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 4

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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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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

DESERT VALLEY CONTRACTING, INC., Plaintiff, vs. IN-LO PROPERTIES, LLC, Defendant.	CASE#: A-16-734351-C DEPT. XV

BEFORE THE HONORABLE JOSEPH HARDY
DISTRICT COURT JUDGE
THURSDAY, JUNE 20, 2019

RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 6

APPEARANCES:

For the Plaintiff: CARRIE E. HURTIK, ESQ.
JONATHAN PATTERSON, ESQ.

For the Defendant: BRIAN W. BOSCHEE, ESQ.
SEAN E. STORY, ESQ.

RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

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WITNESSES FOR THE DEFENDANT

None

Las Vegas, Nevada, Thursday, June 20, 2019

[Case called at 10:46 a.m.]

THE COURT: Okay, good morning.

MS. HURTIK: Good morning.

MR. BOSCHEE: Good morning, Your Honor.

THE COURT: Are we ready to continue? Or are we on?

UNIDENTIED SPEAKER: Yes.

UNIDENTIFIED SPEAKER: Yes, we're on, Judge.

THE COURT: Okay. Okay.

MS. HURTIK: I apologize, Your Honor, that we were late.

THE COURT: Oh, that's okay.

MS. HURTIK: So just tell me when you want me to --

THE COURT: Oh, yeah, go ahead.

MS. HURTIK: Okay. All right.

DANIEL MERRITT, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION (CONTINUED)

BY MS. HURTIK:

Q Okay, Mr. Merritt, can you grab Binder 2? And I'd like you to turn to Exhibit 166.

A Okay.

Q So is this -- this is the invoice from HyBar, dated 2/25/2015. Was one -- was this one of the first invoices from HyBar, or are you aware?

A Yes, this was on the first ones we had from them.

Q And did they keep -- on -- on their invoices, did they say what percentage of the -- their work -- scope of work was completed, that was included in the contract on each of their invoices, usually?
A If I recall, HyBar did, yes.
Q And on this invoice that's dated 2/25/2015, does it tell how much their -- what percentage of the contract that they had completed?
A Yes, 25 percent of the contract.
Q Okay and that --that shows for $23,021?
A Yes, that's correct.
Q Okay. And then if you go to -- in the same binder, Exhibit 170.
A Okay.
Q And this invoice is dated 3/30/2015. And what percentage of the contract pursuant to the scope of work you -- the contract, had HyBar finished at that time?
A At that time, it says progress invoice 85 percent complete original contract and C.O. number 1.
Q Okay. So in March, they were approximately 85 percent, March of 2015 they're approximately 85 percent finished with their contract? Correct?
A That's what -- yes, that's what it says on here as far as the billing. Yes, I believe that was the case as well.
Q Okay, and then if you go to 167, Exhibit 167. What is this?
A This is a waiver and release upon progress payment for the amount of $20, 071. This release covers the progress payment to the

undersigned. All work, materials, and equipment furnished are -- by the undersigned to the property, or to the undersigned's customer. I believe this is just a release, a lien release maybe.

Q Okay. And then if you go to Exhibit 168. Is that another release that all materials supplied and installed were paid at the -- at -- as of April 17th, 2015?

A Yes.

Q To HyBar?

A Yeah, it just says the materials from paid stock, a release, I believe. It doesn't say release. It says material from paid stock.

Q Okay. So HyBar was completing their work pursuant to the contract. They were being paid pursuant to the contract, correct?

A Yes.

Q And was Desert Valley still on the project at that time?

A Yes, on April 17th we were.

Q Okay. And if you go to Exhibit 169. This shows two checks being paid to HyBar. Are these the checks that paid for -- that -- for these releases? Is this the -- there's two checks, was the amount --

A Yes, that's -- those are the ones that were paid for those releases.

Q Okay. Okay, so now if you go to -- let's go to Exhibit 176. Are you there already?

A Yes, I'm there.

Q Okay. So this change order for HyBar, this says approved, and it has a date, 5/7/2015. We kind of talked about it yesterday. Do you know the proof -- who stamped it approved?

A I believe it was Rachelle or Diane Serta in our office.

Q Okay. So this was a change order and -- that happened in April of 2015, that was outside of the scope of your contract, correct?

A Yes, this was.

Q Okay. And then if you look at Exhibit 175. This is a check dated 4/22/2015 for 6,000. And it says it's for Invoice 14106431, and it's -- and it's payable to HyBar. If you flip back to the change order, is that paying for this change order?

A Yes, it was paying for this one.

Q Okay, and so that change order was being paid for, and had been approved. And do you know why the full -- there was still 2,176 left on it? Do you know why that wouldn't have been paid at that time?

A I believe it was up-front payments for the material order, and I think there was another payment after it's been installed. I believe that was the case.

Q Okay. And if you turn to Exhibit 179.

A Okay.

Q This is a check, and it's to HyBar, for $46,042. On 11/19/2014. Do you know what this check was for?

A I believe this was the check to order the material for all the trim. They had to order the material up front to start making it.

Q Uh-huh.

A I believe this was part of that payment to -- for the material for the whole house.

Q Okay. And if you go to Exhibit 180, is that in front a -- I don't know what this is. If it's something internal. But it says original contract order, and it's TruStile Interior Doors, 50 percent deposit, 46,042. And up at the top it says contact Russ. So does this coincide with the check that was written.

A Yes, this -- this does coincide with that check that was written, the 92,000 is the amount that was initially proposed for HyBar.

Q Okay. So were the subcontractors requiring a deposit before they started work?

A Yes, most of the cases in this -- this job they were. They were all requiring deposits.

Q Okay, and did Desert Valley Contracting actually have to front some of that money up front before the insurance company paid out anything?

A Yes -- yes, we did. And then we would work with Eugene in as far as establishing payments because the subs were asking for the money up front like that.

Q Okay. So now we're going to stay in the same binder right now. And I want to go to Exhibit 183. And again, this is an invoice and it reflects the payments that were received and it says progress invoice 85 percent complaint, original contract and change order 1. So does this indicate to you that they were paid for their original contract, plus the change order to the wine -- the wine room?

A Yes, that's correct. I believe it was the Switch -- I believe it was the Switchglass doors and it was in the office, or I'm sorry, the downstairs lounge.

Q Okay.

A But yes, that -- that -- this includes the change order number 1. That change order, I believe is the one.

Q Okay. And so as you -- the job progressed, Desert Valley Contracting made progress payments and made payments as the work was performed by the contractors?

A Yes, that's correct.

Q So the only time that it became an issue is when there were so many change orders that it was getting out of control?

A Yes, because the invoices we had on file for those contractors wouldn't match what we were trying to bill them out, so we had -- when it changed, it was a very difficult accounting issues.

Q Okay. So in the same binder, I would like you to go to Exhibit 221. Or I'm sorry, 222. Okay, this is an email dated Wednesday, May 13th, 2015, from you to Tina Dyba and Rachelle Elliston. Can you tell me what this email is about, and why you sent it?

A This was more trying to get the materials ordered for the countertops, because she would have to go to L.A. for those. So this was trying to get her to pick out the material for the countertops for the home. I did talk to Eugene. He didn't think that they were picked out, yet. I believe she was the one picking them out, or working with him on that. This is where I let them know that the bathrooms couldn't be tiled in all the way on all the walls. Changes, I didn't know about these ones. We couldn't get it to the insurance company. I refer to that. They probably wouldn't approve it. I needed the countertop selection to price out the material because there was a set amount the insurance would allow, so I was waiting on that. And this is getting her to talk with Artesia Cabinets, because the design, certain granite comes in certain sizes.

Q Uh-huh.

A So I had to make sure she talked with them about either it's a prefab slab, or what size is the slab? How is it fabricated? Thickness. I tried to get another change order supported to the insurance company, and by this time, the insured -- insurance said everything should have been picked by now. Exact to me. Basically they were saying the estimate is -- should be done with the materials based on what we found at the house, not what was being picked out.

Q Okay.

A We were under the assumption that only the countertops had to be picked out at our last meeting, but there was more stuff coming through, so I just wanted to make sure it progressed fast, and she picks everything out.

Q Okay. And was there actually a problem when she did order the granite?

A There was some that went out of stock by the time the payment was made, I believe was one of the case. Another one, a slab was broke when it shipped and it couldn't -- it was the wrong size. It was a 50 inch slab, and I think the vanity was a 51 inch cutout from Artesia.

Q Okay.

A So one of them didn't fit. Another one where she had to go reselect, because they were either out of stock, or just didn't have the material any longer when she picked it.
Q Okay. And when you say she picked it, did she do the measurements and give the numbers -- the measurements for that slab to be ordered?
A She was working with Artesia Kitchen and Bath. They're the ones who had the cabinet layouts and measurements.
Q Okay.
A Which was required when we first started, so no margin of error was ever done. So they had a kitchen drawing from Artesia Kitchen and Baths, and they were actually the ones that worked with her on the sizes and dimensions.
Q Okay. Hold on a minute, I just flipped off of my page. Okay. So I want you to go to Volume 4. Okay, so I want you to go to Exhibit 329.
A Okay.
Q So this exhibit has one page, and it says -- at the -- at the bottom of it, there's an email, on July 22nd, 2015, from Rachelle Elliston. Says, John, hey, I want to reach out to you and see if you can schedule a time to stop by the 587 St. Croix property, and check the pool out. It's turning green, and the little pool area is not filled up all the way. Please let me know what you can do now. Then July 22nd, this same day, there's an email from you to Rachelle. And you say, he's actually here right now, correct?

A Yes.

Q Okay, so were you guys -- you were doing things other than just construction on the property?

A Well, the pool, I don't know what caused it to do that. And yes, we were doing -- we helped with getting the pool squared away as well, to get it cleaned or whatnot. I think we had to get another company out there, or something, that his existing company couldn't do.

Q Okay.

A So, yeah, we -- we did help with the pool area.

Q So you were making sure things were okay?

A Yes.

Q Is that correct?

A Yes, we did.

Q Okay. So if you turn to Exhibit 379, in the same binder.

A Okay.

Q Now this is a two-page exhibit and it's an email from Eugene Inose on July 30th, 2015 to Gordy, Sorette [phonetic], Rachelle, you and Tina Dyba, and it's about the slab selections, photos, sales order. So -- and it's asking if -- Eugene's asking if you can all meet at the house. And that there were certain things going on. Did you all meet a the house?

A For this meeting, yes, we did. We had to go over a lot of things with Gordy, because Gordy was going to be the one that was going to fabricate and install the countertops.

Q Uh-huh.

A So we had -- it had to be an on-site meeting. Had to actually measure rough openings and stuff of that nature. Make sure that the drawings actually jibe with the dimensions of the house.

Q Okay, and so Gordy is with Summit Tile?

A Yes.

Q Okay. And so if you look at the bottom of this, it's July 30th, 2015, and it says please find below the slab quantities and questions. And then it says we did not receive cabinet drawings on the following. They have not been bid or contracted. Laundry and theater. We did not see material specified for family room alcove tops, master vanities, master tub decks, and master dry bar. So were these decisions that were not being made by Mr. Inose? Let me say it another way. Were these decisions that had to be made by Mr. Inose, before things could be ordered?

A Yes, as far as the materials and the -- what kind of tops they were. Yes, he had to make the final say on the -- on the materials.

Q Okay, so here we are. We're almost a year into it. It -- this first occurred, you guys got called out August of 2014, correct?

A Yes, correct.

Q Okay, so now we're in July of 2015. So this isn't any delays you've caused, is it?

A No, this is -- this is just choosing the materials and them getting the measurements they need from the cabinets, basically.

Q Okay.

A A couple areas.

Q Okay, so they just haven't made decisions on this stuff yet?

A That's correct.

Q Okay. So then if you go to Exhibit 380. So Eugene, at the bottom of DVC 1241 and it goes into 1242, there's an email from Eugene Inose to Rachelle Elliston and you, and Rob Ramirez is still cc'd. And it says things I need to see completed at 587 St. Croix. So again, he's saying he's going to be in town for our Tuesday meeting. So again, you were continuing to have meeting with Mr. Inose on site, right?

A Yes, we were.

Q Okay. So there was never an eight month gap of you not being on the project, was there?

A No, there was never an eight month gap of me not being on the project.

Q There was never a gap at all, was there?

A Well, there was -- when the tile was delayed in Long Beach, I think there was a gap there, because no trades could really get in. We've already done everything we could on the drywall and such. And Eugene didn't want to be there for the drywall and insulation, just because of how caustic it is, or how much fibers are in the air.

Q Right.

A But no, there was never an eight month gap in me not going to that house, or -- or getting involved with all the subs and walking it with them.

Q And even during that time, when the tile was on hold, there were lots of emails going back and forth. You were still coordinating and trying to get stuff ordered and arranged, correct?

A Yes, the whole -- the whole process we're on the job, it -- I -- there was a constant string of us always working. Whether we not be there, because there's no materials can be installed. But we were always working on finishing and, you know, the final touches on it.

Q Okay, so this is dated -- his email dated September 3rd, 2015, and so this is saying these are some of the items that needed to be completed. So do you agree with this list? Were these things completed, or was there a reason they weren't completed at this point?

A The wood floor -- okay, so on the bottom of the page, the reason we couldn't finish the wood floor is -- is this was just a small area of the wood floor that is downstairs. We still had to do work with the -- installing the wallpaper, and we wanted to put all that up before the wood floor goes down, so we're not walking all over the wood floor. The wood floor is something we wanted to wait on for that area, because there's too -- too much like fine detail work around the area.

Q Okay.

A That we wanted to get up, and then do the floor last, so we're not tracking anything over the floors, risk scratching it. Master bathroom mirrors. There was numerous electrical items with those that had to be done. Our framers had to go back in numerous times to -- we had to take everything back off the wall. Reframe it. Do the rough specs of the mirror when they got on site. We knew exactly what to do. We had to reroute some plumbing for the mirrors. So the mirrors were something that they did get installed. But it just took a while because we had to do a lot of modifications to get those in there. It wasn't just hanging the

JNT000857

mirror on the wall. There was cavities and there was wiring that goes to them.

Q And these were not like the original mirrors that were in the house?

A No, they weren't like the original mirrors.

Q Okay. So these were an upgrade?

A Yes, the mirrors were an upgrade.

Q Okay, and then the master bath flooring?

A Master bath flooring it was because we were still doing the framing around the -- that did get done. It was limestone, I believe, a darker limestone. That did get done after the mirrors were done, because there was too much rough carpentry going on to put a nice finished stone floor in there.

Q Okay. So master closet?

A Master closet, there was a couple of things going on in there. There was the carpet, there was the cabinets, the entire thing from ESP, and there was -- there was also lighting, I believe that was proposed to be done, that wasn't in the bid. So I don't know if that master closet included that lighting on here.

Q Okay.

A Or if it was some pendant lights that were getting replaced, I believe. I don't know if that had that on there. I don't know exactly what trade. It could have been the cabinets. But those were in from Efficient Space Planning. They put those in. I think there was some detail work they had to do on them.

Q Okay, so there was nothing wrong from the flood damage. This is on the second floor. There was no damage to the electrical, the lights upstairs, was there?

A Not in any of the lights from above, any sconces, any lights, pendant lights, any recessed lights, anything like that wasn't effected or damaged upstairs.

Q But Mr. Inose was replacing all of those lights?

A Well, we had a bid to replace the lights, in -- in their invoice from either Desert Home Electric, I believe it was Desert Home Electric. And we saw that after the fact, that they had that on their invoice to us.

Q And that was not part of the scope?

A That wasn't part of my estimate, no. The insurance -- no, never even came up.

Q And the insurance wouldn't have paid for that, correct?

MR. BOSCHEE: Objection, calls for speculation on that one.

BY MS. HURTIK:

Q Did you have discussions with the insurance company about his -- with the lights being added upstairs.

MR. BOSCHEE: Then that calls for hearsay.

THE COURT: The -- did -- so that last objection is overruled.

BY MS. HURTIK:

Q You can answer.

A Okay, so we checked all the wiring out in the home first of all, to make sure. We had to do a high voltage check throughout the home --

Q Uh-huh.

A -- which would have determined if there was any problem with the wiring. The lights themselves, there was no -- there was no problems with the lights. And insurance usually, if it's a ground level, they'll never pay, for example, for these lights to be replaced in this courtroom, they wouldn't pay for it, because it's totally disrelated to the -- to the claim. So they didn't even come up, nor were they even -- they weren't addressed to me. I didn't realize that they were getting replaced up there.

Q Okay, so were there sconces going up the stairwell to the upper level?

A Yes, there were.

Q Okay, and was Mr. Inose replacing those as well?

A Yes, those were in the bid to be replaced as well, yes.

Q Okay, but they weren't in your original bid?

A They were not in my original estimate.

Q So that's all extras that he was adding?

A That's all extras, and we were -- we checked out all the voltage. We checked out all the lighting. All the lighting that was going to be replaced by the insurance company was in my estimate, that they agreed to replace.

Q Okay. So he also goes on, on the second page of this DVC 1242, he says gym mirrors and flooring. How far along were you there --at this point?

A We got the mirrors in, and then the flooring went in after the mirrors. We did not want to put that flooring in earlier because it's a black gym floor. And it just -- you could see dust on it right away.

Q Okay.

A So that was one of the last things. But I saw the -- the -- HyBar had one last piece of trim to put in, in the gym, because he had to wait for those floors to go in.

Q Okay.

A But the gym floors were in place and actually it was our subcontractor that put those in.

Q Okay. And then all lighting hung.

A Once again, that -- that -- I don't know exactly what that is referring to. We did pass the electrical inspection. So all the lighting, all the boxes were in. All the -- I just believe maybe that's some trim, or some lighting that needs to be done in the kitchen. I'm not sure what that refers to.

Q Okay. And then at the bottom of it, it says, after this, you know he says next step after this, have to have cabinets completed and get all kitchen appliances installed and get our C of O. So were you pretty much complete at this point?

A Yes, we were, the cabinets were installed, the countertops were put in, the paint was done. Some touchup. There was -- there was some wood floor we didn't do in the downstairs lounge area, because we were still getting that -- I believe that one had to be reupholstered or the wallpaper done in there. We didn't want to put that wood floor, just downstairs. All there rest of the -- the carpet was not installed, I believe, but it was ordered.

So, yes, I believe we were close to being done at that point. The house was almost finished except for those touches.

Q Okay, and so -- and then he says we need to have finish any other flooring, painting, finish work. Finish work, he's saying.

A Yes.

Q Okay. So then if you turn back to the first page of this DVC 1241, on September 3rd, 2015, Rachelle Elliston is saying she's scheduling the mirrors and the gym floor next week, and I'll do the mirrors Thursday and -- Thursday, floor Friday. Does that work? If I can get the mirrors soon, I'll be at -- sooner, I will, but I can't get floor until Friday. So he responds, that sounds reasonable, thank you. So you were moving forward?

A Yes, that was the gym area. We had all the rest of the tile floor done, we were building up to it, but that's why we wanted to wait. I figured she said the same. We did not want it to be walked on, because it was a black mat, so we wanted to do that near last, when all the painting was done, the drywall. All that stuff, so it didn't get tracked out.

Q Okay. So I want you to turn to Exhibit 385. So this is an email from Eugene on October 13th, 2015, to Rachelle, Dennis Zachary cc'd, you're cc'd, and Rob Ramirez is cc'd. This is one day after your meeting. So can you read that and then tell me what this was about.

A Read the entire page?

Q Yeah.

A Okay, Rachelle, Daniel and Dennis --

THE COURT: Hold on. Hold on. Hold on. You want him to --

MS. HURTIK: Well, you don't have to read the whole thing. No, I'm saying, read it to yourself.

THE COURT: Okay.

MS. HURTIK: So then you get refreshed as to what it says, and then explain to me what was going on. Sorry.

THE COURT: So be --

MS. HURTIK: Yeah, that would take a long time.

THE COURT: That's a bottom first email, right, and then --

MS. HURTIK: The top email. The -- on DVC 1250, the one that says from Eugene, Tuesday, October 13th at 5:25 p.m.

MR. BOSCHEE: But there's an email below that goes on the same page. Should he read them both for context?

MS. HURTIK: He can. Yes. Yes, I would like you to read both of them.

THE WITNESS: Okay, I'll read them both.

THE COURT: So will I.

MS. HURTIK: And just let me know when you're done.

THE WITNESS: Okay.

MS. HURTIK: Okay, are you -- I'll give the Judge a few minutes.

THE COURT: Yeah, I apparently read slower than Mr. Merritt does. Bear with me.

THE COURT: Okay.

BY MS. HURTIK:

Q Okay, maybe let me break it up because it's such a long email.

A Okay.

Q And maybe make it a little bit easier.

A Okay.

Q So -- so the first paragraph, Mr. Inose is saying all the change orders you are receiving is due to the fact that nobody has been on the site for over eight months. And this is dated October 13th, 2015. Was that true?

A No, that was not true.

Q And the reason why we did all the emails and to support what we were doing with these subs is to show -- because -- because we seen the changes happening, so we wanted to show who we were meeting with, when we were meeting with it, and that's why we kept the emails back and forth with us and the subs, to show, even though we -- like the tile thing, delay things, we still kept the emails going back and forth to show correspondence been going on, and jobsite meetings were happening. Within that eight months, like about once a week it was happening.

Q Right. And in fact we went through ad nauseum yesterday, through all the emails when you were meeting, correct?

A Yes. That's correct.

Q So he says nobody's on site to answer questions from subcontractors, so they do what they think is best. And then now toward the end of the job these are change orders. It's not anything that's being added. Was that true?

A No, that's not true. We have a list of the added items, and we can compare it with the original estimate.

Q Okay. And why do you hire subcontractors? Why don't you just do the work on certain items yourself, as a general contractor?

A A lot of this stuff is really customized. Some of these worked in the house before, was the real thing. And when they're familiar with the house, they know it, and they've dealt with it before, such as Eagle Sentry, they know all the systems over there. That's why they are almost the only one qualified, or the ones that had to be on there. But Eugene requested that the same people work on his house be the same ones put back in.

Now there was a couple that weren't in business anymore, that we couldn't get. So we did have to call in a couple other subcontractors that he's never really worked with before.

