

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 5

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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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Steven D. Grierson

1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DESERT VALLEY CONTRACTING,
9 INC.,

10 Plaintiff,

11 vs.

12 IN-LO PROPERTIES, LLC,

13 Defendant.

CASE#: A-16-734351-C

DEPT. XV

14 BEFORE THE HONORABLE JOSEPH HARDY
15 DISTRICT COURT JUDGE
16 WEDNESDAY, JUNE 19, 2019

17 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 5**

18 APPEARANCES:

19 For the Plaintiff:

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

20 For the Defendant:

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

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25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

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1 Las Vegas, Nevada, Wednesday, June 19, 2019

2

3 [Case called at 10:40 a.m.]

4 THE CLERK: Case number A734351, Desert Valley

5 Contracting, Inc. versus IN-LO Properties, LLC.

6 MR. BOSCHÉE: Good morning, Your Honor, Brian Boschée,
7 Sean Story and Eugene Inose appearing for the Defendant. If I could ask
8 the Court's indulgence, either this afternoon or tomorrow at some point I
9 think my law clerk might come over and watch a little bit of the trial.

10 THE COURT: Yeah.

11 MR. BOSCHÉE: He's not an admitted member of the bar --

12 THE COURT: Sure.

13 MR. BOSCHÉE: -- but, you know --

14 THE COURT: Yeah.

15 MR. BOSCHÉE: -- he's not a witness either so I told him he
16 could come.

17 THE COURT: Yeah, that's fine.

18 MR. BOSCHÉE: Okay.

19 THE COURT: Anybody is welcome to come watch.

20 MR. BOSCHÉE: All right.

21 THE COURT: Yeah.

22 MR. BOSCHÉE: I always like to ask first.

23 THE COURT: Okay.

24 MS. HURTIK: Good morning, Your Honor, Carrie Hurtik and
25 Jonathan Patterson and Dennis Zachary on behalf of Desert Valley

1 Contracting.

2 THE COURT: Okay. Good afternoon. You all can sit down.
3 It's been a while.

4 MR. BOSCHEE: Wait a minute.

5 THE COURT: So I did review through my notes to refresh my
6 memory of what's happening. So who are we going with today?

7 MR. BOSCHEE: We brought back Russ from HyBar to finish
8 up. I think Ms. Hurtik had to cross-examine him. He was a third-party
9 witness. And we want to get him wrapped up before we got to the other
10 witnesses so he can get out of here.

11 THE COURT: Okay.

12 MR. BOSCHEE: Go about his life.

13 MS. HURTIK: Your Honor, may we put the witness books up
14 there?

15 THE COURT: Oh, sure. Thank you.

16 MS. HURTIK: Okay.

17 THE COURT: Yeah, yeah. That's fine.

18 [Pause]

19 MS. HURTIK: Okay, Your Honor, we're ready.

20 THE COURT: Okay. Sounds good. Come on up. Let's go
21 ahead and swear him in again now.

22 THE CLERK: Please raise your right hand.

23 RUSSELL BARLOW, DEFENDANT'S WITNESS, SWORN

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

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

2 THE CLERK: Thank you.

3 THE COURT: Have a seat. Thank you.

4 CROSS-EXAMINATION

5 BY MS. HURTIK:

6 Q Okay. So Mr. Barlow, who did you -- and I know it's been a
7 while since your testimony before so I'm just going to kind of refresh you
8 on a few things.

9 A Sure.

10 Q You may have already answered some of these questions,
11 but just bear with me, okay?

12 A Uh-huh.

13 Q So when you worked on this we'll call it the Inose project,
14 Mr. Inose's house, were you one of the original contractors?

15 A Yes. Just, Your Honor, my son and his fiancé were just
16 going --

17 THE COURT: Oh.

18 THE WITNESS: -- to come in and observe. Can they do that?

19 THE COURT: Yeah, yeah, yeah. You can tell anybody you
20 want it's public so yeah, come on in.

21 THE WITNESS: They were getting their marriage license.

22 MR. BOSCHEE: I don't think anybody is calling them as a
23 witness. That should be fine.

24 THE WITNESS: They got their marriage license this morning.
25 They're getting married so --

1 THE COURT: Oh, my goodness.

2 THE WITNESS: Sorry about that.

3 THE COURT: Welcome, welcome. Thank you for coming in.
4 I always get excited when we have visitors because nobody ever comes
5 in. Yeah. Okay.

6 MS. HURTIK: Okay.

7 THE COURT: Go ahead.

8 THE WITNESS: Sorry about that.

9 THE COURT: That's okay.

10 MS. HURTIK: Oh, that's okay.

11 BY MS. HURTIK:

12 Q So were you one of the original contractors when Mr. Inose
13 first purchased the -- first built the house?

14 A Yes.

15 Q Okay. And so who contacted you when the -- Mr. Inose had
16 the flood and they had to do the, we'll call it, remodel, rebuild? Who
17 contacted you?

18 A I don't recall for sure.

19 Q Okay. Did you enter into a contract with Mr. Inose for your
20 work on the -- after the flood?

21 A No.

22 Q Okay. Who did you enter into a contract with?

23 A Desert Valley Contracting.

24 Q Okay. And why was that? Why did you enter into a contract
25 with Desert Valley Contracting and not directly with Mr. Inose?

1 A Desert -- as far as I knew, Desert Valley was directing the
2 restoration project.

3 Q Okay. And I think you were asked this before, but did you --
4 who did you understand was the project supervisor once you actually
5 started working on the project?

6 A Daniel Merritt, I think.

7 Q Okay.

8 A He was the person that I worked with at Desert Valley.

9 Q Okay. He's the person you worked with at Desert Valley. But
10 did you work with Rob Ramirez?

11 A Yeah, I talked to Rob. I'm not sure what role he played.

12 Q Rob didn't schedule stuff with you or talk to you about how
13 things should be done?

14 A He may have. I can't recall for sure. I just know I had an
15 interaction with him.

16 Q Okay. So how often -- let's strike that. Let's go back. So we
17 had asked you previously, I believe Mr. Boschee had asked you, you're
18 the primary -- you're the owner of HyBar, correct?

19 A Yes.

20 Q Okay. And you've been in business how many years?

21 A Presently constituted for 19.

22 Q Okay. And so before you decided to enter into the contract
23 to do the rebuild with Desert Valley Contracting, did you walk the project
24 to see what needed to be done?

25 A Yes.

1 Q And who did you walk the project with? Do you recall?
2 A I don't recall.
3 Q Was there a reason that you walked the project prior to
4 bidding the project?
5 A To determine the scope of what was needed.
6 Q Okay. But was there a -- was there specifics that were told
7 what you needed to do? Were you -- were there specifics given to you
8 when you did the walk through?
9 A I don't recall exactly what I was instructed, just to walk and
10 see the damage.
11 Q Okay. Were you paid for your bid?
12 A No.
13 Q So --
14 A Meaning did somebody pay me to come --
15 Q To do the bid.
16 A -- and do the bid?
17 Q Yes.
18 A No.
19 Q The insurance company didn't pay you to come and do a
20 bid?
21 A No.
22 Q Okay. So when you walked did -- walked the property, do
23 you know whether Mr. Inose was present?
24 A I don't recall. I -- he could have been, but I don't recall.
25 Q Okay. Do you know whether Rob Ramirez was?

1 A I would -- I can't say for sure, but I think he probably was.
2 Q Okay. But you know Danny Merritt was?
3 A To my -- best of my recollection, everything that I talked with
4 about the job was with Daniel Merritt.
5 Q Okay. And how -- okay, so you -- are you the one that
6 actually did the walk-through to do the estimate, the bid, for the rebuild?
7 A Yes.
8 Q Okay. After that was accepted, did you understand that the
9 insurance company had to accept your bid?
10 A Yes.
11 Q Okay. And to your knowledge, was the first bid accepted?
12 A Yes.
13 Q Okay. And did you have changes to your bid as it went
14 along?
15 A Yes.
16 Q Okay. And were those change orders because Mr. Inose
17 wanted to make changes to the aesthetics of the property?
18 MR. BOSCHEE: Objection. Calls for speculation.
19 THE COURT: You could just -- well, overruled.
20 BY MS. HURTIK:
21 Q Were those changes made because -- did you have any
22 discussions with Mr. Inose ever during the rebuild?
23 A Yes.
24 Q Okay. So did he ever instruct you to make any changes in
25 the process of your scope of work?

1 A I don't recall that he instructed. He would have maybe asked
2 for it, but I don't recall him instructing me.

3 Q Okay. So let me ask you this. So you said that you were the
4 one on the project and I think you testified that you were out there. But
5 how often were you actually, once your bid was accepted, how often
6 were you out on the project?

7 A On a reasonably regular basis.

8 Q Well, I'd like to kind of narrow that a little. I know it's been a
9 while, but were you there every week, were you there daily?

10 A Not daily. Probably weekly.

11 Q Okay. And were you the one actually performing the work or
12 did you have a crew that performed the work?

13 A I had a crew.

14 Q Okay. So was the crew -- who was your crew that was on the
15 job?

16 A As in which workers were on the job?

17 Q What were your workers?

18 A I don't recall.

19 Q You don't recall. Okay. So do you -- did you have -- do you
20 recall whether any of your workers that were out there contacted you
21 because changes were being requested but there weren't written change
22 orders?

23 A I don't think so.

24 Q So you're saying you were never asked for change orders?

25 A No, you asked if -- did you ask me that my workers called and

1 were asked to do work?

2 Q Were you --

3 THE COURT: Yeah, that was the question.

4 MS. HURTIK: Yes.

5 THE COURT: Yes.

6 THE WITNESS: So that I know of my workers were not asked
7 to do work without a change order.

8 BY MS. HURTIK:

9 Q Okay. So were -- when there were change orders, it was
10 directed directly to you?

11 A Yes.

12 Q Okay. And how many change orders -- or do you recall how
13 many change orders were done?

14 A I can't tell you the number but a few.

15 Q Wasn't it quite a few? There was some big changes?

16 A There was some big changes, but I can't tell you how many.

17 Q Okay. So and we'll go through some of the contracts and
18 stuff, but I just want to get some basic clarification on a few items. Okay.
19 So was the wine room one of the big changes?

20 A Yes.

21 Q Okay. And why was that a big change? Can you explain to
22 me why that was such a big change?

23 A That was -- it was a glass wall partition that was added, glass
24 wall, glass doors partitioned. It was changed. It was not part of the
25 original plan.

1 Q Okay. And when you get changes like that, do you do a
2 sketch and provide it to the general contractor or the GC so that they can
3 see what is needed, what needs to be done, if there's any work that has
4 to be done by other trades?

5 A Either a sketch or a list, some kind of a description, yes.

6 Q Okay. And so the door, do you recall what kind of door was
7 leading into that wine room before this -- they -- the change was going to
8 be made and it was going to be glass doors?

9 A Not precisely.

10 Q Okay. But it was not glass doors, correct?

11 A It was not a glass door.

12 Q So did the opening have to be, to your knowledge, widened?

13 A The -- it wasn't just the opening. The -- there was a glass
14 wall that was not there that was added.

15 Q Okay. So did there have to be demolition to current existing
16 drywall and framing?

17 A Yes.

18 Q Okay. And were you part of that demolition?

19 A No.

20 Q Okay. So who was responsible for that demolition?

21 A Desert Valley.

22 Q Okay. And you know that because you had conversations
23 with -- who did you have the conversations with regarding that?

24 A My change order would have been approved by Desert
25 Valley.

1 Q Okay. So you wouldn't have done any work without your
2 change order being approved and signed?

3 A I hope not.

4 Q Okay. I'm just asking. So if there are change orders that you
5 did work and it wasn't signed, why would you have done that work; do
6 you know?

7 A If it was small or incidental.

8 Q And you did say that in your earlier testimony. But when you
9 say small or incidental, what would you classify as minor?

10 A Adding casing to a door.

11 Q Okay.

12 A Repairing a window. Something small. Something that's
13 not material, going to hurt me if I don't get paid.

14 Q Okay. So and -- so when the -- when you were instructed --
15 how far into the job were you when you were instructed that that wine
16 room was going to change and now it was going to be this glass doors
17 into it?

18 A I don't know how far I was into the job when it happened.

19 Q Had already -- had it already been repaired and then it had to
20 be ripped out again? Do you know that?

21 A I don't know that.

22 Q Okay.

23 A I had not done work on it myself yet so --

24 Q Okay. So did you do any work out there or did you just go
25 check on your guys?

1 A I just check on my guys. When I say I, that's representative
2 of my company.

3 Q Right. And that's fine.

4 THE COURT: So you're the owner, right?

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 MS. HURTIK: Yeah. And --

8 THE COURT: You don't personally do all the work?

9 THE WITNESS: No.

10 THE COURT: Okay.

11 BY MS. HURTIK:

12 Q Right. And so I'm just trying to determine, you know, do you
13 know that -- if any work was done by your guys that wasn't approved in
14 a written change order?

15 A I don't know that.

16 Q And do you review all the bills and the contracts?

17 A I would say most of them.

18 Q Who would be doing that besides you?

19 A Whoever was my office assistant or staff at the time.

20 Q Okay. So is the office -- your office assistant allowed to sign
21 off on change orders?

22 A No.

23 Q Who was allowed to sign off on change orders?

24 A Me.

25 Q Okay. And so after -- I know you started work. Do you recall

1 the dates that you actually did -- performed work out there, your
2 company?

3 A I don't recall.

4 Q Okay. Were you paid in full for your work that was
5 performed pursuant to the contract?

6 A Yes.

7 Q Were you paid for any change orders?

8 A I was paid for everything that we did including change
9 orders.

10 Q Okay. Did you do -- you were aware that Mr. Inose and
11 Desert Valley Contracting separated ways?

12 A Yes.

13 Q Okay. Did you continue to work on the project after Desert
14 Valley was no longer on the job?

15 A I think so, yes.

16 Q Okay. And do you recall whose license general contractor
17 you worked under?

18 A I did not work under a contractor.

19 Q Okay. So you used your own license?

20 A Yes.

21 Q Okay. And what were you bid limits? What are your bid
22 limits?

23 A Five-hundred-thousand.

24 Q Okay. And do you recall the cost of this project?

25 A I don't.

1 Q Okay. I'm going to have you -- behind you is binders and I'm
2 going to have you go -- hold on one minute. I'm going to show you your
3 contract, okay? So I want you to go to --

4 [Counsel confer]

5 MS. HURTIK: Hold on a minute.

6 [Counsel confer]

7 BY MS. HURTIK:

8 Q Can you pull out binder 1? It's behind you. And I think you
9 looked at these before.

10 A What section?

11 Q Give me a minute to grab it, okay? Okay. I would like you to
12 go to 160, Exhibit 160. And just let me know when you're there. It's kind
13 of hard to -- it's way at the back so it's kind of hard to turn, okay?

14 A Okay.

15 MS. HURTIK: Okay. Is this actually on?

16 COURT RECORDER: You got to hit the button up there --

17 MS. HURTIK: Which button?

18 THE COURT: You can show her. Don't touch anything --

19 MS. HURTIK: I'm sorry.

20 THE COURT: -- until he shows it to you.

21 COURT RECORDER: This button right here.

22 MS. HURTIK: Oh, okay. All right.

23 COURT RECORDER: There you go.

24 BY MS. HURTIK:

25 Q So if -- Mr. Barlow, if you can look at this. Let me see if I can

1 get it to zoom in a little bit better.

2 COURT RECORDER: Yeah, just --

3 MS. HURTIK: This button?

4 COURT RECORDER: -- hit that.

5 MS. HURTIK: That's not doing it.

6 COURT RECORDER: There you go.

7 MS. HURTIK: Can it go any better or --

8 COURT RECORDER: Yeah, you can just use the up and down

9 arrows.

10 MS. HURTIK: Oh, that's better. Okay. But we won't get it

11 much better than that, right?

12 COURT RECORDER: Right.

13 MS. HURTIK: It's so small. Okay. Why don't --

14 THE COURT: Well, he has a copy there.

15 THE WITNESS: I have a copy.

16 MS. HURTIK: You have a copy. You can see it.

17 THE COURT: Yeah, he can see it.

18 MS. HURTIK: I don't think I'll use this on here.

19 BY MS. HURTIK:

20 Q But okay. These are bate stamped if you will recall on your

21 previous testimony on the bottoms. And it will say DVC and it's got

22 some numbers.

23 A Yes.

24 Q And can you tell me the date of your proposal, this first

25 proposal? And I guess I jumped because I said this first proposal. Is this

1 your first proposal?

2 A I don't know for sure.

3 Q Okay. Did you do this proposal?

4 A Yes.

5 Q Okay. And so based on this proposal, it goes from DVC-247

6 to 249. That proposal the total amount was 94,806; is that correct?

7 A On 249, it says that, 94,806.

8 Q Uh-huh. And so then if you go to 244 to 246, at the top in the

9 center it's circled, a half circle, and it says revised. Do you know whose

10 handwriting that is?

11 A No.

12 Q Do you think you would have written on that?

13 A No.

14 Q Okay. So if you look at it and on the first page if you go

15 down to line item four, lounge, and you go to I think it's like the third

16 line, there's some cross outs. And then there's cross outs for about three

17 lines. Then you skip and then there's two more cross outs. What was

18 the lounge?

19 A The lounge --

20 Q Uh-huh.

21 A -- was a room in the front part of the house.

22 Q Okay. And so it says "remove damaged door system, install

23 new door system." Do you know why you crossed through "removed

24 damaged door system"?

25 A I'm not sure that I crossed through that.

1 Q Okay. Do you think that there was another proposal after
2 this?

3 A I would -- just looking at this, I would think that the proposal
4 after this is the one with their higher numbers, but that's just me looking
5 at numbers.

6 Q Okay. So what I'm having you look at is the second one, the
7 one that is -- that starts from 244 to 246. And at the top it says "revised."
8 And when you get to the back of this, this is actually lower numbers, and
9 it says \$92,084.

10 A Okay.

11 Q Okay. And if you look at the top of this, on every page --
12 well, if you go to the top of it in the upper -- if you're looking down --
13 right-hand corner, it's got a date. What is the date on that?

14 A You're talking about up here?

15 Q Yes.

16 A The date says 8/28/14, but I can't read the smaller date that's
17 up above that.

18 Q Okay. So let me approach --

19 MS. HURTIK: May I approach, Your Honor?

20 THE COURT: Sure.

21 BY MS. HURTIK:

22 Q I want to make sure you're looking at the right thing because
23 I don't think you are. This --

24 A Are you looking for that little date?

25 Q Well, no. What you're looking at is -- okay, I'm having you go

1 to 244. Are you on 244?

2 A This is 244.

3 Q Okay. So there is --

4 A It says 8/28/14.

5 Q Okay. I'm sorry. So the revised one is 241. So go to 241.

6 A And that would be backwards here maybe?

7 MR. BOSCHEE: Which is Exhibit 160 again?

8 BY MS. HURTIK:

9 Q That would be in exhibit -- let's go --

10 UNIDENTIFIED SPEAKER: 158.

11 MR. BOSCHEE: 158.

12 BY MS. HURTIK:

13 Q Let's go back. Let's find out -- because if they're not -- they're

14 not in order on my thing right here. So let's go back. I'll tell you exactly

15 what exhibit it is. It's Exhibit 158. So I had you in 160, but we're going

16 back to 158.

17 A Okay.

18 Q Okay. So on this one, it says "revised" and it's bates stamped

19 241 and 242. This says "revised - 2." Do you recognize the handwriting?

20 A No.

21 Q Okay. And we originally in Exhibit 160, we had 247 to 249

22 which is -- it just says proposal.

23 A Okay.

24 Q That one -- so then you had another revised which was DVC-

25 244 to 246. Now, we have a revised 2. Do you know how many times

1 this was revised?

2 A No.

3 Q Okay. So let's stick on Exhibit 158. What is the total amount
4 of this proposal?

5 A \$92,084.

6 Q And what is the date that you revised this?

7 A The date says 11/5/14.

8 Q Okay. And if you go back to Exhibit 160, what is the date of
9 the original -- what appears to be the original proposal and the first
10 revision?

11 A Is that the number 244?

12 Q That is 247 through -- well, 244 -- 244 to 248 and that is
13 actually -- actually 249, 244 to 249, and that is actually two proposals.

14 A So it -- the date is 8/28/14 --

15 Q Okay.

16 A -- on both of them.

17 Q So do you believe that Exhibit 158 is the actual proposal that
18 your scope of work was prepared from for your contract?

19 A In Exhibit 158?

20 Q In 158 which is dated 11/5/2014.

21 A I can't say for sure.

22 Q Okay.

23 A But I would think so. It looks --

24 Q Okay. So I'd like you to look at this proposal the one that is
25 158 and it's bates stamped 241 through 242 and tell me where the wine

1 room is on this.

2 A There's no wine room.

3 Q Okay. So originally, you weren't doing anything with the
4 wine room doors, correct? Based on this proposal.

5 A Based on this, yes.

6 Q Okay. So that would have been a signed change order that
7 instructed you or made you do the repairs -- not repairs but changes to
8 that wine room, correct?

9 A Yes.

10 Q And to your knowledge, is that the -- one of the biggest
11 changes that were done on your scope of work?

12 A I don't recall if that was.

13 Q Did you walk the job to make sure that -- did you walk the job
14 to check on or supervise your scope of work that your company was
15 doing?

16 A Restate the question.

17 Q Did you walk the job to verify that your crew was performing
18 as you expected --

19 A Yes.

20 Q -- your scope of work?

21 A Yes.

22 Q Okay. And did you do it at the end of your work or did you
23 do it just throughout the process?

24 A Throughout.

25 Q Okay. So I want you to -- you can put that back. And I'm

1 going to have you go to binder two. And you're going to go to Exhibit
2 220. And Exhibit 220 is bated stamped DVC-388 through 407. You can
3 look at it real quick. Do you recognize this subcontract?

4 A Yes.

5 Q Okay. Under subcontractor initials on the bottom of each
6 page, it says -- it appears to say SB or is that RB? Is that your initials?

7 A That is not my initials.

8 Q Who is SB?

9 A Sonya Bickem [phonetic].

10 Q Okay. So did somebody else review and sign the contract in
11 your office or did you actually approve it and then they signed it?

12 A I approved it and then they signed it.

13 Q And who is Sonya Bickem?

14 A She was my assistant.

15 Q Okay. And can you tell me the date of your subcontract?

16 A The subcontract is dated 10/3/14.

17 Q Okay. So that proposal that was Exhibit 158 that was dated
18 in November, and let's get the specific date, was November 5th, 2014
19 would have been done after your contract was signed, correct?

20 A No.

21 Q Why? Can you tell me why?

22 A I'm looking at the date of the signed contract.

23 Q Uh-huh.

24 A And it's 11/5.

25 Q Okay. So the contract was prepared on October -- or October

1 3rd, 2014. You had a revised bid November 4th. But I believe -- are you
2 looking at DVC-393?

3 A Yes.

4 Q Okay. So it says that Desert Valley signed that contract
5 10/3/2014 and that you signed -- our your company, Sonya -- you said
6 Sonya Bickem?

7 A Yes.

8 Q Signed it on 11/5/2014. So are you sure that that was the
9 scope of work that was part -- was supposed to be this contract?

10 A I'm not sure which scope of work.

11 Q The one dated 11/4.

12 A I can't be sure.

13 Q Okay. So let's go to DVC-39 -- 391 and I'm going to get rid of
14 the zeros so just go to the numbers on the bottom.

15 A Yeah. What number did you say?

16 Q 391.

17 A Okay.

18 Q Okay. So section 6 is about change orders, correct?

19 A Yes.

20 Q Okay. And you said you review the contracts before they're
21 signed, correct?

22 A Yes.

23 Q Okay. So this says it's not anticipated that there will be any
24 change orders on the job. However, if there are, a change order will be
25 written by the project manager or superintendent. And I'm just -- I'm not

1 going to read all the rest, but you can read that. A written change order
2 must be obtained from the office before proceeding with the work and
3 signed both the general and owner and subcontractor. All extra work
4 authorization shall be verified in writing by project manager, company
5 officer, contract administrator or company officer before beginning any
6 work. Failure to receive this authorization before starting any extra work
7 shall relieve the contractor from all responsibilities of payment. Who is
8 that relieving from responsibilities of payment to your company?

9 MR. BOSCHKE: Objection. Calls for a legal conclusion.

10 THE COURT: You could rephrase.

11 MS. HURTIK: Sure.

12 BY MS. HURTIK:

13 Q What is your understanding of that clause? Let's start with
14 that.

15 A That I need a signed change order.

16 Q Okay. And if you don't have a signed change order, do you
17 get paid?

18 A There's a good chance I won't.

19 Q Okay. All right. And who, was your understanding, was the
20 project manager or superintendent?

21 A Daniel Merritt.

22 Q Okay. But you never had any direction from Rob Ramirez?

23 A I don't think I said that. I said I don't recall.

24 Q I'm asking. I'm asking you.

25 A Oh. I don't recall.

1 Q So you -- okay. So you don't recall any conversations or
2 direction from Rob Ramirez?

3 THE COURT: Well, those are two different questions.

4 MS. HURTIK: Yeah.

5 THE COURT: So he can --

6 MS. HURTIK: Okay.

7 THE COURT: Ask him that question not argumentatively.

8 MS. HURTIK: Sure.

9 BY MS. HURTIK:

10 Q So are you aware whether or not all your change orders were
11 signed by Desert Valley Contracting and Mr. Inose?

12 A I don't recall.

13 Q Okay. Did you have problems getting change orders signed?

14 A I don't recall. I got paid.

15 Q Well, okay. A change order is pretty important. So did you
16 have any conversations with Dennis Zachary at Desert Valley Contracting
17 regarding change orders being signed?

