

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS A. PICKENS,
INDIVIDUALLY AND AS TRUSTEE
OF THE LV BLUE TRUST,

Appellant,

vs.

DR. DANKA K. MICHAELS,
INDIVIDUALLY AND AS TRUSTEE
OF THE MICH-MICH TRUST,

Respondent;

Electronically Filed
Feb 23 2022 10:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

S.C. DOCKET NO.: 83491
D.C. Case No. D-17-560737-D

APPENDIX

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ATTORNEYS FOR APPELLANT

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| Complaint for Divorce and for Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest | 10/24/2017 | I/AA00001-00015 |
| Request for Issuance of Joint Preliminary Injunction | 10/25/2017 | I/AA00016 |
| Affidavit of Process Server | 11/02/2017 | I/AA00017-00022 |
| Notice of Appearance of Attorney | 11/27/2017 | I/AA00023-00024 |
| Appendix of Exhibits in Support of Defendant's Motion to Dismiss | 11/29/2017 | I/AA00025-00044 |
| Motion to Dismiss | 11/29/2017 | I/AA00045-00061 |
| Petition to Seal Records Pursuant to NRS 125.110(2) | 12/15/2017 | I/AA00062-00063 |
| Exhibit Appendix to Opposition to Defendant's Motion to Dismiss and Countermotion for Attorney's Fees and Costs | 12/20/2017 | I/AA00064-00093 |
| Motion Opposition Fee Information Sheet | 12/20/2017 | I/AA00094 |
| Opposition to Defendant's Motion to Dismiss and Countermotion for Attorney's Fees and Costs | 12/20/2017 | I/AA00095- I/AA00111 |
| Order to Seal Records Pursuant to NRS 125.110(2) | 12/22/2017 | I/AA00112- I/AA00113 |
| Stipulation and Order to Continue Hearing | 12/28/2017 | I/AA00114- 000115 |
| Notice of Entry of Stipulation and Order | 12/29/2017 | I/AA00116- 000119 |
| Notice of Entry of Order to Seal Records | 01/03/2018 | I/AA00120-00124 |
| Reply to Opposition to Defendant's Motion to Dismiss and Opposition to Countermotion for Attorney's Fees and Costs | 01/09/2018 | I/AA00125-00141 |
| Court Minutes | 01/25/2018 | I/AA00142-00143 |
| Court Minutes | 02/23/2018 | I/AA00144-00145 |
| Order | 03/09/2018 | I/AA00146-00154 |

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| Notice of Entry of Order | 03/12/2018 | I/AA00155-00164 |
| Order | 03/12/2018 | I/AA0065-00173 |
| First Amended Compliant for Divorce; for Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest; and for Alternative Equitable Relief Under the Putative Spouse Doctrine | 03/22/2018 | I/AA00174-00188 |
| Answer to First Amended Complaint for Divorce; for Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest; and for Alternative Equitable Relief Under the Putative Spouse Doctrine; Affirmative Defenses and Counterclaim | 05/02/2018 | I/AA00189-00211 |
| Reply to Defendant's Counterclaim | 05/30/2018 | I/AA00212-00219 |
| Plaintiff, Danka K. Michaels' Initial Expert Witness List | 07/11/2018 | I/AA00220-00229 |
| Declaration of Service | 07/13/2018 | I/AA00230 |
| Joint Early Case Conference Report Pursuant to N.R.C..P 16.2(i)(2) | 07/13/2018 | I/AA00231-00237 |
| Declaration of Service | 07/19/2018 | I/AA00238 |
| Order Setting Case Management Conference and Directing Compliance with NRCP 16.2 | 07/31/2018 | I/AA00239-00242 |
| Declaration of Service Robert Semonian | 08/03/2018 | I/AA00243 |
| Declaration of Service Shannon L. Evans | 08/03/2018 | I/AA00244 |
| Motion for Leave to File Second Amended Complaint | 09/07/2018 | I/AA00245- II/AA00270 |
| Motion Opposition Fee Information Sheet | 09/07/2018 | II/AA00271 |
| Case and Trial Management Order | 09/10/2018 | II/AA00272- 00274 |
| Court Minutes | 09/10/2018 | II/AA00275- 00276 |

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| Stipulation and Order Granting Leave to File Second Amended Complaint, and Vacating Motion Hearing | 10/08/2018 | II/AA00279-00281 |
| Notice of Entry of Stipulation and Order | 10/10/2018 | II/AA00282-00287 |
| Second Amended Complaint for Equitable Relief Under (1) the Putative Spouse Doctrine, and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties Were Married Under <i>Michoff</i> ; and to Set Aside Deeds of Real Property and Assignment of L.L.C. Interest | 10/15/2018 | II/AA00288-00305 |
| Answer to Second Amended Complaint for Equitable Relief Under (1) the Putative Spouse Doctrine, and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties Were Married Under <i>Michoff</i> ; and to Set Aside Deeds of Real Property and Assignment of L.L.C. Interest; Affirmative Defenses and Counterclaim | 11/19/2018 | II/AA00306-00329 |
| Declaration of Danka K. Michaels in Support of Answer to Second Amended Complaint for Equitable Relief Under (1) the Putative Spouse Doctrine, and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties Were Married Under <i>Michoff</i> ; and to Set Aside Deeds of Real Property and Assignment of L.L.C. Interest; Affirmative Defenses and Counterclaim | 11/21/2018 | II/AA00330-00332 |
| Order After Hearing of September 10, 2018 | 12/11/2018 | II/AA00333-00336 |

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| Notice of Entry of Order | 12/17/2018 | II/AA00345-00351 |
| Motion Opposition Fee Information Sheet | 01/08/2019 | II/AA00352 |
| Motion to Withdraw as Attorney of Records for Plaintiff | 01/08/2019 | II/AA00353-00358 |
| Certificate of Service | 01/09/2019 | II/AA00359-00360 |
| Order Granting Withdrawal as Attorney of Record for Plaintiff | 02/05/2019 | II/AA00361-00362 |
| Notice of Entry of Order | 02/06/2019 | II/AA00363-00367 |
| Notice of Taking Videotaped Deposition | 02/15/2019 | II/AA00368-00370 |
| Defendant's Witness List (Non-Expert) | 02/20/2019 | II/AA00371-00375 |
| Amended Notice of Taking Videotaped Deposition | 03/05/2019 | II/AA00376-00378 |
| Second Amended Notice of Taking Videotaped Deposition | 03/05/2019 | II/AA00379-00381 |
| Notice of Appearance | 03/08/2019 | II/AA00382-00383 |
| Notice of Department Reassignment | 03/11/2019 | II/AA00384-00385 |
| Peremptory Challenge of Judge | 03/11/2019 | II/AA00386-00388 |
| Case Management Order – Domestic | 03/21/2019 | II/AA00389-00394 |
| Notice of Attorney's Lien | 04/05/2019 | II/AA00395-00397 |

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| Defendant's Motion to Compel Discovery Responses | 04/22/2019 | II/AA00441-00458 |
| Notice of Hearing | 04/22/2019 | II/AA00459 |
| Defendant's Supplemental Witness List (Non-Expert) | 04/24/2019 | II/AA00460-00464 |
| Notice of Unavailability of Counsel | 05/08/2019 | II/AA00465-00467 |
| Appendix of Exhibits to Plaintiff's Response and Opposition to Defendant's Motion to Compel Discovery Responses | 05/13/2019 | II/AA00468-00495 |
| Plaintiff's Response and Opposition to Defendant's Motion to Compel Discovery Responses | 05/13/2019 | II/AA00496-III/AA00516 |
| Reply in Support of Defendant's Motion to Compel Discovery Responses | 05/15/2019 | III/AA00517-00522 |
| Plaintiff's Supplement to Response and Opposition to Defendant's Motion to Compel Discovery Responses | 05/21/2019 | III/AA00523-00527 |
| Stipulation and Order RE: Motion to Compel | 05/28/2019 | III/AA00528-00534 |
| Notice of Entry of Stipulation and Order RE: Motion to Compel | 05/29/2019 | III/AA00535-00543 |
| Receipt of Check | 06/03/2019 | III/AA00544 |
| Notice of Entry of Stipulation and Order to Continue | 06/13/2019 | III/AA00545-00551 |
| Stipulation and Order to Continue | 06/13/2019 | III/AA00552-00556 |
| Stipulation and Order to Vacate Discovery Hearing | 06/18/2019 | III/AA00557-00559 |
| Notice of Entry of Stipulation and Order to Vacate Discovery Hearing | 06/19/2019 | III/AA00560-00564 |

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| Appendix of Exhibits in Support of Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees | 08/01/2019 | III/AA00567-IV/AA00702 |
| Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees | 08/01/2019 | IV/AA00703-00736 |
| Notice of Hearing | 08/01/2019 | IV/AA00737 |
| Notice of Unavailability of Counsel | 08/05/2019 | IV/AA00738-00740 |
| Stipulation to Extend Discovery Deadlines and Continue Trial (First Request) and Order Continuing Trial | 08/05/2019 | IV/AA00741-00745 |
| Plaintiff's Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Countermotion for Leave of Court to File Supplemental Points and Authorities | 08/12/2019 | IV/AA00746-V/AA00754 |
| Notice of Entry of Stipulation and Order | 08/16/2019 | V/AA0055-00762 |

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| Plaintiff's Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Countermotion (1) to Dismiss or, in the Alternative, for Summary Judgement as to Defendant's Causes of Action for International Misrepresentation/Fraud; Negligent Misrepresentation; Breach of Implied Covenant of Good Faith and Fair Dealing; Promissory Estoppel; Express Agreement; Implied Agreement; and Malicious Abuse of Process; (2) for Summary Judgement Setting Aside Deeds of Real Property and Assignment of LLC Interest; and (3) for Permission to Submit Points and Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(e) | 08/19/2019 | V/AA00814-00843 |
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| Reply to Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Opposition to Countermotion (1) to Dismiss or, in the Alternative, for Summary Judgement as to Defendant's Causes of Action for Intentional Misrepresentation/Fraud; Negligent Misrepresentation; Breach of Implied Covenant of Good Faith and Fair Dealing; Promissory Estoppel; Express Agreement; Implied Agreement; and Malicious Abuse of Process; (2) for Summary Judgement Setting Aside Deeds of Real Property and Assignment of LLC Interest; and (3) for Permission to Submit Points and Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(e) | 09/06/2019 | V/AA00862-00879 |
| Minute Order | 09/10/2019 | V/AA00880-00881 |

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| Notice of Taking Custodian of Records Deposition and Seven Day Notice of Intent to Serve Subpoena Duces Tecum | 12/09/2019 | V/AA00883- 00885 |
| Declaration of Service | 12/20/2019 | V/AA00886 |
| Defendant's Second Supplemental Witness List (Non-Expert) | 12/27/2019 | V/AA00887- 00891 |
| Trial Subpoena Robert Semonian | 01/28/2020 | V/AA00892- 00898 |
| Trial Subpoena Shannon L. Evans, Esq. | 01/28/2020 | V/AA00899- 00905 |
| Trial Subpoena | 01/29/2020 | V/AA00906- 00909 |
| Declaration of Service | 02/04/2020 | V/AA00910 |
| Declaration of Service | 02/05/2020 | V/AA00911 |
| Stipulation and Order to Extend Filing of Pre- Trial Memorandum and Trail Exhibits | 02/06/2020 | V/AA00912- 00913 |
| Defendant's Pre-Trial Memorandum | 02/07/2020 | V/AA00914- 00932 |
| Plaintiff Thomas Pickens Pretrial Memorandum | 02/07/2020 | V/AA00933- 00950 |
| Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 02/10/2020 | V/AA00951- 00954 |
| Plaintiff Thomas Pickens General Financial Disclosure Form-Trial | 02/11/2020 | V/AA00955- 00962 |
| Receipt of Copy | 02/11/2020 | V/AA00963 |
| General Financial Disclosure Form | 02/13/2020 | V/AA00964- 00981 |
| Notice of Non-Opposition to Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 02/13/2020 | V/AA00982- VII/AA01254 |

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| Court Minutes | 02/14/2020 | VIII/AA01728 |
| Notice of Intent to Appear by Communication Equipment | 02/20/2020 | VIII/AA01729-IX/01768 |
| Plaintiff's Request for the Court to take Judicial Notice Pursuant to NRS 47.130 | 02/20/2020 | IX/AA01769-01770 |
| Plaintiff's Request for the Court to take Judicial Notice Pursuant to NRS 47.130 | 02/20/2020 | IX/AA01771-01780 |
| Court Minutes | 02/21/2020 | IX/AA01781-01793 |
| Notice of Hearing | 03/20/2020 | IX/AA01794-01798 |
| Stipulation and Order to Continue Day Three of Trial | 06/24/2020 | IX/AA01799-01800 |
| Notice of Entry of Stipulation and Order | 06/25/2020 | IX/AA01801-01810 |
| Notice of Change of Firm | 06/26/2020 | IX/AA01811-01819 |
| Court Minutes | 07/20/2020 | IX/AA01820-01823 |
| Estimated Cost of Expedited Transcripts | 07/22/2020 | IX/AA01824-01826 |
| Notice of Hearing | 08/26/2020 | IX/AA1827-X/AA2051 |
| Final Billing for Transcripts | 09/01/2020 | X/AA02052-02054 |
| Transcript RE: Non-Jury Trial | 09/01/2020 | X/AA02055-02070 |
| Transcript RE: Non-Jury Trial Day 2 | 09/01/2020 | X/AA02071-02086 |

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| Notice of Hearing | 11/17/2020 | X/AA02191-02201 |
| Notice of Hearing | 11/25/2020 | X/AA02202-02209 |
| Court Minutes | 01/22/2021 | X/AA02210-02220 |
| Notice of Hearing | 01/22/2021 | X/AA02221-02232 |
| Notice of Change of Firm Address | 01/27/2021 | X/AA02233-02243 |
| Notice of Hearing | 02/23/2021 | X/AA02244-XI/AA02252 |
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| Defendant's EDCR 7.27 Brief | 04/02/2021 | XI/AA02302-02320 |
| Stipulation and Order to Extend Briefing Deadlines | 04/14/2021 | XI/AA02321-02329 |
| Notice of Entry of Stipulation and Order | 04/19/2021 | XI/AA02330-02351 |
| Stipulation and Order to Extend Briefing Deadline | 04/22/2021 | XI/AA02352-02369 |

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| Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 04/23/2021 | XI/AA02407-02424 |
| Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 04/23/2021 | XI/AA02425-02443 |
| Defendant's Closing Argument Brief | 05/28/2021 | XI/AA02444-02467 |
| Stipulation and Order to Extend Deadline for Plaintiff to File His Rebuttal Brief | 06/14/2021 | XI/AA02468-02488 |
| Plaintiff's Rebuttal to Defendant's Closing Argument | 06/15/2021 | XI/AA02489-XII/AA02524 |
| Notice of Change of Firm Address | 08/01/2021 | XII/AA02525-02567 |
| Findings of Fact, Conclusions of Law and Judgement | 08/03/2021 | XII/AA02568-02613 |
| Notice of Entry of Findings of Fact, Conclusions of Law, and Judgement | 08/05/2021 | XII/AA02614-02657 |
| Defendant Danka K. Michaels Memorandum of Fees and Costs | 08/25/2021 | XII/AA02658-02671 |
| Exhibit of Appendix to Defendant Danka K. Michaels Memorandum of Fees and Costs | 08/25/2021 | XII/AA02672-02716 |
| Case Appeal Statement | 09/02/2021 | XII/AA02717-02743 |
| Notice of Appeal | 09/02/2021 | XII/AA02744-XIII/AA02768 |
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| Defendant's Reply to Plaintiff's Objection to Memorandum of Fees and Costs | 09/20/2021 | XIII/AA02855-02885 |
| Certification of Transcripts Notification of Completion | 10/28/2021 | XIII/AA02886-02913 |
| Final Billing for Transcripts | 10/28/2021 | XIII/AA02914-02956 |
| Transcript RE: Non-Jury Trial Day 3 | 10/28/2021 | XIII/AA02957-XIV/AA03007 |
| Transcript RE: Non-Jury Trial Day 4 | 10/28/2021 | XIV/AA03008-03040 |
| Transcript RE: Non-Jury Trial Day 5 | 10/28/2021 | XIV/AA03041-03054 |
| Receipt of Copy | 11/10/2021 | XIV/AA03055-03069 |
| Plaintiff's Trial Exhibit 1 - Photographs of the parties' wedding on April 7, 2002 and announcement | 02/14/2020 | XIV/AA03070-03083 |
| Plaintiff's Trial Exhibit 2 - Litterae Matrimoniales (Marriage Certificate) of Thomas Pickens and Danka Katarina Oltusova dated April 7, 2002 | 02/14/2020 | XIV/AA03084-03096 |
| Plaintiff's Trial Exhibit 3 - Medical Records for Tom Pickens produced by Danka Michaels, his physician | 02/14/2020 | XIV/AA03097-03111 |
| Plaintiff's Trial Exhibit 4 - Nevada Prescription Monitoring Program Prescription log for Tom Pickens | 02/14/2020 | XIV/AA03112-03116 |
| Plaintiff's Trial Exhibit 5 - Chain of Title with Applicable Deeds for 9517 Queen Charlotte Drive, Las Vegas, Nevada 89145 | 02/14/2020 | XIV/AA03117-03127 |

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| Plaintiff’s Trial Exhibit 7 - Affidavit of Custodian of Records and file from First American Title Company—purchase of 9517 Queen Charlotte Drive, Las Vegas, Nevada 89145 on October 7, 2004 | 02/14/2020 | XIV/AA03137-03150 |
| Plaintiff’s Trial Exhibit 8 - Certificate of Custodian of Records for Ticor Title of Nevada—purchase of 7608 Lowe Avenue, Las Vegas, Nevada 89131 on February 28, 2011 | 02/14/2020 | XIV/AA03151-03164 |
| Plaintiff’s Trial Exhibit 9 - 2005 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA3165-03180 |
| Plaintiff’s Trial Exhibit 10 - 2006 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA03181-03196 |
| Plaintiff’s Trial Exhibit 11 - 2007 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA03197-03210 |
| Plaintiff’s Trial Exhibit 12 - 2008 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA03211-03224 |
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| Plaintiff’s Trial Exhibit 15 - 2011 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03320-03372 |
| Plaintiff’s Trial Exhibit 16 - 2012 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03373-03429 |
| Plaintiff’s Trial Exhibit 17 - 2013 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03430-03478 |
| Plaintiff’s Trial Exhibit 18 - 2014 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03479-03494 |

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| Plaintiff's Trial Exhibit 20 - 2016 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XVI/AA03544- 03639 |
| Plaintiff's Trial Exhibit 21 - 2005 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVI/AA03640- 03735 |
| Plaintiff's Trial Exhibit 22 - 2006 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVI/AA03736- XVII/AA03823 |
| Plaintiff's Trial Exhibit 23 - 2007 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVII/AA03824- 03848 |
| Plaintiff's Trial Exhibit 24 - 2008 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVII/AA03849- 03998 |
| Plaintiff's Trial Exhibit 25 - 2009 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVII/AA03999 XVIII/AA04127 |
| Plaintiff's Trial Exhibit 26 - 2010 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVIII/AA04128- 04239 |
| Plaintiff's Trial Exhibit 27 - 2011 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVIII/AA04240- XIX/AA04361 |
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| Plaintiff's Trial Exhibit 29 - 2013 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XIX/AA04483- XX/AA04646 |
| Plaintiff's Trial Exhibit 30 - 2014 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XX/AA04647- XXI/AA04755 |
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| Plaintiff's Trial Exhibit 32 - 2016 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XXI/AA04843- 04879 |
| Plaintiff's Trial Exhibit 35 - 2006 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXI/AA04880- 04908 |

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| Plaintiff's Trial Exhibit 36 - 2007 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXI/AA04909- XXII/AA05059 |
| Plaintiff's Trial Exhibit 37 - 2008 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXII/AA05060- 05200 |
| Plaintiff's Trial Exhibit 38 - 2009 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXII/AA05201- XXIII/AA05305 |
| Plaintiff's Trial Exhibit 39 - 2010 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIII/AA05306- 05391 |
| Plaintiff's Trial Exhibit 40 - 2011 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIII/AA05392- 05488 |
| Plaintiff's Trial Exhibit 41 - 2012 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIII/AA05489- XXIV/AA05577 |
| Plaintiff's Trial Exhibit 42 - 2013 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIV/AA05578- 05669 |
| Plaintiff's Trial Exhibit 43 - 2014 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIV/AA05670- XXV/AA05758 |
| Plaintiff's Trial Exhibit 44 - 2015 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXV/AA05759- 05802 |
| Plaintiff's Trial Exhibit 45 - 2016 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXV/AA05803- 05934 |
| Plaintiff's Trial Exhibit 46 - 2017 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXV/AA005935- XXVI/AA06106 |

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| Plaintiff’s Trial Exhibit 47 - 2012 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVI/AA06107- XXVII/AA06297 |
| Plaintiff’s Trial Exhibit 48 - 2013 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVII/AA06298- 06490 |
| Plaintiff’s Trial Exhibit 49 - 2014 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVII/AA06491- XXVIII/ AA06589 |
| Plaintiff’s Trial Exhibit 50 - 2015 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVIII/ AA06590-06672 |
| Plaintiff’s Trial Exhibit 51 - 2016 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVIII/ AA06673-06691 |
| Plaintiff’s Trial Exhibit 52 - 2008 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXVIII/ AA06692- XXIX/ AA06759 |
| Plaintiff’s Trial Exhibit 53 - 2009 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06760-06832 |
| Plaintiff’s Trial Exhibit 54 - 2010 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06833-06862 |
| Plaintiff’s Trial Exhibit 55 - 2011 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06863-06912 |
| Plaintiff’s Trial Exhibit 56 - 2012 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06913-06930 |
| Plaintiff’s Trial Exhibit 57 - 2013 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06931-06962 |
| Plaintiff’s Trial Exhibit 58 - 2014 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06963-06998 |

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| Plaintiff's Trial Exhibit 59 - 2015 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06999 |
| Plaintiff's Trial Exhibit 60 - 2016 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXX/AA07000 |
| Plaintiff's Trial Exhibit 63 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 05/29/2014 through 12/31/2014 | 02/14/2020 | XXX/AA07001- 07002 |
| Plaintiff's Trial Exhibit 65 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2015 through 12/31/2015 | 02/14/2020 | XXX/AA07003- 07006 |
| Plaintiff's Trial Exhibit 67 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2016 through 12/31/2016 | 02/14/2020 | XXX/AA07007- 07008 |
| Plaintiff's Trial Exhibit 69 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2017 through 12/31/2017 | 02/14/2020 | XXX/AA07009- 07010 |
| Plaintiff's Trial Exhibit 70 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2018 through 12/31/2018 | 02/14/2020 | XXX/AA07011 |
| Plaintiff's Trial Exhibit 71 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2019 through 04/30/19 | 02/14/2020 | XXX/AA07012- 07013 |
| Plaintiff's Trial Exhibit 74 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 07/01/2014 through 12/31/14 | 02/14/2020 | XXX/AA07014 |

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| Plaintiff's Trial Exhibit 76 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2015 through 12/31/15 | 02/14/2020 | XXX/AA07015- 07016 |
| Plaintiff's Trial Exhibit 78 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2016 through 12/31/16 | 02/14/2020 | XXX/AA07017- 07050 |
| Plaintiff's Trial Exhibit 79 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2017 through 12/31/17 | 02/14/2020 | XXX/AA07051 |
| Plaintiff's Trial Exhibit 80 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2018 through 04/30/18 | 02/14/2020 | XXX/AA07052 |
| Plaintiff's Trial Exhibit 82 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/30/10 through 12/15/11 | 02/14/2020 | XXX/AA07053 |
| Plaintiff's Trial Exhibit 83 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/11 through 12/14/12 | 02/14/2020 | XXX/AA07054- 07057 |
| Plaintiff's Trial Exhibit 84 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/15/12 through 12/15/13 | 02/14/2020 | XXX/AA07058 |
| Plaintiff's Trial Exhibit 85 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/13 through 12/15/14 | 02/14/2020 | XXX/AA07059 |

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| Plaintiff's Trial Exhibit 86 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/14 through 12/15/15 | 02/14/2020 | XXX/AA07060 |
| Plaintiff's Trial Exhibit 87 - American Express Statements #72004 Thomas Pickens card #72004 #73002 Danka Michaels card #72020 12/16/15 through 12/15/16 | 02/14/2020 | XXX/AA07061-07092 |
| Plaintiff's Trial Exhibit 88 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/16 through 12/15/17 | 02/14/2020 | XXX/AA07093-07095 |
| Plaintiff's Trial Exhibit 89 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/17 through 12/15/18 | 02/14/2020 | XXX/AA07096-07204 |
| Plaintiff's Trial Exhibit 90 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/18 through 04/14/19 | 02/14/2020 | XXX/AA07205-07228 |
| Plaintiff's Trial Exhibit 93 - Lowes house summary with supporting Wells Fargo Home Mortgage #9607 (PMA #3436) titled in the names of Danka Katarina Michaels and Thomas A. Pickens 07/02/14 through 07/01/2016 | 02/14/2020 | XXX/AA07229-07230 |
| Plaintiff's Trial Exhibit 97 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/10 through 12/08/11 | 02/14/2020 | XXX/AA07231 |
| Plaintiff's Trial Exhibit 98 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/11 through 12/07/12 | 02/14/2020 | XXX/AA07232-07236 |

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| Plaintiff's Trial Exhibit 99 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/12 through 12/08/13 | 02/14/2020 | XXX/AA07237-07239 |
| Plaintiff's Trial Exhibit 100 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/13 through 12/08/14 | 02/14/2020 | XXX/AA07240-07247 |
| Plaintiff's Trial Exhibit 101 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/14 through 12/08/15 | 02/14/2020 | XXX/AA07248-07250 |
| Plaintiff's Trial Exhibit 102 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/15 through 12/08/16 | 02/14/2020 | XXXI/AA07251-07255 |
| Plaintiff's Trial Exhibit 103 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/16 through 12/08/17 | 02/14/2020 | XXXI/AA07256-07258 |
| Plaintiff's Trial Exhibit 104 - American Express Statements #63006 titled in the name of Thomas Pickens 01/08/18 through 12/07/18 | 02/14/2020 | XXXI/AA07259 |
| Plaintiff's Trial Exhibit 105 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/18 through 05/08/19 | 02/14/2020 | XXXI/AA07260 |
| Plaintiff's Trial Exhibit 106 - American Express #51001 titled in the name of Blue Point Development 12/05/12 through 12/20/13 | 02/14/2020 | XXXI/AA07261-07262 |
| Plaintiff's Trial Exhibit 107 - American Express #51001 titled in the name of Blue Point Development 12/21/13 through 12/19/14 | 02/14/2020 | XXXI/AA07263 |
| Plaintiff's Trial Exhibit 108 - American Express #51001 titled in the name of Blue Point Development 12/20/14 through 12/20/15 | 02/14/2020 | XXXI/AA07264-XXXII/AA07516 |
| Plaintiff's Trial Exhibit 109 - American Express #51001 titled in the name of Blue Point Development 12/21/15 through 12/20/16 | 02/14/2020 | XXXII/AA07517-07682 |

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| Plaintiff’s Trial Exhibit 111 - American Express #51001 titled in the name of Blue Point Development 12/21/17 through 12/20/18 | 02/14/2020 | XXXII/AA 07686-07687 |
| Plaintiff’s Trial Exhibit 112 - American Express #51001 titled in the name of Blue Point Development 12/21/18 through 04/19/19 | 02/14/2020 | XXXII/AA 07688-07689 |
| Plaintiff’s Trial Exhibit 113 - Bank of America Bank Statements #2561 titled in the name of Blue Point Development 10/29/12 through 02/28/14 | 02/14/2020 | XXXII/AA 07690-07691 |
| Plaintiff’s Trial Exhibit 114 - Bank of America Bank Statements #0222 titled in the name of Patience One LLC 11/01/12 through 12/31/13 | 02/14/2020 | XXXII/AA 07692-07693 |
| Plaintiff’s Trial Exhibit 115 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 06/06/17 through 12/08/17 | 02/14/2020 | XXXII/AA 07694-07695 |
| Plaintiff’s Trial Exhibit 116 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/09/17 through 12/07/18 | 02/14/2020 | XXXII/AA 07696-07698 |
| Plaintiff’s Trial Exhibit 117 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/08/18 through 05/08/19 | 02/14/2020 | XXXII/AA 07699-07700 |
| Plaintiff’s Trial Exhibit 118 - Wells Fargo Checking #8952 titled in the name of Thomas Pickens 10/16/18 through 12/31/18 | 02/14/2020 | XXXII/AA 07701-07702 |
| Plaintiff’s Trial Exhibit 119 - Wells Fargo Checking #8952 titled in the name of Thomas Pickens 01/01/19 through 04/30/19 | 02/14/2020 | XXXII/AA 07703-07704 |
| Plaintiff’s Trial Exhibit 125 - Land Rover Financial Group statement 12/13/13 – 01/12/14 | 02/14/2020 | XXXII/AA 07705-07706 |

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| Plaintiff’s Trial Exhibit 126 - Lexus Statement – 12/24/13 | 02/14/2020 | XXXII/AA 07707 |
| Plaintiff’s Trial Exhibit 127 - Southwest Pension Services – Danka Michaels. Statements 09/03/2013 and 12/31/13 | 02/14/2020 | XXXII/AA 07708- XXXIII/AA 07769 |
| Plaintiff’s Trial Exhibit 128 - Valic – Danka Michalecko statements 9/30/13, 12/31/13, and 9/30/15 | 02/14/2020 | XXXIII/AA 07770-07772 |
| Plaintiff’s Trial Exhibit 129 - Pinnacle Health Systems – Danka K. Michaels. Statements 9/30/13 and 12/31/13 | 02/14/2020 | XXXIII/AA 07773-07778 |
| Plaintiff’s Trial Exhibit 132 - Danka Michaels Pinnacle Health Systems Statement 7/1/15 | 02/14/2020 | XXXIII/AA 07779-07780 |
| Plaintiff’s Trial Exhibit 133 - Bank of the West – 2015 Porsche statement 12.2.14 | 02/14/2020 | XXXIII/AA 07781-07841 |
| Plaintiff’s Trial Exhibit 134 - Life Insurance Statement 11/25/15 | 02/14/2020 | XXXIII/AA 07842-07849 |
| Plaintiff’s Trial Exhibit 138 - Thomas Pickens UBS Retirement statements dated June 2017 and October-December 2017 (Supplemental Response to Request for Production No. 16.) | 02/14/2020 | XXXIII/AA 07850-07857 |
| Plaintiff’s Trial Exhibit 144 - JP Morgan Statements, Danka K. Michaels IRA, August 31, 2019 through September 30, 2019 | 02/14/2020 | XXXIII/AA 07858-07866 |
| Plaintiff’s Trial Exhibit 146 - Plaintiff email dated April 3, 2014 | 02/14/2020 | XXXIII/AA 07867-07919 |
| Plaintiff’s Trial Exhibit 147 - Plaintiff email dated August 26, 2014 | 02/14/2020 | XXXIII/AA 07920-07922 |
| Plaintiff’s Trial Exhibit 148 - Plaintiff email dated May 22, 2013 | 02/14/2020 | XXXIII/AA 07923-07930 |
| Plaintiff’s Trial Exhibit 149 - Plaintiff email dated July 9, 2012 | 02/14/2020 | XXXIII/AA 07931-07933 |

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| Plaintiff’s Trial Exhibit 150 - Plaintiff email dated May 9, 2012 | 02/14/2020 | XXXIII/AA 07934-07964 |
| Plaintiff’s Trial Exhibit 151 - Plaintiff email dated November 13, 2011 | 02/14/2020 | XXXIII/AA 07965-07998 |
| Plaintiff’s Trial Exhibit 152 - Plaintiff email dated December 2, 2016 | 02/14/2020 | XXXIII/AA 07999- XXXIV/AA 08018 |
| Plaintiff’s Trial Exhibit 153 - Plaintiff email dated June 30, 2014 | 02/14/2020 | XXXIV/AA 08019-08202 |
| Plaintiff’s Trial Exhibit 154 - #002651 Emails between Dr. Michaels and R. Semonian | 02/21/2020 | XXXIV/AA 08203-08209 |
| Plaintiff’s Trial Exhibit 155 – NV Prescription Monitoring Program | 02/21/2020 | XXXIV/AA 08210-08247 |
| Plaintiff’s Trial Exhibit 156 – Request to appeal denial of unemployment benefits | 02/21/2020 | XXXIV/AA 08248 |
| Defendant’s Trial Exhibit A – Plaintiff’s Response to Defendant’s First Request for Production of Documents and Tangible Things from Plaintiff (with certain attachments thereto) | 02/14/2020 | XXXIV/AA 08249 |
| Defendant’s Trial Exhibit C – Documentation of \$450,000 loan taken by Danka K. Michaels, M.D., PC for tenant improvements | 02/14/2020 | XXXIV/AA 08250- XXXV/AA 08257 |
| Defendant’s Trial Exhibit G – Records produced by Equity Title, LLC, in response to Subpoena Duces Tecum for Blue Mesa property (Affidavit and relevant documents) | 02/14/2020 | XXXV/AA 08258-08270 |
| Defendant’s Trial Exhibit J – Plaintiff’s Decree of Divorce filed June 26, 2021 | 02/14/2020 | XXXV/AA 08271 |

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| Defendant's Trial Exhibit K – Blue Point Development account statement and record produced by Wells Fargo Bank, in response to Subpoena Duces Tecum | 02/14/2020 | XXXV/AA 08272 |
| Defendant's Trial Exhibit L – Wells Fargo billing Statement dated November 2016 | 02/14/2020 | XXXV/AA 08273- XXXVI/AA 08571 |
| Defendant's Trial Exhibit M – Notice of Entry of Findings of Fact and Conclusions of Law filed on June 1, 2018 in the matter of <i>Bluepoint Development Inc. v. Patience One, LLC</i> | 02/14/2020 | XXXVI/AA 08572- XXXVII/AA 08867 |
| Defendant's Trial Exhibit N – Records evidencing attorney's fees and expert fees paid by Defendant in this action | 02/14/2020 | XXXVII/AA 08868-08938 |
| Receipt of Copy | 11/10/2021 | XXXVII/AA 08939 |

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| Affidavit of Process Server | 11/02/2017 | I/AA00017-00022 |
| Amended Notice of Taking Videotaped Deposition | 03/05/2019 | II/AA00376-00378 |
| Answer to First Amended Complaint for Divorce; for Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest; and for Alternative Equitable Relief Under the Putative Spouse Doctrine; Affirmative Defenses and Counterclaim | 05/02/2018 | I/AA00189-00211 |
| Answer to Second Amended Complaint for Equitable Relief Under (1) the Putative Spouse Doctrine, and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties Were Married Under <i>Michoff</i> ; and to Set Aside Deeds of Real Property and Assignment of L.L.C. Interest; Affirmative Defenses and Counterclaim | 11/19/2018 | II/AA00306-00329 |
| Appendix of Exhibits in Support of Defendant’s Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees | 08/01/2019 | III/AA00567-IV/AA00702 |
| Appendix of Exhibits in Support of Defendant’s Motion to Compel Discovery Responses | 04/22/2019 | II/AA00398-00440 |
| Appendix of Exhibits in Support of Defendant’s Motion to Dismiss | 11/29/2017 | I/AA00025-00044 |