Q Okay, but the trades, they're specialized trades, and they know what they're supposed to do, correct?

A Yes, they -- well we -- we go through their bids, and walk the property with them, to make sure they know what to go through. And I was in constant communication with all of them, as far as if anything changes, you've got to let me know.

Q Okay, so then let's go to the next paragraph. He says nobody opens up or closes for the subs. Nobody has an understanding of the scope of work. So he says you're not experienced in custom homes. Is any of that true, that you weren't opening and closing the doors for the subs?

A We have -- our project manager, we hired two different project managers on this. The first -- the first one was Michael Darling. And the second was Will Roberts. And they would have a sign-in sheet when everybody came in. I don't know if we have that sheet, but they would sign everybody in, sign everybody out every day when we were -- when we were at the job. I don't know during the time when we were waiting for the tile, if any subs did come in and do work then, we -- I would either go meet them, because Will was on another project, but nothing was going on there, for a little while, while the tile work was being waited -- waited on.

Q Uh-huh.

A But, no, we were opening and closing for them. At this point in the time, Rob Ramirez was supposed to open and close. That was part of our deal with him. Is he was supposed to take care of the house. He knew the alarm codes. He was the one that's supposed to be turning it off and turning it on. And that's all we really asked of him. And he would leave after doing that.

Q Okay, so you guys would lock the doors, but you wouldn't set the alarms?

A We didn't set the alarms. I believe one -- when we did set the alarm one time, I think we set it off. So he had to change -- well, he -- he -- Eugene didn't want anybody really having the code, so that's why Rob was entrusted with the alarm stuff.

Q Okay, and so let's go to the next little paragraph. Let's get some facts together. The superintendent was under your employment, not mine. And you guys let him go after six months. Wasn't -- we read an earlier email that you -- just previously, that you're talking -- Rob Ramirez is being cc'd in October of 2015. And this job started in September or August of 2014. He was still on the job well past six months, wasn't he?

A Rob Ramirez?

Q Uh-huh.

A Yes, he was.

Q Okay. And we've shown the documentation, right?

A Yes, we did. Was payroll.

Q Okay, and would you guys have ever hired Rob Ramirez? Was that your decision?

A No, it was Eugene's decision to hire Rob for the project.

Q And did you guys really want to use Rob?

A We couldn't figure out how to justify his cost. That was a hard number to swallow. We'd rather have not used him if we could have salvaged the money and put it back into the house. It was about -- I'm not sure how much we paid him.

Q Okay, but did -- why did you use him, then? Why -- why did you use him?

A It was per Eugene's request, Rob had to be the project supervisor or superintendent on -- on his house, because Rob was the original one that built the home.

Q Did he threaten you that if he wasn't on the job, that he would fire you guys?

A Yes, he did.

Q Okay. So then he says that you told him -- the next paragraph, that you told him that you'd personally be on-site every day until the job was complete. Did you tell Mr. Inose that?

A I told Mr. Inose that we would have a project manager, which we did hire for the project to be on the job site. I couldn't dedicate myself, because I -- because I was the estimator for the company. Which we did hire a project manager that stayed on the job site.

Q Okay. Okay. So if you go to the second page, DVC 1251 of the exhibit. And this actually is an email that starts on the page before, and it's October 13th, 2015. And it's Rachelle Elliston responding to Eugene. So did Rachelle have a conversation with you and Dennis Zachary about what -- about the bills and the change orders after this?

THE COURT: So it's this --

MS. HURTIK: Sorry.

THE COURT: That's okay. But I think you said Rachelle's responding to the Mr. Inose and I don't think that's accurate.

MS. HURTIK: No, I'm sorry, I'm incorrect. It's an email that was sent to Mr. Inose and the first email we just went over was his response.

THE COURT: Right.

MS. HURTIK: So I apologize.

BY MS. HURTIK:

Q So this email, though, Rachelle sent to Mr. Inose. You had a conversation with her and Dennis Zachary discussing the change order, and what you guys -- the company had spent, just to keep this project going?

A Yes, that did occur before this email was sent.

Q Okay, so -- so why --- why were you guys sending this email to him?

A We reached back out to the subcontractors and -- and we had to sit and really get all of their bids resent to us. We had their original bids for the job. And this was after the fact, after design changes. There was a couple other changes in there. So we had to really take stock of where they were at dollar-wise in order for us to track the job the right way. So after they sent everything into us, and we seen the price, the dollar amount is different, we had to generate this email and tell him that we can't move forward anymore, unless either somebody pays for the change orders, or we revert back and put the house back the way it was.

That was -- then we added things up, these were just rough numbers here, but we did track them. We did realize they are just rounded up from another number that was actually accurate. This was just letting them know the ballpark figures. And then this is when I started working on the estimate, or the change order, showing where the differences are, what we generated above and beyond the insurance estimate.

Q Okay. So -- so the -- okay, so if the scope of work had been completed that was in your original bid, would the house have been done?

MR. BOSCHEE: Objection. Calls for speculation.

BY MS. HURTIK:

Q When you did the bid, do you know --

MR. BOSCHEE: I don't think anybody know that.

THE COURT: Hold on.

MS. HURTIK: Let's -- let's -- I can change the question, Your Honor.

THE COURT: Okay, yeah, that's fine.

BY MS. HURTIK:

Q Okay, do the final bid, that -- the last bid that you gave to the insurance company, in June of 2015, if everything had been completed on that bid, would the house have been done?

A Yes, I believe it would have.

Q Okay. And -- and you can say that because that's your estimate based upon the subcontractors and putting the house back as it should have been?

A Yes, the original bids we had from the subcontractors were more along those terms. A couple things that maybe it wouldn't go back to the exact same size, but overall, they most of everything in the original bids.

Q Okay, so in this email that was sent out. So you say you spent over $28,000 painting the exterior of the house, that was in addition and over the contract that was approved by the insurance company?

A That was not over the -- I believe it's about 20,000 over the contract that was approved by them. They put in -- we put in for painting of the home, just one coat to go back the same color.

Q Uh-huh.

A But there was also stucco cracks and patches that had to -- it was a smooth coat stucco on the whole house.

Q Uh-huh.

A So we had to fix all those cracks and it was just -- it took a lot of time with scaffolding and other items to get it fixed.

Q Okay, but on the exterior of the house, was that part of the water damage?

A They allowed for one coat of paint because there was some water staining on certain elevations of the home, back near the master bedroom.

Q Okay.

A And I believe another area of the house. They allowed for the painting of those elevations. I think it was for the -- where the HVAC was located.

Q Okay, so but suffice it to say you guys were spending, you were fronting money to cover things that weren't in -- that he wanted -- he kept on requesting, right?

A Yes, that's correct.

Q Okay. And can you give me an example, so this -- let me see. Let's go to Exhibit -- let's stay on this one. So what were the other things that were -- when you look at this, were things that were not part of the estimate? Were the toilets part of the estimate?

A The toilets were not. We were requested to replace the toilets because I think based on the fact that somebody did use the toilet over there, and we were told that we could not reinstall those toilets. So we had to buy new toilets. The mirrors up in the master bathroom were another example. They weren't just simple mirrors. They had to be wired in, TV's installed behind them, and then the framing done to support the extra weight. And the master vanities were not part of the estimate either, that were underneath those mirrors. And those had to be replaced due to the size of the mirrors, with the countertops.

Q Okay, so I have a question. So you just said you used -- somebody used one of the toilets.

A Yes.

Q And you had to replace the toilet because somebody used the toilet in the house?

A Yes, and then we got a port-a-potty just after that there at the job site.

Q Okay, why would you have to replace the toilet just because somebody used the bathroom?

A It was a preference of Eugene. He didn't want to use the toilets anymore.

Q Did you find that odd?

A Yes, we did. We did, but we got a bid for the toilets and they were a Toto toilet that had to be wired in, I believe. So those -- those were -- I don't believe those were ever purchased, though.

Q Okay. So -- hold on one second. I just wanted to double-check that I'm going to have you pull this out real quick.

A Okay.

Q So -- so if you can go to Binder number 6. So I would like you to go to Exhibit 523.

A Okay.

Q So this is an email, April 16, 2015 from you to Tina Dyba and Eugene, Rachelle cc'd, and Rob Ramirez, correct?

A Yes, that's correct.

THE COURT: And my apologies, what number?

MS. HURTIK: I'm sorry, Your Honor.

THE COURT: No, that's okay.

MS. HURTIK: Exhibit 523.

THE COURT: Okay, Ms. Hurtik, that's my fault. Okay, sorry.

BY MS. HURTIK:

Q Okay. So can you explain what this email was about?

A Okay, so we were at the wallpaper phase of the job. And I -- I took a swath of the original wallpaper that was at the house, just so I could make sure that it was like for like, or I could --I could eventually send it in and get a value associated to it. She chose wallpaper that was about $10,000 higher when we priced it out, than what the insurance company allowed for. And it was something along the lines where this is a different material. It was a wood veneer. Before it was just a fabric wallpaper. So we couldn't justify that. And I was just trying to tell her to choose something cheaper, basically. And not get something so high priced, because it's -- that's -- well, I had a piece of the wallpaper originally and I told her we cannot put in that wood veneer panel on the wall. It's too expensive.

Q Okay. So this is another thing where they wanted to upgrade and the insurance company hadn't approved it, correct?

A They had not approved for that type of wallpaper, no.

Q Okay. In the same binder, Exhibit 492; if you could turn to that. So on the bottom part of this, there's an email from Troy Williams to Eugene. Do you know who Troy Williams was?

A Troy Williams was the estimator/project manager at Artesia Kitchen and Bath that I was dealing with.

Q Uh-huh. And so this is dated October 16th, 2015. And it's saying Eugene, attached please find the following items for review and approval. Proposal for theater bar base cabinetry, a drawing for the theater bar cabinetry, and resubmittal of proposal for pool bath shelving and bench, resubmittal of drawing for the sink. It says this is the first proposal submitted for the theater cabinets. To date there has been no approval given for the previous submittal of the pool bath shelving and bench. I don't know what your expectation is moving forward, related to these areas. Are we still submitting them to Desert Valley for insurance approval? They fall out -- the two areas listed above, fall outside the scope of our original contract, and therefore I do not know if Desert Valley has allocated insurance funds for those to be remade.

Were you aware of this -- were you aware that he was trying to get the theater base cabinets redone and the pool bath shelving and bench?

Q The pool bath shelving, no, but the theater base cabinet yes, after the fact. The theater base cabinet was something that was way far away from the actual water damage. But it was not -- when we first walked the job with Artesia Kitchen and Bath, we knew that they could do it, because they weren't the ones that originally did the cabinets there, they did not put that in their bid. That theater based cabinetry was not in their bid, so it was not part of my original bid. It was something that they didn't include in their estimate. The pool bath shelving and bench was something that wasn't there before. So I'm unsure of that. But the theater based cabinet we did find out after the fact, I don't know if the insurance had closed the claim out with them, and no more supplements could be sent to them, but we did know about that, way after the fact. I believe on this date was when we first found out.

Q But there were no damages in these areas, really?

A There was no damages to those ones. I believe maybe some scratches on an end panel. But that was the -- asked for the replacement of those. I believe there was some scratched areas on there.

Q Okay.

A I'm not quite sure what happened with the theater cabinets, but it was something after the fact.

Q Okay. And I'm going to have you go to 487. Exhibit 487. Okay, so this is an email from you, May 17th, 2015 to Troy Williams and Rachelle. And I believe it is a response to the email listed below, which is Wednesday, May 13th from Troy Williams to you and Rachelle, regarding change orders.

Q So why did you send this?

A So basically we walked this job. He had all the drawings for the cabinets that were needed. He had everything needed to create a bid for the whole house. We went through and I don't know who we got the cabinet drawings from, but we did get them. And they were the cabinets for the home. He submitted his bid, we got it approved, we walked the jobs a couple times with Artesia, I even went over to Artesia's shop. Over, I believe it's on Decatur or whatever, and met with him numerous times. And said are we good on this, you know, so I can lock it in. It wasn't -- he said they were made off pictures, but I walked this job with Artesia Kitchen and Bath. I walked it with them. They had the pictures of what it looked like before, but they also had the drawings. The drawings are really the actual footprint you need to create a cabinet bid. They're the exact dimensions, the finish height. But he also had the pictures from SERVPRO, before they -- because they were all removed when we walked the property. They were demo'd out.

So when they finished their drawings, it increased their bid almost 37 -- $30,000 off of -- there was no changes that I could note, maybe in -- except for materials. So that's why I had to generate this email in saying, you know, we can't have this this late in the game. The insurance is not going to approve this large of a -- and I was trying to find out why is it a change order. What -- what caused it. He admitted that he missed some things on the bid and didn't have like the theater room cabinets and stuff on the bid. But it wasn't enough to quantify $30,000. So that's what I was trying to figure out why is this change happening.

Q Okay. And were -- after the cabinets were actually ordered, so this is a huge change order, after they were ordered, was there delays in getting the cabinets?

A The cabinets did because the material, I believe that they had to fabricate them. They were a European type cabinet.

Q Uh-huh.

A There was a couple that were off, that had to be readjusted or reordered. I believe that they were around the refrigerator area, had to be redrawn because the refrigerator changed. So new cabinets had to be custom made around the refrigerator area. They would have had to been custom made regardless, but that caused a little bit of delays because some of it was off. And I believe some of the hinges and stuff weren't working.

Q Okay. So again, this is something that the insurance company wasn't going to approve, correct?

A It -- it -- I don't believe they would have approved this. This was too far above and beyond their original bid, which was supposed to have everything in it. Or if they did approve it, there would have to be a really good reason why it's such a big price difference, like something where another material is not in stock. Or that's the only thing they can order. Or something along those lines.

Q Okay. So if I can have you go to Binder 5. And then I want you to go to Exhibit 404. Okay, so I'll give you a minute to read it.

A Okay.

Q Okay, so this is an email dated October 13th, 2015. After you had that job site meeting and Mr. Inose sent you that email --

A Yeah.

Q -- that we just went over a few minutes ago. So it's to Dennis Zachary and Rachelle Elliston. And why did you send this email? What -- what does this email state?

A This is basically saying I didn't want to be on this job anymore because of all these changes, and -- and -- and we were -- I felt like I was being cornered into either trying to sign subcontractors' invoices or keep the job going by all means. So I had to stop and tell Dennis that I could not -- no longer be a part of this, because I know that I was going to get in trouble, if I let these things keep going like that. I was trying to just get dollar amounts associated with everything, and show where the negative -- negative charges are going to be, or we're going to go in the red. And I just felt like there was no way for me to get out of it. so I had to really appeal to Dennis and ask him if I could be off the project, because I just -- I could not authorize that -- that work to be completed the way it was proposed to be completed.

Q So you were concerned that the company was going to have to -- they were going to have to pay for all of these costs, he was trying to keep -- Mr. Inose was trying to get you to pay for things that weren't covered?

A Yes, I was very concerned about that, and ultimately, you know, I have to -- I had to stop and just take my involvement out, or try to take my involvement out at that time.

Q Okay, and after this -- after this -- shortly after this is when you guys tried to have discussions with Mr. Inose about you need to -- we need to finish this, we need to stop, right?

A Yes. We were trying to -- and actually Eugene would come in. He came in and helped look for some of the stuff, to try to cut some of the cost down as well. So we were trying by any means to get some of this price knocked down, because a lot of things were missing. You know, we couldn't find like three or four Lutron devices. He came in to help us look for those. So he actually -- he was there trying to see if we could get some of the price knocked down, but it just wasn't enough for the whole -- for the whole project.

Q Okay. Okay, I'm going to take you to Volume --

THE COURT: Let me pause you a moment, while I catch up.

MS. HURTIK: Of course.

THE COURT: Thanks.

[Pause]

THE COURT: Okay.

BY MS. HURTIK:

Q Okay. So before we go to the exhibits, I want to ask you a question concerning, to your knowledge, Mr. Inose stated he never read the contracts, he never -- he never looked at the estimates. Did you go over contracts and estimates with Mr. Inose?

A When we signed with SERVPRO, we were there -- when we were initially signing the contract, we were in his house. We were at his office, at his desk, and we were with SERVPRO, George, the one that referred us. And we did go over the contract, made copies with him right there. He signed it and we left him with a copy as well. And I -- I was there when he read it, so he did read it. It's about a two page contra court is what it is. And that's when he signed it.

Q Okay, and then when you were doing the estimates, your estimating. You -- you actually discussed things with Mr. Inose about your estimate?

A Yes, I did. We went over numerous areas of the home, where we could factor the price out, and factor it into other places. So we would talk about things like the sauna room, the pool bath, other things like that, to where we were trying to allocate other money towards things.

Q What about the pool? The pool, there was nothing that happened to the pool, because of the water damage, was there?

A No, not to the pool.

Q But he -- he had repairs done to the pool

A Yes, the pool deck was redone, and all the surfaces out there was redone.

Q Did the insurance company pay for that?

A No, they didn't.

Q So that was an extra outside of it?

A Yes, for the pool area, yes.

Q Is that -- was that in your bid?

A That was not in my bid, no.

Q Okay. So did he pay them separately?

A No, we paid them.

Q You paid them. Why did you guys pay them?

A It was the same company that was doing the driveway. I believe we used -- we didn't do items in the pool sauna bath, to do that area.

Q Uh-huh.

A So we allocated some money towards that as far as maybe not doing the tile on the wall. I believe that was what we did with the pool area.

Q Okay, so did you have any meetings towards the end in October with Mr. Inose, about how you could get this finished up?

A Yes, we were meeting there at the end with the subs. There was trim work going on. They were installing some -- just the, you know, final touches on everything, but there was still a couple areas, I think one or two areas that needed flooring still. Some cabinets and like the laundry room cabinets. I don't know if they had the countertop on them. A couple just finishing touches for the -- the home we were going over.

Q Okay.

A With the subs.

Q Okay. Okay, so in Volume 9. Let's go to -- so I want you to go to Exhibit 606.

A Okay.

Q Actually that's the -- that's the wrong one. I'm sorry. Okay, I'm wrong. It's 607, actually.

A Okay.

Q Okay. Okay, so on IN-LO 644, at the bottom, there is an email from you dated April 17th, 2015 to Brian Lynch. Eugene Inose is cc'd as well as Tina Dyba.

A Yes.

Q And so it says you're going to be in a conference with Tina today about a request. And that you were going to call Brian Lynch, the adjuster, after you talked to her, because you wanted all the communications through you when it comes to material and contents because you need to be in control of all that, and make sure that you delegate correctly or bill correctly. Why were you concerned about that?

A Well, there was a couple piece of granite, and what else was picked out, some items that were just way above the budget that were being picked out. So that's why I needed to at least see the material and see what we're up against. So it was really important for me to know those things right away, so I can say that it's a go, or it's not a go for material price.

THE COURT: When you say were picked out. By whom?

THE WITNESS: Tina Dyba was the designer, and she would go work with Eugene to go pick out materials. Those would be the two that would pick out a lot of the materials.

BY MS. HURTIK:

Q If you can go to Exhibit 608. So at the bottom of this IN-LO 650, and it's -- goes on to -- well, at the bottom of this, there's an email from Eugene Inose, it looks like on 10/22/2014. And it says, Hello, Brian I will cut out a check to Desert Valley today for the aforementioned mount.

Do you see that?

A Yes, I do.

Q Okay, and then it says I do need to get on the phone with you a little later today regarding the mold remediation. There has been a turn of events. Daniel informed me that his company, Desert Valley/SERVPRO would like to put a proposal together that will have an NTE pricing, and a guarantee that they will finish the mold remediation until it passes. So what -- what happened here? Was -- was SERVPRO of Henderson, did they not get all the mold?

A So basically it was -- I believe it was a -- either a pre-existing condition, or I don't believe it was from this event. I'm not sure exactly where the mold was found. A test was performed and it was found on all the framing throughout. There was -- there was different kinds of mold. I'm not exactly sure what kind. So it was such a large area to be treated for mold because you have set containments and put equipment in. It's a lot of work. Basically it was such a large area, the other SERVPRO came with an estimate, I think 50 or 60,000. Same with another company had bid mold work as well.

Q Uh-huh.

A So this was -- if we didn't get that mold test to pass, the job wouldn't move forward. So basically we had to stop work, we had to figure out what to do with the mold test, because on a nice house like that, a mold test usually isn't warranted to make sure. So, but it was just so much square footage, we had to create an estimate, work with Fireman's Fund and try to get it done, just for as little as we could, just to get the project kept moving. Nobody else would do it for, I believe we submitted a $20,000 estimate for the mold work.

Q Okay, so you guys were trying actively to keep this moving forward, as quickly as possible, correct?

A Yes, we were.

Q Okay, and what is an -- what is NTE pricing?

A NTE is not to exceed pricing. So basically just telling the insurance company, this will not exceed this -- this cost.

Q And then you would do that?

A Yes.

Q So you -- so you didn't do all of it, but there was a little piece that you did at the end?

A For the mold?

Q For the mold?

A No, we did all of it. It was a pretty large mold job.

Q No, I mean -- I mean for this particular issue. SERVPRO of Henderson did the original?

A Yes, that's correct. Uh-huh. And we did a piece at the end. You're right about that.

Q Okay. Okay, so Exhibit 609. This is an email April 29th, 2015 from you. And it says follow-up contents with Enservio to Eugene and Tina and Robert Ramirez and you cc'd Rachelle?

A Yes.

Q So what were you trying to do here? What is this email about?

A So basically the contents person that was going over -- that was hired by the insurance company to assess all the damaged wet contents, couches, area rugs, stuff like that, was out there. This was kind of holding up the job, too, because the stuff was in the garage, and ideally we needed that garage space.

Q Okay.

A To store construction stuff. So we were trying to get them to make this list and -- and help them document everything so we could issue the contents payment and hopefully we may be able to get some -- get rid of some of the stuff. The contents were something -- we worked with Enservio to get a number for the insurance company.

Q Okay, so again you were trying to move the project forward, quicker, correct?

A Yes, with the contents. We were trying to get them out of there.

Q Okay, and then the last paragraph of this email, it says, I'm going to start working on this -- on all this. We're ordering the mirrors tomorrow. We were just seeing if we could get a better price, as a contractor. But it's too hard to tract that down. So, were you also trying to decrease his cost?