18 A I don't recall.

19 Q Did you have any conversations with Rachelle Elliston at
20 Desert Valley Contracting?

21 A Yes.

22 Q Okay. Were they -- what were they regarding?

23 A Various project details. I can't recall exactly what they were.

24 Q Did she ever ask you, do you know or recall, did she ever ask
25 you to sign any change orders?

1 A I don't recall.

2 Q Did she ever ask you whether work was being -- that she
3 received an invoice and it didn't match the scope of work and so there
4 needed to be a change order?

5 A I don't recall.

6 Q At any time were you ever instructed by Desert Valley
7 Contracting to cease work until the change order issue was resolved?

8 A I don't -- I don't recall.

9 Q So at any point, did Mr. Inose start directing you?

10 A Yes.

11 Q When did that happen?

12 A Somewhere toward the end of the project when Desert
13 Valley was no longer --

14 Q So --

15 A -- working with him.

16 Q And was Rob Ramirez and Mr. Inose directing you or was it
17 just Mr. Inose?

18 A I don't recall.

19 Q Okay. So you said you were paid in full. Did you do any
20 work outside of the scope of the contract, this proposal that was -- you
21 looked at which was Exhibit 158?

22 A It was Exhibit 158?

23 Q Exhibit 158 which is in the binder one.

24 A Yes. For the \$92,084?

25 Q Uh-huh.

1 A Yes.

2 Q What did you do in addition?

3 A I don't recall all we did, but we did do the wine room.

4 Q Okay. Was the wine room being -- did you start it when

5 Desert Valley Contracting was still on the project?

6 A Yes.

7 Q Okay. So that was an extra? That was a change order;

8 would that be correct?

9 A Yes.

10 Q Okay. Okay. If you'll go to binder one, Exhibit 159. Okay.

11 This document that's Bate Stamped 240 through 243 what is this?

12 A The change order for the wine room.

13 Q Okay. And the total change order what was the cost of that?

14 A The total change order for that on this proposal is 6,124.

15 Q Okay. And this says that you were deleting certain items

16 from the original proposal, correct?

17 A Correct.

18 Q Okay. And that there was -- so it's saying 23. And if I read

19 this right, it's \$2,366 you deleted. And so then you added the following

20 item but it -- the custom glass doors for \$8,490; is that correct?

21 A Yes.

22 Q Okay. Is this the only change order that was done regarding

23 the wine room?

24 A As far as I know.

25 Q Okay. Do you see on this change order that it's been signed

1 or accepted?

2 A Not on this copy.

3 Q Okay. So were you paid for this?

4 A Yes.

5 Q Were you paid for this by Desert Valley Contracting?

6 A I don't recall.

7 Q Okay. Were you still performing work on the wine room after

8 Desert Valley Contracting was off of the job?

9 A I don't recall.

10 Q If you'll look at the top of this, the change order date. What

11 is the change order date?

12 A January 5th, 2015.

13 Q Okay. Do you know whether Desert Valley -- you said they

14 were still on the project?

15 A I believe they were still on the project.

16 Q Okay. But you believe you -- there's a signed change order

17 for that?

18 A Restate the question.

19 Q Do you think that that --

20 A I'm sorry. I just wasn't listening.

21 Q Sure.

22 A What was your question? Sorry.

23 Q Well, you said getting a signed change order was important.

24 This one isn't signed. Are you aware of a signed change order?

25 A I'm not aware of it.

1 Q So why would you have done the work?

2 A I may have had a signed change order and it's not here. I
3 may have been directed and taken a risk. I don't recall.

4 Q You said that you didn't -- minor things you wouldn't take a
5 risk on but big things you would take a -- you -- I'm sorry. Let me
6 rephrase that. Strike that.

7 So you said you wouldn't take a risk on a large item?

8 A Yup.

9 Q So what do you determine? What do you determine that
10 you'd take a risk on, dollar-wise?

11 A Small items, much smaller than this.

12 Q Well, what's that limit?

13 A Two or 300, maybe \$500.

14 Q Okay. Okay. So if there's change -- if there's no signed
15 change order, then you just did the work and you could not have been
16 paid?

17 MR. BOSCHEE: Objection. Asked and answered.

18 THE COURT: Sustained.

19 BY MS. HURTIK:

20 Q All right. So the wine room, you just saw the change order
21 for that wine room, so it said that you were deleting the hall to closet and
22 the pre-hung solid-core paint grade and the popular door. Okay. So
23 there's a picture of the door. How it was done? Were you present while
24 this was being performed? The work for the wine room?

25 A Not the whole time.

1 Q Okay. So I'm asking because the testimony previously --
2 okay. So was this already framed in for that -- and it was a change that
3 made in January, after the original contract that stuff had to be ripped
4 out that had already been done? Do you understand my question?

5 A No. Restate it.

6 Q Okay. So the original contract did not have the doors for the
7 wine room, the wall, the glass wall, correct?

8 A Yes.

9 Q Okay. Then you got asked that hey, I want to do this glass
10 wall, this is pretty cool, this is what I want, okay? So you bid it, you do
11 the change order, okay. Now do you -- are you aware if it had already
12 been repaired and then the change was done?

13 A There was a wall there that had to be removed, so that
14 repair, that I know of, had not been done.

15 Q Well, this wasn't a repair, this was a change; so do you know
16 -- the water damage repairs, do -- would you have even known if they
17 had been done to that wall?

18 A I don't know. I can't recall if the repairs were done.

19 Q Okay. Okay. So do you recall -- I'll like you to go to Exhibit
20 176 which would be in binder two. Okay. So is this the change order?

21 A Yes.

22 Q And is this one accepted and approved?

23 A Yes.

24 Q What's the date?

25 A April 22nd, 2015.

1 Q It's signed on the bottom; there's a different date?

2 A Yes, that date is May 7th, 2015.

3 Q Okay. So this one says: delete the following items from the
4 original. So you're deleting the great room, repurpose of two doors.
5 And then you're doing a lounge door there -- well, there's lounge door,
6 and it says lounge door changes to by-parting heavy-duty pocket door
7 system, extensive rework of great room doors to be bi-parting and
8 interlock rabbit [phonetic], includes removal of central rails and rework
9 glass installation to accommodate switched glass.

10 Now there's no price there, but then below that it says add the
11 following items, and this amount at the bottom, minus the -- minus your
12 -- what you were deleting is 8,176, correct?

13 A Yes.

14 Q So was this in addition to -- this was an additional change
15 order, and what was the date of this one?

16 A Of the same change order that just you asked?

17 Q You said --

18 A May, it was signed May 7th, 2015.

19 Q Okay. So the change order date is 4/22/2015, 5/7 is the date it
20 was approved, so did -- was there already -- was this something that
21 repairs had already been done and now they're adding and so there has
22 to be stuff ripped out and changed?

23 A No, repairs hadn't been done, but the doors we weren't using
24 were being repurposed for -- to accommodate the switch glass, so.

25 Q Well, it says delete that. Says delete the repurpose.

1 A It would delete the two doors where they were going to
2 originally go.

3 Q Okay.

4 A And then repurpose them for use elsewhere.

5 Q Okay. I'm a little confused so you're going to have to clarify
6 this for me.

7 A There were two doors in the great room that were no longer
8 to be used.

9 Q Uh-huh.

10 A So we took those doors that we had ordered for the great
11 room and repurposed them for use in the lounge.

12 Q Okay. But then it says switch glass add-on for lounge door,
13 so what did you do in addition? You took the doors from the great room
14 and put them in the lounge, but that says switch glass add-on.

15 A That was -- we repurposed and used those doors and added
16 switch glass to those doors for the lounge.

17 Q Okay. And so my question is, so those are changes to the
18 lounge doors, correct?

19 A Yes.

20 Q Okay. So was it framed, did it have to be changed to a
21 pocket door system that wasn't there before?

22 A Yes.

23 Q Okay. And was that already -- were the repairs already done
24 and to the -- from the flood damage, and then it had to be ripped out so
25 that that could be performed?

1 A I don't recall.

2 Q Or -- okay.

3 A The reframing was not my scope of work.

4 Q But you would have had to coordinate with somebody,

5 correct?

6 A I would have had to provide the materials when they gave us

7 the opening.

8 Q Okay. So would -- you would have had to provide -- would

9 you have had to provide a sketch of what the door was going to look like,

10 what the dimensions were to the general contractor or whoever the

11 framer was?

12 A Yes.

13 Q Are you aware if you did that?

14 A I'm only aware that we were able to put the doors in, so that

15 might night have been in writing but it was communicated to him.

16 Q Okay. So I guess that wasn't my question. My question was

17 did you provide sketches or do you provide sketches with dimensions so

18 that the framer knows what the door's going to look like and how they

19 need to frame it out?

20 A Sometimes.

21 Q Okay. So I guess I'll ask it a different way. Why wouldn't you

22 do that?

23 A Because it's -- I need an opening that's -- I don't need to

24 sketch it, I just need an opening a certain size, width and height, and if

25 they can do it just from a -- a number, there's no sketch needed.

1 Q On this change order, where's your numbers to tell them
2 what is needed?

3 A They're not on there.

4 Q Well, so how would they know?

5 A They would have asked me and I would have given them that
6 number.

7 Q Nothing in writing?

8 A Sometimes, no.

9 Q How often not in writing?

10 THE COURT: So why does that question matter in this case?

11 MS. HURTIK: Because I'd like to know how they would
12 understand what to frame it out. He hasn't given them any specifics.
13 He's just saying that he told them. There's no --

14 THE COURT: Well, he doesn't recall from what -- five years
15 ago, I guess.

16 MS. HURTIK: Okay.

17 THE COURT: Do you recall whether you gave them a sketch
18 or whether you gave them a measurement?

19 THE WITNESS: I do not recall either one.

20 THE COURT: Okay.

21 THE WITNESS: I would have -- I would -- somehow, they
22 would have had to sized to frame an opening, and then I would have fit
23 the doors in.

24 MS. HURTIK: Okay.

25 ///

1 BY MS. HURTIK:

2 Q So when you -- Desert Alley was off of the project and you
3 were working for Mr. Inose directly, did you have a new contract signed
4 with Mr. Inose for any other work that you performed?

5 A I don't recall.

6 Q Does the contractor's board usually require that you have
7 documentation, a contract?

8 MR. BOSCHKE: Objection. Calls for speculation and a legal
9 conclusion.

10 MS. HURTIK: Well, you've been -- okay. So let me ask it a
11 different way. You've been --

12 THE COURT: So that's sustained.

13 BY MS. HURTIK:

14 Q You've been a contractor for -- I think you said --

15 THE COURT: Well, we've already gone over that. Just ask
16 him a new question.

17 MS. HURTIK: I am, Your Honor.

18 THE COURT: Well, no, you were going to ask him how long
19 have you been a contractor --

20 MS. HURTIK: You're anticipating.

21 THE COURT: -- and he's already testified about that, so I --
22 ask him a question related to this lawsuit.

23 BY MS. HURTIK:

24 Q So you never had any conversations, I just want to ask one
25 final time on this, with Mr. Zachary regarding the job?

1 A Mr. Zachary?

2 Q Yes. Dennis Zachary.

3 A I'm -- I'm not sure who that is.

4 Q Desert Valley Contracting, the only person that you -- tell me

5 who you talked to at Desert Valley Contracting during this project.

6 A Daniel Merritt and Rachel or Rachelle, I don't remember her

7 last name.

8 Q Okay. So when Desert Valley was removed from the project,

9 did you have change orders that had not been signed and you were

10 waiting to get signed to perform work on?

11 MR. BOSCHEE: Objection. Asked and answered.

12 THE COURT: Sustained.

13 THE WITNESS: I don't recall.

14 THE COURT: Sustained. So when I say sustained you don't

15 have to answer.

16 THE WITNESS: Oh, sorry.

17 THE COURT: That's okay. That's okay, though.

18 MR. BOSCHEE: So he gave the same answer he gave the last

19 time, so.

20 THE COURT: Yeah, yeah. I mean -- yeah, that's fine.

21 MS. HURTIK: Okay. I don't have any other questions.

22 THE COURT: Okay.

23 MR. BOSCHEE: Maybe three, three follow-up, Judge, real

24 fast.

25 THE COURT: Those are famous last words.

1 MR. BOSCHEE: I know especially for me, right?

2 THE COURT: When an attorney says three minutes.

3 REDIRECT EXAMINATION

4 BY MR. BOSCHEE:

5 Q You testified earlier that you're paid in full for all the work
6 that was performed, whether there was a signed change order or not;
7 you remember that?

8 A Yes.

9 Q Okay. You were paid in part by Desert Valley and part by
10 Eugene Inose directly; is that fair?

11 A Yes.

12 Q Okay. Now HyBar had lien rights had the work not been paid
13 for that was performed at the house, didn't they?

14 A Yes.

15 Q Okay. You didn't lien the project, did you?

16 A I did not.

17 Q Okay. You never pursued any legal action against either Mr.
18 Inose or Desert Valley for nonpayment for breach of contract, did you?

19 A I did not.

20 Q Okay. Do you have Exhibit 1, binder number 1 still in front of
21 you?

22 A Yes.

23 Q Go to Exhibit 162 real fast. I saw that when you were flipping
24 to another exhibit and it popped a question into my head.

25 A Okay.

1 Q Okay. Do you see on Exhibit 162 where that's another
2 change order, I believe; is that right?

3 A If it's Number 251?

4 Q I believe that's right. Is he looking at the right one? Or it's an
5 invoice, okay, about a change order.

6 A That's an invoice.

7 Q Invoice of the change order. Do you see where at the bottom
8 there it says approved per day?

9 A Yes.

10 Q Okay. Isn't it in fact true that every change order, every
11 written change order that you submitted was approved by Desert Valley?

12 A I don't recall.

13 Q Okay. Well, let me ask you a different way. Do you recall
14 Eugene Inose ever signing a change -- ever seeing a change order signed
15 by Eugene Inose directly?

16 A No.

17 Q Okay. Any change orders that were signed were signed by
18 somebody at Desert Valley; is that right?

19 A Yes.

20 Q Okay. You -- counsel asked you a question about your bid
21 limit; do you remember that?

22 A Yes.

23 Q Okay. Did you work over \$500,000 on this project?

24 A No.

25 Q Okay. You ever been in trouble with the contractor's board

1 for going -- for exceeding your bid limit?

2 A No.

3 Q Okay. On -- counsel asked you some questions about an
4 exhibit, about change orders and you looked at the contract and if there
5 was a change order there'd still have to be something in writing, and
6 there was some questioning about taking a risk; do you recall that?

7 A Yes.

8 Q Okay. You didn't perform any work, change work or work
9 from your proposal, without expressed direction from the project
10 manager, did you?

11 A Not that I recall.

12 Q Okay. And every -- and all the work that you did was
13 submitted to the Desert -- to Desert Valley and the project manager who
14 was Danny Merritt in writing, wasn't it?

15 A Ask the question again?

16 Q All of -- you --

17 THE COURT: So he's not adverse to you, I don't think --

18 MR. BOSCHKE: Right.

19 THE COURT: -- so you --

20 THE WITNESS: No, I just -- I wanted to --

21 MR. BOSCHKE: No, I just -- yeah, I'm just trying to --

22 THE COURT: I'm trying to tell him --

23 MR. BOSCHKE: Yeah.

24 THE COURT: -- stop asking leading questions because you're
25 not a hostile witness.

1 THE WITNESS: Okay.

2 MR. BOSCHKEE: But he's a third party, so -- but okay, I'll --

3 THE COURT: But he's not hostile.

4 MR. BOSCHKEE: No, he's not.

5 THE WITNESS: I'm not hostile to either one of you.

6 MR. BOSCHKEE: And I don't think I'm asking leading
7 questions but -- maybe a little bit.

8 BY MR. BOSCHKEE:

9 Q My question, basically, was your understanding, I think, for
10 your testimony was the project manager was Daniel Merritt; is that right?

11 A Yes.

12 Q Okay. That was the --

13 THE COURT: He testified to that --

14 MR. BOSCHKEE: Okay. Right.

15 THE COURT: -- numerous times.

16 MR. BOSCHKEE: I understand.

17 BY MR. BOSCHKEE:

18 Q And all of the change orders that you've testified about and
19 that we've seen in evidence were submitted to Mr. Merritt; is that right?

20 A Yes.

21 Q And Desert Valley? Okay. Did you do any work that you can
22 recall that was outside either the proposal that we looked at or the
23 change orders that you submitted to Desert Valley?

24 A No, not that I recall.

25 Q Okay. And the doors that you testified to, there were going

1 to be doors in one room and then they were repurposed for another
2 room; you remember that?

3 A Yes.

4 Q Okay. That was, again, something that was signed off on by
5 Desert Valley before you actually repurposed those doors; is that right?

6 A Yes.

7 Q Okay. While you were -- after Desert Valley left the project,
8 do you recall you got a letter? We don't have to look at the exhibit, per
9 se, but you got a letter from them basically telling you not to work on the
10 project? Do you remember that?

11 A Yes.

12 Q Okay. Had you stopped working at the project at that point
13 and not been paid, you would have still been owed money, right?

14 A Yes.

15 Q Okay. And you would have had lien rights against the
16 property?

17 A Yes.

18 Q And a claim against Desert Valley?

19 A Yes.

20 Q Okay. But in spite of that letter you kept working, got paid,
21 and were paid for all the work that you did?

22 A Okay.

23 MR. BOSCHEE: I have no further questions, Your Honor.
24 That was close to three minutes.

25 THE COURT: Attorney time and the rest of our times.

1 MS. HURTIK: I just have one question.

2 THE COURT: That's famous last words.

3 RECROSS-EXAMINATION

4 BY MS. HURTIK:

5 Q So Exhibit 174 you were just asked about, so if you'll look at
6 that, it's got --

7 THE COURT: What is that -- you mean the --

8 MS. HURTIK: That's in that binder --

9 THE COURT: Okay.

10 THE COURT: Oh, the --

11 MS. HURTIK: -- 2.

12 THE COURT: -- letter exhibit?

13 MS. HURTIK: 174.

14 MR. BOSCHEE: I don't think I asked him about 174. Did I?

15 THE WITNESS: Okay.

16 MR. BOSCHEE: I assume again it was 170 -- okay.

17 THE WITNESS: 174, I haven't looked at before.

18 MS. HURTIK: I thought you did.

19 MR. BOSCHEE: No. Huh-uh. I don't think so.

20 THE COURT: He asked about Exhibit 162.

21 MR. BOSCHEE: I asked him about 162.

22 MS. HURTIK: Oh, well.

23 THE WITNESS: Yeah. Yeah.

24 MS. HURTIK: Let me ask you, because I thought he said that.

25 I don't know. Maybe I was just --

1 THE COURT: Well, he said 162.
2 BY MS. HURTIK:
3 Q Okay. So do you have 174?
4 A I have 174 in front of me.
5 MS. HURTIK: Do you, Your Honor?
6 THE COURT: I do, yes.
7 BY MS. HURTIK:
8 Q Okay. So this is a service paperwork, and it says 8/8/2014,
9 and it says under scheduled time, do you see that handwriting? Is that
10 your handwriting?
11 A No.
12 Q Okay. Do you recognize that handwriting?
13 A No.
14 Q Okay. And it say scheduled time, if you look under that, do
15 you see first trip, three-hour total, guys, two times 1.5?
16 A Okay.
17 Q Okay. And then if you look kind of down into the second
18 column where it says materials needed, it says -- it's -- says it's signed,
19 and then it's got a name under it, and it says Robert Ramirez.
20 A Okay.
21 Q So did you walk the job with Robert Ramirez?
22 MR. BOSCHEE: Asked and answered, Judge.
23 THE COURT: Well --
24 MS. HURTIK: Well, this is based on this document.
25 THE COURT: Well, so it's outside the scope, so yeah, I'm

1 tending -- he didn't ask you about 174. At some point we need to get
2 done, so the objection that the Court's making outside the scope is
3 sustained.

4 MS. HURTIK: Your Honor, it goes -- can I make an objection?
5 Because it goes to his voracity. He says he doesn't -- he never --

6 THE COURT: So let me ask you, there was a limited amount
7 of questioning of Mr. Boschee, you're now on - I don't know if we're on
8 re-redirect or redirect or re-cross, whatever it is though, general rule is
9 you're limited to what was asked the last time. So how is this within
10 what Mr. Boschee asked on that three, five, or six minutes?

11 MS. HURTIK: Because based on what he testified, I asked
12 him a question, whether he had ever been instructed to cease work on
13 the job by Desert Valley. He told me no. He -- Mr. Boschee asked him
14 the --

15 THE COURT: Well, you don't have to argue to me right now.
16 That's okay.

17 MS. HURTIK: No, I know. But Mr. Boschee asked him if he
18 did, and oh, yeah, he's seen a letter, he got a letter.

19 THE COURT: Right. So you could ask him about the letter,
20 but this isn't the letter.

21 MS. HURTIK: Well, the issue is he also said he wasn't paid to
22 do a bid. This is the first walkthrough, this is documentation that this is
23 the first walk-through by HyBar, and in it, it says: list all times so we can
24 send them a bill.

25 MR. BOSCHEE: And what is the balance owed at the bottom

1 say?
2 MS. HURTIK: It -- it's saying --
3 MR. BOSCHEE: Zero.
4 MS. HURTIK: -- list all times --
5 THE COURT: Well --
6 MS. HURTIK: -- so we can send them a bill.
7 THE COURT: -- so, Mr. Barlow, do you --
8 MS. HURTIK: It doesn't say it's the bill.
9 THE COURT: Do you recognize any of the handwriting on
10 that document?
11 THE WITNESS: None.
12 THE COURT: Okay. He -- I mean, this isn't his -- yeah, the
13 underlying document's his service paper, but these --
14 Did you take these notes?
15 THE WITNESS: I did not.
16 THE COURT: Have you ever seen these notes before?
17 THE WITNESS: No.
18 THE COURT: That you remember? Okay.
19 THE WITNESS: Not that I recall.
20 THE COURT: He -- I mean, this isn't him. So --
21 MS. HURTIK: All right.
22 THE COURT: -- thank you, Mr. Barlow. You're done,
23 hopefully.
24 And there's no need to get upset with me. I mean, I don't -- I
25 asked you, here's the general rule, you're generally limited, why is this

1 an exception, and you gave me no reason why it's an exception. So
2 who's next?

3 MS. HURTIK: Rachelle Elliston.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you, sir. Thank you for visiting. You're
6 welcome to hang out, too, it you'd like.

7 MR. BOSCHEE: Thanks, Russ. See you soon. Thanks, Russ.

8 THE WITNESS: Have a good day.

9 MR. BOSCHEE: And congratulations, Russ.

10 THE COURT: Yeah, yeah, that, too.

11 THE CLERK: Please raise your right hand.

12 RACHELLE ELLISTON, PLAINTIFF'S WITNESS, SWORN

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

15 THE WITNESS: Rachelle Elliston, R-A-C-H-E-L-L-E, Elliston,
16 E-L-L-I-S-T-O-N.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MS. HURTIK:

20 Q Okay. Ms. Elliston, how long have you worked for Desert
21 Valley Contracting?

22 A Seven years.

23 Q Okay. And do you work for more than one entity that is
24 owned by the same owners of Desert Valley Contracting?

25 A SERVPRO, we also own a SERVPRO.

1 Q Okay. And what is your job title?
2 A Operations manager.
3 Q Okay. And at the time of the -- where -- Eugene Inose's
4 house restoration, and what was your job title?
5 A I was just moving up to become the operations manager.
6 Q Okay. How were you involved in this project?
7 A I was involved by helping put the contracts together, the
8 billings, and sending the subcontractor contracts to them.
9 Q Okay. So tell me what your -- who was your -- who were you
10 reporting with or working with on the -- on Mr. Inose's house?
11 A So it was our whole team, our admin team, our owners,
12 Danny.
13 Q Okay. And did you -- how did you get this job?
14 A SERVPRO Henderson got a water flood, and they called us
15 out.
16 Q Okay. So SERVPRO of Henderson is not owned by the same
17 owners at Desert Valley Contracting?
18 A No.
19 Q Okay. So your company did not perform the original
20 remediation, correct?
21 A Correct.
22 Q Okay. So when you guys were called out, did you have any
23 conversations throughout the project or when you were first called out
24 with Mr. Inose?
25 A No, I didn't have any conversations with him until we had the

1 contract signed and we were starting the work.

2 Q Okay. Did -- was there any instructions to you that certain
3 subcontractors had to be used on the project?

4 A Yes. Daniel let us know that Eugene had special
5 subcontractors build the house and he would like the same ones to come
6 back out.

7 Q Okay. Did you use all of the same subcontractors, to your
8 knowledge, that originally built the house?

9 A Yes.

10 Q Okay. And was that -- and to your -- you never had any
11 conversations with Mr. Inose regarding that, just with Daniel Merritt?

