

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;

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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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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 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 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 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 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
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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
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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
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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
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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 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
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Appendix of Exhibits in Support of Defendant’s Motion to Compel Discovery Responses	04/22/2019	II/AA00398-00440
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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
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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
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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
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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
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Plaintiff’s Trial Exhibit 134 - Life Insurance Statement 11/25/15	02/14/2020	XXXIII/AA 07842-07849
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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
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Plaintiff’s Trial Exhibit 20 - 2016 1040 Income Tax Return for Thomas A. Pickens	02/14/2020	XVI/AA03544- 03639
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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 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
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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
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Transcript RE: Non-Jury Trial	09/01/2020	X/AA02055-02070
Transcript RE: Non-Jury Trial Day 2	09/01/2020	X/AA02071-02086

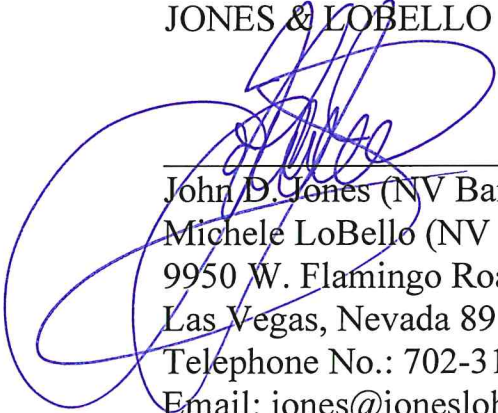
ALPHABETICAL INDEX OF APPELLANT’S APPENDIX VOLUME XXXV OF XXXVII		
DESCRIPTION	DATE FILED	VOL./PAGE No.
Transcript RE: Non-Jury Trial Day 3	10/28/2021	XIII/AA02957- XIV/AA03007
Transcript RE: Non-Jury Trial Day 4	10/28/2021	XIV/AA03008- 03040
Transcript RE: Non-Jury Trial Day 5	10/28/2021	XIV/AA03041- 03054
Trial Subpoena	01/29/2020	V/AA00906- 00909
Trial Subpoena Robert Semonian	01/28/2020	V/AA00892- 00898
Trial Subpoena Shannon L. Evans, Esq.	01/28/2020	V/AA00899- 00905

1 This Objection is made and based upon the papers and pleadings on file herein, the
2 attached Points and Authorities and Exhibits, and any argument the Court may wish
3 to entertain on the premises.
4

5 Respectfully submitted this 7 day of September, 2021.

6 Respectfully submitted,

7 JONES & LOBELLO

8
9
10 
11 John D. Jones (NV Bar No. 6699)
12 Michele LoBello (NV Bar No. 5527)
13 9950 W. Flamingo Road, #100
14 Las Vegas, Nevada 89147
15 Telephone No.: 702-318-5060
16 Email: jones@joneslobello.com
17 Email: lobello@joneslobello.com
18 Attorneys for Plaintiff,
19 THOMAS A. PICKENS

20 **I. INTRODUCTION**

21 It is not ordinarily the inclination of undersigned counsel to automatically
22 object to the fees claimed to be incurred by a colleague. In this case, however,
23 Nevada law precludes the relief sought by Defendant as it pertains to fees and costs.
24 Defendant's claim for attorney fees and costs is temporally precluded by clear and
25 unambiguous Rules and recent case law from the Nevada Supreme Court. Even if
26 there was a timely motion filed, as set forth hereinafter, there is no legal basis for an
27 award of attorney fees in this case. Finally, Nevada case law requires that the Court
28

1 consider the relative income of the parties when adjudicating any claim for attorney
2 fees. For these reasons, the Affidavit of Counsel and Memorandum of Fees and
3 Costs should be ignored by the Court and to the extent that is construed as a request
4 for relief, that relief should be denied as untimely and contrary to Nevada law.