A Yes, we -- we were trying to get better deals on stuff, or better install costs, because some of these subs were pretty high on their price. So yes, we were always trying to find if we can get a better deal.

Q Okay. So then let's go to Exhibit 611. So this one is dated at the bottom, from you, October 7th, 2014. So this is pretty early on, correct?

A Yes.

Q Okay, and this is to Brian Lynch, the adjuster, correct?

A Yes, it is.

Q Okay. So you say in this, the next step is going to get bids from the companies for mold debatement portion of the job, and we're waiting on that. If they do get their numbers in ASAP, may they start right away? There's some things that we can move forward on for the construction side. To get it going, you're saying. And you were asking once the bids are all on. And then you say just trying to find a way to expedite anything we can, correct?

A Yes, that's correct.

Q So again, you're just trying to move it forward, right?

A Yes.

Q Okay, so in the second paragraph it say we are paying what we can out to get what we need, but would like to see if there's any way to get payment through -- through to aide in this. We've submitted a bid for 50 percent down of all the subcontractors, which is separate from the billing to date. This bid was in the 50 percent charge for the cabinets, the Eagle Sentry bid and other vendors. Please let me know if there's something that needs to be reviewed. So you guys were actually having to put money out, before you got paid by the insurance company?

A Yes, we were. We -- we started working on the project. I believe we started doing the rest of the demolition, or wherever we could. We did some framing. We started ripping out the subfloor upstairs. So we were doing stuff in-house while -- while we asked the insurance company to cut a check for 50 percent for all the subcontractors, because they were requesting that to work on the project.

Q Okay, so -- so let's kind of -- so did you then -- so were the checks made to you exact -- specifically? Or did you have to wait for Mr. Inose? Did -- were they written to him?

A They were written to him. I would go meet him at -- like I think it was his condo he was staying at. And then he would sign them over. And we'd have to give the progress, or lien releases from the subcontractors, and material releases.

Q So there was a delay always?

A When we were dealing with that much, yes, there was.

Q Okay. So then I'd like -- Your Honor, what do you want? It's noon, do you want me to keep going?

THE COURT: No, we can break. But before we do, I'm looking at the email October 7th, 2014. Is it customary that the subs request 50 percent down on projects like this?

THE WITNESS: Because these were custom cabinets, and a lot of it was custom work. That once you order it, you cannot restock it. It was pretty customary. Yes, it was.

THE COURT: Okay. Yeah, let's break for lunch, come back at 1:15.

MS. HURTIK: Thank you, Your Honor.

MR.BOSCHEE: Thank you, Your Honor.

THE COURT: Who else do we have to call?

MR.BOSCHEE: Got to finish up Danny, and I think Dennis is the only other witness, so --

MS. HURTIK: Yes. Yes.

THE COURT: Okay.

MR.BOSCHEE: I don't think we're going to finish today. At least in part because I need to leave early. But we should finish tomorrow morning, I think, pretty easily.

MS. HURTIK: Right. I think we should be -- we may be done today, and just closing arguments tomorrow.

MR.BOSCHEE: That would be great.

MS. HURTIK: That's the hope.

THE COURT: Okay.

MR.BOSCHEE: I've already got -- already got Mr. Flansberg [phonetic] taking my son to baseball tonight, so I can't ask him too much. Or he's going to charge me.

[Recess at 12:03 p.m., recommencing at 1:21 p.m.]

THE CLERK: We are back on the record, Judge.

THE COURT: All right. Whenever you're ready.

BY MS. HURTIK:

Q Okay. Mr. Merritt, can you -- we're going to keep doing Volume 9.

A Okay.

Q And we're going to go to Exhibit 625. So Exhibit 20 -- or Exhibit 625 consists of Bates stamp 798 through 800.

A Yes.

Q Okay. So the first one is a -- 798 is a check to Eugene Inose. It says advance payment toward dwelling repair from, it says Brian Lynch cut the check from American Insurance Company. And it was for $300,000.

A Yes.

Q Okay. So then if you go to the next one, IN-LO 799, there is a check, and this one is dated 10/16/2014, and this is again from the insurance company, directly to Eugene Inose, and it's for $400,000.

A Yes.

Q And to your knowledge, was that the first advance that was made to get you guys started?

A No, I believe the first advance was a $100,000. I don't see it here, or $50,000 I believe that was paid up front. I don't see it here, though.

Q Okay. So then an on the last one was IN-LO 800. And that is dated 6/25/2015. And that says final payment of water damage repairs, 614,470.68. So were you aware that Mr. Inose was closing out the claim with the insurance company in June of 2015?

A I wasn't aware the claim was closed out as far as no supplements or other items, no. At that time, no, we were still working with getting subcontractor bids.

Q Okay, so why -- would you ever have advised that he close out the claim at that point?

A I wouldn't have advised because of the changes that were --

or the costs that kept coming in. I was worried about that. I don't believe I would advise for closing out, no.

Q Okay. Okay, so if you add these three checks, there's the one on 300,000 on 3/4/2015, which is the first one.

A Yes.

Q The second on 400,000 on 10/16/2014, and then the last one on 6/25/2015. They total $1,314,470.68. Was that close to what your bid was?

A Yes, that was close to what my bid was to them. Yes, it was.

Q Okay, and do you believe that these numbers were paid out, based on your bid?

A I believe so. It says repairs on all of the -- it says -- says water damage for dwelling repairs on every one of them, so I do believe it was for that.

Q Okay. And you believe that there was a $50,000 one that is not in this group, that was paid originally, to get you guys started?

A It may have been part of the $300,000 one, but I saw an email where there was a separate $50,000 invoice that was paid for our services after we finished the subfloor, I believe it was.

Q Okay. So if you go to -- still in this binder, Exhibit 601. Okay, and I'm going to have you -- so we talked about this yesterday as well. So this bid, it starts on IN-LO 489 is actually the page that the estimate starts at.

A Yes.

Q And it's quite lengthy. If you go to one of the last pages. Let me get you the -- IN-LO 546, which is page 58.

A Yes.

Q It says total 1,320,429.28; is that correct?

A Yes, that's correct.

Q Okay. So that's the actual -- that -- that amount, was that for the original, to put the house back together, or were there change -- was there more on top of this?

A This amount was to put the house back together, the original, well, with the subcontractor bids we had. But there was more on top of this amount, as well.

Q Okay. But the checks that we just went through, that Mr. Inose that was paid, that have actually been produced, are pretty close to that number, correct?

A Yes, they are pretty close to that number.

Q Okay. So now on -- let's go back to -- I just want to make sure I have -- okay, so if you were to go to IN-LO 491, and I just kind of want to focus on what are you -- what the parts were that were above and beyond. So on IN-LO 491 --

A Okay.

Q This is for the laundry room. And in here it says, go down to line 31. It says countertop post formed plastic laminate, premium grade.

A Yes.

Q Okay, so is that laminate countertop was in the laundry room?

A It was originally, yes.

Q Okay. And did Mr. Inose upgrade that?
A Yes, that went to quartz, I believe in the laundry room.
Q And so they went -- he went to granite?
A Quartz or granite, yes.
Q Granite or quarts.
A Solid surface, yes.
Q And that was outside of the insurance bid, correct?
A Yes, that was.
Q And who performed the work? Do you know who did that? To put -- install that countertop that he upgraded?
A I believe it was Gordy with Summit Tile and Stone did that countertop in there.
Q Okay, so any monies he paid for that would have been above and beyond the contract, and above and beyond what the insurance company approved, correct?
A Yes, for the -- probably for the fabrication. There's a lot more that goes into fabricating the quartz, and the install, and the material.
Q Okay. So if you go to IN-LO 526, which is page 38.
A Yes.
Q Okay, so this one, it says it's master bath. And what were the upgrades -- are there any upgrades in here, in this actual bid that he did -- that you did?
A The upgrades are not in this bid, but the upgrades that were done in the master bath would have been the Switchglass mirrors, the -- I'm just reading it over.

Q Uh-huh.

A The top for the bathtub. I don't believe the vanities were in here. So I believe the vanities were.

Q And who did the vanities?

A Artesia Kitchen and Bath.

Q So anything that Mr. Inose had to pay to Artesia for the cabinets, would have been above and beyond the scope?

A In this area, yes.

Q Okay.

A Except for the countertop. We did have to replace the countertop.

Q Okay. So this bad actually -- you did a supplement on this bid for any upgrades; is that correct?

A Yes, we did a supplement on this, factoring out the areas we said we would factor out, factoring in the areas that were actually being performed.

Q Okay, so this is solely based on the original scope to put the house back as it was, correct?

A Yes, this was estimated the way it sat.

Q And again, we talked about the ten and ten, the profit. That you were entitled to the profit and the overhead, which would have been ten and ten on the one million 320, correct?

A Yes, that was the contract amount.

Q And you never were paid that, correct?

A Not the overhead and profit, no.

Q Okay, so then I want you to turn to Exhibit 602.
A Okay.
Q Okay. So this is -- this is another estimate, and this is -- goes from IN-LO 575 to 625. And if you actually go to page 38 of this, IN-LO 620.
A Okay.
Q And make sure that I have that correct. Is the total amount for all of the upgrades that he was doing in addition to the original contract, was it $137,541.01?
A Yes, it was.
Q Okay. And how did you -- how did you come to this estimate?
A This estimate was created after there are -- I'm looking over it now. This one was created after we found that we could not repair the subfloor upstairs. I don't believe this was the supplemental one that called out the individual trades. This was -- I'm sorry, I'm trying to read over it now. This was for when we had to replace the subfloor in all the upstairs. Frame it in, because we couldn't install a new floor over the subfloor, because it was in too bad of condition after the demolition.
Q Okay.
A It was also for some extra areas that needed insulation. And I believe the mold work is in this estimate as well. For what we had to do for the mold.
Q Okay, so this is not for the upgrades?
A No, no, that one is not.

Q Okay. So if you go to IN-LO 57 --

THE COURT: So what?

MS. HURTIK: I'm sorry.

THE COURT: What is this then, I guess? Because the 137 was -- I mean what is that number for then?

THE WITNESS: I'll have to look through that, Your Honor. I'll look through it now and see. So this one was created when we found that we could not salvage the floor upstairs. A majority of this was to -- I'm sorry, I'm looking through it.

MS. HURTIK: Okay.

THE WITNESS: Was for the flooring, the demolition of some tile floor, when that was found that it couldn't be replaced. So I believe this 137 one went into the other estimate after -- after I negotiate -- renegotiated with the insurance company. Because a lot of these line items are in the original estimate. So I believe that this was part of that.

BY MS. HURTIK:

Q Okay, so if you go to -- so this is part of the original estimate?

A That one should have been incorporated, yes. We did those tasks in the original.

Q Okay, so if you go to the first page of this exhibit, IN-LO 572.

A Yes.

Q There's an email from Brian Lynch, forward -- it's from Brian Lynch to Eugene. And it says, "Good morning, Mr. Inose. We've worked through many of the projected estimates with Desert Valley and will be issuing an advance payment of $400,000 at this time."

A Yes.

Q "The payment should be received by mail in the next seven days." And it goes on to say, "A new statement of loss is attached for your records. We are issuing this advance, based on your contractor's request for advance funds to place orders with some of the vendors." So the money that was being issued to Mr. Inose, the insurance company felt comfortable because your bid was sufficient, and they issued the money to him, as an advance, correct?

A We -- we were asked to get the subcontractors' costs up front, because the bid was -- we had to wait for them, because a lot of their costs were above and beyond what Xactimate, our estimating program, allows for. So we had to go up front and ask all the subcontractors to get their estimates and invoices in before he would release, or before Fireman's Fund would release that much money. I believe we had to have all their bids in, and that's what helped prompt them to release the money.

Q Okay.

A Because they wanted 50 percent up front.

Q Okay. Okay, just a minute. I'm trying to find a -- Your Honor, if I could just have a minute.

THE COURT: Sure.

[Pause]

BY MS. HURTIK:

Q Okay, so when you were removed from the job, you didn't -- Mr. Inose actually sent you a termination letter, correct?

A Yes, that's correct.

Q And do you know, recall when he did that?

A I do not recall the date that we got that, no. I'm sorry.

Q Okay. But you guys were trying to work things out with him. You didn't -- you stopped work because the change orders weren't being paid, and you needed to get all the numbers correct, right?

A Yes.

Q Okay. So you didn't terminate the contract, he actually terminated the contract?

A Yes, he sent us the letter. Yes, he did.

Q Okay. I'll pass the witness.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. BOSCHEE:

Q All right. I apologize if I jump around a little bit. I have an outline and then I've got all your notes. I think for point of clarification, the letter came from me, didn't it?

A I believe it did.

Q The termination letter.

A Yes, yes, it did come from you. I remember.

Q I believe it was in October of 2015, wasn't it?

A I believe that is the date, yes.

Q Yeah, I think that rings a bell. All right, you've got -- you still got Exhibit 602 in front of you, right?

A I do.

Q Okay. If I'm -- if I'm looking at it -- if I looked at it correctly just a second ago, it's dated October of 2014, so that was right at the beginning, kind of once you guys were up and running and kind of ascertaining what was to be done. That's when you figured that the floor was not salvageable upstairs, right?

A October, let me read it -- let me double-check that real quick? Yes, because SERVPRO didn't demo a majority of the floor. We ended up tearing the rest of it out.

Q Right.

A And that's why it didn't happen right when they finished the job. We found that it was glued and it was making a mess.

Q Okay. I -- I thought you recalled that. That's why I just wanted to make sure. So the 137, the number we looking at, really doesn't have anything to do with anything relating to the amounts that you weren't paid later on in 2015, was it? That's just demo work --

A I don't believe --

Q -- and everything --

A Oh, I'm sorry. I don't believe so.

Q Okay.

A I think this was something that we put into our other estimate.

Q Okay. Just wanted to make sure because that one didn't -- that one didn't ring a bell to me. But -- but the flooring upstairs. I want to get -- clarify this point. I'm jumping around in my outline a little bit, but the -- the flooring upstairs had to be replaced, right?

A Yes, it did.
Q And -- and a lot of the toilets had to come out for the flooring on both floors to be replaced, right? They had to be like removed?
A Yes, they did. Detached and reset, they had to be.
Q Okay.
A Uh-huh.
Q And when they were detached -- until the new flooring came in -- the flooring was delayed in a lot of the part of the house, I remember, because of tile problems, right?
A There was acclamation for the wood floor, that we had to leave there on-site. And the tile was the big thing.
Q Yeah.
A Yes, it was.
Q Most of the toilets were stored outside during that process, weren't they?
A No, they were in the garage.
Q Okay, they were all in the garage?
A I believe most of them, except for the ones we left there in place, because we didn't do the demo for the toilet area until it was necessary.
Q Okay. Was the garage -- did you ever have a recollection independently of whether the garage was warmer than the rest of the house? Especially during the summer?
A The garage it was stored in, there was a couple garage where things were at. I don't recall if it was much hotter than the house, I don't

remember that part.

Q Okay. And I think you testified -- I want to make -- I just want to make sure I'm clear on this. I think you testified to this, but I don't think that you guys actually paid for the replacement toilets. I think that was something that Mr. Inose had paid for directly. Is that --

A I believe that's the truth. Yeah, we -- I don't believe we approved that change order.

Q Okay. Let me go back. So you testified, I think this morning about the DVC work order, the contract, that two-page contract?

A Yes.

Q And I think you said that Eugene signed that in his office, while you guys were all there. Do you recall that?

A Yes.

Q Okay.

A Yes, I do.

Q You weren't here for this, but I think -- I think Rachelle said that's a standard DVC form work authorization, isn't it?

A Yes, it is.

Q Okay. And that's a form that you guys have created and use all the time, right?

A Yes, that's the standard.

Q Okay.

A At the -- at the time. I don't know if it's changed since.

Q That's -- that's true, at the time it was.

A Yes.

Q I understand. In the five and a half years that you worked there --

A Yeah.

Q -- it was the standard form, right.

A Yes, it was.

Q Okay. And when you were putting the initial estimate together, there were some subs that -- that worked on the house before, and there were some subs that didn't work on the house --

A Yes, that's correct.

Q -- before, right? Okay. And the subs that didn't work on the house, previously, were those subs that you guys went and just solicited bids from and just kind of took the best one and went with it? Or how did that process work? The bidding process?

A So basically, we would have to exhaust -- if -- if the company was there or not anymore. If they're still here in town working, we'd have to see if they worked in that kind of specialized trade. So Sunrise HVAC, we did call on their plumber. But Sunrise HVAC was the one that did work on the house, so -- so the plumbing part of it did not work on the house. That wasn't the plumber for the house. But the prime example would be the Sunrise Plumbing, we did call in their sister company. Artesia Kitchen and Bath, I believe never worked at the house. I'm not quite sure of them. I think it was another cabinet company before. But the other ones weren't in business anymore, I believe, so we had to utilize another cabinet company, so.

Q Okay. And we're going to get to them in a little bit. But

Burnham was one of the companies that was not initially -- was not one of the original contractors. That's someone that you guys -- you guys had to choose to work on the house --

A That is correct.

Q Okay. Because there was some problems with Burnham that we'll talk about later. I just wanted to make sure I had that right in my notes.

A Okay.

Q So you put the original estimate together. And we looked at that exhibit, and we can look at it again, certainly. I don't know if we need to just this second, but that was originally to put the house back the way it was. Kind of exactly with -- with subcontractor bids and estimates, 10 and 10 for you guys. And that's what's ultimately submitted to the insurance company, right?

A Yes, that's correct.

Q And that was the 1 million, 247 and change, initial estimate, I think. Because the -- the last one in June was a little bit more.

A It was. And I believe it was because the driveway added on.

Q Right.

A The damaged driveway added on. I think that's what did it.

Q Okay. Well, we're going to talk about the driveway in a light bit, too. Let me ask you this. So you -- you put this -- and -- and I've heard now, and you haven't had the pleasure of this, but I've -- I've listened to testimony now for eight days of Eugene talking about things that he requested and you and Rachelle talking about things that , okay, sure we can do that, that -- I mean after you put that initial estimate together, one thing I didn't see in any of the binders, or any things, and you can tell me if I'm wrong, but I didn't see anything where you say, Eugene, no. We're not going to do this. It's going to cost you more money if we do this. Is there an email or anything to that effect?

A Uh-huh.

Q Because I haven't seen it.

A Yes, there -- there was several emails --

Q Okay.

A -- saying that to him. I'm not sure what exhibit or what binder it's in.

THE COURT: We went through them with Ms. Hurtik, at least one or two of them.

MR. BOSCHEE: Okay.

THE WITNESS: yes.

BY MR. BOSCHEE:

Q So -- so I guess what I'm getting at is when -- you don't -- you know in the original estimate that the wine room is what it was at the time.

A Yes.

Q Eugene asked you to kind of upgrade the wine room. You didn't say no, we can't do that. It's going to cost you more money. Did you?

A At the time we did not have the plans to upgrade the wine room. That came after the estimate was negotiated.

Q I understand. No, that -- that was my question. It was probably a poor question. You've got the estimate. You've done it.
A Yes.
Q And you know what everything is going to cost to put the house back. And then Eugene comes and says I want to upgrade my wine room. I want to put a glass wall, I want to do all this other cool stuff.
A Yes.
Q You didn't tell him, no, you can't do that. It's going to cost you more money, did you?
A At a certain point we did.
Q Right.
A When -- when we couldn't authorize paying the subs anymore. The change orders didn't -- we -- we tried to price everything out like that, what he asked for.
Q Uh-huh.
A But the change orders just got too high. They were above and beyond what we had. So that -- that's when we asked for more money.
Q And that was -- that was around August 2015, I think is --
A Yes, that was when --
Q -- when that email.
A Yeah, that was when those --
Q All right.
A -- those conversations started happening.

Q But the work in the wine room at that point was pretty much done, wasn't it?
A The wine room had the glass up in that time. It had the framing done for it. It did not have the like racks or decorations put in it.
Q Uh-huh.
A But yes, I believe most of it was roughed in and most of it was completed.
Q Okay. And -- and to be clear, and we talked about this at length in your deposition, so I'm not -- this isn't anything that's out of school, throughout the process, when -- when Eugene would ask for some of these things, you thought you could true it up with other things that he wasn't doing, like the sauna, like the powder room. Things like that. You were kind of taking stuff out of here, and then putting it over here?
A Yes.
Q And you thought all of that would kind of true up at the end, right?
A Well, it was --
Q Theoretically?
A -- hard, I -- I didn't know on some of the items.
Q Uh-huh.
A So it was a working. We kept getting bids in. So there was -- it was a constant retaining of bids --
Q Right.
A -- to see what everything would cost. Like there was three

trades involved, just putting mirrors in.

Q Sure.

A So we didn't realize that some -- some extra things were needed to get these things done. And that's when we started comparing the bids.

Q Okay. Now one thing I also didn't see, and -- and -- maybe -- maybe -- maybe we did see it and I just didn't -- you guys were getting change orders from a lot of the subs throughout the process, and you, or someone at Desert Valley was approving them. Is that fair?

A A lot of them weren't approved. We didn't sign them because we needed -- the problem with that, is we needed a lump sum from them.

Q Sure.

A Not -- we would get ten change orders from Desert Home Electric, or just a laundry list of them. And we'd have to figure out what they were for. So what we did is, we didn't approve a lot of those ones. We didn't approve HyBar's. I believe we didn't sign their change order. I don't -- there was several of them we would not sign off until we could put a total tally together and generate everything. So some of them get approved. I believe the one for the HyBar for the Switchglass doors was.

Q Sure.

A But there was numerous other ones that wouldn't. So it was --it was hit and miss on which ones were or which ones weren't.

Q But prior to August of 2015, none of those change orders, none of those change requests, or extra requests from the subcontractors were forwarded to Eugene, were they?

A I don't know if they were or they were not. I know we were dealing with Rob Ramirez, but I don't know if we sent Eugene each individual change order.

Q Okay, because I remember -- I made this note in -- yesterday, and I think this is what you said. That you were -- you were working to create one change order that kind of had the -- the macros of -- of what all the subs were putting together, and that was what you were going to send to Eugene.