12 A Correct.

13 Q Okay. So were there delays on this project?

14 A Yes.

15 Q Okay. What was the cause of the delays?

16 A Some of the delays were the material being changed, the
17 colors, tile order delay, change orders being done in the home.

18 Q Were there a lot of change orders on this project?

19 A Yes.

20 Q Okay. Did -- who was making the change orders? Who was
21 directing the change orders?

22 A It was Eugene and Danny. They would conversate. Eugene
23 would say what he wanted done and Danny would direct us, this is going
24 to be getting done, he had a conversation with Eugene.

25 Q Okay. Was there a designer involved on this project?

1 A Correct. Yes.

2 Q Okay. Did -- were you ever out on the project?

3 A Yeah, I've been out there.

4 Q Okay. And how often would you go out to the project?

5 A I would go out there several times a week.

6 Q Okay. And why were you going to the project?

7 A To check on it, to make punch lists, to make sure the

8 subcontractors were getting things done in a timely fashion, take

9 pictures.

10 Q Okay. Did you have any complaints from Mr. Inose?

11 A Yeah, he complained all the time.

12 Q Okay. What kind of complaints?

13 A This wasn't done fast enough, this wasn't right, he wanted to

14 change this, didn't like the paint color that they originally approved.

15 Q Okay. So there were change orders that were being made

16 that were after things were completed or before things were completed?

17 A A little bit of both.

18 Q Okay. So were you there, I mean, did you ever ask Mr. Inose

19 to sign change orders because they weren't getting signed?

20 A Yes.

21 Q Okay. Did you do that in a personal conversation with Mr.

22 Inose?

23 A Yes. I told him there's been a ton of changes on there, that

24 we need to draw the line and sit down and get some changeovers

25 signed.

1 Q Okay. And why was that?

2 A Because too many things were changing.

3 Q Okay. So it was increasing the price?

4 A Yes.

5 Q And in a normal -- so when you have -- when SERVPRO or

6 Desert Valley, let's go with Desert Valley does a job, do you normally do

7 an estimate first?

8 A Correct.

9 Q Okay. And if it's an insurance claim, how does it work?

10 A We usually submit all the subcontract bids and the estimate

11 to the insurance company, they approve it, any change orders we submit

12 to the insurance company throughout the job, and at the end we send

13 them in a supplement with everything to back it up.

14 Q Okay. And so do you do any work until the insurance

15 company approves it, for Desert Valley Contracting?

16 A No.

17 Q Okay. And do you usually leave the claim open until the

18 project or the job is completed?

19 A Absolutely.

20 Q Okay. In this case, was the claim closed at some point?

21 A It was closed.

22 Q Was it closed prior to the work being completed?

23 A Yes.

24 Q Okay. Did that limit when -- did that give you a limit to the

25 amounts of money that could be used to do changes?

1 A Yes.

2 Q Okay. Did you have conversations with Mr. Inose regarding
3 that?

4 A Yes. Since the claim was closed, that he would need have to
5 pay out of his pocket because there's no insurance company to go
6 supplement to that.

7 Q Okay. So you advised him that he was going over the
8 amount of the original estimate?

9 A Correct.

10 Q Okay. And what was his response?

11 A Just get it done.

12 Q Did he say he'd pay you?

13 A Yes.

14 Q He said he'd pay you what any -- whatever was over the
15 contract?

16 A Correct.

17 Q Okay. When you asked him to sign change orders, did he
18 sign them?

19 A No.

20 Q Did he tell you why he wouldn't sign them?

21 A Him and Danny were going to sit down and have a meeting
22 and go over it all.

23 Q Okay.

24 A And we just never got to that point.

25 Q But did you have any meetings at his house with him to get

1 him to sign change orders?

2 A I did, I tried to go over there and talk to him about it, to get
3 him to a meeting so we can sit down and go over all the changes, so that
4 he would understand our part as a construction company.

5 Q Okay. And what happened at that meeting?

6 A I arrive -- he called me that morning and told me to come
7 alone. We could -- maybe me and him could work this out. He had me
8 put all my electronics in the little room as you pull in on the side. We
9 walked the house. He explained to me if we don't get this property done
10 that he's going to sue us. I left immediately and I call our owners and
11 then we called you.

12 Q Okay. All right. So --

13 THE COURT: Hold on one second. That was a lot for me to
14 write down. Just one second. Say that answer again, I'm sorry, I
15 couldn't write fast enough.

16 THE WITNESS: Where did you stop at?

17 THE COURT: Say that again?

18 THE WITNESS: I said where did you stop at?

19 THE COURT: You said come over, he had you put your
20 electronics and something --

21 THE WITNESS: Inside of the -- as you drive up in the
22 driveway there's a little room on the left-hand side, I believe. We put all
23 my electronics in there, phone, keys, and we went in the house. We
24 walked the property. He advised me that we needed to get it done in a
25 timely fashion or he was going to sue us.

1 THE COURT: And then you said you told someone.

2 THE WITNESS: I left immediately, got my things, called our
3 owner, and called Carrie.

4 THE COURT: Thank you.

5 BY MS. HURTIK:

6 Q Okay. So prior to that, when there were any problems on the
7 project, did you have any discussions with Mr. Inose regarding over-
8 ordered tile, things like that?

9 A Yeah, I was trying to work out some change orders with him.
10 I said, you know, instead of having to pay out of your pocket, we could
11 return the tile, pay for the restocking fee, use that money towards the
12 change-orders. You know, I was trying to help the situation.

13 Q Okay. So on the extra tile that had been ordered, where was
14 that tile supposed to go? Do you recall?

15 A Well, originally, it was ordered for the house, but obviously
16 was a huge extra order, and that was -- he said no, that was supposed to
17 go into another office building or a house or something they were
18 building.

19 Q Okay. So they told you guys how much to order?

20 A Correct. We got all of our ordering from DYBA.

21 Q From DYBA.

22 THE COURT: DYBA, is that the designer?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 ///

1 BY MS. HURTIK:

2 Q So you were told that that tile was supposed to be used
3 elsewhere, and so he did not want you to send it back?

4 A Correct.

5 Q Okay. So were there any other situations where you ordered
6 stuff and there was an issue getting the materials?

7 A There was a few times where I would order material and the
8 colors would change and I would have to stop the order, or, you know,
9 say, you know, please don't process the order, it's been changed to this.

10 Q Okay. Was there any incidents, like on the tile, was there any
11 delays in getting the actual tile?

12 A Yes. That had to be shipped from, I believe Italy or
13 somewhere, and it had to go through customs, so that took a long, long
14 time.

15 Q Okay. And so throughout this time Mr. Inose was getting
16 upset?

17 A Correct.

18 Q Okay. Did you have any situations where the designer and
19 Mr. Inose went on their own and picked out materials and then an
20 invoice was just sent to you and it wasn't actually within the scope?

21 A Correct. Tina and Eugene would meet at, you know, different
22 supply houses. She would go over colors, materials, options with him.
23 She would place an order, usually send us the invoice. I would check it
24 and make sure that it was something that we could order, and then go
25 from there.

1 Q Okay. So they would place the order without approval?

2 A Yes.

3 Q So did you have an instance where you had more money
4 was being spent than what was allowed for in the contract?

5 A Yes.

6 Q Okay. Did you have lots of those instances?

7 A Yes.

8 Q And what did you guys try to do to control that?

9 A I tried to tell Eugene we're ordering out of control, maybe we
10 don't do this in the home to compensate -- to compensate for these
11 things that have already been ordered. I was just trying to work out the
12 situation.

13 Q Okay. And to your knowledge, was this upgrades from the
14 original construction

15 A Yes.

16 Q Okay. Did you guys also -- was there an instance where you
17 had to pay out of pocket to fly his designer to California to meet with Mr.
18 Inose?

19 A Yeah, they didn't like anything here in Las Vegas.

20 Q Okay. So how many times -- so why didn't she just drive out
21 there or fly on her own?

22 A Oh, I have no idea. Eugene just said we -- or we need to fly
23 the -- DYBA out there, she was going to look at materials in LA with him,
24 they had better options, things like that.

25 Q Okay. And did your contract -- was there provisions in your

1 contract for that?

2 A No.

3 Q Okay. So what did you guys do when that happened?

4 A I don't recall, to be honest.

5 Q Okay. So did you send a letter to all the subcontractors
6 telling them to cease work until you worked out things with Mr. Inose
7 because of the differences?

8 A Yes.

9 Q And did the subcontractors all have contracts with you?

10 A Yes, they did.

11 Q Okay. Did they continue to do work or perform work on the
12 project or did they stop working?

13 A I believe they continued to finish work. They finaled out their
14 permit under us.

15 Q Okay. Now you said you did contracts. Did you do the -- did
16 you just prepare the contracts, or do you actually understand the
17 specifics of the contracts?

18 A A little bit of both.

19 Q Okay. So was Mr. Inose's -- pursuant to your subcontractors,
20 was he supposed to be directing them?

21 A No.

22 Q Who was supposed to directing the subcontractors?

23 A Us.

24 THE COURT: What did you say? Us?

25 THE WITNESS: Us, yes.

1 THE COURT: Is that -- okay.

2 BY MS. HURTIK:

3 Q Okay. Were the subs upset while they were doing work on
4 the project?

5 A Yes, they were a little frustrated.

6 Q Okay. And why were they upset and frustrated?

7 MR. BOSCHKE: Objection. Calls for speculation.

8 MS. HURTIK: The ones that --

9 THE COURT: Sustained.

10 BY MS. HURTIK:

11 Q Okay. So did you have conversations with any of the
12 subcontractors regarding problems on the project?

13 MR. BOSCHKE: Objection. Calls for hearsay.

14 THE COURT: Was the question did you have any
15 conversations?

16 MS. HURTIK: No.

17 THE COURT: So that's a yes or no question. That one's
18 overruled.

19 BY MS. HURTIK:

20 Q You can answer.

21 A Oh, yes.

22 Q Okay. So what was -- since you had conversations with
23 them, what was -- what were the issues that were going on in the house
24 that you were aware of?

25 MR. BOSCHKE: Well, now that calls for hearsay.

1 THE COURT: The linking to the last question does if -- so, but
2 if you don't link it to the last question, I don't think it does. So if you
3 rephrase it, I think you -- okay.

4 MS. HURTIK: Sure.

5 BY MS. HURTIK:

6 Q So what were the problems that you're aware of on the
7 project throughout the time that DVC was out there?

8 A Changes being done.

9 Q Just changes being done?

10 A Yeah. That Eugene would want different items done, that
11 they weren't scheduled that day to do, timelines, things like that.

12 Q Okay. So was it creating a problem with scheduling?

13 A Yes.

14 Q Okay. So was your scheduling a moving target?

15 A Yes. When things change, the schedule changes.

16 Q Okay. Would you have subcontractors -- did you do the
17 scheduling?

18 A I would assist with the scheduling.

19 Q Okay. Who did the scheduling with you?

20 A It would be me and like one of our admins in the office.

21 Q Okay. So if something was changing, would you have
22 subcontractors just show up out there and you'd have to pull them back?

23 A Yes.

24 Q Okay. Did you get calls that contractors that, you know, there
25 was -- related to the scheduling, that there were problems?

1 A Yes.

2 Q Okay. Did you have conversations with the insurance
3 company regarding the change order?

4 A I didn't personally.

5 Q Who did that?

6 A Daniel.

7 Q Okay. So Daniel Merritt?

8 A Yes.

9 Q Okay. So Daniel Merritt. Anybody else would have had
10 conversations with the insurance company besides Daniel Merritt?

11 A Probably Gene or Rob.

12 Q Okay. And you said Rob; who's Rob?

13 A He was a superintendent that was on-site.

14 Q Okay. And was he originally an employee of Desert Valley
15 Contracting?

16 A No.

17 Q So how did he become the superintendent or supervisor on
18 the site?

19 THE COURT: So that -- I don't think she said that that was
20 the case, so the question's leading, but you can ask her who was the
21 superintendent on the site?

22 BY MS. HURTIK:

23 Q Who was the superintendent on the site?

24 A Rob Ramirez.

25 Q Uh-huh. And did Rob Ramirez originally work on the project

1 when it was first built, Mr. Inose's house?

2 A Yes.

3 Q Okay. So would you normally have used somebody that was

4 not from Desert Valley contracting to supervise the project?

5 A No.

6 Q Okay. Why did you use Mr. Ramirez to be the

7 superintendent?

8 A Because it made Eugene feel more comfortable having the

9 same person on the project that originally built his house. He knew

10 basically the ins and outs of the house.

11 Q Okay. Did Mr. Ramirez report or go to the house every day?

12 A He was supposed to. That was his job.

13 Q Did he?

14 A I can't say for sure.

15 Q Okay. Who was responsible for locking up the house?

16 A Rob.

17 Q Were there codes on the house, security codes on the house?

18 A Yes.

19 Q Okay. Did DVC have those cods?

20 A No.

21 Q Okay. Who had -- to your knowledge, who had those codes?

22 A To my knowledge, Rob had the codes. We didn't have any

23 codes.

24 Q Okay. So did you ever get any calls saying that you'd left the

25 house unlocked?

1 A Eugene would call like once or twice saying the house was
2 unlocked, so then we got into a routine of when we left I would call Rob
3 and say we locked the house, now Rob, you can go check it.

4 Q Okay. So Mr. Ramirez was the one that was responsible for
5 checking the house?

6 A Correct.

7 Q Okay. At some point Mr. Ramirez was no longer on the
8 project, correct?

9 A Correct.

10 Q Okay. Who checked the house then?

11 A We would just lock it up at the end of the day. I would check
12 it on the way in or the way out, going to or from work. It was kind of
13 right by my house.

14 Q Okay. Okay. So did Desert Valley --

15 THE COURT: Can I -- can I, Ms. Hurtik, can I pause you one
16 second?

17 MS. HURTIK: Sure.

18 THE COURT: You probably have a lot of time with her, I'm
19 assuming?

20 MS. HURTIK: Not -- oh, okay.

21 THE COURT: That's all I'm -- because I have a lunch meeting
22 which --

23 MS. HURTIK: Sure.

24 THE COURT: -- is fine, but I'm assuming you're not going to
25 end in like five or ten minutes?

1 MS. HURTIK: Probably like ten minutes, but then he'll have --

2 THE COURT: Oh, okay. Well, we can finish the -- I can -- if
3 you finish in ten minutes, that's fine. Yeah, Go ahead. Sure.

4 MS. HURTIK: Yeah, because she's not really the --

5 THE COURT: Okay. No, that's fine.

6 MS. HURTIK: Okay. So what time do you have to leave,
7 Your Honor?

8 THE COURT: Well, I don't -- I need to show up at some point,
9 so --

10 MS. HURTIK: Oh, okay.

11 THE COURT: -- any time before, you know, 12:30's fine.

12 MS. HURTIK: Let's just -- let's break now.

13 THE COURT: That's fine. Yeah.

14 MS. HURTIK: Because I don't want to be there where I'm
15 saying, you know --

16 THE COURT: No, that's fine. Yeah, that's why I said.

17 MR. BOSCHKE: You don't want your ten minutes to be like
18 my three minutes?

19 MS. HURTIK: Yes.

20 THE COURT: Yeah, yeah. So we'll take our lunch break. My
21 meeting should go to one, I think, but come back at 1:15.

22 MS. HURTIK: 1:15.

23 MR. BOSCHKE: Okay.

24 MS. HURTIK: Thank you, Your Honor.

25 MR. BOSCHKE: Okay. Thank you, Your Honor.

1 [Recess at 12:09 p.m., recommencing at 1:23 p.m.]

2 THE COURT: Hey, come on back up.

3 BY MS. HURTIK:

4 Q Okay, Ms. Elliston, if you -- behind you are binders. And I
5 want you to go to Volume 6, Binder 6. Okay, and then if you can go to
6 Exhibit 493. And if you'll just let me know when you're there.

7 A Okay.

8 Q Okay, so at the -- this is an email chain and it's Bates
9 stamped on the bottom, DVC1753. And it goes -- there's two pages of
10 DVC1754. So if you go to the second page, the DVC1754, and there's an
11 email dated August 13th, 2015. Can you read that email?

12 A "Inose Team. I have spoken to Eugene and he would like a
13 mandatory meeting at his house every Wednesday at 8:00
14 a.m. until the job is complete. We are all really busy and
15 really close to completing this project. Please let's all be
16 there and wrap this job up. Once your trade is complete you
17 will not have to attend. Please let me know if you have any
18 questions. Thank you all and have a great weekend."

19 Q Okay, and do you know when was that sent?

20 A It says August 13th, 2015.

21 Q Okay, and who did you send it to?

22 A I sent it to Steve Riley, Roy, or Gordy at Summit, Daniel, Ross
23 Barlow, Tina, Troy Williams, Dennis, Greg Lester, and Eugene.

24 Q Okay.

25 A And then Rob as well.

1 Q Okay. And so you said this was sent to Rob as well?

2 A I believe he's the email rnnr1702.

3 Q Okay. And this also says Ross Barlow who was HyBar.

4 A Let's see, Steven Riley, Daniel Merritt, Roy, Greg Lester, no I

5 don't see, oh, yes, I do see Russ Barlow.

6 Q Okay, so when you sent this back, did you have a response

7 from the subcontractors?

8 A Let's see. Is this the whole email string?

9 Q I don't know. But I'm -- do you recall?

10 A I believe I did. I believe every started to be onsite every

11 Wednesday.

12 Q Okay. So and did Mr. Inose meet every Wednesday with you

13 guys?

14 A Most of the Wednesdays.

15 Q Okay, so he was there almost every week?

16 A Yes.

17 Q Okay. And then if you turn to the first page of that, which is

18 the DVC1753. There's on the bottom one, you sent another email, and

19 that one is September 8th, 2015.

20 A Correct.

21 Q You said "Inose Team, Eugene is in town. He would like to

22 meet onsite tomorrow morning to go over any and all questions. Please

23 all -- all me -- all meet". It says please all me.

24 A Typo. Yeah.

25 Q At 8:00 a.m. Thank you. And it's -- your name's below that.

1 A Correct.

2 Q So you were continuing to have meetings with the

3 subcontractors and Eugene on Wednesdays.

4 A Correct.

5 Q and whenever he came into town?

6 A Correct.

7 Q Okay. And at those meetings, what happened at those

8 meetings?

9 A We would go over what's completed, what needs to be fixed,

10 what wasn't completed, any changes, timelines, just the project in

11 general.

12 Q Okay, so then if you're going up this, you see that there's an

13 email just above that from Daniel Merritt. And it's sent to you.

14 A Correct.

15 Q And there's a bunch of cc's, and this one is October 20th,

16 2015. And can you tell me what this one was about?

17 A Please send all change orders is the subject. Team we all --

18 team, we need all change orders for this project sent over to us. That

19 means anything that's above and beyond your original contract that is

20 not already approved and signed by us. So we can review everything.

21 Please do this as soon as possible and let me know if there's any -- if

22 there's going to be any issues, or if you guys have any questions. Daniel

23 Merritt.

24 Q Okay, so is it -- so you were having meetings regarding

25 change orders, and with all the subcontractors, and Mr. Inose was

1 included in all these meetings?

2 A Not every single meeting. Like I said, he would come up
3 periodically.

4 Q Okay, and -- okay. So Mr. Inose was aware of change
5 orders, you believe?

6 A Yes, he was included in the email and he didn't respond that
7 there's no change orders.

8 Q Okay, and, but he still wouldn't sign them?

9 A Correct.

10 Q Okay. And then if you go up to the top, there's another one
11 on October 20th, 2015. This one is -- it appears to be from Troy
12 Williams. Who is Troy Williams?

13 A Hold on one second. He was one of the subcontractors.

14 Q Artesia Cabinets?

15 A Yes.

16 Q Okay. And so Daniel, to my knowledge, you have all of our
17 outstanding items, which you -- which are for the pool, bath shelving,
18 bench and the base bar -- bar base cabinetory [sic]. Please let me know
19 if you need any other information from me. Thank you. Troy.

20 Okay, so but then at the top there's another one, and you're
21 cc'd on it, and it's on the same day. It says, I know, Troy. But can you
22 please just send over whatever has not been signed and sent back? We
23 just want to make sure we have one -- we have an one solid email.

24 A Correct.

25 Q Okay, so were you having trouble getting change orders

1 from the subcontractors?

2 A At a certain point we were. Towards the end they -- they
3 were kind of weary whether they should send it us, or they send it to
4 Eugene. Who do they answer to.

5 Q Do you know why?

6 A Probably because Eugene was the one dealing with them
7 more.

8 Q Okay, but you were still on the job --

9 A Correct.

10 Q -- at this time.

11 A Yes.

12 Q Okay, all right. I don't have any further questions for her.

13 A Thank you.

14 MR. BOSCHEE: I will acknowledge that was closer to ten
15 minutes, than mine was three minutes.

16 THE COURT: That was pretty --

17 MR. BOSCHEE: So, it was --

18 THE COURT: -- very accurate. Yeah.

19 MR. BOSCHEE: I have to fall on that grenade.

20 CROSS-EXAMINATION

21 BY MR. BOSCHEE:

22 Q You've -- good afternoon. My name is Brian Boschee. I
23 deposed you a while back. I had one question that was unclear from my
24 notes. And -- and you testified about it right at the beginning of -- of
25 your examination. I was unclear as to who actually employs you. Who

1 do you -- who pays your salary?

2 A Desert Valley Contracting.

3 Q Okay. And what is this, the SERVPRO entity, the different
4 one that you had talked about earlier, that was not the one that came out
5 to site; how are they related?

6 A How is SERVPRO Henderson related to us?

7 Q Yes.

8 A They're not.

9 Q Okay. And then there was another SERVPRO entity I thought
10 you had mentioned in that, that was different than SERVPRO Henderson.

11 A So we own SERVPRO of downtown Las Vegas. It's a
12 franchise --

13 Q Okay.

14 A -- that's personally owned.

15 Q And when you say we, that's Desert Valley Contracting.

16 A Well, Dennis and Jodi, the own it.

17 Q Okay. That was -- that was the part that I was a little hazy
18 on, so I appreciate I clarifying that for me. We've talked a lot about Rob
19 Ramirez. Do you recall that from Ms. Hurtik's examination?

20 A Correct.

21 Q Rob Ramirez was actually an employee of Desert Valley
22 Contracting, wasn't he?

23 A At one point, yes.

24 Q On this project?

25 A Yes.

1 Q When he was a supervisor on this project, he was actually
2 employed, not as a consultant, but as an employee of the company,
3 right?

4 A Correct.

5 Q Okay. You testified earlier that Rob was the one locking up
6 the house every night, because you guys didn't have the codes. Do you
7 remember saying that?

8 A Correct.

9 Q Okay. And then at some point Eugene started complaining,
10 and so I think you testified that you guys started locking up the house,
11 and Rob just had to double-check it.

12 A Correct.

13 Q Is that fair? Okay. How did you start locking up the house, if
14 you didn't have the codes?

15 A I would just lock the door and leave. I didn't have the code to
16 alarm it.

17 Q So you just didn't set the alarm ever?

18 A Yes.

19 Q Okay.

20 A I didn't come in.

21 Q So then was it Rob's responsibility to go back to the house
22 and set the alarm or --

23 A Yes.

24 Q Okay. Now my next question is, Rob was an employee of
25 Desert Valley at -- at that time. But you guys didn't get the codes from

1 him to -- to facilitate that?

2 A No, the only reason he was an employee for us, was because
3 he was Eugene's superintendent that built the home. So Eugene trusted
4 him more. So he's the one that had the codes.

5 Q Understand. Rob Ramirez wasn't the only supervisor from
6 Desert Valley on the project for -- for the duration that you guys were out
7 there, was he?

8 A No, we've had some of our own supervisors on-site.

9 Q Okay. And -- and Danny was out there a lot, too, I think you
10 said.

11 A Correct.

12 Q Okay. You guys -- you said you're familiar with -- with your
13 agreement, your estimate for the scope of work Desert Valley did on this
14 project? Sort of?

15 A Sort of.

16 Q Well, the contact certainly.

17 A Yes.

18 Q I think you were. Okay. if I -- if I said to you this was a 10
19 and 10 agreement, would you understand what that meant?

20 A Yeah, 10 percent overhead, 10 percent profit.

21 Q Right, okay. And the original estimate, I think was around a
22 million three. There's a specific document with the number in it --

23 A Yeah.

24 Q -- but a million three and change, whatever.

25 A Okay.

1 Q Okay. So ten percent overhead on a million three, I'm not --
2 I'm not a math guy, per se, but you're probably better at this than I am, is
3 about \$130,000, right?

4 A Oh, I would honestly do it on my calculator, just to confirm.
5 I'm not going to believe me.

6 Q Okay.

7 THE COURT: I'm not a math person either, but I can ten
8 percent of 1.3 million is 130, I think.

9 BY MR. BOSCHEE:

10 Q That's about as close as I was going to get.

11 A Yeah, I'm just -- I would always do it on the calculator,
12 though.

13 Q Okay. Sitting here right now, do you have a recollection of
14 how much money Rob Ramirez was paid as a supervisor before he was
15 let go?