5 6 **II. ANALYSIS**

7
8 The Decision of the Court, as it pertains to the issue of attorney fees, was as
9 follows:

10 **IT IS FURTHER ORDERED, ADJUDGED AND**
11 **DECREED** that Dr. Michaels is determined to be the prevailing party
12 in this matter. Dr. Michaels is awarded attorney fees and costs subject
13 to application for the relief and information provided therein.
14 Counsel for Dr. Michaels shall submit the appropriate memorandum of
15 fees and costs setting forth their analysis under *Brunzell* and shall also
16 submit their redacted billing statements in accordance with *Love* within
17 twenty days following the Notice of Entry of Order of the Findings of
18 Fact, Conclusions of Law, and Judgment. (emphasis added)

19 The key phrase in this Order is “subject to application for the relief and
20 information provided therein.” This portion of the Order meant that Defendant was
21 required to file the appropriate motion, or application, for relief in the nature of
22 attorney fees and costs. In this case, the Defendant has not filed a motion for costs
23 pursuant to NRS 18.110, or a motion attorney fees pursuant to NRCP 54. Defendant
24 has also not sought to alter or amend the Findings and Orders of the Court under
25 NRCP 52.

26
27 ///

1 Pursuant to NRCP 54, a motion for attorney fees following the entry of a
2 judgment must be filed within 21 days of the notice of entry. As such, any
3 “application” for attorney fees needed to be filed on or before August 26, 2021. To
4 date, no such motion has been filed. As such, any request for attorney fees is time
5 barred by the clear language of NRCP 54.
6

7 Pursuant to NRS 18.110, a claim or motion for costs must be filed within five
8 days of the Notice of Entry of the underlying judgment. In this case, the
9 memorandum of fees and costs was not filed until 20 days of the Notice of Entry.
10 As such, the request for reimbursement of costs is untimely and must be denied.
11

12 Even if the appropriate applications for attorney fees and costs were filed, and
13 filed timely, there are multiple reasons for the Court to deny any such relief to the
14 Defendant. The Nevada Supreme Court has unequivocally held “[i]t is well
15 established in Nevada that attorney fees are not recoverable unless allowed by
16 express or implied agreement or when authorized by Statute or Rule.” Miller v.
17 Wilfong, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005)
18
19
20

21 Since the Court concluded that this case is not a divorce case, there can be no
22 Sargeant argument. There was also no written agreement or implied agreement for
23 an award of attorney fees to the prevailing party. Moreover, the Court’s Findings
24 and Orders do not cite to any statute which would support an award of attorney fees.
25 In the absence of any such statutory authority, an award of attorney fees would not
26 be proper.
27
28

1 While the Court determined Defendant to be the “prevailing party”, in order
2 for Defendant to recover attorney fees under NRS 18.010, a finding that “the claim,
3 counterclaim, cross-claim or third-party complaint or defense of the opposing party
4 was brought or maintained without reasonable ground or to harass the prevailing
5 party.” Nev. Rev. Stat. Ann. § 18.010 (West). No such Finding was made by the
6 Court, and the Defendant did not seek to alter or amend the Findings. As such, there
7 exists no statutory authority upon which this Court could award attorney fees.
8 Defendant’s Memorandum and supporting Affidavit suggest she would be entitled
9 to a fee award pursuant to an offer of judgment whereby she demanded payment
10 from Tom. Defendant was not awarded \$20,000, as her offer requests. And again,
11 she failed to file a timely Motion. So her offer of judgment is moot.

12 Finally, Wright v. Osburn, 114 Nev 1367 (2008) requires the Court to consider
13 the relative income of the parties. When the Court compares the parties’ FDFs, there
14 is no way, given where the parties were left financially after the September of 2016
15 “transactions”, that the Court could, without abusing its discretion, award the
16 Defendant any amount of attorney fees.