A Yes, that's correct.

Q Okay. And that's the one you end up sending in August of 2015, that's got the -- the back up and the change orders, and the invoices on it. Saying, okay, here's -- here's the change, here's what it's going to cost?

A Yes.

Q Okay. And I guess what I'm getting at is, do you specifically sitting here right now, recall sending Eugene, or giving Eugene any change orders that you're getting from these subs, and specifically prior -- prior to sending the email to the insurance company in June of 2015?

A Yes, I -- I remember some emails where Eugene said we're going either have to get Desert Valley to pay this, or somewhere along the lines the insurance, but regardless get it done.

Q Okay.

A So he would authorize us to do it. And I believe that was for -- I don't know if it was for the Eagle Sentry or if it was for another. But we would send him some of them. Custom Landau was another one. They came in after the fact. So we did send them over, and say this is what they're asking to do.

Q When you say after the fact, can you clarify that for me? Is that after the insurance or after they've done the work?

A After the -- no, not after -- after the insurance was all done off the job. Customline was something that we did not foresee and nobody really foresaw that they had to come in and take the steel off the wall and put it back.

Q Okay, and that was kind of the question. And then -- then the follow-up to that is I didn't see anything where any of these change orders, including the August 25th email, truthfully, but any of the change orders, or any of the extras from the subs were ever sent to the insurance company. Do you have a recollection of sending any of these to the insurance company, other than two estimates?

A When we went from the 1.2 million, or whatever it was, to the 1.3, there -- there were things that added on that went to the insurance company. Past that, when we were getting into everything and getting the drywall hung, there were things that we didn't feel could go the insurance company for a supplement, because it wasn't the exact same footprint or was different than what was in the home. So we -- we had to weight that out and utilize some of the other money from the other projects in there to do that. But we didn't know -- the insurance wouldn't have paid for things that weren't there originally.

Q Well, right, but that's kind of my point. The -- but the insurance did end up paying for a lot of the wine room change, right?

A The wine room change was used from the sauna room. I don't know exactly what funds went to what --

Q Right.

A -- to pay for what. I did create an estimate on what it all costs.

Q Uh-huh.

A But I don't know exactly how X amount of dollars went into the wine room versus what was paid out initially. I believe the insurance paid around 9,000 for the wine room.

Q Yeah, that's kind of where I'm going. I mean I -- I just -- the things that I've -- I've kind of -- because we were looking at these estimates. We've been looking at -- and it's the whole thing is about as clear as mud after you look at them long enough. But -- but -- but technically there were things that -- that were done and paid for by the insurance that normally an insurance company -- the insurance in this situation wouldn't have paid for. Like an upgraded wine room, right? I mean had they known that the wine room wasn't going back exactly as is, that there were going to be upgrades to the wine room, that's not something that an insurance company would ordinarily approve, right?

A No, they wouldn't --

Q Yeah.

A -- approve of an upgrade to a wine room.

Q Right.

A Unless you had to do some kind of electrical system.

Something technical like that.

Q Or a code thing.

A Code thing --

Q Right.

A -- yes.

Q And that's why, you know in -- in the estimate, that's why the -- there's nothing about the upgrade wine room in there, it's just taken out of different parts of the insurance. Like the -- the sauna, the powder room. Because it was never -- you guys never told the insurance company that you were upgrading certain parts of the house, did you?

A We -- we -- initially when we started doing everything and we started getting material pricing, we were worried about the material cost versus what we could get things for nowadays. So the insurance was notified of -- I wouldn't say upgrades, but I would say additional items in the home that had to be done. But the upgrades were discussed with Eugene and ourselves. And we actually did create an estimate tracking were all the money went inside of the estimate, versus what we were paying for new stuff. So we did actually do that to show them where all the costs were at.

Q Well, to show -- to show them, or to show Eugene?

A To Eugene.

Q Right.

A Not the insurance, because they probably wouldn't have engaged on that at all.

Q Right. And so -- so when you're having these conversations with Eugene, kind of we're going to take this and take that. That's a conversation between Desert Valley and Eugene Inose, not between Desert Valley and Fireman's Fund, right?

A That's correct.

Q Okay. The -- this was -- you testified -- I made a note of this, that this wasn't a typical job, I think was the quote that I wrote down from you. Remember that?

A Yes.

Q Okay. Was it atypical because it was an insurance job, because it was a very large custom home, or the combination of both?

A Well, there was a lot of different trades involved and that's where it was kind of atypical, because you'd have to have one do one task before another could get behind. So there was a lot of moving parts on it, I would say.

Q Okay. I want to talk about Rob Ramirez for a minute. I'm kind of bouncing around. But as things pop into my head, I'm -- I'm going to think about them. We've talked about Rob Ramirez a lot. He was one of the supervisors on the job, right?

A Yes.

Q Okay. And you testified earlier that Eugene insisted on Rob being a part of this, or he was going to go a different direction with a contractor, I think is what he said.

A Yes.

Q Now, that said, yesterday you testified you would negotiate Rob Ramirez's compensation with the insurance company. Do you remember saying that?

A Yes, I do.

Q Okay. is there a line item in -- because I looked and I couldn't find it, but that doesn't mean it isn't there. When you submitted the original estimate to the insurance company, is there a Rob Ramirez line item in there?

A There is a -- it's not called Rob Ramirez, but it's called commercial superintendent.

Q Okay.

A Per hour. That's how we were able to put him in there.

Q Okay. And the commercial superintendent per hour is what you guys denoted as kind of extra supervision?

A Yes.

Q Okay. And the insurance company paid for that?

A They did.

Q Okay.

A And I noted it was for Rob on the estimate. It's for his time.

Q My question then is Rob Ramirez was actually hired as a W-2 employee by Desert Valley, right?

A Yes, that's correct.

Q Sitting her right now, I mean given that he's a separate kind of line item, separate entity in the estimate, how was -- how exactly was he compensated? Because I've got -- there's -- and we can look at them, but there's a bunch of payroll documents in there, where you guys are paying him. So I'm trying to figure out, was he paid by Desert Valley, was he paid by the insurance?

A He was paid by Desert Valley. They would cut us the check for payment. And we were responsible for paying him. The insurance did not pay him directly.

Q Okay. But -- and -- and as a W-2 employee, he was one of the supervisors that were on site?

A Yes, that's correct.

Q Okay. Now you also testified at one point about things that were going on in October of 2015. Rob Ramirez was terminated by Desert Valley in May of 2015, right?

A I don't recall the date. I believe the funds were not there anymore to keep him paid. And I believe that's what happened. I don't know the date exactly.

Q It was -- well, I -- you would have to get in it, but there's an exhibit to this, right. But early summer of 2015, you kind of ran out of money for Rob, and he wasn't in the budget anymore, and so you let him go, I think is what happened?

A Yes, I believe that's correct.

Q Okay. After that, what -- what involvement did Rob Ramirez have, if any, with the project, after he was not being paid anymore?

A Well, I believe Eugene took over that. He wanted Rob to stay on the job. So they had some communication going back and forth to get Rob back onto the job.

Q Okay.

A I don't know if it was after we were off the project, or before we just left. But Rob came back in, and got re-involved --

Q Sure.

A -- in the project, to finish. So the involvement for him would have been some emails, maybe a couple site visits, but it was very minimal after the -- after the funds were there no more.

Q Okay. But Rob Ramirez as -- as an employee of Desert Valley was not part of your ten percent overhead? Was that -- was that what you're telling me?

A I -- I don't know exactly how the bookkeeping did it. I know that they had to remove some costs to make it work, to keep him on longer.

Q Okay.

A And I believe we did have to forfeit the overhead and profit for him, and the burden. But I'm not sure exactly what was forfeited to keep him on.

Q Okay. Because Rob was paid -- I think we -- we saw some documentation, or maybe Rachelle mentioned it, in excess of $70,000 for the time that he was there for those six months. Does that sound about right?

A Yes, I think 76,000 or so.

Q Okay. Even though you had Rob Ramirez on site as a supervisor -- super -- superintendent or supervisor. I don't know what his exact title was. Desert Valley also had other supervisors there in addition to him, right?

A Yes, we did.

Q To oversee the trades?
A Yes.
Q Okay. Was there a reason why you guys had extra supervisors there in addition to the -- the supervisor that Eugene insisted on?
A We were doing some things in-house as well. So we weren't just relying on the sub to do their -- their things. So we were able to do a lot of things in the house. We were doing framing in-house. We were prepping the walls. We were doing the insulation in the house. So yes, there was a reason for us to have our own. Because Rob was primarily for the subcontractors, because he had a working knowledge with them.
Q So just so I've got the outlay of who's on the property at given times, you'd always have a project manager there. You testified there were two project managers, right?
A At different times.
Q Different times, right.
A Yes.
Q They didn't overlap?
A No.
Q You had Rob Ramirez who is on the payroll as a supervisor, and then you guys also had other supervisors that were there overseeing Desert Valley work, right?
A Yes.
Q Okay.
THE COURT: Are project managers and supervisors separate

people or are those the same?

THE WITNESS: I would say that in the case, they're the same in this case. Just because we didn't do not, what was the project manager versus supervisors. So we would call them project managers. I would say so.

BY MR. BOSCHEE:

Q Well, see, that was my next question because Rob Ramirez was never a project manager on this -- on this project, was he? He was always just supervisor.

A Well, the thing is I don't know what -- what would make him a project manager versus supervisor. I don't know what that would entail. Project manager, he was helping manage the subs. Doing timelines with them. So I would say more of a project manager because he was in the loop with who was coming in. He would go look at the drywall finish work. And he would quality control check a lot of things. So -- and he would tell us to come back in and finish something if we didn't do it right.

Q But kind of following up on the Judge's question, which was also going to be my next follow-up question. Every -- as long as Rob Ramirez was on the project, there was -- one of the two individuals you talked about was always also there as the project manager, right? It wasn't ever just Rob Ramirez, project manager, with nobody else overseeing him, was there?

A I know we had Michael Darling initially. That was our -- our first one we hired. I'm -- I'm just not sure if he was always there with one of our person -- people from DVC, or if Rob went there on his own accord to meet with subs --

Q Okay.

A -- so I'm not 100 percent sure if every time we were always there with him.

Q Okay. You also testified, I think, about a half hour ago, that you -- in addition to going over the contract, you went over the estimates with Eugene. Do you remember saying that?

A Yes.

Q Okay. That first estimate, the -- the long one, the 1.24 whatever million dollars.

A Yes.

Q When did you go over that with Eugene, and where?

A It would have been with the insurance company. We -- we sent everything over to them. They should have also sent him a copy.

Q Right.

A To show him what was being agreed upon. And when we -- when we started going over things, I don't know the exact date. I do know that we talked about the individual rooms, and what we were going to use for what at that time. I don't know the exact date we went over it, though.

Q Okay. And -- and I want to be clear about this, I -- there are emails with the estimates that -- that Eugene's copied on. My recollection was, that you testified that you actually went over -- went through the estimate, itself with him.

A Yes.

Q Do you recall specifically doing that? Going through, like, okay, here's -- here's what we're going to do. Here's the estimate, line by line?

A I do as far as what we were going to take out, what we're going to credit back.

Q Okay.

A And where the numbers were with everything. Yes, I do --

Q Okay.

A -- recall that.

Q And was --

A I just don't know when.

Q Okay. Towards the beginning of the project, or towards --

A Beginning of -- well, when we were -- we were almost finished with negotiating with the insurance company, I sent him -- he has copies of it sent, but we also did it on-site. Went room by room --

Q Okay.

A -- to make sure we didn't miss -- Rob was there as well. He was there for reviewing the estimate to make sure we didn't miss anything.

Q Okay.

A And that's where we came up with the higher estimate, because there were some things that were not on there.

Q Right. The driveway. Let's talk about that for a second. The driveway was damaged during -- as I understand it during the cleanup when SERVPRO was out there, put some heavy machinery in the driveway and it -- it cracked.

A Yes.

Q Is that -- is that fair?

A Yes, that's correct.

Q Okay. It appears, and I think you testified to this, that the driveway repair was paid for through the Fireman's Fund Insurance money, right?

A Yes, it was.

Q Okay. That wasn't part of your estimate, was it?

A Yeah, it was part of my later estimate.

Q Your later estimate, right?

A Yes.

Q That was not part of your initial estimate?

A No, it was not.

Q Okay. That was some added work that needed to be done?

A Yes.

Q Okay.

THE COURT: So it was in the 1.3 million?

THE WITNESS: Yeah, it should have been in that one, yes. That's why it went up, yes.

BY MR. BOSCHEE:

Q SERV - I mean there wasn't any real dispute that SERVPRO actually damaged the driveway, right? I mean they -- they did it?

A It was a sub they were using. A dumpster removal company.

And I don't know who called the dumpster removal company in. It was a subcontractor they were actually using.

Q So I guess my question is, why didn't SERVPRO's insurance pay for the driveway repair and why did Eugene Inose's insurance pay for it?

A I'm not sure, again, who called the dumpster company in. I don't believe it was his insurance. But the conversation -- the Fireman's Fund did know that that's -- that that's what was the cause, that's what happened. He actually sent somebody out to look at the driveway. I don't know why Fireman's Fund took over to pay for the driveway. I'm -- I'm unsure why they didn't go after SERVPRO to open a claim.

Q Or subrogate the claim.

A I'm not sure, yeah.

Q Or something. Okay. Go to -- I think you might have it in front of you. 601.

A Okay. Okay.

Q And part of the reason I'm bouncing around a little bit is because you happen to have that binder in front of you. And I know how much fun it is to keep reaching back and grabbing new binders all the time. We've -- we've looked at this. And this is I believe the -- I mean I guess the second estimate; is that right?

A Let me check the date really quick. Yes, this would have been the second estimate.

Q Okay. If you flip to IN-LO 488, this is your email to Brian Lynch, right?

A Yes.

Q And on Friday, June 5th. And if you go back to the first page, 484, that's the email from Brian Lynch to Eugene Inose. Let me ask you a general question for you in the specifics. Mid-June of 2015 was around when the insurance claim was closed, right?

A I believe so, yes.

Q Okay. Which follows up Brian Lynch's email to Eugene, which basically says closing the claim --

A Yes.

Q -- but that comports with your recollection of when that happened, right?

A It does, yes.

Q Okay. Now, in your email to Brian, you put -- you actually put the number in the subject line. And you say in that email, with no needed change orders and no more change orders from all the subcontractors which have submitted their bids. At this time we will be able to complete the project for this amount. That's a representation that you're making to the insurance company on June 5th of 2015, right?

A Yes, that's correct.

Q But on June 5th, and we looked at them earlier, you were in possession already at that point of several change orders and extra things from Artesia Cabinets, among others, Summit Tile. I mean you knew that there were additional change orders that were still out there when you wrote this email; didn't you?

A No. I don't believe those were at the same time.

Q Okay.
A If you could show me which ones there were.
Q Well, we looked at a bunch, but I mean I'm talking about the change orders that are coming in from the subcontractors kind of on an ongoing basis from 2014 through 2015 that you were signing off on. But let me ask you another way. On June 5th of 2015 did you believe that you could complete the project for one million, three twenty-four, twenty-nine eighty-two?
A The way the house sat and what we got the subcontractors bids for, yes, I do believe that.
Q And that included at that point the upgrade wine room, right?
A Yes.
Q The doors that were transferred from the one room to the other room that we heard a little bit about, right?
A The doors themselves for the material, not for the wiring or for anything else that had to do with that.
Q Right. Because there was additional things that you found out after this that was --
A After the fact that needed to be done, yes.
Q Right. And it didn't include the mirrors, it didn't include some of the things we talked about upstairs?
A It did not include the mirrors or the resurfacing of the pool around the back. I'm just trying to think. I don't remember exactly what it did. I know the mirrors weren't part of this. They cost a lot, above and beyond. And I think a lot of the finishes that were being chosen were

really a big part of it.

Q Right. But I guess in this email that is forwarded to Eugene two weeks later by Mr. Lynch, which is a copy of everything, it says no further billing exists beyond the final estimate, I mean that's what led to the closeout of the claim, wasn't it? Your email telling the insurance that there was nothing that -- the $1,320,000 was going to get the job done?

A With what the contractors, the subcontractors told us, that was their final bids, that was their closing numbers, and everything was picked out at that time, so yes, we believed that.

Q Okay. And, again, we don't have to look at it again because you looked at it in your deposition we looked at earlier.

A Yeah.

Q You signed that unconditional lien release on July 3rd that says no change orders and signed that because on July 3rd of 2015 you still believed that there weren't going to be any additional change orders and that everything was going to be covered by the insurance, right?

A Yes. So at that time we were still working there. Everything was still going. But I think there was -- there were change orders coming and I wasn't aware of those.

Q Okay. When obviously if you weren't aware of them, Mr. Inose wasn't aware of them, either, right?

A That's correct.

Q Okay. Because how would he be? So I guess my question, then, kind of over-achingly, is you testified earlier, Rachelle did, too, and it sounds like it's standard business practice, that you never close out an insurance claim until the work is done, right?

A Yes.

Q Okay. And I think you testified yesterday that around the time of this email the work was about 60 to 70 percent complete?

A Yes.

Q Okay. So but you didn't say that in this email; did you? You didn't tell the insurance company that we're only 70 percent done, don't close the claim; did you?

A I don't believe that any percentage was asked for or told to them.

Q Okay. You didn't tell Mr. Inose in any correspondence in June not to close the claim because the job wasn't done; did you?

A I don't believe I did or did not do that. I don't know.

Q There's probably nothing -- I mean there's not a correspondence one way or the other, right?

A I don't know.

Q Because God knows it would probably be in one of these binders somewhere if you did. We don't have nearly enough paper killed here in this case. But is it fair to say that you didn't know what you didn't know in June of 2015 about what might or might not be coming in to get the rest of the 30 percent of the work done; did you?

A No. I knew the way the house was going to be put back. It was the changes that really threw us for a loop.

Q Okay.

A We had it set in stone, everything. We had all the subcontractors' bids sent in, we had job walks done. Everybody had their numbers. It's after this is when we started seeing things changing and we were trying to allocate more money for things in the home, but it was a constant change.

Q Right.

A Constant things were changing, so that's where --

Q Moving on both fronts, right, but to be fair, there's things that Eugene's asking for and then there's things that were taken away in other parts, so there's just a lot of moving parts in all directions?

A That is correct. That is correct.

THE COURT: I think everyone can probably stipulate to that. And if you don't, I'll find it.

MR. BOSCHEE: I just want to make sure.

THE WITNESS: That's okay.

BY MR. BOSCHEE:

Q So when -- I didn't ever see Eugene Inose, a signed change order from him for any of this work. Is there one?

A I don't think Eugene signed anything, as well.

Q Okay. Most of -- as I understand it, and I think this has been pretty consistent, too, but I want to hear it from you --

A Yes.

Q -- because you're one of the parties to the conversation.

A Yes.

Q Most of what happened was kind of you and Eugene talking things out and figuring out okay, well can I do this? Sure, but then we have to take something away from that or kind of doing, for lack of a better phrase, horse trading on that front verbally, right?

A Well, it was also with the subcontractors.

Q Right.

A We would have to -- so we would talk about things verbally. He would say can you do this and we would have to get their bids. So it wasn't just verbal, it was actually cross-checking and seeing what would this cost.

Q Sure.

A And this was after this point in the game. This was September, October, you know, when we were finishing everything up.

Q But I'm talking --

THE COURT: September, October --

THE WITNESS: 2015, yes.

MR. BOSCHEE: 2015.

BY MR. BOSCHEE:

Q But before that. I mean so September, October 2015, that's -- now you've got to get all the changes from the subs, now you've got to get all the -- I'm talking about October, November of 2014.

A Okay.

Q Or kind of at the beginning of the project --

A Yes.

Q -- when Eugene first asked you if he can do a wine room.

A Yes.

Q You know, I'd like to do this with the wine room. And you're like well, sure, but we've got to take something away from here?

A That's exactly, yes.

Q That's kind of what happened; isn't it?

A It is for the wine room, yes.

Q Okay. Well, it's for most of the changes; isn't it? It was mostly a give and take back and forth with the two of you?

A If it was justifiable --

Q Sure.

A -- you know, we could go over every one, you know. Everyone had its own case.

Q Right. But I guess what I'm saying is, they all had their own case and they're all different scenarios and some you did, some you didn't do.

A Yes.

Q But it was all verbal. It was all conversations that you and Eugene were having, kind of an ongoing basis throughout the project, right?

A We would actually ask the subcontractors for the bids, the dollar amounts, to back up what they needed to do for it. So it was verbal what we talked about, but then we'd put it on paper and that's why I had to crunch the numbers as an estimator and see what we could do.

Q Sure. And then were those bids from the subcontractors ever provided to Eugene when you guys were making decisions on what you could or couldn't do or you'd just estimate it and tell him?

A No, we got him the bids for a lot of the low voltage. We sent him the bids for the Eagle Sentry. There was correspondence back and forth with him and I about some missing Lutron panels, how much those would cost to replace. There was wallpaper selections that he knew the dollar amounts on, Tina would go work with him on that. So it wasn't necessarily a bid, it was more of these materials are going to be this much or the Lutron panels are going to be this much. So he did know those costs.

Q I'm jumping around again because you brought up the Lutron panels and I want to talk about that. The Lutron switches all just kind of disappeared at one point; didn't they?

A There was about six or seven of them that weren't there, yes.

Q Yeah. They just -- and sitting here right now, I mean I don't think any of us know what happened to those switches; they just were not there anymore?

A That's correct. We couldn't find them anywhere. Eugene even looked himself in all the rooms.

Q And they had to then be replaced?

A I believe they couldn't tie in any newer models to fit with the older ones. I believe they had to all be replaced.

Q And the Lutron switches are pretty expensive as I recall?

A Yes. About 70, $80 each.

Q Right. And those were all lost while the work was ongoing on the -- at the property, right?

A Those were all taken down initially and I don't know if

SERVPRO called somebody in to take them down, but they were all taken out of walls before they made their cuts I believe is when that happened so they wouldn't get all dusty and just ruined from the equipment.

Q Okay. And --

THE COURT: So hold on one second.

MR. BOSCHEE: Okay.