16 A I believe it was around 100 and something thousand dollars.

17 Q Okay. And that was money that was paid to him out of
18 insurance proceeds, wasn't it?

19 A Yes.

20 Q Okay. As an employee of Desert Valley, to supervisor this
21 project?

22 A Correct.

23 Q Okay. I think, and my handwriting is atrocious, so bear with
24 me for a second. I think you said that you -- you report, or your -- your
25 supervisor, at least with respect to this project, while you were kind of

1 training, was Danny, right?

2 A Correct. Well, he was our estimator on, and not the
3 supervisor on the project.

4 Q Okay.

5 A He was the estimator.

6 Q That's what I guess what I was getting at. It sounded like
7 from what you were doing at that time, you worked with Danny primarily
8 because he was the estimator?

9 A Correct.

10 Q Okay. I just wanted to make sure I had that. And you used
11 the same subs as -- as many of the same subs as you could, but some of
12 them weren't available, right?

13 A Correct.

14 Q Okay. I want to talk about the delays a little bit. And -- and I
15 was a little hazy on -- on something. There were some delays in
16 shipping, I think you testified about, right?

17 A Correct.

18 Q Okay, were there other delays related to scheduling, just that
19 the things got backed up because the scheduling kind of overlapped and
20 people couldn't get out there, or were double booked?

21 A Sometimes the subcontractors were, but that was because
22 things changed. They need different equipment, they need different
23 materials, they need to order new things.

24 Q Sure. Okay. And I think you testified about that. And the
25 reason that the scheduling was -- got -- got messed up a little bit was

1 because of the changes, right?

2 A Correct.

3 Q You guys were the general contractor, though, on this
4 project, weren't you?

5 A Yes.

6 Q Okay, and ultimately the responsibility for the scheduling and
7 scheduling of the subcontractors was Desert Valley's, right? Not
8 Eugene's?

9 A Correct.

10 Q Okay. So with respect to any changes or change orders that
11 came in, ultimately Desert Valley's responsibility is to kind of figure that
12 out and coordinate it with the subs, to make sure that delays don't
13 happen, right?

14 A Well, in fact, if they come from us.

15 Q Sure.

16 A If they come from Eugene, then that's what he's telling them.

17 Q I want to follow-up on that. I think you testified twice now,
18 actually. I think you said -- you said the exact same thing in your
19 deposition. That the changes that were coming from Eugene were --
20 were almost always in conversations with Daniel. Like Daniel and
21 Eugene would talk about stuff. Eugene would want something different.
22 Tell Danny, Danny would direct it to get done. Is that pretty fair?

23 A I would --

24 Q For the most part?

25 A -- yeah. Pretty much.

1 Q Okay. Eugene up until Desert Valley left the project, wasn't
2 dealing directly with -- with a lot of the subcontractors. It was always
3 kind of through Danny as a conduit, wasn't it?

4 A No, I feel like he was dealing with them. When he was
5 onsite, he would deal with them, and tell them what he wanted, when he
6 would attend the meetings.

7 Q Okay. I went through the binders again, over the last few
8 days, and I didn't see a single change order signed by Eugene Inose. Is
9 there one?

10 A Not that I'm aware of.

11 Q Okay. but I did see a whole bunch of change orders that
12 were signed by Danny Ramirez. Are you familiar with those?

13 A I'm not to be honest.

14 Q Okay. When subcontractors would submit change order, if --
15 if we're talking about Eugene wanting things different and changed, the
16 subcontractors would submit change orders to Desert Valley, wouldn't
17 they?

18 A Correct.

19 Q Okay. And what happened next? What would happen to
20 those change orders?

21 A We would usually put them in an estimate. Submit them to
22 the client. The client would sign off on them, and then we would move
23 forward.

24 Q I'm saying what happened on this project. Because you just
25 told me that Eugene didn't sign any of the change orders. So when the

1 subs sent you the change orders on this project, what happened that's
2 different, than what normally happens?

3 A The subcontractors were talking to us and Eugene. So they
4 were being confused as far as direction. When to go, how to start, if it's
5 approved, if it's not approved.

6 Q Okay. But the -- the subcontractors ended up doing all of the
7 work, didn't they? That was in the change orders?

8 A To be honest, I don't know.

9 Q Okay. Well, you were -- until Desert Valley left, you, I think
10 testified you were familiar with what was going on with the change order
11 and the contracts that were coming in, weren't you?

12 A Correct.

13 Q Okay.

14 A But I -- I thought you meant at the end, I don't know what
15 happened.

16 Q Oh, yeah, no. After -- after you guys left, I wouldn't, no, that
17 would be rank speculation, and I wouldn't even ask you about that,
18 unless there was some independent reason for you to know. I'm talking
19 about while Desert Valley's on the project. Change orders would come
20 in from the subcontractors. The work got done, but Eugene never signed
21 any of the change orders. So that's where I'm missing -- I'm trying to
22 figure out the gap there. How did those change orders get approved?
23 Or how did those subcontractors end up doing that work, if the owner of
24 the property and the insurance aren't actually signing change orders?

25 A I'm not exactly sure.

1 Q Okay. Did you personally ever submit anything in writing,
2 as it relates to a change order, to the insurance company directly?

3 A Me, no.

4 Q Okay. Did you ever -- and I didn't see an email to this effect
5 until, I want to say it was October or November of 2015. And that was a
6 big email, that we'll talk about in a second. But prior to the -- prior to
7 October, the emails that we were just looking at, did you personally ever
8 send Eugene Inose, an email with change orders from the
9 subcontractors?

10 A I don't believe I personally did, but I verbally would explain
11 to him, we are receiving change orders from the subcontractors, we
12 need to have a meeting, we need to go over them, you need to
13 understand this. We need to make sure it's correct, because also him,
14 as the homeowner, they might be billing for something that he's not
15 approving.

16 Q Sure. Well, that's -- that's the reason that you get written
17 change orders, right?

18 A Correct.

19 Q Is because you want the owner to sign off on the extra work
20 that's being done.

21 A Correct.

22 Q All right. Okay. You also testified, I think I heard this, that
23 you had a conversation with Eugene, wherein that you told him there
24 was extra work, and he said do it, and I'll pay for it. Do you remember
25 saying that?

1 A Yes.

2 Q Okay. When did that conversation take place?

3 A Oh, it was towards the end of the project, because he wanted

4 us to get it done. I don't know an exact date, to be honest.

5 Q Okay. Was it before or after the insurance was closed?

6 A It was probably after.

7 Q Okay. Sitting here right now, do you have an independent

8 understanding one way or another, as to whether any of the change

9 orders were sent by anybody at Desert Valley to the insurance company

10 prior to the insurance being closed?

11 A I -- I honestly don't know.

12 Q Okay. May be a Danny question?

13 A Yes.

14 Q Okay. The conversation that you had with Mr. Inose, was

15 that at the property, or was that somewhere else?

16 A Which conversation?

17 Q The one where he -- the one I just asked you about. The one

18 where he told you he'd pay for the extra material. Just get it done.

19 A I believe that was a phone conversation.

20 Q Okay. You also testified, I think, about the -- about the tile.

21 Do you remember that?

22 A Correct.

23 Q Okay. There was a bunch -- bunch of extra tile ordered.

24 A Yes.

25 Q Do you -- do you know where the tile went initially, once it

1 got to the house? What happened to it?

2 A It was in one of the garages in a pallet ready -- or on several
3 pallets.

4 Q Okay. And I think you talked -- you testified, you said -- you
5 said they -- that was what I wrote down.

6 A Yeah.

7 Q So I just wanted to follow-up on that. They ordered the tile.
8 Who did you mean by that?

9 A DYBA.

10 Q And DYBA is an interior designer, right?

11 A Correct.

12 Q Okay. They're not a licensed contractor in the State of
13 Nevada, are they? That you're aware of?

14 A I -- I don't know to be honest with you.

15 Q Okay.

16 THE COURT: Is DYBA the name of the company?

17 THE WITNESS: It's DYBA Interior Concepts.

18 MR. BOSCHKE: DYBA Interiors.

19 THE COURT: Thank you.

20 MR. BOSCHKE: Sorry, should have been specific.

21 THE COURT: No, that's okay.

22 BY MR. BOSCHKE:

23 Q But DYBA Interiors was the interior designer.

24 A Correct.

25 Q You work with a -- I mean I assume Desert Valley works with

1 interior designers a fair amount, don't you?

2 A Yes.

3 Q Okay. Interior designers don't typically measure flooring and
4 tile, do they?

5 A It depends on if they work closely with the subcontractors.

6 Q Okay.

7 A They would say, hey, subcontractor, you know, this is the
8 kind of tile we're installing. We did this at a last project.

9 Q Okay.

10 A Can you get the measurements? This is the design we want.

11 Q Okay. But the flooring subcontractor is the one who's
12 actually going to have to work with the designer and measure it out and
13 figure all that out, right?

14 A Correct, because they're making the design.

15 Q Right. Because, and ultimately, it's their flooring license
16 that's kind on the hook, if they screw it up. Sitting here right now, do
17 you know for a fact that DYBA Interiors actually ordered the tile?

18 A No.

19 Q Okay. So when you testified about that earlier, was that an
20 assumption, or a guess, or you just don't know?

21 A Well, I know that she sent to me over the email for Tuscany
22 to pay for the order.

23 Q Okay.

24 A So I don't know if she personally went down there and
25 placed it. I don't know if she told the tile guy to place it. I -- I can't

1 answer for that.

2 Q And refresh my recollection, I've -- it's been a minute since I
3 looked at all these binders in any great deal. Who was Tuscany?

4 A The tile -- I believe that was the tile supply house.

5 Q The tile supply place, right?

6 A Yes.

7 Q That -- that supplied the tile for the flooring?

8 A Correct.

9 Q You also testified, I think, if I can read my handwriting again,
10 that -- that Eugene told you at one point that he was going -- that he
11 wanted to use the excess tile for another property of his.

12 A Correct.

13 Q Do you remember that? Okay. When did that conversation
14 take place?

15 A When we were walking the house one time and we were
16 going over some changes, some change orders. I brought up the idea,
17 maybe we can send this tile back, pay the restocking fee. I even went the
18 extra mile, looked into it, called Tuscany to see if they would take it back,
19 because it was a special order. And maybe we could use some of that
20 money to pay for some of the change orders.

21 Q But Tuscany couldn't take it back, could they?

22 A I believe they could for a restocking fee.

23 Q What was the restocking fee?

24 A I believe it was like 15 percent or something.

25 Q Okay. But Eugene -- it's your testimony that Eugene didn't

1 want to do that, because he wanted to use the tile for something else.

2 A Correct.

3 Q Would it surprise you to know that the tile is still in his
4 garage? Five years later.

5 A He just probably didn't do the project.

6 Q Okay. The -- you testified earlier that -- that's it's -- it's
7 standard for you guys -- and when I say you guys, it's Desert Valley to
8 submit the subcontract bids, and the proposal and the estimate, and any
9 change orders, to the insurance company for approval, on a job like this,
10 right?

11 A Correct.

12 Q But you didn't exactly follow that protocol here, did you?

13 A We did at the very beginning. We submitted all the invoices
14 and estimates to the insurance company --

15 Q Right.

16 A -- for approval before we did get started, yes. They came to
17 an agreed dollar amount.

18 Q Right. And that's the estimate that -- that we've seen, it's --
19 it's in evidence.

20 A Correct.

21 Q And that was the amount of money that the insurance
22 company agreed to pay for the -- for the home, right?

23 A Correct.

24 Q Okay. When the insurance closed out, were you aware of
25 another estimate that was submitted to the insurance company?

1 A I believe they were working on the concrete issue, but as far
2 as anything else, no.

3 Q Let's talk about the concrete issue. That's -- that's the
4 driveway, right?

5 A Uh-huh.

6 Q Okay.

7 THE COURT: Is that a yes?

8 THE WITNESS: Oh, yeah, sorry.

9 THE COURT: That's okay. Just so we have a record.

10 BY MR. BOSCHEE:

11 Q The driveway was damaged at one point, wasn't it?

12 A Yes.

13 Q Okay. How was it damaged?

14 A I believe from SERVPRO Henderson heavy equipment.
15 That's from my understanding.

16 Q During the initial remediation before --

17 A Correct.

18 Q -- Desert Valley could get out there?

19 A Yes.

20 Q Okay. How was the -- how was the driveway repair paid for?

21 A I believe we submitted the change order to the insurance
22 company to see if they would cover it.

23 Q Which insurance company, I guess would be --

24 A Fireman's Fund.

25 Q Okay. You -- his homeowner's policy, right?

1 A Correct.

2 Q Okay. It was never subrogated or resubmitted to SERVPRO's
3 insurance, was it?

4 A I -- I honestly don't know.

5 Q Well, it wasn't by you, certainly?

6 A Yeah.

7 Q Okay. That was where I was going. I wouldn't expect you to
8 guess --

9 A Yeah.

10 Q -- as to who -- who did what beyond that. Prior to the end of
11 the project, how many conversations did you have with Eugene Inose,
12 about the changes and the extra costs that were going on?

13 A Oh, me and him were in contact almost every other day
14 about what's going on with the house, any updates, change orders. I
15 was really trying to set a meeting to go over change orders for him to
16 understand, for us to talk about it.

17 Q Okay. And that was a constant throughout the project?

18 A No, towards the end more.

19 Q Okay. Did you have conversations along those lines before
20 July of 2015?

21 A Oh, I can't say exactly what date.

22 Q Okay. I'll use the 4th of July as a good benchmark. Because
23 that's a good benchmark, because that's a good benchmark, because
24 people tend to remember that. Do you remember having conversations
25 with Eugene about change orders and extra money he might owe prior

1 to the 4th of July of 2015?

2 A I actually do, because I remember he said he wanted to be in
3 his house before Christmas, because he has a huge Christmas party here
4 every year.

5 Q Okay.

6 A And he missed it last year, and he doesn't want to miss it
7 again this year.

8 Q Okay. And so you did have -- you did have some --

9 A Yeah.

10 Q -- of these conversations. Can you -- the binder's behind you,
11 I don't know which one it is. Which one is it, John?

12 MR. PATTERSON: 562.

13 MR. BOSCHEE: What's the exhibit number?

14 MR. PATTERSON: 8.

15 MR. BOSCHEE: Number 8.

16 THE COURT: What exhibit was it again?

17 MR. BOSCHEE: 562.

18 BY MR. BOSCHEE:

19 Q Have you seen this document before?

20 A Correct.

21 Q Okay. We talked about it at your deposition.

22 A Yes.

23 Q I was going to say it may be the last time you saw it, so
24 hopefully. But that's your signature at the bottom, isn't it, on July 2nd,
25 2015?

1 A Yes.

2 Q Okay. Had Danny -- well, let me ask you this. Do you
3 recognize the signature at the top?

4 A Yes.

5 Q Okay. It looks like he wrote no change orders in after you
6 signed this; is that right?

7 A Oh, yes.

8 Q Okay. Sitting here today, do you have any understand, or
9 knowledge, or reason, as to why when you've been having all of these
10 conversations with -- with Mr. Inose about change orders and extra work,
11 that Danny Merritt would sign something saying that there are no
12 change orders as of July 3rd, 2015?

13 A I don't.

14 Q Because you guys had a lot of change orders as of July 2015,
15 didn't you?

16 A Yeah. Yes.

17 Q Several of them. I mean we can go --

18 A Yes.

19 Q -- through all of them in the binder. I don't really want to, but
20 there were a lot at that point, weren't there?

21 A Yes.

22 Q Okay. But none of them signed by the insurance company,
23 none of them signed by Mr. Inose, and as of July 3rd, 2015, a signature
24 on a page from Daniel Merritt, saying that there are no change orders.

25 THE COURT: Was that a question?

1 MR. BOSCHEE: I'm getting there.

2 THE COURT: Okay.

3 BY MR. BOSCHEE:

4 Q So is it still your testimony that Mr. Inose was aware of all of
5 these change orders prior to that date?

6 A Absolutely.

7 Q Okay. You remember you looked at a -- on direct
8 examination, I think you looked at Exhibit 493. Can you grab that one
9 again? I think -- which binder was that in?

10 A What book was it? Can I close this one?

11 Q You can close that one, yeah. That's -- that's it. I just wanted
12 to make sure you hadn't seen it before you signed it the next day.

13 MS. HURTIK: What -- the other binder?

14 MR. BOSCHEE: I don't know --

15 MS. HURTIK: 6?

16 MR. BOSCHEE: I think it was 6.

17 THE COURT: I think it's 6.

18 MR. BOSCHEE: I think so.

19 THE WITNESS: What number?

20 MR. BOSCHEE: The one we looking at before, 493.

21 THE WITNESS: Okay.

22 BY MR. BOSCHEE:

23 Q We're going to stick on the first page for a second. And you
24 testified on direct examination, that Mr. Inose was aware that there were
25 change orders in October of 2015, because he was copied on this email.

1 Do you remember saying that just a few minutes ago?

2 A Yes.

3 Q Okay. Was there ever any -- because I couldn't find one over
4 lunch, but that doesn't mean it isn't in there. Was there ever an email
5 prior to this, from Desert Valley to Mr. Inose, from you, let's say. Let's
6 start with you, because I don't know -- you don't know anybody who
7 doesn't know, you know, there could be other people, but -- are you
8 aware sitting here right now, of an email, from Desert Valley to Eugene
9 Inose prior to this one, that ever even mentions change order?

10 A To be honest, I don't recall.

11 Q Okay. Sitting here right now, you -- you can't say one way or
12 the other?

13 A Yeah, I can't recall.

14 Q Okay. You can't -- you never sent an email discussing
15 change orders to Mr. Inose. Did you follow up any -- all of these
16 conversations that you had?

17 A I -- I can't say that I did or did not.

18 Q Okay. You don't know.

19 A Yeah.

20 Q Okay. But it does say in the middle -- this is Danny's email to
21 everybody.

22 A Correct.

23 Q I want to make sure I read this correctly, that he's looking for
24 all of the project -- all the change orders for the entire project that have
25 been sent over to us.

1 A Correct.

2 Q Okay. That means anything that's above and beyond the
3 original contract that has not already been approved and signed by us.
4 Do you see that?

5 A Yes.

6 Q That's Desert Valley, right?

7 A Correct.

8 Q When it says us. Okay. So that we can review everything.
9 And do you know sitting here right now, why you guys needed those
10 change orders from all the subs, as of October 20th of 2015? What was
11 significant about that date?

12 A Probably him and Eugene were going to have a meeting and
13 do any change orders, because the unconditional progress payment,
14 because as of that date there was no change orders, because we
15 received a payment.

16 Q Right.

17 A So Eugene knew there was going to be a change order. So
18 in return, we were doing our homework trying to get everything together
19 to sit down and create the change order.

20 Q How did Eugene know there was going to be a change order?

21 A All the several conversations we've had with him, verbally,
22 email, telephone.

23 Q Well, which is -- this is -- this is the first email, though, right?

24 A Well, yes, this email

25 Q Okay.

1 MS. HURTIK: Objection. Misstates her testimony. She said
2 she did not recall. You just said she -- you twisted it.

3 MR. BOSCHEE: Well, that's why I asked it differently.

4 THE COURT: Overruled.

5 BY MR. BOSCHEE:

6 Q So prior to this email, you -- you can't -- you can't --

7 THE COURT: Could I pause -- let me -- somebody has --

8 MR. BOSCHEE: I know.

9 THE COURT: -- in -- somebody has a phone on a table or
10 something that keeps vibrating.

11 MR. BOSCHEE: I thought it was the witness. That's why I
12 didn't say anything --

13 THE WITNESS: No, I follow the rules. I turned my phones
14 off.

15 THE COURT: No, sometimes, I think it's me and then I'm like,
16 no my phone's not up here.

17 MR. BOSCHEE: I didn't -- I didn't want to like say anything to
18 the witness, but I heard it, too.

19 BY MR. BOSCHEE:

20 Q So -- so the -- so what you're saying is the way that Eugene
21 knew -- knew that there was going to be a change order given to him
22 was because of the conversations that you had and -- and other -- the
23 communications you had with him, right?

24 A Correct.

25 Q Okay. But prior to this, Eugene had not actually seen a

1 written change order from Desert Valley Construction, had he?

2 A I don't know if he received one via email. I don't know.

3 Q Okay. Well, I guess that's -- I'm following up on your answer.

4 Because you said that he knew a change order was coming. And that
5 was the purpose of this email. He hadn't gotten a change order from
6 you prior to this email. That's why you're saying that he knew
7 something was coming, right?

8 A Yeah, because as the project was going on, like we said,
9 there was changes that are being done.

10 Q Uh-huh.

11 A So like I said, we were trying to schedule a meeting to go
12 over the changes. He was aware that there was changes. He knew we
13 were trying to have a meeting.

14 Q Right.

15 A So that's why we were probably trying to get everything
16 together, to sit down.

17 Q Okay.

18 A Have a meeting.

19 Q And -- and I'm not going to quarrel with you that there were
20 a lot of changes that were done on this -- this property.

21 A Uh-huh.

22 Q A lot of things that -- that were added. There were also some
23 things that weren't done, right?

24 A We didn't finish the job, obviously.

25 Q I'm not even -- I'm not even there.

1 A Okay.

2 Q I'm not even there. I'm not going to talk about finishing the
3 job. I'm talking about things, kind of doing some extras over here, but
4 then there was some things taken off the scope of work, right. Like the
5 sauna downstairs?

6 A Correct. And that would have been a meeting, or a sit down
7 meeting for an adjustment.

8 Q Right. Now typically in -- in a construction project, that
9 would actually be a deductive change order, right? You've got a scope
10 of work that includes a sauna. And the sauna comes off, so you do a
11 deductive change order, right?

12 A Correct.

13 Q Didn't do that here, though, did you?

14 A We didn't have a chance to.

15 Q Oh, I'm -- I understand. I just want to make sure I didn't see
16 it.

17 A Yeah.

18 Q There isn't a deductive change order for the sauna in here, is
19 there?

20 A Not that I'm aware of.

21 Q Okay.

22 A I don't know.

23 Q And -- and there was -- I think there was some work with the
24 rotunda that wasn't -- that -- that they didn't -- that you guys didn't do?
25 Kind of as we're not going to do this, because we're doing this?

1 A I'm sure that -- I'm -- I'm -- yeah, probably.

2 Q Okay. And again, no deductive change order for that, either.

3 Because I didn't see one.

4 A Yeah.

5 Q Okay. So while there are extras being asked to be done by

6 Eugene, there's also some other things that Eugene is saying you don't

7 have to say, kind of verbally between him and Danny, as the project is

8 going along, right?

9 A Correct.

10 Q Okay. And I assume those were part of the discussions that

11 you had with Mr. Inose as well?

12 A Correct.

13 Q Okay. Prior to the insurance closing, did you know for a fact

14 that there was not going to be enough insurance money to cover the

15 extra work that was going to be done, given all these deductions?

16 A No.

17 Q Okay. You also talked about -- I mean I should -- let me

18 follow-up with that. No, you didn't know if there wasn't going to be

19 enough, or you just -- you weren't sure?

20 A I wasn't sure, because things kept changing.

21 Q Right. You talked about the meeting at Eugene's house

22 where you -- let me find the exact terminology, because again, my

23 handwriting isn't so good. You left -- he asked you to leave your

24 electronics and everything in there.

25 A Little room.

1 Q At a prior meeting, at -- at Eugene's house, you had actually
2 fallen and almost broken your phone, hadn't you?

3 A Yeah.

4 Q Okay. Was that the reason that he asked you to put your
5 electronics in a -- in the room before you came and talked to him?

6 A My iPad, my phone, and my keys, no, that was not the
7 reason.

8 Q Okay. Okay. So during that meeting, did you represent, or
9 ask Mr. Inose if there was something -- if he could give you, Desert
10 Valley, the tile that was in his garage?

11 A No.

12 Q He didn't -- that never -- that conversation never happened?

13 A No.

14 Q Okay. So after the restocking fee, after that conversation, did
15 you ever discuss the tile again?

16 A I told him we could probably sell it.

17 Q Okay. Did you try to sell it?

18 A No.

19 Q Okay. You also said that if -- I think you testified that if you
20 walked through the house, and if things didn't go the way he wanted, he
21 was going to sue Desert Valley, right? I think you said that.

22 A Yeah, he would --

23 Q Okay. Okay.

24 A -- try to intimidate.

25 Q I understand. But he didn't commence this lawsuit, did he?

1 A No, but he would just try to intimidate and get loud, and yell,
2 and --

3 Q Okay.

4 A -- scream and --

5 Q Okay. But -- but -- but that aside, I mean, Desert Valley sued
6 him, not the other way around, right?

7 A Yes, that's true.

8 Q Okay. Okay. You, at one point -- well, do you remember --
9 we can go look at the letter, but I think we've all seen it at this point, do
10 you recall when the decision was made that Desert Valley was no longer
11 going to work on this project?

12 A It was the same day I had the meeting and I left all my
13 electronics in the room. Or, yeah, and then I left, and I called our owner.
14 And I told him, he wants us to finish the job. If not, he said he's going to
15 sue us. We called Carrie. We got all of our documents. We went down
16 to our office.

17 Q That's what I thought. That's -- I just wanted to make sure. I
18 thought it was either a day before or --

19 A No, it was the same day.

20 Q -- day after. Same day, okay.

21 THE COURT: You said we got all our documents. Something
22 like that.

23 THE WITNESS: We -- well, I went to the office. I got all of
24 the documents, our job folder. And I went down to Carrie's office.