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| Appendix of Exhibits in Support of Reply to Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Opposition to Countermotion (1) to Dismiss or, in the Alternative, for Summary Judgement as to Defendant's Causes of Action for Intentional Misrepresentation; Breach of Implied Covenant of Good Faith and Fair Dealing; Promissory Estoppel; Express Agreement Implied Agreement; and Malicious Abuse of Process; (2) for Summary Judgement Setting Aside Deeds of Real Property and Assignment of LLC Interest; and (3) for Permission to Submit Points and Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(e) | 09/06/2019 | V/AA00845-00861 |
| Appendix of Exhibits to Plaintiff's Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Countermotion 1) to Dismiss or, in the Alternative, for Summary Judgement as to Defendant's Causes of Action for Intentional Misrepresentation/Fraud; Negligent Misrepresentation; Breach of Implied Covenant of Good Faith and Fair Dealing; Promissory Estoppel; Express Agreement; Implied Agreement; and Malicious Abuse of Process; (2) for Summary Judgement Setting Aside Deeds of Real Property and Assignment of LLC Interest; and (3) for Permission to Submit Points and Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(e) | 08/19/2019 | V/AA00763-00813 |
| Appendix of Exhibits to Plaintiff's Response and Opposition to Defendant's Motion to Compel Discovery Responses | 05/13/2019 | II/AA00468-00495 |

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| Case and Trial Management Order | 09/10/2018 | II/AA00272-00274 |
| Case Appeal Statement | 09/02/2021 | XII/AA02717-02743 |
| Case Management Order – Domestic | 03/21/2019 | II/AA00389-00394 |
| Certificate of Service | 09/11/2018 | II/AA00277-00278 |
| Certificate of Service | 01/09/2019 | II/AA00359-00360 |
| Certification of Transcripts Notification of Completion | 10/28/2021 | XIII/AA02886-02913 |
| Complaint for Divorce and for Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest | 10/24/2017 | I/AA00001-00015 |
| Court Minutes | 01/25/2018 | I/AA00142-00143 |
| Court Minutes | 02/23/2018 | I/AA00144-00145 |
| Court Minutes | 09/10/2018 | II/AA00275-00276 |
| Court Minutes | 02/14/2020 | VIII/AA01728 |
| Court Minutes | 02/21/2020 | IX/AA01781-01793 |
| Court Minutes | 07/20/2020 | IX/AA01820-01823 |
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| Court Minutes | 03/05/2021 | XI/AA02253-02261 |
| Court Minutes | 03/12/2021 | XI/AA02272-02284 |
| Court Minutes | 04/02/2021 | XI/AA02285-02301 |

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| Declaration of Danka K. Michaels in Support of Answer to Second Amended Complaint for Equitable Relief Under (1) the Putative Spouse Doctrine, and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties Were Married Under <i>Michoff</i> ; and to Set Aside Deeds of Real Property and Assignment of L.L.C. Interest; Affirmative Defenses and Counterclaim | 11/21/2018 | II/AA00330-00332 |
| Declaration of Service | 07/13/2018 | I/AA00230 |
| Declaration of Service | 07/19/2018 | I/AA00238 |
| Declaration of Service | 09/05/2019 | V/AA00844 |
| Declaration of Service | 11/01/2019 | V/AA00882 |
| Declaration of Service | 12/20/2019 | V/AA00886 |
| Declaration of Service | 02/04/2020 | V/AA00910 |
| Declaration of Service | 02/05/2020 | V/AA00911 |
| Declaration of Service Robert Semonian | 08/03/2018 | I/AA00243 |
| Declaration of Service Shannon L. Evans | 08/03/2018 | I/AA00244 |
| Defendant Danka K. Michaels Memorandum of Fees and Costs | 08/25/2021 | XII/AA02658-02671 |
| Defendant’s Closing Argument Brief | 05/28/2021 | XI/AA02444-02467 |
| Defendant’s EDCR 7.27 Brief | 04/02/2021 | XI/AA02302-02320 |
| Defendant’s Motion to Compel Discovery Responses | 04/22/2019 | II/AA00441-00458 |
| Defendant’s Pre-Trial Memorandum | 02/07/2020 | V/AA00914-00932 |
| Defendant’s Reply to Plaintiff’s Objection to Memorandum of Fees and Costs | 09/20/2021 | XIII/AA02855-02885 |
| Defendant’s Second Supplemental Witness List (Non-Expert) | 12/27/2019 | V/AA00887-00891 |

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| Defendant's Supplemental Witness List (Non-Expert) | 04/24/2019 | II/AA00460-00464 |
| Defendant's Trial Exhibit A – Plaintiff's Response to Defendant's First Request for Production of Documents and Tangible Things from Plaintiff (with certain attachments thereto) | 02/14/2020 | XXXIV/AA 08249 |
| Defendant's Trial Exhibit C – Documentation of \$450,000 loan taken by Danka K. Michaels, M.D., PC for tenant improvements | 02/14/2020 | XXXIV/AA 08250-XXXV/AA 08257 |
| Defendant's Trial Exhibit G – Records produced by Equity Title, LLC, in response to Subpoena Duces Tecum for Blue Mesa property (Affidavit and relevant documents) | 02/14/2020 | XXXV/AA 08258-08270 |
| Defendant's Trial Exhibit J – Plaintiff's Decree of Divorce filed June 26, 2021 | 02/14/2020 | XXXV/AA 08271 |
| Defendant's Trial Exhibit K – Blue Point Development account statement and record produced by Wells Fargo Bank, in response to Subpoena Duces Tecum | 02/14/2020 | XXXV/AA 08272 |
| Defendant's Trial Exhibit L – Wells Fargo billing Statement dated November 2016 | 02/14/2020 | XXXV/AA 08273-XXXVI/AA 08571 |
| Defendant's Trial Exhibit M – Notice of Entry of Findings of Fact and Conclusions of Law filed on June 1, 2018 in the matter of <i>Bluepoint Development Inc. v. Patience One, LLC</i> | 02/14/2020 | XXXVI/AA 08572-XXXVII/AA 08867 |
| Defendant's Trial Exhibit N – Records evidencing attorney's fees and expert fees paid by Defendant in this action | 02/14/2020 | XXXVII/AA 08868-08938 |
| Defendant's Witness List (Non-Expert) | 02/20/2019 | II/AA00371-00375 |

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| Estimated Cost of Expedited Transcripts | 07/22/2020 | IX/AA01824-01826 |
| Estimated Cost of Transcript | 09/07/2021 | XIII/AA02769-02791 |
| Estimated Costs of Transcript | 09/07/2021 | XIII/AA02792-02822 |
| Exhibit Appendix to Opposition to Defendant's Motion to Dismiss and Countermotion for Attorney's Fees and Costs | 12/20/2017 | I/AA00064-00093 |
| Exhibit of Appendix to Defendant Danka K. Michaels Memorandum of Fees and Costs | 08/25/2021 | XII/AA02672-02716 |
| Final Billing for Transcripts | 09/01/2020 | X/AA02052-02054 |
| Final Billing for Transcripts | 10/28/2021 | XIII/AA02914-02956 |
| Findings of Fact, Conclusions of Law and Judgement | 08/03/2021 | XII/AA02568-02613 |
| First Amended Compliant for Divorce; for Set Aside of Deeds of Real Property and Assignment of L.L.C. Interest; and for Alternative Equitable Relief Under the Putative Spouse Doctrine | 03/22/2018 | I/AA00174-00188 |
| General Financial Disclosure Form | 02/13/2020 | V/AA00964-00981 |
| Joint Early Case Conference Report Pursuant to N.R.C..P 16.2(i)(2) | 07/13/2018 | I/AA00231-00237 |
| Minute Order | 09/10/2019 | V/AA00880-00881 |
| Motion for Leave to File Second Amended Complaint | 09/07/2018 | I/AA00245-II/AA00270 |
| Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees | 08/01/2019 | IV/AA00703-00736 |
| Motion Opposition Fee Information Sheet | 12/20/2017 | I/AA00094 |

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| Motion Opposition Fee Information Sheet | 09/07/2018 | II/AA00271 |
| Motion Opposition Fee Information Sheet | 01/08/2019 | II/AA00352 |
| Motion to Dismiss | 11/29/2017 | I/AA00045-00061 |
| Motion to Withdraw as Attorney of Records for Plaintiff | 01/08/2019 | II/AA00353-00358 |
| Notice of Appeal | 09/02/2021 | XII/AA02744-XIII/AA02768 |
| Notice of Appearance | 03/08/2019 | II/AA00382-00383 |
| Notice of Appearance of Attorney | 11/27/2017 | I/AA00023-00024 |
| Notice of Appearance of Co-Counsel for Defendant | 10/16/2020 | X/AA02087-02122 |
| Notice of Attorney's Lien | 04/05/2019 | II/AA00395-00397 |
| Notice of Change of Firm | 06/26/2020 | IX/AA01811-01819 |
| Notice of Change of Firm Address | 01/27/2021 | X/AA02233-02243 |
| Notice of Change of Firm Address | 08/01/2021 | XII/AA02525-02567 |
| Notice of Department Reassignment | 03/11/2019 | II/AA00384-00385 |
| Notice of Entry of Findings of Fact, Conclusions of Law, and Judgement | 08/05/2021 | XII/AA02614-02657 |
| Notice of Entry of Order | 03/12/2018 | I/AA00155-00164 |
| Notice of Entry of Order | 12/17/2018 | II/AA00345-00351 |
| Notice of Entry of Order | 02/06/2019 | II/AA00363-00367 |
| Notice of Entry of Order to Seal Records | 01/03/2018 | I/AA00120-00124 |
| Notice of Entry of Stipulation and Order | 12/29/2017 | I/AA00116-000119 |

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| Notice of Entry of Stipulation and Order | 08/16/2019 | V/AA0055-00762 |
| Notice of Entry of Stipulation and Order | 06/25/2020 | IX/AA01801-01810 |
| Notice of Entry of Stipulation and Order | 04/19/2021 | XI/AA02330-02351 |
| Notice of Entry of Stipulation and Order RE: Motion to Compel | 05/29/2019 | III/AA00535-00543 |
| Notice of Entry of Stipulation and Order to Continue | 06/13/2019 | III/AA00545-00551 |
| Notice of Entry of Stipulation and Order to Vacate Discovery Hearing | 06/19/2019 | III/AA00560-00564 |
| Notice of Hearing | 04/22/2019 | II/AA00459 |
| Notice of Hearing | 08/01/2019 | IV/AA00737 |
| Notice of Hearing | 03/20/2020 | IX/AA01794-01798 |
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| Notice of Hearing | 11/17/2020 | X/AA02191-02201 |
| Notice of Hearing | 11/25/2020 | X/AA02202-02209 |
| Notice of Hearing | 01/22/2021 | X/AA02221-02232 |
| Notice of Hearing | 02/23/2021 | X/AA02244-XI/AA02252 |
| Notice of Hearing | 03/08/2021 | XI/AA02262-02271 |

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| Notice of Intent to Appear by Communication Equipment | 02/20/2020 | VIII/AA01729-IX/01768 |
| Notice of Non-Opposition to Plaintiff’s Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 02/13/2020 | V/AA00982-VII/AA01254 |
| Notice of Taking Custodian of Records Deposition and Seven Day Notice of Intent to Serve Subpoena Duces Tecum | 12/09/2019 | V/AA00883-00885 |
| Notice of Taking Videotaped Deposition | 02/15/2019 | II/AA00368-00370 |
| Notice of Unavailability of Counsel | 05/08/2019 | II/AA00465-00467 |
| Notice of Unavailability of Counsel | 08/05/2019 | IV/AA00738-00740 |
| Opposition to Defendant’s Motion to Dismiss and Countermotion for Attorney’s Fees and Costs | 12/20/2017 | I/AA00095-I/AA00111 |
| Order | 03/09/2018 | I/AA00146-00154 |
| Order | 03/12/2018 | I/AA0065-00173 |
| Order After Hearing of September 10, 2018 | 12/11/2018 | II/AA00333-00336 |
| Order Granting Withdrawal as Attorney of Record for Plaintiff | 02/05/2019 | II/AA00361-00362 |
| Order Setting Case Management Conference and Directing Compliance with NRCp 16.2 | 07/31/2018 | I/AA00239-00242 |
| Order to Seal Records Pursuant to NRS 125.110(2) | 12/22/2017 | I/AA00112-I/AA00113 |
| Peremptory Challenge of Judge | 03/11/2019 | II/AA00386-00388 |
| Petition to Seal Records Pursuant to NRS 125.110(2) | 12/15/2017 | I/AA00062-00063 |
| Plaintiff Thomas Pickens General Financial Disclosure Form-Trial | 02/11/2020 | V/AA00955-00962 |

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| Plaintiff, Danka K. Michaels' Initial Expert Witness List | 07/11/2018 | I/AA00220-00229 |
| Plaintiff's Closing Argument | 04/23/2021 | XI/AA02370-02834 |
| Plaintiff's Objection to Defendant Danka K. Michaels' Memorandum of Fees and Costs | 09/07/2021 | XIII/AA02823-02854 |
| Plaintiff's Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Countermotion for Leave of Court to File Supplemental Points and Authorities | 08/12/2019 | IV/AA00746-V/AA00754 |
| Plaintiff's Opposition to Defendant's Motion for Summary Judgement, to Dismiss, for Protective Order and for Attorney Fees and Countermotion (1) to Dismiss or, in the Alternative, for Summary Judgement as to Defendant's Causes of Action for International Misrepresentation/Fraud; Negligent Misrepresentation; Breach of Implied Covenant of Good Faith and Fair Dealing; Promissory Estoppel; Express Agreement; Implied Agreement; and Malicious Abuse of Process; (2) for Summary Judgement Setting Aside Deeds of Real Property and Assignment of LLC Interest; and (3) for Permission to Submit Points and Authorities in Excess of 30 Pages Pursuant to EDCR 5.503(e) | 08/19/2019 | V/AA00814-00843 |
| Plaintiff's Rebuttal to Defendant's Closing Argument | 06/15/2021 | XI/AA02489-XII/AA02524 |
| Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 02/10/2020 | V/AA00951-00954 |

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| Plaintiff's Request for the Court to take Judicial Notice Pursuant to NRS 47.130 | 02/20/2020 | IX/AA01771-01780 |
| Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 04/23/2021 | XI/AA02835-02406 |
| Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 04/23/2021 | XI/AA02407-02424 |
| Plaintiff's Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 04/23/2021 | XI/AA02425-02443 |
| Plaintiff's Response and Opposition to Defendant's Motion to Compel Discovery Responses | 05/13/2019 | II/AA00496-III/AA00516 |
| Plaintiff's Supplement to Response and Opposition to Defendant's Motion to Compel Discovery Responses | 05/21/2019 | III/AA00523-00527 |
| Plaintiff's Trial Exhibit 1 - Photographs of the parties' wedding on April 7, 2002 and announcement | 02/14/2020 | XIV/AA03070-03083 |
| Plaintiff's Trial Exhibit 10 - 2006 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA03181-03196 |
| Plaintiff's Trial Exhibit 100 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/13 through 12/08/14 | 02/14/2020 | XXX/AA07240-07247 |
| Plaintiff's Trial Exhibit 101 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/14 through 12/08/15 | 02/14/2020 | XXX/AA07248-07250 |
| Plaintiff's Trial Exhibit 102 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/15 through 12/08/16 | 02/14/2020 | XXXI/AA07251-07255 |
| Plaintiff's Trial Exhibit 103 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/16 through 12/08/17 | 02/14/2020 | XXXI/AA07256-07258 |

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| Plaintiff's Trial Exhibit 105 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/18 through 05/08/19 | 02/14/2020 | XXXI/AA07260 |
| Plaintiff's Trial Exhibit 106 - American Express #51001 titled in the name of Blue Point Development 12/05/12 through 12/20/13 | 02/14/2020 | XXXI/AA07261-07262 |
| Plaintiff's Trial Exhibit 107 - American Express #51001 titled in the name of Blue Point Development 12/21/13 through 12/19/14 | 02/14/2020 | XXXI/AA07263 |
| Plaintiff's Trial Exhibit 108 - American Express #51001 titled in the name of Blue Point Development 12/20/14 through 12/20/15 | 02/14/2020 | XXXI/AA07264-XXXII/AA07516 |
| Plaintiff's Trial Exhibit 109 - American Express #51001 titled in the name of Blue Point Development 12/21/15 through 12/20/16 | 02/14/2020 | XXXII/AA07517-07682 |
| Plaintiff's Trial Exhibit 11 - 2007 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA03197-03210 |
| Plaintiff's Trial Exhibit 110 - American Express #51001 titled in the name of Blue Point Development 12/21/16 through 12/20/17 | 02/14/2020 | XXXII/AA07683-07685 |
| Plaintiff's Trial Exhibit 111 - American Express #51001 titled in the name of Blue Point Development 12/21/17 through 12/20/18 | 02/14/2020 | XXXII/AA07686-07687 |
| Plaintiff's Trial Exhibit 112 - American Express #51001 titled in the name of Blue Point Development 12/21/18 through 04/19/19 | 02/14/2020 | XXXII/AA07688-07689 |
| Plaintiff's Trial Exhibit 113 - Bank of America Bank Statements #2561 titled in the name of Blue Point Development 10/29/12 through 02/28/14 | 02/14/2020 | XXXII/AA07690-07691 |

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| Plaintiff’s Trial Exhibit 114 - Bank of America Bank Statements #0222 titled in the name of Patience One LLC 11/01/12 through 12/31/13 | 02/14/2020 | XXXII/AA 07692-07693 |
| Plaintiff’s Trial Exhibit 115 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 06/06/17 through 12/08/17 | 02/14/2020 | XXXII/AA 07694-07695 |
| Plaintiff’s Trial Exhibit 116 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/09/17 through 12/07/18 | 02/14/2020 | XXXII/AA 07696-07698 |
| Plaintiff’s Trial Exhibit 117 - Wells Fargo Visa #0648 titled in the name of Thomas Pickens 12/08/18 through 05/08/19 | 02/14/2020 | XXXII/AA 07699-07700 |
| Plaintiff’s Trial Exhibit 118 - Wells Fargo Checking #8952 titled in the name of Thomas Pickens 10/16/18 through 12/31/18 | 02/14/2020 | XXXII/AA 07701-07702 |
| Plaintiff’s Trial Exhibit 119 - Wells Fargo Checking #8952 titled in the name of Thomas Pickens 01/01/19 through 04/30/19 | 02/14/2020 | XXXII/AA 07703-07704 |
| Plaintiff’s Trial Exhibit 12 - 2008 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA03211- 03224 |
| Plaintiff’s Trial Exhibit 125 - Land Rover Financial Group statement 12/13/13 – 01/12/14 | 02/14/2020 | XXXII/AA 07705-07706 |
| Plaintiff’s Trial Exhibit 126 - Lexus Statement – 12/24/13 | 02/14/2020 | XXXII/AA 07707 |
| Plaintiff’s Trial Exhibit 127 - Southwest Pension Services – Danka Michaels. Statements 09/03/2013 and 12/31/13 | 02/14/2020 | XXXII/AA 07708- XXXIII/AA 07769 |
| Plaintiff’s Trial Exhibit 128 - Valic – Danka Michalecko statements 9/30/13, 12/31/13, and 9/30/15 | 02/14/2020 | XXXIII/AA 07770-07772 |

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| Plaintiff’s Trial Exhibit 129 - Pinnacle Health Systems – Danka K. Michaels. Statements 9/30/13 and 12/31/13 | 02/14/2020 | XXXIII/AA 07773-07778 |
| Plaintiff’s Trial Exhibit 13 - 2009 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA03225- XV/AA03262 |
| Plaintiff’s Trial Exhibit 132 - Danka Michaels Pinnacle Health Systems Statement 7/1/15 | 02/14/2020 | XXXIII/AA 07779-07780 |
| Plaintiff’s Trial Exhibit 133 - Bank of the West – 2015 Porsche statement 12.2.14 | 02/14/2020 | XXXIII/AA 07781-07841 |
| Plaintiff’s Trial Exhibit 134 - Life Insurance Statement 11/25/15 | 02/14/2020 | XXXIII/AA 07842-07849 |
| Plaintiff’s Trial Exhibit 138 - Thomas Pickens UBS Retirement statements dated June 2017 and October-December 2017 (Supplemental Response to Request for Production No. 16.) | 02/14/2020 | XXXIII/AA 07850-07857 |
| Plaintiff’s Trial Exhibit 14 - 2010 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03263- 03319 |
| Plaintiff’s Trial Exhibit 144 - JP Morgan Statements, Danka K. Michaels IRA, August 31, 2019 through September 30, 2019 | 02/14/2020 | XXXIII/AA 07858-07866 |
| Plaintiff’s Trial Exhibit 146 - Plaintiff email dated April 3, 2014 | 02/14/2020 | XXXIII/AA 07867-07919 |
| Plaintiff’s Trial Exhibit 147 - Plaintiff email dated August 26, 2014 | 02/14/2020 | XXXIII/AA 07920-07922 |
| Plaintiff’s Trial Exhibit 148 - Plaintiff email dated May 22, 2013 | 02/14/2020 | XXXIII/AA 07923-07930 |
| Plaintiff’s Trial Exhibit 149 - Plaintiff email dated July 9, 2012 | 02/14/2020 | XXXIII/AA 07931-07933 |
| Plaintiff’s Trial Exhibit 15 - 2011 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03320- 03372 |
| Plaintiff’s Trial Exhibit 150 - Plaintiff email dated May 9, 2012 | 02/14/2020 | XXXIII/AA 07934-07964 |

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| Plaintiff's Trial Exhibit 151 - Plaintiff email dated November 13, 2011 | 02/14/2020 | XXXIII/AA 07965-07998 |
| Plaintiff's Trial Exhibit 152 - Plaintiff email dated December 2, 2016 | 02/14/2020 | XXXIII/AA 07999- XXXIV/AA 08018 |
| Plaintiff's Trial Exhibit 153 - Plaintiff email dated June 30, 2014 | 02/14/2020 | XXXIV/AA 08019-08202 |
| Plaintiff's Trial Exhibit 154 - #002651 Emails between Dr. Michaels and R. Semonian | 02/21/2020 | XXXIV/AA 08203-08209 |
| Plaintiff's Trial Exhibit 155 – NV Prescription Monitoring Program | 02/21/2020 | XXXIV/AA 08210-08247 |
| Plaintiff's Trial Exhibit 156 – Request to appeal denial of unemployment benefits | 02/21/2020 | XXXIV/AA 08248 |
| Plaintiff's Trial Exhibit 16 - 2012 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03373- 03429 |
| Plaintiff's Trial Exhibit 17 - 2013 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03430- 03478 |
| Plaintiff's Trial Exhibit 18 - 2014 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03479- 03494 |
| Plaintiff's Trial Exhibit 19 - 2015 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XV/AA03495- XVI/AA03543 |
| Plaintiff's Trial Exhibit 2 - Litterae Matrimoniales (Marriage Certificate) of Thomas Pickens and Danka Katarina Oltusova dated April 7, 2002 | 02/14/2020 | XIV/AA03084- 03096 |
| Plaintiff's Trial Exhibit 20 - 2016 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XVI/AA03544- 03639 |
| Plaintiff's Trial Exhibit 21 - 2005 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVI/AA03640- 03735 |
| Plaintiff's Trial Exhibit 22 - 2006 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVI/AA03736- XVII/AA03823 |

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| Plaintiff's Trial Exhibit 24 - 2008 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVII/AA03849-03998 |
| Plaintiff's Trial Exhibit 25 - 2009 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVII/AA03999 XVIII/AA04127 |
| Plaintiff's Trial Exhibit 26 - 2010 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVIII/AA04128-04239 |
| Plaintiff's Trial Exhibit 27 - 2011 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XVIII/AA04240- XIX/AA04361 |
| Plaintiff's Trial Exhibit 28 - 2012 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XIX/AA04362-04482 |
| Plaintiff's Trial Exhibit 29 - 2013 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XIX/AA04483- XX/AA04646 |
| Plaintiff's Trial Exhibit 3 - Medical Records for Tom Pickens produced by Danka Michaels, his physician | 02/14/2020 | XIV/AA03097-03111 |
| Plaintiff's Trial Exhibit 30 - 2014 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XX/AA04647- XXI/AA04755 |
| Plaintiff's Trial Exhibit 31 - 2015 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XXI/AA04756-04842 |
| Plaintiff's Trial Exhibit 32 - 2016 1040 Income Tax Return for Danka Michaels | 02/14/2020 | XXI/AA04843-04879 |
| Plaintiff's Trial Exhibit 35 - 2006 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXI/AA04880-04908 |
| Plaintiff's Trial Exhibit 36 - 2007 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXI/AA04909- XXII/AA05059 |
| Plaintiff's Trial Exhibit 37 - 2008 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXII/AA05060-05200 |

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| Plaintiff’s Trial Exhibit 39 - 2010 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIII/AA05306- 05391 |
| Plaintiff’s Trial Exhibit 4 - Nevada Prescription Monitoring Program Prescription log for Tom Pickens | 02/14/2020 | XIV/AA03112- 03116 |
| Plaintiff’s Trial Exhibit 40 - 2011 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIII/AA05392- 05488 |
| Plaintiff’s Trial Exhibit 41 - 2012 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIII/AA05489- XXIV/AA05577 |
| Plaintiff’s Trial Exhibit 42 - 2013 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIV/AA05578- 05669 |
| Plaintiff’s Trial Exhibit 43 - 2014 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXIV/AA05670- XXV/AA05758 |
| Plaintiff’s Trial Exhibit 44 - 2015 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXV/AA05759- 05802 |
| Plaintiff’s Trial Exhibit 45 - 2016 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXV/AA05803- 05934 |
| Plaintiff’s Trial Exhibit 46 - 2017 1120S Income Tax Return for Danka K. Michaels MD, PC | 02/14/2020 | XXV/AA005935- XXVI/AA06106 |
| Plaintiff’s Trial Exhibit 47 - 2012 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVI/AA06107- XXVII/AA06297 |

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| Plaintiff's Trial Exhibit 49 - 2014 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVII/AA06491-XXVIII/ AA06589 |
| Plaintiff's Trial Exhibit 5 - Chain of Title with Applicable Deeds for 9517 Queen Charlotte Drive, Las Vegas, Nevada 89145 | 02/14/2020 | XIV/AA03117-03127 |
| Plaintiff's Trial Exhibit 50 - 2015 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVIII/ AA06590-06672 |
| Plaintiff's Trial Exhibit 51 - 2016 1065 Income Tax Return for Patience One LLC | 02/14/2020 | XXVIII/ AA06673-06691 |
| Plaintiff's Trial Exhibit 52 - 2008 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXVIII/ AA06692-XXIX/ AA06759 |
| Plaintiff's Trial Exhibit 53 - 2009 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06760-06832 |
| Plaintiff's Trial Exhibit 54 - 2010 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06833-06862 |
| Plaintiff's Trial Exhibit 55 - 2011 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06863-06912 |
| Plaintiff's Trial Exhibit 56 - 2012 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06913-06930 |
| Plaintiff's Trial Exhibit 57 - 2013 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06931-06962 |

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| Plaintiff’s Trial Exhibit 59 - 2015 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXIX/ AA06999 |
| Plaintiff’s Trial Exhibit 6 - Chain of Title with Applicable Deeds for 7608 Lowe Avenue, Las Vegas, Nevada 89131 | 02/14/2020 | XIV/AA03128- 03136 |
| Plaintiff’s Trial Exhibit 60 - 2016 1120 Income Tax Return for Blue Point Development LLC | 02/14/2020 | XXX/AA07000 |
| Plaintiff’s Trial Exhibit 63 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 05/29/2014 through 12/31/2014 | 02/14/2020 | XXX/AA07001- 07002 |
| Plaintiff’s Trial Exhibit 65 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2015 through 12/31/2015 | 02/14/2020 | XXX/AA07003- 07006 |
| Plaintiff’s Trial Exhibit 67 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2016 through 12/31/2016 | 02/14/2020 | XXX/AA07007- 07008 |
| Plaintiff’s Trial Exhibit 69 - Wells Fargo Business Checking #9112 titled in the name of Blue Point Development 01/01/2017 through 12/31/2017 | 02/14/2020 | XXX/AA07009- 07010 |
| Plaintiff’s Trial Exhibit 7 - Affidavit of Custodian of Records and file from First American Title Company—purchase of 9517 Queen Charlotte Drive, Las Vegas, Nevada 89145 on October 7, 2004 | 02/14/2020 | XIV/AA03137- 03150 |

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| Plaintiff’s Trial Exhibit 74 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 07/01/2014 through 12/31/14 | 02/14/2020 | XXX/AA07014 |
| Plaintiff’s Trial Exhibit 76 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2015 through 12/31/15 | 02/14/2020 | XXX/AA07015-07016 |
| Plaintiff’s Trial Exhibit 78 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2016 through 12/31/16 | 02/14/2020 | XXX/AA07017-07050 |
| Plaintiff’s Trial Exhibit 79 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2017 through 12/31/17 | 02/14/2020 | XXX/AA07051 |
| Plaintiff’s Trial Exhibit 8 - Certificate of Custodian of Records for Ticor Title of Nevada—purchase of 7608 Lowe Avenue, Las Vegas, Nevada 89131 on February 28, 2011 | 02/14/2020 | XIV/AA03151-03164 |
| Plaintiff’s Trial Exhibit 80 - Wells Fargo Checking ending 3436 titled in the names of Thomas A. Pickens and Danka K. Michaels 01/01/2018 through 04/30/18 | 02/14/2020 | XXX/AA07052 |

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| Plaintiff's Trial Exhibit 83 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/11 through 12/14/12 | 02/14/2020 | XXX/AA07054- 07057 |
| Plaintiff's Trial Exhibit 84 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/15/12 through 12/15/13 | 02/14/2020 | XXX/AA07058 |
| Plaintiff's Trial Exhibit 85 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/13 through 12/15/14 | 02/14/2020 | XXX/AA07059 |
| Plaintiff's Trial Exhibit 86 - American Express Statements #72004 Thomas Pickens card #72004 Danka Michaels card #72020 12/16/14 through 12/15/15 | 02/14/2020 | XXX/AA07060 |
| Plaintiff's Trial Exhibit 87 - American Express Statements #72004 Thomas Pickens card #72004 #73002 Danka Michaels card #72020 12/16/15 through 12/15/16 | 02/14/2020 | XXX/AA07061- 07092 |
| Plaintiff's Trial Exhibit 88 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/16 through 12/15/17 | 02/14/2020 | XXX/AA07093- 07095 |

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| Plaintiff's Trial Exhibit 89 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/17 through 12/15/18 | 02/14/2020 | XXX/AA07096-07204 |
| Plaintiff's Trial Exhibit 9 - 2005 1040 Income Tax Return for Thomas A. Pickens | 02/14/2020 | XIV/AA3165-03180 |
| Plaintiff's Trial Exhibit 90 - American Express Statements #72004 Thomas Pickens card #73002 Danka Michaels card #72020 12/16/18 through 04/14/19 | 02/14/2020 | XXX/AA07205-07228 |
| Plaintiff's Trial Exhibit 93 - Lowes house summary with supporting Wells Fargo Home Mortgage #9607 (PMA #3436) titled in the names of Danka Katarina Michaels and Thomas A. Pickens 07/02/14 through 07/01/2016 | 02/14/2020 | XXX/AA07229-07230 |
| Plaintiff's Trial Exhibit 97 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/10 through 12/08/11 | 02/14/2020 | XXX/AA07231 |
| Plaintiff's Trial Exhibit 98 - American Express Statements #63006 titled in the name of Thomas Pickens 12/09/11 through 12/07/12 | 02/14/2020 | XXX/AA07232-07236 |
| Plaintiff's Trial Exhibit 99 - American Express Statements #63006 titled in the name of Thomas Pickens 12/08/12 through 12/08/13 | 02/14/2020 | XXX/AA07237-07239 |
| Receipt of Check | 06/03/2019 | III/AA00544 |
| Receipt of Copy | 02/11/2020 | V/AA00963 |
| Receipt of Copy | 11/10/2021 | XIV/AA03055-03069 |
| Receipt of Copy | 11/10/2021 | XXXVII/AA08939 |
| Reply in Support of Defendant's Motion to Compel Discovery Responses | 05/15/2019 | III/AA00517-00522 |
| Reply to Defendant's Counterclaim | 05/30/2018 | I/AA00212-00219 |

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| Reply to Opposition to Defendant's Motion to Dismiss and Opposition to Countermotion for Attorney's Fees and Costs | 01/09/2018 | I/AA00125-00141 |
| Request for Issuance of Joint Preliminary Injunction | 10/25/2017 | I/AA00016 |
| Satisfaction and Release of Lien | 07/31/2019 | III/AA00565-00566 |
| Second Amended Complaint for Equitable Relief Under (1) the Putative Spouse Doctrine, and (2) Pursuant to Express and/or Implied Agreement to Hold Property as if the Parties Were Married Under <i>Michoff</i> ; and to Set Aside Deeds of Real Property and Assignment of L.L.C. Interest | 10/15/2018 | II/AA00288-00305 |
| Second Amended Notice of Taking Videotaped Deposition | 03/05/2019 | II/AA00379-00381 |

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| Stipulation and Order to Continue | 06/13/2019 | III/AA00552-00556 |
| Stipulation and Order to Continue Day Three of Trial | 06/24/2020 | IX/AA01799-01800 |
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| Stipulation and Order to Extend Briefing Deadline | 04/22/2021 | XI/AA02352-02369 |
| Stipulation and Order to Extend Briefing Deadlines | 04/14/2021 | XI/AA02321-02329 |
| Stipulation and Order to Extend Deadline for Plaintiff to File His Rebuttal Brief | 06/14/2021 | XI/AA02468-02488 |
| Stipulation and Order to Extend Filing of Pre-Trial Memorandum and Trial Exhibits | 02/06/2020 | V/AA00912-00913 |
| Stipulation and Order to Vacate Discovery Hearing | 06/18/2019 | III/AA00557-00559 |
| Stipulation to Extend Discovery Deadlines and Continue Trial (First Request) and Order Continuing Trial | 08/05/2019 | IV/AA00741-00745 |
| Supplemental Exhibit in Support of Notice of Non-Opposition to Plaintiff’s Request for the Court to Take Judicial Notice Pursuant to NRS 47.130 | 02/13/2020 | VII/AA01255-VIII/AA01727 |
| Transcript RE: Non-Jury Trial | 09/01/2020 | X/AA02055-02070 |
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| Transcript RE: Non-Jury Trial Day 4 | 10/28/2021 | XIV/AA03008- 03040 |
| Transcript RE: Non-Jury Trial Day 5 | 10/28/2021 | XIV/AA03041- 03054 |
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| Trial Subpoena Shannon L. Evans, Esq. | 01/28/2020 | V/AA00899- 00905 |

1 was handed several.