THE COURT: Sorry. I can't write as fast as you all talk.

MR. BOSCHEE: Very few people can write as fast as me.

THE COURT: I can probably write as fast as I talk. So the -- sorry. These Lutron panels were taken down not by Desert Valley Contracting, but by SERVPRO, one of SERVPRO's sub-type people?

THE WITNESS: That's correct. I'd have to find out exactly who, but they were removed by another company and placed into boxes and put into the rooms.

BY MR. BOSCHEE:

Q And then at some point after they were put in the boxes and put in the rooms, before they were originally installed?

THE COURT: They magically walked off the job.

MR. BOSCHEE: Something happened to them.

THE WITNESS: Six of them, which makes no sense, so. And I believe some of them weren't working, either, so I think the ones -- and the style was discontinued. I believe Eagle Sentry said two or three of them just weren't working any more.

BY MR. BOSCHEE:

Q Well, and that was my next question is my recollection was that all 20 of them ultimately had to be replaced because that style was discontinued and they just had to redo the whole thing, right?

A That's correct.

Q Okay. But other stuff went missing from the project, too, right? I think there was a TV?

A One television I believe so, yes.

Q Was there a refrigerator?

A I don't recall a refrigerator. Refrigerators were tested out and everything. They were left in the other garage.

Q Okay.

A And appliance -- they should have all been there. I don't think a refrigerator went anywhere.

Q And then the other question I had was, we talked a little bit about the lights and the lights that had to be kind of hung and redone upstairs?

A Yes. Yes.

Q That wasn't necessarily part of the water damage, right, I think you testified to?

A The upstairs ones wouldn't have been.

Q Okay. But they still had to be taken down when the other work was going forward, right? I mean the lights were actually taken down and then had to be put back. It wasn't just a replacement issue?

A It depends on the area. The master closet they didn't have to be. They were okay where they were.

Q Okay.

A But the -- I'm trying to think. None of the ones up above had to be taken down. They all stayed. So up on the second floor --
Q Yeah.
A -- none of the ones up above had to be taken down at all. They were just masked around before we painted.
Q But they were taken down; weren't they? They were actually off the ceiling at one point; they were removed and taken down, weren't they?
A None of the upstairs ones should have been.
Q Okay.
A I believe it was all downstairs ones. I'm just not sure.
Q Okay.
A I don't want to say that there were, but there would have been no reason for us to remove the upstairs lighting. They were all -- a lot of them were recessed lights just like these and there would have been no reason to take them, but I don't remember that part.
Q Okay. The other question I had was about the theater room.
A Yes.
Q The theater room, there was water damage in the theater; wasn't there?
A Not in the theater, but just on the outside. There was water damage all the way up that -- well, it was up that hallway.
Q Right.
A It didn't get to that area because it was up higher, but the floor all matched, so.

Q Right. That was my question. The electronics and everything in the theater room were relatively unaffected, but some of the exterior, some of the wall and the flooring were damaged slightly; weren't they?
A Yes, that's correct.
Q Okay. And wasn't that why the cabinets then needed to be replaced was to match what they had to redo with the wall?
A I believe the cabinets had to be replaced in that area because I believe the floor -- either there was a scratched end panel on the cabinet or the floor was continuous underneath it. There was one or two reasons. And they matched the rest of the cabinets in the home.
Q Okay. And Artesia just basically screwed that up on their bid, right; they just didn't include it?
A They didn't include that on their bid.
Q Okay. And so that wasn't, you know, a change or an upgrade or anything that Eugene was after, that was Artesia basically just dropping the ball?
A Yes.
Q Okay.
A There was a cabinet, it was outside of the theater, not in the theater --
Q Right.
A -- almost like in the hallway.
Q Yeah. It's the -- I mean I can picture it. But it's the cabinet right outside the door that goes in.

A Yes, un-huh, that's it.

Q Okay. The -- I want to go back to approving the change orders. You testified I think it was yesterday that a couple of the change orders were stamp approved by Rachelle and/or someone else in the office; remember that?

A Yes.

Q Who had authority to approve change orders from Desert Valley?

A Rachelle would have been the office manager. She would have had the approval or Diane Serta [phonetic], another girl that was working with us that was on this project doing the admen stuff.

Q Okay. Let me direct you to -- I don't know what binder they're in, 135. Probably one, I would guess. And I'll try to ask you some questions about -- I'll try to ask you some questions about what's in this binder so we don't have to keep jumping around if we can.

A Okay. Yeah.

THE COURT: You said 135?

MR. BOSCHEE: 135 is where I'm going to start, okay, and see where it goes from there.

BY MR. BOSCHEE:

Q So we'll start with 135 and 136 and we're just going to kind of bounce a little bit. So Eagle Sentry in 135, this is just an initial -- it looks like a pay app., is that right or is this actually a change order?

A This was the original estimate --

Q Okay.

A -- from the original time they walked the job.

Q Okay. And then if you flip the page to 136, for example, this one looks like a change order and it looks like it was dated December 17th, 2014.

A Yes.

Q But it also doesn't look like anybody signed it, but it is stamp approved?

A Yes.

Q Was that stamp from your office?

A I believe it was.

Q Okay. And this is in December of 2014?

A Yes.

Q So if you flip the page to 138, or actually it's -- now I'm at -- I was at 136, now I'm at 137.

A Okay.

Q The same thing. Now we're in January 2015, there's another change order from Eagle Sentry?

A Yes.

Q And it's for -- it looks -- it says for programming. Putting aside what that exactly means --

A Yeah.

Q -- from them, but that's another one you guys approved, right?

A I believe so, yes.

Q Okay. Now, if you flip to the next one, this is what I like to

refer to as a deductive change order, right?
A I believe so, yes.
Q Okay. Do you remember why this -- why they took --
THE COURT: 139 you said?
MR. BOSCHEE: I'm at 139 now. Actually, no, I'm at 138. Sorry.
BY MR. BOSCHEE:
Q And this was a lot of Crestron it looks like that was deducted?
A Let me look at the original one and see if any of these are --
Q Sure.
A I just have to -- okay, I see that.
Q Okay. And sitting here right now do you know what --
A I don't know why they would have. I believe it was because the insurance may have said they weren't going to pay for those devices --
Q Okay.
A -- but I'm not sure.
Q Okay. And that's fair you don't know, but all of those change orders are stamped approved by your office and all those predates June of 2015, right?
A Yes.
Q Okay. Now, if you flip to 140 --
A Okay.
Q Okay. This is -- it looks like installation of seven existing TV's, mounts and Crestron controls.

A Yes, I see it.

Q Okay. Seventeen hundred and eighty-five dollars. This is July 28 of 2015?

A Yes.

Q Okay. This is after the insurance is closed out, right?

A I believe so.

Q Is that your signature?

A Yes, it is.

Q Okay. And it looks like this is submitted on July 28th and signed by you, 9 -- I think it's a nine. I don't know if it's a nine or an eight, but 9-9 of '15?

A Yes, I believe so.

Q Okay. Is this something you ran by Mr. Inose before you approved it?

A I believe we had a company install the TV's on our other estimate, but I don't know if I did run this by Inose or not before we approved it. I don't recall if I did or not on this change order.

Q Okay. Because the insurance is closed out at this point, so obviously this is going -- the $1785 is going to be an amount due and owing above and beyond whatever was in that last estimate, right?

A Yes, I believe so.

Q Okay. And it's for installation of seven existing TV's?

A Yes.

Q I don't necessarily know what existing TV's mean, but I assume it means that they were TV's that were already on the property and were going to have to be installed at some point?

A Yes, I believe so.

Q And yet there's an extra $1785 charge for this for work that was going to have to be done anyway, but got done after the insurance closed?

A I believe so, yes.

Q Okay. Kind of the same thing. If you flip the page to 141, that same day you approved another change order from Eagle Sentry, I think, I think that's your signature, it looks the same.

A Yes.

Q Okay. The same thing. It looks like installation, another thousand dollars?

A Yes.

Q And that's again going to be an extra charge above and beyond the insurance close-out estimate that you've already provided, right?

A I would have to compare it to the Eagle Sentry's original one and see if they credited anything back. I believe there was conversation where they were going to because these came so far after the fact. I don't know. I don't know if this was above and beyond or if this was something we negotiated with them to see if they could do it for the same price.

Q Okay. But as I recall, from -- and we'll skip ahead a little bit to later when you and Eugene are trying to work this out --

A Yes.

Q -- and counsel and I were helping a little bit here or there, but we're trying to work this out, one of the big issues was Eagle Sentry, right? Eagle Sentry had a lot of change orders and a lot of extra time that was not accounted for in the insurance money; didn't they?

A I would have to look at their total amount at the end of the job to make that determination because I don't know what their total final bill ended up being.

Q Okay.

A I know it was around 56,000 or so on the insurance estimate --

Q Right.

A -- but I don't know what it ended up being as far as if it was different than that.

Q Do you have a recollection in October of 2015 of them kind of being a hang-up and trying to get this -- of you and Eugene trying to get this resolved because they wouldn't budge on their numbers and they were owed a lot of money and just wouldn't move?

A I believe I do remember that, yes.

Q Okay. And it looks like at least some of it, maybe not all of it, but at least the handful of things we looked at were for installation and labor of things that probably should have been part of their bid and their estimate, right?

A The TV's are kind of tricky because it's not really part of the structure, it's part of contents. So the insurance necessarily -- they wouldn't pay for it under their structure. It's not a part of the home --

Q Okay.
A -- it's a wall mounted TV. So they would call it contents coverage.
Q Okay. And that's fair. If we're -- you testified, I think, that you guys got paid everything except the profit overhead on this job; do you remember that?
A Yes, I do.
Q Is it your testimony that no profit and no overhead was ever taken out of any of the insurance payments that were received by Desert Valley, that it all went directly to subcontractors?
A We have run a job cost. It's not only subcontractors work, we did in-house, as well.
Q Right.
A So there was a mixture of the two.
Q That's fair. That's a fair statement. I should have -- I forgot that you guys did a lot of stuff in the house. There was some painting and some other things that you guys were paid for.
THE COURT: And framing and something else.
BY MR. BOSCHEE:
Q And framing, yes.
A Yes. Yeah, we did quite a bit. So the way we track it, we did track -- I don't have a total dollar amount. We did track how much we paid and the difference would have been. I don't know if we divided overhead and profit out of each payment. I'm not sure of how that all comes to the end, some of the numbers.

Q Okay. But at least -- but we know that at least one employee was paid. Robert Ramirez was paid out of the insurance money because that's one we talked about.

A Yes, that's correct, uh-huh.

Q But at the end of the job, the subcontractor, when -- you know, and again, you guys stopped working, then you were terminated, and then it all went. The subcontractors weren't paid; were they?

A No, they were paid. We were making progress payments to them.

Q No, but I mean there was still money owed to some subcontractors at that point, right?

A I believe so, yes.

Q Yeah. Okay. And shortly after that termination, your company, Desert Valley, I think it was Rachelle, sent a letter advising them to stop working, right; stop working on the house?

A I'm not sure of the letter that she sent. Maybe -- I believe there was a letter, but I'm not sure if there was stop cease and desist letter.

Q That's fine. You talked a lot about the approvals, the electrical approval, things like that . And I remember distinctly you saying we got the approval. Those approvals happened in December of 2015; didn't they?

A As far as for what?

Q Electrical, plumbing.

A Well, they came -- some of them did happen then, but not all of them at once. We had to involve different -- we had to involve like the appliance company to come and check out the appliances, make sure, you know. So that approval would have been a different time. The electrical all had to be ran through with a meg test, so that had to happen. Just different times, but we were getting the --

Q It was phased --

A Yes, it was.

Q Okay. But I guess my question is, most of those approvals happened after you guys left the job; didn't they?

A You mean as far as the approvals to --

Q Final approvals, final approvals.

THE COURT: So let me pause because I'm not sure I'm following. Sir, are you talking final approvals from the city?

MR. BOSCHEE: Yes. The ones that he testified about.

THE COURT: I'm not sure he's --

MR. BOSCHEE: Okay.

THE COURT: -- because --

THE WITNESS: Okay.

BY MR. BOSCHEE:

Q Remember yesterday you talked about when Ms. Hurtik asked you some questions about final approvals that were received for electrical, for plumbing, for things like that, you said we got these, and you were kind of looking at them.

A Oh, I'm sorry, the inspection, the inspections. Okay, yes.

Q Followed by -- the final approval follows the final inspection, right?

A Right, yeah. I'm sorry, I thought you were talking about subcontractors.

Q No, no.

THE COURT: That's why I paused because there was a clear disconnect there.

BY MR. BOSCHEE:

Q And it was a bad question and that's totally my fault.

A Okay.

Q The final inspections and the final approvals from the city, most of that happened after you guys were off the job, right?

A No. The ones that we had -- what we had when we were still in possession of the job, I believe we had the final electrical, final mechanical, final plumbing.

Q Okay.

A Those were all when we were still over the job. We had the city send us that from my understanding.

Q Well, the reason I ask is because I think there was a slight -- there was a slight gap between when you guys actually left the job and when the new G.C. switched out and was on the permit. So I think that there was a gap there where the finals were obtained --

A Yes.

Q -- where you guys weren't actually at the house anymore.

A I see.

Q That's why I was looking for a clarification on that.

A I'm not sure when exactly. I'd have to look over the permit thing again and see the dates just to clarify.

Q Okay.

MR. BOSCHEE: I don't know if now's a great time, but I would -- if we could take a five minute break to run down the hallway real quick.

THE COURT: Okay.

MR. BOSCHEE: I want to get the witness out of here as quickly as possible, but I do --

THE COURT: That's okay. Let's take a 15 minute break while we're at it.

MR. BOSCHEE: Okay.

THE COURT: Come back in 15 minutes.

MR. BOSCHEE: Cool. Thank you.

[Recess at 2:33 p.m., recommencing at 2:51 p.m.]

THE CLERK: We're on the record, Judge.

THE COURT: Okay And we're back.

BY MR. BOSCHEE:

Q You testified yesterday, and I think it's the same one, that Eugene at one point wanted to get rid of Burnham, the drywall sub. Do you remember that?

A I believe so, yes.

Q Okay. If you could go to, I think -- do you still have -- it's number 1 is in front of you, right?

A Yes, it is.

Q I think --
A Number 1 is in front of me.
Q --it's Exhibit 25.
A 25, okay.
Q And then I'll ask you a questions while we're --
A Okay.
Q -- before you look at that. So I'm kind of -- I was a little hazy on -- on what transpired here. So Burnham did the painting and drywall before the flooring went in. And then -- and then obviously it got dusty and -- how did that happen?
A So basically Burnham did the drywall and then the taping and texturing. And the painting before the floor went in. Yes, that's -- that's how it happened.
Q Okay. So then I had another question that I -- I did not know the answer to. So if you flip to Exhibit 25.
A Uh-huh.
Q Is that your handwriting?
A On the signed check?
Q No, on the 15,269 settle amount?
A No, I believe that's Rachelle's writing.
Q Okay.
A Or -- or her or Diane -- Diana.
Q Okay. Well, it's -- it's a pretty straight forward question regardless. Did you guys end up negotiating some kind of a discount with Burnham because they had essentially screwed up and you guys

had to go in there and repaint and redo a lot of the drywall?
A I believe there was two bids for them.
Q Okay.
A I don't know if they finished all of the painting. I'm not 100 percent on that, but I don't know if we renegotiated a bid with them. I know we had their original bids. I'm unsure if we renegotiated any number. It looks here that this was a settlement amount. But I am unsure of -- of what that was for.
Q Okay. Well, then that raises another question I had, as it relates to all of the other subs. I didn't see anything quite that overt, where it says settle amount.
A Yes.
Q But did you end up renegotiating the payment amounts of any of the other subcontractors to a lower price?
A Well, not necessarily a lower price. But a prime example would have been like the cabinet company who missed some.
Q Right.
A And we told them that they have to basically swallow that cost if they -- you know, because it was supposed to be part of the original bid. Now that was a prime example. So it wasn't necessarily negotiating it down. It was more for items unforeseen in our bids, or something they had to add on. I don't -- getting a lower price, we didn't really know these subs too well, so we didn't really have any negotiating power with them.
Q Okay.

A They weren't our subs, so -- this -- this was our sub.
Q Well, Burnham -- I was going to say Burnham was.
A Burnham was. Yes, it was.
Q So you had a little bit of more -- a little bit more.
A I believe so. But I'm not sure if this was an actual settle amount. I'd have to see what was actually paid out to them.
Q Okay. Now I'm going to make you -- I don't know where 401 is. We looked at it early -- yesterday. I think it's in Binder -- it's in 3 or 4, I think. It's in 4.
A It's in 4.
THE COURT: And what number again?
MR. BOSCHEE: 401.
THE COURT: 401.
BY MR. BOSCHEE:
Q We've looked at this one a bunch. This is the -- the email with the change orders. Now, as I understand it, this was kind of -- this was the -- the big change order email that you planning to send, where you were going to get all the information from the subs, and then get it to Eugene, right?
A Yes.
Q Okay, was there a reason why you waited until August 25th to get all the -- to-- to kind of rally up the troops and get all the information from the subs? Was there anything about mid-August that --
A Tina still hadn't chosen the finish materials.
Q Okay.

A So we were really waiting on that. And we were waiting on the final touches on it. So, yes, the reason why is things were still getting picked out at this time.

Q Okay.

THE COURT: So -- hold on.

MR. BOSCHEE: Okay.

THE COURT: So --

THE WITNESS: Okay.

THE COURT: Tina -- Ms. Dyba?

THE WITNESS: Tina Dyba, yes, sir.

THE COURT: And she hadn't done what again?

THE WITNESS: Picked out all the materials or finishes.

THE COURT: Who -- who chose Tina to be the designer?

THE WITNESS: She was the original designer over the home, and I believe that's why she was retained again.

THE COURT: Okay.

MR. BOSCHEE: I'm going to give the Judge a second, in case he wants to ask a follow-up question, and then I'm going to follow-up --

THE COURT: No, you can ask.

BY MR. BOSCHEE:

Q Okay.

A Okay.

Q Since we're talking about Tina.

A Yes.

Q And DYBA Interiors, they were actually the -- as a designer, they were under -- kind of under Desert Valley, as a general contractor, right?

A They were under -- you mean as far as payments?

Q Yeah, I mean they --

A Yeah.

Q -- were paid by the insurance through you guys, right?

A Yes, they were.

Q Okay.

A The same -- same scenario as Rob kind of was.

Q Right. Okay. And -- and so they weren't -- I mean DYBA Interiors, even though they worked with Eugene to pick out materials, Tina did, and -- and were the original designer in the house, I mean they were another, you know, actually in this case, more of a supplier, but a designer under the umbrella of the general contractor?

A That's correct, yes.

Q Okay.

A Uh-huh.

Q And paid by the insurance?

A Yes, paid by the insurance through -- we'd have to pay her.

Q Right.

A Through us.

Q Right.

THE COURT: And do you -- had Desert Valley Contracting ever worked with Tina Dyba before this project?

THE WITNESS: No. We actually weren't the one -- Eugene wanted her on the home. We -- we never knew her before then.

MR. BROSCHEE:

Q Were there any other designers that you work -- that you wanted to use instead of her, or was it just he recommended her and you went with her?

A We didn't have a designer for the home. We had all the materials, you know, sampled out, taken out. So we could find everything for the home, but we did not have any other designer. It never came up for us to bring another one in.

Q Okay. So back to 401, now that I followed up -- I wanted to follow up on that, because it was -- the Judge asked a good question and I wanted to piggy back off of that, the -- the documentation that's attached to 401, these are -- these are some of the -- the bids and change orders that you got from the subs that you were trying to collect, right?

A Yeah, I don't know if the work was done, though.

Q Fair.

A I'd have to look through them. But yes, these are the subcontractor's numbers, yes.

Q Okay. And a couple of these we've looked at before. And if you look at DVC 1281, for example --

A Yeah.

Q -- that's another one from Eagle Sentry.

A Yes.

Q And I think we previously looked at the two past that.

A Yes.

Q The July 20 --
A For Eagle Sentry, that's correct.
Q Okay. Now the -- the one on here, the first one, 12 -- 1281, where they've got the line item for Lutron.
A Yeah.
Q Are those -- those switches and panels that we were talking about earlier?
A Those -- those are, yes, they are.
Q Okay. And these were included with what you denoted as extra -- kind of extra as part of your global change order to Eugene, right?
A I'll have to double check, because I think Eagle Sentry went back and included those back into their $59,000 one.
Q Okay.
A I really need to see Eagle Sentry's whole final number with all those. I have them loose-leaf here, but I don't know what their whole final number was. I'd have to see that and compare it to the original submitted to the insurance.
Q Well, that's one -- you're -- this is kind of creeping slowly to the -- to the -- the big question I was going to ask later. But I'll ask it now. Going through these change orders, and everything that happened post-insurance closeout, I had a hard time reconciling which numbers were complete extras that needed to be paid, and which kind of got -- some were phased back, some were included, some weren't. And sitting here right now, do you have a number that -- that you can sit here and

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identify, this is what was extra?

A I could -- I definitely know the items that were upgraded.

Q Okay.

A That weren't there before. I can name those and I can find the numbers for that. I did create a whole estimate reflecting that. And I don't know where that is.

Q Well --

A If I --

Q Okay, go ahead.

A Yeah, that was the point in there. I went through -- because things kept changing. It wasn't the same house that we started and locked into the insurance company, when we said we're good. It was a whole different -- whole different things were done. The pool was done after that, and a lot of things. So it wasn't the same footprint.

Q And this isn't -- this isn't necessarily impeachment, and I don't certainly want to publish for this purpose, but when I asked you the question back in the day --

A Yeah.

Q The number that -- that you -- that I think you told me was around $89,000 were for -- for a damage number. Does that sound approximately in the ballpark of what you think was owed to the subs at that point?

A For above and beyond?

Q Yeah.

A What their original -- for the subcontractors? It does sound about right.

Q Okay.

A But I'd have to look at the list again.

Q Yeah, without going back and confirming everything, that was from a while back. So I just wondered --

A I thought it was more. I thought it was closer to the hundred and some odd thousand mark, but I -- I -- I'm not sure.