25 THE COURT: Okay.

1 BY MR. BOSCHEE:

2 Q One other question that I -- that I wanted to ask. This -- this

3 flying back and forth from California. You talk about DYBA Interiors

4 flying to California, or flying out here from California, or one way or the

5 other. How often did that happen?

6 A I'm not exactly sure how often that happened.

7 Q Okay. Did you prepare the contract that Desert Valley

8 entered into with Mr. Inose for this project? Do you recall one way or the

9 other?

10 A That's -- that's our standard contract that we use for --

11 Q Okay.

12 A Yeah.

13 Q So you just used a standard contract that you --

14 A Yes.

15 Q -- guys typically use? Okay. But it is Desert Valley's standard

16 contract?

17 A Correct.

18 Q Okay. When you sent the letter -- when -- when you guys

19 stopped working on the project and then sent the letter to the

20 subcontractors to basically advising them to stop working, was the

21 house done?

22 A No.

23 Q House isn't done still, is it?

24 A I have no idea.

25 Q When's the last time you were there? Been a while.

1 A I think that -- that same day with the whole electronic issue.
2 Q Okay. Was subcontractors -- subcontractors were still in the
3 money, weren't they?
4 A Yes.
5 Q Okay, and at that point, the insurance had been closed for
6 quite a while, hadn't it?
7 A I believe so.
8 Q Okay. Were you involved in the process of closing out the
9 insurance claim?
10 A No.
11 Q Okay. Do you know if Mr. Merritt was?
12 A I don't know. You'll have to ask him.
13 Q Okay. I'm just --
14 A Yeah.
15 Q -- I wanted to know if you knew. It's not standard to closeout
16 an insurance claim before the work is finished, is it?
17 A No, we would never advise our client to do that.
18 Q Okay. But that happened here, didn't it?
19 A Yes.
20 Q Okay. And as it turned out, there wasn't enough insurance
21 money to pay for the work that ended up being done by the
22 subcontractors, was there?
23 A There was enough work to be paid for the original contracts
24 for the subcontractor, but not everything that was changed.
25 Q Well, but do you know that for sure? I mean after -- after the

1 insurance was closed out, there were -- there was all these changes and
2 all these invoices that were submitted. Do you know whether it was all
3 change orders, or whether the insurance would have covered even the
4 original scope?

5 A I -- I don't know how much they gave Eugene, so I don't.

6 Q Okay. Okay. Because again, that -- what I was getting at with
7 the deductive change orders, I mean there was some stuff that came off,
8 and some stuff that got added. And a lots of thing changed.

9 A And he could have got paid more than we --

10 Q Right.

11 A -- our contract was.

12 Q Right.

13 A So I have no idea.

14 Q Okay. So again, to my point, you don't know if there was
15 enough insurance money to cover what was the work -- not the scope of
16 work that was in the estimate, but the work that was actually done on the
17 project?

18 A Correct.

19 Q Okay. And -- and given that, Desert Valley and -- and the
20 subcontractors had lien rights, didn't they?

21 A Yes.

22 Q Okay. And if the -- if the subcontractors wouldn't have
23 gotten paid, they could have sued Desert Valley for breach of contract, or
24 lien Mr. Inose's property, couldn't they?

25 A Correct.

1 Q Okay. You guys didn't get sued, did you?

2 A No.

3 Q By any of the subs?

4 A No.

5 Q And there are no liens on the project -- on the property from
6 any of the subcontractors for Desert Valley, are there?

7 A Not that I know of.

8 Q Okay. I don't think I have any further questions for this
9 witness. Thank you. Let me grab my water, so I don't leave it on the
10 table. That's good.

11 REDIRECT EXAMINATION

12 BY MS. HURTIK:

13 Q Okay, I just have one question.

14 A Okay.

15 Q So in Volume 6, I want you to go to Exhibit 473. Ooh, what
16 happened?

17 A I don't know.

18 Q It's the computer, sorry. Everything flashed.

19 A Okay.

20 Q So this is an email dated April 30th, 2015. And it's from
21 Danny Merritt to Eugene Inose and Robert Ramirez, and you're cc'd. The
22 subject is discussed tile change order. Can -- can you read this? Have
23 you ever seen it first, before?

24 A Well, yeah, it's in my email.

25 Q Okay. Can you read it?

1 A I'm pretty sure I glanced through it.
2 "Eugene, I just want to let you know I did send the estimate
3 over to Brian Lynch and his advisor, John Mansion
4 [phonetic]. And verbally spoke to him about it for the new
5 tile work. They say I just include it in my estimate and
6 they're going to review everything. I will have the estimate
7 with the bid in it, and the concrete bid finalized this weekend.
8 So I just want to let you know that I prepared them. I told
9 him it's only for the tile. It's only for labor and materials to
10 install, less the tile itself. We cannot schedule them until
11 approved" -- "until they approve their estimate. They didn't
12 seem to have too many questions, but I know they have to
13 review it. So we can't just pull the trigger on it, because I
14 have" -- "I have to have him say that yes, this bid is accepted.
15 So he wanted to talk to you today about it." "About it. You
16 know, just to make sure that the companies we're going to
17 go through and order items. I will follow-up with the
18 insurance company again today myself. And let you know
19 about Brian wanted" -- "wanted to walk just to clarify the
20 company the we are going to be using."

21 Q Okay. So you were asked earlier whether the first time you
22 guys ever asked for change orders, or let Mr. Inose know about change
23 orders was sometime in those October emails, which were on Exhibit
24 493. And there was Exhibit 473. I'm sorry, 493 and 487. So you actually
25 did tall Mr. Inose about change orders in April of 2015, correct?

1 A Correct.

2 Q Okay, and so to your knowledge, were there other change
3 orders that he was advised of?

4 A I mean -- yes.

5 Q Okay. Thank you.

6 MR. BOSCHKE: Can I ask one question about this? Because
7 it's in -- it's right in there?

8 RECROSS-EXAMINATION

9 BY MR. BOSCHKE:

10 Q The concrete bed, the section that you read in there. Do you
11 remember that?

12 A Uh-huh.

13 Q That's for the driveway, isn't it?

14 A Correct.

15 Q Okay. I just wanted to clarify that. I wasn't sure. They were
16 talking about tile, and then the concrete just kind of jumps into the email.
17 But that's the driveway, not the tile, right?

18 A Correct.

19 Q Okay. That's all.

20 THE COURT: All right. Thank you.

21 THE WITNESS: All right. Thank you.

22 MS. HURTIK: You're done.

23 THE COURT: You got somebody in?

24 MS. HURTIK: Your Honor, I feel really bad about this, but can
25 we just take a -- while he's -- they're getting him, can I take a little break?

1 THE COURT: Oh, sure.
2 MS. HURTIK: Just five minutes.
3 THE COURT: Yeah. Who's coming in?
4 MS. HURTIK: Sorry, too much --
5 MR. BOSCHEE: Danny -- Danny Merritt.
6 MS. HURTIK: Danny Merritt.
7 THE COURT: Oh, they, okay.
8 MS. HURTIK: Just, I've had too much water.
9 THE COURT: Yeah, no, you're fine. You're fine. Yeah.
10 MS. HURTIK: Sorry.
11 THE COURT: No, that's okay.
12 MR. BOSCHEE: Also.
13 MS. HURTIK: Okay.
14 [Recess at 2:06 p.m., recommencing at 2:11 p.m.]
15 THE CLERK: Sir, please stand and raise your right hand.
16 DANIEL MERRITT, PLAINTIFF'S WITNESS, SWORN
17 THE CLERK: For the record, please state and spell your first
18 and last name.
19 THE WITNESS: Daniel Edward Merritt. D-A-N-I-E-L
20 M-E-R-R-I-T-T.
21 THE CLERK: Thank you.
22 THE COURT: You can sit down. Thank you.
23 DIRECT EXAMINATION
24 BY MS. HURTIK:
25 Q Okay, so Mr. Merritt, do you -- were you employed by Desert

1 Valley Contracting at the time that the Inose project was done?

2 A When it was finished, yes I was.

3 Q Okay. And how long did you work for Desert Valley
4 Contracting?

5 A Approximately five and a half years.

6 Q Okay, and what was your job position?

7 A Estimator, project manager.

8 Q Okay. And do you still -- how long have you been an
9 estimator, project manager?

10 A About 12 years now, total.

11 Q Okay. And are you currently -- do you still have that same
12 type of position?

13 A Yes.

14 Q Okay. So you're no longer employed by Desert Valley, are
15 you?

16 A No, I'm not anymore.

17 Q Okay. So were you -- do you recall how you became retained
18 on Mr. Inose -- Mr. Inose's project?

19 A I was through the SERVPRO of Henderson. They referred us
20 over as a contractor and we met with them, and then walked the job.
21 That's how we were referred over. SERVPRO of Henderson.

22 Q Okay. And so when you went out was SERVPRO of
23 Henderson already done with their -- completed with the cleanup?

24 A No, they were still working on it.

25 Q Okay. And so when you went out, who did you originally

1 meet with?

2 A George Parks was the first person I met with there on the
3 site.

4 Q And who is George Parks?

5 A He was a -- like a project manager for SERVPRO, but not an
6 estimator. A project manager.

7 Q Okay. And did -- was Mr. Inose on the project when you
8 went out?

9 A Initially, yes, he was there.

10 Q Okay, and that first initial visit, what did you do?

11 A We walked the property, tried to just get a scope of work for
12 everything, with George. What they were going to be taking out. What
13 they anticipate drying, versus what needs to be ripped out. So basically
14 getting a scope of work on -- an initial scope of work on what SERVPRO's
15 -- SERVPRO was going to do for the demolition.

16 Q Okay, and do you recall when -- what year this was?

17 A 2015, I believe. I'm sorry. It's been so many -- a couple years
18 since --

19 Q That's okay.

20 A Was it 2015, I believe.

21 Q Okay, so what I'm going to do, there are binders that are
22 behind you. And so if you would pull volume 8.

23 A Okay.

24 Q Okay. And then if you can go -- there's exhibit numbers.
25 They're all tabbed.

1 A Okay.

2 Q And if you'd go to Exhibits 560.

3 A Okay.

4 Q What is this document?

5 A This is a Desert Valley work authorization.

6 Q Okay, did you have Mr. Inose fill this out when you were out
7 there?

8 A Yes.

9 Q Okay, and if you look at the second page of this, it is signed
10 by Mr. Inose.

11 A Yes, that's correct.

12 Q And what is the date?

13 A August 4th, 2014.

14 Q Okay. So do you believe you were out there for the first time
15 on August 4th, 2014?

16 A Yes, that was when.

17 Q Okay, and is this a normal work authorization, when you're
18 called out to a job, that you do -- that you have the client sign?

19 A For the reconstruction for Desert Valley, yes it is.

20 Q Okay. And if you go on the first page, if you go to the second
21 -- I'll just bring it up there. See if I can get it to clear. Maybe not. That's
22 better.

23 A Okay, there.

24 Q Okay, I'll get better as I do it. Okay, so I highlighted a couple
25 of sections, so it's easier to see. So this says the undersigned transfers,

1 assigns, and conveys to contractor his or her, right, title and interest in,
2 and to the insurance policy proceeds, and all drafts for work performed
3 to be performed by contractor. Accordingly, undersigned authorize and
4 directs their insured named below to make Desert Valley Contracting a
5 payee to all insurance drafts, for all insurance and work performed by
6 contractor on the above damaged property.

7 The undersigned also agrees to immediately endorse and
8 tender all drafts that's produced to the contractor. The undersigned
9 further agrees to authorized Desert Valley Contracting to sign on their
10 behalf and deposit all insurance checks that are issued, and to pay for
11 the services performed, pursuant to the contract.

12 So to your knowledge, did Mr. Inose sign over the insurance
13 checks to Desert Valley Contracting, after he entered into the contract
14 with them?

15 A When certain tasks were finished at the job, or certain
16 contractors, subcontractors needed payment, I believe that's -- that's
17 when they were signed over.

18 Q Okay.

19 A We would have to come to that agreement first, on -- on
20 what processes would be done next, before they got signed over.

21 Q Okay. So now there's also down at the bottom. See where
22 my --

23 A Yes.

24 Q Okay, so it says contractor within five days of termination by
25 either party, upon termination of contractor's services, client is

1 responsible to pay all fees and costs incurred by the contractor, within
2 five days of termination by either party. If any request for additional
3 work to be performed are made during the scope of the job, all such
4 requests must be put in writing, and these costs will be added to the
5 scope of work. If the scope of work is beyond any insurance claim, the
6 owner, agent, or authorized party, will pay all claims within ten days of
7 completion of work. Any materials will be paid for prior to the additional
8 work being performed.

9 Did you have a situation on this job where there were
10 additional costs that were outside of the insurance scope of work?

11 A Yes. That's when we created a change order on the project.
12 So, yes, that was where a change order came up, and we called all the
13 subcontractors, got their prices. And that's where the change order was
14 generated.

15 Q Okay, so did Mr. Inose -- was he paying -- do you -- are you
16 aware of whether or not he was paying you for work outside of the scope
17 of the work for the insurance company?

18 A Until we created the change order, it's hard to tell what was
19 in the scope versus what wasn't. The change order was more of a
20 snapshot of what was actually happening.

21 Q Okay.

22 A So I don't know on the funds what went towards anything
23 that was outside of the scope, or versus what wasn't.

24 Q Okay, and on the second page of this, it says contractor has
25 the right to stop the work until such time as the insurance proceeds are

1 released. So did you guys stop work on the Inose project because you
2 had a problem with payments for change orders?

3 A The change order that I was talking about, yes, that's why the
4 project was stopped.

5 Q Okay. Were there a lot of change orders on this project?

6 A We went back and started getting the subcontractors' prices
7 again, and there were a lot of changes within those initial estimates that
8 we got versus the latter estimates, when we were nearing the end of the
9 job.

10 Q Okay. So did Mr. Inose -- so this -- we'll go back to this, but
11 you have it in front of you.

12 A Uh-huh.

13 Q This Desert Valley Contracting representative's signature, do
14 you know, is that yours?

15 A That is my signature, yes.

16 Q Okay, and did Mr. Inose sign that?

17 A Yes, I believe we were up in his office, or one of the upstairs
18 rotunda room. Uh-huh.

19 Q Okay, so he -- you went over the terms of your contract with
20 him?

21 A Yes, he read it when we were there.

22 Q Okay, and he signed it? And he signed it?

23 A Yes.

24 Q Okay.

25 A Correct, sorry.

1 Q Okay. So because -- this was the -- not just a straight job, like
2 you were a contractor and you had been called out to do the work. It
3 was an insurance job, correct?

4 A Yes, that's correct.

5 Q Okay. What's the difference on an insurance job?

6 A Well, the insurance job basically puts items to a house as it
7 sits. You know, they put the house back with the like for like values, as it
8 sits. If there's anything code upgrade-wise or anything, things that need
9 to be upgraded in the home, it has to be supplemented and called a code
10 upgrade. But normally insurance pays to put the house back together, as
11 much as possible, the way it was.

12 Q Okay, so they don't -- they don't pay for upgrades? What
13 they would consider upgrades?

14 A No, they wouldn't.

15 Q Okay. But they will, if it is a code change, correct?

16 A Yes, they would if the code is like wiring or something, and --
17 or something like that. Or if plumbing. It's just numerous things it can
18 be a code upgrade.

19 Q Okay. So once Mr. Inose retained you, retained Desert
20 Valley, what was the next step? What did you do next?

21 A Then the negotiations with the insurance company started.
22 We were calling in the subcontractors to generate prices, costs for
23 everything. Involving all the parties that needed to be part of it, like a
24 designer. Just getting a scope of work for the whole house, basically.
25 Trying to come to an agreement with the insurance company, on -- on

1 what the price should be.

2 Q Okay. And who was Mr. Inose's insurance company? Do
3 you recall?

4 A Yeah, it was Brian Lynch with Fireman's Fund, is who the
5 primary contact was.

6 Q Okay.

7 A He was out of St. Louis, Missouri, I believe.

8 Q Okay, so did Mr. Lynch -- did Mr. Inose give you the
9 information for his insurance company?

10 A Yes, he did. We had the claim number, everything up front.
11 We started talking to him up front.

12 Q Okay, and so did Brian Lynch come out and walk the
13 property with you?

14 A Yes, Brian Lynch came out on several occasions to come and
15 deal with not only what we had to do, but there was some contents, there
16 were some other things that had to be dealt with as well, with any
17 insurance claim this size. So he was dealing with several aspect of the
18 claim.

19 Q Okay, and was there anybody else? Was there another third
20 party insurance -- third party independent that was also involved?

21 A Yeah, it was J. Shell, I believe it was called. Or J.S. Held, I
22 think the company's name is.

23 THE COURT: Say that again. J.

24 THE WITNESS: J.S. Held, I think it was. J.S. Held. His name
25 was John Matchen.

1 BY MS. HURTIK:

2 Q And what was John Matchen's role?

3 A Third party insurance inspector, or third party adjuster.

4 Q Okay. And so -- so initially, before you even started work,
5 you had to do a scope of work and a bid, right?

6 A Yes.

7 Q And you couldn't start until the insurance company approved
8 it?

9 A Yes, that's correct.

10 Q Okay. So did Mr. Matchen or Brian Lynch approve it?

11 A Mr. Matchen wrote the scope. He was the one that wrote the
12 estimate. Brian Lynch approved the estimate.

13 Q Okay. And was Mr. Inose -- was he present when you guys
14 were negotiating what was going to be repaired? What was going to be
15 done?

16 A In the initial part of it, yes. When we were walking with all
17 the subcontractors, we were all there. We were all there walking the
18 property together, before anything started.

19 Q Okay, so --

20 A So --

21 Q Go ahead, I'm sorry.

22 A Yes, he would -- he would be there.

23 Q Okay, so the subcontractors, you said, walked the property
24 before the bids were finalized, right?

25 A A majority of them. I don't -- I don't believe all of them were

1 able to. Custom Landau was one, I think couldn't do it. Or we didn't
2 know that they were needed until later. A couple of them, I don't think
3 were able to make the initial job walk.

4 Q Okay. And was Mr. Inose on that original job walk?

5 A Well, there were several of them, so yes, I believe on most of
6 those he were. I'm just not too sure of exactly how many we had.

7 Q Okay. Now were there contactors -- so you guys are a
8 general contractor, correct?

9 A Yes.

10 Q Okay, so would you have used your own subs on this project
11 normally?

12 A For most of the trades, yes. But for the like very specialized
13 stuff, you know, we -- we like to work hand in hand with some subs, that
14 there's only one or two here in Las Vegas that do the trades. So it
15 basically would be one or two that can only do it here in town.

16 Q Okay.

17 A But yes, ideally, we like to use our own subs. We have a
18 relationship with them.

19 Q Okay, in this situation, were you allowed to use your own
20 subs? Or were you directed to use other subs?

21 A We were directed to use other subs for a majority of the
22 trades.

23 Q Okay, and who directed that?

24 A It was Robert Ramirez and Eugene wanted to use who
25 originally worked on the home as much as possible.

1 Q And did the insurance company agree with that?

2 A We got their estimates and their numbers. They were okay,
3 as long as the numbers were in accordance with the estimate.

4 Q Okay. Okay. So were the subcontractors -- were they paid to
5 walk the project to do the bids?

6 A I believe that a couple of them did want to be paid for
7 generating, like Artesia Cabinets, to draw cabinets, they had to get paid
8 for that. There was several other companies that did need some
9 payment up front to generate the estimate, because it did some invasive
10 work to get to those numbers.

11 Q Okay.

12 A I just -- I'm not sure of who exactly it was.

13 Q And -- and did the insurance company agree to pay for that?

14 A I don't recall if they knew prices for them up front, or if it was
15 part of the whole package for their whole estimate. I -- I don't recall if
16 that was separated out as a separate -- separate charge.

17 Q Okay. Do you -- now do you recall which trades? I know you
18 said you might not, but do you recall which trades might have been paid
19 for that?

20 A Artesia Cabinets would have been one of the big ones to do
21 the cabinet layout --

22 Q Okay.

23 A -- start working with design. I know DYBA Interior Concepts
24 was another one. She had to get paid up front for a lot of the design
25 stuff she had to do. Traveling and getting stuff. Comfort Home Electric

1 had to be paid up front, but they were -- to the -- to assess all of the
2 appliances.

3 Q Okay.

4 A To see what needed to be replaced and whatnot.

5 Q What about HyBar?

6 A HyBar had to be paid up front. They -- they knew what to
7 make for the home.

8 Q Uh-huh.

9 A But to put any -- anything together, any numbers or any
10 drawings, they had to be paid up front as well.

11 Q Okay. And did they give you -- are you aware, did they give
12 you any invoices saying that they had to be -- what -- what they had to
13 be paid up front, or was it a standard amount they were allowed?

14 A It -- I believe when we first started, a lot of their invoices
15 came in to stock material for the job. It's standard, you know, for
16 subcontractors to collect a certain percentage.

17 Q Uh-huh.

18 A So we were getting those -- those invoices. I'm not sure
19 which one had the -- you know, estimate lined out separate for payment.
20 I'm not sure which ones line that out, or if they included it all in one lump
21 sum.

22 Q Okay. Okay. So I'm going to come back to that in a minute,
23 but my -- one of my questions is, once you got the bids done, and the
24 insurance company accepted those bids for the work, then what
25 happened next? What was the -- did you enter into contracts with the

1 subcontractors?

2 A Yes, we did.

3 Q Okay. And is that normal, that you would have done that?

4 A Yes, it is, once we have an agreed price.

5 Q Okay. So the contractors were your -- they started doing
6 work for you.

7 A Yes.

8 Q And then Robert Ramirez, can you explain his role?

9 A Robert Ramirez was supposed to an on -- on -- supervisor for
10 the project. We had to negotiate his salary up front. That was part of
11 what took a while with the insurance. So he an onsite supervisor that
12 was -- worked with a lot of these subs before, knew them. And that's
13 why he was contracted in to make sure the house goes -- gets -- gets the
14 same treatment as it had before.

15 Q Okay. So once you had -- once you did the estimate -- your
16 estimate is pretty detailed, correct?

17 A Yes.

18 Q Okay. And that estimate had to be approved by the
19 insurance company, correct?

20 A Yes, that's correct.

21 Q Okay. Hold on just a minute. Let me turn to -- okay, so I'm
22 going to ask you, before we go further. What is your background? Have
23 you worked on custom homes before?

24 A Yes. Desert Valley Contracting and several companies --
25 California on several projects.

1 Q Okay. So this -- this isn't something that you never have
2 done before, right?

3 A No, it's something I have done before.

4 Q Okay.

5 A They're just different. All -- every house like that is different,
6 though.

7 Q Okay. And do the custom homes take longer to finish --
8 complete?

9 A Yes.

10 Q Okay. And why is that?

11 A Most of the reason being is materials. Everything is custom
12 cut to size. It's not just a regular size of a home. A lot of things are
13 larger. There's a lot more wiring that goes into them. Low voltage
14 systems. Especially, you know, Italian style cabinets, or European style
15 cabinets. There's a lot of different touches that go into a custom home.

16 Q Okay, so -- okay, so I'm going to have you go to Volume 9,
17 Exhibit 601.

18 A Okay.

19 Q Okay. All right. So when you get to 601.

20 A Okay, I'm there.

21 Q Now, I want you to -- on the first -- this is Bates stamped.
22 There's several different Bates stamp numbers that are on the bottom.
23 This is a pretty big exhibit. Okay. So on the first page, it says IN-LO 484.

24 A Yeah, I see it. Yes, I see it.

25 Q Okay. And let's -- well, let's go back. Hold on just a second.

1 So this says that it is a -- it's from -- a message from Brian -- or from
2 Brian Lynch, if you look at the middle.

3 A Yes.

4 Q June 19th, 2015. To Eugene Inose. And it says final claim
5 payments. So when did you -- when were you finishing up? Do you
6 recall when you were finishing up the work? We're going to kind of
7 jump to the back end of the job, and then I'm going to jump back. But so
8 this June 19, 2015 Brian Lynch, you said was the insurance adjuster --

9 A Yes.

10 Q -- for Fireman's?

11 A Yes, that's correct.

12 Q Okay. So this says the following documents are attached for
13 your review. An email from Desert Valley Construction stating no further
14 billing costs exist beyond the final estimate. A copy of the final estimate,
15 totaling 1.320429.28. And then it says evaluation of total loss of
16 contents. Do you see where I am?

17 A Yes, I do.

18 Q Okay. And it goes down to say what's in here. Policyholder
19 release, draft statement of loss documenting DYBA Interiors summary.
20 So I want you to turn to IN-LO 488.

21 A Okay.

22 Q Okay. So on this one, this is an email from you on June 5th,
23 2015, to Brian Lynch, and you cc'd John Mission -- Mansion.

24 A Yes. Yes.

25 Q Okay. So this says, Brian filing our correspondence for the

1 Inose claim, we're at the above-agreed contact amount with no needed
2 change orders. No more change orders from all of the subcontractors
3 which have submitted their bids. We will not -- at this time, we will be
4 able to complete the project for this amount. We are in the
5 understanding that the expired ALE is due to products that were ordered
6 out of the realm and the boundaries of a regularly ordered floor, and has
7 postponed our completion date to possibly mid-August. So how much --
8 when you sent this over in June, how much were you completed on the
9 job? What was the percentage, you believe?