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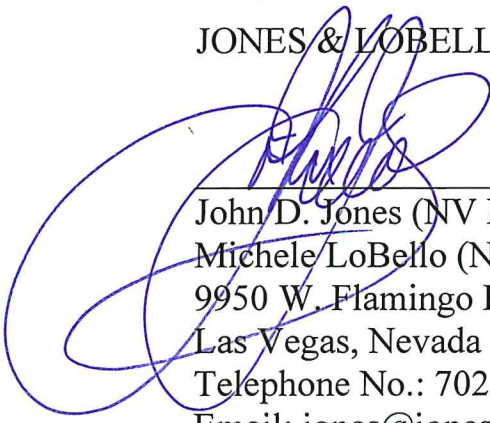
III. CONCLUSION

Based upon the forgoing clear and unambiguous authorities, no award of fees or costs to Defendant is permitted or appropriate in this case.

Respectfully submitted this 7 day of September, 2021.

Respectfully submitted,

JONES & LOBELLO



John D. Jones (NV Bar No. 6699)
Michele LoBello (NV Bar No. 5527)
9950 W. Flamingo Road, #100
Las Vegas, Nevada 89147
Telephone No.: 702-318-5060
Email: jones@joneslobello.com
Email: lobello@joneslobello.com
Attorneys for Plaintiff,
THOMAS A. PICKENS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of JONES & LOBELLO and that on the 7th day of September, 2021, I caused the above and foregoing document entitled foregoing PLAINTIFF'S OBJECTION TO DEFENDANT DANKA K. MICHAELS' MEMORANDUM OF FEES AND COSTS, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☒ by email to

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Jennifer V. Abrams, Esq.
The Abrams & Mayo Law Firm
6252 South Rainbow Blvd., #100
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Email: JVAGroup@TheAbramsLawFirm.com
Attorney for Defendant

Shawn M. Goldstein, Esq.
GOLDSTEIN LAW, LTD.
1980 Festival Plaza Drive, Suite 300
Las Vegas, NV 89135
Email: shawn@goldsteinlawltd.com
Attorney for Defendant,

///

JONES & LOBELLO

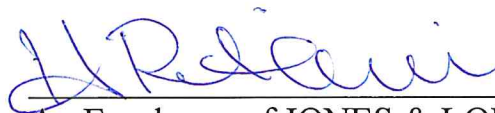
9950 W. Flamingo Road, #100

Las Vegas, Nevada 89147

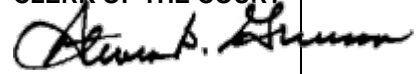
702-318-5060 FAX: 702-318-5070

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and that there is regular communication by mail between the place of mailing and
the place(s) so addressed.



An Employee of JONES & LOBELLO



RPLY

Jennifer V. Abrams, Esq. (7575)
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Attorney for Defendant

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Email: shawn@goldsteinlawltd.com
Co-counsel for Defendant

Eighth Judicial District Court - Family Division
Clark County, Nevada

THOMAS A. PICKENS, individually,)	Case No.: D-17-560737-D
and as trustee of the LV Blue Trust,)	Department: J
Plaintiff,)	
vs.)	Dates of Trial: February 14, 2020
	February 21, 2020
DANKA K. MICHAELS,)	March 5, 2021
individually, and as trustee of the)	March 12, 2021
Mich-Mich Trust,)	April 2, 2021
Defendant.)	Time of Trial: 9:00 a.m.
)	

DEFENDANT'S REPLY TO PLAINTIFF'S OBJECTION TO
MEMORANDUM OF FEES AND COSTS

COMES NOW, Defendant Danka K. Michaels by and through her
attorneys of record Jennifer V. Abrams, Esq. of The Abrams & Mayo Law

1 Firm, and Shawn M. Goldstein, Esq. of Goldstein Law Ltd. and hereby
2 submits her Reply to Plaintiff's Objection to Defendant Danka K.
3 Michaels Memorandum of Fees and Costs and hereby respectfully
4 requests that the Court Find and Order as follows:

5 1. Confirming the amount awarded to Defendant as and for her
6 attorney's fees and costs in the amount of \$268,908.19, plus interest;

7 2. Reducing said amount to judgment in favor of Defendant
8 and against Plaintiff;

9 3. Finding that Plaintiff's Objection is without merit;

10 4. Finding that the issue of the amount attorney's fees and costs
11 to be awarded is collateral to and independent from the part of the case
12 taken up by appeal;

13 5. For such other and further relief as requested herein and as
14 this Court deems just and necessary.