2 THE WITNESS: The first one asked when we
3 moved into the building, that question was asked, and
4 that's the '12, 2012, 7/4/2012. That was the rent-roll
5 when we moved in.

6 THE COURT: Hold on. Hold on. What you
7 handed me is dated April 16.

8 THE WITNESS: Did I hand you this one?

9 THE COURT: I think there's two that are
10 duplicated.

11 And then you handed me the rent-roll of
12 4/20, coincidentally, 2015.

13 MR. WINTERTON: And I don't even have that
14 one, so...

15 MS. HIGBEE: So I have an objection. First
16 of all, I thought we were just showing him one thing so
17 that he could refresh his recollection, which is then
18 you take it back --

19 THE WITNESS: Let's use the 5/16.

20 MS. HIGBEE: -- and you don't look at it.

21 THE COURT: What we're going to do is this.
22 We're going to do it properly.

23 Mr. Winterton, which document do you want
24 to use to refresh Mr. Pickens' recollection?

25 MR. WINTERTON: The document that talks

1 about, 5/16.

2 THE COURT: Well, let him look at it. Ask
3 him if his recollection has been refreshed and take the
4 document back. He can't testify from the document.

5 MR. WINTERTON: Okay.

6 THE COURT: How this works is, it's just
7 used for reference, refreshing recollection. He gets
8 to look at it, and then you take it back. When he's
9 done, he needs to let you know.

10 THE WITNESS: Here you go, 5/16.

11 THE COURT: Mr. Winterton, take all the
12 other documents also.

13 MR. WINTERTON: Yeah, I got them all back.

14 BY MR. WINTERTON:

15 Q. Now, in about mid of 2016, I would like to
16 go over to refresh your recollection as to the tenants
17 that were in there.

18 Now, Dr. Michaels was in there; isn't that
19 correct?

20 A. That's correct.

21 THE COURT: You just reviewed a document
22 dated May 16, 2016, right?

23 THE WITNESS: Yes.

24 THE COURT: That was a 184 Patience One,
25 LLC rent-roll?

1 THE WITNESS: Yes.

2 THE COURT: Did you use that to refresh
3 your recollection?

4 THE WITNESS: Yes.

5 THE COURT: Have you refreshed your
6 recollection?

7 THE WITNESS: As well as I have.

8 THE COURT: Okay. Mr. Winterton.

9 MR. WINTERTON: Thank you, your Honor.

10 BY MR. WINTERTON:

11 Q. Okay. Now, in regards to this, I wonder if
12 you could tell us what tenants were in there, to your
13 recollection.

14 A. We have Dr. Michaels on the first floor,
15 you have an ortho- -- not orthopedic, another foot
16 doctor in on the first floor. Again, the name is
17 slipping my name. You had myself in 208, you had a
18 mobile x-ray company in maybe 202. I'm not sure what
19 suite that was in. You had a foot doctor in on the
20 second floor. You had LaSpaluto on the first floor --
21 or on the second floor. You also had Boku, which is
22 a -- I don't know what you call it. Anyhow, I'm sorry.

23 Q. Boku?

24 A. Yeah, Boku.

25 Q. Now, wasn't it normal that they typically

1 have, what, the amount of one month's rent for a
2 deposit?

3 A. Correct.

4 Q. And so if I were to say Boku for \$916, the
5 security deposit, would that be correct?

6 A. Correct.

7 Q. And LaSpaluto Financial, 788?

8 A. Correct.

9 Q. Direct Mobile Imaging, 1,600?

10 A. Correct.

11 Q. And then Summerlin Foot and Ankle, 5,500?

12 A. Correct.

13 Q. Okay. So to the best of your recollection,
14 there was not any \$25,000 in security deposits?

15 A. No.

16 MS. HIGBEE: Your Honor, I would ask that
17 you give that testimony the weight that you deem
18 necessary, but there's no leases that show how much
19 those deposits were, and we don't -- since we haven't
20 seen this before, we don't know what the, quote,
21 rent-roll, if it's accurate, anything about it. So I
22 would ask that you give it little weight.

23 MR. WINTERTON: And I will say, your Honor,
24 the leases were turned over to them. They testified
25 that when they took over the building, there was a

1 packet that was turned over to them, and it was a
2 packet of all the leases. So they're the ones that
3 have testified that there was 25,000. But they're the
4 ones that have the lease, and they're holding that from
5 us.

6 THE COURT: At this point, with regard to
7 the objection, or the question from defense counsel on
8 the weight of this particular testimony to be given by
9 the Court, the concerns the Court may or may not have
10 are regarding foundation and the origin of some of the
11 numbers and the natural path they took, if anything, to
12 prove up the numbers.

13 We're not there yet, but at this point
14 we're in the infantile stage of this testimony, but
15 these are concerns I'm looking at. So that weight will
16 be considered based on the totality of this testimony,
17 absolutely.

18 BY MR. WINTERTON:

19 Q. Now --

20 THE WITNESS: Can I ask a question?

21 THE COURT: No.

22 BY MR. WINTERTON:

23 Q. Now, were you involved in renting these
24 units out?

25 A. Yes.

1 Q. And how were you involved in renting these
2 units out?

3 A. Well, I basically oversaw the building.
4 When we first -- in 2012, we hired Sun Properties to
5 manage the property for a year. They managed it for a
6 year.

7 They only managed the money, they didn't
8 manage the overall renting of the spaces. So we
9 actually went out and hired an outside real estate firm
10 to try to rent the spaces. I think he lasted for like
11 six months, and then we got rid of him. He actually
12 brought in one client.

13 Go ahead.

14 Q. So you were personally involved in regards
15 to the renting of these properties?

16 A. Yes.

17 Q. Were you the person that signed the leases
18 in regards to --

19 A. Yes.

20 Q. -- the tenants?

21 And you had knowledge as to how much the
22 monthly rents were?

23 A. Yes.

24 Q. And you had knowledge as to how much the
25 security deposits were?

1 A. (Witness nods head.)

2 Q. You were involved in the bank accounts?

3 A. Yes.

4 Q. And you deposited the money into the bank
5 accounts?

6 A. Yes.

7 Q. And so you were familiar with the financial
8 deposits that were made?

9 A. Yes.

10 Q. Okay. And did there come a point in time
11 when they took over, you handed over the leases --

12 A. Correct.

13 Q. -- to Patience One?

14 A. My executive did.

15 Q. And that was at your direction?

16 A. Correct.

17 Q. And did your executive do it or did you
18 personally?

19 A. I didn't do it, my executive did.

20 Q. Okay.

21 THE COURT: Mr. Pickens, I'm going to -- at
22 the time period -- I want to know the time period you
23 were, quote, a leasing manager, the managing partner,
24 your duties, you took it upon yourself to go out and
25 lease the building.

1 What period of time did you start that and
2 when did it stop?

3 THE WITNESS: The day we basically took
4 over the building.

5 THE COURT: Month and year.

6 THE WITNESS: September 2012.

7 THE COURT: Okay.

8 THE WITNESS: I'm going to say until, I'm
9 going to say November 2016.

10 THE COURT: After that, did you have any
11 role whatsoever in managing those leaseholds?

12 THE WITNESS: No.

13 THE COURT: Did you have any role at all in
14 marketing or finding new tenants?

15 THE WITNESS: No.

16 THE COURT: So that stopped approximately
17 November 2016?

18 THE WITNESS: (Witness nods head.)

19 THE COURT: Thank you.

20 BY MR. WINTERTON:

21 Q. And prior to November of 2016 or around
22 September, is that when the funds were taken out of the
23 bank account? I wonder if you could tell us a little
24 bit about that.

25 A. Around September 2016, I no longer -- the

1 account, the Wells Fargo account, was given to
2 Dr. Michaels and -- wasn't given, she was a signer just
3 like I was a signer. The account was a joint account
4 between the two of us. So she had access to the
5 account, she could do whatever she wanted with the
6 account. So at any time she could close it if she
7 wanted or write checks out of it.

8 THE COURT: Did she ever do that?

9 THE WITNESS: Just the one time to close
10 it.

11 THE COURT: And that's the question I have.

12 For the time period that checking account
13 was a joint account, it was roughly four years,
14 correct?

15 THE WITNESS: Correct.

16 THE COURT: How much activity -- other than
17 that last check you said to move funds to a new account
18 and then close the account, the account never closed,
19 my understanding, is that true, or you don't know?

20 THE WITNESS: I can't tell you if it
21 actually closed.

22 THE COURT: We heard testimony last week
23 that the account never closed, they just moved the
24 funds from that account to a new account that you
25 weren't involved in.

1 THE WITNESS: That's correct.

2 THE COURT: Do you know if that account's
3 still open?

4 THE WITNESS: I'm going to say it's not,
5 because I no longer have access to it from Wells Fargo.

6 THE COURT: So back to Dr. Michaels.

7 Did she ever draw on that account or move
8 money around or have electronic access or utilize
9 electronic access on that joint account in the period
10 of on or about September '12 to on or about the same
11 time 2016?

12 THE WITNESS: She had access all the time.
13 Did she move any money, the answer is no. She had no
14 reason to even pay attention to it.

15 THE COURT: Okay. Thank you.

16 BY MR. WINTERTON:

17 Q. Now, let's go to -- so we know about the
18 security deposits and all of that. Now, let's focus on
19 how the rent and the finances of the building took
20 place.

21 So we'll go to September of 2012, and there
22 was a loan at the building, or on the building?

23 A. Correct.

24 Q. Okay. And was that important, was there
25 certain requirements that the bank had? I wonder if

1 you could explain that.

2 A. It's very important.

3 The bank -- in order to get the loan, there
4 was several requirements. The first requirement was,
5 we were going after an SBA loan because that seemed to
6 be the best approach with her medical practice, instead
7 of a conventional loan.

8 So we were approved, the SBA, with
9 conditions. The conditions were that, one, we meet all
10 the SBA requirements. We had to occupy 50 percent of
11 the building or control 50 percent of the building,
12 which between her space and my space and some storage,
13 we met that requirement. But we both had to have that
14 much space in order to meet that requirement.

15 Two, she had to do a master lease which
16 required everyone to be a lessee under her, which we
17 ran into trouble because Prudential refused to be a
18 subordinate to that loan agreement.

19 They gave us a loan, and we moved forward,
20 but then they required the information, and the loan
21 got in a risk. So in 2013 we were constantly going
22 back and forth to the bank giving them financials to
23 look at whether we were qualified or not.

24 Q. So what happened next?

25 A. We ended up, during that time at the end of

1 2013, we went to Wells Fargo and applied for a
2 conventional loan. And we were given that conventional
3 loan, and we were required to sign leases, myself and
4 her, for ten years.

5 Q. Okay.

6 THE COURT: What year did you sign those
7 leases, what month and year?

8 THE WITNESS: The original leases were --

9 THE COURT: 2013?

10 THE WITNESS: The original leases were in
11 2012, and then --

12 THE COURT: The ten-year term, did that
13 start in --

14 THE WITNESS: 2014, with Wells Fargo.

15 THE COURT: What month, do you recall?

16 THE WITNESS: I'm going to say June.

17 THE COURT: And both your respective
18 businesses have the ten-year term leases?

19 THE WITNESS: Correct.

20 BY MR. WINTERTON:

21 Q. If I can have you turn to Exhibit 1 up
22 there.

23 THE COURT: Of what book?

24 MR. WINTERTON: It is my book. I think
25 it's black.

1 THE COURT: Is this -- Mr. Pickens, it's
2 the other binder.

3 BY MR. WINTERTON:

4 Q. And Exhibit Number 1 is two leases that
5 deal with -- one is for you and the other is for your
6 wife.

7 A. Correct.

8 Q. Okay. Are these complete and accurate?

9 A. The issues with these two leases, even
10 though they're pretty much the same, is, this lease was
11 made for Bank of America. We ended up signing another
12 lease for Wells Fargo.

13 It's not in here. I don't have it, you
14 don't have it, so I could probably find it.

15 Q. Is this -- but it says at the top "By Wells
16 Fargo."

17 A. Yeah.

18 Q. Okay. So this is the Wells Fargo lease?

19 A. No, it's not. This is the original lease
20 for Bank of America, because this is February 2013.
21 Wells Fargo didn't come into play until 2014.

22 Q. Okay.

23 A. But we sent these to Wells Fargo because
24 they wanted the information on the leases.

25 Q. Okay. Now, so then you entered into these

1 leases, but Wells Fargo had certain requirements upon
2 you?

3 A. Wells Fargo required us to do a financial
4 every year, which means that our CPA would have to do a
5 complete financial with all our checking accounts, all
6 the, you know, any documents to have to do with
7 Patience One, and our -- my financials, BluePoint's
8 financials, BluePoint Medical's financials, and
9 doctor's personal financials every year.

10 Q. Now, if you did not meet certain
11 requirements, could Wells Fargo call their loan?

12 A. Yes.

13 Q. Okay. And did your wife, was she able to
14 make all her payments for her rent?

15 A. Not in 2013.

16 Q. And so you were required to put up
17 additional money to comply with Wells Fargo's
18 requirements?

19 A. This is Bank of America.

20 MS. HIGBEE: If I may, your Honor. He's
21 been leading him on several occasions, and I haven't
22 said anything, but now it's getting into information --

23 THE COURT: Yeah, I agree, Ms. Higbee.

24 I'm going to sustain the objection with the
25 instructions, Mr. Winterton, we're a bit lax. I mean,

1 I know what I need to hear, I'm trying to ask questions
2 myself, just a little less leading.

3 MR. WINTERTON: Okay.

4 THE COURT: I mean, he's been in this
5 project from the years he's testified to. He's got a
6 lot of information here. I don't think he needs to be
7 led, just ask him the question.

8 MR. WINTERTON: I was just trying to get to
9 the foundation.

10 THE COURT: I understand the nudge a little
11 bit, but it's crossed the line a little bit. Reel it
12 in a bit.

13 MR. WINTERTON: We'll be happy to.

14 BY MR. WINTERTON:

15 Q. Were there certain requirements regarding
16 income that you had to deal with with Wells Fargo?

17 A. Oh, yes, of course.

18 Q. And I wonder if you could explain to the
19 Court why that's important, how it interacted.

20 A. Well, I mean, we borrowed --

21 Q. Could you explain how the interaction with
22 Wells Fargo and the rents and all of that applied.

23 A. I met with Wells Fargo 30 times --

24 THE COURT: How many times?

25 THE WITNESS: Probably 30.

1 -- to try to go over all the financials,
2 all the accounts receivables for Dr. Michaels, because
3 I had to explain to them, she had a lot of account
4 receivables, and because she's a medical practice, it
5 takes time to get those funds, but they're on the
6 books, and she was good for the money. And Bank of
7 America didn't understand that, so that's why there was
8 conflict with Bank of America.

9 But I could show Wells Fargo, this is
10 logical, insurance companies don't pay right away, they
11 could be 120 days out, 160, whatever, but the money was
12 there.

13 You had to look at my financials. My
14 financials were good. And because of our financials
15 together, we were given the loan by Wells Fargo.

16 BY MR. WINTERTON:

17 Q. But after the loan was given, did the bank
18 want to look at rent-rolls and income?

19 A. Oh, yeah, absolutely.

20 Q. Did you have to give it to -- could you
21 explain how you had to report to the bank regarding
22 income and --

23 A. We had to do a complete financial package
24 to the banks every year. Again, it was through our
25 CPA. He had all the documents, he had all the bank

1 accounts, he had all the rent-rolls. So when we
2 presented the package to Wells Fargo, it would be
3 complete with the rent-rolls, you could see how much
4 money was brought in and how much money, you know, was
5 going out.

6 Q. Okay. And did BluePoint Development, did
7 they ever have to or not have to put additional money
8 in?

9 A. I did all the time.

10 Q. I wonder if you could explain that to the
11 Court and why it was important.

12 A. The building when we bought it was under --
13 it needed a lot of repairs and beautification and
14 renovations. When we first went in the building, I
15 ended up having to renovate.

16 We had a tenant was on the first floor, had
17 to move them up to the second floor so she could take
18 her complete space. I ended up paying for the
19 renovations out of BluePoint's account.

20 If the bank ever got in a certain position,
21 I always transferred money to make sure the account
22 was, looked appropriate. I actually paid for the TI on
23 the, for the foot doctor downstairs, which cost me 200
24 and -- like \$241,000 out of BluePoint.

25 So I was constantly putting money in for

1 renovations, improvements so the bank could look at it
2 and say, okay, you guys are improving the property and
3 this is a good thing.

4 The appraisal when we bought it was like
5 2 million. The appraisal when we went to Wells Fargo
6 was 3.4 or 3.5. And it would probably appraise for
7 5 million now.

8 Q. Now, did BluePoint Development put in
9 additional money to show the rental income was coming
10 in?

11 A. Absolutely.

12 Q. And how would that affect the loan with
13 Wells Fargo Bank?

14 A. Well, you know, the more people we had in
15 the building and the more money that we could show went
16 through the account would always improve the loan
17 value.

18 Q. Okay. Now, I wonder if I could get you to
19 go to the rent, the document you prepared for 2013.

20 THE WITNESS: Your Honor, he took two
21 pieces. The summary sheets off of both of these went
22 back to him by mistake. They're the ones you have too.

23 Not those. Out of the books.

24 THE COURT: These?

25 THE WITNESS: Yes, those two. There's one

1 more.

2 There's one more.

3 MR. WINTERTON: Here it is.

4 THE COURT: What are these?

5 THE WITNESS: These are the summary sheets
6 of the books that I gave you, because I want to try to
7 make it simple so everybody didn't have to go through
8 them. So the front page on the book is a summary page
9 of all the books for certain accounts.

10 THE COURT: Okay.

11 MR. WINTERTON: Your Honor, I have shown to
12 the other side that they have these, if I can approach
13 your Honor.

14 THE COURT: Yes.

15 What am I looking at? What do I need to
16 look at, because I may have these also.

17 THE WITNESS: Yeah, you have those.

18 What I have is a summary sheet for Suite
19 208 of all the accounts and all the money transactions
20 between BluePoint and Patience One from 2013 to 2015 --
21 or 2017, I'm sorry.

22 THE COURT: '16, right?

23 THE WITNESS: Yeah, but it actually through
24 '17.

25 THE COURT: Okay. What else?

1 THE WITNESS: The other one is the personal
2 account.

3 THE COURT: Okay.

4 THE WITNESS: So those are the two. And
5 these are just clarifications. This is what's in those
6 books.

7 THE COURT: These are summaries?

8 THE WITNESS: Correct.

9 Now, I'll go through them, and everybody
10 could follow.

11 THE COURT: Are you going to make an
12 objection?

13 MS. HIGBEE: Yes, I would like to make an
14 objection.

15 First of all, the underlying documents, I
16 don't know where they are. If they're a summary, then
17 I need to know what those are. Are they the new ones
18 today? Is it the black book?

19 THE WITNESS: The new ones today.

20 THE COURT: Hold on, sir. She's addressing
21 the Court.

22 THE WITNESS: Okay. I'm sorry.

23 MS. HIGBEE: And then if it's what I think
24 it is, most of these documents or the summary refers to
25 figures that are gleaned not from payments by

1 Blue Development but by receipt from Patience One, if
2 that makes sense.

3 So it doesn't -- it's not showing what
4 payments he made from -- through his Blue Development
5 account for rent to Patience One, rather it lists out
6 figures that don't say they're for rent but show up in
7 Patience One accounts. So it could be building
8 information.

9 Anyway, I'm not sure that this summary can
10 come in before we know what the documents are that it
11 represents.

12 THE COURT: We have to know what he's
13 testifying to.

14 MR. WINTERTON: Your Honor, I'm about to
15 say, wow, did I predict it or what. Now they're
16 sitting there and going to say they're offsets. So I
17 will lay a foundation, but I haven't even gotten to it.

18 THE COURT: I want him to explain to me,
19 the Court, what he's looking at, what he -- I
20 understand the spreadsheet. Where is he lifting these
21 numbers from so that I can do the correlation and then
22 come back with the objection.

23 MR. WINTERTON: Your Honor, that's what I
24 would like to do, but I haven't even been given time to
25 lay the foundation.

1 THE COURT: What I'm going to do at this
2 point is, I'm going to overrule the objection
3 temporarily, for now, because I want to hear more
4 testimony. I want you to lay the foundation and lay it
5 as quick as you can so we can see where he's going and
6 where he's getting it from.

7 MR. WINTERTON: Okay.

8 THE COURT: Because his interpretation
9 of -- the witness' interpretation of an extrapolation
10 or summary, the methodology he came down to arrive at
11 it is what I'm looking at.

12 MR. WINTERTON: Sure. I would be glad to.

13 BY MR. WINTERTON:

14 Q. Okay. From my understanding --

15 THE COURT: What I want to focus on is --
16 now I'm going to jump in here. I want to focus on
17 what's your best evidence to show the Court he has a
18 rent credit. That's it.

19 MR. WINTERTON: That's where I'm going.

20 THE COURT: Good. Let's get there.

21 BY MR. WINTERTON:

22 Q. What I would like to do is, my
23 understanding is, this is a summary of what's in here.
24 For example, I may hold up 2014. Now, 2014 was the
25 bank statements and documents that we produced at the

1 very beginning; is that correct?

2 A. That's correct.

3 Q. So what you've done is now you've made a
4 summary of these things that were produced earlier?

5 A. Yes.

6 Q. Okay. And the documents that we produced
7 earlier is a record of the rental payments?

8 A. Correct.

9 Q. Okay. Now, what I would like to do is,
10 let's go to 2014 where it says Rent Recap 2014, and
11 let's look at the BluePoint Development, Suite 208,
12 summary sheet.

13 And using 2014, could you -- first off,
14 what exactly is this packet of 2014?

15 MS. HIGBEE: Your Honor, if we can, for the
16 record, when you hold up and say "this," it's not going
17 be good enough.

18 THE COURT: Right. I need you to clearly
19 identify for the court reporter what you're holding up.

20 MR. WINTERTON: Sure.

21 THE COURT: Because she's making a record.

22 BY MR. WINTERTON:

23 Q. Okay. I understand you have prepared a
24 document that is called BluePoint Development Rent
25 Recap 2014. And I also believe that would be

1 Exhibit 4, but we'll just go with this Rent Recap 2014
2 that was produced.

3 Now, what is this first page of the
4 BluePoint Development Rent Recap 2014, Suite 204?

5 A. The first page is basically the bank
6 accounts where the rent came from. The first accounts
7 were Bank of America, the second accounts were Wells
8 Fargo, the money transferred in or transferred out of
9 the account.

10 Q. Okay. Now, you --

11 THE COURT: Is the joint account the Wells
12 account?

13 THE WITNESS: All these accounts are joint
14 accounts.

15 THE COURT: The one that you testified to
16 my questions earlier for the -- that you indicated that
17 Dr. Michaels had only made the one transaction of her
18 own, is that the Wells account?

19 THE WITNESS: Both of them. She was a
20 signer and a --

21 THE COURT: But the one where the money was
22 taken out.

23 THE WITNESS: Wells account, yes, sir.

24 THE COURT: Thank you.

25 ///

1 BY MR. WINTERTON:

2 Q. Now, and you personally created this?

3 A. Yes.

4 Q. Okay. Now, let's -- at the very bottom,
5 it's a got credit balance, 2013, and it's got the
6 number 650206.

7 A. Correct.

8 Q. Can you explain how you arrived at that,
9 and what that means?

10 A. The credit balance came from 2013. It came
11 from the monies that I paid in 2013, minus the rent
12 that was due, to come out with the credit balance
13 coming from 2013 going to 2014.

14 Q. Okay. Before we get -- I just want to go
15 through '14 right now.

16 And then it says Total Rent Paid. How did
17 you arrive at the total rent paid?

18 A. The total rent paid was the total amount
19 that I put in the bank.

20 THE COURT: Talking about BluePoint?

21 THE WITNESS: That's correct.

22 BluePoint put in the bank, which is 92,602,
23 is how I came up with it.

24 THE COURT: Let me ask you this.

25 Who are the members of BluePoint around

1 this time? Are you the only owner?

2 THE WITNESS: I'm the only owner.

3 THE COURT: When you're saying credit, you
4 have a ten-year lease, right, 4,000 a month, correct?

5 THE WITNESS: Correct.

6 THE COURT: When you're making these
7 contributions from BluePoint to the Patience One
8 account to, what I understand is to keep your covenants
9 current to keep the bank happy, right?

10 THE WITNESS: Correct.

11 THE COURT: Stay compliant so they don't
12 call whatever note they have.

13 THE WITNESS: Correct.

14 THE COURT: When BluePoint's making these
15 payments you testified, are you using those to apply
16 those for rent credits or loan contributions, how are
17 you defining them?

18 Let's say BluePoint gave \$500,000 to Wells
19 Fargo over a relevant period of time. Are you taking
20 that and applying that to a credit against future
21 rents, if need be, for BluePoint's rent to
22 Patience One?

23 THE WITNESS: I would consider any money
24 that I put into it credit to whatever. I mean, this is
25 my future. This is my retirement, you know, this

1 building. So if I put money into it, I would expect --

2 THE COURT: Yeah, you have two hats here.

3 BluePoint is, from what I'm hearing -- and it makes

4 sense -- is, in essence, a funding source, you know, a

5 lender to help --

6 THE WITNESS: Correct.

7 THE COURT: -- Patience One --

8 THE WITNESS: Correct.

9 THE COURT: -- which you have equity
10 interest in --

11 THE WITNESS: Correct.

12 THE COURT: -- to stay in the black?

13 THE WITNESS: Correct.

14 THE COURT: Then you have this other part
15 where BluePoint is a tenant under a different contract?

16 THE WITNESS: Correct.

17 THE COURT: Okay. Thank you.

18 BY MR. WINTERTON:

19 Q. Okay. Now, I'm going to build upon that.

20 We talked about -- so the total rent paid.

21 Now, you're the manager of BluePoint
22 Development, correct?

23 A. Correct.

24 Q. You understand -- and you're also managing
25 Patience One?

1 A. Correct.

2 Q. So you're making the decision which ones
3 applied to rent, which ones applied to credit?

4 A. Correct.

5 Q. You have complete authority to do that?

6 A. Correct.

7 Q. And at that time there was no question --

8 MS. HIGBEE: Again, are we leading or is he
9 testifying?

10 MR. WINTERTON: I'll strike it.

11 THE COURT: Go ahead.

12 BY MR. WINTERTON:

13 Q. In regards to having to report to the bank,
14 were you -- who else was also involved?

15 A. There were probably, I'm going to say, four
16 people that had to put information. I was the main
17 person that reported to the bank.

18 Dr. Michaels was really running her
19 practice, so it was difficult for her to review things,
20 but we collected things from her.

21 THE COURT: Patience One is 50 percent
22 ownership for you?

23 THE WITNESS: Correct.

24 THE COURT: Did you have it in your
25 personal name or an entity?

1 THE WITNESS: I think, I think the loan was
2 in personal, and I think we transferred it into a --

3 THE COURT: But your ownership interest,
4 your membership interest in the LLC, Patience One, how
5 did you hold that interest, personally or a different
6 entity?

7 Were there just two members of that
8 Patience One, LLC?

9 THE WITNESS: Correct.

10 THE COURT: And Dr. Michaels had
11 50 percent?

12 THE WITNESS: Well, no. Neither one of us
13 had 50 percent. I think it was all transferred into a,
14 I'm going to say a, what is it, estate planning type
15 thing.

16 THE COURT: Okay, some type of estate
17 planning?

18 THE WITNESS: Correct.

19 THE COURT: Let me ask this.

20 What was the quorum, what was the
21 decision-making vote, was it 51 percent needed or less
22 or more than that?

23 If you're making management decisions while
24 she's running her practice, you kind of got two hats
25 here. You kind of run the show on both ends for your

1 tenant, but you happen to own BluePoint, and then for
2 the landlord, which you have 50 percent in
3 Patience One.

4 When there comes this decision to make, did
5 you have to take a vote or have a membership meeting
6 and say to Dr. Michaels, irrespective whether she's
7 your wife or not, do you agree with this or not?

8 THE WITNESS: Well, we would talk about it,
9 but I had the ultimate -- I was the manager, the active
10 manager, and I can make decisions, unless it was major,
11 and then I would, of course --

12 THE COURT: Do you have bylaws that speak
13 to that, or an operating agreement?

14 THE WITNESS: I would believe we do.

15 THE COURT: Is that in any of the books?

16 THE WITNESS: No.

17 MR. WINTERTON: It's not in any of the
18 books by either side.

19 MS. HIGBEE: It's not in the books.

20 THE COURT: All right. Thank you.

21 BY MR. WINTERTON:

22 Q. So it's your testimony then that you had --
23 unless it was a major, major decision, you had the
24 day-to-day decisions to make?

25 A. That's correct.

1 Q. And so the day-to-day decision as to
2 payments or rent, not payments or rent was under your
3 area?

4 A. Correct.

5 Q. And what was applied to rent and what was
6 not applied to rent was your area?

7 A. Correct.

8 Q. Okay. And it was what you gave to the
9 accountant to give to the bank?

10 A. Correct.

11 Q. Now, you did keep separate things that were
12 loaned versus rent; isn't that correct?

13 A. Correct.

14 Q. And I wonder -- let's go to the same report
15 under 2014, it's in red, that says BluePoint Loan to
16 Patience One.

17 I wonder if you could explain how this
18 loan, how this came about.

19 A. This was, instead of going to the bank and
20 acquiring a loan, Patience One or BluePoint Development
21 had finances to do a TI buildout.

22 So instead of going and getting a loan, I
23 actually paid out of BluePoint Development, which I had
24 the funds to pay for it. So therefore, sooner or later
25 I would expect to get it back. I mean, it wasn't a

1 gift, it was, you know, in my mind that I would get it
2 back someday.

3 Q. Okay. So you kept records separate from TI
4 versus rent?

5 A. Sure.

6 Q. Now, it says here -- now, there's something
7 in yellow that says, "Note Fong rent check."

8 I wonder if you could explain what that is.

9 A. The note in yellow was, there were two
10 people renting space in my office, and instead of
11 having them write checks to BluePoint Development, I
12 had them write checks to Patience One.

13 And that's -- the copy of the check for
14 Fong is in the back, and I just wanted to show that
15 actually it was paid into the account, and that's what
16 that was for, it was for rent. And it should have gone
17 to 208, but it just went into the bank.

18 Q. So that was a subtenant in your suite?

19 A. Yeah. And there was another gentleman that
20 was paying 600, that he also did the same thing, wrote
21 a check out to Patience One out of my suite. And I
22 just allowed it to go in there, I was fine with that.

23 Q. Okay. So that's part of the rent that
24 you're calculating?

25 A. Correct.

1 Q. Now, let's turn to the next page of the
2 document entitled BluePoint Development, Suite 208,
3 Rent Recap 2014.

4 A. Okay.

5 Q. What is this second page?

6 A. The second page is a Wells Fargo -- no, I'm
7 sorry.

8 It's a recap of the money that BluePoint
9 paid for Patience One.

10 THE COURT: Where are you at?

11 MR. WINTERTON: I was just explaining what
12 the second page was.

13 THE COURT: I don't have that.

14 THE WITNESS: I think it's in 2013. I'm
15 sorry.

16 THE COURT: '13?

17 MR. WINTERTON: Oh, I'm in '14.

18 THE WITNESS: Yeah, I know. I don't think
19 it's in there. I'm sorry.

20 MR. WINTERTON: I'm in '14.

21 THE COURT: I'm in the BluePoint
22 Development, Suite 208, Rent Recap 2014.

23 MR. WINTERTON: That's the one I'm at.

24 THE COURT: First page, that's it, right?

25 MR. WINTERTON: We talked about the first

1 page, yes.

2 THE COURT: Now you say the second page?

3 THE WITNESS: It didn't get in your book, I
4 don't think.

5 THE COURT: I don't have a second page.

6 THE WITNESS: It's in 2013.

7 THE COURT: Oh, it's in 2013. Okay.

8 THE WITNESS: I'm sorry.

9 MR. WINTERTON: It's in my '14.

10 Okay. We'll move on.

11 THE WITNESS: I put this together all last
12 night, just trying to make sure it was all put
13 together.

14 It's not in that one either?

15 THE COURT: Hold on.

16 THE WITNESS: That's the wrong book.

17 THE COURT: It's this right here?

18 THE WITNESS: No.

19 MR. WINTERTON: I'll tell you what, I'll
20 just go through it. I'll just pass it, because it's
21 really dealing with more the improvements.

22 THE COURT: All right. Go ahead.

23 BY MR. WINTERTON:

24 Q. We'll move on.

25 A. Anyhow, this is a list of -- this came from

1 BluePoint's checking account and all the monies that
2 BluePoint spent in 2013, 2014, and 2015.

3 THE COURT: I found it. Go ahead.

4 THE WITNESS: And it's just a list of money
5 that was spent by BluePoint to improve the building.

6 BY MR. WINTERTON:

7 Q. Now --

8 THE COURT: Did you attribute this at any
9 time on your books while you were managing as also
10 applicable to rent credits for BluePoint?

11 THE WITNESS: Did I put in there --

12 THE COURT: I mean, did you, in your
13 thinking, well, I got some credits in the bank for
14 rent, if I can't make rent for whatever reason --

15 THE WITNESS: Well, in my mind, the answer
16 is yes.

17 THE COURT: In your mind, you could draw
18 down --

19 THE WITNESS: Absolutely. I could draw
20 down at any time for anything that I put in, so --

21 THE COURT: Okay.

22 BY MR. WINTERTON:

23 Q. When this whole thing is coming about, this
24 was husband and wife working together working on a
25 project?

1 A. Correct.

2 Q. Okay. So now what we have is, we've got
3 checks in the back.

4 I wonder if you could explain what -- it's
5 not checks, I'm sorry, bank statements. And what
6 exactly are these bank statements, and how does it
7 relate to the first page that, the summary you just
8 testified about?

9 A. Okay. The summary is based on the business
10 checking account from BluePoint. So if you go through
11 the summaries in every case, you can see that June was
12 when I basically opened the account, and the money
13 didn't start coming out of the Wells Fargo account
14 until, I think, July.

15 And if you look on the fourth page of July,
16 just to give a reference, and 7/28, so it should be the
17 second page of four, and July 1st through the 31st.

18 What I did is, it shows an online transfer
19 from -- to Patience One, LLC for rent of Suite 208, and
20 it says \$4,000. It's page 2 of 4, Wells Fargo, on
21 July 2014.

22 Yeah, that's the wrong book.

23 THE COURT: 2014, right?

24 THE WITNESS: Correct. Should be July.
25 Page 2. There it is.

1 THE COURT: Okay.

2 THE WITNESS: So what I did is in this book
3 is took every BluePoint Development checking statement
4 and put in here, and I highlighted money that I put in
5 and transferred to Patience One.