10 A I'm just thinking back. I would say about 60 to 70 percent at
11 this time. The drywall was done, the cabinets -- the cabinets were done.
12 There was upstairs flooring that wasn't done. Some of the higher end
13 fixtures weren't done. But I believe the wine room was done. So I'd say
14 about 60 percent, I believe, because we were waiting on the tile floor to
15 do a lot of other -- some other trades. We didn't want to do other stuff
16 without the floor being in there.

17 Q Okay. So would it be fair to say that the stuff -- the finish
18 work was what was remaining?

19 A Yes, most of the finish work.

20 Q Okay. And did you do anything that was outside the scope of
21 the bid?

22 A Yes, we did.

23 Q What did you do that was outside of the scope of the bid?

24 A Well, there was a wine room we did, that was -- it was
25 originally a wine room, but we made it larger. And it had more racks in

1 it, and had its own cooling system that had to be added, or a larger one.
2 There were mirrors up in the master bath that had backlighting, for both
3 the vanities. There was a stucco repair and painting on the home, on the
4 outside. The entire outside. There was a bunch of Lutron System, I
5 believe they were called. Lutron switches that had to be replaced. That I
6 -- I don't believe the insurance took -- took charge of those.

7 Q Okay.

8 A There were floating vanities. Vanities that were -- had to
9 create special brackets for them to be floating. So it appeared that they
10 were off the floor in all the washrooms and toilet rooms.

11 Q Right.

12 A There was Switchglass doors that opened and were wired to
13 the lounge room.

14 Q Uh-huh.

15 A That were -- needed low voltage and I think regular wiring for
16 them. And special -- from HyBar, I believe, some specialty doors and
17 trim for those.

18 Q Okay.

19 A There was a motor that was burnt out on the -- on the back.
20 There's a large slider, telescoping door on the back, and that motor had
21 to be replaced. So that's another item.

22 Q So these were the items that had to be completed at this
23 stage?

24 A Yes, they were being worked on, or almost completed at that
25 stage. The Switchglass was in, the doors were in. The -- I don't believe

1 the motor for the telescoping door was in yet. That was still being
2 worked on. But a lot of the vanities were roughed in. All the hangers for
3 the vanities were done, to hang them up high. The wine room, I believe
4 was about complete, less the -- there was racks and stuff. You know, the
5 finish touches in there. But all the rough-in, electrical framing was done
6 for the wine room. The glass was in. Those items were done.

7 Q So if you go to IN-Lo 489-- excuse me, 489.

8 A Uh-huh.

9 Q You're still in the same exhibit. Is this the actual -- if you look
10 at this, what is the date? Does it have the actual date of the original
11 estimate that was given to the insurance company, as well as the date
12 that this was actually completed?

13 A Yes, if you look on the date entered, it should be this is
14 actually a newer date that this one was put in. So the date entered is
15 about the middle of the page down. And that would have been
16 whenever this new -- newer estimate -- if this is a newer one, was
17 created.

18 Q Uh-huh.

19 A So the original one should have been completed, it looks like
20 4/27/2015 or maybe the last modification. But this one would have been
21 8 -- oh, I'm sorry, one second. Okay, so the original one should have
22 been 8/7/2014. That's -- that's probably when the first estimate was
23 done. The other one was 4/27/2015, which is actually the newer date.
24 Which is when this one should have been done. I'm sorry about that.

25 Q Okay. So to get this -- so this is what you sent to the

1 adjuster. And why did you send this to the adjuster at this point? At this
2 time?

3 A Because after going through -- there were a couple other
4 things that happened. Driveway got damaged. You know, as we -- as
5 we got further into the job, we were able to associate some more costs.
6 I'm just going to breeze through this, and make sure I'm familiar with
7 which one this one is.

8 Q Sure, that's fine.

9 A So I believe it just took this long to get to a final -- let me
10 check. Oh, the subcontractors were still coming in with some of their
11 costs. That wasn't all the way done, because it was very hard to get
12 everybody on -- to get all their prices in. There was a lot of moving
13 parts. So I believe this was a result of waiting for everybody to get their
14 price in, locking them all in, and finally sending the final number to the
15 insurance.

16 Q Okay. And so did you have -- you were having trouble
17 getting the subcontractors to give you all of their change orders?

18 A Yes, we -- we did initially because we needed to know how
19 much everything was costing above and beyond what they originally
20 submitted. Prices were going above and beyond that. So that's where
21 we did have some problems with some of them to get a final number.
22 So we stopped everything and reached out to them to get their final --
23 final bids near the end of this.

24 Q Okay. And why was there change orders that you weren't
25 aware; you wanted to make sure that you had all of the change orders?

1 A Well, there were some design items that, you know, it was --
2 it was always being designed, you know. We put the house back the
3 way it was on the initial estimate with other things, but there was design
4 changes, materials. Some of the materials weren't in stock, they still had
5 to be sought out and found. That was part of the -- part of it.

6 There was -- there was issues like with the low voltage that
7 came up. Like Eagle Sentry needed a lot more information and more
8 funds to do their job. We had to have the appliances assessed so we
9 didn't know if the appliances were going to be part of the claim or not.
10 There was a lot of instances like that, that were in flux.

11 Q Okay. So but this is like -- were you having meetings with
12 Eugene Inose on a regular basis?

13 A Initially we were, when the job first started, and then it was
14 kind of relinquished over to Rob Ramirez and our on-site supervisor
15 after, because Eugene would live in Los Angeles and have to travel back
16 and forth. So those meetings went to about once a week, maybe once
17 every two weeks.

18 Q Okay. And was Rob Ramirez on the site regularly?

19 A Initially he was there as well, but after -- after a while we had
20 our supervisor we hired to put on there, his name is Will, and he was
21 there and then Rob would come and let him in in the day -- in the
22 morning and then secure the house back up at the end of the day.

23 Q Okay. So I want you to look at this -- you're going to stay in
24 this exhibit. And so this exhibit that was sent over to Brian Lynch, what
25 was the actual final number? Is that on IN-LO 546?

1 A I'm looking right now. Yes, that would be the actual final
2 number that was sent to the insurance company.

3 Q And what is that number?

4 A \$1,320,420 -- \$1,320,429.28.

5 Q Okay. And did the insurance company approve that?

6 A Yes, they did.

7 Q Okay. So if you turn to -- well, let's kind of go through. So
8 this was the result of getting all of the subcontractors' change orders?
9 And were there continuing change orders going on?

10 A Yes, there were.

11 Q After this was submitted there were?

12 A Yes. Even after this was, yes.

13 Q Okay. So why was this submitted as a final then?

14 A Because we got the numbers from the subcontractors and
15 they said that that will be their final number, and that's what we
16 submitted.

17 Q Okay. So after this was submitted Mr. Inose was still making
18 changes?

19 A Yes, there were still changes going on.

20 Q Okay. And did you ever advise -- okay. So when you do
21 insurance claims, do you keep them open during the duration of the
22 project?

23 A Ideally, yes, you would want to do that.

24 Q Okay. And why is that?

25 A Because of unforeseen things at the end. There may be, you

1 know, material that's out of stock, or there's code upgrades that you
2 don't quite encounter just yet. There's a bunch of factors that could add
3 more cost to a job, but any construction job, that you just don't foresee.

4 Q Okay. And why would this job -- why, if you weren't
5 complete yet -- this is June and you said that probably it would take you
6 to August, correct?

7 A Yes, that's correct.

8 Q Okay. So why would you have closed out this job?

9 A Well, there would be no reason for us to do it, as we were
10 still worried about any changes coming in.

11 Q Okay. So who closed out the job with the insurance
12 company?

13 A I believe Eugene did.

14 Q Okay. Did you instruct Mr. Inose to close it out?

15 A No, I do not recall doing any of that.

16 Q Okay. I mean, did you have any conversations with him; did
17 you know he was closing it out?

18 A Well, in my e-mail to the insurance company I believed that
19 we were good with the subcontractors on this price, but I didn't know
20 that they were going to close the claim out a hundred percent without
21 any more further supplements or payments coming.

22 Q Okay. So you weren't aware of the conversations -- you
23 didn't know Mr. Inose was closing it out?

24 A I did not.

25 Q Okay. Did you have any conversations with the insurance

1 company, concerns with this job?

2 A Well, the insurance company just seen the prices -- I believe
3 our first estimate we submitted was around \$1.2 million, and with the
4 subcontractors walking in and the changes, it went up to the 1.32, and I
5 believe that that may have been where they were concerned if things
6 were -- they weren't near the policy limits, I don't believe --

7 Q Okay.

8 A -- but that's where his concern was. He didn't want a bunch
9 of stuff adding onto the estimate that weren't insurance related.

10 Q Okay. So were you entitled to -- do you know whether you
11 were paid for all of the work that you were contracted to do?

12 A I'm unsure if we were. I don't believe we were.

13 Q Okay. And do you know what your profit and overhead was?

14 A On a 1.32 --

15 Q Do you know what the percentage was?

16 A Twenty percent. It's standard across the board --

17 Q Okay. So ten and ten?

18 A Ten and ten, yes. Ten percent overhead and ten percent
19 profit.

20 Q Okay. And do you think that you -- so if you turn to page 59
21 of the estimate, which is IN-LO 547, is that your amounts for your
22 overhead and profit?

23 A Yes, that's where it's labeled.

24 Q And how much was your overhead and profit, the total, do
25 you know, when you're looking at that?

1 A \$105,000 for each occurrence, 105,905.61 for overhead and
2 the same for profit.

3 Q Do you believe that you received that?

4 A I believe we collected everything short of the overhead and
5 profit on the job.

6 Q Okay. And you said that's standard in the industry, right?

7 A Yes.

8 Q Okay. And did you provide Mr. Inose with these -- this whole
9 estimate throughout the construction; did you provide him copies?

10 A Yes. The initial one was sent over, and the secondary one,
11 which would have been this one, was also submitted from his insurance
12 carrier to him, is what the insurance company told me.

13 Q Okay. And did Mr. Inose have any meetings with you or any
14 conversations and go through line-by-line items in this bid that you're
15 aware of?

16 A I don't believe we went through every line item because Rob
17 Ramirez was the one I was mostly talking with the numbers with on --

18 Q Okay.

19 A -- so he could see where everything was, so I believe it was
20 with him.

21 Q So Mr. Ramirez went through this with you?

22 A Yes.

23 Q Okay. All right. So let's go to Volume 3, and Exhibit 266.

24 A Okay.

25 Q Now, is this another estimate?

1 A Yes, it is.

2 Q Okay. And is this the original estimate, to your knowledge?

3 A Let me check the dollar amount.

4 Q Okay.

5 A Yes, this one looks like the original one that was generated.

6 Q Okay. And what was the total amount of this one?

7 A \$1,274,099.67.

8 Q Okay. So this was the one -- was this originally approved by

9 the insurance company?

10 A Yes.

11 Q Okay.

12 A That's what we initially had to them, which they did approve

13 before the 1.32 one was generated.

14 Q Okay. And so when you do an insurance claim like this, does

15 the adjuster -- or does the adjuster have you or the third party take

16 pictures of what the condition of the property is?

17 A Yes.

18 Q Okay. So do you take pictures before and after usually?

19 A Ideally, yes.

20 Q Okay. Ideally. And you never completed this because you

21 removed yourselves from the job, correct?

22 A That is correct.

23 Q Okay. So you don't have pictures of the final on this, do you?

24 A Not of the job being complete, but I believe we have our

25 progress photos.

1 Q Progress photos. Okay. So if we go to this first bid, I want to
2 kind of -- can you explain, is this done -- how is this broken down? Is it
3 broken down by rooms?

4 A Yes, it's per room and it just depends on the estimator's
5 style. Usually they'll do whatever tasks have to come first. So I try to do
6 mine from like the insulation, work out and work your way into the
7 drywall, to the texturing. Just some kind of sequence that makes some
8 kind of sense so it's just not random.

9 Q Okay. So this original bid, did it have the wine room in it?

10 A I'm looking. There was an initial wine room there, so -- what
11 is it called. Yes, it has it in there.

12 Q Okay. What page is that on?

13 A Well, I looked on the sketch on page number 77 just to
14 confirm it was in there. I have to find where it is in the actual estimate.

15 Q Okay.

16 A I called it a wine cellar, and it's on page number DVC 000604,
17 on the bottom.

18 Q Okay. So the wine cellar. So this original bid was just to
19 bring it back to the standard that it was at the present, right?

20 A Yes, correct.

21 Q Okay. And so the wine room, the repairs were supposed to
22 be -- what was the total for the actual wine room, or wine cellar?

23 A \$7,531.25.

24 Q Okay. So let's go to -- and did you keep that other binder --
25 here, I'm going to move this a little bit, if I can. That other binder, which

1 is Volume 9, and I'm going to have you go back to Exhibit 601.

2 A Okay.

3 Q Okay. Now, this bid is supposed to be the most complete
4 bid, correct?

5 A Yes.

6 Q Okay. So go to the wine cellar. Is that on IN-LO 495 --

7 A I'm looking.

8 Q -- which would be page 7 and 8 of this bid?

9 A Yes, but I believe this is not -- this is the insurance company
10 estimate, I believe. This was not the wine cellar that was built.

11 Q Okay. So this one says -- what's the total for the wine cellar?

12 A The wine cellar actually went down a little bit because I think
13 we had to tell [phonetic] some items.

14 Q Okay.

15 A It's \$5,751.58.

16 Q Okay. So anything above that would have been upgrades
17 that Mr. Inose decided to do?

18 A Since the insurance agreed on this, yes, it would have been --
19 any dollar amount above that would have been.

20 Q Okay. So the insurance company wouldn't have paid for it
21 and it wouldn't have been in your scope of work, correct?

22 A Not in my scope of work, no.

23 Q And according to that scope of work and work authorization
24 that Mr. Inose signed, anything that was not authorized by insurance, he
25 was supposed to pay you directly, correct?

1 A Yeah.

2 MR. BROSCHEE: Objection. Calls for a legal conclusion.

3 THE COURT: Overruled.

4 BY MS. HURTIK:

5 Q Okay. So any upgrades -- let's go back. So if you go on to

6 the lounge on the original one, which is in your Volume 3, which is the

7 Exhibit --

8 A Yes.

9 Q -- 266, and I think the lounge is on -- I just had it.

10 A It's on DVC 000617.

11 Q Okay. So the lounge, were there major changes to the

12 lounge area?

13 A Yes, as far as the doors that were added to it.

14 Q Okay. And what was the total amount that was supposed to

15 be paid for the lounge room?

16 A 22,194.84.

17 Q Okay. Were there any things that were eliminated from --

18 that Mr. Inose had that he wanted to eliminate?

19 A Yes.

20 Q And what were those?

21 A There was a sauna bathroom in the back of the home, which

22 wasn't eliminated, it was just done not to the -- it wasn't wrapped in all

23 tile. It had all tile on the walls and was done like a whole tile room.

24 Q Okay.

25 A So by -- it wasn't eliminated, it was just done in drywall as

1 opposed to tile.

2 Q Okay. So if you go to your original bid on Volume 9 -- I'm
3 sorry, the final bid, Volume 9, and if you go to IN-LO 506, which is page
4 18 and 19, what was the actual amount for the lounge room that the
5 insurance approved?

6 A 21,148.05.

7 Q So that actually went down a little bit, right?

8 A It did.

9 Q Okay. So you would say there was some give and take, that
10 you guys made some adjustments to compensate; when he was over in
11 some areas, you would try to adjust in another area?

12 A Yes, that's correct.

13 Q Okay. So were there less change orders because you would
14 adjust to try to compensate for any overages?

15 A Initially, when I created this estimate, we did try to check all
16 the overages. It was just the -- it was just the items that we didn't know
17 that were starting to add up, certain things that needed to be done to
18 accommodate this.

19 Like, for example, there was wiring for the doors that we
20 didn't anticipate the cost on. There was the wine room, which really
21 needed framing, heavy framing for the glass, and then we started getting
22 the subcontractor bids for these items.

23 Q So did the contractors not bid the project properly because of
24 the additional changes?

25 A They bid it properly to what was there, to what we walked

1 with the adjuster, but then they did not bid it properly to the finished
2 product.

3 Q Okay. Did Mr. Inose want you to get rid of any
4 subcontractors?

5 A Yes, I believe so. I'm trying to remember who it was.

6 Q Was it a drywall subcontractor?

7 A Yes, that's correct.

8 Q What was wrong with that subcontractor, do you know?

9 A They would go walk the -- it was a smooth coat drywall
10 finish, very hard to get, but they would walk with these really powerful
11 halogen floor lamps and shine it up the wall, and it just -- we ended up
12 having to go in on our own to finish the drywall because the drywall
13 contractor didn't do it to their standard.

14 Q Okay. So you ended up actually doing the drywall work,
15 repairing the drywall work that had already been done?

16 A Yes, that's correct.

17 Q So did Desert Valley Contracting charge for that, or did they
18 just eat that?

19 A We had to eat that one. We couldn't submit our cost on top
20 of Burnham Painting & Drywall's cost.

21 Q Okay. So do you know how much Burnham Painting &
22 Drywall charged? And if you don't, I'm going to show you a document.

23 A I believe it was -- I believe it was 20- or 30,000. I'm not sure.
24 It may be more.

25 Q Okay.

1 A I'm trying to look for their --

2 Q So did Burnham, in fact, did you have a dispute with
3 Burnham? Did DVC have a dispute with Burnham Drywall?

4 A I don't recall that. I wasn't really dealing with them on the
5 project management side more for the numbers. I don't recall if we did
6 or we didn't have a dispute with them.

7 Q Okay. Do you know whether any of the subcontractors took
8 Desert Valley Contracting to the contractors' board?

9 A I don't know that either. Sorry.

10 Q Okay. So when you said that -- and maybe I'm wrong about
11 this. I'm sorry if I am. But were there a lot of moving parts on this
12 project?

13 A Yes, there were.

14 Q And why was that?

15 A Well, the flooring was one of the larger things. I think
16 because it got -- the flooring took so long to come in, there was a lot of
17 downtime, so the design was usually in flux, as we went back and forth
18 for wallpaper, countertops. They couldn't really find anything good out
19 here in Las Vegas, so they'd have to go to Los Angeles and travel and
20 look for stuff.

21 Q Okay.

22 A There was always a balance between money getting released
23 and materials being ordered. So if that guy held up in any fashion,
24 sometimes the materials weren't in stock, again, you know, a little bit
25 more time would have to happen to find something in stock.

1 There was a lot of items that were very custom that had to be
2 done with like the wine room. We couldn't reuse the same unit that was
3 in there servicing that. We had to get a larger one. Wiring for a lot of it,
4 and some televisions that were reportedly not working when they were
5 reinstalled. So things like that came up and you just wouldn't have any
6 knowledge of it until you crossed the bridge to get there.

7 Q Okay. So when you wanted a change order signed, did you
8 e-mail those to Mr. Inose or did you have conversations with him
9 regarding the change orders?

10 A When the change orders first started coming from the
11 subcontractors, you know, we were -- like we eliminated the sauna room
12 to try to accommodate some of them, but we didn't -- we didn't put
13 anything together until we knew that it was going over the contract --
14 basically the amounts that were allotted for, so I generated a master
15 change order with all these things in it and tried to explain where all the
16 money -- or where everything was at.

17 Q Okay.

18 A So that's when I did that. So there were numerous loose-leaf
19 change orders, but we sat down, called all the subcontractors at one time
20 and told them to give us their final dollar number. So that's where we
21 kind of had to put the stop on everything because of that --

22 Q Okay.

23 A -- when we found out their dollars were different.

24 Q Okay. So after you guys were no longer on the project, did
25 the subcontractors continue to work on the project?

1 A Yes, they did. I believe most of them did.

2 Q Okay. Do you even know whether or not the project, his
3 house, is completed at this time?

4 A I don't know that.

5 Q Okay. So was there a lot of -- so you said there was a
6 designer involved?

7 A Yes.

8 Q Who was the designer?

9 A Tina Dyba, with Dyba Interior Concepts.

10 Q Okay. And would she make changes and then after the fact
11 they would order things and after the fact tell you guys?

12 A Yes. We had to restock a couple things from that. Wallpaper
13 was one of them that we never ended up doing.

14 Q Okay.

15 A There was a couple other items, I believe.

16 Q Okay. And so there was an overage on tile?

17 A Yeah.

18 Q So did you measure for the tile?

19 A We measured in our initial estimate, but because it was such
20 a custom tile, it was being cut out of a mountain basically, we wanted to
21 have the installer double-check those measurements and also submit his
22 measurements as well, from Summit Tile & Stone.

23 Q Okay. So what you ordered off of was given to you by
24 measurements taken from the tile contractor?

25 A Yes, because we didn't -- they were such large tiles, we didn't

1 want to try to risk a chance of making the order and then have it being
2 off for them, so we usually rely on them to do that.

3 Q Okay. So I would like you to go to Binder 1, and it's Exhibit
4 No. 23.

5 A Okay.

6 Q Okay. This is a proposal from Burnham Painting & Drywall
7 Corporation. Can you look at this and tell me what your contract amount
8 was for Burnham?

9 A For just drywall, or for paint as well?

10 Q Well, did you have to -- did you have to eat the painting or --

11 A Yes. We had to paint the house twice on the inside.

12 Q You had to paint the inside of the house twice?

13 A Yes.

14 Q Why?

15 A Because the tile -- we were asked to paint it beforehand. I
16 think there was still dust coming off of the mud. I don't recall the reason,
17 but we were asked to paint, just to make sure that there was no more
18 imperfections in the drywall.

19 Q Okay.

20 A And I guess the paint would let you see that a little bit more.
21 So we painted the house, but when Summit Tile & Stone went and
22 installed, it got -- too much dust was on the walls and we tried to wipe it
23 and clean it, but we were asked to repaint the house again.

24 Q Okay. So this is -- the proposal says -- or is this the actual
25 contract?

1 A Yes.

2 Q Okay. And it says drywall 31,678, and it says interior paint
3 25,398?

4 A Yes.

5 Q So did you have to redo all of the drywall?

6 A We had to -- we didn't hang the drywall. We had to texture it
7 all several times over again.

8 Q Okay.

9 A With a smooth, level five finish.

10 Q Okay. Did you guys -- do you know that you -- do you know
11 whether or not you paid Burnham, Desert Valley paid Burnham, the
12 31,678 and the 25,398?

13 A I believe we did on the drywall. I'm unsure on the painting
14 part of it, but the drywall, yes.

15 Q Okay. So the drywall portion is 31,678, and that's what you
16 had to -- well, you had to redo both of these items?

17 A Actually, the paint, they did the paint as well, so both of
18 those, yes. And then we redid the paint after the tile was done, yeah.

19 Q And you couldn't recharge for that, correct?

20 A No, we couldn't.

21 Q Okay. And that was the subcontractor. Why didn't you try to
22 make the subcontractor redo it?

23 A Because it wasn't -- it's not a -- it was something we were
24 asked to do initially and we didn't -- there was no justification in trying to
25 get somebody to do it after another subcontractor dusted the walls up.

1 We couldn't ask them to go repaint it. It's mostly every subcontractor
2 cleans up after themselves for their own trade, but in this case there was
3 just too much dust on the wall and it wouldn't have been justified for
4 anybody to go back and repaint it for payment.

5 THE COURT: So let me -- I think I understand what you're
6 saying, but let me just -- so you couldn't insist, insist being my word, I
7 guess, but couldn't insist that Burnham repaint because the need for the
8 repainting was not Burnham's fault?

9 THE WITNESS: That's correct. Yes, that's exactly why.
10 BY MS. HURTIK:

11 Q Okay. So, Danny, you were the estimator and you were
12 overseeing stuff, right?

13 A Yes.

14 Q But who was the day-to-day; it was Ramirez?

15 A The day-to-day was Ramirez, in conjunction with Will, our
16 project manager, because I was still doing estimates for other projects.

17 MS. HURTIK: Okay.

18 THE COURT: What's Will's last name, if you remember?

19 THE WITNESS: If I could ask Dennis, I think he may know.

20 THE COURT: That's okay.

21 THE WITNESS: Do you know Will's last name?

22 MS. HURTIK: No. He'll testify. You can't ask him

23 THE WITNESS: Oh, sorry. I don't know how court works. I
24 don't remember Will's last name.

25 THE COURT: No. That's why I said if you remember.

1 THE WITNESS: Oh, yeah. Sorry.

2 THE COURT: That's okay.

3 MR. BROSCHEE: We'll find his last name in an exhibit at
4 some point --

5 THE COURT: Somebody will look.

6 THE WITNESS: Yeah, it's in there.

7 BY MS. HURTIK:

8 Q Okay. Because I want to make sure that this is pretty clear,
9 I'm going to go back --

10 A Okay.

11 Q -- to the original, and I want you to go to Binder No. 1.

12 A Okay.

13 Q And like I said, I'm kind of jumping you around back and
14 forth, but --

15 A That's okay.

16 Q So on binder one --

17 THE COURT: So --

18 MS. HURTIK: Sure.

19 THE COURT: I probably should take a break --

20 MS. HURTIK: Okay. Go ahead.

21 THE COURT: -- you know, just for myself. Let's take 15
22 minutes because I have to do some signing and things. So come back at
23 3:30.