15 Dated: September 20, 2021

16 THE ABRAMS & MAYO LAW FIRM

17 /s/ Jennifer V. Abrams, Esq.

Jennifer V. Abrams, Esq.

18 Nevada State Bar Number: 7575

6252 South Rainbow Blvd., Suite 100

19 Las Vegas, Nevada 89118

Attorney for Defendant,

20 Danka K. Michaels

21

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. This Court Has Jurisdiction To Enter The Amount Of**
3 **Fees Awarded.**

4 As a preliminary matter, this Court is not divested of jurisdiction
5 to enter an award of attorney fees to Defendant Danka K. Michaels (“Dr.
6 Michaels”) as a result of Plaintiff Thomas A. Pickens (“Plaintiff”) appeal.
7 Where an issue is “entirely collateral to and independent from that part
8 of the case taken up by appeal, and in no way affected the merits of the
9 appeal,” district courts may grant relief while the case is on appeal.
10 *Bongiovi v. Bongiovi*, 94 Nev. 321, 579 P.2d 1246 (1978); *Kantor v.*
11 *Kantor*, 116 Nev. 886, 8 P.3d 825 (2000); *Mack-Manley v. Manley*. 122
12 Nev. 849, 138 P.3d 525 (2006); *Foster v. Dingwall*, 126 Nev. 49, 228
13 P.3d 453 (2010). The issue of the amount of attorney’s fees is collateral
14 to the part of the case which Plaintiff appealed and thus this Court does
15 have jurisdiction to rule on how much the award of attorney fees should
16 be¹.

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20 _____
21 ¹ The Court will recall that it already awarded Dr. Michael’s attorney’s fees in the Findings,
Conclusions of Law, and Judgment filed on August 3, 2021. The Memorandum of Fees and Costs
submitted was to confirm the amount of that award, not whether or not fees and costs should be
awarded.

1 **II. Reply to Plaintiff's Objection.**

2 In the interest of brevity, this Reply only addresses the arguments
3 raised in Plaintiff's Objection to Defendant Danka K. Michaels'
4 Memorandum of Fees and Costs. While each will be addressed more
5 fully in turn below, it is important to note that all of Plaintiff's
6 arguments are based upon some technicality (although he never actually
7 cites the rules, law, or statutes allegedly not complied with) and not the
8 actual merits of the amount of fees and costs sought by Dr. Michaels. It
9 should be further noted that Plaintiff did not take issue with a single
10 entry of time, nor did he make any argument whatsoever that the
11 amount sought by Dr. Michaels was unreasonable or excessive. His
12 failure to do so must be construed by the Court as an admission by
13 Plaintiff that the amount sought by Dr. Michaels, \$268,908.19 plus
14 interest (which is far less than the amount of fees Plaintiff incurred), is
15 reasonable.

16 **A. Dr. Michaels Is Not Precluded From An Award Of**
17 **Fees And Costs.**

18 First, Plaintiff argues at page 2, lines 23-24 that Defendant is
19 "temporally precluded by clear and unambiguous Rules and recent case
20 law from the Nevada Supreme Court." No such rules or cases are cited.
21

1 Even if Plaintiff is referring to NRS 18.110 and NRCP 54 as later noted in
2 his Objection, his argument is misplaced.

3 NRS 18.010(3) states: “In awarding attorney’s fees, the court may
4 pronounce its decision on the fees at the conclusion of the trial or special
5 proceeding without written motion and with or without presentation of
6 additional evidence.” Here, this Court ordered (at page 31, lines 3-10 of
7 the Findings of Fact, Conclusions of Law, and Judgment) that:

8 Dr. Michaels is determined to be the prevailing party in this
9 matter. Dr. Michaels is awarded attorney fees and costs
10 subject to application for the relief and information provided
11 therein. Counsel for Dr. Michaels shall submit the
12 appropriate memorandum of fees and costs setting forth
their analysis under *Brunzell* and shall also submit their
redacted billing statements in accordance with *Love* within
twenty days following the Notice of Entry of Order of the
Findings of Fact, Conclusions of Law, and Judgment.

