 get damaged, stuff like that.

17 Q Okay. And so the -- and I -- so anything -- was anything done
18 to the theater room?

19 A What do you mean by -- okay, please clarify that. Was
20 anything --

21 Q So were there any -- so you said the theater room itself was
22 not damaged. So does that mean that you open the door, and I don't
23 even know, we've got pictures, but did that -- you go into the theater
24 room and nothing was touched inside. Is the actual -- you said the
25 electronics. Were they actually in a closet in the theater room?

1 A Correct. We have an electronics like a brain room, I guess,
2 where all the Crestron brain, the Lutron brain, everything that controls
3 the whole house is in the theater room. It's actually a separate little
4 room like a -- kind of like a big closet, I guess --

5 Q Okay.

6 A -- that has all the electronics in there.

7 Q So that's the only area that was in the contract, the scope of
8 work to take care of the brains of your house?

9 A I believe so.

10 Q Okay. And so but the theater -- outside the theater room
11 there's some invoices and stuff for a granite countertop or --

12 A Correct.

13 Q Okay. So that would have been an extra, correct?

14 A No. So that part, that whole area outside the theater room
15 got affected by the flood. So they ripped out the cabinetry and stuff like
16 that. And when they ripped out the cabinetry, it cracked the countertop.
17 I guess they were trying to save it, but in effect they cracked it.

18 Q Okay. So --

19 A So it had to be replaced.

20 Q Okay. So who ripped out that countertop, SERVPRO or DVC?

21 A You know, ma'am --

22 Q If you know.

23 A I don't know exactly. Like I said, DVC's people and
24 SERVPRO, they wear the same shirts. They say DVC and SERVPRO. I
25 don't know who was who. Like when they're working on my house I

1 don't go up to them and say are you SERVPRO today or are you -- I don't
2 know. I mean --

3 Q But they weren't the same people. Dennis Zachary was not
4 representing him as SERVPRO to you; was he?

5 A Dennis Zachary was not on the job. These are just workers.

6 Q So Dennis Zachary never met with you ever?

7 A No, I did not say that. I just said he was not --

8 Q No, I --

9 THE COURT: So let me ask. It's 5:01.

10 MS. HURTIK: Yeah.

11 THE COURT: Are we anywhere close to being done?

12 MR. BOSCHEE: I said I had three minutes and it will be -- it
13 may be less than three minutes, but I don't know how much Carrie has.

14 MS. HURTIK: I've got at least a half an hour.

15 MR. BOSCHEE: Okay.

16 THE COURT: All right. We'll see you tomorrow at 10:30.

17 MR. BOSCHEE: Thank you, Your Honor.

18 MS. HURTIK: Thank you, Your Honor.

19 [Proceedings adjourned at 5:00 p.m.]

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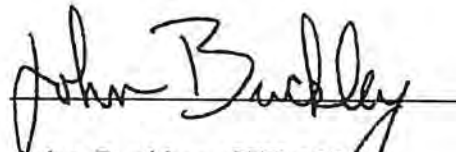
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ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case to the
best of my ability.


John Buckley, CET-623
Court Reporter/Transcriber

Date: February 4, 2020