24 MS. HURTIK: Okay.

25 MR. BROSCHEE: That will give him time to go over --

1 THE WITNESS: Yes, it will. I'll run over there.

2 MR. BROSCHEE: There you go.

3 MS. HURTIK: Oh, yeah, that's true. He --

4 [Recess at 3:13 p.m., recommencing at 3:41 p.m.]

5 BY MS. HURTIK:

6 Q So Mr. Merritt, so when you're talking about Burnam
7 [phonetic] Drywall and how you had to repaint?

8 A Yes.

9 Q So the painting was done before the tile was placed?

10 A Yes, that's correct.

11 Q And is that normal?

12 A Not usually, just because the dust. Or it depends on the tile
13 installers.

14 Q Uh-huh.

15 A Where they choose to cut the tile mostly.

16 Q Okay.

17 A As that generates a lot of dust. Usually, we prefer to cut tile
18 outside.

19 Q Okay.

20 A So painting can technically be done before tile gets laid if it's
21 cut in the right area.

22 Q Okay. And so was part of the problem you said because this
23 tile, this special custom tile was -- it was dustier than a normal one
24 would have been?

25 A Yes, and a lot of the pieces had to kind of be cut inside, they

1 couldn't really, because a lot of curves.

2 Q Uh-huh.

3 A A lot radius's they had to follow, so they couldn't really cut it
4 outside, there was too many measurements to bring it inside the house.
5 I believe a lot of it had to be cut, for the special cuts, on the inside of the
6 home.

7 Q Okay. So Burnam, their paint job wasn't bad, it's just that it
8 had to be redone because of the tile?

9 A Yes.

10 Q Okay. So -- okay. So that wasn't any, you know, you guys
11 still had to eat that, because of that?

12 A Yes, we ate that.

13 Q Okay. And did you try to get the insurance company to pay
14 that?

15 A We tried to clean it first to see if it would make a difference,
16 and we used dried methods, and then we started using wet methods, but
17 it was just too much dust. We couldn't make the walls look uniform
18 again. So we couldn't -- in those kind of situations we couldn't really --
19 we'd probably have to go out to the subcontractor for the money --

20 Q Uh-huh.

21 A -- as opposed to the insurance company because they were
22 just going to go back and say well, why did this get done without this
23 being done, or why didn't you put -- there's numerous reasons why and
24 they put, you know, cut it outside, put air scrubbers in or something like
25 that.

1 Q Okay. So I would like you to go to binder number four.
2 Okay. Go -- if you would turn to Exhibit 401? Do you recognize this
3 email?

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

5 THE COURT: That's okay. Okay.

6 BY MS. HURTIK:

7 Q And there's quite a few attachments, so I'll let you look at it
8 first, before.

9 A Yeah, yes, I remember this email.

10 Q Okay. So can you -- this email says: subject change order,
11 not including material for bathroom walls, and then there's attachments,
12 quite a few attachments. And it was sent from you to Eugene, and also
13 sent to Rachelle and Dennis, Rachelle Elliston and Dennis Zachary.

14 A Yes.

15 Q now what is -- why did you sent this?

16 A Basically, we stopped -- well, we stopped, called the
17 subcontractors, and took a snapshot in time of the way the house was at
18 that time.

19 Q Okay.

20 A That means, you know, the proposal for walls getting
21 wrapped in tile in the bathrooms was another thing, but I had to do
22 something where I had to associate cost to these things and show where
23 the money was being allocated for, because it was going over those
24 things that thought it could be allocated towards.

25 Q Okay.

1 A So what had happened is we called all the subcontractors,
2 got all their prices in, I did as much work as I could to find out what
3 materials were chosen at the time for these areas.

4 Q Okay.

5 A And compared it to the old estimate, with the items that I
6 knocked off the old estimate to hopefully credit towards some of this,
7 and this was the result. This email was near the end of the job where we
8 had to say that this is what the things are going to cost for to finish this.

9 Q Okay. So now -- okay. So this goes through quite a bit of
10 detail, so what happened with the -- so the first paragraph, you're talking
11 about wall tiles, and you're saying that there was going to be -- that you
12 needed Tina to know that she has to reselect the wall tiles, otherwise the
13 order will increase by about 24,000.

14 A Yes.

15 THE COURT: So what exhibit are we on? I apologize.

16 MS. HURTIK: I'm sorry. We're on Exhibit 401.

17 THE COURT: Okay.

18 MS. HURTIK: And it's the first page. It's the first page of the
19 email and I'm in the first paragraph.

20 THE COURT: What Bates stamp is it?

21 MS. HURTIK: It is DVC1278.

22 THE COURT: Oh, okay. I have it 1277, but I have 78, too.

23 MS. HURTIK: Twelve -- okay.

24 THE COURT: I'm now on the one you're on, so we're good.

25 MS. HURTIK: Okay.

1 THE COURT: Please.

2 BY MS. HURTIK:

3 Q So -- okay. So this says that the order would increase by
4 24,000. We can't pay this due to the fact that the -- we don't have the
5 funds allocated in our estimate. So was this a change that was made
6 after your estimate was done?

7 A Yes.

8 Q Okay. Did Mr. Inose do this change then? Did you guys --
9 did he stop it?

10 A For the wall tile in the bathrooms?

11 Q Yeah.

12 A I believe he did stop that, yes.

13 Q Okay. And was it in relation to this email that was done in
14 August of 2015?

15 A I believe so.

16 Q Okay. So the next paragraph talks about: I have attached
17 bids and highlighted what Gordy was going to charge for the wall
18 installed if performed by him, and the difference is going to be -- there
19 was a difference, you were trying to give him a different contractor? Is
20 that what you were trying to do, to install that tile?

21 A Yes, trying to get the best deal we could for that task.

22 Q Okay.

23 A We had a couple of bids on that part.

24 Q Okay. So the master -- if you go to the third paragraph, it
25 says: master bathroom mirrors, 20,000, raw materials, 5,000 for the

1 install and wiring. Was that all above the original bid?

2 A The original bid had regular mirrors in it. This email was --
3 they're not exact dollar amounts, it was a roundabout number so we
4 could see where all the money was going to. So this was -- that was not
5 part of the original bid, the 20,000, nor the 5,000. These were just how
6 much -- just right about what everything costs, but I attached
7 subcontractor invoices for everything.

8 Q Uh-huh.

9 A So it was not -- it was above and beyond whatever the
10 mirrors were in the original bathroom bid.

11 Q Okay. And in this same paragraph you said -- you have
12 house painting and stucco patches across the perimeter membrane for
13 the downstairs tile floor, net 11,000, installation cost, 30,000 over budget
14 for downstairs tile floor. So he was over budget on the tile for the floor
15 downstairs?

16 A There is a special membrane that was put down on the floor,
17 a blue membrane, I believe it was, and they said they had to use it with
18 that type of tile floor. That was where a lot of that cost did come from.

19 Q Okay.

20 A And plus, it was a very thick, about inch-thick floor that they
21 had to install, so the install cost went -- went up pretty high as opposed
22 to what it would have been for tile that would have been in the house
23 before. The thickness was really the difference, cutting through that
24 thick of material.

25 Q Okay. And then it also -- after that, it says that foil, ESP

1 closet foil face, 7,000, which was not approved by insurance for this
2 upgrade, extra wallpaper, 14,000 for wallpaper, insurance only allowed
3 for a thousand. So did -- these are all areas that he was going over the
4 scope?

5 A Yes, in those areas, yes.

6 Q And did he -- did he go over that scope or did he take those
7 things out of that?

8 A I believe the wallpaper was taken out, but not the closet foil
9 face. I believe that that was above and beyond, and I think that's
10 something that that subcontractor missed on their estimate, I believe.
11 The 14,000 for the wallpaper was a bid that we got from DYBA Interior
12 Concepts, for her number for the wallpaper.

13 Q Yeah.

14 A That was in the estimate, but that price for the wallpaper was
15 way above, so the wallpaper was actually performed in the first room,
16 when you walk in, and I think that that one and a couple of other rooms
17 that we're talking about where the wallpaper's going, that's just showing
18 the price difference --

19 Q Okay.

20 A -- from what Fireman's Fund allowed --

21 Q So they --

22 A -- versus that.

23 Q Okay. So Fireman's was allowing 4,000 and what Mr. Inose
24 picked was ten -- 14,000 over the amount?

25 A It was that, but with the install, too, I think it was kind of a

1 more difficult kind of wallpaper to install is the problem. You have to be
2 really careful with it.

3 Q Okay. So you sent this to Mr. Inose, and on -- behind these,
4 DVC1280, this is Desert Home Electric, this -- is this one of the change
5 orders, one of the changes that were being done and increasing the
6 contract? This one's 51, 5,130.

7 A Yes, these were for the lighting for the vanities and the
8 butler's pantry. Under-cabinet lights, under-cabinet lights, yes, this is
9 above and beyond.

10 Q Okay. And then if you continue to go through, there's Eagle
11 Sentry change orders on 1281 through 1283, and one in the amount of
12 52-65-66, one for 1785, and one for 1,020. Are these -- these are all
13 increases in the scope?

14 A Yes, from the original contract.

15 Q And was the insurance company insurance approving these?

16 A No, these weren't part of the insurance scope. These weren't
17 submitted. These weren't part of the insurance claim.

18 Q Okay. And then -- okay. So there is quite a few pages here
19 that DVC1284, 1285, 1286 and 1287, are these all increases from Summit
20 Tile and Stone?

21 A Let me look through them really quick.

22 Q Sure.

23 A The first page or 1284 was original scope --

24 Q Okay.

25 A -- of the tile work.

1 Q Uh-huh.

2 A Anti-fracture membrane was not, the \$11,000 underneath
3 that was not, then on the next page, on 1285.

4 Q Okay.

5 A But I believe they told us it had to be used with that kind of
6 tile because of the thickness and it's natural stone.

7 Q Okay.

8 A You have to use that membrane.

9 Q Okay.

10 A Master bath floor was part of the original. Kitchen powder
11 wall clad was not.

12 Q Okay.

13 A Copper powder wall clad was not. Pool bath shower was but
14 not the -- the wall clad was, as well. And the next one, 1286, the tub deck
15 was not. None of these prices were in the initial insurance estimate for
16 the install because we didn't know who was going to do fabrication and
17 installing the granite. Well, we didn't know what material at first.

18 Q Okay.

19 A But none of these prices, I'd have to cross-check these prices
20 with the original estimate to see where the differences lie. These, some
21 of these, installations of the countertops are in there.

22 Q Okay.

23 A However, the prices may not jive. They may not be accurate
24 to these ones.

25 Q Okay. So when you go to DVC1287, it says total proposal,

1 \$91,376.

2 A Yes, and that's for all those areas listed above. Now there's a
3 couple of different trades involved in here on this bid. There's a floor
4 install trade, there's tile, countertop, so you'd really have to separate the
5 things out that are actually not -- not in the original estimate, as well as
6 the price charged per -- per thing, and if that's the -- the point, you'd
7 want to maybe get another subcontractor bid if that's -- if that's the case
8 to see if you can lower or a competitive bid.

9 Q Okay. But were these -- you were saying that he was over
10 the scope, the original email that was attached to these was over the
11 scope.

12 A Yes, I already went through and dug through that and found
13 out what it was -- a roundabout number what it was over.

14 Q Okay.

15 A Just so I could put some kind of numbers together.

16 Q Okay. So what was the -- so were you saying that he was
17 almost \$100,000 over his -- the scope?

18 A With all these trades or just some in tile and stone? Do you
19 mean --

20 Q With all the trades.

21 A Yes, that was where the number was around.

22 Q Okay. And so you were concerned? Or were you concerned?

23 A Yes, I was concerned and --

24 Q Okay. So would -- so in response to that email, what did Mr.
25 Inose do? Did he delete things or what happened?

1 A I don't -- I believe when that email was generated there was
2 no back and forth afterwards. I believe the conversation was more like if
3 we could finish it for what we have, we have, you know, what we're
4 allotted, but that's where I wouldn't -- I wouldn't go forward with it
5 because I knew we did not have enough money to do the -- these things,
6 like clad the walls and tile --

7 Q Uh-huh.

8 A -- Eagle Sentry's cost to replace all the switches.

9 Q Uh-huh.

10 A You know, those unforeseen charges were not -- we couldn't
11 justify those.

12 Q Okay. And so he -- what did he tell you -- he just wanted you
13 to complete it and, you know, he just wanted you to complete it? He
14 didn't care that it was going to -- he wasn't going to pay any more
15 money?

16 A Yes, that's correct. He wasn't going to pay any more for
17 change orders.

18 Q Okay. So -- but he still wanted this stuff installed? Do you
19 recall?

20 A He wanted to use Summit Tile and Stone a hundred percent
21 because they already finished part of the trade for the floor.

22 Q Uh-huh.

23 A So he wanted to keep them for the countertops for that.

24 Q Okay.

25 A We didn't really get into negotiating anything else out of the

1 contract, like the wall tiles, I believe we were off the job near or close to
2 that point.

3 Q Okay. So I want you to stay in the same volume and go to
4 Exhibit 342.

5 A Okay.

6 Q All right. So this is an email from Casey Webb [phonetic],
7 and it's to Rachelle Elliston, but it references you.

8 A Yes.

9 Q Can you read that email and --

10 A Yes. Good afternoon. Danny probably informed you of our
11 issues we were running into over at Inose. The scope of work has
12 drastically changed. I have attached a quote for the totals for the kitchen,
13 butler pantry, downstairs laundry, and the toilet and bidet installs. We
14 will have to do the toilets in stages due to the toilet design and getting a
15 nice finished product. We will have to drill holes through the tile for the
16 toilets. We do not take responsibility for tile issues including cracking or
17 chipping. There shouldn't be any. I've done a bunch of these toilets,
18 never had an issue, but they do take time. Let me know when we are
19 approved so I can get those water lines moved ASAP for you guys so
20 you guys can patch the drywall.

21 Q Okay. So was this something that was outside of the scope
22 that Mr. Inose was doing?

23 A This is for -- yes, this was for some rerouting of the plumbing
24 in the bathrooms.

25 Q And why was it outside of the scope? What was he changing

1 that wasn't the same as what was there originally?

2 A The design of the toilet.

3 Q Okay. So the insurance company wouldn't pay for this?

4 A No, they were standard toilets before. These were, I believe,
5 electric toilets or had power going to them.

6 Q Okay. And if you go the second page of this DVC1078, this is
7 actually -- this is an invoice from Sunrise, and is this just for the supply
8 lines and the plumbing portion, not the toilets themselves?

9 A This does have the toilets on there, but there was water lines
10 and such that had to be moved for these specific toilets, so it's a mix of
11 things that are in the original estimate, as well as things that are not.

12 Q Okay.

13 A Like line number 1, cut drywall, move water lines over
14 behind the new toilets to stop out, it's because the new toilets, where the
15 angle stops connect and everything.

16 Q Okay. And was this the -- this -- could you even submit this
17 to the insurance company at the time that this was generated?

18 A Not this in entirety. Portions of it I could have. As far as the
19 toilets, just the toilet themselves. Install kitchen faucets, and those I
20 could have. Vegetable sink faucet, I could have. Several things in there I
21 could have.

22 Q Okay.

23 A But not the entire thing.

24 Q Okay. Okay. So I want you to go to binder number three.

25 Or, I'm sorry, no. Binder number eight. Okay. In binder eight, if you can

1 go to Exhibit 561? Okay. This DSC Online Services. Do you know what
2 this is?

3 A It's an inspection progress report from the city.

4 Q Okay. And what's the date of this?

5 A 12/17/2015.

6 Q Okay. So were there several inspections that were scheduled
7 that day?

8 A Yes.

9 Q And this, actually, does it show a print up for other previous
10 inspections as well as those dated on 12/17/2015?

11 A Yes. Yes, it does.

12 Q Okay. So at this time, in December 20 -- 17, 2015, had you
13 passed? It says final two, it says pass; what is that?

14 A I'm unsure what the reference is to what the final two is.

15 Q Uh-huh.

16 THE COURT: I don't feel so bad.

17 THE WITNESS: I've never seen that one, but maybe it's -- T-
18 w--

19 BY MS. HURTIK:

20 Q No, I've never seen that before myself, so --

21 A I believe it's drywall.

22 Q Okay.

23 A The final nailing inspection, but I'm -- I'm unsure. I'm sorry.
24 Final two, I don't know that one.

25 Q Okay. Then it says final mechanical. Did you pass final

1 mechanical?

2 A Yes, we did.

3 Q Okay. Final plumbing; did you pass?

4 A Yes, we did.

5 Q Final electrical; did you pass?

6 A Yes.

7 Q Okay. And then do you know what the miscellaneous
8 inspection in August was that you passed?

9 A There's comments below it that I believe pertain to that.

10 Q Uh-huh.

11 A And below it says: met with contractor on-site, identified
12 acceptable required receptacle locations for the kitchen and butler area,
13 countertops for the contractors. So I believe when we walked the job
14 that electrical wasn't quite installed the right way in the kitchen.

15 Q Okay.

16 A So we had to make sure that the outlets or the boxes were
17 going to go on the right way and they're all GFI protected.

18 Q Okay.

19 A Sop that was -- we wanted to call the inspector out and make
20 sure we weren't going to fail anything drastically --

21 Q Okay.

22 A -- beforehand, and he walked it with us, and -- and showed
23 us what to do.

24 Q Okay. So you were passing, these areas were finished, you
25 got finals on them.

1 A Yes.

2 Q Okay. So then if you go next to the Exhibit 562? Now this is
3 an unconditional waiver and release on progress payments, and it's
4 dated 7/2/15, and up at the top it says no change orders as of 7/3/2015; is
5 that your signature?

6 A Yes, it is.

7 Q Okay. What does that mean? Are there -- does it mean there
8 weren't any more change orders or there just weren't any as of when
9 this was done?

10 A As of that time we believed we had everything needed, all
11 the subcontractor's bids and everything like that, so we didn't anticipate
12 any changes on that. Now supplemental items may have been like --
13 supplimentals and changes orders sometimes differ. Change orders are
14 a change --

15 Q Okay.

16 A -- to -- to the work being done. Supplimentals are usually
17 somewhere we need a little bit more money for this trade or -- or
18 something like that, so there's a difference.

19 Q Okay. So -- but did you get more change orders after this
20 date?

21 A Yes, we did.

22 Q Okay. So when you signed that, you didn't have them, right?

23 A No, not at that time.

24 Q And you thought you had everything?

25 A We did think we had everything.

1 Q And you'd been asking the subs for all of their change
2 orders?

3 A Yes, that's why this was generated, I believe.

4 Q And why was this -- and I think I asked you this, but I just
5 want to make sure, why was this confusion about the change orders?
6 Was there too many? Who was directing the change orders?

7 A Well, it was a mix between the design, materials being
8 available. Mostly I would say design and working with the -- what
9 materials to put back in the home. There was a lot of changes in that.

10 Q Okay. Let me kind of make it more specific. Was more than
11 one person directing the subcontractors to do this?

12 A Yes, there was.

13 Q Okay. And so was that creating a problem with change
14 orders?

15 A Yes, it was.

16 Q Okay. And so when you said design, who was directing --
17 who were the individuals that were create -- how was the confusion
18 happening?

19 A Well, Tina and Eugene were working on the design portion of
20 things, coming up with materials and items such as that nature. Now we
21 could always generate a material cost which I would have to do and
22 double-check it with the estimate, but also there was a labor cost going
23 into it, too, and because they were choosing materials without these
24 subs there, let's say Artisia Kitchen and Cabinet, they would just do the
25 install, but the material may come from Los Angeles, like the granite or

1 quartz.

2 Q Uh-huh.

3 A So that's the case, so we have to get more than one number
4 for each of these changes or in theory whatever was different, or even if
5 it was the same material going back in, we have to cross-check the price
6 and also cross-check that individual subcontractor that had to install it
7 after the fact.

8 Q Okay. Okay. So Exhibit 570 in the same binder, okay. So
9 this is an email from you to Tina Dyba and Rachelle Elliston. So what
10 were you -- why did you send this to her?

11 A Well, this was just to try to keep her within the scope of work
12 of what needed to happen. I was getting word that all the walls were
13 going to get tile in the bathrooms --

14 Q Uh-huh.

15 A -- and I tried to let her know that we can't do that, only one of
16 the walls in the one of the bathrooms had tile. And this was just
17 something where I was just throwing caution to the wind, that we have
18 to stick with the scope of work, especially, you know, this late in the
19 game when -- when everything should have been approved or we should
20 have had most of the numbers in. So basically, I was just telling her that
21 we need to know the -- that the products have to be picked out, she was
22 still picking products out and that -- that there was an open-ended item
23 on how much stuff would cost.

24 Q Okay. So this is May 13, 2015, correct?

25 A Yes.

1 Q Okay. So you originally went out there in August of 2014?
2 A Yes, that's correct.
3 Q Okay. So these delays that here you are in May, part of it is
4 because of design changes?
5 A I would believe so, yes.
6 Q Okay. Okay. If you go to Exhibit 573? Okay. So this is May
7 13, 2015, and it's the summary for cabinets and material change orders,
8 and it's from Troy Williams. Okay. So how much is this change order
9 for?
10 A This one is for 27,226.
11 Q Okay.
12 A Even.
13 Q And do you know whether the insurance company approved
14 this?
15 A No, this was not part of the insurance company scope.
16 Q And why wasn't it part of the scope?
17 A Well, on his own lines here, change order number one,
18 reflect the actual cost of contracted materials, original proposal was
19 based off of photos from jobsite demo at the time of initial water
20 damage. Actual cost or based on field condition and actual orders. So
21 what he's saying is they -- I know they came out to inspect the cabinets
22 when it all first happened because we got them out there.
23 Q Uh-huh.
24 A But they're saying now that they actually had to do a drawing
25 or something of the sort or whatever the case may be, the price changed

1 because of that.

2 Q Okay.

3 A And I didn't -- I didn't know why. I couldn't really -- that's not
4 really a definite answer on why their cost changed. Change orders also
5 reflect the credits for removal of the laundry room from cabinetry scope
6 to be supplied and installed by our closet company instead.

7 So basically, it's just a change order taking off of some
8 cabinets that were in the laundry room by going to be done by another
9 company, and -- and then the other one is proposal for a laundry room,
10 replacement of laundry room to be supplied and installed by Creative
11 Closets and Cabinetry.

12 Proposal for powder room number one, new wall-hung
13 vanity by Creative Closets and Cabinetry. Proposal for powder room
14 two, wall-hung vanity. Those both -- the both -- the wall-hung vanities
15 weren't part of the original one, they were just regular vanities.

16 Q Okay. So he was upgrading the vanities?

17 A To a -- to hanging off the floor, yes.

18 Q Floating?

19 A Floating vanities, yes, that's correct.

20 Q Okay. And the insurance said we're not paying for that
21 because that's not original condition.

22 A We didn't have that information at that time, so I don't think
23 the insurance company even said anything about that.

24 Q Okay. So if you go to Exhibit 576? Okay. So this is a change
25 order for Desert Home Electric?

1 A Yes.

2 Q Okay. And this one you said approved.

3 A I did.

4 Q Okay. And --but it says on the side: removed, Inose needs to
5 pay. Do you know, is that your handwriting?

6 A No, that's not my handwriting.

7 Q Okay.

8 A I believe it's Rachelle's handwriting. I'm not sure.

9 Q Okay. So is this something that was extra but you approved
10 it just --

11 A Yes, at the time, this was something extra, and that's why I
12 approved it, because I believe we used the funds from the power room --
13 not the powder room, the sauna room for -- for some of this. This is a
14 portion of what we were trying to reallocate money towards.

15 Q Okay. So Desert Home and Electric, if you go -- you're still in
16 the same exhibit, if you go to IN-LO 205?

17 A 205?

18 Q Yeah.

19 A Okay.

20 Q This is an invoice, October -- excuse me -- October 21st, 2015,
21 and it says miscellaneous change orders still open, \$11,645. Were there
22 -- do you know whether these were approved?

23 A I'd have to see their full contract amount to Desert Valley just
24 to make sure. I know that most of them weren't approved. If you go
25 back one page to 204?

1 Q Uh-huh.

2 A That change order was not signed or approved for the puck
3 lights, the under cabinet lights, so the 204, the page before should have
4 been part of that, as well, but that was not approved or signed by us.

5 Q Okay. So if you leaf through these Desert -- the Desert Home
6 Electric?

7 A Yes.

8 Q It's 206, was that --that one does -- it has accepted by, but
9 that's not signed, correct?

10 A That's correct.

11 Q Okay. And then there is a -- if you go to 207, there's actually
12 exclusions and questions, and then there's -- it's circled. It says original
13 contract.

14 A Yes.

15 Q And it says outside -- so these are exclusions and questions.
16 So this is stuff that was also change orders?

17 A I don't believe there were change orders. These are just
18 showing what he did because they did the first one and got paid, so I
19 believe that was part of the original contract. The second one, August,
20 install 40 devices, he would do that with no charge just to help out is
21 what it says. October, number three, request install of 35 device, see
22 attached PO request. So I don't think that was ever agreed on.

23 Q Okay. So --

24 A And this is -- this was, I believe supposed to be Eagle Sentry
25 work, but I don't think Eagle Sentry could do the low voltage work

1 anymore or something with the machines they had or something.