13 Plaintiff then attempts to argue at page 4, lines 8-10 that, “Pursuant to
14 NRS 18.110, a claim or motion for costs must be filed within five days of
15 the Notice of Entry of the underlying judgment,” and then he claims that
16 because Dr. Michaels did not do so, her request for costs must be denied.
17 This argument is typical of the frivolous arguments made by Plaintiff to
18 support his position. NRS 18.110(1) states in full:

19 The party in whose favor judgment is rendered, and who
20 claims costs, must file with the clerk, and serve a copy upon
21 the adverse party, within 5 days after the entry of judgment,
or such further time as the court or judge may grant,
a memorandum of the items of the costs in the action or

1 proceeding, which memorandum must be verified by the
2 oath of the party, or the party's attorney or agent, or by the
3 clerk of the party's attorney, stating that to the best of his or
4 her knowledge and belief the items are correct, and that the
5 costs have been necessarily incurred in the action or
6 proceeding. (emphasis added)

7 The statute clearly states that this Court can grant a different time to file
8 the Memorandum. Here, the Court gave Dr. Michaels 20 days to do so
9 and the appropriate Memorandum of Fees and Costs setting forth the
10 *Brunzell* analysis, with redacted billing statements in accordance with
11 *Love*, was filed within that twenty-day deadline set by this Court.
12 Plaintiff's arguments about timeliness fail and, like his frivolous
13 arguments made throughout this case, such arguments should never
14 have been made.

15 Second, Plaintiff cites *Miller v. Wilfong* 121 Nev. 619, 119 P.3d 727
16 (2005) for the proposition that "attorney fees are not recoverable unless
17 allowed by express or implied agreement or when authorized by Statute
18 or Rule." Plaintiff then argues at page 4, lines 24-28 that "the Court's
19 Findings and Orders do not cite to any statute which would support an
20 award of attorney fees. In the absence of any such statutory authority, an
21 award of attorney fees would not be proper." This Court, however, did
22 conclude that Dr. Michaels was the "prevailing party" in determining
23 that an award of fees is proper. The "prevailing party" language was

1 taken straight from the text of NRS 18.010, which expressly authorizes
2 such an award.

3 Plaintiff next argues that there was no finding by this Court that
4 his “claim, counterclaim, cross-claim or third-party complaint or defense
5 [] was brought or maintained without reasonable ground or to harass
6 the prevailing party.” Respectfully, the 31-page decision does exactly
7 that, with extensive detail including, but not limited to the following:

- 8 a. “The Court found no credible intent by either Mr.
9 Pickens or Dr. Michaels to legally marry . . .” page 24,
lines 3-4.
- 10 b. “Mr. Pickens did not have a credible, good faith belief
11 that he was legally married to Dr. Michaels . . .” Page
24, lines 9-10.
- 12 c. “Mr. Pickens failed to establish that he and Dr.
13 Michaels were in a physician-patient relationship at
the time of the execution of the transfer documents.”
14 Page 24, lines 24-26.
- 15 d. “Mr. Pickens failed to prove any such [physician-
16 patient] relationship, vulnerability, or breach.” Page
25, lines 20-21.
- 17 e. “The court finds, under the totality of the
18 circumstances, that the parties engaged in lawful, valid
and enforceable contracts on September 13, 2016.”
Page 26, lines 22-24.
- 19 f. “Testimony and evidence satisfied the court that there
20 was no unjust enrichment by Dr. Michaels.” Page 27,
lines 19-20.