Q Well, we'll look at some more exhibits --

A Okay.

Q -- and maybe it is closer to that.

A Okay.

Q We'll get there.

A I'm not quite sure of the exact dollar amount.

Q Now this is near the end of the -- the August 25th, 2015 --

A Yes.

Q -- was near the end of the job, right?

A Yes, that's correct.

Q Okay. I think you testified earlier that you thought you were pretty close to done at this point, right?

A Close to done of the project, yes.

Q Okay.

A To that -- not August, I believe it was September, October --

Q Okay.

A -- when -- when we were closer to being done.

Q So after you sent this email then, more work, you --you kept working, and kept doing things on the project, to kind of get it to where it close to done in September, October, right?

A With the -- with the -- the stuff we paid out, with the things we could get done within the realm of the scope of work, yes.

Q Okay. And -- and at this point, we looked at checks earlier, and you need to get me an exact date, but you had not been paid all of the insurance money that Eugene had been tendered yet, had you?

A Not all of it, no.

Q Right. There was still some money -- insurance money left.

A Some.

Q Okay. But not enough?

A Not enough to finish the job the way we saw to finish it.

Q Okay. I shouldn't ask you a why question, I don't know the answer to, but I'm going to anyway.

A Okay.

Q Why didn't you ask the subcontractors for an up -- a complete accounting of what they were owed, and all of their change orders, and everything it was going to take, before you sent that email to the insurance company?

A We did at the time. It was a whole different layout.

Q Okay.

A The house wasn't -- so we did do that at the time. That's why we told the insurance company, they told us that that's all their numbers. We gave the -- for example, all the cabinets were in place, except for the one near the theater room, as we all know.

Q Right.

A Everything to do it that way was, at that time, good. And then we had to redo that again. I believe it was in September, we went back and did the same thing with the subs, and had to go back and say, okay, now we need all your final numbers again.

Q Well, I guess, that's what I'm -- that's where I'm a little hazy.

A Yeah.

Q Because most of -- and -- and the big one, obviously is the wine room. We talked about that a lot.

A Yeah. Yes.

Q But the wine room.

A Uh-huh.

Q And -- and the doors, and a few other -- but a lot of the change -- the extra change work was already either done or in the process of -- of being done in June of 2015. So I guess my question is, why didn't you gather up all -- call all this information from the subs as what's it going to cost to get all this stuff done that we're -- that we're in the process of doing, before you sent that email to the insurance?

A June --the -- they weren't -- we weren't done with them in June. It was -- it was later that we were done with the -- the wine room, I believe was started. But we couldn't submit the wine room to the insurance, as it was upgraded. That wouldn't have --

Q Well, right.

A Any supplements to the wine room, or change orders to that, the insurance wouldn't have recognized.

Q Well, right, and I -- and I understand that. And -- and -- and then -- and you didn't submit the changes to the wine room with the insurance.

A No, no we didn't.

Q Because it wouldn't have gotten paid for.

A it wouldn't have.

Q But -- which is a whole different -- different conversation, which we'll get to later. But the -- the question I have is, so -- but you know all of this extra work is going to happen. It's -- you're 70 percent done and there's all this stuff that's going to be going on. The wine room is in -- is in process -- in progress. But you know the doors are moving. You know that some of the stuff is upgraded upstairs. So why -- why didn't you ask for okay, guys, I need you to give me new bids, new final numbers, as to what this is completely going to cost, so at least I know before I submit this to the insurance, of what the difference is going to be?

A Well, we couldn't have submitted to the insurance regardless, because none of them were original to the home. So I think that submitting it to the insurance could have never happened on those -- those things. Like the Switchglass upstairs or the pool being done in the backyard. None of them were insurable.

Q Totally -- totally understand that. And -- and I've got you there, that there certain things that you couldn't send to the insurance. Maybe some things you could have. I guess -- guess we don't know. But -- but I guess at least at that point, you would have known, okay, this is what it's going to cost to complete the house as -- as you want it, Eugene. This is what we can submit to the insurance. And this is going to be the difference, do you still want to do all this?

A We did do that. We submitted him a change order, showing him -- breaking down everything, the cost difference.

Q Totally understand. But that was in August.

A Yes, but the reason why it took so long is because we had to get specs on everything. Like the mirrors needed their own specs.

Q Right.

A Everything needed several bids to accomplish a task. It was -- it was very tedious as far as what needed to be done to do these things. It wasn't simple as just getting a bid, saying, okay, go install these mirrors. We had to put our framing numbers to it. We had to put plumbing to it. We found out, once we got the actual specs, we had to put wiring to these.

Q Right.

A You know, those -- those are the things that it was a fluid chart, and then, you know, then we stopped. And that's why it did take until August to get all the numbers in, because we finally had a good scope of work for the whole house.

Q And I understand, and I understand that's tough. And that's a tricky proposition because of the -- the detail involved. I guess where I'm going with this, though is as of July 3rd of 2015, you testified earlier that you signed that document and you didn't believe that there were going to be any cost overruns, any change orders, above and beyond the insurance, as of that date, right?

A I did not believe that, right.

Q Okay. And Eugene, who has been asking for all this extra stuff, and you've been saying sure, we'll get you all this extra stuff, as of July 3rd of 2015, he doesn't believe there are going to be any cost overruns above and beyond the insurance, because you signed that document saying that there were no change orders, right?

A At that time, yes.

Q Okay. So then in August -- then -- then a little less than two months later, here comes this change order with all these extras, and all these changes, and all these things that -- and between July 3rd and August 25th, Eugene didn't receive any of these change orders, did he?

A We should have sent him -- I -- I don't know what the dates were we sent them. But we wanted them more comprised, and we didn't want to send him a bunch of loose-leaf stuff that wouldn't have made no sense to him.

Q Right. That's what you testified to yesterday, to be fair. Is that you didn't want to just here, here, here, here. Let's get them all together and give him one change order. Okay. But if Eugene doesn't think that he's going to be out of pocket anything on July 3rd, because there are no change order, can you imagine that it was a bit of a shock to get this document saying, oh, by the way, not only do you owe money above and beyond the insurance, it's a considerable amount?

A No, because he kept changing things. The house was never the same. It was upgrade after upgrade. So, yes, I mean anybody could add anything on at any time, and the price is going to go up.

Q But the upgrades were occurring all through the project, right? This isn't something that happened between July and August. I mean the upgrades were happening almost from jump street. It happened from 2014 all the way through.

A Oh, we accounted -- yeah, we accounted for those ones up front.

Q Correct.

A We did. But at the end, you know, with some of the missing Lutron switches. Like nobody could have accounted for that, until that went in. You know, and -- and with them being discontinued or if even one of them was malfunctioning, one of them, you'd have to ask for a whole new system.

Q Right.

A And not only does that marry to the Lutron switches, that marries to the screens. That marries to the whole system. So I think that should have been -- went back to the insurance company, absolutely do. But you know, the hard thing is everything else was -- it was just all bundled into one, and the insurance wasn't going to pay for any more, and, you know, that was the problem.

Q Well, sure, and -- and the insurance -- the insurance doesn't -- doesn't have a full picture of what's going on, because there's certain things that -- that you're not telling the insurance, right? About the wine room, and that you're not doing the sauna and things like that, so --

A Yes.

Q So you can't really go back and submit and say, oh, by the way this thing we didn't tell you about is costing more than we thought it would --

A Yeah.

Q -- so we need some more money from you.

A Well --

Q Right?

A I mean it's weird, I've never seen it close out like this. I've never seen an insurance claim not support the claim anymore. I don't know if -- there should have been coverage -- enough coverage for the home. I just -- if it's justifiable, I think we could have went back, and, you know, maybe asked for -- like, not the -- not the wine room, none of that stuff.

Q Uh-huh.

A But the Lutron switches, absolutely. A missing TV, no. That's not -- that's not -- cracked tiles up above on the patio deck, yes. There are certain things that I think that we could have recouped some if they would have opened it back up.

Q Well, and this kind of goes the same question as the driveway, right. If -- if SERVPRO or Desert Valley Contracting, one or the other --

A Yeah.

Q Lost or damaged one of those Lutron switches, Eugene's homeowner's insurance shouldn't be paying for that, should it?

A Well, no, I don't believe it should have, but I believe somebody should have -- action should have been taken at the time it was discovered.

Q Right. And that's fair. I mean it's -- when you found out, you found out. But that turned into a change order and extra cost, right?

A Yes, it did.

Q Okay. Is Exhibit 561 -- 561 is in a different book.

A I'll find it.

THE COURT: I'm just trying to make sure I'm paying attention.

MR. BOSCHEE: 7.

THE WITNESS: 7.

MR. BOSCHEE: See this is the problem. When I'm taking notes, I write down the exhibit numbers, I don't write down the binders. And then --

THE WITNESS: 7 or 8?

THE COURT: Oh, yeah.

THE WITNESS: It's 8.

MR. BOSCHEE: it's 8.

THE WITNESS: It's 8.

MR. BOSCHEE: That's 8. Good talk.

BY MR. BOSCHEE:

Q But that's 'okay, because I think we'll be in this binder for a little bit.

A Okay.

Q There are some more questions in there.

A Okay.

MS. HURTIK: Brian, what number? 561?

MR. BOSCHEE: Yeah, 561.

MS. HURTIK: Thank you.

BY MR. BOSCHEE:

Q So before we -- before we broke for a minute and I really had to run down to the other end of the hallway, and I didn't want to dig this out, but this is a -- the inspection permit document that I was thinking about, you answered questions about. Do you remember that?

A Yes, sir.

Q Okay. I just want to make sure I'm reading this correctly, because it looks like, for example, like -- like some of these were -- you got final mechanical, final plumbing and final electrical in December of 2015. Am I reading that correctly at the top?

A Yes, that's correct.

Q Okay. And in December of 2015, you guys weren't on the project anymore, right?

A I don't believe at that time we were.

Q Okay. So -- okay, that -- that may be -- that may be last question I ask about that then. We -- let me ask you one question to follow-up on -- flip to 562 --

A Okay.

Q -- this is that -- that's where you signed the -- the thing.

A Okay.

Q Just to be clear on this, because I wasn't clear on this earlier.

When you signed there's no change orders as of 7/03/2015, that wasn't just for this progress payment, that was on the entire project right. You didn't think there was going to be any extra charge, as of July at that moment, because you didn't know?

A I'm unsure if it was for this progress, or for that, I mean I'm not sure if it was for the whole -- I was pretty sure that there wasn't. We did all the subcontractors' bids in.

Q Okay.

A Everybody said that they feel good with where they were at. So I believe it was for the project, but I'm -- I can't say yes or no for sure.

Q Okay. Seems like I've got the wrong exhibit here, but that could be I wrote it down wrong. Go to 573.

A Okay.

Q Do you remember we talked about this? You -- you and Ms. Hurtik talked about this a little bit. This is May 13th, 2015. And if you flip a couple pages and there's a change order.

A Yes.

Q Okay. For 27,226?

A Yes.

Q Was this over approved?

A I don't -- I think after we got this change order, we had to go back to Artesia and say why were all these things missed, or why is there such a large price -- discrepancy in the price.

Q Uh-huh.

A So I think that they -- I don't believe that this change order was approved.

Q Okay. Did they end up doing the work and putting the -- actually doing the work that's in the change order?

A Well, the powder room -- let me -- let me look at everything really quick.

Q Sure. Take a second. Take your time.

A Okay. So basically in this change order it says some other costs are going to allocated back towards Creative Closest and Cabinetry, which I don't -- I'd have to find their invoice and see how much that is. So it's actually taking some costs out of their estimate. But adding on costs, because it states original proposal was based on photos from the job site photos.

Q Okay.

A So I -- I couldn't find out why their price changed. And I went back to Tory, and that's when I sent them an email saying that why is your price all of a sudden $30,000 more than that what it was. And he told me he missed some things.

Q Right. So I guess -- and the reason I'm asking this, because this May 13th of 2015 --

A Yes.

Q -- you sent that final estimate to the insurance company in June of 2015, so I kind of want to know between this change order, which is not insignificant.

A Uh-huh.

Q And the -- and the updated insurance estimate, what resolution did you come to with Artesia, if any?

A I told Artesia we're not going to pay that. And he said he could get everything done for the 165 he originally bid. I said that the wall hung cabinets are not going to be supported, because they weren't wall hung cabinets before.

Q Okay.

A So I said that needs to come back down and be whatever cabinets were in the powder rooms before. And I told him the $30,000 costs for -- for material, I said, just put it -- you know, we -- we -- we had a long email. I went and met with him over at Artesia Kitchen and Bath. Let him know that this can't happen. I got to lock this into the insurance company, so -- so this should have been stricken. It shouldn't -- they shouldn't have pushed -- I believe his total contract was 165, and it should have stayed around -- right around there.

Q Okay.

A Because I told him we can't -- we can't quantify this change order. It's just something that came out of the blue for no real apparent reason. He had everything he needed to estimate the job. He had measurements, everything.

Q Okay. So -- but -- but sitting here right now, do you know whether this -- any -- any part of this ended up in your estimate or not? Or don't you know?

A Let me -- I have to go back and look at the estimate --

Q Okay.

A -- that was submitted to the insurance. But no, I talked to --

Q Yeah.
A -- I told Artesia to make it work for all -- all of that cost, 165.
Q Okay.
A And he did. He said he would. He said that was his mistake.
Q Okay. So this was not one of the -- this was not one of the change orders that ultimately made it into --
A No, no, it was not.
Q Okay.
A It was not, because the -- the only thing that would have been different on here was whatever the laundry room ended up being. I got to find out that -- whatever that estimate was. And the wall hung cabinets. You know the ones that are free-floating in the -- in the vanity powder rooms. Those were different than what was there.
Q Okay. Which make sense. I just wanted to clarify that, because I wasn't -- when you talk about it, I wasn't sure if this was money that -- work that got done and got paid through the insurance or not. It doesn't appear that it did.
A It should have been -- it should have been taken off, because we told him that $30,000 and they had to make it work, so -- you know, in their original bid, they said they had everything. They had a really good detailed bid originally.
Q Okay.
A For the 165, and everything was in there. So we couldn't find -- I had to go to his supervisor and we had to talk about the numbers --
Q Okay.

A -- to get them back to where they needed to be.

Q Kind of while we're on the subject of Artesia Cabinets, I have another question.

A Yeah, that's fine.

Q I think you testified earlier, but as I mentioned once or twice, my handwriting isn't very good, so I sometimes can't read it. when -- when -- when the cabinets were measured, when DYBA and -- and you guys were figuring out the cabinets --

A Yeah.

Q -- and doing all that.

A Uh-huh.

Q Artesia actually measured it, and then you guys ordered the material, right?

A Our -- there was mixture between Artesia measuring it. We did not order the material, they ordered the material.

Q Artesia did.

A Yeah, Artesia did it.

Q Okay.

A And -- and we actually had drawings from another cabinet company that -- that built the -- initially was there. We were able to get the drawings for the actual footprint of the kitchen, the pantry, the laundry room, and all the bathrooms.

Q Okay. I'm going to flip you to Exhibit 329 and then we're going to go 379 after that, and I think they're in the same binder, I hope.

THE COURT: Which number?

MR. BOSCHEE: It's -- we're going to start at 329.
THE WITNESS: Okay.
BY MR. BOSCHEE:
Q Two questions about 329.
A Okay.
Q That -- that popped into my head when -- when counsel was asking questions. One, the pool work -- the work on the pool that was being done, that was right outside of where the construction, where the tile was being laid and some of the demo was being done, right?
A It was probably about -- they had about a 10 foot patio between there and there. About 10 -- 10-12 feet.
Q Okay. Is that where the dust and some of -- some of the debris that was coming from, that might need to be cleaned by the -- the cleaning company?
A No, it was actually -- it wasn't that, it was turning green. There was something wrong with one of the pumps or something, or something wrong with something, that turned it green. It wasn't the dust, it was actually algae growing in there.
Q Okay, and did it -- were they able to ascertain what was the cause of the --
A Oh, yeah, yeah. Somebody came out and fixed it. I think it was the person from Desert Oasis Pools, I believe it was.
Q Okay.
A They -- they were able to come out and figure it out.
Q Okay. And then the -- where are they? Was that -- was the

work done with the pool kind of in conjunction or at the same time as the driveway work?

A Oh, gosh.

Q Do you remember?

A I -- I --

Q If you don't, that's not --

A I don't know.

Q Okay.

A I don't know. I'd have to check the -- I mean I know when we got the driveway bid and everything, I believe. But I don't know when the work was actually scheduled. We had to wait for other tile to be -- we had to wait for something to happen, for the driveway to be done, so it wasn't being driven on for a while.

Q Okay. Makes sense.

A Uh-huh.

Q While you're in that binder.

A Yes.

Q Flip to 379.

A Okay. Okay.

Q We looked at this email earlier. Do you remember that?

A Yes, I do.

Q Okay. And you talked -- we talked a lot about the top part of the email. I got a couple of questions about the bottom part of the email.

A Yes.

Q It says at the bottom, we did not receive cabinet drawings on the following. These have not been bid or contracted. Laundry and theater. Do you see that?

A Yes, I do.

Q As of July 30th, 2015?

A Yes.

Q I mean not that the buck necessarily stops with you as the general contractor, but how is it possible that they didn't have drawings in July of 2015 for that material, for that work?

A We walked the job with them. They knew all the areas. I provided a sketch to them with the areas highlighted --

Q Right.

A -- on the sketch, where the cabinets will go in. I mean we documented it really well. So I don't know if it was -- I honestly don't know how they would have missed -- the laundry room is right next to the kitchen. Right -- the room next to it. So they had the pantry, they had the butler's -- they had the pantry, they had the wine room, they had the kitchen, and the laundry room was right here. I think it's because it was different kind of cabinets, maybe. I'm not sure. The theater room, I can kind of understand. It was way far away from all this. In a different part of the home.

Q Okay.

A But they knew it was in the scope of work, so there -- we highlight things. We walked it with them. We gave them -- we'd have to retain the cabinet drawings that they were given and see why those things weren't in there. Because we gave them the cabinet drawings for the whole house.

Q Well, and that's -- that was kind of the question is that -- the questioning that you answered, or the line of questioning related to delay in scheduling. And -- and the changes that were going on from Eugene.

A Yes.

Q But at least in this instance, it looks like part of the reason for the delay is just because somehow there was a -- there was a drawing mix-up between one sub and another sub, right?

A Let me check the dates on this and -- I'd have to see what was given to them. I -- I don't want to say yes or no, or if they did or didn't have it, without seeing those drawings.

Q Okay, and that's fine. That sounds -- that's at least what -- what Gordy's representing, but that's fine.

A Yes. But this -- this wouldn't be for the -- this would be for the countertops, not for the cabinets.

Q Okay. Right. Let's flip to the next one, 380.

A Okay.

Q You talked about this email at -- at a decent amount of length earlier today; do you remember that?

A Yes, I do.

Q Okay. And this is -- now we're in September of 2015.

A Yes.

Q Okay. Now help me out here. The -- the stuff that was held up in the port, was that just the limestone, or was that something else?

A That was just the limestone.
Q Okay.
A Yeah.
Q And how long was that delay?
A Oh, gosh. Two, two and a half months, maybe.
Q Okay. And I know that things don't come to a complete standstill at that point, but what -- as the general contractor, what scheduling adjustments did you make to compensate for that delay or -- or gap in time with the limestone delivery?
A So basically we were engaged with the high voltage testing in the home. I'd have to check the exact dates to know what we were -- what we were doing. I believe we did -- we attacked the driveway at that time. We did the pool, because no shipments were coming in. So I think at this time, when the stuff was at the port, we were fixing drywall in the house. We kept going over the drywall and fixing, you know, wherever they said they needed it fixed.
Q Right.
A After the other company. Before the painting. So we fixed all that before they came in and painted. And then we were doing the driveway, I believe. The driveway area.
Q Okay. In this email, the one -- the thing that jumped out to me was -- was kind of the last thing. It's on the second page.
A Yeah.
Q Where Eugene indicates that -- that the lighting needs to be hung. I asked you a question earlier about -- about why the lighting

needed to be -- needed to be hung at all.

A Yeah.

Q Why -- why was it ever taken down.

A Uh-huh.

Q So I guess then the next question is why was it in -- in September of '03 [sic], that there still needed to be lighting hung?

A That was for the downstairs. All the downstairs receptacles did come out.

Q Okay.

A And I don't think it was the -- the actual lighting. I think it was all the trim they had to do. You know, because otherwise if it doesn't have the trim, it looks like an unfinished lightbulb just up in the -- in the lid. So all the lightbulbs were in. We had the lights in the house. But I believe there was pendant lights downstairs. There was some Swarovski crystal, I believe downstairs.

Q Okay.

A And I believe trim out. I -- I don't know -- we had a lot of that stuff done, but maybe not the trim pieces of it. Like the --you know, the recess light trim, or the pendent light. And we didn't want to do that until -- I think there was a trade that needed to happen before that happened. We don't --

Q Do you recall which one?

A No, I'd have to look back and see the gym mirrors and the flooring were -- were going in. That was almost the last thing. I don't know. I think the lighting would just need to be hung, actually. But it was for the downstairs area. And I don't know if this was just for the trim. Or they -- it shouldn't have been for the whole fixture. The whole fixtures were up. I believe it was just for the trim for the lights.

Q Okay. Go to 3 -- what was it 385.k

A Okay.

Q The October 13th email that we spent a lot of time on this morning.

A Yeah.

Q So putting aside a lot of this, I'm not going to quarrel whether you were there for the three months or not, because we're seeing emails that you actually were. My -- my first question was, I think I wrote down that -- that your testimony in response to the second paragraph, in terms of locking up -- locking up the job.

A Yeah.

Q Was that Rob Ramirez was supposed to do that.

A That's what -- what we were under the assumption was. He had the alarm codes.

Q Right.

A He was the one that was entrusted with them, and he would secure the alarm. So sometimes we would just call him in to come and set the alarm back.

Q Well, here's my question. This is where I'm a little confused. Because I asked you about this earlier.

A Uh-huh.

Q And if you want to look at -- if you want to pull Exhibit 618, that's the document where you guys actually fire him. But you don't have to, if you don't need to.