6 Now, your comment earlier was, was it
7 always going to rent? Did I always say it was for
8 rent? Maybe not, because I might have been in a hurry,
9 but it shows what I transferred in every case, every
10 month.

11 BY MR. WINTERTON:

12 Q. Into Patience One?

13 A. Into Patience One.

14 Now, there is, just for the Court's
15 information, there is a conflict in -- if you look at
16 the front page, I have the statements for January and
17 February. And that's why I put it in green on your
18 summary sheet in the front. So January and February, I
19 have the Bank of America account, and it shows that,
20 March, April, May, June --

21 MS. HIGBEE: Hang on. Hang on.

22 Your Honor, objection. He's saying that he
23 has Bank of America accounts. We need to lay the
24 foundation, because they aren't in this document that
25 he's talking about.

1 MR. WINTERTON: Your Honor --

2 THE COURT: I agree. Sustained.

3 MR. WINTERTON: -- what I would like to do
4 is, we've been getting a lot of objections in the
5 middle of testimony and at the beginning of my
6 questions that even prevent us from laying foundation.

7 THE COURT: Well, I understand, but here's
8 why. Because of the nature of how these were disclosed
9 and the time that they were disclosed. I'm not going
10 to get into rules because it's justice court.

11 MR. WINTERTON: Sure.

12 MR. MAUPIN: Defense is making a record at
13 the appropriate time.

14 Now, you're going to have an opportunity to
15 lay the foundation because it's the first time you
16 mentioned B of A accounts to this particular time
17 period.

18 The objection is noted, and it's a good
19 one, is that where is the B of A account. So go ahead
20 and lay your foundation.

21 MR. WINTERTON: Your Honor, I would
22 disagree --

23 THE COURT: Lay your foundation.

24 MR. WINTERTON: -- respectfully disagree,
25 because he testified -- they testified about B of A

1 bank accounts. So if he's testifying about -- not my
2 client, but the previous witness, Jakub, testified --

3 THE COURT: He didn't testify with
4 specificity of money that was deposited or transferred,
5 he never went to that. I don't think he had knowledge
6 to that extent.

7 MR. WINTERTON: No, but he also --

8 THE COURT: He's far more knowledgeable
9 about these accounts than the prior witness.

10 MR. WINTERTON: Sure. I'll go ahead.

11 THE COURT: Just ask him, build some
12 foundation on the B of A account.

13 MR. WINTERTON: Sure, we'll do it.

14 BY MR. WINTERTON:

15 Q. Let's go ahead, and can you tell us about
16 the Bank of America bank accounts.

17 A. Because we purchased the building through
18 Bank of America, we had to open a Bank of America
19 account. And therefore, until we got into Wells Fargo,
20 everything was paid for through Bill Pay through Bank
21 of America.

22 And that's why it becomes important. And
23 the issue is, I don't have all the Bank of America
24 statements, which we all have access, we can go to the
25 bank and say give us the accounting.

1 So I was going to tell the Court that
2 March, April, May, June, I don't have the backup for
3 those, so I'm actually giving them ammunition to say,
4 well, you don't have the backup for those.

5 I'm trying to help them out too and say,
6 okay, I know, but I can get it.

7 And Wells Fargo would have never gave us a
8 loan if I didn't pay for those.

9 So I'm just painting for the record that
10 there's nothing being hid here, or I'm not trying to
11 hide anything. If anything, I spilled my guts on
12 everything in these books.

13 So anyhow, go on.

14 Q. Okay. But it's your testimony as the
15 manager of Patience One that the rent was paid for
16 those months?

17 A. Absolutely.

18 Q. And as the manager of BluePoint Development
19 you're testifying that it was paid?

20 A. Absolutely.

21 Q. And have you seen anything in these
22 proceedings that would contradict that they were not
23 paid?

24 A. No.

25 Q. Okay. So now let's go on and talk more

1 about -- so I wonder if you could explain more how --
2 continue, because we were trying to get through this,
3 how this summary sheet reflects the statements in the
4 back.

5 A. Yeah. Everything on this summary sheet
6 comes from all but those four that I said, comes from
7 the bank statements that came from the Wells Fargo
8 Bank. And most of them says for rent. Some of them
9 doesn't say it's for rent. But that's the purpose of
10 it, because the bank account would be in a situation
11 where I want to make sure that there's plenty of money
12 in there.

13 Now, December of 2014, I put in a -- I
14 transferred \$24,000 into Patience One, which if you
15 look at December in the book, which everybody is aware
16 of -- and this was the document that I sent Mr. Jakub
17 Michalecko to show that I was ahead.

18 So if you look at December, page 2 of 4 in
19 December, it shows transfer to Patience One checking,
20 six months rent for Suite 208. So it clearly says I
21 put in six months worth of rent.

22 Now, not taking that for granted, he
23 decided to evict me anyhow even with me going to him
24 and saying, listen, I'll sit down with you and bring
25 out all the records and show you everything, I don't

1 care, I don't have anything to hide. But instead they
2 want to say, well, we don't know what that was for, so
3 therefore, we're going to evict you.

4 Q. Okay.

5 THE COURT: Okay. Hold on. Let's look at
6 the Rent Recap 2014, this binder.

7 THE WITNESS: Yeah.

8 THE COURT: I want to look at page 2 of 5
9 from September's statement, Wells Fargo.

10 THE WITNESS: Okay.

11 THE COURT: Look at the September 17 entry.
12 It says, "Online Transfer from Patience One, LLC."

13 Why would Patience One be giving you money?

14 THE WITNESS: Well, there was always --

15 THE COURT: BluePoint money, I'm sorry.

16 THE WITNESS: There's always questions.
17 There's several numbers. There's a \$20,000 transfer.

18 THE COURT: I saw that.

19 THE WITNESS: The issue is, was there --
20 did BluePoint pay something for, like taxes, or did
21 BluePoint pay for something else, or was it just that
22 BluePoint was overextended because they paid all this
23 money out to Patience, and therefore, it was taking
24 some of that money back to say, okay, I need it now,
25 but I'll give it back.

1 Now, if you looked at the money, I
2 probably -- you know, you took out 6,500, I ended up
3 putting 8,000 -- there was actually 8,000 taken out,
4 and I put in 10,000.

5 But I showed that on the record, the plus
6 and minuses all the way through. I mean, that's why I
7 highlight them. There was nothing to hide. At any
8 time that could happen.

9 THE COURT: Did Dr. Michaels or any of her
10 entities have an interest in BluePoint?

11 THE WITNESS: She had no interest, but she
12 had signing abilities on all my accounts.

13 THE COURT: But she didn't own any
14 equity --

15 THE WITNESS: No.

16 THE COURT: -- and she wasn't a manager
17 member?

18 THE WITNESS: No.

19 THE COURT: Just a signatory on account?

20 THE WITNESS: Yeah.

21 THE COURT: Thank you.

22 Go ahead, Mr. Winterton.

23 MR. WINTERTON: Thank you.

24 BY MR. WINTERTON:

25 Q. So this is the document -- so you created

1 all this by looking at the records of BluePoint and
2 Patience One?

3 A. Correct.

4 Q. And to the best of your knowledge, is this
5 information true and correct?

6 A. The only ones that are issues are March,
7 April, May, and June, because I don't have the proper
8 backup for that, which I can find.

9 Q. Okay. But no one has disputed that they
10 weren't paid?

11 A. No.

12 Q. Even when it comes to the eviction here,
13 there's never been any dispute that they were not paid?

14 A. No.

15 Q. Maybe just for clarification too for
16 foundation. It says Wells Fargo Business and Wells
17 Fargo Tom's that you put in there.

18 Could you please explain what that is.

19 A. The difference is, is one was a personal
20 account, and I would transfer money in from my personal
21 account every now and then just because I either had
22 spare money in my account or Patience needed it, one or
23 the other, didn't care, just transferred money when it
24 needed it.

25 So that's why when you have two different

1 sets of books, one shows a personal account, which they
2 said was a joint account, which, questionable whether
3 it's a joint account or not. And I can go to that on
4 the summary sheet. This summary sheet (indicating).

5 And the reason this is important is
6 because, again, this says it's a personal account, not
7 Tom and Danka's. And that's who it's labeled to. This
8 is contributions made to that account from me and from
9 her. And it's based on all the information that comes
10 in the books behind that. So between 14, 15, and 16, I
11 deposited 710,580.

12 THE COURT: When you say "I," is that
13 BluePoint?

14 THE WITNESS: That was from my checking --
15 yeah, BluePoint.

16 THE COURT: So BluePoint, it's your
17 testimony --

18 THE WITNESS: It was either paychecks or
19 money that I transferred into that account.

20 THE COURT: Into the Wells account?

21 THE WITNESS: Into this personal Wells
22 account.

23 THE COURT: What is the relevance of that?

24 THE WITNESS: Well, because I transferred
25 money out of this personal account and went into the

1 Patience account. And there is some question on
2 whether that money was split and joint money in that it
3 doesn't count somehow. So that's why it's important.

4 BY MR. WINTERTON:

5 Q. Okay. What I would like to do now is,
6 we've got Exhibit Number 4, and we have the BluePoint
7 Development, Suite 208, Rent Recap 2014.

8 And if you go down the columns, Exhibit 4,
9 and then you go to the Rent Recap 2014, and you go --
10 the first one is 4,000, next one, there's a difference
11 there, 4,000, 4,000, 4,000, 4,000, 4,000, 21,000. And
12 then what you did in Exhibit 4 is attach the bank
13 statements to the back; is that correct?

14 A. Correct.

15 Q. So really this here is the same thing that
16 we've already produced in Exhibit 4?

17 A. Correct.

18 Q. You've corrected it?

19 A. Just clarification.

20 Q. There was one entry that was off?

21 A. Correct.

22 THE COURT: And nothing new?

23 THE WITNESS: No.

24 MS. HIGBEE: I don't know when you want me
25 to make the objection, but if he's offering it into

1 evidence, then I'm going to make it now or I can -- do
2 you want me to point out the differences?

3 THE COURT: Not yet.

4 BY MR. WINTERTON:

5 Q. Okay, let's go over to 2015.

6 MS. HIGBEE: Well, I think I need to make
7 the objection if we're moving on to another document.

8 THE COURT: He's not moving for admittance
9 yet.

10 MS. HIGBEE: Okay.

11 THE COURT: When he does --

12 MS. HIGBEE: All right. I'll try to
13 remember.

14 THE COURT: The time is ripe at that point.
15 I'm waiting.

16 BY MR. WINTERTON:

17 Q. Now, let me -- and the documents that were
18 in Exhibit 4, you prepared -- you gathered those
19 documents?

20 A. Correct.

21 Q. Let's go with Exhibit Number -- let's go
22 with BluePoint Development, Suite 208, 2015.

23 Okay. Did you prepare this document that
24 says BluePoint Development, Suite 208, Rent Recap 2015?

25 A. Yes.

1 Q. And what I would like to do is compare it
2 to Exhibit Number 5.

3 First off, let's lay the foundation.

4 So you personally prepared this. How did
5 you prepare it?

6 A. What I thought I was trying to do was make
7 it simple for everybody to see where the money came
8 from.

9 And what I did is, went through every bank
10 statement I had, color-coded every item, whether it was
11 plus or negative, showed the money brought forward from
12 the years prior, that if there was a balance, and kept
13 showing the money going forward, and what credit I
14 would have at the end of that time is what every book
15 was done. So every book was based on Bank of
16 America -- BluePoint Development's Bank of America
17 account.

18 The only one that was different was 2013.
19 It was Patience One account showing payments from
20 Patience One. So that's the only difference.
21 Everything else is BluePoint.

22 Q. Now, are you the manager in 2015 for
23 BluePoint Development?

24 A. Yes.

25 Q. Were you the person that would make the

1 decision whether payment was for rent or not for rent?

2 A. Yes.

3 Q. At that time did you also -- were you the
4 manager for Patience One?

5 A. Yes.

6 Q. Did you make the decisions whether or not
7 the money deposited was for rent or not for rent?

8 A. Yes.

9 Q. And you testified that you went through all
10 these records, BluePoint's and Patience One?

11 A. Correct.

12 Q. Now, I wonder if you could explain to me
13 how you prepared in this binder, BluePoint Development,
14 Suite 208, Rent Recap 2015.

15 A. I went through every BluePoint, the
16 account, checking account from BluePoint and again
17 highlighted every single payment that was made to
18 BluePoint or deducted from Patience One. And I also
19 brought the credit forward from 2014, which was
20 44,602.06 was the balance that I had coming to me in
21 2014. I brought it forward to 2016 to show that it was
22 a -- there was a credit still on the books. And that's
23 again, I'm trying to recap every year and show the
24 credit through 2017.

25 Q. Okay. Now, so where it says Credit Balance

1 2014 in blue, 44,602.06, that's a credit?

2 A. Correct.

3 Q. Now, then it says Total Paid, 40,098, how
4 did you arrive at that?

5 A. That was the amount of money that was from
6 the top of the checks that I paid from the account.

7 Q. Okay. Now, in this exhibit, have you
8 attached the Wells Fargo Bank statements?

9 A. Yes.

10 Q. And have you highlighted the payments that
11 you're referring to as it goes through?

12 A. Yes, I did.

13 Q. Okay. And as the representative of
14 BluePoint and Patience One, you determined that these
15 were -- should be applied towards rent or not?

16 A. What I determined was, whether it's fair or
17 not, I took the negatives and the positives and put in
18 there and said, okay, they're rent.

19 Now, I could have went and said, well, you
20 owe me X amount of money. I could deduct the 10,000 or
21 the 12,000 or whatever it is -- I can't see without my
22 glasses. I could have taken it out of the money that I
23 put in it and said, okay, now play with the rent.

24 I mean, I had the choice to do that, and I
25 didn't do that. I said, okay, let's just say it's

1 rent. So I was trying to be fair in this situation. I
2 could have said they paid back some of the loan, but I
3 didn't do that.

4 Q. So --

5 A. Which I had all the right to do.

6 Q. Okay. Then let's move on.

7 And then you came out with the Balance
8 Paid. And how did you arrive at Balance Paid?

9 A. The Balance Paid was the total of the
10 pluses and minuses from the Wells Fargo account.

11 Q. Okay. And rent, how did you reflect the
12 rent?

13 A. 4,000 a month.

14 Q. And then you have a credit here?

15 A. Correct.

16 Q. And the credit, 36,710?

17 A. Correct.

18 Q. And again, you kept your loans and other
19 things separate, and so that's where you got this red
20 caption here?

21 A. That's correct.

22 Q. What I want to do, let's go with Exhibit
23 Number 5, and let's put the two together. And we're
24 going to go over them and go over any differences.

25 So we've got here Rent Recap 2015. We got

1 for January, \$4,000. So that appears to be the same.
2 February, 4,000. March, 6,000. April, 4,000. We also
3 have another 8,000.

4 Why did you have an extra payment in April?

5 A. I just always put money in there.

6 Now, I do see a mistake, and I'll bring it
7 up. The 2,000 credit going forward there should be
8 36,000. I think the numbers on the last one is
9 correct.

10 Q. Okay.

11 A. But it still makes no difference, I still
12 have a credit.

13 Q. Now, one difference is, we got where it
14 says August, and on the 2015 it has a blank, and then
15 now you come out and said rent should be reduced by
16 10,000.

17 Could you explain why you did that, or what
18 happened to the difference there?

19 A. Which one, 2015?

20 Q. We're in 2015. It's highlighted in red in
21 the BluePoint Development, Suite 208, Rent Recap 2015.

22 A. I put it in red for the reason that I
23 stated. There's a question on whether it could be
24 considered paying back the loan or whether it should be
25 done against rent. And that's why I bring it up.

1 I had the option to do either one. And I
2 could have done it, but for the Court and everybody
3 else, I just said we're just going to play completely
4 open and let it speak for itself.

5 Q. So you deduct it as rent?

6 A. Yeah, I deduct it as rent whether it should
7 have been or not.

8 Q. So that means you had to pay 10,000 extra
9 dollars for that?

10 MS. HIGBEE: If I may make an objection. I
11 think the objection is that he's testifying to
12 documents that are not in evidence, and I think that's
13 where I'm having a problem with 2014 and 2015. So he's
14 testifying to all these numbers, and none of these
15 documents are in evidence yet.

16 THE COURT: I'm going to overrule the
17 objection. He's testified to enough that is here to
18 show his methodology and keeping track of what he's
19 doing in his discretionary call of whether I'm going to
20 apply it to rent or to loan or not. So I'm going to
21 overrule the objection.

22 MS. HIGBEE: I don't mean to --

23 THE COURT: Go ahead.

24 MS. HIGBEE: -- but to make a record.

25 The problem with that is that there are --

1 if the Court is relying upon them because of his
2 foundation and his methodology, we have not yet pointed
3 out the problems with it yet. I suppose we can do that
4 on cross, but if it's not evidence yet, it shouldn't be
5 considered yet.

6 THE COURT: Well, for testimony purposes,
7 I'm going to listen to it. But for cross-examination,
8 absolutely, I'm going to allow you to go into it.
9 Right now it's marked for identification purposes.

10 MS. HIGBEE: Thank you.

11 MR. WINTERTON: Just for a little
12 housekeeping. Your Honor, maybe the best way, because
13 when I go through this, I was going to move for
14 admission, but if the Court doesn't have any problem,
15 I'll wait until after the cross-examination.

16 THE COURT: I would like to wait until
17 after cross-examination. I want to hear all testimony
18 regarding the exhibits before I make my ruling.

19 MR. WINTERTON: Perfect. Then I won't
20 move. Thank you.

21 BY MR. WINTERTON:

22 Q. Okay. So then the rest of it, as I'm
23 looking at it, and you can correct me, there is one
24 more difference, and that's at the very bottom, and it
25 says "Note for \$4,000."

1 I wonder if you could explain what that is,
2 because in your 20 -- in Exhibit Number 5 you had a
3 dash there. Why the difference?

4 A. I'm lost, because I don't have the note
5 that you're referring to, I don't think.

6 Q. What I'm looking, the last entry.
7 Do you remember why you did that?

8 A. No.

9 Q. Okay.

10 A. There was a reason, but I -- the one thing
11 I want to clarify is the front pages may not be correct
12 on the book, but the summary is correct all the way
13 through (indicating). Correct all the way through.

14 Q. Okay. We'll get to that in a minute.

15 Let's go to Exhibit Number -- let's see.
16 We'll go to rent recap -- let's see, BluePoint
17 Development, Suite 208, Rent Recap 2017.

18 THE COURT: Which year?

19 MR. WINTERTON: 2016, I'm sorry. Thank
20 you, your Honor.

21 BY MR. WINTERTON:

22 Q. Okay. Now, in the binder that says
23 BluePoint Development, Suite 2008, Rent Recap 2016, who
24 prepared this summary?

25 A. I prepared it.

1 Q. And how did you prepare it?

2 A. It was prepared from the Wells Fargo Bank
3 statements from BluePoint Development.

4 Q. And did you attach to this exhibit the --
5 or this document the bank statements that you used?

6 A. Correct.

7 Q. Okay. And as you went through this, were
8 you the one that made the highlighted markings on the
9 bank statements reflecting the payments?

10 A. Correct.

11 MR. WINTERTON: Your Honor, I think I need
12 to do a little bit of a housekeeping.

13 The bank statement's account numbers are on
14 these records, and we should have had them redacted.
15 So if we could at least tell -- the opposing side has
16 got access to all these accounts anyway, but we would
17 ask that they at least try to keep them confidential if
18 they would, because it's their bank statements too.

19 MS. HIGBEE: We don't have a problem with
20 that.

21 THE COURT: I think there would be no other
22 self-interest other than to keep them confidential.

23 MR. WINTERTON: I didn't think so either,
24 but I just think I should mention that.

25 THE COURT: Thank you.

1 BY MR. WINTERTON:

2 Q. Okay. I wonder if you could explain the
3 entries that you made in this binder, which is
4 BluePoint Development, Suite 208, Rent Recap 2016.

5 A. Again, it has every \$4,000 transfer that
6 was made from BluePoint Development into the
7 Patience One account from the beginning of the month to
8 the end.

9 And then November I put in there because I
10 received an invoice from Jakub. I put in there
11 electrical, which I wasn't responsible for, but I put
12 it in there because I got an invoice.

13 So that was the last one, and that's
14 probably the last record you will see from BluePoint
15 Development as a wire transfer.

16 THE COURT: What about January, June and
17 August, the blanks?

18 THE WITNESS: The --

19 THE COURT: 2016.

20 THE WITNESS: Well, I think what I did
21 here, your Honor, is I ended up --

22 THE COURT: As well as December.

23 I see where you attributed what looks
24 like -- that's being earmarked for rent, correct, the
25 \$4,000 amount?

1 THE WITNESS: Correct.

2 THE COURT: And then one month you have
3 September, looks like there's two entries totaling
4 \$12,000.

5 THE WITNESS: Well, again, I put money in
6 there because, no matter what, I just always put more
7 money in. It's just a habit that I always made.

8 THE COURT: The question is, because of --
9 you testified, to a significant extent, you made the
10 call whether or not to be rent or not rent, pay back
11 the loans or not to BluePoint.

12 What was your intent with this over -- this
13 recap here?

14 So January was \$4,000, that month,
15 earmarked for rent from BluePoint to Patience One.

16 THE WITNESS: I always --

17 THE COURT: I'm asking that. I don't want
18 to go always, I want to know what happened in January
19 of 2016, because you prepared these documents.

20 THE WITNESS: Okay, I'll tell you what
21 happened January 2016.

22 THE COURT: It looks like you didn't give
23 yourself rent credit for that month.

24 THE WITNESS: No. Here is the issue.

25 2015, you look at -- if you look at the

1 recap -- I'm sorry, look at this recap.

2 THE COURT: Right.

3 THE WITNESS: If you looked at this recap
4 and you go down through 2015, you see I made two
5 payments in December.

6 THE COURT: Okay.

7 THE WITNESS: One was made on
8 December 31st, which would have come up to
9 January 31st.

10 THE COURT: It was the overlap.

11 THE WITNESS: Yeah. And that comes into
12 play more than once.

13 THE COURT: Let's go into June now. So we
14 go to June -- let's look at June.

15 THE WITNESS: You know, maybe I didn't make
16 a payment in June. I don't have a problem with that,
17 but I also made an \$8,000 payment --

18 THE COURT: It's not a problem. I'm just
19 trying to get clarification what this means, that's
20 all.

21 THE WITNESS: I understand.

22 THE COURT: Your lawyer can ask those
23 questions. I just want to get what your intent was.

24 So June you may not have made a rent
25 payment. July rent was made. August, is that the same

1 answer, that that month BluePoint did not make a rent
2 payment to Patience One?

3 THE WITNESS: True.

4 THE COURT: And then December, the same
5 answer?

6 THE WITNESS: True.

7 THE COURT: Okay. And I'm setting aside --
8 when I ask that question, I'm not putting it in the
9 trick bag, sir. I'm setting aside all the loans you've
10 testified to and the information I've seen about
11 BluePoint funding Patience One to keep it going.
12 That's a separate issue from my questions. Okay?

13 So thank you.

14 THE WITNESS: Understood.

15 BY MR. WINTERTON:

16 Q. Okay. What we have here is in blue it says
17 Credit Balance, 2015, and it says 40,310.

18 Could you explain that entry.

19 A. Again, you need to go off the cover sheet,
20 because that sheet is wrong.

21 So I put the cover sheet and put all the
22 information on 2016. I have a credit balance of
23 \$36,710 coming into 2016.

24 Q. Okay. And then the total paid there, it
25 is, it said, 48,000. And then in your summary sheet

1 you took out the utilities, but in the one that was
2 presented here, it says -- well, that would be correct,
3 48,339.42, that's what was paid.

4 A. That's correct.

5 Q. And again, how much is rent supposed to be
6 for?

7 A. 48,000.

8 Q. Okay. And then it leaves a balance paid.

9 I wonder if you can explain how you arrived
10 at that number.

11 A. The balance -- the amount paid was 44,000
12 for the year. You add the credit to that, minus the
13 48,000 for the rent, and it came with a credit of -- I
14 still have a credit going into 2017 of 33,093 -- or
15 039.52, going into 2017. So I have a credit balance
16 going into 2017, 33,039.52.

17 THE COURT: Mr. Pickens, up until the time
18 you received the notice to pay rent or quit that
19 triggered this, essentially your temporary eviction,
20 had you ever received any notice to pay rent or quit
21 prior to that time, in 2017?

22 THE WITNESS: No. When they served the
23 notice, we have emails, and I think we had --

24 THE COURT: My question is this --

25 THE WITNESS: No. Never.

1 THE COURT: -- prior to being served a
2 notice to pay rent or quit, the case before the Court,
3 had you ever received a notice in any other time in
4 2017 or late 2016 to pay the rent or quit?

5 THE WITNESS: Never.

6 THE COURT: Thank you.

7 BY MR. WINTERTON:

8 Q. Now, in 2016 -- well, never mind.

9 I'm trying to recall if I asked this
10 question.

11 You prepared the documents that are in
12 BluePoint Development binder, 208, Rent Recap 2016.
13 You also prepared Exhibit 6, which is BluePoint
14 Development, 208, Rent Recap 2016.

15 A. Correct.

16 Q. And you also attached the bank statements
17 which are the back of that exhibit.

18 A. Correct.

19 Q. And this new binder, which is BluePoint
20 Development, Suite 208, Rent Recap 2016, contains the
21 exact same bank statements in the back there.

22 A. Correct.

23 Q. Okay. What I would like to do is go to
24 BluePoint Development, Suite 208, Rent Recap 2017.

25 And who prepared this binder?

1 A. Yes, I did.

2 Q. And how did you prepare it?

3 A. I prepared it from the bank statements from
4 Wells Fargo.

5 Q. And I wonder if you could explain what this
6 is.

7 A. This is the amount of rent I paid to
8 Patience One, according to the invoices -- not even
9 according to invoices. I knew I owed rent, I paid
10 rent. I knew he had electrical -- might have
11 electrical that he wants me to pay. I overpaid rent.
12 I always did that. I'm consistent with that.

13 Q. Okay. Now, is there any lease or document
14 that says that you were supposed to pay the utilities?

15 A. No.

16 Q. Did you ever have any communication with
17 Jakub regarding utilities?

18 A. No. If anything, I said I'm not supposed
19 to pay it.

20 Q. Okay. Was there any agreement relating to
21 it?

22 A. No.

23 THE COURT: But there also wasn't an
24 agreement with BluePoint and Patience One to contribute
25 all the money you testified through the years either,

1 right?

2 THE WITNESS: No, of course not.

3 THE COURT: Thank you.

4 BY MR. WINTERTON:

5 Q. How did you arrive -- okay. I wonder if
6 you can go over and explain what the entries are on
7 this exhibit.

8 A. The entries on here are checks that were
9 written out to Patience One, because I no longer
10 transferred money, it became a check-writing situation.

11 Q. Okay. And it says -- okay. And then it
12 says Total Credit 2016. How did you arrive at that
13 number?

14 A. The number that came from the credit that
15 transferred from 2016 of 33,039.52, it was brought
16 through to 2017 showing a credit of 33,039.52.

17 Q. Okay. And then it says Total Paid. How
18 did you arrive at that?

19 A. The amount of money I wrote in checks to
20 Patience One was 43,064.12. I added the credit plus
21 what I paid and deducted the amount of my rent, and it
22 came up to 28,003.64 in credit going into 2018.

23 Q. Okay. So that's the -- so you're claiming
24 there's still a credit due towards rent?

25 A. Yes.

1 Q. Now, let's look at Exhibit Number 7.

2 And did you prepare this document that's
3 listed as Exhibit Number 7?

4 A. Yes. Which one, 2014 or --

5 Q. I'm looking at the rent -- Exhibit Number 7
6 is the Rent Recap 2017.

7 A. Okay. Yes.

8 Q. Okay. And those are the same documents
9 that are attached to this binder that says BluePoint
10 Development, Suite 208, Rent Recap 2017?

11 A. (Witness nods head.)

12 Q. And there's only one difference between the
13 two, and that's in January, February. Under the new
14 one, you put a dash instead of a 4,000 that you had,
15 and you got a check -- and you took out the check
16 number. So you're actually claiming you're paying less
17 rent. I wonder if you could explain that.

18 A. Yeah. I wrote a check for \$4,000. I
19 couldn't see the check, I couldn't find the check, and
20 so therefore, I took it out of the spreadsheet and
21 said, okay, maybe it didn't go to Patience One, don't
22 know; it could, may not have.

23 I mean, I will go look for that check and
24 find it. But I was willing to say, okay, that's 4,000,
25 I still have \$28,000 worth of credit, I don't care

1 about that.

2 Q. Okay.

3 A. I just want to be fair.

4 Q. So you actually decreased it --

5 A. Absolutely.

6 Q. -- and that's the difference?

7 Okay.

8 A. I think in the last meeting we claimed 32,
9 you take the 4,000 out --

10 MS. HIGBEE: Your Honor --

11 THE COURT: There's not a question pending,
12 sir.

13 THE WITNESS: I'm sorry.

14 BY MR. WINTERTON:

15 Q. I wonder if you could tell me how you
16 arrived at all of that.

17 A. I just went through the Wells Fargo
18 accounts, looked at the check numbers and verified that
19 they were the same as they were claiming. And the
20 checks said Patience One, so therefore, every check had
21 Patience One on it but that one check.

22 Q. Okay. And so you decided to take that out?

23 A. I decided to take it out.

24 Q. Okay. Now, what I would like to do is have
25 you turn to Exhibit K.

1 THE COURT: K?

2 MR. WINTERTON: K as in -- I'm talking
3 about a K.

4 THE BAILIFF: Kindergarten.

5 MR. WINTERTON: Kindergarten, thank you.

6 THE COURT: Are you talking about
7 defendant's exhibit book, right?

8 MR. WINTERTON: Yes.

9 BY MR. WINTERTON:

10 Q. I would like to go to, in their book,
11 Exhibit K, I want to go to under the Chase Bank
12 account, September 30th, 2017 through October 31st,
13 2017, and it's the first page of four.

14 A. Can you repeat that, please.

15 Q. Sure.
16 September 30th, 2017 through October 31st,
17 2017. Page 1 of 4. Bank statement from Chase,
18 JPMorgan Chase Bank.

19 THE COURT: Beginning balance of \$3,967?

20 MR. WINTERTON: \$23,360.

21 THE COURT: I said beginning balance.

22 MR. WINTERTON: Yeah, beginning balance
23 23,360.

24 THE COURT: No. Are you looking at
25 September 1 through September 29?

1 MR. WINTERTON: No, September 30th through
2 October 31st.

3 THE COURT: That's K?

4 MR. WINTERTON: It is in K.

5 THE COURT: September 30 through
6 October 31, 2017, Chase statement, page 1 of 4?

7 MR. WINTERTON: That is correct.

8 THE COURT: Beginning balance, \$23,360.08?

9 MR. WINTERTON: Yes.

10 THE COURT: Find it?

11 MR. MAUPIN: They're in reverse order.

12 THE COURT: Yeah.

13 THE WITNESS: Okay.

14 BY MR. WINTERTON:

15 Q. Okay. Now, what I would like to do is go
16 through your rent recap that you have. So you can put
17 it along the side, and we're going to go through this
18 really quick to just show the rent was paid, or that
19 the rent shows up in their bank accounts.

20 So if you look on --

21 Your Honor?

22 THE COURT: Yes.

23 MR. WINTERTON: I wonder if it would help
24 if I helped him find it.

25 THE COURT: Please assist him.

1 THE WITNESS: September, right?

2 MR. WINTERTON: Yeah, September.

3 September 30th through October.

4 THE WITNESS: Okay.

5 THE COURT: All set?

6 MR. WINTERTON: Yes.

7 BY MR. WINTERTON:

8 Q. Okay. What I would like to do is, if you
9 look at that and you look on, it says Deposits, and
10 it's on 10/17, you got \$4,344.02, on 10/17.

11 A. Correct.

12 Q. And that matches your statement on the rent
13 recap for October of 4,344; isn't that correct?

14 A. That's correct.

15 Q. Okay. I want you to turn one, two, three,
16 four pages.

17 A. Okay.

18 Q. We've got 47,087.44. That matches; is that
19 correct?

20 A. That's correct.

21 Q. This is their deposits.

22 Let's turn one, two, three, four. It goes
23 \$4,000 there?

24 A. Correct.

25 Q. We'll go one, two, three, four, and we've

1 got 4,000 there?

2 A. Correct.

3 Q. Okay. One, two, three, four. Next one,
4 4,500?

5 A. Correct.

6 Q. One, two, three, four. Next one is 4,000?

7 A. Correct.

8 Q. One, two, three, four. 4,500?

9 A. Correct.

10 Q. One, two, three, four. 4,200?

11 A. Correct.

12 Q. One, two, three, four. 4,166.10, correct?

13 A. Correct.

14 Q. And then the top one is 4,567.25.

15 So for 2017, your rent recap also matches
16 the deposits that Patience One received?

17 A. That's correct.

18 Q. Do you have access to that Chase One Bank
19 account?

20 A. No.

21 Q. Do they give you any accounting from their
22 bank account of Chase Bank?

23 A. No.

24 Q. Okay.

25 THE COURT: Mr. Pickens, look at those

1 entries that you just testified to.

2 Is it true that at least \$4,000 rent
3 credits on the Chase account stopped after
4 October 2017? I don't see any credits after that.

5 THE WITNESS: That's correct.

6 BY MR. WINTERTON:

7 Q. What do you mean there was no credits
8 after --

9 A. That's when I went to them -- prior to that
10 we were having discussion on rent, and I told them, I
11 said, listen, I have a credit from a long time, and
12 it's been on the books forever, and I'm going to use my
13 credits.

14 And, you know, I sent them the information,
15 the backup showing the six months worth of credits that
16 I had --

17 THE COURT: Who did you have that
18 conversation with?

19 THE WITNESS: Jakub.

20 THE COURT: Jakub?

21 THE WITNESS: Yes. This was prior to
22 getting evicted.

23 THE COURT: Could you tell me how many
24 conversations you had with him?

25 THE WITNESS: The email went back and forth

1 for maybe two months.

2 THE COURT: When did that start, was it
3 2017?

4 THE WITNESS: It was --

5 THE COURT: My question is, when did you
6 start alerting Patience One that you were claiming
7 credits? When did you start making that --

8 THE WITNESS: Probably 2017. I'm going to
9 say mid-2017.

10 THE COURT: Did you make that to Jakub?

11 THE WITNESS: Yes.

12 THE COURT: Did you ever make it to
13 Dr. Michaels?

14 THE WITNESS: She was included in the
15 emails.

16 THE COURT: Besides emails, any other form
17 of communication?

18 THE WITNESS: No.

19 THE COURT: Did you ever speak with Jakub
20 personally either on the phone or in person to discuss
21 your credit concerns?

22 THE WITNESS: Well, the answer is no.

23 THE COURT: So you brought up the issue of
24 credits at some time in mid-2017?

25 THE WITNESS: Correct.

1 THE COURT: Why did you do it at that
2 point, why not earlier?

3 THE WITNESS: Okay. I agreed not to hassle
4 Dr. Michaels when we had the separation. I agreed to
5 stay out of her life. I agreed not to create any
6 problem.