1 In sum, this Court found that Plaintiff brought and maintained this
2 action against Dr. Michaels without reasonable ground.

3 Plaintiff further argues that “Defendant was not awarded \$20,000 as
4 her offer [of judgment] requests.” The fees to be awarded by this Court
5 must be included, however, in determining if the offeree failed to obtain
6 a more favorable judgment. NRCP 68(g) provides:

7 If a party made an offer in a set amount that precluded a
8 separate award of costs, expenses, interest, and if attorney
9 fees are permitted by law or contract, attorney fees, the court
10 must compare the amount of the offer together with the
11 offeree’s pre-offer taxable costs, expenses, interest, and if
12 attorney fees are permitted by law or contract, attorney fees,
13 with the principal amount of the judgment.

14 Thus, if this Court is inclined to award Dr. Michaels more than \$20,000
15 in attorney fees and costs, then Plaintiff failed to obtain a more favorable
16 judgment. Moreover, Dr. Michaels propounded a second Offer of
17 Judgment which proposed a “walk away” – neither party taking any
18 from or paying anything to the other. Plaintiff also rejected that Offer of
19 Judgment.

20 Finally, Plaintiff relies on *Wright v. Osburn* 114 Nev. 1367, 970
21 P.2d 1071, (1998) to support his argument that the court must take into
consideration the relative incomes of the parties in awarding attorney
fees. While Plaintiff argues that *Sargeant v. Sargeant* does not apply

1 because the parties are unmarried, he does not explain why *Wright v.*
2 *Osburn* which was a divorce case between married persons, should apply
3 when the parties are unmarried as they are in this case. Nevertheless,
4 this consideration would not preclude an award of fees.

5 **B. NRS 18.010 Applies, Has Been Complied, With And**
6 **Should Be Liberally Construed In Favor Of Awarded**
7 **Dr. Michaels Her Fees And Costs Since Plaintiff's**
8 **Claims Were Maintained In Bad Faith.**

9 Pursuant to NRS 18.010(2)(b), the District Court “may make an
10 allowance of attorney’s fees to a prevailing party” whenever a “claim . . .
11 was brought or maintained without reasonable ground or to harass the
12 prevailing party.” “A claim is groundless if the allegations in the
13 complaint . . . are not supported by any credible evidence at trial.”
14 *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993)
15 (citations and internal quotation marks omitted). “Bad faith,” which
16 makes “the rationale for awarding attorney[’s] fees . . . even stronger,”
17 “may include conduct aimed at unwarranted delay or disrespectful of
18 truth and accuracy.” *Id.* Two aspects of Nevada’s fee-recovery statute
19 are particularly notable in the context of Dr. Michaels’ request for
20 attorneys’ fees in this action.

21 First, the Nevada Legislature has instructed district courts to take
frivolous litigation seriously in applying NRS 18.020(2)(b). The statutory

1 text explicitly provides that it is to be “liberally construed . . . in favor of
2 awarding attorney’s fees in all appropriate situations” so that courts
3 effectively “punish for and deter frivolous and vexatious claims” that
4 “overburden limited judicial resources, hinder the timely resolution of
5 meritorious claims and increase the costs of engaging in business and
6 providing professional services to the public.” *Id.* The Nevada Supreme
7 Court has emphasized that this “statutory language is clear” in that “it
8 encourages the district court to award attorney fees” and “reflects the
9 Legislature’s intent to liberalize attorney fee awards.” *Trustees of*
10 *Plumbers & Pipefitters Union Local 525 Health & Welfare Tr. Plan v.*
11 *Developers Sur. & Indem. Co.*, 120 Nev. 56, 62-63, 84 P.3d 59, 63
12 (2004). Thus, while the decision to award attorneys’ fees is subject to a
13 district court’s sound discretion (and reviewable under an abuse of
14 discretion standard), *see Semenza v. Caughlin Crafted Homes*, 111 Nev.
15 1089, 1095, 901 P.2d 684, 687 (1995), Nevada courts are to err in favor
16 of awarding attorneys’ fees to the prevailing parties where the elements
17 of NRS 18.020(2)(b) are met.