A Okay.

Q Rob Ramirez was let go in May of 2015, by Desert Valley. You guys didn't have money in the budget. And there's an exhibit to that effect.

A Okay.

Q That says yeah, we're done. We don't have money for you anymore, right.

A Yes. Yes.

Q So if Rob Ramirez is off the payroll in May of 2015, how can he still be going back and setting the alarms and doing essentially, I mean Desert Valley's work. I mean that's -- you know, I assume that's your job to lock and close the property every night, so that nobody can come in there and steal anything. How is he still doing that when he's not an employee between May and October of 2015.

A Well, I believe Will would have been the one that started doing that, our supervisor, Will Roberts. That's the one we had working on the project.

Q Did Will have the codes?

A I believe so. We'd have to ask.

Q Okay.

A Yeah.

Q So after -- so from May -- is your testimony -- I just want to be clear about this.

A Yes.

Q From May to October of 2015, Will Roberts had the codes, and it was his responsibility to lock up the house.

A I don't know the exact dates on that, though. I don't want to say for sure I know it was him. I -- I know that, you know, I'm not sure if those are the exact dates.

Q Okay, well, then -- then the -- then the next -- the next question that pops into my head is between May and October of 2015, do you know for certain one way or the other whether the codes were ever actually activated and the house was actually ever secure?

A I know it was locked. You know, we -- we would have meetings there every week, so, yes, we would do that. And we have emails showing that we would meet with the subs and everything there. But a lot of the times the subs didn't have a full day of work. It wasn't like in the beginning when you would go in and you would have eight or nine hours' worth of work. So it would be, Rachelle would go check on the house. I would go meet with the subs about once a week. And anything they needed addressing, we would address it. But I don't know, we never had any confirms of a break in or anything like that in the home, or no police reports or anything like that.

Q Well, no, and I don't -- I don't recall seeing any police reports or reports of break-in --

A Okay.

Q -- in the evidence. And I wouldn't certainly -- I guess, but my question goes to you don't know, you know as -- as, you know, as the guy who was going to write things at that point --

A Okay.

Q -- you don't know for a fact whether the codes were actually activated between March and October -- or May and October of 2015, do you?

A Oh, gosh, I couldn't say for the whole time. I really couldn't.

Q Okay. And -- and at some point late in the process, we find that there are Lutron switches missing, right?

A I believe about five or six of them, yes.

Q Okay. And there was a TV that was missing?

A I believe that was the claim, yes.

Q Okay. So while there are no police reports, and there are no reports of a break-in, stuff that was in the house at the beginning wasn't in the house at the end, right?

A Minor stuff. There was way more expensive stuff in the home that could have walked away.

Q I understand.

A So, yeah, it is -- it is what it is, I guess.

Q Okay. Do you know for a fact, because I think -- I think there's a representation -- there's a representation in the email that -- and there was a disagreement about this --

A Yeah.

Q -- and I think I'm with you on this.

A Yeah.

Q Eugene says that you told him that you were going to be on

the project every day for the rest -- until it was done, right?
A I don't recall -- I recall saying we would get a project manager for the project, yes.
Q Do you know for a fact that there was a project manager on property every day for the rest of the project after you said that to Eugene?
A Well, I -- I -- I don't know for every day. Like I said some days we were waiting for the tile. Some days we couldn't have any trades in there working, so there would be no reason for somebody to go there.
Q Right.
A So I don't -- we had a sign out sign in sheet. I don't know where that is. We tried to document every really well. I -- I can't say for certain every single day, because some trades it would be three days before, let's say a cabinet guy would go in because he had to make orders and stuff.
Q Okay.
A So it wouldn't --
Q And that's fair. I mean if there' s nobody -- if nobody's got to be there, then nobody's got to be there. I understand that.
A Yeah.
Q But -- but again to that point, I mean, you don't know -- you don't know whether a project manager was there every day after you said that to Eugene, do you?
A Well, we did hire somebody on, and we have the -- the time -- I don't know if we document it through what job he was on, but yeah,

we hired Michael Darling. That was 100 percent his job to manage the IN Estate Project.

Q Okay.

A And then after he was gone we hired Will Roberts and for about one year we had those two -- well, one year combined, those two worked for us.

Q When did Will stop working on the project?

A I'd have to find his termination date. I don't -- I don't know when -- or when he quit. He moved to California.

Q Okay. You testified -- and now -- now I'm literally following your lineal line of questioning --

A Okay.

Q -- with counsel, that's why I'm -- I'm jumping around a little bit.

A Okay, that's fine.

Q You testified that if -- and I think I've got this quote right, but if I misstated it, someone's going to object. If everything had been done per the estimate, there would have been enough money and everything would have been completed. Do you remember saying that?

A Yes.

Q Okay.

A But with all the moving parts that were going on and the sauna going to the wine room, and everything else, you don't actually know that for certain do you? You don't know that there would have been enough money to complete everything, do you?

A Well, not with the changes that kept happening. There was no way to know.

Q Right.

A There was -- I mean there was no way to know if things kept going the way they did. Materials kept changing, they kept picking out different stuff. So there was no way to timestamp and say it cost X amount of dollars, because it was always moving. And I couldn't put -- I couldn't pin it down. I really couldn't pin a price down at the end, there.

Q Well, sure, and that's -- I mean that's --

THE COURT: One second.

MR. BOSCHEE: Sure.

THE COURT: You said they kept -- they kept picking out new stuff. They is?

THE WITNESS: Oh, I'm sorry, Tina Dyba and Eugene Inose.

THE COURT: That's who I assumed, but just wanted to make sure.

THE WITNESS: Yeah, that's who it was.

BY MR. BOSCHEE:

Q But I mean and -- and I totally understand that. And that was an ongoing process with interchanging stuff and picking things out and everything through the course of the project. But I guess what I'm saying with the deductions over here and the additions over here, and the deductions over here, and the additions up here. I mean sitting here right now, you can't say for certain whether --

THE COURT: Sir, you've asked this question probably three or four times.

MR. BOSCHEE: But I don't know that he's answered it.

THE COURT: Yeah.

BY MR. BOSCHEE:

Q That's why I kind of -- I mean and that's why I mean -- I just want to -- I just want to make sure. Because you've got deductions over here --

A Yeah.

Q -- and additions over here --

A Yeah.

Q -- and deductions over here. And the moving parts that the Judge has mentioned once or twice in response to my questions. Sitting here right now, you don't have -- you can't say for certain whether the amount of the estimate would have been enough to finish the project do you -- could you?

A I do. It really depends on when that question would be asked. If it was asked at the end of October, when we were asked for all the change orders, then no, it wouldn't have been done for the amount that we estimated.

Q Okay.

A But if it would have been asked up front when we thought everything was there, and yes, we did -- and -- and the trade-offs were there.

Q Yeah.

A We said we could do the wine room for that. But there was, you know, a lot of other things, that we just couldn't -- it was getting too much.

Q Right. And I -- and I -- I'm with you. I'll take you at your word that as of June and July, you thought there was enough -- there was enough there in the estimate and everything else, you didn't make a misrepresentation to the insurance company. I'm saying now looking back, knowing what you know now, you have no -- you can't really say one way or the other, whether there would be enough --

THE COURT: So this is now --

MS. HURTIK: Objection.

THE COURT: -- the fifth time you've asked him.

MS. HURTIK: Yeah.

THE COURT: So let's ask him a different question.

MR. BOSCHEE: Okay.

THE COURT: Maybe the fourth, but --

BY MR. BOSCHEE:

Q Did -- one -- one note that I made -- going back for a second to the pool deck, I thought you said in your testimony with Ms. Hurtik, that Desert Valley paid for the pool deck and that the insurance did not?

A That's correct.

Q Is that correct? How much did you pay for the pool deck?

A They did the driveway -- that was part of the insurance proceeds.

Q Right.

A We did have a discussion with Eugene. He brought up the pool deck to us, because they did a really good job on the driveway -- it's the same kind of material.

So, he was talking with them and seeing what we could do to get the saltwater deposit -- it's a saltwater pool so, it had a lot of corrosion and stuff, you know, and it was eating away at it.

So, I do not remember the price. I think it was six thousand some odd dollars --

Q Okay.

A -- that we did utilize some other money to get the pool deck done, yes.

Q Okay. That was -- so, the -- there you -- that was where I was -- my notes weren't incorrect. I was a little -- when you say you utilized some other money to get the pool deck done, what other money?

Was that money that the insurance was paying for something that didn't get done?

A Yes --

Q Okay.

A -- an internal change order to do that. Yes, that was one of the items that were discussed with Eugene to do at the house.

Q Oh, and that's fine. I just wanted to make sure because I --

THE COURT: So, yeah.

THE WITNESS: Yes?

THE COURT: So, the money to do the pool deck came from the insurance proceeds?

THE WITNESS: That's correct.

THE COURT: Okay.

THE WITNESS: And that was for -- we didn't do something -- and I've got to find out exactly what we eliminated in the house -- to get the pool deck done.

THE COURT: Okay.

THE WITNESS: It was like some wall tile or something like that.

THE COURT: Okay.

BY MR. BOSCHEE:

Q Let's go to Exhibit 564. Now, I'm jumping back into my outline. It'll be back in --

MR. BOSCHEE: In which binder is it?

UNIDENTIFIED: You're still here. The same one; it's 8.

MR. BOSCHEE: 8, okay.

THE WITNESS: Volume 8.

THE COURT: Yep. What number, again?

MR. BOSCHEE: It is Exhibit 564.

MS. HURTIK: 565 or 564?

MR. BOSCHEE: 564. Make sure you got the right one in case your binder is wrong or something like that. And it could be.

MS. HURTIK: It could be.

BY MR. BOSCHEE:

Q So, the question that I kept asking you four or five times and the judge called me out on, this is why. This is an invoice and it appears to be that was sent to Eugene Inose from Desert Valley Contracting.

Do you see that?

A Yes.

Q Invoice date is 9/04 of '15. Do you see that?

A Yes.

Q Is that Rochelle Elliston's signature in about the middle of the page there and then all the way down?

A Yes, that is.

Q Okay. Am I reading that correctly to say: Total contract to complete home, one million three twenty-one three thirty-one twenty-nine?

A Yes.

Q So, from Desert Valley to Eugene, is this invoice -- am I reading this correctly to say that as of September 4th -- or -- yeah, September 4th of 2015, you were still representing to Mr. Inose that the one million three twenty-one was going to be enough to finish the house?

A I don't want to answer for what she put on here because I don't -- I'd have to check and see when we were getting the change orders from the subs --

Q Okay.

A -- because I know she signed -- she just had the information that was given to her. She was not in the middle of getting the subcontractor's price or looking into the numbers.

Q Okay.

A So, I don't want to answer for her. She was just dealing with the information she was given on the contract amount --

Q Okay.

A -- and not so much the ins and outs of the changes.

Q But this state's -- and I'll call it -- and I mean this in a very nice way -- the shakedown that you made on the subcontractors to finally get their information in August --

A Yes, yeah.

Q -- this is after that, isn't it?

A It was after, but we still didn't have all their numbers by then. We were still waiting for a couple of other things to be chosen on the house.

Q Okay. But just for -- and this is more of a timeline question --

A Yes.

Q -- so, you're concerned about the costs and so you send out -- you go out to the world and get these subcontractors, Hey, I've got to have the -- I've got to have your numbers and I've got to have them now --

A Yes.

Q -- right? And then you get a bunch of change orders and you make your master change order and you send it to Eugene on August 25th, right?

A Uh-huh.

Q And then two weeks later, he gets this invoice from Desert Valley saying it's still one million three twenty-one three thirty-one to finish the project.

That's the timeline, isn't it?

A I'm not sure. I don't want to say that this is not inclusive of the change order. I know that we were working on the change order for the changes at the home at this time --

Q Okay.

A -- so, I don't know why. I can't say that this is part of that timeline. It could have been something that was created without her and I talking. I'm just not sure. I'm not sure.

Q Okay. That's fair. I mean, it's not your signature and I totally understand that.

A Uh-huh.

Q In September, how close were you to having the house done or how close was the house to being done at that point, September 4?

A September -- I'm sorry, I'm just trying to figure out. We were off the job October, I believe. September, we should have had all the tile flooring in downstairs, all the cabinets, countertops were in. The paint was all done. All the doors and trim should have been done, except for, I believe, one area didn't have door and trim. The wallpaper wasn't up. The lounge room was done; it had the switch-glass doors there. The wine room was complete.

Q Okay.

A The switch-glass mirrors were complete, I believe, upstairs in the master bedroom. I believe the master bathroom floor wasn't done at that time --

Q Okay.

A -- and I think the master closets were ordered, but they weren't installed at that time. So, I would say, gosh, I mean, it depends on what you're calling wallpaper -- how much completion of wallpaper would be, or is that considered?

You know, I guess wallpaper is part of completing everything. I don't know --

Q I guess it depends, but, yeah.

A Yeah. Like, 85, 90 percent.

Q Okay. I'm going to ask you about it because I asked you about it earlier. Go to 567 --

A Okay.

Q -- because we're there. Do you ever remember seeing this letter?

A I did see this letter, yes.

Q Okay. Do you recall that it was sent out around November in 2015?

A I believe so. Yeah, I believe that was the time.

Q Okay. Did you instruct Rochelle Elliston to send this letter out or did she send this out at the direction of someone else?

A It was a company decision.

Q Okay.

A We all conferred on it. When we -- we all conferred on it. It was a company-wide decision.

Q Okay. And at that point, subcontractors still had invoices and change orders out for payment, didn't they -- they hadn't been paid in full?

A I believe that was the case.

Q Okay. And you had contracts -- I say "you" -- I mean, you, not personally -- but Desert Valley had contracts with all of these subcontractors, didn't they?

A We had initial contracts and was also the change orders.

Q Right.

A There were several different ones, yes.

Q Okay. And all the subcontractors had lien rights, didn't they --

A I believe so, yes.

Q -- at that point?

A Uh-huh.

Q Okay. And at that point, for nonpayment, they could have sued Desert Valley or lien the property, couldn't they?

A If it was based on the original contract -- I would have to look at all the numbers because, are we basing this off of the original contract that was agreed on with them or these change orders, which contract amount?

Q Well, I would say approved change orders and work performed under Chapter 624, but either way --

THE COURT: But you won't because he's not an attorney.

MR. BOSCHEE: Because he's not an attorney.

BY MR. BOSCHEE:

Q But there were amounts owing and the subcontractors had rights to pursue remedies against somebody, right?

A I don't know how to answer that, because a lot of it was tied up in change orders.

THE COURT: You might say anybody can sue anybody for anything.

MR. BOSCHEE: That is true.

THE WITNESS: Yeah. And I don't know, because the change orders were -- that's where it got cloudy --

BY MR. BOSCHEE:

Q Right.

A -- you know. And I can say, yes, they're going to come after you for fifty-four three four nine because that's what was in it, but I can't answer to the change orders. That's where -- if it was in the original contract with the insurance company, what that estimate was based on, yes, I would say that they would have lien rights or they could go after them for those amounts, but when they're contract is added on above and beyond that, I don't know what to say to that. I don't know how to answer that.

Q Fair enough. So, remember earlier I promised we were going to go to an exhibit that was going to show you the money that you put together for what you thought was owed?

A Yeah.

Q Okay. Well, we're there. Go to 568.

A Okay.

THE COURT: So excited.

MR. BOSCHEE: I noted a twinge of sarcasm from the Court there.

THE COURT: Sorry, I should bide my time.

No, well, some, but some also very curious.

BY MR. BOSCHEE:

Q So, about a week after the letter to the subs goes out, you actually put together an email --

A Yes.

Q -- to send Eugene, right?

A Yes.

Q And this is it?

A Yes. This is --

Q Okay. I --

A -- I believe the letter.

Q Well, the redacted part is from me, but --

A Yes.

Q -- I don't know why I chose to redact this one --

A I know.

Q -- with 800 emails that are in here, but we'll put that aside for a moment. But this was you putting together a list of what was owed to the subcontractors and kind of for what they were still claiming as amounts owed, right?

A Okay. So, this was a list of what -- our estimate had in it versus what their total contracts were after, above and beyond that, yes.

Q Right. And then you -- so, what you'd do is you'd you would actually list that out. If you go through the email -- and if anybody wants to go through the email -- and you have the invoices.

A Yes.

Q So, for, like Gordy and Summit, you've got, the estimate is at 72 plus 14 is 86. The difference between that under what he's claiming was 15,932.70, right?

A Yes.

Q Okay. And you did that for all the subs that were claiming outstanding work, didn't you -- I mean, at that point?

A I don't know if it was for outstanding work or fit was for the changes. I don't -- I'd have to look through, but I'd have to see if some of this was part of their supplement or additional funds they needed to do a job or maybe they misquoted the job initially -- I don't know. I don't want to say that this is was -- this should have been paid from the start.

I know that a lot of these numbers were locked into our original estimate and these were the overages that I had to factor back to show where they're above and beyond what was under the insurance scope of work.

Q Well, let me ask you, then, the follow-up question, I think to that is: What was the purpose of this email? You sent it to -- I think you originally sent it to Carrie and then you sent it to Eugene after that.

What were you trying to show by breaking down the numbers this way?

A Trying to create a change order for the entire project so we could still finish the job, but this is how much we need to collect to finish a job the way he wanted to build the house.

Q Okay. I will tell you --

THE COURT: Pause one second.

MR. BOSCHEE: Okay.

THE COURT: Sorry.

[Pause]

THE COURT: Okay.

MR. BOSCHEE: I already did it, but you can double-check my math.

MS. HURTIK: Oh, you heard me say that?

MR. BOSCHEE: I did.

MS. HURTIK: I talked out loud.

THE COURT: I didn't, so that's okay.

BY MR. BOSCHEE:

Q Well, I added this up and I had someone smarter than me double-check the math.

A Okay.

Q The amounts of the differences that I came up with were a hundred and twenty-five thousand seven sixty-three twenty-six.

A Okay.

Q I'm guessing that's a little bit closer to what number you thought when you said earlier that it was a little over a $120,000 or a $102,000.

A Yes, that was what I was thinking.

Q Okay.

A Yes.

Q Now, do you know one way or the other whether Eugene ended up paying a lot of the subcontractors directly for the work performed?

A I know we had to have because the job wouldn't have gotten done and they were already married into the job, so I believe he had to have paid him, yes.

Q Okay. One of the -- if you go to IN-LO 64 --

A Yes.

Q -- one of your entries -- because a lot of this is -- a lot of these are all differences from your estimate -- and then you've got one there about halfway down the page for Rob Ramirez. Do you see that?

A Yes, I do.

Q Okay. I think -- well, I don't know -- I'm a little confused as to what you were getting at with this paragraph in terms of recouping payroll, workers' comp, et cetera, at 28 percent with the -- to get that twenty-seven-thousand-seven-hundred-and-forty-dollar difference.

A Now, that was -- we do have a burden and we didn't add 10 and 10 to that price. We paid them that amount.

Q Right.

A But the 28 percent was a burden that we didn't have included to his time and I don't know if that was an accounting time or how that worked, but 28 percent is usually a burden we associate to any money we pay out. Like, let's say we pay Home Depot --

Q Sure.

A -- or not Home Depot -- but, like, let's say we pay somebody or pay a sub. There's usually a 28 percent burden for us to cover all that workers' comp and stuff like that.

Q Okay. But Desert Valley employed -- I mean, at the insistence of Eugene, but employed him as a W-2 employee, didn't you?

A Yes.

Q Okay. So, is it your position that Eugene would be responsible for the 28 percent burden that Desert Valley would carry on one of its employees, even if it was insisted upon by the homeowner?

A You know, honestly, I know that I did ask for that and I know that there was a reason for behind it, but I don't know. I mean, I think that that is -- that would be questionable.

It was we were trying to recoup the burden. I'm not sure about him being an employee of ours, so I don't know what to say to that, and that price may be something that we could not have recouped.

Q Okay. Well, I mean, let me say it like this, I mean, if he wasn't a W-2 employee, you wouldn't have had the W -- you wouldn't have to pay for all those taxes, you wouldn't have had any of those other things, so --

A Uh-huh.

Q -- we can disagree on that if you want, but --

A Yeah.

Q But this is a burden recoupment for a Desert Valley employee that you were sending to Eugene, isn't it?

A I believe so. I don't know how that works, the ins and outs of those parts of it.

Q Okay. So, per this email, at that time --

A Yes.

Q -- again, we're now in November of 2015 --

A Uh-huh.

Q -- Desert -- you're basically setting out to Eugene that there's a hundred and twenty-five and change -- that someone is going to double-check my math -- that's still owed to the subcontractors, right?

A Once again, I'm not sure if their change orders were signed or approved --

Q Okay.

A -- so, these were their proposed change orders for a lot of them, because we didn't sign a lot of them, because we said, No, we need to take a look at these numbers, and so I don't want to say that this was owed for them to finish something that we engaged on them to do.

So, it's their cost that we got from them to finish the project with the way he wanted to do it and some of them may have done the costs and sent us a supplement after the fact or done the job and sent this to us, but these were above and beyond what was in the insurance company estimate.

Q Okay. You testified earlier that you don't -- that you didn't believe that Desert Valley had gotten any profit and overhead out of this job -- or actually you weren't sure -- but you didn't think that they had.

Do you remember that?

A Yes, that's correct.

Q Okay. You didn't put anything about that in this email for money that Eugene might or may not owe, did you?

A They should have been included in the costs for the subcontractors.

Q Okay.

A I believe I included that inside the payments.

Q Okay.

A Yeah.

Q So, then if Eugene paid all of these subcontractors the amounts -- the difference amounts that are articulated in this email, that would have also covered the profit and overhead that was owed, right, if you paid the full amount?

A Well, it depends on what you're basing overhead profit on, I guess, because I'm basing it off the insurance-agreed estimate.

Q Sure.

A These are numbers that exceed that, so I don't know if you have a new overhead profit scale or an old that that we're trying to collect on.

Q Okay.

A Would it be the new amount or --

Q Well, even going off the old amount --

A Yes.

Q -- if the payment was still owed off the old amount, that would include the P&O, right, the estimate amount?