7 THE COURT: There came a point when the
8 relationship was on the demise or separating or
9 whatever, I'm not -- I don't want to get into that.

10 THE WITNESS: No, I know that, but I'm
11 explaining.

12 THE COURT: Okay. Go ahead.

13 THE WITNESS: I'm explaining.

14 And so I stayed away. Whatever they asked,
15 I paid. Whatever they did, I did. And then it got to
16 the point where they were being very abusive to me.
17 And I just said, you know what, I'm done being nice.
18 I'm not going to do this anymore.

19 And that's when this whole thing started,
20 because I was trying to be the person that -- I've
21 always been that type of person. I just accept things
22 and move on. It's what I tried to do. Instead, they
23 wanted to be aggressive.

24 THE COURT: So you brought up the issue of
25 rent credits starting in roughly summer -- was it

1 summer or fall of 2017 or late summer?

2 THE WITNESS: Late summer.

3 THE COURT: Did there come a time, did you
4 ever tell Jakub or anyone with Patience One,
5 Dr. Michaels, that you weren't going to pay rent, and
6 you would deem yourself to have a credit; did you make
7 it that clear?

8 THE WITNESS: Oh, yeah, absolutely. I put
9 it in an email, and it's dated, and it went to both of
10 them.

11 THE COURT: Thank you.

12 BY MR. WINTERTON:

13 Q. What I would like to do is go over a little
14 bit more of that.

15 THE COURT: How much more time do you have
16 with this witness, Mr. Winterton?

17 We need to take a break. I want to give
18 the court reporter a break, obviously. We've gone a
19 long time. We've been going two hours. We're going to
20 have to take a break.

21 I'm sorry, I have a little compassion for
22 court reporters. We've been going too long here.
23 Let's take a 15-minute break. Come back at 12:40.

24 Off the record.

25 (A recess was taken from

1 12:26 p.m. to 12:42 p.m.)

2 THE COURT: Back on the record.

3 Mr. Pickens, do you remember you're under
4 oath?

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 Mr. Winterton.

8 MR. WINTERTON: Okay. Thank you, your
9 Honor.

10 BY MR. WINTERTON:

11 Q. Okay. I would like to continue on with the
12 questioning, and let's go with Patience One, Suite 208,
13 Rent Recap 2013.

14 Who prepared this booklet called
15 Patience One, Suite 208, Rent Recap 2013?

16 A. I did.

17 Q. And I wonder if you could explain what the
18 documents are in the back of this.

19 Okay, you've got -- strike that. Let me
20 start over.

21 Did you prepare this summary sheet at the
22 beginning?

23 A. Yes, I did.

24 Q. How did you prepare this summary sheet?

25 A. I took the 2013 bank statements from

1 Patience One and highlighted all the entries there of
2 what was paid by BluePoint.

3 Q. Okay. And in 2013 you actually had a
4 management company; isn't that correct?

5 A. That's correct.

6 Q. And that management company, who was that
7 management company?

8 A. Sun Properties, I believe.

9 Q. Okay. And what I would like to do is look
10 at Exhibit Number 2.

11 And is this a summary report and bank
12 statements and everything that Sun Property Management
13 gave Patience One?

14 A. Yes, it is.

15 Q. I wonder if you could explain how this came
16 about, or what this report is for the Court.

17 A. This was recorded from all the bank
18 statements, the Bank of America accounts. They had
19 access to review and deposit. And that was the only
20 thing they had or they were able to do.

21 Q. Okay. And then from there -- what was Sun
22 Property Management's responsibility?

23 A. They were to manage the vendors that took
24 care of the building, janitors, the landscape guys,
25 whatever vendors we had at the time, toilet paper for

1 the bathrooms. And basically if there was problems
2 with the tenants, they would voice them to us, and we
3 would review them, and we would take care of their
4 issues if they had any problems.

5 Q. Okay. And they prepared this report?

6 A. Correct.

7 Q. And in this -- did Sun Property Management
8 ever say that rent was due or not due from BluePoint
9 Development?

10 A. Never said it was due or not due.

11 Q. Okay. And so how did you -- now I'm going
12 back to this Patience One, Suite 208, Rent Recap 2013.

13 So this is a summary that you prepared, not
14 some property management, that you prepared?

15 A. That's correct.

16 Q. And you did the same thing, looked at the
17 bank accounts?

18 A. Correct.

19 Q. And Total Paid. I wonder if you could
20 explain how Total Paid was arrived at.

21 A. It was every month, what was paid by
22 BluePoint Development, transferred into the account,
23 and it was for the year of 2013, and it came up to a
24 total of 54,502.06.

25 Q. Okay. And then Rent Due, how did you

1 arrive at that figure?

2 A. 4,000 a month by 12 months.

3 Q. Okay. And then you arrived at Credit
4 Balance?

5 A. Correct.

6 Q. How did you come up with Credit Balance?

7 A. Subtract from what I paid from the Rent
8 Due, came up with 6,502.06.

9 Q. Okay. What's the BluePoint Medical, the
10 document behind that?

11 A. That's the medical suite Dr. Michaels owns.
12 It's rent they paid in 2013.

13 Q. Okay. So it looks like they were not
14 paying complete rent?

15 A. That's correct.

16 Q. Let's turn in three pages.

17 You have attached an email here. I wonder
18 if you could explain what this is about.

19 A. This was from the accountant to
20 Dr. Michaels discussing the rent payments, and that she
21 had a little financial problems.

22 Again, it was a collection -- not a
23 financial problem, it was a collection issue; and
24 therefore, she couldn't pay the full amount of rent and
25 asked if I was okay with it. And of course I'm okay

1 with it.

2 THE COURT: So there were times when
3 Dr. Michaels' practice did not pay her rent?

4 THE WITNESS: Her full amount.

5 THE COURT: Her full amount.

6 THE WITNESS: That's correct.

7 THE COURT: What was her practice? I'm
8 sorry, did it have a name?

9 THE WITNESS: BluePoint Medical. That's
10 what this front page is.

11 THE COURT: BluePoint Medical, I'm sorry.
12 And you were BluePoint Development.

13 THE WITNESS: Correct.

14 THE COURT: Were you aware at any time if
15 Patience One ever threatened or posted a notice to
16 evict Dr. Michaels for nonpayment?

17 THE WITNESS: I would never do that.

18 THE COURT: I'm asking, did it ever happen?

19 THE WITNESS: No, absolutely not.

20 THE COURT: Patience One, I'm asking, not
21 you. I'm asking if Patience One ever --

22 THE WITNESS: No.

23 THE COURT: As a tenant not paying full
24 rent, did Patience One ever proceed or serve a notice
25 for nonpayment of rent upon her?

1 THE WITNESS: No.

2 THE COURT: Thank you.

3 BY MR. WINTERTON:

4 Q. Does that have an effect in regards to the
5 banking issue that you addressed at the beginning?

6 A. It did have an effect because Bank of
7 America made us jump through hula hoops to try to show
8 that we were financially sound to carry this mortgage,
9 which, again, I took accounts receivables from
10 Dr. Michaels and showed them that we were.

11 Q. And then the rest of this statement is bank
12 statements?

13 A. Correct.

14 Q. And this is the bank statements from Bank
15 of America?

16 A. Correct.

17 Q. That shows the payments that were reflected
18 in your summary here?

19 A. Correct.

20 Q. And there is no -- strike that. I'll move
21 on.

22 Okay. Now, you testified, laid foundation
23 as to these rent recaps that were done. We've talked
24 about how they related to our exhibit. There is now a
25 BluePoint Development summary.

1 I wonder if you could explain to me exactly
2 what this is.

3 A. The summary, what I tried to do is put it
4 on one page so everybody didn't have to go through the
5 books. I tried to make it easy.

6 And I put all the calculations drawing from
7 the books and information. So that's why I said the
8 calculations is right on this page, that I have a
9 credit of 28,000, whatever it is -- I have to put my
10 glasses on -- 28,103.64, carried from 2013 through
11 2017.

12 Q. Okay. So let me go through and see if I
13 can, we can lay the foundation and go over this.

14 So on the far left-hand side, you have the
15 months --

16 A. Correct.

17 Q. -- of the year. And then where it says
18 2013, that column there is those columns that are
19 reflected in your recap 2013 of payments that are made?

20 A. Correct.

21 Q. So that's why you have total paid for the
22 year, correct?

23 A. Correct.

24 Q. And then you have 2014. The same thing, if
25 I were to look at the recap, they were there?

1 A. That's correct.

2 Q. Now, you've got certain green that are
3 highlighted. I wonder if you could explain that.

4 A. The green is Total Paid. And what I put
5 the green on here is to indicate that monies came from
6 my personal account or our joint account.

7 And that's why I did the other books, to
8 show that it basically was a personal account. So
9 \$8,000, \$2,000, 2,000 deducted, 5,000, all that was, is
10 added up into the 2014 payment.

11 Q. And then we go into, we've got 2015.

12 A. Correct.

13 Q. And that's a summary, and I compare that to
14 the recap also?

15 A. Correct.

16 Q. 2016, that's a summary?

17 A. Correct.

18 Q. 2017 is a summary?

19 A. Correct.

20 Q. Okay. And then what's this on the
21 right-hand side, 2014 and 2015 with those --

22 A. That's our personal account.

23 Q. Okay.

24 A. It's showing the amounts that were paid out
25 of those personal accounts.

1 Q. It was for rent?

2 A. Correct.

3 Q. And so the bottom green line at the bottom
4 is total paid for the year?

5 A. Correct.

6 Q. And then you have the different years, and
7 then the yearly rent is the same?

8 A. Correct.

9 Q. Okay. And then you said under or overpaid?

10 A. Correct.

11 Q. Have you ever had any underpayment?

12 A. Not for the years I've been in the
13 building, no.

14 Q. And so it's all overpay. And that's the
15 amount of overpay that has been made?

16 A. Correct.

17 Q. And that's a running total?

18 A. It's a running total, yes.

19 Q. So when we get to the very end that says
20 28,103.64, that's how much credit we're claiming right
21 now?

22 A. That's going into 2018.

23 Q. Okay. And you kept rent separate from
24 other loans and things like that?

25 A. Right.

1 Q. And in the red at the bottom, is that your
2 calculations of the other stuff?

3 A. Correct.

4 Q. Okay. I'm trying to read the blue.
5 Checking only. Something about credit card. I'm
6 sorry, I'm having trouble reading.

7 A. This document doesn't include massive
8 amount of credit card cost. But I put that because
9 there's other costs that are related to this, but I
10 didn't want to get it confusing for this hearing.

11 Q. So basically then, this sheet here is a
12 summary of these documents --

13 A. Correct.

14 Q. -- that were produced in our exhibits?

15 A. Correct.

16 THE COURT: The loans that you reflected on
17 the summary, there's some other in the documents that
18 were previously disclosed in these exhibit books, these
19 loans allegedly from BluePoint Development to Patience.

20 Is there any memorialization of that
21 understanding, an email, a memo, anything, to say --

22 THE WITNESS: No. No.

23 THE COURT: I understand you're running
24 both entities here.

25 THE WITNESS: Sure.

1 THE COURT: But was there any notation like
2 in a memo or some type of written indication or
3 memorialization to identify hypothetically it's 50,000
4 is a loan, a business loan, from BluePoint Development
5 to Patience One?

6 THE WITNESS: No. But there was an
7 improvement on the property.

8 THE COURT: Right.

9 THE WITNESS: I understand your question.

10 THE COURT: Patience One filed taxes
11 yearly, correct?

12 THE WITNESS: Um-hmm.

13 THE COURT: "Yes"? There's a court
14 reporter.

15 THE WITNESS: Yes, sir.

16 THE COURT: Who would sign the tax return
17 for Patience One?

18 THE WITNESS: I would.

19 THE COURT: Did Dr. Michaels ever?

20 THE WITNESS: She may have once in awhile
21 if I wasn't there.

22 Our CPA was the same CPA that did all our
23 taxes for all the businesses forever.

24 THE COURT: Do you recall any reflection of
25 a business loan or loans that were indicated in the

1 schedules from BluePoint Development to Patience One?

2 THE WITNESS: I'm going --

3 THE COURT: During this relevant time
4 period.

5 THE WITNESS: I'm going to say no, because
6 I'm not a CPA, so I don't know what he did, I --

7 THE COURT: I'm only asking what you know.

8 THE WITNESS: I understand.

9 THE COURT: Thank you.

10 BY MR. WINTERTON:

11 Q. Let me see if I understand the answer.

12 No, you don't know the answer to the
13 question, or no, you didn't see any or --

14 A. No, I didn't even look at them. If he said
15 they're -- I didn't pay attention to them. Whatever he
16 said was supposed to be the Golden Rule. I'm ignorant.

17 Q. You hired professional --

18 A. Yeah, exactly.

19 Q. Okay. Let's go to Exhibit Number 8.

20 THE COURT: I'm sorry, 8?

21 MR. WINTERTON: 8.

22 BY MR. WINTERTON:

23 Q. Yes. Okay. The Judge had asked some
24 questions about credit and notice and all of that.

25 I wonder if you could -- there's this email

1 that's in Exhibit Number 8 that talks about the credit.

2 I wonder if you could give us a little
3 background as to why this was written. Some background
4 first.

5 A. The background was, he sent an email for an
6 invoice, and the invoice was wrong. And so it started
7 irritating me to the point where I said, okay, wait a
8 minute. I have a credit of \$32,000, or whatever, on
9 the books; I'm more than happy to share the books with
10 you.

11 And he sent the email to his mother, and
12 they decided not to take me up on sitting down with me
13 and going through the books. Instead, they decided to
14 evict me.

15 So I gave them opportunities to sit down
16 with me, they didn't take it, and they evicted me
17 instead.

18 Q. Now, let's go over this email a little bit
19 that is here, and let's start at the very bottom. And
20 this is Tom Pickens, it's from you.

21 So did you write this notation in there?

22 A. Yes, I did.

23 Q. And it says:

24 "You need to correct your statement to
25 show a 32,000 credit. And if that is not

1 enough, I will be more than happy to put
2 together a bill for all the improvement costs
3 BluePoint paid."

4 I wonder if you can explain what you're
5 talking about there.

6 A. Well, again, it was one of those things
7 that I knew I had a credit. I've always had that
8 credit. And it became irritating when they were
9 questioning my honesty to the point where then I got
10 frustrated and I said, well, I'm going to give you a
11 bill for all the improvements that I did on the
12 building. Because BluePoint somehow should be paid
13 back. And so it went from there.

14 Q. Okay. And then it appears Jakub wrote a
15 letter to Dr. Michaels:

16 "Please be advised that the tenant in
17 Suite 208 in regards to a credit of 32,000."

18 A. That's correct.

19 Q. And did you receive this?

20 A. Yes, I did.

21 Q. And he says:

22 "He provided a printout of a bank
23 statement of an account dated back to 2014."

24 I wonder if you could explain what that
25 bank statement is.

1 A. That was the bank statement that was
2 showing the 26,000 or 24,000, and showing that it was a
3 six months credit in rent.

4 So it clearly states it was six months
5 worth of rent.

6 Q. Okay. So for documentation, you showed six
7 months worth of rent?

8 A. Correct.

9 Q. And you're claiming rent, advanced rent.
10 Did they ever come back to you and ask for
11 further documentation?

12 A. No. Not until they evicted me, and then
13 they said, okay, we can do it.

14 Q. What do you mean, "Okay, we can do it"?

15 A. Well, in the notice, if you want to get in
16 your office and you want to do anything in your office,
17 you have to come to us and get our permission to go
18 into your office, which is very offensive.

19 Q. So they locked you out and had access to
20 all your, all the records --

21 A. All the records, all the documents.

22 Q. They had everything there?

23 A. Yep.

24 Q. Okay. Now, the bank statements that we've
25 been going through and have listed as exhibits, did

1 Dr. Michaels have access to those bank statements?

2 A. She had access, but she never would go and
3 look at them.

4 Q. Okay.

5 A. It just wasn't something -- she didn't have
6 time to.

7 Q. Okay. And you testified that you had the
8 same accountant?

9 A. That's correct.

10 Q. And what documents would you give the
11 accountant to prepare the tax records?

12 A. The accountant would get all the checking
13 accounts, he would have all the records, all the credit
14 card accounts, everything we spent on credit cards, all
15 the bank documents, all the bank statements. He would
16 have access to everything. And he would have access --
17 if you wanted any document, he would be able to provide
18 it because he has it all.

19 I mean, it was a real simple bookkeeping
20 situation: Cash in, cash out; what went in the bank,
21 what came out of the bank is how everything was run.
22 And QuickBooks was never used during my -- it was
23 attempted but never used during my, whatever you want
24 to call it, over Patience One, my control over
25 Patience One.

1 Q. So you don't use QuickBooks?

2 A. No.

3 Q. Did you ever prohibit Dr. Michaels from
4 going to the accountant and receiving all these
5 records?

6 A. Never.

7 Q. Okay. Let's move on. Let's see. Going on
8 from where I left off:

9 "He did, however, not provide
10 invoice/statements of months from the date of
11 the lease until today have been paid in full.
12 All information is limited prior to my
13 involvement."

14 So it sounds like he didn't have the
15 records, he didn't have anything to challenge you?

16 A. That's correct.

17 Q. Okay. Now, let's move on.

18 And then did you write the next entry in
19 this email above it:

20 "I'm not asking for a credit. I have
21 a credit."

22 Did you write that?

23 A. Yes, I did.

24 Q. And, "I am more than happy to open my
25 books."

1 So again, you're offering to open the books
2 and --

3 A. Absolutely.

4 Q. -- let them have all the credit.

5 Did they ever come into your office to go
6 over this?

7 A. No.

8 Q. Did they ever ask if they could?

9 A. No.

10 Q. Let's go on.

11 Above, "Let me think about it. I have an
12 appointment."

13 So basically Dr. Michaels wrote this and
14 just said, let me think about it?

15 A. Correct.

16 Q. Okay. Then what happened up above?

17 "Here is what is interesting."

18 I wonder if you could explain this.

19 MR. MAUPIN: Your Honor, I would like to
20 issue an objection to what's -- to the next section of
21 this email is an improper attempt to impeach Jakub
22 Michalecko.

23 THE COURT: Well, I've read the email. I
24 don't think it's relevant to what's before this Court.
25 I'm not going to go down the world whether it's the

1 truth or not. It is what it is. There's no need to go
2 into that, Mr. Winterton.

3 MR. WINTERTON: That's fine. It was so
4 small, I was having trouble reading it.

5 THE COURT: The parties are close in.
6 Obviously there's interfamily issues here that are not
7 relevant -- at least on this point are not relevant to
8 the decision I have to make.

9 MR. WINTERTON: Okay. I will move on.

10 BY MR. WINTERTON:

11 Q. This is a true and accurate copy of the
12 emails that you provided in Exhibit Number 8?

13 A. Yes.

14 MR. WINTERTON: Your Honor, we move for
15 admission of Exhibit Number 8.

16 THE COURT: Any objection?

17 MS. HIGBEE: No objection.

18 THE COURT: No objection, so admitted.

19 BY MR. WINTERTON:

20 Q. Okay. Let's go over to Exhibit Number 9.
21 And actually, this is part of the same --

22 THE COURT: My notes show that Exhibit 8
23 was admitted last week.

24 MR. WINTERTON: You know what, I think 8, 9
25 and 10 were admitted.

1 THE COURT: They were, yeah, based on my
2 records. If I'm wrong, correct me.

3 Where are we at, Mr. Winterton?

4 MR. WINTERTON: You know what, I'm going to
5 move on since those have now, they have been admitted.

6 BY MR. WINTERTON:

7 Q. So did you talk to Jakub about -- in
8 addition to these emails, what other conversations did
9 you have with Jakub about checking the books and for
10 the credit that is owed you?

11 A. Everything was through emails because of
12 the family issues, and so there was no other
13 conversation, there was no phone conversations. There
14 was a letter dropped off giving him a bank statement
15 showing that credit of \$24,000, and rent.

16 Q. Okay. And so it was tough to communicate
17 because of the family issues that you're saying?

18 A. Yes.

19 Q. In your mind, from your understanding, was
20 there any issue in regards to he knew you were asking
21 for a credit?

22 A. No, he knew it.

23 Q. Okay. Now, it was your intent that
24 November and December was supposed to be, of 2017, was
25 supposed to be part of the credit?

1 A. Correct.

2 Q. And as the record shows, they started an
3 eviction proceeding against you?

4 A. That's correct.

5 Q. Now, they had submitted into evidence --
6 let me pull it out here -- that they had served notice,
7 and the notice was signed by Dara -- and pardon me,
8 maybe you could pronounce the last name.

9 A. (Indiscernible due to overlapping
10 conversation.)

11 THE COURT: Exhibit B?

12 MR. WINTERTON: Exhibit B.

13 THE COURT: Page 3?

14 MR. WINTERTON: Third page there.

15 BY MR. WINTERTON:

16 Q. At the time that Dara signed this, was she
17 an employee?

18 A. No.

19 THE COURT: Who was she?

20 THE WITNESS: She was a friend. She was an
21 employee, and then I laid her off. And if I needed
22 something in the office, she would go get it for me, if
23 I had to sign checks or whatever.

24 THE COURT: December 29, 2017, did she have
25 access to your office?

1 THE WITNESS: Oh, yeah, of course, because
2 I was out of town.

3 THE COURT: Why don't you please turn to
4 the white book, please. I want you to look at
5 Exhibit B.

6 THE WITNESS: Which one?

7 THE COURT: Exhibit B, as in boy, page 3 of
8 that exhibit.

9 THE WITNESS: Okay.

10 THE COURT: It's the top left, United
11 States Postal Service. Is that the page you're on?

12 THE WITNESS: Okay.

13 THE COURT: Do you recognize her signature,
14 Dara?

15 Exhibit B as in boy, the third page.

16 Do you see it now? It's dated
17 February 21st, 2018.

18 THE WITNESS: The answer is no.

19 THE COURT: You don't know if that's
20 Dara's --

21 THE WITNESS: Yeah, I can't say for sure
22 that's her signature.

23 THE COURT: Does it resemble her signature?
24 How long did she work with you?

25 THE WITNESS: For several years, but that

1 kind of was scribbled. I mean, her name, it looks like
2 her.

3 So her name and everything is difficult, so
4 I don't see another person signing for her.

5 THE COURT: But you know who she is?

6 THE WITNESS: Yes, absolutely.

7 THE COURT: At that time, Mr. Pickens, on
8 December 20th, 2017, she had a key to your office?

9 THE WITNESS: Yes.

10 THE COURT: And it's not -- it looks
11 apparent that someone with that name was at that
12 office, your office, on December 29th, 2017, 11:11 a.m.

13 Do you have any reason to believe she
14 wouldn't be there at that time?

15 THE WITNESS: Do I believe --

16 THE COURT: Do you have any reason to
17 believe that she would not be in your office at that
18 date and time?

19 I mean, you still occupied that office.
20 You haven't been evicted yet. Christmas 2017, you
21 hadn't been locked out yet.

22 THE WITNESS: Here is the statement, and I
23 don't know if I can say this or not.

24 I wouldn't have any knowledge that she
25 would be or she wouldn't be. She went and came as she

1 wanted --

2 THE COURT: Okay.

3 THE WITNESS: -- is the reason I had an
4 issue with that.

5 I didn't tell her to go to the office. She
6 went there to, whatever. And she never told me when
7 she went in the office. I could care less.

8 THE COURT: She didn't have set hours?

9 THE WITNESS: No. Never. Well, she didn't
10 work for me, but she was able to go to the phone or use
11 the computer.

12 THE COURT: In what capacity did she serve?

13 THE WITNESS: She was a friend.

14 Oh, when she was -- she was a safety
15 director. When she worked for me, she was safety
16 director.

17 THE COURT: When did she cease working --

18 THE WITNESS: Middle of the year.

19 THE COURT: Of 2017?

20 THE WITNESS: Yes.

21 THE COURT: Did BluePoint pay her at any
22 time --

23 THE WITNESS: After that, no.

24 THE COURT: Before then?

25 THE WITNESS: Of course.

1 THE COURT: How did you pay her?

2 THE WITNESS: Check.

3 THE COURT: Withholding or --

4 THE WITNESS: Oh, yeah, withholding, of
5 course.

6 THE COURT: Well, I don't know, did you W-2
7 her or you did 1099 in the form of payment?

8 THE WITNESS: Yeah, absolutely.

9 THE COURT: So on December 29, 2017, what
10 was her status with BluePoint?

11 THE WITNESS: Friend.

12 THE COURT: Friend, okay. But she still
13 had access?

14 THE WITNESS: Yeah, of course, because I
15 was out of town all the time.

16 THE COURT: So you would trust her to --

17 THE WITNESS: She was the only person I
18 trusted in town.

19 THE COURT: Okay. Thank you.

20 BY MR. WINTERTON:

21 Q. Okay. And in December at the time period
22 that we're talking about, December 29, 2017, was she
23 your employee?

24 A. No.

25 Q. Did you let her use your office to look for

1 a job?

2 A. Absolutely.

3 Q. Okay. Did she have any authority to sign
4 any documents on behalf of BluePoint Development on
5 December 29th, 2017?

6 A. No.

7 Q. When was the first time that you had
8 learned -- strike that.

9 THE COURT: How old was she at the time
10 that she allegedly signed this? Was she over 14 years
11 old?

12 THE WITNESS: She's 60-some years old.

13 THE COURT: How was her mental state,
14 lucid, sharp?

15 THE WITNESS: I have a question on my own.

16 THE COURT: I'm asking about her.

17 THE WITNESS: I would say she's sharp.

18 THE COURT: Okay. Thank you.

19 THE WITNESS: Again, that's assumption.
20 Assuming.

21 BY MR. WINTERTON:

22 Q. When did you first learn that you were
23 evicted from the premises?

24 A. New Year's Eve I went to the office with a
25 couple to show them my office. At that point, the

1 locks weren't changed. Now, several days after that, I
2 found out, when I hired you, that I had been evicted.
3 And I came to you with the information and said, how is
4 this possible, why would they do this.

5 Q. So --

6 A. So it was sometime in February that they
7 put the notice on there. I came to you and asked you
8 what am I supposed to do, and it went to court. Nobody
9 did anything, and now here months later we're going
10 through this.

11 Q. Okay. So they had changed the -- you
12 didn't have notice until -- so you had gone to the
13 office and everything was fine, then the next thing you
14 know there was a notice on the door and you were locked
15 out?

16 A. Correct.

17 Q. That was the first time you learned about
18 it?

19 A. Yes.

20 THE COURT: What day would that have been?

21 THE WITNESS: I don't remember what day it
22 was. I mean, could I figure it out?

23 THE COURT: Was it three or four days after
24 January 1st?

25 THE WITNESS: It was probably four days,

1 five days after there, somewhere in there.

2 THE COURT: Thank you.

3 BY MR. WINTERTON:

4 Q. But the locks had been changed at that
5 time?

6 A. Yes.

7 Q. And then from there you started these
8 proceedings to go ahead and to get back in?

9 A. Absolutely.

10 MR. WINTERTON: Your Honor, I believe I'm
11 done with my direct exam, and I'm reserving the right
12 in regards to the issue of the exhibits.

13 THE COURT: I understand. So noted.

14 At this time cross-examination. Who is
15 going to do cross?

16 MS. HIGBEE: Well, with all the information
17 that we have, we might have to do a little tag-teaming.

18 THE COURT: That's fine.

19 MS. HIGBEE: Because of going back and
20 forth between the documents.

21 THE COURT: And I'll allow that. Just give
22 me warning.

23 MS. HIGBEE: Okay. If I can one second?

24 THE COURT: Absolutely.

25 Let's talk about a lunch break. There's

1 certain people that would like to eat lunch, I'm sure.

2 It is 1:15. I'm presuming you're going to
3 take some time with this witness?

4 MS. HIGBEE: Yes.

5 THE COURT: I don't want to hold you to a
6 time. Give me an estimation.

7 MS. HIGBEE: I would say hour, hour and a
8 half.

9 THE COURT: An hour.

10 Mr. Winterton, do you have any more
11 witnesses after Mr. Pickens?

12 MR. WINTERTON: I want to say no. I'll
13 wait until cross, but I don't think I will.

14 THE COURT: Ms. Higbee, whenever
15 Mr. Winterton rests, who will the defense be calling?

16 MS. HIGBEE: Depending on how cross goes --

17 THE COURT: I understand.

18 MS. HIGBEE: -- we may call Jakub back and
19 maybe Dr. Michaels. I don't know for sure, but it
20 depends on how truthful and accurate Mr. Pickens is.

21 THE COURT: I do want to hear from
22 Dr. Michaels.

23 MS. HIGBEE: I figured.

24 THE COURT: So you can make a choice. You
25 don't have to make a choice now, but I would like to

1 hear from her. I have questions.

2 MR. WINTERTON: If I call one more witness,
3 she would have been the witness. You probably already
4 knew that.

5 THE COURT: I wasn't trying to say that,
6 but I do need to hear from her.

7 MS. HIGBEE: I would throw this out, but I
8 would need to confer with my client. We could -- I
9 know with some time, I could probably more streamline
10 my cross if I didn't have to go from this book to this
11 book and back, because this is line items, we're
12 talking about numbers.

13 THE COURT: I know. Listen, I understand
14 that. And all part of your defense, I'm not going to
15 hamstring you. There's a lot here.

16 I think the issues are pretty well framed
17 in my mind where we're at. I want to streamline, but I
18 don't want to prejudice someone.

19 Let me tell you about where I'm going on
20 the exhibits, maybe that will help. I'm inclined to --
21 what I see right now, I don't see a big difference. I
22 see a summary, okay? Charts, graphs demonstrative
23 evidence. Demonstrative purposes, I should say.

24 I'm inclined not -- what was brought in
25 these binders, I'm inclined right now very strongly to

1 not admit them. I don't think it's necessary. You've
2 helped the Court through the testimony using them for
3 identification purposes as a teaching tool, as a
4 demonstrative tool, but as far as evidence in the
5 record, no.

6 And I don't think it hurts the plaintiff,
7 and I do think, if anything, the defense can't say
8 we're blindsided.

9 I don't want them to come in. Because what
10 I've looked at is, I do see where he's explained some
11 of the anomalies or inconsistencies. That's for me to
12 determine in deliberation toward my decision on
13 credibility and more substantive than anything else.

14 But I don't think, Mr. Winterton, what you've added --

15 And I agree, and I've drawn through as much
16 as you all have, as the defense has, I don't see
17 anything different. But I don't like -- I think it's
18 just strictly for demonstrative and for helping the
19 Court in the testimony, but I'm inclined to not admit
20 it as evidence.

21 But then again, all the backup that was
22 used, from what I can see, the extrapolation that was
23 used by Mr. Pickens to develop these spreadsheets or
24 these overviews, I don't think you need it. And I
25 don't think the defense has to worry about having to

1 craft a defense to some of these issues for making a
2 record for reasons they want to make a record. I don't
3 want to put them in that position. I don't need to.
4 Okay?

5 MR. WINTERTON: With that being said, then
6 there would be no problem with 4, 5, 6 and all of
7 those, because they've already had them in advance and
8 they are --

9 THE COURT: Yeah, bank records, when you
10 make your formal motion, I'll address that. But I'll
11 tell you right now, because we've tiptoed around this a
12 bit, and I said I want to wait until cross is over. I
13 can tell you right now, from what I hear and see, I'm
14 not going to admit these as additional evidence. I
15 don't think it needs to be. I think the record is
16 complete on what you've already submitted a couple
17 weeks ago.

18 MS. HIGBEE: I understand.

19 THE COURT: So your concerns, I agree but
20 maybe for a different reason. I don't want them coming
21 in. And I don't need to have them come in. But for
22 record purposes and for you to do your job and preserve
23 the record, they're not going to come in at this point
24 when you make that motion.

25 I'm kind of getting the cart before the

1 horse, because I'm trying to help you in crafting what
2 you're going to do on cross.

3 MS. HIGBEE: I understand.

4 THE COURT: That's why I brought this up
5 earlier, because I think it's to justice to you folks,
6 because you're kind of thinking on your feet here, and
7 you're going where you're going, you're zigging and
8 zagging. And I understand that.

9 So to now help you, we can take a little
10 break here if you want, or we can take a lunch break
11 for a bit. Not a long lunch break. We'll take 30
12 minutes, 40 minutes to have something to eat, and you
13 can discuss that. But right now I don't want -- I'm
14 not going to have these coming in.

15 Like I said, the bank records are the bank
16 records. What he testified to in using the plaintiff's
17 argument and why they're presented, I understand why,
18 and I'll treat it as charts, graphs and demonstrative
19 evidence for testimony purposes but not evidence.
20 Okay?

21 MS. HIGBEE: Understood.

22 THE COURT: Does that help?

23 MS. HIGBEE: That's fair enough. Okay.

24 THE COURT: What do you want to do, do you
25 want to take a lunch break to prepare a little bit?

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MS. HIGBEE: Yes, please.

THE COURT: So it is 1:22. Let's start at
2:00. We'll be in recess until 2:00.

(A luncheon recess was taken
from 1:22 p.m. to 2:04 p.m.)

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2 2:04 P.M.

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4
5 THE COURT: All right. We're back on the
6 record.

7 This is the time for the cross-examination
8 of Mr. Pickens.

9 Remember, you're under oath to tell the
10 truth.

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. Ms. Higbee.

13 MS. HIGBEE: Thank you, your Honor.
14

15 CROSS-EXAMINATION

16 BY MS. HIGBEE:

17 Q. Mr. Pickens, would you open your binder,
18 the black one, to Exhibit 1.

19 A. Okay.

20 Q. That's the lease agreement between Patience
21 One and BluePoint Development, correct?

22 A. As I stated earlier --

23 Q. Is it yes or no question.

24 THE COURT: Just answer the question, sir.
25 It's cross-examination.

1 THE WITNESS: Yes.

2 BY MS. HIGBEE:

3 Q. And you signed on behalf of both parties,
4 the landlord and the tenant, correct?

5 A. Correct.

6 Q. And just leave that open.

7 And today you're claiming a credit of rent,
8 correct?

9 A. Correct.

10 Q. That you prepaid rent or you paid amounts
11 that were equal -- greater than what was due for rent;
12 is that right?

13 A. That's correct.

14 Q. Okay. So before today, before you showed
15 up with these additional documents, these eight
16 binders, you were claiming \$33,202.27; is that right?

17 A. Correct.

18 Q. All right. Now, let's go back to September
19 of 2016. That's when you no longer were a part of
20 Patience One; is that right?

21 A. That's correct.

22 Q. In fact, it was September 13th, 2016?

23 A. Correct.

24 Q. You don't recall?

25 A. Correct.

1 Q. Correct. Okay.

2 And at that point in time you gave your
3 interest in Patience One through your trust to
4 Dr. Michaels; is that right?