18 Second, and of importance here, with its 2003 amendment,
19 Nevada’s fee-recovery statute now provides that the duty of good faith
20 extends beyond the time the suit is filed. Sanctions in the form of
21 attorneys’ fees apply not merely when lawsuits are “brought” or “filed”

1 without a reasonable ground, but also whenever litigation is
2 “***maintained***” in bad faith. NRS 18.020(2)(b) (2003) (emphasis
3 added). As such, even if Plaintiff’s suit was filed in good faith in October
4 2017 (which it was not), Plaintiff is still liable for any attorneys’ fees
5 incurred by Dr. Michaels from the date he continued to maintain his suit
6 once it became clear it was groundless or if he engaged in unreasonable
7 or delaying tactics once the litigation was commenced. *See Barozzi v.*
8 *Benna*, 112 Nev. 635, 639-40, 918 P.2d 301, 303-04 (1996) (claims may
9 seem “*well grounded when initiated*,” but later prove groundless or
10 frivolous over time, as evidence “become[s] stale in the years preceding
11 trial,” or it becomes clear that allegations are not supported by evidence
12 produced through discovery), *as modified by Baldonado v. Wynn Las*
13 *Vegas, LLC*, 124 Nev. 951, 194 P.3d 96 (2008) (recognizing that,
14 following the 2003 amendment, NRS 18.020(2)(b) applies to claims that
15 were “initially frivolous” as well as claims that “become[] so later”).

16 **III. Conclusion.**

17 Dr. Michaels should be awarded fees and costs she has been
18 compelled to incur to defend against an action that should never have
19 been filed and should never have been maintained beyond the original
20 *Complaint for Divorce and for Set Aside of Deeds of Real Property and*
21 *Assignment of LLC Interest*. Dr. Michaels requests an award of fees

1 sufficient to make her whole and to allow her to receive the benefit of the
2 parties' agreement without the years' long unnecessary expenditure of
3 attorney fees and costs to defend herself against Plaintiff's frivolous
4 attempts to undue it. Dr. Michaels should be granted the relief request in
5 her Memorandum and herein, and Plaintiff's objections should be
6 denied.

7 DATED: Monday, September 20, 2021.

8 Respectfully Submitted,

9 THE ABRAMS & MAYO LAW FIRM

10 /s/ Jennifer V. Abrams, Esq.

Jennifer V. Abrams, Esq.

11 Nevada State Bar Number: 7575

6252 South Rainbow Blvd., Suite 100

12 Las Vegas, Nevada 89118

Attorney for Defendant,

13 Danka K. Michaels

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing REPLY TO OBJECTION TO MEMORANDUM OF FEES AND COSTS was filed electronically with the Eighth Judicial District Court in the above-entitled matter on Monday, September 20, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

Michele T. LoBello, Esq.
Attorney for Plaintiff

/s/ Chantel Wade
An Employee of The Abrams & Mayo Law Firm

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ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

FILED

OCT 28 2021

Thomas A. Pickens
CLERK OF COURT

THOMAS A. PICKENS,) CASE NO. D-17-560737-D
Plaintiff,) DEPT. J
)
vs.) NV SUPREME CT. APPEAL NO. 82388
)
DANKA K. MICHAELS,) SEALED
Defendant.)

CERTIFICATION OF TRANSCRIPTS NOTIFICATION OF COMPLETION

The Office of Transcript Video Services received a request for transcript and one copy, for the purposes of appeal from Michelle LoBello, Esq., on September 03, 2021 for the following proceedings in the above-captioned case:

MARCH 05, 2021; MARCH 12, 2021; APRIL 02, 2021
(FEBRUARY 14, 2020; FEBRUARY 21, 2020 - previously transcribed.)