A I'm sorry, I'm a little confused. If he paid the full contract --

you mean the full 1.32 million?

Q Well, if he paid -- just from this email, I mean, forget the 1.32 million.

A Okay.

Q Yeah, if you paid the full 1.32 million, then, yes --

A Yeah.

Q -- right? Okay.

So, I guess what I'm saying is you guys got -- and Ms. Hurtik asked you about this earlier --

A Uh-huh.

Q -- I've got the number here -- one million -- it was really close from the 1.3, from the insurance money, right?

A We got 1.1, I believe it was -- somewhere around there. I'm not sure of the total dollar amount we got. I'd have to look at the numbers.

Q Well, you -- I could -- I'll pull it back up. I mean, when you testified earlier, you added those checks up that were sent to Eugene, it was $1,314,000.

A They were sent to Eugene, yes.

Q That was sent to Eugene, right?

A Uh-huh, that's correct.

Q So, if all of that money went to either Desert Valley or the subcontractors, that would have been covered the estimate amount, right, including profit and overhead?

A No, it was a little bit off from the insurance company's estimate. I don't know how that was -- it was maybe a thousand or two thousand --

Q Okay.

A -- some insignificant number on a job this size, but it was very close, yes.

Q It was very close. And then the numbers in here --

A Uh-huh.

Q -- would have been above and beyond that, the money that -- okay, Eugene, that's nice, that's the insurance money, but this is what they're claiming is owed, because it's the difference.

Whether you signed change orders or not --

A Yes.

Q -- it may not be valid, but it is what they're claiming, right?

A Yes, uh-huh.

Q Okay. So, if the $1.314 million was paid in some combination to Desert Valley and to the subcontractors and these amounts were paid, then wouldn't Desert Valley be paid in full?

A If -- well, now, these are just labor rates here --

Q Right.

A -- these aren't for materials. Oh, no, there's some material -- I'm sorry -- there's some materials in here. So, you mean if I added these overages, what you're saying --

Q Yeah. You add --

A -- to the original?

Q Yeah, you had -- you add the $125,000 --

A Uh-huh.

Q -- and change that's in here --

A Uh-huh.

Q -- to the one million one -- you know, $314,000 of insurance money that came in and that was paid -- all of that money was paid in some combination to Desert Valley and the subcontractors, Desert Valley wouldn't be owed anything, would it?

A I believe that's true, yes.

Q Okay.

MR. BOSCHEE: I have nothing further for this witness. Thank you, Judge.

THE COURT: Okay.

MS. HURTIK: Are you ready?

THE COURT: Okay.

MS. HURTIK: Okay.

REDIRECT EXAMINATION

BY MS. HURTIK:

Q So, Mr. Merritt --

A Yes.

Q -- let's go back to the last question you were asked, because I think there's a little confusion there.

A Okay.

Q So, Mr. Boschee told -- had -- he had the numbers confused a little bit. If you went to Exhibit 585, and we went through all the --

A Yes.

Q -- numbers that were paid, checks that were actually paid to Desert Valley and it wasn't the contracted amount -- it was the amounts paid -- it was one million one twenty-three seven thirty-four eighty-nine.

A Okay.

Q And you were pretty close on the number --

A Yeah.

Q -- without even being told again, you know, being refreshed.

A Okay.

Q So, and Mr. Boschee -- the number -- you were correct that Mr. Inose was paid 1.3 million something --

A Yes.

Q -- according to the payout, but, actually, Mr. Inose was paid more than that. He was paid almost 1.6 million and we can go to those. We're going to go to those in a little bit. But you were just asked specifically if Mr. Inose paid the subcontractors this 500 -- or one hundred and twenty-five thousand seven hundred and sixty-three thirty-five --

A Yes.

Q -- and that, plus the insurance money. Then, if that all added up to the 1.3, approximately --

A Okay.

Q -- that DVC would have been paid in full.

A Okay. I'm not --

MR. BOSCHEE: Objection. That's not actually what I asked.

MS. HURTIK: Well, that's what it sounded to me, like.

THE COURT: So, the objection is overruled.

BY MS. HURTIK:

Q Okay.

A Okay.

Q So --

THE COURT: But let's ask him a question, rather than --

MS. HURTIK: Yeah, I'm trying to get --

THE COURT: -- a soliloquy.

MS. HURTIK: Yeah.

BY MS. HURTIK:

Q So, let me try to get to it. So, I'm trying to clarify --

A Yes.

Q -- so, he asked you if the one twenty-five seven sixty-three was paid, plus the contract -- the 1.3 --

A Yes.

Q -- then would Desert Valley have been paid in full in the profit and overhead, but the question is, the one twenty-five seven sixty-three would have been for change orders, correct?

A Yes, above and beyond the 1.32 insurance-submitted estimate; those were the overages from the insurance estimate.

Q And in your own contracts, you stated that if it wasn't written and it wasn't signed that you didn't pay them, correct?

A That's correct, on the change orders, yes.

Q And a lot of these change orders were not signed; is that correct?

A Yes, they were not signed.

Q Okay. And if it was stamped approved, but not signed -- because there's a couple of those -- does it have to be signed, as well as approved?

A Usually it does. When it goes through, somebody has to take responsibility for signing. There's -- if you just stamp it approved, there's no person to assign who stamped it.

Q Okay.

A You should have a signature, I would believe, but I'm not sure of the laws regarding that.

Q Okay. So --

THE COURT: Well, how about Desert Valley's practice in terms -- because so, when we've gone through various that are stamped approved, does that mean Desert Valley has approved that change order, generally, or are you saying, Generally, no, we stamp and then we sign?

THE WITNESS: Usually it gets stamped. It comes back to the estimator to factor into the estimate -- that's the office girls -- and then it comes up to me to usually sign the change orders, because I'm in charge of the money coming in and out. So, that's usually what we do.

I'll ask them what they have and what it's for -- is it for something very pertinent to get a job moving -- so there's a two-party involvement, usually, with the approving the change orders.

THE COURT: Okay.

BY MS. HURTIK:

Q So, let me ask you, so, pursuant to the contracts that you --

you had contracts with the subcontractors, correct?

A Yes.

Q Okay. So, you were entitled to the profit and overhead from the contractors' work performed on the project?

A Yes, for the work performed on it, yes. We were the ones paying them.

Q Okay. So, if he's paying them, you're not getting paid it, right? You're not -- if he's paying them directly, you're not getting paid your overhead and profit, are you?

A No, we wouldn't be.

Q Okay. And you were also asked on this Exhibit 568 if these numbers were accurate. And was this a work-in-progress that you were trying to get to actual numbers of what was actually being over the contract amount?

A On some of the cases they did send us an actual change order, what it would be to finish everything out, but in some cases, we still didn't have the materials in so there are still some open items to where -- you know, those are the ones that I believe I did have hard numbers for. The Rob Ramirez's time was another one. I didn't know with -- that that was a 28 percent burden -- I believe we all talked about that -- but the other things like the material, their costs for labor -- we had some of those hard costs in -- that's how I was able to get to those numbers.

Q Okay.

A We actually had bids supporting those numbers.

Q Okay. And did you have trouble getting some of the subcontractors to give you all of those change orders?
A Yes, because -- the reason is because there was a lot of different things they had to do. You know, a prime example would have been Eagle Sentry, not knowing about the Lutron switches until they had to cross that bridge.
Q Okay.
A So, yes, it was hard because they didn't really know if they were going to encounter anything or if anything was going to be different than what they bid. So, we tried to lock them all in and say, If you did it this way, what would it cost us --
Q Okay.
A -- with no changes.
Q So, let's go back to those Lutron switches, because there was a lot of conversation about that, that, Oh, those were missing. And it didn't matter whether six were missing or one were missing, they all would have had to be replaced, correct?
A They would all have been replaced per Eagle Sentry. They told us that the system was outdated and they couldn't get one of the screens to work, one of the Lutron -- it's a touchscreen thing -- it's a touchscreen system, and they couldn't get one of them to work, so, regardless, they said the whole thing would have to be replaced, regardless, so --
Q Okay. So, that's kind of a non-issue, really, because there's no damages to that because they had to be replaced anyways and you

said that Eagle Sentry put that back into their contract, correct?

A Yes.

Q Okay. So, you were also asked a question about were your costs, you know, at that time when you gave that bid in June of 2015 to the insurance company, that whether or not you knew those costs would work and you could have been complete on the job.

Well, Eugene kept on changing things, correct?

A Yes.

Q So, you couldn't know when he -- you knew at the time -- would it be a correct statement that you knew at the time, but then he kept on changing stuff?

A That would be correct.

Q And so, wasn't that the problem with this job the whole entire time you were on this job?

A Yes, there was a problem with the job the entire time; things just kept changing on it.

Q A continuous moving target?

A Yes, it was like that.

Q Okay. And then you were also asked questions about was Rob Ramirez -- who was locking up -- Rob Ramirez was off of the job in -- sometime in May, so who was locking up from May to October.

A Yes.

Q Was -- and if I'm wrong, I just need to know the answer to this --

A Uh-huh.

Q -- wasn't Rob Ramirez still showing up for Mr. Inose to -- wasn't he still showing up?
A He was. And I don't know if it was out of courtesy or what the deal was, but he was still showing up on the job site and we would have meetings with him with the subcontractors.
Q Okay. And there were some things missing -- a TV -- and there were some things missing, but wasn't the TV and all those switches locked up in a room and Mr. Inose was the only one that had the keys to that room?
A The TV and the switches were in a downstairs, like a master suite, I believe it was, and, yes, that was locked.
Q And was -- to your knowledge, you didn't have keys to that, did you?
A Eagle Sentry was given access to the room because they had to, but nobody else was supposed to go in any of the closed rooms of the house; they were all locked doors.
Q Okay. So, you didn't have keys to that?
A No, we did not.
Q Okay.
A Not for the interior doors.
Q Okay. So -- and those items were small anyway, correct?
A It was about five or six Lutron or Crestron switches, but they didn't -- most of it -- the system was old and obsolete anyways. I don't know why that -- those would have went missing. They probably just got misplaced.

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Q Okay.

A The TV, I don't know. I know the TV -- one of them was damaged and beyond repair -- I believe that was the TV -- one television was found that was damaged by water.

Q Okay.

A So, I don't know if the company testing it took it -- I don't see why they would. I don't know the case with the TV.

Q Okay. Now, let me just see -- so, you were asked about the change orders not being sent to you and being sent to Mr. Inose, but, in fact, you had lot -- yesterday and earlier today, we went through lots of emails where there were tons of meetings with Mr. Inose. You were constantly saying they were going over budget.

You had discussed change orders with him before this, haven't you, before June?

A Well, we would try to, more so, meet on a common ground to try to figure out how to get this job done. We wanted to finish. We were already invested in it -- all of this -- and we didn't want to, at the end, to be off of it, because we knew something like this would happen in court.

So, we wanted to try to work with him, but, yes, at the end, it was just too much going out and when we got everybody's numbers, it just is what it was. That's what the subcontractors were charging and we couldn't allocate for those funds. We couldn't, you know, we couldn't move any more money around in the estimate without us going under or going in the hole.

Q Okay. You also testified -- Mr. Boschee asked you about the framing and insulation and the prepping walls -- those were things that you guys actually did in-house, Desert Valley?

A Yes, we did the framing, all the installation work. We did the demolition of the floor. All the tile, we did -- we finished that demolition. We did -- yeah, the framing for the wine room -- things like that, in-house. The drywall texture, we had to go back over that other company's texture and retexture everything and then painting inside and outside.

Q So, you would have been entitled to profit and overhead for those items in-house, that you did on top of the other profit?

A Yes, usually 10 O&P [sic] is assigned to that.

Q Okay. And so the other thing is you never told the insurance company to close the claim, did you?

A I didn't tell the insurance company to close the claim.

Q And did you even think you had the authority to close the claim?

A Not -- well, usually, a contractor wouldn't or not have the authority. They just wanted to know if we got all the numbers in, which is what I told them, we did get all the numbers in from the subcontractors, which is what I was led to believe at the time.

Q So, in fact, was Mr. Inose -- he was in a big hurry to finish this, wasn't he?

A Yes.

Q Okay. So, did he tell you that he was going to close the claim?

A I don't believe we talked about that. I know there was an email from me to the adjuster saying that we did have all the bids in, but I don't believe that Eugene and I talked or emailed anything to do with that.

Q Okay. And were you shocked when the claim was actually closed and you weren't finished, completed with your work?

A I was more shocked when I got the change orders from the subcontractors, essentially the Eagle Sentry one. That's when I was getting to the point where I needed to reach back out and get some extra funds for that because I think it was justifiable.. So, that's more of the shocking part when I started to see the change orders come in.

Q Okay. So -- excuse me --

THE COURT: When did you, if you recall, when did you learn that the claim had been closed out?

THE WITNESS: I think it was in July. I believe it was in July when I actually learned that it had been closed out to where Fireman's sent them the last check and that was that. I believe it was July.

BY MS. HURTIK:

Q Okay. So -- and, again, you were asked four or five times -- well, I asked you again, so never mind --

THE COURT: So, we're going to ask number 6?

BY MS. HURTIK:

Q You were asked eight times --

A That's okay.

UNIDENTIFIED SPEAKER: Amen.

BY MS. HURTIK:

Q We'll stop on that one.

A Okay.

Q So -- all right -- so, basically, Desert Valley Contracting, you didn't have any control over the job as far as change orders because of Dyba and Mr. Inose and Rob Ramirez, correct?

A That's correct on some of the items. The Artesia kitchen, they admitted that it was their mismeasurements on their mistake, that thirty-thousand-dollar one --

Q Uh-huh.

A -- but the Eagle Sentry, we had no power on it; that was going to be that no matter what. So, that change order was going to come. The materials, her flights to Los Angeles -- I believe she went out to LA three or four times -- we had to pay for the plane tickets out there -- so, that, I didn't anticipate that happening, or plane tickets going out there, but we paid for the plane tickets and the hotel accommodations for them to pick up material. Those are the costs I didn't foresee. I thought they could pick everything out here in Las Vegas.

Q Okay. And so, if Mr. Inose had paid subcontractors after he terminated you and he paid them more than what the contract was worth and there were change orders that were signed, I mean -- let me strike that because that's not going to make sense.

So, if Mr. Inose had stuck with the bid as it was, you would have been fine, correct?

A Yes. We would have been okay if we just did the wine room and the pool in the back; those are the two things that we -- and then at that time those are the two items that we were changing money out for.

Q Okay.

MS. HURTIK: I don't have any further questions. Thank you.

RECROSS-EXAMINATION

BY MR. BOSCHEE:

Q Well, I have a clarification -- a couple clarification questions, because I was a little confused. You just said, if I wrote it down correctly, that Eagle Sentry, that change order was coming no matter what.

A Yes.

Q Why do you say that?

A Well, when they -- they did everything else they had to do, but when they got the Lutron boxes out --

Q Yeah.

A -- they were actually tucked away back in the room to install them and put them in the house, that's when they found out the system was incompatible.

They were thinking everything could be put back in or they could find a couple other ones if a couple of them were damaged by water, but when they went to test the system, they found out it was no longer made and it's incompatible with the house.

Q Okay. But the Lutron switches needed to be replaced because some of them -- at least a couple of them -- were damaged by the water, right?

A They told us that it's because of the -- one of the -- they said that that was one of the cases, too, yes, but they also said that one of the screens wasn't working, as far as the Lutron screen -- I guess it's a touchscreen one; you control everything by touching it.

Q Okay. So, that should have been covered by the insurance, shouldn't it, even if it was a change order?

A But they didn't find that out until it was like July or August when they found out all the Lutron switches were -- I don't know the exact date, but it was after it was closed out.

Q Okay. So, had that information been culled before the insurance was closed out, that's something you would have expected would have been covered, right?

A Yes, I would have.

Q Okay. You just testified, I think -- or one of you testified to it -- you didn't have control over the job.

Do you remember saying that?

A As far as the whole job or just the aspects --

Q Well, that was my question. You were the general contractor, right? I mean, the buck does kind of stop with you guys in terms of scheduling and what the subs do and don't do, isn't it?

A Well, it depends on, once again, if things are changing, you know, then we have to adjust on the fly. And, you know, we set a course for these subcontractors to do their trades and that was set in motion, but what happens is when you throw something in here and, like, let's say -- I'll just take the glass up in the bathrooms --

Q Sure.

A -- for example. We had to reschedule everybody around those mirrors, which we, you know, and we tried to schedule it the right way, but you have to have framers come in, plumbers come in -- everybody's got to do it the right way -- and that was something after the fact that we didn't anticipate.

Q Well, this goes to, I think, the very first question I asked you. I mean, as a general contractor, can't you -- couldn't you have just said, Eugene, no, we can't do that. There isn't insurance money for that. We can't do it. We're not going to let the subs do that. You can't have it.

A Well, we did say that and we -- that's where we put together the change order and told him where these overages were going to be and --

Q Well, no. I'm saying -- I might have been -- I get that. I mean, that's the emails in August, September, and October.

A Uh-huh.

Q I'm saying, you know, kind of like a kid with his hand in the cookie jar, No, you can't have those mirrors, you can't do that. We're not going to authorize that work to be done at all, regardless of cost.

A Well, there was a lot of things that weren't chosen at the end there and that's what we needed. We -- that's why I was pushing the fact that we needed to get the countertops chosen, we need to get the finishes chosen, because we can't have this whole estimate still be in limbo like this, regardless of that. If we had those costs in, we would be able to gauge it a lot better.

Q Right. Which makes sense to me -- I'm totally fine with you on that. The change orders that you just talked about with Ms. Hurtik, they weren't sent to Eugene, but you guys were having meetings on property and talking about these things, kind of an ongoing basis.

Do you remember talking about that a second ago?

A Yes.

Q Okay. But even though you're having discussions and you're going over -- we're going to do this, but take away this or whatever -- you're not actually going to know or a homeowner isn't going to actually know what the costs or the difference is going to be until they see it, are they?

A No. That's -- until they see the estimates or until they see the finished project? I'm sorry.

Q Well, or the bids from the subcontractors, the change order amount, the difference between this deductive change order and this actual change order --

A Yes.

Q -- you're not going to know what you're going to be out-of-pocket until you see that, are you?

A No, you wouldn't.

Q Rob was showing up periodically between May and October, but you weren't charging him with the responsibility of actually putting the codes into the --

A No, we weren't.

Q Okay.
A We weren't relying on that. He didn't want that responsibility, either.
Q Okay. And you testified, again, after my kind of terrible question -- and I think Ms. Hurtik asked you a similarly bad question about the math and the terrible question of profit and overhead -- so, I'm going to follow it up with one last probably bad question.
A Okay.
Q All of the insurance payments and the one twenty-five and all that, that all presupposed that Desert Valley isn't taking the P&O out on an ongoing basis as the insurance money is coming in, right?
We did all that math and we did all the -- gymnastics over the 1.314 and the 250 or the 125.
A Uh-huh.
Q It presupposes that the P&O isn't coming out as the payments are coming in, right?
A We have a tracker of what's paid to us and --
Q Right.
A -- and everything like that, and I think that would be a better -- you know, what we paid out for subs, what we paid out for labor and everything --
Q Sure.
A -- and I don't believe that has the O&P on it. It has a burden, a labor burden, which most contractors have. It has all the checks going out, all the receivables coming in. And we do have that tracking.

That would probably be the form we would all want to look at, because I don't want to say that this didn't go to O&P or this did go to O&P. This is a tracking form that shows exactly what our costs were for the job and what we collected to date.

Q But your labor costs would be part of your overhead, wouldn't they -- your labor burden?

A Once again, I would want to refer to this.

Q Okay.

A Because it breaks all that down.

Q Right.

A Yeah, part of the burden, the labor burden, yes, workers' comp is part of that -- I don't know what other things -- we have a couple of things that make the burden.

Q We've talked a little bit, too, about these trips to California that apparently Tina Diva or Tina Dyba -- however we pronounce her name --

A Uh-huh.

Q -- she made one trip or three trips or whatever. I mean, these are -- you're talking about the actual flight to Los Angeles to pick out materials, right?

A And the hotel room stays.

Q And hotel, okay.

A Uh-huh.

Q So, I mean, collectively, what are you talking about, 1500 bucks? A couple thousand dollars?

A A couple thousand dollars, I would say, yes.
Q Okay.
MR. BOSCHEE: I have nothing further.
Thanks, Judge.
THE WITNESS: Thank you.
THE COURT: Done?
MS. HURTIK: Yeah.
THE COURT: Okay. Thank you, Mr. Merritt.
THE WITNESS: Thank you.
MR. BOSCHEE: Your call with your client. I've got another 20 minutes if you want to start him or if you want to wait until tomorrow morning. We will definitely finish tomorrow, regardless, so ...
MS. HURTIK: Let's wait until tomorrow morning, because by the time I -- we won't be done.
THE COURT: So, we'll finish tomorrow?
MS. HURTIK: We'll finish tomorrow.
MR. BOSCHEE: Oh, absolutely. Yeah, we'll finish tomorrow. I mean, I don't think this is more than -- he's not more than an hour, right?
MS. HURTIK: No.
MR. BOSCHEE: Yeah, okay.
THE COURT: Oh, okay.
MR. BOSCHEE: Yeah. No, we'll finish easily tomorrow.
THE COURT: No, I was just -- if he's going to be as long as Mr. Merritt --

MR. BOSCHEE: That's why I asked.

MS. HURTIK: No, not at all.

MR. BOSCHEE: I'm like, I've got some time -- we can do this.

THE COURT: Okay. See you -- what do we have tomorrow morning?

MR. BOSCHEE: I think it was nine bells tomorrow, right?

MS. HURTIK: Are we at 9:00 tomorrow, Your Honor? Unless you want to --

THE COURT: Bear with me.

MS. HURTIK: Okay.

THE COURT: Yeah. So, you are at 9:00, yep.

MR. BOSCHEE: Okay.

THE COURT: Okay. Good.

MR. BOSCHEE: Then we'll be done even earlier.

THE COURT: All right.

MS. HURTIK: Thank you, Your Honor.

MR. BOSCHEE: Thank you, Your Honor.

THE COURT: Thank you.

[Proceedings adjourned at 4:22 p.m.]

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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