5 MR. WINTERTON: Your Honor, I'm going to
6 object. The reason why is, this issue is kind of under
7 litigation, and I'm kind of concerned the testimony
8 regarding this could be used in the other proceeding,
9 because the issue regarding the property and the
10 transfer and whether it was legal or not is all part of
11 litigation in another court.

12 THE COURT: That's the risk you take when
13 you filed from the writ, so he's going to have answer
14 that question. Because it's of very much concern this
15 Court has in making this decision. And I didn't get to
16 that on your direct at the time. I started to ask some
17 formation questions, but I'm very concerned, and I want
18 to hear these questions regarding the structure of the
19 corporation, the timing, when membership interests may
20 have been transferred, I don't know.

21 So continue, please.

22 MR. WINTERTON: Okay. So for my
23 understanding, just for the record, then --

24 THE COURT: Go ahead.

25 MR. WINTERTON: It's just for my

1 understanding, because I stayed away from it because I
2 thought that's what we were, but now --

3 THE COURT: No, no. We're staying away
4 from -- here is the difficult part. I understand you
5 don't want to get into all the salient points of the
6 divorce proceeding. I don't want to either. But there
7 are some aspects of that that we just can't avoid,
8 because this is a very closely held business
9 relationship, if you would, between a husband and wife
10 at a relevant time, then there's a separation, they
11 have common assets. I don't know which ones are
12 separate, I don't know which ones are community.

13 I'm not so concerned about that, I'm
14 concerned about basic business principles, organization
15 and representation and authority issues within those
16 entities. That's what I'm concerned about, who had
17 authority to do what and when.

18 So when we come to those issues, I'm going
19 to have to hear some testimony regarding the
20 relationship of the parties and the business
21 relationship, if you will, and what happened when it
22 changed, if it changed and when it changed and how it
23 changed. And, I'm sorry, I have to understand that.
24 Even if they were still married, I still have to know
25 that. Even if they were siblings or just nonfamily

1 members, I still have to know that.

2 MR. WINTERTON: Thank you. That helps me
3 understand.

4 THE COURT: But I don't want to get into,
5 you know, just like the other issues we had in one of
6 the exhibits. Those personal matters don't concern
7 this Court. But for those issues that touch on the
8 relationship of these business entities, and the
9 authority that Mr. Pickens had, or also Dr. Michaels,
10 because she has an interest in this, that does concern
11 the Court on what decisions were made on behalf of the
12 landlord/tenant, when they were made, and did they have
13 authority to make those, and if it's enforceable or
14 not.

15 MR. WINTERTON: Thank you.

16 MS. HIGBEE: If I may, your Honor, I have a
17 proposed exhibit for the witness. And this is not in
18 our binder, this has to do with the transfer of the
19 interest. Proposed Exhibit J.

20 THE COURT: Okay. Thank you.

21 This is proposed Exhibit J for the record.
22 It's just proposed at this point.

23 BY MS. HIGBEE:

24 Q. Mr. Pickens, have you ever seen this
25 document before?

1 A. Yes.

2 Q. Is your trust, LV Blue Trust, is that you?

3 A. Yes.

4 Q. And Mich-Mich Trust, is that Dr. Michaels?

5 A. That's correct.

6 Q. Did you retain an attorney to prepare this
7 document?

8 A. The answer is no.

9 Q. No, you didn't go to an attorney?

10 A. We went to an attorney, but I didn't obtain
11 an attorney.

12 Q. Did you pay the attorney?

13 A. Yeah, I paid him.

14 Q. So the attorney was working for you, and
15 you paid him, but you didn't retain him?

16 A. That's the case.

17 Q. Okay. So we have this document. If you
18 would read over it. I'm sure you've seen it before,
19 you said so.

20 A. Absolutely.

21 Q. Is this document signed by you?

22 A. Correct.

23 Q. And is this the document that you signed
24 giving away your interest in Patience One to Mich-Mich
25 Trust, which is Dr. Michaels?

1 A. At the time, yes.

2 Q. Is it yes or no?

3 At this time you signed this, and this was
4 your interest that you gave up?

5 A. Yes.

6 Q. Did you get any money in return for this
7 interest?

8 A. Zero.

9 Q. Did you say, I'm not going to sign this if
10 I don't get any money?

11 A. It was never presented to me. The answer
12 is no.

13 Q. The answer is no.

14 Did you say to -- was Dr. Michaels there
15 when you signed this --

16 A. Absolutely.

17 Q. -- document?

18 She was there?

19 A. Absolutely. It's her attorney.

20 Q. Mr. Pickens, let me finish my question
21 before you answer so the --

22 A. That's fine.

23 Q. You just did it again.

24 THE COURT: Just wait until --

25 THE WITNESS: Go ahead.

1 THE COURT: Listen. Cross-examination can
2 get contentious. That's what it's all about.

3 THE WITNESS: I appreciate it. Thank you,
4 sir.

5 THE COURT: You have a good temperament --

6 THE WITNESS: Okay.

7 THE COURT: -- you're a gentleman --

8 THE WITNESS: All right.

9 THE COURT: -- just listen --

10 THE WITNESS: Thank you.

11 THE COURT: -- pause, go forward. I'm the
12 one that may jump in and mess things up.

13 THE WITNESS: Okay.

14 MS. HIGBEE: Thank you, your Honor.

15 BY MS. HIGBEE:

16 Q. So when you signed this document on this
17 day, September 13, 2016, did you say to Dr. Michaels,
18 hey, I have a rent credit?

19 A. No.

20 Q. Did you have any documentation that said
21 I'm going to consider all the payments I've made to
22 Patience One as rent?

23 A. No.

24 Q. Did you have any -- do you have any
25 documentation that separates out your loan, your

1 payment towards the property and rent?

2 A. No.

3 Q. And you never gave that to Dr. Michaels?

4 A. No.

5 Q. From January 2014 -- I think this is what
6 your testimony was. From January 2014 through
7 September 2016, you were in charge of the books and
8 records for Patience One; is that right?

9 A. That's correct.

10 Q. You made the deposits?

11 A. No, I didn't.

12 Q. You didn't?

13 A. No.

14 Q. You didn't make any deposits into the
15 Patience One account?

16 A. No.

17 Q. So all these documents you've given us
18 showing that there were documents --

19 A. My exec did make the deposit. I didn't
20 personally make the deposits.

21 Q. Again, please let me finish my question
22 before you answer. Do you understand?

23 A. Sorry.

24 Q. Okay. So on your behalf, there were
25 deposits made?

1 A. Yes.

2 Q. At your direction?

3 A. Absolutely.

4 Q. You paid the expenses of Patience One?

5 A. Absolutely.

6 Q. And you kept track of the receipt of rents
7 from other tenants and from BluePoint Development and
8 from Dr. Michaels' business?

9 A. Absolutely.

10 Q. Did Dr. Michaels ever make any -- ever make
11 deposits into the Patience One account?

12 A. There are times she transferred money from
13 her bank account into Patience One. So the answer is
14 yes.

15 Q. She was 50 percent owner, right?

16 A. Yeah. Absolutely.

17 Q. You were developing the building?

18 A. Absolutely.

19 Q. Yeah, so she was paying some of the owner
20 contributions, the responsibility of an owner, correct?

21 A. She was paying rent.

22 Q. She never paid anything towards any of the
23 owner expenses for a building?

24 A. \$35,000 for landscaping in the rotunda.

25 Q. I'm sorry. So she did?

1 A. Yes.

2 Q. Okay. So when you said no earlier, and now
3 you're saying yes, and you, in fact, gave me an example
4 of monies that she paid towards the building, yes?

5 A. Yes, she did that.

6 Q. Okay. All right. So let's go a little bit
7 deeper into the monies.

8 I'm going to try and work back and forth
9 with your books. First of all, keep the Exhibit 1 open
10 if you would, keep your thumb on that, because we're
11 going to be going back to that.

12 THE COURT: Counsel, when you identified as
13 the proposed exhibit, did you say J?

14 MS. HIGBEE: Yes. I meant L. How about I
15 can do the alphabet. J, K, L.

16 THE COURT: Okay. I just wanted to correct
17 the record.

18 This is the Assignment of Such Membership
19 that currently has been marked for identification
20 purposes as Proposed Exhibit L to defendant's
21 exhibits.

22 MS. HIGBEE: And I would now move to have
23 that document admitted as evidence.

24 THE COURT: Any objection?

25 MR. WINTERTON: Yes, your Honor. It wasn't

1 produced at the very beginning. And it comes in as a
2 blind side and --

3 THE COURT: I'm going to overrule the
4 objection. It's very relevant. Your client is aware
5 of this document. Because this is an extraordinary
6 remedy process, I'm going to allow this.

7 BY MS. HIGBEE:

8 Q. Before we leave Exhibit 1, a couple more
9 questions. I'm sorry to go back and forth.

10 So on Exhibit 1, did you draft this
11 document?

12 A. Which Exhibit 1? In which book?

13 Q. The black one.

14 A. Okay. Is this the lease?

15 Q. Yes, Exhibit 1.

16 A. Is that what you're referring to? Did I
17 draft this?

18 Q. Yes.

19 A. No, it was a standard lease.

20 MR. WINTERTON: What exhibit is this?

21 MS. HIGBEE: Exhibit 1, in your book.

22 MR. WINTERTON: Okay. I started looking
23 for L again.

24 BY MS. HIGBEE:

25 Q. It was a standard lease.

1 When you say it was a standard lease, who
2 drafted it? It just appeared on your desk, or how did
3 you find it?

4 A. This was the standard lease that was
5 building was using at the beginning, so we just used
6 the same lease.

7 Q. Do you mean the prior owner of the building
8 that you purchased used this lease?

9 A. I'm going to say I'm not sure where it came
10 from, how about that.

11 Q. All right. But so you got it from
12 somewhere, and then you signed it?

13 A. Agreed.

14 Q. So 1.5 talks about the base rent of \$4,000,
15 and it commenced on February 1st, 2013, right?

16 A. Correct.

17 Q. Do you remember testifying earlier that you
18 said you paid 12 months out of 2013 in rent?

19 A. Yeah.

20 Q. And so you didn't pay, because the lease
21 started in February; isn't that right?

22 A. I still paid.

23 Q. You paid 11 payments, if you paid at all,
24 correct?

25 Mr. Pickens, it's not on any paper, it was

1 what you said out of your mouth. It was, did you
2 pay -- you said, "I paid" --

3 MR. WINTERTON: I object.

4 MS. HIGBEE: -- "12 months of rent in
5 2013."

6 MR. WINTERTON: He has a right to refresh
7 his recollection by looking at other exhibits.

8 THE COURT: I'm going to overrule the
9 objection for now.

10 Why don't you reask the question,
11 Ms. Higbee.

12 BY MS. HIGBEE:

13 Q. Rent started in February of 2013; isn't
14 that right?

15 A. Correct.

16 Q. So earlier when you said that you had paid
17 12 times, 12 months in 2013, that wasn't accurate?

18 A. It was just deposited for me, so I would
19 say correct.

20 Q. Under 1.5 of Exhibit 1 in front of you, it
21 refers to paragraph 4, which explains -- apparently
22 explains further what base rent is.

23 Can you turn to paragraph 4 for me.

24 A. I don't see any paragraph 4 in there.

25 Q. I don't either. Is this the whole lease?

1 A. It's what we were required to sign by the
2 bank.

3 Q. Oh. The bank only required a two-page
4 document with references to other paragraphs that
5 aren't in existence?

6 Yes or no. The bank required this exact
7 lease, two pages, with references to paragraphs that
8 don't exist; that's what the bank wanted?

9 A. That's what we sent to the bank.

10 Q. Okay. You provided today eight of these
11 binders that you put together.

12 How long did it take you to put together
13 these eight binders?

14 A. I'm going to say 16 hours.

15 Q. And what about the black binder in front of
16 you, how long did it take you to put together that?

17 A. Pretty much the same documents.

18 Q. So the question was, how much time did it
19 take you?

20 Is this funny, Mr. Pickens?

21 MR. WINTERTON: Excuse me, your Honor.

22 THE WITNESS: Yeah.

23 MR. WINTERTON: I'm going to object. That
24 becomes a multiple question. And I don't appreciate
25 her harassing my client. My client has a right to

1 think about a question.

2 THE COURT: I agree. I agree.

3 MS. HIGBEE: I'm sorry.

4 THE COURT: Listen. Ms. Higbee knows.
5 She's going to re-ask the question.

6 Facial expressions of witnesses can change
7 the moment of cross-examination. I can appreciate
8 that.

9 Ms. Higbee, I'm aware of the countenance of
10 the face, move forward with your question.

11 BY MS. HIGBEE:

12 Q. How much time did it take you to put
13 together the black binder?

14 You said 16 hours for the stack that you
15 gave us today. And how much time did it take you to
16 put together the black binder?

17 A. 16 hours.

18 Q. Okay. Total of 32 hours?

19 A. (Witness nods head.)

20 Q. When you -- let me go back a little bit.

21 Did you ever give all this documentation to
22 either Jakub or Dr. Michaels in the past?

23 A. Did I give it to them, no.

24 Q. So in August or September of 2017, when you
25 began talking about the rent credit, you did not take

1 all these binders and go over to Patience One and say,
2 here is my credit?

3 A. In an email I offered to open the books for
4 everything at that time.

5 Q. All right. Let's turn to those emails
6 let's do that. That's Exhibit 8 and 9 and 10 in the
7 black binder.

8 A. Okay, that's fine.

9 Q. Specifically turn to Exhibit 10, please.

10 A. Okay.

11 Q. At this point in time we're talking about
12 August 31st, 2017; is that right?

13 That's when these emails are in Exhibit 10?

14 A. This is March 28th.

15 Q. That's a reference at the top where you
16 sent it to your attorney; isn't that right?

17 A. Well, I'm just trying to find out where
18 you're getting the number. September 27th?

19 THE COURT: Exhibit 10. Tab 10.

20 THE WITNESS: Okay.

21 BY MS. HIGBEE:

22 Q. All right. So on August 31st, 2017, there
23 were emails exchanged between you and Jakub; is that
24 correct?

25 A. That's correct.

1 Q. And starting from the bottom, you sent an
2 email with five different points there; is that right?

3 A. That's correct.

4 Q. And the first one appears to be the \$24,000
5 that you were claiming of six months of rent that you
6 overpaid; is that correct?

7 A. That's correct.

8 Q. If you would, go to the next one, which is
9 the one I want to focus on, and it is an email to you
10 from Jakub.

11 Do you recall getting this email?

12 A. Yes, of course.

13 Q. And if you want to, read over it if you
14 have forgotten what it says.

15 A. No, I haven't forgot what it says.

16 Q. Okay. Is Jakub asking for documentation of
17 your rent credit?

18 A. I actually gave him documents for the rent
19 credit.

20 Q. The question was, in this email, is Jakub
21 asking you for documentation of your rent credit?

22 A. No.

23 Q. No, he's not. Okay.

24 So number 2, where it says:

25 "As for the \$8,000 payment, since

1 there are no invoices or records of payment,
2 I can't confirm the transaction."

3 That doesn't mean to you he has no
4 documentation of \$8,000?

5 A. And that's why I offered to show him
6 everything.

7 Q. Can you please answer the question that I
8 ask, Mr. Pickens.

9 Does that statement I just read to you mean
10 that he has no documentation of the \$8,000?

11 A. I was referring to the \$24,000.

12 THE COURT: Answer the question. First
13 off --

14 THE WITNESS: Yes.

15 THE COURT: Mr. Pickens, do you know where
16 she's at in this exhibit? Are you tracking where she's
17 at?

18 THE WITNESS: Yes, I am.

19 THE COURT: Go ahead, Ms. Higbee. Get him
20 back on track.

21 BY MS. HIGBEE:

22 Q. That's fine.

23 From this email, you don't gather that
24 Jakub doesn't understand how -- that there's no
25 documentation for your rent credit?

1 MR. WINTERTON: I'm going to object, your
2 Honor. I think that's speculation, trying to figure
3 out what Jakub understands. I don't think he knows
4 that.

5 THE COURT: Sustained.

6 BY MS. HIGBEE:

7 Q. I'm asking for your interpretation of this
8 email to you.

9 Does this, to you, say that Jakub has all
10 the documentation he needs for the rent credit, and
11 he's ready to give it to you; is that what it says?

12 A. He's asking for an invoice that were
13 never -- we were never invoiced. We never invoiced our
14 rent payment. It was never invoiced, it was an
15 automatic. It wasn't invoiced ever before he took
16 over.

17 Q. Okay. What does that have to do with your
18 interpretation of this provision that I was just asking
19 you about?

20 Please try to stick to what the question
21 is.

22 A. Yes, he asked the question.

23 Q. Okay. Did you ever provide documentation
24 for the \$8,000 payment?

25 A. No.

1 Q. And what did you provide to document the
2 \$24,000?

3 A. Bank statement.

4 Q. Just one?

5 A. Yeah. Same statement you have.

6 Q. Thank you. We'll get to that in a minute.

7 A. Okay.

8 Q. All right. Did you provide anything else
9 besides the \$24,000 payment, the bank statement for
10 \$24,000, did you provide anything else?

11 A. No.

12 Q. And let's say that the \$24,000 was, as you
13 say, overpaid rent. Does that come up to the
14 \$33,202.27 in credit that you're asking for?

15 A. The answer is no.

16 Q. Did the target change?

17 MR. WINTERTON: I'm going to object. I'm
18 kind of confused about the question myself.

19 THE COURT: Do you understand question?

20 THE WITNESS: No, I understand, but it's a
21 broad statement.

22 The statement was, I offered to show them
23 everything, which they did not take me up on the offer,
24 and, therefore, you're focusing down on one thing, that
25 if you would have came in and let me go through the

1 books, you would have been more than -- you would have
2 seen how I got to 32,000.

3 So it's difficult to answer questions that
4 are not black and white.

5 THE COURT: Okay.

6 BY MS. HIGBEE:

7 Q. So the answer is, is at different times
8 since September until now, the rent credit has changed
9 a couple times, hasn't it?

10 A. Absolutely.

11 THE COURT: Mr. Pickens, let me ask you
12 before Ms. Higbee moves on.

13 Prior to you assigning your interest in
14 Patience One to Dr. Michaels' interest, were rent
15 statements invoiced to you, rent bills?

16 THE WITNESS: Never.

17 THE COURT: Were they invoiced to the other
18 tenants?

19 THE WITNESS: Never.

20 THE COURT: So during that time period
21 prior to you assigning your interest, it's your
22 testimony that rents were never invoiced to the
23 tenants?

24 THE WITNESS: Never.

25 THE COURT: After you assigned your

1 interest --

2 THE WITNESS: Yes.

3 THE COURT: -- did they start being
4 invoiced?

5 THE WITNESS: To me. I don't know about
6 the other tenants.

7 THE COURT: You were invoiced after?

8 THE WITNESS: Yes, absolutely.

9 BY MS. HIGBEE:

10 Q. Just to follow up with that.

11 So when you were in charge of Patience One,
12 you chose not to do any invoices, correct?

13 A. It wasn't required.

14 Q. I never said it was. But you choose not
15 to?

16 A. Correct.

17 Q. Now, do you have a property management
18 license?

19 A. No.

20 Q. But when you are no longer a part of
21 Patience One, the new manager of Patience One decides
22 to invoice; is that correct?

23 A. That's correct.

24 Q. Don't have to, but you can.

25 A. Correct.

1 Q. When you got the invoice for your rent
2 payment, did you challenge the amount that was on the
3 invoice?

4 A. Occasionally, yes.

5 Q. Occasionally.

6 Do you have any documentation today that
7 shows you challenged it?

8 A. I think it's in the emails.

9 Q. Okay. That was in August of 2017?

10 A. I need to look through and see which one it
11 is.

12 Q. Go ahead. 8, 9 and 10.

13 A. Yeah. The number 4, I put in here.

14 Q. Number 4 --

15 A. No, number 3, I'm sorry, on my list.

16 Q. Okay. So that's in August 2017 -- I'm just
17 trying to establish a time frame -- is that right?

18 A. Yeah.

19 Q. Before that time, you had been receiving
20 invoices for the amount of rent that you owed; is that
21 correct?

22 A. Correct.

23 Q. Since September 2016, you had been
24 receiving these invoices?

25 A. I'm going to say yes. I'm not sure of the

1 date, but...

2 Q. Approximately.

3 A. Yeah, that's fine.

4 Q. And you never questioned the amount that
5 was on that invoice all the way to August of 2017.

6 A. I questioned it.

7 Q. But you never said anything to Dr. Michaels
8 or Jakub; is that correct?

9 A. I believe in that this is not --

10 Q. I did not ask you what believed, I want to
11 see --

12 A. The answer is yes.

13 Q. Yes?

14 A. Yes.

15 Q. Where is that documentation?

16 A. It's not in here.

17 Q. Okay. So you don't have it with you today?

18 A. No.

19 Q. Okay. All right. I think you testified
20 earlier about utility payments.

21 Was it your testimony that there was never
22 an agreement to pay utilities?

23 A. That's correct.

24 Q. Before you took over -- before you
25 transferred your interest out of Patience One, who paid

1 the utilities on the BluePoint Development suite?

2 A. Patience One.

3 Q. Patience One?

4 A. Um-hmm.

5 Q. Then after that, after your transfer of
6 your interest, you did begin paying the utilities to
7 Patience One?

8 A. Correct.

9 Q. Is that correct?

10 A. That's correct.

11 Q. But there was no agreement, you just did it
12 out of the goodness of your heart?

13 A. Absolutely.

14 Q. Now, do you believe that utility payments
15 are the same thing as rent?

16 A. No.

17 Q. So they shouldn't count towards your rent
18 credit, should they?

19 Utility payments should count towards a
20 rent credit?

21 A. No.

22 Q. No, they shouldn't.

23 I think your testimony earlier was that
24 everything over the \$4,000 was for utilities; is that
25 right?

1 A. No, I don't believe I said that.

2 Q. No, you didn't say that? Okay.

3 Let's walk through it then, and we'll go
4 through a few of them.

5 If you would please turn to Exhibit 7 in
6 your black binder.

7 All right. In February there's a payment
8 for \$4,166.10; is that right?

9 A. Correct.

10 Q. Is it your position that the \$166.10 is
11 there something other than utilities?

12 A. Because I paid for it, it was, whatever, it
13 was a credit to what I should get. I mean, I didn't
14 owe that rent. I didn't owe that amount.

15 Q. You didn't owe that amount?

16 A. No.

17 Q. Okay. Let's turn to Exhibit J, if you
18 would please, the fourth page from the front.

19 A. Is it in the front or the back?

20 Q. Exhibit J, start counting from the first
21 page --

22 A. I'm saying is it in front of J or back of
23 J?

24 Q. It's in behind J.

25 THE COURT: Is there a yellow tab on it?

1 MS. HIGBEE: Yes, there should be.

2 THE WITNESS: All right.

3 BY MS. HIGBEE:

4 Q. Is that a check from BluePoint
5 Development --

6 A. Absolutely.

7 Q. -- to Patience One?

8 A. Absolutely.

9 Q. And does it say --

10 THE COURT: Please let her finish the
11 question.

12 THE WITNESS: Okay.

13 BY MS. HIGBEE:

14 Q. Does it say Rent and NV Energy?

15 A. Absolutely.

16 Q. So is it your testimony that you paid both
17 rent and utilities for this month?

18 A. That's what I'm showing, yes.

19 Q. If you will flip back to Exhibit 7,
20 there's -- if you will go to October. We'll just pick
21 some, we'll go to October.

22 There is an entry, and this is your entry,
23 you prepared this document?

24 A. Which one?

25 Q. We're in Exhibit 7.

1 THE COURT: Now we're back to your book,
2 Plaintiff's 7, going left to right.

3 THE WITNESS: All right. And this is
4 for --

5 BY MS. HIGBEE:

6 Q. In October there was a payment of
7 \$4,344.02.

8 A. Absolutely.

9 Q. Is that overage for utilities?

10 A. It's what was invoiced to me.

11 Q. Was that overage for utilities?

12 A. I'm saying yes.

13 Q. Okay. Thank you.

14 THE COURT: Mr. Pickens, during the time --
15 and I'm going to call you the property manager for
16 purposes of my questions, unless there's an objection
17 to my classification of you as that.

18 During the time that you were running the
19 property, did you bill -- did Patience One bill tenants
20 for utilities?

21 THE WITNESS: Some new tenants, yes. The
22 old tenants, no.

23 THE COURT: The way the, I'll call it the
24 spaces or suites were developed, were they separate
25 metered or not?

1 THE WITNESS: Yes.

2 THE COURT: So some of the tenants that
3 were not billed for utilities did have a meter
4 associated with the suite. Why weren't they billed for
5 utilities during your management?

6 THE WITNESS: When we first moved in the
7 building, it was at the low, so getting people in to
8 rent, we figured to get the square footage price, that
9 it didn't matter if we got the money for the utilities.

10 THE COURT: So it was an incentive to get
11 tenants?

12 THE WITNESS: Yes.

13 THE COURT: Did there come a time you
14 started billing certain tenants?

15 THE WITNESS: Yes.

16 THE COURT: The market got better?

17 THE WITNESS: Absolutely.

18 THE COURT: Then after the transfer and you
19 assigned your interest in management --

20 THE WITNESS: Fair enough.

21 THE COURT: -- did Patience One's
22 management -- at the time it was Jakub -- did the
23 tenants start getting billed for utilities?

24 THE WITNESS: I don't --

25 THE COURT: Well, you were, right?

1 THE WITNESS: Yes, I was.

2 THE COURT: So were you billed for
3 utilities from the time they took over in let's say the
4 fall of 2016 until the time you vacated, were you
5 billed monthly for utilities?

6 THE WITNESS: Yes.

7 THE COURT: Thank you.

8 BY MS. HIGBEE:

9 Q. And you paid them?

10 A. Yes, absolutely.

11 Q. So if I represent to you that on Exhibit 6,
12 the front page of Exhibit 6 in your black binder --

13 A. Okay.

14 Q. -- there's one payment of rent in November
15 for \$4,339.42. Do you see that?

16 A. Yes.

17 Q. So that's about when you started paying
18 utilities; is that correct?

19 A. Correct.

20 Q. And then if you will flip back to Exhibit
21 7, the front sheet shows several payments over \$4,000,
22 does it not?

23 A. Yes.

24 Q. So if my math is correct, I believe that
25 all of those overage payments come up to \$3,404.04.

1 That doesn't have anything to do with the
2 payment of rent, does it?

3 MR. WINTERTON: Objection. Speculation.

4 THE COURT: Overruled.

5 He testified he is familiar with the lease.
6 He signed the lease.

7 MR. WINTERTON: The reason why is she just
8 put up a number there. I'm trying to calculate the
9 number myself. How can he guess that that number is
10 correct?

11 THE COURT: You need to specify. If you're
12 saying it's speculation on the number, I will grant
13 that, ask her to rephrase her question. But that
14 objection wasn't specific enough.

15 So go ahead, Ms. Higbee, you can ask it in
16 a way we can have an estimation.

17 BY MS. HIGBEE:

18 Q. All right. If you would, take a look at
19 Exhibit -- I'm going to ask you whether you believe
20 that figure is close to the overage from --

21 A. Yes.

22 Q. -- in 2006 through 2007 --

23 A. Yes.

24 Q. Let me finish.

25 A. I said yes.

1 Q. I meant exhibit, not 2000, so Exhibit 6 and
2 Exhibit 7.

3 Is that an estimate -- or is that close to
4 what you think the overage payments in rent for
5 utilities would be?

6 A. Yes.

7 Q. Thank you.

8 Again, please go to Exhibit 7.

9 In February 2017, there's an entry here for
10 \$4,000 for check number 1231 that we've talked about
11 today; is that right?

12 A. Yes.

13 Q. And you took that off of the documents that
14 you provided just today?

15 A. That's correct.

16 Q. So that shouldn't have been part of the
17 rent credit; is that correct? Because you don't have
18 check with you today.

19 A. Correct. Yes.

20 Q. So that can't count towards that. So
21 \$4,000 comes off your credit. Agreed?

22 \$4,000 comes off the credit, correct?

23 A. Yes.

24 Q. If you look at Exhibit 5, please. It's the
25 second to last tab, yellow tab, in Exhibit 5.

1 A. Which -- I'm sorry.

2 THE COURT: White book, the --

3 MS. HIGBEE: Sorry. It's kind of hard.

4 THE WITNESS: Okay.

5 BY MS. HIGBEE:

6 Q. All right. So on that tab, the highlighted
7 portions that you highlighted; is that right?

8 A. Yes.

9 Q. So on 4/20 there was a transfer to Patience
10 One for rent; is that correct?

11 There's a designation that it's for rent.

12 A. Which tab? I'm sorry.

13 Q. Sorry. I thought you were with me. Number
14 5, Exhibit 5.

15 A. Okay.

16 Q. Second to last yellow tab.

17 A. Okay, let me make sure.

18 Yeah.

19 Q. Yeah, April 1st, 2015 through April 30th at
20 the top. Do you see that?

21 Is that the -- you're on the right one?

22 A. 4/22, is that what you're looking for?

23 Q. Yes. I'm looking at 4/20 up above says
24 that it's for a transfer to Patience One for rent,
25 correct?

1 A. Yes.

2 Q. And this is from your account for BluePoint
3 Development to Patience One, correct?

4 A. Correct.

5 Q. All right. And on 4/22 there's a transfer
6 to Patience One, but it says it's for insurance; is
7 that right?

8 A. Yes.

9 Q. And you're claiming that as part of the
10 rent credit?

11 A. What I'm claiming there is an overage.

12 Q. An overage, okay. Well, let's put that one
13 down.

14 So when you pay insurance, that it should
15 be a rent credit towards BluePoint Development; is that
16 what I gather?

17 Is that what you're asking this Court to
18 believe?

19 A. I wasn't responsible for the rent, so the
20 answer is yes. Or for the -- I'm sorry, for the
21 insurance, and I paid it, so the answer is yes.

22 Q. Let's see. Patience One is responsible for
23 the insurance, correct?

24 A. Correct.

25 Q. And you're 50 percent owner of Patience

1 One, correct?

2 A. Yes.

3 Q. But you're not responsible for the
4 insurance?

5 A. Patience One is, not BluePoint Development.

6 Q. Okay. I understand.

7 Exhibit 5, the last tab.

8 In your calculation for the rent recap in
9 2015, you have a payment that you made for \$6,000; is
10 that right?

11 A. Correct. Absolutely.

12 Q. This is on March 2nd. Do you see where I
13 am?

14 A. No, absolutely, I know.

15 Q. That's for taxes; is that right?

16 A. Absolutely.

17 Q. And BluePoint Development paid that to
18 Patience One?

19 A. Absolutely.

20 Q. And it's your position that, what, that
21 taxes are -- if you pay your taxes to Patience One,
22 that it's a rent credit?

23 A. If I have to pay for the taxes for Patience
24 One, absolutely.

25 THE COURT: It's your testimony, when you

1 paid these items that would not be considered by the
2 lease base rent, you're offsetting giving the credit
3 for rent?

4 THE WITNESS: Absolutely.

5 BY MS. HIGBEE:

6 Q. Did you ever tell Dr. Michaels you were
7 doing this offset?

8 A. No.

9 Q. Did you ever write it down in an agreement
10 of any sort?

11 A. Absolutely not.

12 Q. Because it was you on both sides.

13 A. No, it's because I didn't need to go ask
14 her to give Patience One money to pay for the taxes, or
15 she would have had pay for it, she would have had to
16 put money in; she didn't.

17 Q. But fast-forward from March of 2015 to
18 August 2017, Dr. Michaels is supposed to know that you
19 took this as a rent credit when you paid your property
20 taxes, is that what you're trying to say?

21 A. What I'm trying to say is, the books were
22 always open. They never were closed. Everybody had
23 the opportunity to look at them at any time.

24 THE COURT: Let me ask you a question.

25 Going back to Defendant's Exhibit L, the

1 Assignment and Assumption of Interest, when you
2 assigned your interest in Patience One to the Mich-Mich
3 Trust, okay?

4 THE WITNESS: Um-hmm.

5 THE COURT: During that process when you're
6 doing an assignment, it's usually customary you
7 transfer the books, especially in a situation where
8 you're managing that asset.

9 Did you hand over to the assignee to say,
10 by the way, here is the books, here is how I kept the
11 books, here is how I reconciled rents and setoffs, base
12 rent versus non-base rate, items that my entity, the
13 plaintiff in this case, covered; did you go through all
14 that at the time or thereabouts in September of 2016 or
15 shortly thereafter?

16 THE WITNESS: The answer is no, I didn't go
17 through it with them because --

18 THE COURT: I understand you're saying it's
19 always open for them to look at. No one is saying
20 that. I'm not asking that question.

21 My question is, did you, in any type of due
22 diligence with them, say, by the way, here is what I've
23 been doing, it's yours, but then again, this is where
24 the numbers lie and the credit lies for BluePoint?

25 THE WITNESS: Never did that, because it

1 was basically a 72-hour transfer of all this stuff, and
2 I was -- flew from Florida, signed over these
3 documents. And Jakub was actually in my office at that
4 time, he was working for me, and he had access to all
5 my records --

6 THE COURT: I understand the access. I'm
7 just asking what you did.

8 THE WITNESS: No, I didn't. I agree
9 100 percent, I did not go and go through and give them
10 a complete breakdown.

11 THE COURT: You said you assigned, for good
12 and valuable consideration, 50 percentages.

13 What consideration did you receive?

14 THE WITNESS: None.

15 THE COURT: Thank you.

16 Ms. Higbee.

17 BY MS. HIGBEE:

18 Q. On Exhibit 5, there is a reference to, in
19 October, of \$6,098.04. Do you see that?

20 A. I'm sorry, which tab?

21 Q. This is on tab 5.

22 A. Okay.

23 Q. Your summary, the Rent Recap, 2015.

24 A. Okay.

25 Q. Do you see the \$6,098.04?

1 A. Yes.

2 Q. And if you would flip to the second yellow
3 tab. Do you see -- I'm sorry, it's still in Exhibit 5
4 that you're looking at, the yellow tab, the second one.

5 A. I see it.

6 Q. Do you see on 10/2 there was a transfer to
7 Patience One for property taxes; do you see that?

8 A. Sure. Absolutely.

9 Q. So you made that, but you are still
10 thinking that that's the -- that's a credit towards
11 rent?

12 A. Absolutely.

13 Q. And again, do you have any documentation
14 that shows that you explained to Dr. Michaels that you
15 were taking credits for these amounts?

16 A. No.

17 Q. Okay. All right. I know that you don't
18 have a calculator, and we can go through the math if
19 you want, but if we add all these up, it looks to me
20 like at the end of these you have about a \$5,700 credit
21 after, if these are deducted, if they aren't considered
22 rent credits.