2 Q Okay.

3 A So I believe that this it -- this is Eagle Sentry's scope of work
4 that was originally submitted to the insurance company --

5 Q Okay.

6 A -- is why Desert Home Electric came in.

7 Q Okay. And if you go through, in the 209, you signed that one,
8 and you signed --

9 A Two-O?

10 Q You signed 210, IN-LO 210, but then 211 is not signed, and
11 that is a change order for 2,300, and that is in October of 2015, so was --
12 that wasn't -- there's several after that?

13 A Yes.

14 Q That none of them are signed, so do you know why these
15 weren't signed?

16 A Well, this -- once again, this was supposed to be an Eagle
17 Sentry scope of work, and I believe we did -- they did not take that back
18 out of their estimate, Eagle Sentry. Something happened to where Eagle
19 Sentry could not do some of these items, and Desert Home Electric came
20 in to do them, and we told Desert Home Electric to get all their numbers
21 over at once, and I believe none of these were in the original estimate.
22 So we'll go to 211, this all pertains to the Crestron devices, or Lutron, I'm
23 sorry --

24 Q Uh-huh.

25 A -- devices that were not paid for by the insurance company.

1 And then we'll go to 212, this was something after the fact for, I believe,
2 the office. Office desk, yes, which they're stating because the office desk
3 was a different configuration, the wire was too short.

4 Q Okay.

5 A Because I believe where the countertop cutout was, or just
6 the way the desk was designed, but that wouldn't have been approved
7 because that's -- that's a -- that's a, you know, insurance usually wouldn't
8 approve to lengthen wires or do something if you change something.

9 Q So he was changing the layout of the kitchen?

10 A A little, in the office desk, this is upstairs in his office, so that
11 probably just means, you know, a little bit, three or four inches could be
12 too much, you know, which is very hard to get it right back to where it
13 was, but still, that cost doesn't get absorbed.

14 Q Okay.

15 A 213, these ones should have been onsite, the light covers,
16 but I don't think we were there past many of these to look for them, to
17 reinstall them. SERVPRO should have saved any kind of little trim like
18 that. There was four light covers, brushed to chrome nickel, \$175 each
19 though, which SERVPRO usually saves and puts in boxes for us, so we --
20 we would have had to go look and scrub and see if these were in there
21 before doing -- or trying to bill for it.

22 Q So did you have a problem that some of the -- some of the
23 switch plates or some of the switches were missing because --

24 A We -- we --

25 Q -- the trade before, that SERVPRO that did the remediation,

1 they weren't there?

2 A We did, and there was a cooker in the kitchen that was
3 damaged, a sink that was, a faucet that was damaged, I believe a
4 refrigerator had a ding in in.

5 Q Okay.

6 A And we subbed out all these things, like if the Lutron or the
7 Crestron, we sub that out for somebody else to disconnect those
8 because we didn't want to touch them.

9 Q Okay.

10 A So I believe several of those were lost, and that's why a
11 change order for all of them, because you have to have them all
12 reprogrammed at that same time is why they all had to be redone.

13 Q Okay.

14 A But we didn't know that until they went in to do the rough
15 electrical that somebody lost some of them.

16 Q Okay. So the original contract is an IN-LO 227 for Desert
17 Home Electric.

18 A Yes.

19 Q And that says approved. Is that you guys approving this? Do
20 you know?

21 A I don't know.

22 Q Okay. So in this original contract, this is for the high voltage,
23 so was there a contract for high voltage and low voltage?

24 A There should have been. The original contract for low
25 voltage would have been through Eagle Sentry, when it was negotiated

1 with the insurance company.

2 Q Uh-huh.

3 A But I believe at some point they said they don't have a
4 machine to do it anymore or something along those lines --

5 Q Okay.

6 A -- where Desert Home Electric had to come in, and this was
7 after the fact that Eagle Sentry's price was already to the insurance
8 company to do the project.

9 Q Okay. So even in this contract, if you look at it, it says they
10 needed cabinet details on number one?

11 A Yes.

12 Q So there's stuff that says note any special Creston switches
13 going in, will be addressed later. We need to install devices first.

14 A Yeah.

15 Q Then change out once we confirm that everything works.

16 A Yeah, so the -- so the cabinet details were for lighting for the
17 under cabinet lighting which wasn't there before. Replace all plugs,
18 switches, and plates, matching what's there. That should have all been
19 salvaged and placed somewhere to be reused because the insurance
20 usually doesn't -- they want you to detach everything you can save, save
21 it --

22 Q Right.

23 A -- and keep it there, so --

24 Q Okay. Now on Eagle Sentry, if you go to Exhibit 579, you
25 know what? Strike that. I think we have talked about Eagle Sentry a little

1 bit. Let's go out of there. So were you checking the job site on a regular
2 basis?

3 A I would go there initially really regularly, but at the end,
4 maybe once a week I would be there, twice a week, especially when I
5 had to walk with subs, we had to look at any issues coming up. Flooring
6 install was a big thing. We had to go and make sure that the flooring
7 was going in the right way because a lot of different trades relied on that.
8 I would walk with Tina, the interior designer, as well.

9 Q Uh-huh.

10 A Custom Landau was another one we had to walk it with to
11 make sure all the stainless steel clad trim was put in right. But a lot of
12 these, like the Eagle Sentry or the Artesia, they came out initially, and
13 then came out maybe one other time, and they basically had everything
14 they needed to do to put their numbers together, the bigger numbers, so
15 I wouldn't really have to walk it too many more times with them. It was
16 just more of the, like, the finished trim, wallpaper, flooring installer. We
17 had to get a couple of bids for flooring install.

18 Q Okay.

19 A You know, stuff like that, yes.

20 Q Okay. So I want you to go to binder number nine. Okay. If
21 you go to Exhibit 614? So on Bates stamp, there's several pages in here,
22 on IN-Lo698, there's an email from Rachelle Elliston at the bottom of the
23 page, and it say ccc Danny Merritt and Michael Darling, and it says
24 subject, Inose updates, but it's actually sent to RNR1702; who is that?

25 A That's Rob Ramirez's email.

1 Q Okay. And then it says please see the attached Inose update.
2 Let me know if you have any questions. Thank you. But then it says
3 regards, Eugene Inose. So were you sending -- this is dated September
4 22nd, 2014. Were you sending job updates?

5 A Yes, there was some job updates as far as emails, and there
6 was a list of what was going on. We had a whole file of what the subs
7 were doing, what portion they were, that we would send regular updates
8 as far as emails go.

9 Q Okay. So if you go in the same exhibit to IN-LO700, and this
10 is actually -- appears to be an update for -- there's a running progress
11 report, it appears.

12 A Yes.

13 Q IN-LO702, so who were these progress reports sent to?

14 A They should have been sent to Rob, our project manager,
15 Rob Ramirez, our project manager, and I believe Eugene was -- would
16 have been on these, as well, but I'm not sure if he was. I know for sure
17 Rob Ramirez, our project manager, and some of our office staff that were
18 working on it.

19 Q Okay.

20 A Our project manager at the time was Michael Darling, I --

21 Q Michael Darling?

22 A At this time, yes.

23 Q Okay. So were you keeping -- now if you go to the last, well,
24 the last two pages of this which is IN-LO703, I guess just go to 703,
25 there's company contacts, phone numbers, and emails. So was this, this

1 was information so that everybody knew who to contact?

2 A This was more of a who -- who was involved in this project
3 and what the bid status was, so we know that we had in all of our bids
4 for these contractors, or if there's issues with any of their bids, like
5 there's unforeseen things that they don't know, which -- which
6 sometimes there was. But this was a spreadsheet we created to track
7 down all the parties and if we got their bid or not, so we know to call and
8 get their bid to finalize the insurance estimate.

9 Q Okay. All right. Okay. And did you have sub meetings,
10 meeting with the subcontractors throughout the rebuild?

11 A Yes, we had to meet with -- just because there was a lot of
12 different subs and we couldn't really work them together at the same
13 time, it had to be scheduled --

14 Q Uh-huh.

15 A -- so yes, we met with Burnham Painting and Drywall, we
16 met with -- and Tina was there, as well, to help with some of the design,
17 we met with Artesia Kitchen and Cabinets a couple of times over there.
18 Every one of these subs we had to meet with. We had to meet with
19 Sunrise HVAC a couple of times for a unit that was damaged out there
20 and what we needed to do with that. Yes, we met with the subs out
21 there. That's what we do on a regular basis.

22 Q So can you go to Exhibit -- or volume four? Okay. If you can
23 turn to Exhibit 348? Okay. So this is a -- at the bottom of it, it says
24 September 8th, 2015, it's from Rachelle Elliston. Inose team, Eugene is
25 in town, would like to meet on-site tomorrow morning to go over any

1 and all questions. Please all be there at 8:00. Then above that is October
2 20th, 2015, and it's from you to Rachelle Elliston, and several, I believe,
3 subcontractors?

4 A Yes, it was -- and I sent it out to all the subcontractors, I
5 believe, that were working on the project at the time, or that had
6 involvement with the project, if their accounts weren't closed out or their
7 estimate wasn't agreed on.

8 Q Okay. So according to these emails, I mean, were you
9 advising and talking to Eugene Inose about change orders all throughout
10 the project?

11 A Well we were working together as far as, yeah, if he wanted
12 to do upgrades, I -- we were going to try to make it work for him. So we
13 would credit back prices, and for the materials, we can kind of get -- we
14 could kind of get a good feel for what everything will cost. It's the
15 subcontractor price was really what shot it through the roof. So, you
16 know, yes, there was back and forth about designs, him and -- Tina and
17 himself would work on stuff, so yeah, I would have to say yeah, that --
18 that could probably work or that wouldn't work. There was -- there was
19 definitely back and forth with that, but the project still kept moving on
20 the whole time. It was more for the finishes, is really where it came
21 from, you know, maybe putting tile on the wall versus dry walling it.

22 Q Uh-huh.

23 A Those were the finishes that we -- that -- and then a lot of the
24 low voltage Lutron stuff at the end there, the electrical, just way higher
25 than initially thought, mostly because the switched doors that were put

1 in, the wine cooler, there's a lot of stuff that had to be specially wired.

2 Q Okay. And do you by any chance -- so when you started
3 doing this, so, I mean, you've had lots of meetings with the
4 subcontractors throughout the process, right?

5 A Yes. Yes, we did.

6 Q You've had meetings on-site, and you've had lots of
7 meetings with Mr. Inose, right?

8 A Yes.

9 Q Okay. So did you get the plans or original plans for the
10 original -- for the house so that you knew exactly how things were?

11 A We -- we had the original cabinet drawings from Artesia, that
12 we were able to get the original cabinet lay -- so the house was going
13 back, well, technically, as is. We had to drop a new set of plans for the
14 wine room because that was changing.

15 Q Okay.

16 A But I don't believe we actually had a copy. No, we did have a
17 copy of the plans, yes, there was a copy of the original plans.

18 Q Okay. And did you have to go, did you have to obtain
19 electrical plans and other plans from the city, from the City of
20 Henderson?

21 A For some of the things, yes. For the wine room, we did.

22 Q Okay.

23 A And we had to show that it changed the walls, as well,
24 because they -- they were bigger than the original footprint of the
25 original wine cellar.

1 Q Okay.

2 A So that was all inspected and passed upon and we were

3 done with that, too.

4 Q Okay.

5 A So we did have to change that, but I don't think we had to

6 draw up a full new set of plans.

7 Q Okay.

8 A I believe were able to -- just to mark up on the original plans

9 that were.

10 Q Okay. So Exhibit 349 in the same binder, so there's an email

11 on September 16th, 2014 from you to Diana Serta [phonetic], and it says

12 the owner, no, because the owner only wants DVC obtaining the plans

13 which are already on file. Nobody else. Look them up online.

14 So what were you getting there?

15 A Oh, I'm sorry. What page is that one?

16 Q Oh, I'm sorry. 349. It's Exhibit 349, you're in binder four.

17 A Okay. On the front page? The first page?

18 Q Yup. It's DVC122.

19 A Oh, 122.

20 THE COURT: You might not have turned it to 349.

21 THE WITNESS: Oh, I didn't. I'm sorry.

22 THE COURT: That's okay.

23 THE WITNESS: Okay.

24 THE COURT: So what was your question, Ms. Hurtik?

25 MS. HURTIK: Okay. I'm sorry. So --

1 THE COURT: That's -- no, that's --

2 BY MS. HURTIK:

3 Q Okay. So it says the top -- the top email says, it's from you to
4 Diana Serta.

5 A Yes.

6 Q And it says no because the owner only wants DVC obtaining
7 the plans which are already on file. Nobody else. Look them up online.

8 So were you -- what were you -- is this what you were
9 obtaining, the plans for the house, do you know?

10 A Yes. It was for Desert Home Electric. They needed the
11 electrical plans on the houses.

12 Q Okay.

13 A And I think for the fire protection company, they may --
14 needed that, too. And that was sent from my phone, so I'm trying to
15 think. They were already on file with the City of Henderson. I believe we
16 did find that out, they -- I don't think they were on our file, with the City
17 of Henderson they were, and we were only the ones that were supposed
18 to be getting those plans, nobody else.

19 Q Okay. And do you know who LWG is?

20 A Where do you see LWG? I'm --

21 Q Okay. If you go -- turn one page to DVC 11/23, and it says
22 LWG site inspection on September 12th due to the scope of this matter,
23 LWG is further requesting a follow-up site visit.

24 A LWG was somebody the insurance company brought in, and
25 they were the ones who -- I believe Nick Gianetto [phonetic], there is at

1 the very bottom.

2 Q Okay.

3 A Senior complex loss consultant management. That was
4 Nicholas Gianetto, another third-party vender that was called in from the
5 insurance company. I believe he just focused on electrical and low
6 voltage for the home, because the concern came up where everything
7 needs to be tested and make sure that the water didn't compromise
8 anything. So Nick Gianetto came in. He was another third-party vender I
9 was working with -

10 Q Okay.

11 A That was requesting this list, as well, above and beyond what
12 -- well, in conjunction with what else the insurance company needed
13 from us. So this was a hole another list we were working on to either
14 justify replacing these things or, you know, justify the bids that were, you
15 know, sent to them and they'd have to review the bids, like Eagle
16 Sentry's bid had to get reviewed --

17 Q Okay.

18 A -- and you know, stamped off on.

19 Q So there's -- there were a lot of people involved in this
20 project. There's a lot of stuff going on, right?

21 A Yes, there was, there -- yes, there was the refrigeration
22 people. Ferguson had to come in and disconnect all the appliances and
23 check them. Custom Home -- there was a bunch of them that had to do a
24 lot of different trades to check the appliances, electrical, everything.

25 Q Okay. So your -- you were the project manager, correct?

1 A I was -- we hired a project manager specifically for this
2 project. Michael Darling was one of them.

3 Q Okay.

4 A And later on, Will Roberts would have been the second one.
5 I was ultimately the estimator and the one controlling the money over --
6 over everything.

7 Q Okay.

8 A But project manager, as well. I had to get in there and do a
9 lot of that, as well. Work with the cabinet company, help with revising
10 costs and, you know, walk the job, make sure the framing was done
11 right, we had to redo all the subfloor. There was a lot of things I had to
12 go do

13 Q Okay. So now I want to go to Exhibit 360 in this book. So
14 this is DVC1163, and this is dated July 16th, 2015, and this is again,
15 another job site meeting, correct?

16 A Yes.

17 Q And it's with Tina Dyba, is listed on it, as well.

18 A Yes.

19 Q And do you know whether Eugene participated in this one?
20 He's cc'd on it.

21 A I don't believe Eugene went to this one. I believe Rob did.
22 Let me see if he's even on here. Rob may have been off this job at this
23 time. Let me check the date. I don't believe Eugene could have made
24 this one, I think there was something with that, but this was the one
25 where we had to get all the subs back in because it was nearing the end.

1 Q Okay.

2 A All the finals were getting inspected on.

3 Q Uh-huh.

4 A And we just had to make sure we had all of our numbers
5 straight and they could all walk the job. So yes, I did call for this
6 meeting. Several of them did confirm. Not all of them could make it, but
7 we were able to walk with a good amount of them on this meeting.

8 Q Okay. And this says that in -- within it, it's saying hello, team.
9 We just want to have a meeting with all the subs in the trades still
10 involved in this project just to make sure we get the timelines down and
11 make sure that we're not working over each other and you get a good
12 timeline for the owner as far as when we're going to try to wrap
13 everything up, what the next steps are, and most importantly, the
14 finishing product for the home.

15 So you were trying to wrap stuff up, right?

16 A Yes. Well, and find out if everything that was set in stone is
17 still set in stone would be the big thing, make sure there's no -- nothing
18 else changing.

19 Q Okay.

20 MS. HURTIK: Your Honor, how late are we going to go
21 today? I just want to -- until 5? Okay. Because I'm going to try to stop it
22 at a good place.

23 THE COURT: Oh, sure. Whoever's fine.

24 MS. HURTIK: Okay. Are we okay if we stop it right now and
25 then --

1 THE COURT: Well, let's do 15 more minutes.

2 MS. HURTIK: Do 15 more minutes? Okay. I just have to get
3 my car. I think they're there until 6. Okay. Okay.

4 BY MS. HURTIK:

5 Q Okay. So if you go to Exhibit 380? So this is at the bottom in
6 the email from Eugene, and it's to you and Rachelle, and Robert Ramirez
7 is cc'd. This is September of 2015. And so was this -- so this is a list of
8 things that he -- are -- were either in completion or on the way to being
9 done?

10 A Yes, that's correct. The things on the bottom were the wood
11 floor was almost done, it just had to be done in like two more areas
12 because we were doing other work in those areas, we didn't want to
13 install the floor.

14 Q Uh-huh.

15 A Master bath mirrors did end up getting done.

16 Q Uh-huh.

17 A The floor did end up getting done. The closet, I don't know if
18 that was all the way finalized. Smoke mirrors, I don't know if those are
19 finished.

20 Q Uh-huh.

21 A Next page, gym mirrors and floor, those mirrors were done,
22 and the flooring was done. All lighting hung, I don't believe all the
23 lighting was hung, we did pass the final electrical though, so I'm not sure
24 if that needed to have the actual, like, pendant lights hung or whatever.
25 I'm not sure what the final electrical would have entailed on this house,

1 but yeah, those were -- those were some of the things that we were
2 almost finished with or in the works of or --

3 Q Uh-huh.

4 A -- like with lighting, I'm not sure all of it came in.

5 Q Okay. And this, on page 2 of this email, it says DVC1242, it
6 says: I plan on being in town for a week minimum to monitor the
7 progress on the house. So Mr. Inose was coming regularly and he was
8 overseeing or checking on you guys?

9 A He was, or we would email. We would email back and forth
10 as far as whatever's going on, so we'd have to keep a string of emails
11 going and who's coming in, who's doing what.

12 Q Okay. Okay. So at some point did -- so Mr. Inose had a lot of
13 contact with subcontractors, right?

14 A Yes.

15 Q Okay. At some point do you -- did he -- when you were --
16 that things were falling apart with you and him, was he trying to get the
17 subs to complete the work through him?

18 A I believe there was a couple of subs that they tried to go that
19 route with just to get them to finish up for inspections and what not.

20 Q Okay.

21 A And I think some of those would be the -- Eagle Sentry was
22 one, I believe. That was a big one. Artesia Kitchen and Cabinets, I think
23 they still had some -- some light work there. And I'm not sure of the
24 other ones.

25 Q Okay. Okay. So go to Exhibit 396 in the same binder. Okay.

1 So this is an email on May 12th, 2015, and it's to Eugene and Rob, and
2 Rachelle Elliston and Dennis Zachary are cc'd, and it's talking about
3 Ramirez times. So what was going on here?

4 A This is where we -- Rob was supposed to be a part of this job
5 regardless, so basically, if Rob wasn't on the job we couldn't be on the
6 job because he was the one that helped build the house, initially, I
7 believe. So with a lot of -- we got everything we could as far as for Rob
8 up front. We had to ask for the money for him up front, and when we
9 looked at everything, you know, we're supposed to have our overhead
10 and profit, even on what we pay out for, like, a supervisor like Rob.

11 Q Right.

12 A And we're supposed to have a burden on there, so we even
13 took that out, trying to make this work and just -- we're going to break
14 even or just -- just to keep Rob on the job, but this is after even that
15 money ran out. So we were trying to keep him on there, because we
16 knew if we didn't, we'd probably be off the job.

17 So I was, you know, I was trying to just say that, you know,
18 we -- we are in the red, this is another example of why we're in the red
19 on this job, and we have to ask for more money one way or another. But
20 then I started getting the subcontractor bids up and I started getting
21 Rob's pay up, and I started adding everything up, and that's where I saw
22 that here's the numbers, here's our hard costs for everything, and this
23 was just like a red flag going up saying we need to either get this thing
24 done the way it is now or, you know, or ask for more money.

25 So it was -- it was not only Rob, it was -- it was -- there was

1 other things in here, too, I believe. It was Tina's money, too, because
2 she -- she asked for some more, because she started having to take
3 flights out to LA to look for materials, and that wasn't in our original --

4 Q Okay.

5 A -- bid to design the house, you know. So she didn't know her
6 cost up front, really, I guess, for the design of the house, but the
7 insurance only paid her X amount of dollars for it, so.

8 Q Okay. What about -- was there upgrades to the pool areas,
9 as well, that he was having done?

10 A Yeah, the pool actually got recoated, recoated, like from the
11 concrete place, and that was like another five or \$6,000 for the pool to
12 get done because --

13 Q Okay. Was that in the scope?

14 A No, it was not in the scope, and initially, no, it wasn't.

15 Q Okay.

16 A That was money we -- we found, tried to allot for from other
17 areas.

18 Q Okay.

19 A It was -- it was a saltwater pool, and I think saltwater was
20 building up on it. That's why he wanted to have them do that.

21 Q Okay. So --

22 A So we -- we did the pool.

23 Q Okay. So on this email that we were looking at, so you said
24 that you already paid Rob Ramirez \$75,800, and that was for nine
25 months of work?

1 A Yes.

2 Q And that the insurance company wasn't going to justify any
3 more than that, that was high. How did his -- what he was getting paid,
4 who decided on what he was getting paid?

5 A Well, first we had to figure out kind of how long the job was
6 going to take, and we basically paid him, I don't know if it was an hourly
7 or a salary, but I don't know where the numbers were generated from. I
8 think it was on how long the job was going to take. Now in the
9 meantime, the shipping from the Long Beach and the floor?

10 Q Yeah.

11 A Added three more months onto the job just being stuck in
12 the harbor over there.

13 Q Okay.

14 A So that was kind of like a dead time for the project where you
15 know, there was really not much going on because we couldn't do much
16 until the floor came. A lot of things depended on that. So this cost was
17 something we tried to figure out for Rob as far as keeping him on the job
18 for, let's say, a year.

19 Q Uh-huh.

20 A I don't believe there was actually X amount of dollars per
21 hour. It was -- it was a fee that was negotiated up front for Rob, and at
22 the end here, when we started running out of money to pay him, and he
23 starting asking for more, you know, he needs more. I believe it was a
24 dollar amount of a week or every two week is what we allotted for him.

25 Q Okay.

1 A So that's -- that's where that price came up. We didn't have a
2 salary, exact dollar salary for him.

3 Q Okay. Okay. So go to Exhibit 399. So this is in July of 2015.

4 A Yes.

5 Q And this is from you to Eugene. Says this job site walk with
6 Eugene. So he's here again, walking the job with you, correct?

7 A Yes. He should have been here this time, yes.

8 Q Okay. And what was this about? Was he still picking out tile
9 and cabinets still?

10 A I believe a lot of the cabinets and tile was done at this time.

11 Q Uh-huh.

12 A We were just looking for the grout colors, and the grout
13 colors for the master bathroom. So we were -- some finishing touches
14 here, and this is when the trim out should have been happening. No, it
15 was grout colors, we had the tile installed at this time.

16 Q Okay. So just still continuing, though, there was still
17 continuing stuff that was happening, continuing revisions or things still
18 being picked out at that time.

19 A Yes.

20 Q So these delays were not caused by you guys, were they?

21 A No.

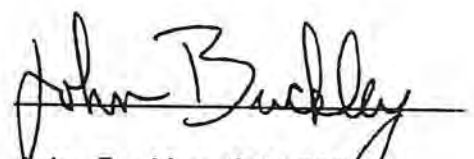
22 Q Okay.

23 A Well, the delay in the Long Beach, nobody had power over,
24 that was where the tile got stuck on the boat and they went on strike, and
25 that delay was -- was one that nobody really could foresee.

1 Q Okay. And that was just there was a strike, you said it was
2 because there was a strike, right?
3 A Yes.
4 Q Okay. Okay. So I want to go through the actual estimate.
5 A Yes.
6 Q What actually -- what was the final estimate and what was
7 the original?
8 A Okay.
9 THE COURT: So now is probably a good time.
10 MS. HURTIK: Yeah, I -- that's what I kind of --
11 THE COURT: Okay. Yeah. Well, that's fine. So we'll start
12 back tomorrow at 10:30. Thank you.
13 THE WITNESS: Thank you.
14 THE COURT: See you tomorrow morning.
15 MS. HURTIK: Thank you.
16 MR.BOSCHEE: Okay. Thank you, Judge.
17 [Proceedings adjourned at 4:57 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