23 Do you have any reason to dispute my math?

24 MR. WINTERTON: Your Honor, I'm going to
25 object. I think the math and the documents speak for

1 itself. I mean, I can give him a calculator, and we
2 could spend all this time --

3 MS. HIGBEE: Yes, we could.

4 THE WITNESS: Can I make a statement?

5 THE COURT: No.

6 Here's a question I have. Do you have any
7 reason to dispute those numbers? Based on how she's
8 presented those.

9 THE WITNESS: And that's my point.

10 THE COURT: No, no, no.

11 THE WITNESS: The way she presented them --

12 THE COURT: I'm asking, based on that
13 math --

14 THE WITNESS: No, not on her math.

15 THE COURT: That's all I'm asking. I know
16 you don't agree with the presentation, but that's not
17 the question.

18 THE WITNESS: I agree, 100 percent.

19 BY MS. HIGBEE:

20 Q. We're going to talk about a couple other
21 issues that seem to be problematic with your rent
22 credit.

23 If you would -- let's see. Now, it looked
24 from your documents that there were times that money
25 went from Patience One to BluePoint Development.

1 A. Absolutely.

2 Q. That seems strange since BluePoint
3 Development is the one that's the tenant.

4 A. It's not strange at all.

5 Q. Let's go to Exhibit 5 again, the first
6 page. In July, in parentheses, there's a \$12,000
7 figure. Do you see that?

8 A. What are we looking at, 5 mine or yours?

9 Q. Either one.

10 A. Yeah. Absolutely.

11 Q. And then there's one that's in parentheses
12 that's 3,000, and that's --

13 A. Absolutely.

14 Q. And you're not requesting a credit for
15 those, are you?

16 A. No. That's why they're a negative.

17 Q. That's why they're in the negative,
18 correct?

19 A. Correct. Absolutely.

20 Q. Then let's turn to, let's see, in two
21 pages, the first tab that's yellow. Do you see that
22 there's a \$10,000 from Patience One out of Patience One
23 account?

24 A. Correct.

25 Q. Do you see that?

1 A. Yeah.

2 Q. In fact, that's the one that you pointed
3 out was in error in the new documents that you showed
4 today?

5 A. Correct.

6 Q. So that shouldn't be taken as a rent credit
7 because --

8 A. It wasn't a rent credit, it was rent
9 deduction.

10 Q. Yeah, exactly.

11 So we can agree on that one.

12 And then just as an aside, the rent recap
13 that you showed today, there was -- you added another
14 \$4,000 for a, quote, a note, but you didn't any
15 documentation for that; is that right?

16 A. Very well possible. I don't know which one
17 you're looking at.

18 Q. Rent Recap of 2015.

19 A. '15?

20 Q. Um-hmm. At the bottom it says, "Note
21 \$4,000," but there's not one shred of paper that says
22 anything about a note or the promissory note or
23 anything; is that right?

24 A. (Witness indicating.)

25 Q. Just what you wrote?

1 A. Yeah, that's fine.

2 No, because I questioned it. As you
3 notice, it's not on mine, it's only on yours
4 (indicating).

5 Q. I'm confused. This is your document that
6 I'm holding up.

7 THE COURT: Yeah, this one.

8 THE WITNESS: No, I understand. She's
9 got -- it's writing that's written on there, and so
10 it's different than what you have.

11 BY MS. HIGBEE:

12 Q. These are just my notes on your document.
13 What I'm focused on is \$4,000 and the word "Note."

14 A. Okay.

15 Q. And there's absolutely no documentation for
16 this \$4,000 in this binder packet that you gave me
17 today.

18 A. Yeah.

19 MR. WINTERTON: Your Honor --

20 THE WITNESS: The reason I put "Note" --

21 THE COURT: Hold on. Hold on. He's making
22 an objection.

23 MR. WINTERTON: I'm going to make an
24 objection to see if we can simplify this.

25 If you go to Exhibit Number 5, it doesn't

1 have the \$4,000 there. If we're not going to admit
2 these others, we're really muddying the water.

3 THE COURT: I'm not admitting these but
4 will be using it for identification purposes for
5 testimony, okay, throughout your case and bringing
6 these in today. And as I said, Ms. Higbee is allowed
7 to use them in the way she wishes on her
8 cross-examination. I'm going to allow that. It
9 doesn't mean it's coming into evidence.

10 MR. WINTERTON: Gotcha.

11 THE WITNESS: Okay. Can I answer?

12 THE COURT: Hold on. I need some
13 clarification too.

14 Ask your question how you want to ask it on
15 this issue.

16 BY MS. HIGBEE:

17 Q. Can you point to a piece of paper that
18 supports this \$4,000 note reference that you have on
19 your summary?

20 A. The reason I put "Note" there is the same
21 reason your Honor asked me about the \$4,000. That was
22 paid on the 31st of the month, and so it actually could
23 have been questioned on whether it was in this month or
24 it should go to the next month, but because it was paid
25 in December, it was considered on this one. So, you

1 know, because there was a double payment in December,
2 you could question on where does it belong, and that's
3 why I put the note on there.

4 Q. The answer is no, you can't point to a
5 piece of paper, but you have an explanation that it
6 goes to the next January's payment in 2016, right, if I
7 follow you?

8 THE COURT: I think he said the
9 December 31st entry.

10 THE WITNESS: Exactly, and that's why I put
11 "Note" there.

12 BY MS. HIGBEE:

13 Q. But it was for January the next year?

14 A. That's why I brought it up in the trial, or
15 in this whatever it is.

16 Q. Okay.

17 A. That's why I put "Note" there.

18 Q. Turn to Exhibit 4, if you would, your first
19 page in either binder.

20 A. Okay.

21 Q. All right. There's references in November
22 to \$1,000 and \$700.

23 Do you see those references?

24 A. Yes.

25 Q. Now, those aren't from BluePoint

1 Development's account, are they?

2 A. No.

3 Q. What account are those from?

4 A. My personal account.

5 Q. Your personal account?

6 A. And that answer is yes.

7 Q. Okay. If you would turn to the first
8 yellow tab.

9 A. Okay.

10 Q. So do you see this is a Wells Fargo,
11 November 1st, 2014? Yes?

12 A. Sure.

13 Q. Do you see the names Thomas A. Pickens and
14 Danka K. Michaels?

15 A. Absolutely.

16 Q. But that's your personal account, or is it
17 both of your personal accounts?

18 Isn't this a joint account?

19 A. You could say it's a joint account, but
20 that's why I presented books earlier.

21 Q. Wells Fargo is saying it's a joint account,
22 correct?

23 A. Okay, there I go again.

24 THE COURT: Was it a joint account or not?

25 THE WITNESS: It was a joint account.

1 THE COURT: Okay. That's the question.

2 THE WITNESS: That means two signers.

3 THE COURT: Well, you could sign a check if
4 you want for \$100 out of that account under Exhibit 4
5 and cash it, correct?

6 THE WITNESS: Sure.

7 THE COURT: Dr. Michaels at this time could
8 sign her name for \$100 and go cash it without your
9 signature, right?

10 THE WITNESS: Correct.

11 THE COURT: It only required one signature
12 from one of the joint account holders.

13 THE WITNESS: Correct.

14 THE COURT: So it's a joint account.

15 THE WITNESS: Correct.

16 THE COURT: Okay. Thank you.

17 BY MS. HIGBEE:

18 Q. So if I understand, you're making payments
19 from your joint account, but you want credit for
20 BluePoint Development; is that right?

21 A. Absolutely.

22 Q. Okay. So under here, all these references
23 in the 2014 Rent Recap under Exhibit 4, all the ones
24 that say Tom's are really joint account, aren't they,
25 those payments?

1 Those came from your joint account with
2 Dr. Michaels.

3 A. Yes.

4 Q. If you add all of those up, and we can give
5 you a calculator, but the estimate is -- or the
6 calculation that I came up with is \$17,200 came out of
7 the joint account to pay rent for BluePoint
8 Development.

9 A. I'm going to say yes.

10 Q. Thank you.

11 Let's look at the first six months of rent
12 payments on the Rent Recap for 2014. January,
13 February, March, April, May, June. There's \$4,000, and
14 apparently it came from a Bank of America account; is
15 that right?

16 That's what you say on your summary?

17 A. Correct.

18 Q. And can you show me the Blue -- can you
19 show me the Bank of America statements attached to
20 Exhibit 4.

21 A. I don't think it's attached, I don't know.

22 Q. Do you have any documentation here
23 whatsoever of those payments?

24 A. No.

25 Q. All right. So is it possible that in

1 December when you paid \$24,000, which coincidentally is
2 six months of rent, could that be for those first six
3 months of rent?

4 A. Absolutely not.

5 Q. Absolutely not. Okay.

6 Well, we don't have any documentation of
7 our first six months of rent, so I don't see how that
8 can go towards your rent credit. I think you have to
9 take that off the rent credit. That's \$24,000, isn't
10 it, for the first six months?

11 A. Correct.

12 No. No.

13 Q. No?

14 A. That's not for the first six months.
15 You're saying it's for the first six months, I'm saying
16 no, it's not.

17 Q. I'm saying isn't the amount of rent from
18 January through June come up to a total of \$24,000?

19 A. Yeah. Absolutely.

20 Q. And you have no documentation that you paid
21 it.

22 A. I can have the documentation, absolutely.

23 THE COURT: Do you have documentation in
24 this courtroom?

25 THE WITNESS: Not here, no.

1 BY MS. HIGBEE:

2 Q. But you spent 16 hours putting these books
3 together, and you didn't take the time to go get the
4 Bank of America bank account; is that right?

5 MR. WINTERTON: Objection. I think that's
6 getting harassing.

7 THE COURT: Overruled.

8 BY MS. HIGBEE:

9 Q. I think there's a question pending.

10 A. It's not in here.

11 Q. It's not, "it" being the documents of the
12 \$24,000 in payments of rents, correct? There's no
13 documentation of it.

14 A. There is, but it's not in this book.

15 Q. You don't have anything in this courtroom
16 today that shows you paid \$24,000?

17 A. Can I look?

18 Q. In evidence, in any of these binders.

19 A. No.

20 Q. All right. Mr. Pickens, there is a rent
21 recap document dated 2013 that you offered today.

22 A. Okay.

23 Q. Do you have it in front of you?

24 A. Yes.

25 Q. Now, this document was never provided to

1 the Court or to Patience One before today; is that
2 right?

3 MR. WINTERTON: I object. Misstates the
4 facts. The (inaudible) exhibits were definitely
5 (inaudible).

6 THE COURT REPORTER: I'm sorry?

7 MR. WINTERTON: She's misleading.

8 THE COURT: I think her question is the
9 recap. She didn't say the backup.

10 MR. WINTERTON: I think the recap also is a
11 summary as part of the exhibits.

12 MS. HIGBEE: I can clarify. I'm asking
13 about the whole thing.

14 THE COURT: I'm sorry?

15 MS. HIGBEE: I'm asking about the whole
16 thing.

17 BY MS. HIGBEE:

18 Q. Has this front page or any of these other
19 pages been provided to the Court or to Patience One or
20 counsel before today?

21 MR. WINTERTON: I'm also going to object.
22 I don't know what book you've got in front of you.

23 MS. HIGBEE: It is 2013 Rent Recap.

24 THE WITNESS: Presented to Patience One,
25 yes; presented to this Court, no.

1 BY MS. HIGBEE:

2 Q. When did you provide it to Patience One?

3 A. It was part of the documents that went to
4 the accounting and the CPA during my tender of the
5 controlling of Patience One.

6 Q. So let's rephrase the question.

7 After you transferred your interest in
8 Patience One --

9 A. The answer is no.

10 Q. Can I finish the question before you
11 answer.

12 A. Sure. Sure, go ahead.

13 Q. Since your departure from Patience One, did
14 you ever provide this rent recap --

15 A. No.

16 Q. -- or any other documentation attached to
17 it to Patience One?

18 A. No.

19 Q. And before today there was no one piece of
20 evidence in your black book that showed you made any
21 payments in 2013; isn't that right?

22 A. That's correct.

23 Q. So how much is the rent for 2013?

24 You don't know?

25 Do you recall that the lease started in

1 February of 2013?

2 A. (Witness shakes head.)

3 Q. You don't recall that?

4 Can you look at Exhibit 1 and tell me when
5 the date of the lease is. Exhibit 1 in the black book.

6 A. I know. February.

7 Q. February 2013?

8 A. Yeah.

9 Q. And rent is 4,000 a month, right?

10 A. Correct.

11 Q. So if you didn't pay during all of 2013,
12 how much rent would be due?

13 A. 4800.

14 Q. No. 44,000.

15 A. 44,000, yeah.

16 Q. Do you agree, 44,000?

17 A. Correct.

18 Q. Additionally with the Rent Recap for 2013
19 that you provided today, attached to it are Patience
20 One bank statements, is that right, from Bank of
21 America?

22 A. Correct.

23 Q. And then were those bank statements ever
24 provided to Jakub when your executive gave over the
25 books and records to Patience One?

1 A. No. Not that I know of; I wasn't there.

2 Q. Okay. And then do you have for 2014, '15
3 or '16 any Patience One bank statements?

4 A. Do I have? No.

5 Q. Have you presented any?

6 A. No.

7 Q. So to follow up from your examination by
8 your attorney, you spent a lot of time talking about a
9 loan that you made to Patience One; is that right?

10 A. We talked about it, yes.

11 Q. And that was from BluePoint Development, or
12 was that from your trust, from you?

13 A. BluePoint Development.

14 Q. BluePoint Development.

15 Now, do you have a promissory note or
16 any --

17 A. No.

18 Q. So you have zero documentation?

19 A. Zero.

20 Q. All right. You also talked about the
21 security deposits.

22 Can you tell me how much you said would be
23 in security deposits for the tenants in September of
24 2016 -- or rather May of 2016?

25 MS. HIGBEE: If I may, your Honor, this is

1 the document that his recollection was refreshed to
2 earlier.

3 THE COURT: Yes.

4 MS. HIGBEE: Can I show it to him?

5 THE COURT: Absolutely.

6 BY MS. HIGBEE:

7 Q. Here you go, Mr. Pickens. Does that
8 refresh your recollection of how much you thought that
9 the security deposits were in 2016, May?

10 MR. WINTERTON: Your Honor, I'm going to
11 object. When I tried to refresh his recollection, I
12 had to give --

13 THE COURT: First off, I'm going to ask him
14 to review it in a moment. It's fair -- you're exactly
15 right.

16 THE WITNESS: I mean --

17 THE COURT: Mr. Pickens, here is what I'm
18 going to do.

19 THE WITNESS: I'm going to say, that's
20 fair.

21 THE COURT: Let me ask you the question.
22 Could you please look at that document,
23 refresh your recollection, and tell me when you're
24 done.

25 THE WITNESS: Done.

1 THE COURT: Now, Mr. Pickens, did you look
2 that the document earlier this morning when your lawyer
3 was asking you questions regarding security deposits,
4 and you used it to refresh your recollection at that
5 point, correct?

6 THE WITNESS: Correct.

7 THE COURT: You just refreshed your
8 recollection again by looking at the document, correct?

9 THE WITNESS: Um-hmm.

10 THE COURT: Has your recollection been
11 refreshed? Yes or no.

12 THE WITNESS: Yes.

13 THE COURT: Okay. Thank you.

14 Ms. Higbee.

15 BY MS. HIGBEE:

16 Q. Thank you.

17 How much were the security deposits to you
18 in May 2016?

19 A. 5500 -- I can't quote the numbers. I mean,
20 I'm not remembering numbers. I looked at it, whether
21 right or wrong, and it looks like there's 1700 on there
22 that's wrong, because there's nobody in that space.

23 Q. So --

24 A. I think I'm correct. I don't see anybody
25 for the 1700 in that space anymore.

1 Q. So a quick review of that, is \$10,000
2 around the number that you believe the deposits were at
3 that time?

4 A. Could be, yes. Yes.

5 Q. And when you were managing Patience One,
6 did you put the security deposits in a separate
7 account?

8 A. No.

9 Q. You just put them in the operating fund
10 or --

11 A. Absolutely.

12 Q. And so you utilized those security
13 deposits?

14 A. If bills needed to be paid, yes.

15 Q. Okay.

16 THE COURT: Why didn't you segregate the
17 security deposits? Why didn't you keep those in a
18 separate fund, even it's noninterest bearing? Why
19 don't you keep those in a separate fund?

20 THE WITNESS: Why didn't I is because
21 BluePoint Development would always pay for whatever
22 needed to be paid for no matter what.

23 THE COURT: Is it your understanding at the
24 time -- and you managed this -- I'm going to say you
25 managed this property for at least four years, and you

1 testified you don't have a license as a professional
2 designated commercial property manager, but put that
3 aside.

4 It was your understanding -- would you
5 agree or disagree: Security deposits has been
6 deposited reflected in the exhibits that I've seen, in
7 the evidence I should say, in this case for this
8 property. When those are made, do those belong to --

9 THE WITNESS: The answer is no.

10 THE COURT: Do they belong to the landlord
11 at that time, or are they held like in a trust in the
12 event they're needed when the tenant vacates? Or do
13 you believe you can utilize those funds right way, if
14 need be, as a landlord?

15 THE WITNESS: I believe you could use those
16 funds as long as you have proper backup to back them up
17 if you needed.

18 THE COURT: So if you had to take, let's
19 say you had -- hypothetically, okay? Let's take Direct
20 Mobile Imaging, that they had a security deposit on
21 account. It says here 1600. I'm not saying it's true
22 or not, just follow me here. And there came time where
23 Patience One needed that money for supporting the
24 asset. Okay?

25 THE WITNESS: Um-hmm.

1 THE COURT: It's your testimony that
2 management of Patience One, which happened to be you at
3 the time, could take those security deposit funds, use
4 them for the property as long as they're readily
5 available to put them back --

6 THE WITNESS: Correct.

7 THE COURT: -- if the tenant was entitled
8 to them at a later time?

9 THE WITNESS: Absolutely.

10 THE COURT: Thank you.

11 BY MS. HIGBEE:

12 Q. When you transferred your interest in
13 September 2016 to Dr. Michaels, did you transfer the
14 security deposits to her?

15 A. This is a tricky one, because I didn't
16 empty the bank account. She had signing rights; she
17 emptied the bank account. She didn't ask me what it
18 was, she just took it.

19 So did anybody ask anything? Whatever they
20 took out -- I don't even know what they took out at the
21 time, so --

22 Q. All right. So we're talking about security
23 deposits.

24 A. Yeah.

25 Q. So are you trying to tell me that those

1 security deposits, how much ever they were, were in
2 that bank account when you left Patience One?

3 A. Do I know how much was in the bank account,
4 the answer is no.

5 Q. No. I'm really getting at, did you say,
6 here is the security deposits for these tenants?

7 A. No, I did not say that.

8 Q. You did not give her any separate
9 accounting for it, correct?

10 A. No.

11 Q. Those monies were spent, weren't they?

12 A. What's that?

13 Q. Those monies had been spent; isn't that
14 right?

15 A. I don't know how much she took out of the
16 account, so I can't tell you for sure.

17 Q. So you had the books and records for all
18 these years, and then suddenly in September of 2016 you
19 no longer know what's in the bank account at that time?

20 A. The answer is, at that time, when this all
21 happened, the answer is no, I didn't know how much was
22 in that account.

23 Q. Okay. But according to you, security
24 deposits, rent credit, there should have been a whole
25 lot of money in there, shouldn't there? Or was that

1 money spent?

2 A. No, there shouldn't have been a lot of
3 money in there.

4 Q. No? Okay.

5 A. Who paid for tenant improvements --
6 MS. HIGBEE: There's not a question.

7 THE COURT: There's no question.

8 Cross-examination, I'm sure you don't like
9 it, that's the way it works. Your lawyer can come back
10 and ask you things.

11 THE WITNESS: Okay.

12 BY MS. HIGBEE:

13 Q. This is really important. I want to make
14 sure that I'm clear on this.

15 I believe that your attorney questioned you
16 about payments of rent in 2017. And if you would, turn
17 to Exhibit 7.

18 A. Okay.

19 Q. So you're no longer in Patience One in
20 2017; is that right?

21 A. Right.

22 Q. But you are paying rent to Patience One?

23 A. Absolutely.

24 Q. You paid all the way until October 2017,
25 correct?

1 A. Through October.

2 Q. Through October. All right.

3 And in fact, you paid rent in October and
4 November of 2016 as well, right?

5 A. Correct.

6 Q. So from the moment that you gave up your
7 interest in Patience One, you said that there's a rent
8 credit, correct?

9 A. Correct.

10 Q. But you paid rent every single month until
11 November 2017; is that right?

12 A. Correct.

13 Q. And you only brought up that there was a
14 rent credit in August of 2017?

15 A. Correct.

16 MS. HIGBEE: Court's indulgence. I think
17 I'm almost done.

18 THE COURT: Okay.

19 BY MS. HIGBEE:

20 Q. Okay. Then just to follow up to what we
21 were talking when earlier, which is that you paid rent
22 all the way from your exiting of Patience One until
23 November of 2017.

24 A. Correct.

25 Q. And you never received an eviction notice

1 even after you left Patience One until December of
2 2017?

3 A. I think that's correct. I don't know when
4 I received it.

5 Q. Well, we looked at it earlier, Exhibit B,
6 and it was December 2017; is that right?

7 A. Yes.

8 Q. Okay. And that's because you paid rent
9 during the entire time that you were there until
10 November of 2017; isn't that right?

11 A. Yes.

12 Q. There would be no basis for an eviction
13 during that time, correct?

14 A. That's correct.

15 Q. And then during the time that you were in
16 charge of Patience One, there was never an eviction
17 notice to you or to Dr. Michaels --

18 A. Never.

19 Q. -- is that right?

20 A. Never.

21 Q. Even though there were times when rent was
22 not paid; is that right?

23 A. No.

24 Q. No? Okay.

25 Show me the eviction notice.

1 A. What's that?

2 Q. I thought you said earlier to the Court
3 that there was never an eviction notice during the time
4 that you were in charge of Patience One to Dr. Michaels
5 or to BluePoint Development.

6 A. That's correct.

7 Q. Okay. All right. And that's because you
8 were in charge of both of those entities; isn't that
9 right?

10 A. The answer is no.

11 Q. No?

12 Is it because you were an owner of Patience
13 One and an owner of BluePoint Development that there
14 were no eviction notices?

15 A. There was no reason or no money that was
16 required during that time, so there was no reason to
17 evict anybody. And because we were husband and wife, I
18 wasn't going to evict her or even think about it.

19 Q. Okay. So the eviction notices on Exhibit B
20 and C came after you stopped paying rent; isn't that
21 right?

22 A. That's correct.

23 MS. HIGBEE: I don't have any further
24 questions, your Honor.

25 THE COURT: How much redirect do you have,

1 Mr. Winterton?

2 MR. WINTERTON: I think maybe half an hour.

3 THE COURT: Okay. We're going to take a
4 recess. It is 3:22. Let's come back in ten minutes.

5 We're off the record.

6 (A recess was taken from
7 3:22 p.m. to 3:38 p.m.)

8 THE COURT: Back on the record.

9 Mr. Pickens, remember, you're under oath.

10 And it's time for redirect examination.

11 Mr. Winterton.

12 MR. WINTERTON: Thank you, your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. WINTERTON:

16 Q. What I'm going to do is, I'm going to, with
17 Ms. Higbee's permission, use her chart and go over
18 these exhibits.

19 MS. HIGBEE: Okay.

20 THE COURT: No objection.

21 MR. WINTERTON: Thank you.

22 BY MR. WINTERTON:

23 Q. Now, the first one, I'm going to start at
24 the bottom and I'm going to go back up.

25 Now, the defense counsel has talked about

1 rent, 2013, and I don't know if they're claiming that
2 it was \$44,000 is owed or not. Let's go to Exhibit
3 Number 2.

4 Now, you had a property management company
5 that was operating the business; isn't that correct?

6 A. That's correct.

7 Q. And so they're the ones who did the
8 records, they're the ones that filled everything out?

9 A. Correct.

10 Q. Okay. Let's turn in to section 3. Go to
11 section 3.

12 MS. HIGBEE: Your Honor, if I may object to
13 the use of this exhibit. It's not in evidence yet, and
14 we don't have Sun Property Management here, and it's
15 for one month, not for the whole time frame for 2013.

16 THE COURT: Well, I did look at that. I
17 see no any type of authentication or custodian of
18 records affidavit.

19 MR. WINTERTON: He testified to it last
20 time, but I'll lay more foundation.

21 THE COURT: I'm going to allow -- I mean,
22 he did testify to it initially. I'm going to allow him
23 to testify within the scope of what he understands this
24 document to be. Overruled.

25 ///

1 BY MR. WINTERTON:

2 Q. Now, as you had Sun Property Management
3 managing the property, did you receive monthly
4 statements?

5 A. Yes.

6 Q. And as the manager of Patience One, LLC,
7 did you review these statements?

8 A. Briefly, yes.

9 Q. And they were important to you because it
10 shows -- were they important to you?

11 A. Absolutely.

12 Q. And why were they so important?

13 A. It gave me a clear picture of what the cash
14 flow of the overall property was to understand how much
15 money I needed, to make sure that was there, what was
16 needed to be covered, what rent was being collected or
17 as far as the amount. So it was important to manage
18 the property.

19 Q. Okay. And did you receive this statement
20 from Sun Property Management?

21 A. Yes.

22 Q. And they were your agents that managed
23 this?

24 A. Correct.

25 Q. And is this a true and correct copy of the

1 December 31st, 2013, statement you received?

2 A. Yes.

3 Q. Okay. Let's go to section 3.

4 THE COURT: Let me ask you. You testified
5 now a couple times now to Sun Property Management, and
6 eventually they ceased being a property manager for
7 Patience One, right?

8 THE WITNESS: Correct.

9 THE COURT: Did you terminate their
10 services?

11 THE WITNESS: Yes, I did.

12 THE COURT: At the time Sun was the
13 property manager, did they invoice tenants for rent?

14 THE WITNESS: No. Never. It was the same
15 thing, they would just pick up the rent. They didn't
16 invoice it.

17 THE COURT: Are you sure?

18 This detail I'm looking at, this cash flow
19 for December 2013, it looks fairly detailed here. And
20 you just indicated you relied on this.

21 Did you ever inquire of them about
22 invoicing rents or sending rent invoices on a monthly
23 basis to the tenants?

24 THE WITNESS: The only thing I can say is I
25 never received an invoice, so I'm assuming that nobody

1 else did too.

2 THE COURT: Okay. And how long were they
3 the property management for Patience One while you were
4 a co-owner of Patience One until you terminated them?

5 THE WITNESS: It was basically a year.

6 THE COURT: Thank you, sir.

7 MR. WINTERTON: Your Honor, we move for
8 admission of Exhibit Number 2.

9 THE COURT: Number 2. Any objection?

10 MS. HIGBEE: Again, what's the relevancy of
11 this document? And Patience -- I mean, no one from Sun
12 is here to testify to what these numbers mean as
13 opposed to what the witness, his own interpretation of
14 it, so...

15 MR. WINTERTON: It was prepared for him.
16 He has said he relied upon it, and he has knowledge,
17 and so he's going to testify.

18 THE COURT: He may testify to the document,
19 and it's been marked for identification purposes for
20 his testimony, but there's another hurdle there to have
21 this admitted as evidence.

22 I don't see the -- my concern is, no one
23 from Sun has been here. I don't see a custodial
24 records affidavit or authentication. It's one month,
25 December 2013. It doesn't show the full scope of the

1 tenure of the time they were property management
2 company before.

3 MR. WINTERTON: Actually, it does. I'm
4 getting to that, because it shows the accounts
5 receivable on section 3, and it says that the accounts
6 receivable, nothing is owed by BluePoint Development.

7 And so the property manager is sitting
8 there saying that no rent is owed for the whole year of
9 2013. If rent was owed, there should be something
10 there.

11 THE COURT: But he was evicted for
12 nonpayment of rent for two months at the end of the
13 2017, not 2013.

14 MR. WINTERTON: I agree, but I'm doing
15 redirect. She's saying, hey, wait a minute, there's a
16 credit here. You should be punished because of the
17 44,000. She puts that up there and says, since you
18 can't -- you haven't produced that package earlier of
19 the 2013, you should be punished for the 44. And what
20 I'm saying is, your Honor, we didn't feel like we
21 needed to because we produced what the property manager
22 said, and they said zero.

23 THE COURT: I understand your argument.
24 Ms. Higbee.

25 MS. HIGBEE: What I would say in response

1 is, then it's hearsay, because what's he's supposed to
2 be proving is how much rent he paid to create a credit,
3 not that he didn't owe anything. It's almost reverse
4 evidence. So I don't think it shows what he's trying
5 to make it show, but --

6 THE COURT: It is a hearsay document.

7 MR. WINTERTON: It is not, it's a business
8 record, which is an exception to hearsay.

9 THE COURT: He can't establish Sun's
10 business record.

11 MR. WINTERTON: No, he can establish
12 Patience One's business record that Sun gives him to
13 show the accounts. This is Patience One.

14 THE COURT: It's a fine line -- here is
15 what I'm going to do. I'm going to overrule the
16 objection. I'm going to admit it over the objection.
17 I'm going to give it the weight I feel it deserves,
18 nothing more. Thank you.

19 MR. WINTERTON: That works.

20 BY MR. WINTERTON:

21 Q. Okay. Let's go to section number 3. And
22 it shows the aged accounts receivable as of dated
23 December 31st, 2013. And it shows that -- I'll wait
24 until you get there.

25 THE COURT: Where? I'm sorry.

1 MR. WINTERTON: It's Exhibit 2, section 3.

2 BY MR. WINTERTON:

3 Q. This is an aged receivable summary, and it
4 talks about accounts receivable BluePoint Development.
5 Do you see that?

6 A. Yes.

7 Q. And there it says Unit 208, and that's your
8 unit, and it says Amounts Receivable, reflecting
9 whether or not money is owed, you didn't owe any back
10 rent at that time?

11 A. No.

12 Q. So her statement here claiming of 44,000
13 based upon your testimony is incorrect?

14 You need to speak orally, yes or no.

15 A. No, I didn't owe \$44,000.

16 Q. Okay. And in fact, your testimony is, you
17 paid the rent?

18 A. I paid \$52,000 or -- I can look for the
19 exact number.

20 Q. Okay. So this 44 -- and when they evicted
21 you, they didn't say you didn't pay that 44,000 did
22 they?

23 A. Correct.

24 Q. Okay. Now I'm going to jump to the joint
25 bank account.

1 Now, what she's claiming, the \$17,200
2 should be withdrawn because that came from a joint bank
3 account.

4 A. That's correct.

5 Q. And in fact, the 17,000 actually came from
6 you?

7 A. That's correct.

8 Q. In fact, prior to coming into this
9 courtroom, you went through the complete joint bank
10 account for every single year that's in question; is
11 that correct?

12 A. Correct.

13 Q. Did you ever find that Dr. Michaels put a
14 dime in here (indicating)?

15 A. The answer is no.

16 Now, to clarify -- can I clarify it?

17 THE COURT: Sure.

18 THE WITNESS: If you looked at that
19 document, there was a pay stub paid to me for any money
20 that came from BluePoint Medical. Other than that,
21 there was no checks deposited by Dr. Michaels in that
22 account, period.

23 THE COURT: Well, you took money out of
24 that account, right?

25 THE WITNESS: It was my personal account.

1 THE COURT: Wasn't it a joint account?

2 THE WITNESS: It was a joint account, but
3 no money was put in by her.

4 THE COURT: That's not what I'm asking.

5 We did this earlier. That account has both
6 Danka Michaels and Thomas Pickens on it, correct?

7 THE WITNESS: Correct.

8 THE COURT: As I said, you can write a
9 check for \$100 and not have to ask her for her
10 authority.

11 THE WITNESS: Correct.

12 THE COURT: She could write a check for
13 \$100 and not need your authority, correct?

14 THE WITNESS: Correct.

15 THE COURT: So all the money that was ever
16 deposited in that account, even if it all came from
17 you, it came from Ms. Michaels, or a Martian on the
18 moon, when it goes in that account, would you agree
19 it's both your monies jointly and severally?

20 MR. WINTERTON: Objection to the extent it
21 calls for a legal conclusion.

22 THE COURT: It does. And I withdraw that
23 question.

24 But would you agree though that any money
25 in that account, based on your understanding, would

1 belong to both of you, regardless of where it came
2 from?

3 THE WITNESS: Here is the statement that I
4 have. She has rights to sign any account that I have,
5 even BluePoint Development and Patience One, to write
6 any check she wants. She has all the rights to sign
7 every single bank account that I have.

8 THE COURT: We're talking about this joint
9 account.

10 THE WITNESS: I know, but I'm just trying
11 to say, she can do that on all the accounts, and I
12 wouldn't question it.

13 THE COURT: We're not asking that question.

14 Those funds in there would jointly be --
15 those are jointly owned by either you or her or both of
16 you together. They're jointly owned, the funds in that
17 account.

18 MR. WINTERTON: Again, to the extent calls
19 for a legal conclusion.

20 THE WITNESS: Yeah, it becomes -- I can say
21 that because she's my wife, and she has the right to
22 whatever she wants to do with that account, even though
23 she didn't put any money into that account.

24 THE COURT: She's still on there.

25 THE WITNESS: She's still on there, but

1 she's on all my other accounts.

2 THE COURT: It's just like if you put money
3 into your child's bank account, and it's 17 for
4 college, and you're on the account, the kid ain't
5 putting the money in, mommy or daddy is, but it's still
6 the kid can take the money.

7 THE WITNESS: To go to that extent, then I
8 have the right to write the 17,200 to Patience One
9 because it's my money too, correct?

10 THE COURT: I'm not going to answer that
11 question. That's what you did.

12 THE WITNESS: Exactly.

13 THE COURT: You have a right to spend that
14 money, exactly.

15 THE WITNESS: All right. So it shouldn't
16 be on the board.

17 THE COURT: How you take the credit in a
18 different transaction is a different question. But
19 that's not for me to ask, that's the dispute for your
20 advocates to deal with.

21 MR. WINTERTON: Exactly. You guys are just
22 covering what I'm covering here.

23 THE WITNESS: Sorry about that.

24 THE COURT: We just saved 20 minutes. Go
25 ahead.

1 BY MR. WINTERTON:

2 Q. Yeah, when you talked about 17,200, that
3 was your money, but if it's even in a joint account,
4 it's both your money, there's nothing prohibiting you
5 to use that money to pay rent?

6 A. Absolutely not.

7 Q. Now, you were the manager of Patience One?

8 A. Correct.

9 Q. You were the manager of BluePoint
10 Development?

11 A. Correct.

12 Q. You have a right to claim it if it's a rent
13 or not rent?

14 A. Absolutely.

15 Q. Nobody else has disputed that, have they?

16 A. No.

17 Q. Until now.

18 A. Correct.

19 Q. When they have tried to evict you or locked
20 you out, did they tell you that the 17,200 didn't
21 apply?

22 A. No.

23 Q. Did they ask for records regarding the
24 17,200?

25 A. No.

1 Q. Did they ask for records regarding the
2 44,000?

3 A. No.

4 Q. And in fact, their accountant had all these
5 records?

6 A. Absolutely.

7 Q. They had access to the complete bank
8 account?

9 A. Absolutely.

10 Q. Okay. No bank statement of 24,000.

11 In this legal proceeding, have you heard
12 any testimony that the 24,000 was not paid?

13 A. No.

14 Q. They're saying just because you don't have
15 those bank statements with us sitting here, that it
16 wasn't paid.

17 A. That's correct.

18 Q. Now, when they tried to evict you, did they
19 say it wasn't paid?

20 A. No.

21 Q. Did they try to say, hey, you owe this
22 \$24,000?

23 A. No.

24 Q. So the evidence we have is, you personally
25 looked and you've seen it, and it's your testimony you

1 paid it, and there's no eviction based upon the 24; is
2 that correct?

3 A. That's correct.

4 Q. Okay. \$10,000. Now, they're claiming that
5 there was a deposit.

6 What is your understanding of this 10,000?

7 A. That probably shouldn't even be on the
8 board for one reason, because I wasn't disputing the
9 deposit. I was disputing the transfer of money from
10 BluePoint Development into that account.

11 There was two 10,000 numbers there. One
12 was on top for a deposit. It had nothing to do with
13 it. The bottom one, in my record I actually showed a
14 deduction of it saying I don't know what it was for.
15 I'm not claiming one way or another, I'm deducting it.

16 Q. So it's a wash?

17 A. Yes, sir.

18 Q. But they're trying to claim a \$10,000
19 deduction on a wash?

20 A. Correct.

21 Q. Let's look at the utilities.

22 Exhibit I are utilities. I'm not going to
23 spend a lot of time because it's not going to make or
24 break this. She's wanting a credit of \$3,400.

25 I went through and quickly added up all the

1 bills, the utility bills, for Nevada Power. Came out
2 to about 2,800. I don't know how they're coming up
3 with the 34 --

4 MS. HIGBEE: Your Honor, is he testifying
5 or is he asking a question?

6 MR. WINTERTON: I'll get to the question.

7 THE COURT: I mean, you're offering facts
8 based on arithmetic that you did, not your client.

9 MR. WINTERTON: I'm trying to save time.

10 THE COURT: I appreciate that. If you want
11 to attack that number, that's one thing, but that's not
12 the way to save time.

13 BY MR. WINTERTON:

14 Q. Okay.

15 If I were to tell you that that number is
16 based upon how much you paid, but it's not based upon
17 what the utilities really were, would you believe that?

18 A. Yes.

19 MR. WINTERTON: And I would ask that the
20 Court take judicial notice of Exhibit I, which are all
21 the Nevada Bank statements.

22 THE COURT: You mean Nevada Energy.

23 MR. WINTERTON: Or Nevada Power, yeah.

24 THE COURT: Take judicial notice of what?

25 MR. WINTERTON: The dollar amounts.

1 MS. HIGBEE: Your Honor, they're already in
2 evidence. I don't know what judicial notice does for
3 it.

4 THE COURT: The documents speak for
5 themselves. They're admitted. I don't need to take
6 judicial notice. They are what they are. If it's
7 2800, if it's 3800, 3400, they are what they are.

8 MR. WINTERTON: Okay. Thank you.

9 BY MR. WINTERTON:

10 Q. Now, where in the lease does it state that
11 BluePoint Development is supposed pay taxes?

12 A. It doesn't.

13 Q. So as the manager of BluePoint Development,
14 you made a decision; is that correct?

15 A. Correct.

16 Q. And that decision was to pay the taxes?

17 A. That's correct.

18 Q. And it's Patience One?

19 A. Correct.

20 Q. So you could have paid from BluePoint
21 Development to Patience One and then turn around and
22 paid the taxes?

23 A. Correct.

24 Q. So you considered -- and when you were the
25 manager of Patience One, did you ever take the rents

1 and use that to pay the property taxes?

2 A. If there was money there, yes.

3 Q. Okay. Same with -- so for both of these,
4 it comes from rent?

5 A. Correct.

6 Q. And so if it comes from rent, you made the
7 decision that these payments should be rent, and you
8 categorized them as rent?

9 A. Correct.

10 Q. And did Dr. Michaels ever say no, don't do
11 that?

12 A. No.

13 Q. Did Jakub ever say no, don't do that?

14 A. No.

15 Q. Have they ever challenged those payments?

16 A. No.

17 Q. Your accountant, when he did his taxes, did
18 anyone ever challenge that?

19 A. No.

20 Q. Let's look at the insurance.

21 Who is responsible for paying the insurance
22 on the property?

23 A. Patience One.

24 Q. Okay. If you didn't have insurance -- and
25 if you don't know, let me know.

1 If you didn't have insurance on the
2 property, what would Wells Fargo do?

3 MS. HIGBEE: Objection. Relevance.

4 THE COURT: Sustained.

5 BY MR. WINTERTON:

6 Q. So Patience One -- whose name was the
7 policy under under Patience One?

8 A. It was under Patience One.

9 Q. Okay. So the insurance --

10 A. Or Patience One, LLC.

11 Q. Oh, okay. So that's what the insurance
12 policy?

13 A. Correct.

14 Q. And so BluePoint paid it?

15 A. Correct.

16 Q. And where does Patience One normally pay?

17 A. Out of the rent account.

18 Q. Okay. And at that time you were the
19 president, manager of Patience One, LLC?

20 A. Correct.

21 Q. You were the manager of BluePoint, LLC?

22 A. Correct.

23 Q. And you considered that as rent, it just --

24 A. Correct.

25 Q. -- went from there.

1 And, in fact, it benefited the other
2 tenants in the property?

3 A. Correct.

4 Q. So based upon that, you collected that as
5 part of your rent deduction?

6 A. Correct.

7 Q. I think we've talked about 12. Do you have
8 any comments you want to make about that 4,000?

9 A. I don't know if it is or isn't, so I took
10 it out.

11 Q. Okay. But it could be there, but you took
12 it out?

13 A. I just don't know. So what I didn't know,
14 I took out.

15 Q. So if we were to say these are Patience
16 One's, we've testified that they were paid on behalf of
17 Patience One, and it should have come from rent, all of
18 a sudden that number down there changes, and then we're
19 back to the credit.

20 If you want to take this and some of the
21 utilities, that probably drops it down to the 28 that
22 you're talking about.

23 THE COURT: Let me ask you a question.

24 THE WITNESS: Yes, sir.

25 THE COURT: At any time during your

1 management of Patience One, LLC and the actions you
2 took as a manager of Patience One, at the same time the
3 sole owner, president of the tenant BluePoint, was
4 there ever a time you considered that the actions you
5 took on behalf of BluePoint were not in the best
6 interest of Patience One of which you also owned
7 50 percent at the time?

8 THE WITNESS: Was there ever a time?
9 Absolutely.

10 THE COURT: Tell me when.

11 THE WITNESS: When this whole thing
12 started, because --

13 THE COURT: I'm talking about before you
14 assigned your interest to where you are today. I'm
15 talking about those three and a half years. You're
16 wearing two hats here.

17 THE WITNESS: Yeah.

18 THE COURT: And I don't want to ask you a
19 legal question, but I'm going to ask you the best way I
20 can.

21 THE WITNESS: Thank you.

22 THE COURT: Did there come a time when you
23 ever believed what you were doing on behalf of
24 BluePoint would maybe be adverse to the best interest
25 of Patience One, a conflict?

1 THE WITNESS: I never believed it was a
2 conflict. I mean, towards the end of it, it actually
3 felt that way because I felt like I was doing all this
4 stuff for Patience One, and I was getting no -- nobody
5 came back and said thank you for it. I mean, I felt --
6 the reason I did it is because the business was a
7 retirement program.

8 THE COURT: What business?

9 THE WITNESS: Patience One.

10 THE COURT: So your interest in Patience
11 One for you personally, it was an asset you were
12 looking to potentially utilize as a retirement asset?

13 THE WITNESS: Absolutely. I mean, it went
14 from 1.7 that we paid for it to probably 5 million
15 today.

16 THE COURT: Well, so you were going to do
17 whatever you could -- when I say you, BluePoint -- to
18 keep it going?

19 THE WITNESS: Absolutely. I wasn't going
20 to let it fall down. Never. I mean, that's my
21 weakness, I agree. I never should have done that
22 because now it's coming back --

23 THE COURT: Do you believe as you sit here
24 today that the credits that you're alleging that
25 Patience One owed BluePoint would be adverse to

1 Patience One's best interest, your vehicle for
2 retirement?

3 THE WITNESS: Oh, no. If anything, it
4 would have been a positive thing to my retirement.

5 What I did for Patience One and what I put
6 into Patience One, all of the money I put into Patience
7 One on TIs and everything else --

8 THE COURT: I understand that.

9 THE WITNESS: -- was to the benefit of my
10 retirement and the overall property.

11 THE COURT: Were you trying to recoup --
12 was BluePoint Development trying to recoup a
13 percentage, if not all of it, by taking unilateral
14 action to assess those as rent credits to BluePoint,
15 finding a vehicle for BluePoint to get paid back by
16 deeming them as rent credits?

17 THE WITNESS: In this?

18 THE COURT: Yes.

19 THE WITNESS: No, absolutely not.

20 I mean, when I did it, it was to the point
21 I was putting money into BluePoint -- or into Patience
22 One on the need that Patience One had. And was I
23 looking for -- to get money back or to - if we never
24 would have came into this and we would have kept going
25 as we would, I probably would have done the same thing.

1 THE COURT: At what point did the light go
2 on and tell you, hey, Patience One, I have rent credits
3 of at least \$20,000? Because for four years I don't
4 see that light going on.

5 THE WITNESS: The light didn't go on
6 because I wasn't paying electric because it wasn't
7 required. I didn't get my -- when the roof leaked in
8 the building and affected my office, and they said,
9 well, we're not going to fix it -- and I've done that
10 for every time it happened in the past -- that started
11 to say, wait a minute, is this because, what is the
12 reason for this. You're trying to destroy me as a
13 company and a person, because you're talking about a
14 \$3 million --

15 THE COURT: This is after you transferred
16 your interest?

17 THE WITNESS: Correct.

18 THE COURT: Let me ask on this lease,
19 Exhibit 1. Who drafted this two-page lease? There's
20 two of them here.

21 THE WITNESS: To be honest, I don't
22 remember who gave it to us.

23 THE COURT: You didn't draft these?

24 THE WITNESS: No, I did not draft them.

25 THE COURT: You don't know who did?

1 THE WITNESS: I don't remember, no.

2 THE COURT: Another question I have, and
3 I'm sorry, I probably should know this and maybe I've
4 missed something here. I understand what Patience One
5 is to a great extent, but what I want to know is, who
6 was the deed/title owner to the building on Buffalo?

7 THE WITNESS: Patience One.

8 THE COURT: Patience One is the title owner
9 of the real estate, the bricks and mortar?

10 THE WITNESS: I don't -- I can't say off
11 the top of my head.

12 THE COURT: You have to know that, I mean,
13 that address of 3320 North Buffalo Drive.

14 THE WITNESS: The reason I'm saying that is
15 because Patience One went into the estate planning
16 programs on each side.

17 THE COURT: Okay. When you assigned your
18 interest -- your trust assigned that interest to
19 Mich-Mich, was that also assigning any real property
20 interest, equity title rights you may have in the
21 asset, the real estate, the buildings, the land, which
22 is referred to as 3320 North Buffalo? You were giving
23 that up as well, if you had any?

24 THE WITNESS: Again, this is going into the
25 other court hearing --

1 THE COURT: Let me ask you -- I don't want
2 to get into -- this is important for the Court.

3 Did your trust own 50 percent of that real
4 estate?

5 THE WITNESS: Yeah.

6 THE COURT: When you did the transfer on or
7 about September 2016, you assigned all that interest to
8 the assignee Mich-Mich, right?

9 THE WITNESS: Yes.

10 THE COURT: At that point you have no
11 interest at all in that real estate or that building,
12 your trust?

13 MR. WINTERTON: To the extent that calls
14 for a legal conclusion --

15 THE COURT: Well, I'm asking --

16 THE WITNESS: Can I answer it?

17 THE COURT: Yeah.

18 THE WITNESS: I am at this point going to
19 try to get my interest back --

20 THE COURT: So that's an issue of dispute
21 in another court.

22 I appreciate where you're going. We're not
23 going to go there. Thank you.

24 Continue, Mr. Winterton. I just needed to
25 clear up a couple things.

1 THE WITNESS: I understand.

2 THE COURT: Sorry, but I've been having a
3 note here to ask that, and I finally did.

4 MR. WINTERTON: That's fine, your Honor.

5 THE WITNESS: It may be more confusing to
6 me.

7 BY MR. WINTERTON:

8 Q. What I would like to do is go to Exhibit
9 Number 6, and I want to go to the first page of
10 September 1, 2016, September 30th, 2016.

11 Okay. The testimony that's been given is,
12 in September of 2016 is when the interest was
13 transferred.

14 A. Correct.

15 Q. And that's where they took over the bank
16 account and all of that?

17 A. Correct.

18 Q. And they talked about no money for the
19 deposit; isn't that correct?

20 A. Correct.

21 Q. Now, in this statement it shows that the
22 beginning balance was 193,000; isn't that correct?

23 A. I'm sorry, I'm not on that. Which --

24 Q. It's Wells Fargo Business Choice Checking
25 Account, September 1, 2016 through September 30th.

1 A. This is BluePoint Development's bank
2 account.

3 Q. Okay. I was looking at the wrong one then.

4 THE COURT: Wells Fargo.

5 THE WITNESS: Yeah, that's BluePoint's
6 account, not Patience One.

7 BY MR. WINTERTON:

8 Q. I misunderstood. For some reason I was
9 thinking that was their bank account.

10 So we don't have -- they took over the bank
11 account, so we don't have the bank account figures at
12 this time?

13 A. No.

14 Q. Okay. Now, in regards to -- and I asked
15 Jakub this question. When they took over the building,
16 that any leases that were there were still in the same
17 place and were to continue; isn't that correct?

18 A. Correct.

19 Q. And any rents or accounts receivable, back
20 and forth, was the same?

21 A. Correct.

22 Q. Is there any documentation that says, that
23 you know, in that transfer that says, hey, we wipe
24 everything out, start from zero?

25 A. No.

1 MR. WINTERTON: I have no further
2 questions, your Honor.

3 THE COURT: Thank you, Mr. Winterton.
4 Any recross, Ms. Higbee?

5 MS. HIGBEE: One second, please.

6 MR. WINTERTON: Is that close to 30
7 minutes?

8 THE COURT: You did great.

9 MS. HIGBEE: Yes, your Honor, just a couple
10 questions please.

11

12 RECROSS EXAMINATION

13 BY MS. HIGBEE:

14 Q. If you would, Mr. Pickens, please turn to
15 Exhibit 2, and then from there turn to section 6 of
16 that document.

17 You testified that there was no rent due
18 from BluePoint Development in December of 2013; is that
19 right?

20 A. What's that?

21 Q. You testified earlier to your counsel and
22 this Court that in December of 2013, the date of this
23 statement, there was no money due and owing for rent
24 from BluePoint Development, correct?

25 A. This is 1/10, 2014. Is that the one you're

1 looking at?

2 I just want to make sure I'm on the same
3 page.

4 Q. Yes. Exhibit 2, the front says Month
5 Ending December 31st, 2013.

6 A. That's correct.

7 Q. Is that what your testimony was, was that
8 there was no outstanding rent due and owing?

9 A. That's correct.

10 Q. But this document doesn't reflect the
11 payments that you made, does it?

12 Does it show a payment of rent that you
13 made in December of 2013?

14 A. Absolutely.

15 Q. It does?

16 A. Yeah.

17 Q. Let's turn to section 6 and let's see how
18 that shows.

19 There's some -- this is the deposit
20 register, which would show the deposits coming in;
21 isn't that right?

22 A. Section 6.

23 Q. Section 6 of Exhibit 2.

24 MR. MAUPIN: Same exhibit. It's section 6
25 of that exhibit.

1 THE WITNESS: Okay. I'm sorry.

2 Section 6?

3 BY MS. HIGBEE:

4 Q. Correct.

5 A. Where?

6 Q. Is this a deposit register that purports to
7 show payments made during the month of December 2013?

8 A. In December?

9 Q. Yes.

10 THE COURT: It's a one-page document,
11 section 6.

12 THE WITNESS: Yeah.

13 BY MS. HIGBEE:

14 Q. And in fact, it shows in the first two
15 memos that there was rent payments made; is that
16 accurate?

17 A. Correct.

18 Q. And then it shows that there's owner
19 transfers, and it shows owner contribution, owner
20 contribution, owner contribution; isn't that
21 right?

22 MR. MAUPIN: Same page.

23 THE COURT: It's the same page, sir.

24 THE WITNESS: Oh, no, that's correct.

25 ///

1 BY MS. HIGBEE:

2 Q. It doesn't show any payment of rent from
3 BluePoint Development during December, does it?

4 A. In December?

5 Q. It doesn't show it at all, does it?

6 A. I'm not on the right page, because I'm
7 looking at December -- or 12/27/13, a wire transfer
8 from checking account 2561 for \$4,000.

9 Q. Correct. And does it say rent or does it
10 say owner contribution?

11 A. I don't care what it says, it's for rent.

12 Q. Oh, okay.

13 Well, you're saying that their rent was
14 paid. Was it an owner contribution, or are you saying
15 Sun Property is incorrect?

16 A. There's a question on whether Sun Property
17 was correct ever when it comes to that. I mean, just
18 because we put money into it, it's not -- I think
19 there's -- I'm sorry.

20 Q. Let's go back to what the question was.

21 A. Go ahead.

22 Q. It doesn't show that BluePoint Development
23 paid rent, does it?

24 A. It doesn't say for rent.

25 Q. Correct. It says "owner contribution."

1 A. Correct.

2 Q. Thank you.

3 A. Can -- never mind.

4 THE COURT: There's no question pending.

5 THE WITNESS: Yeah, I know.

6 BY MS. HIGBEE:

7 Q. One more question about the utilities.

8 Your counsel added up the utility bills
9 that we have as Exhibit K --

10 MR. MAUPIN: I.

11 BY MS. HIGBEE:

12 Q. I.

13 -- and said they weren't \$3,404 that I have
14 here.

15 Wasn't it your testimony earlier today that
16 all of the rents over 4,000 were for utilities from the
17 time that you left Patience One?

18 A. What I testified was that --

19 Q. It's a yes or no question.

20 A. Yes.

21 MS. HIGBEE: Nothing else.

22 THE COURT: Thank you.

23 Do you have a redirect question?

24 MR. WINTERTON: Just a couple.

25 THE COURT: I'm sure.

1 FURTHER REDIRECT EXAMINATION

2 BY MR. WINTERTON:

3 Q. You wanted to make a statement about this.
4 What was the statement you wanted to make?

5 A. My statement is really simple. I never
6 owed utilities in the first place. I did it because
7 they invoiced me, and therefore I paid what was on the
8 invoice. Just like when I paid the garbage bills and
9 everything else.

10 There was a \$2,000 credit when I left on
11 the garbage -- a \$4,000 credit. So I always overpaid
12 things. And I always paid things that were ever sent
13 to me, whether right or wrong. It's just me.

14 So go ahead.

15 Q. Okay. Let's go quickly to that section 6
16 that she's referring to that they stated "owner
17 contribution," and it's \$4,000.

18 A. Correct.

19 Q. Is that the rent that was paid?

20 A. It was for rent, absolutely.

21 MR. WINTERTON: No further questions, your
22 Honor.

23 THE COURT: Thank you.

24 No further questions of this witness at
25 this time?

1 Mr. Pickens, you can have a seat. You can
2 leave all the documents there, please.

3 THE WITNESS: Okay. Even these?

4 THE COURT: Leave it all right there, yes.
5 Next witness, Mr. Winterton.

6
7 (This ends the testimony of
8 Thomas A. Pickens.)

9
10 * * * * *

1 LAS VEGAS, NEVADA; APRIL 20, 2018

2 7:00 P.M.

3 -000-

4
5 DECISION OF THE COURT

6
7 THE COURT: We're calling case 18C003465,
8 BluePoint Development versus Patience One, LLC.

9 This case has been on hearing for the
10 better part of a day and a half on Plaintiff's
11 Application for a Permanent Writ of Restitution.

12 By way of background, some jurisdictional
13 statement I'll make for the record, that the Court does
14 have jurisdiction pursuant to 118C2.220(1). On
15 April 10th, 2018, this Court signed an order granting a
16 Temporary Writ of Restitution, which was the
17 prerequisite and standing that allowed the plaintiff to
18 be here today for its application for a Permanent Writ
19 of Restitution for the subject premises.

20 Initially I would like to say that both
21 sides worked very hard and talked to their clients
22 here. I'll give my decision in a moment and go through
23 my analysis to some extent, because you deserve that.
24 You put a lot of work into this. It's not easy, and
25 it's not an easy decision for me, I will tell you this.

1 I will tell you that I flip-flopped back
2 and forth throughout the proceedings of where I thought
3 I was, where I thought I was going, where I know wasn't
4 going but then I went there. That's why I keep an open
5 mind.

6 These are very good attorneys, very well
7 experienced in commercial and complex litigation.
8 There's a lot of work that goes into this. I know you
9 folks see that, you participate, and you pay for it.
10 There's a lot here, and the burden is significant for
11 both sides in what they have to do.

12 And being a practitioner for 25 years and
13 dealing with these issues in my private practice, I
14 also have an appreciation what goes into what you have
15 to do. So even though I sit here as a, quote,
16 substitute teacher, I'm experienced in this area, and I
17 know a hell of a lot has to be done.

18 I don't take this decision lightly. It's
19 difficult, but it's what we need to do, and that's what
20 the Court swears me to do, and that's why I'm here,
21 initially.

22 It's the burden of the plaintiff to show,
23 number one, that there was an unlawful lockout, so I'm
24 going to do that analysis.

25 After hearing all the evidence, the Court

1 finds that NRS 118C.200, Service, the section that
2 speaks to service, specifically subsections 3 and 4,
3 have been complied with. Specifically, Defendant's
4 Exhibits B and C that were entered in evidence.

5 The Court finds that certified mail receipt
6 signed by Dara Lesmeister was good at the commercial
7 premises she signed for on December 29, 2017;
8 therefore, it was proper. So on that issue, the
9 plaintiff has failed to prove by preponderance of the
10 evidence that the lockout on January 5, 2018, was
11 unlawful.

12 We go to the next test for the plaintiff to
13 prevail. It is the plaintiff's burden of proof to
14 prove by a preponderance of the evidence that it had a
15 rent credit at the time of lockout on January 5, 2018.
16 Let me start that analysis.

17 It's not unusual in business relationships
18 when you have professionals, for them to not be
19 involved in the day-to-day operations in the management
20 of an asset. That's, in fact, more so than not.

21 So when a professional or just say a
22 nonactive partner in a business is not involved in the
23 day-to-day operations, for whatever reason -- it could
24 be a doctor, lawyer, dentist, could be a retiree, it
25 could be someone that doesn't live in the

1 jurisdiction -- it's not unusual to delegate and
2 designate that to a third party. And it's not unusual
3 at all for a business partner, especially a 50 percent
4 equal ownership interest partner. And that's what
5 happened here.

6 Mr. Pickens had complete authority. He had
7 authority over this asset throughout the time line of
8 at least 2013 until he assigned that asset in
9 September -- or his company assigned the asset --
10 September 13, 2016.

11 So it's quite a bit of time. Quite a bit
12 of time to do a lot of things in financial statements,
13 recordkeeping, allocations of how bills are paid, where
14 credits are taken, not taken, what you call base rent
15 or not base rent.

16 The Court looked closely at the exhibit. I
17 believe it was the Standard Multi-Tenant Office Lease.
18 The Court's a little troubled by that, the way it was
19 drafted. I think it was a little sloppy. I understand
20 how it can happen, banks need something in place, so
21 you put a document together. That's not that unusual.

22 However, it does become important when you
23 get to litigation, and you have to support that
24 document and what the terms and the intent and
25 definitions mean, and what's the obligations of the

1 parties when they come before a court of law.

2 Base rent. It's the Court's determination
3 that base rent is strictly base rent. It did not
4 include insurance, it did not include taxes, it did not
5 include utilities. This was not a triple net lease.
6 This was a base rent of \$4,000, nothing more.

7 Mr. Pickens had authority. With that
8 authority the Court was also concerned with how you
9 carry out that authority. It was a significant period
10 of time when Mr. Pickens was 100 percent owner of the
11 tenant BluePoint, the plaintiff in this case. But at
12 the same time, he's also a 50 percent owner of the
13 landlord, the defendant in this case. So I asked that
14 question about potential conflicts or business
15 judgment, how you carry out that authority.

16 I think at all times -- I see nothing in
17 here that would lead that the Court to opine and
18 believe that Mr. Pickens is not a decent, honest man in
19 many respects. So my decisions I make are not pointing
20 to that, so I want anyone to understand that no one is
21 being pointed to as being shady, dishonest for
22 nefarious reasons.

23 I do believe that the recordkeeping here
24 was somewhat sloppy. I believe throughout the time
25 Mr. Pickens was managing, we'll call him the property

1 manager of the asset, it's the Court's finding, I
2 didn't believe he was always acting in the best
3 interest of the defendant asset, of Patience One.

4 And those reasons he explained. He
5 explained that there was shortfalls, and his company,
6 the plaintiff in this case, provided funds to make up
7 for that shortfall. I understand that. But it goes
8 further.

9 The credit issue and the time line of that
10 doesn't come up for quite some time. It doesn't come
11 up until end of August 2017.

12 I know the plaintiff has argued in many
13 ways to establish that a credit was carrying forward or
14 to be inferred being carried forward for those time
15 periods, approximately 2013 until the time the asset
16 was assigned on September 13th, 2016. But the first
17 time that Mr. Pickens made the issue of a claim for
18 rent credit was at the end of August 2017.

19 We heard a lot of testimony about exhibits,
20 Plaintiff's Exhibits 4 through 7, the bank statements.
21 I will tell you that there was a lot of ping-ponging
22 there of payments back and forth.

23 The bank statements were kind of all over
24 the board of what's going to be considered on the left
25 side of the ledger versus the right side of the ledger,

1 and at what time period, almost like a little
2 revisionist history I was picking up here. This was
3 all during the time he was the property manager, so
4 it's very relevant.

5 It's the Court's opinion that during that
6 relevant time period, Mr. Pickens cherry-picked and
7 advantageously line-itemed four years of payments that
8 he called rent credits. But he didn't do that until a
9 year after he assigned his interest in Patience One to
10 a business partner who happened to be a trust within
11 that entity. Only then did that become an issue. No
12 notice otherwise prior to that.

13 I understand the plaintiff wants the puzzle
14 to be put together and puts it in the Court's lap to
15 say, if you take a little bit of this and a little bit
16 of that, you come here and you move here, kind of,
17 would have, I don't know, but you know what, it's
18 credits, just accept it as rent credits.

19 All this Court saw was base rent of \$4,000.
20 There's no evidence in the documentation, the
21 documentation that's supposed to be the best documents
22 to prove a case, as you said, Mr. Winterton, I don't
23 see that those payments should be allocated towards
24 rent as argued by yourself as well as Mr. Pickens
25 throughout his testimony today.

1 The Court was concerned that why did the
2 plaintiff not establish a rent credit at the time of
3 his assignment. That was very, very important to this
4 Court.

5 On September 13, 2016, when that asset was
6 assigned, his interest, he testified -- I asked, what
7 consideration did you receive to give 50 percent of
8 that significant asset. And I think at one point
9 Mr. Pickens testified that may be a valuation of
10 \$5 million. Why? I understand that's changed now
11 versus what the market was at that time. Establish
12 some type of baseline of credit to work from or to
13 consider in consideration.

14 That may be for a different Court, in a
15 different Court in the other matters, but that is
16 something that I didn't hear in testimony of why on
17 September 13, 2016, when it says "consideration
18 received," why rent credits were not established and
19 reduced to some form of a writing between the plaintiff
20 and defendant.

21 On whether or not notice of a rental
22 arrearage was ever -- a delinquency was ever given to
23 Mr. Pickens, that was argued. And I thought
24 Mr. Winterton made a valiant effort to say, you know,
25 at the time they served the notice, you're only asking

1 for the two months, where is it at.

2 Well, the notices clearly say that there's
3 a delinquency of \$8,000. Both Exhibits B and C talk
4 about the dollar amount, and it's deemed an 8,000 --
5 alleged by the notice of an \$8,000 delinquency.

6 Mr. Pickens, or the plaintiff, BluePoint,
7 made rent payments for the better part of a year after
8 the assignment. Ultimately, a few months before he
9 stopped paying rent, that's when the emails came in
10 about saying, hey, where is my credit. That's the
11 first time that the evidence suggests in this hearing
12 that the defendant was put on notice of a credit claim.

13 Burden of proof. Much was made --

14 Before I get to that, the plaintiff paid
15 rents from October 2016 through approximately -- excuse
16 me, October 2016 through October 2017. It begs the
17 obvious question: Why, if there was a rent credit,
18 would the plaintiff continue to make those rent
19 payments after the assignment of his interest, or
20 BluePoint's interest, in Patience One.

21 It was argued and asked for the Court to
22 consider what documents were brought to court for
23 consideration versus what wasn't.

24 The Court finds there's no affirmative duty
25 on the defendant to bring any documents. There's no

1 burden shifting here in a case like this. They don't
2 have to provide contradictory documentary evidence the
3 way this case was presenting. And that's not unusual.
4 But the documents are subject to cross-examination,
5 that evidence is subject to cross-examination.

6 In this case the Court finds that those
7 documents, the evidence that was admitted in this case,
8 plaintiff's evidence, documentary evidence, did not
9 withstand the cross-examination from defendant. And
10 that's what this Court finds.

11 "The best documents win the case."
12 Sometimes. But in this case those documents in
13 conjunction with the testimony that I heard, primarily
14 from Mr. Pickens on behalf of the plaintiff entity,
15 actually tipped the scales in favor of the defendant.

16 It's this Court's decision on the
17 application for a Permanent Writ of Restitution that
18 the plaintiff failed to prove by a preponderance of the
19 evidence that a rent credit existed at the time of the
20 lockout on January 5, 2018.

21 Ms. Higbee, would your firm prepare the
22 order.

23 MS. HIGBEE: Absolutely.

24 THE COURT: Are there other issues we need
25 to address specifically with a bond?

1 Was there a bond issue we need to discuss,
2 or will you do it later in other papers?

3 MR. MAUPIN: Your Honor, there was an
4 \$8,000 bond posted as a part of this proceedings. We
5 are curious if, given the Judge's findings, if we would
6 be entitled to that bond.

7 THE COURT: Yes, you are entitled to that
8 bond.

9 It's the Court's order that that bond be --
10 that the process -- put that in the order, the process
11 to take place after the Court signs the order, that the
12 bond be transferred or relinquished to the defense.

13 Because that's a security -- that's the
14 security that's placed up under the statute to secure
15 the Temporary Writ of Restitution, and that's what's in
16 play on these cases if you prevail or not.

17 Anything else from the defense?

18 MS. HIGBEE: We would leave to ask for
19 attorney's fees and costs.

20 THE COURT: You will have leave to do that
21 in a separate application.

22 MS. HIGBEE: Okay.

23 MR. WINTERTON: And, your Honor, my
24 tenant's in there. Are you saying that at this point
25 in time he needs to move out, and if so, is there a

1 deadline?

2 THE COURT: Let's talk about that. Let's
3 do this as professionally as we can and as seamlessly.

4 How much time would he like? He's got a
5 bond. The bond's been posted. That bond has now been
6 awarded to the defense. So how much time do you need?

7 That bond, I think, was secured up to
8 May 1? Well, strike that. It really wasn't May 1.

9 How much time do you need?

10 MR. WINTERTON: That's a statement my
11 client will have to give.

12 THE COURT: Well, let's talk about that.
13 We can work that out here, and we can have a peaceful
14 transition.

15 Is there much to remove from the property?

16 MR. PICKENS: (Mr. Pickens nods head.)

17 THE COURT: What do you want to offer?

18 MR. MAUPIN: We would like to offer two
19 weeks, your Honor.

20 THE COURT: Today is April 20th, so that
21 would take us to May 4th. That's a Friday.

22 Is that sufficient time?

23 MR. PICKENS: No, sir.

24 THE COURT: How much time do you need?

25 MR. PICKENS: At least a month.

1 THE COURT: We're not going to go much
2 longer than two weeks.

3 MR. WINTERTON: Can we split the difference
4 and say three weeks?

5 THE COURT: Absolutely.

6 Part of the order needs to address that the
7 plaintiff will peacefully vacate the subject premises
8 before close of the day Friday, May 11th, 2018.

9 Anything else?

10 DR. MICHAELS: What time?

11 THE COURT: 11:59 p.m. Put that in there,
12 Friday, May 11, 2018. Three weeks.

13 Anything else?

14 MS. HIGBEE: No.

15 THE COURT: Prepare the order, Ms. Higbee,
16 Mr. Maupin.

17 Thank you, folks.

18 MS. HIGBEE: Thank you.

19 And thanks to your staff for staying.

20 THE COURT: We are now adjourned.

21 MR. WINTERTON: And, of course, they will
22 run it past counsel?

23 THE COURT: Absolutely.

24 MS. HIGBEE: Of course.

25 THE COURT: I apologize. That needs to be

1 passed to Mr. Winterton to perform content approval.

2 MS. HIGBEE: Absolutely. Thank you, your
3 Honor.

4 (Whereupon, the proceedings
5 concluded at 7:20 p.m.)

6 (End of partial transcript.)

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1 C E R T I F I C A T E O F R E P O R T E R

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STATE OF NEVADA)

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SS:

COUNTY OF CLARK)

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5 I, Barbara Kulish, certified shorthand
6 reporter, do hereby certify that I took down in
7 shorthand (Stenotype) all of the proceedings had in
8 the before-entitled matter at the time and place
9 indicated; and that thereafter said shorthand notes
10 were transcribed into typewriting at and under my
11 direction and supervision; and the foregoing
12 transcript constitutes a full, true, and accurate
13 record of the proceedings had.

14 IN WITNESS WHEREOF, I have hereunto
15 affixed my hand this 21st day of May, 2018.

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Barbara Kulish, CCR #247, RPR

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| \$ | 81:19 | 73:17 96:9 140:25 | 11:19 | 12:42 |
| \$1,000 | \$32,000 | 141:4,10 142:24 | 104 | 89:1 |
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| \$10,000 | \$33,202.27 | \$916 | 105 | 47:16 130:17 |
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| 202:4,18 | \$35,000 | - | 106 | 13th |
| \$100 | 132:24 | - | 11:19 | 124:22 228:16 |
| 170:4,8 197:9,13 | \$36,710 | -000- | 1099 | 14 |
| \$12,000 | 74:23 | 5:3 123:3 223:3 | 113:7 | 39:15 47:17,20 |
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| \$166.10 | 50:20 66:1 68:25 | 039.52 | 5:2 | 15 |
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| \$25,000 | \$5,700 | | 64:21 | 17,200 |
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| \$3 | \$52,000 | | 30:11 | 184 |
| 211:14 | 195:18 | | 1200 | 16:24 |
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