I do hereby certify that copies of the transcript requested in the above-captioned case were submitted to be filed with the Eighth Judicial District Court on October 28, 2021, and ordering party was notified October 28, 2021.

DATED this 28th day of October, 2021.

Maria Balagtas
Maria Balagtas, Legal Office Assistant II
Transcription Video Services

EIGHTH JUDICIAL DISTRICT COURT - TRANSCRIPT VIDEO SERVICES
601 N. Pecos Road, Las Vegas, Nevada 89101 (702) 455-4977

AA08271

COPY

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

FILED

OCT 28 2021

Thomas A. Pickens
CLERK OF COURT

THOMAS A. PICKENS,) CASE NO. D-17-560737-D
Plaintiff,) DEPT. J
)
vs.) NV SUPREME CT. APPEAL NO. 82388
)
DANKA K. MICHAELS,) SEALED
Defendant.)

FINAL BILLING FOR TRANSCRIPTS

The office of Transcript Video Services filed transcripts for Michelle LoBello, Esq., on October 28, 2021 for the following proceedings in the above-captioned case:

MARCH 05, 2021; MARCH 12, 2021; APRIL 02, 2021
(FEBRUARY 14, 2020; FEBRUARY 21, 2020 - previously transcribed.)

Original transcript and one copy were requested.

The transcript total is 666 pages, for a final cost of \$2,644.69. A deposit in the amount of \$1,900.00 was received on September 14, 2021. The balance of \$744.69 was paid on October 28, 2021 directly to Verbatim Reporting and Transcription.

DATED this 28th day of October, 2021.

Maria Balagtas
Maria Balagtas, Legal Office Assistant II
Transcription Video Services

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EIGHTH JUDICIAL DISTRICT COURT - TRANSCRIPT VIDEO SERVICES
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1 **TRANS**

FILED

OCT 28 2021

Thomas A. Pickens
CLERK OF COURT

COPY

5 **EIGHTH JUDICIAL DISTRICT COURT**

6 **FAMILY DIVISION**

7 **CLARK COUNTY, NEVADA**

9 THOMAS A. PICKENS,)

10 Plaintiff,)

11 vs.)

12 DANKA K. MICHAELS,)

13 Defendant.)

CASE NO. D-17-560737-D

DEPT. J

APPEAL NO. 82388

16 BEFORE THE HONORABLE DIANNE STEEL
DISTRICT COURT JUDGE

18 TRANSCRIPT RE: NON-JURY TRIAL (DAY 3)

20 FRIDAY, MARCH 5, 2021

1 APPEARANCES:

2 The Plaintiff:
3 For the Plaintiff:

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DIRECT CROSS REDIRECT RECROSS

16 -- -- --

(None presented)

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ADMITTED

DEFENDANT'S
EXHIBITS:

74

1 LAS VEGAS, NEVADA

FRIDAY, MARCH 5, 2021

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 09:20:25)

4

5 THE COURT: Good morning, everyone. Please be
6 seated.

7 MR. JONES: Good morning, Your Honor.

8 MR. GOLDSTEIN: Good morning, Your Honor.

9 THE COURT: All right. This courtroom is designed
10 for much taller person. I'll do the best I can to see
11 everyone. All right.

12 MR. JONES: And given the distance, it probably
13 doesn't do well for soft talkers.

14 MR. GOLDSTEIN: It's a good thing you and I have
15 never been accused of that, I guess.

16 MR. GOLDSTEIN: Not once.

17 THE COURT: Okay. Yeah. Madam Clerk, I have to hit
18 something to get out of Veronica's -- case thing, here. What
19 do I hit? I apologize, everybody. I'll be right with you.

20 THE CLERK: There should be --

21 (Off record)

22 THE COURT: I'm so sorry for the delay.

23 THE CLERK: Oh, we're back on the record?

24 THE COURT: Yes, let's go back on the record. Thank

1 you. All right. Good morning. Judge Steel --

2 MR. GOLDSTEIN: Good morning .

3 THE COURT: -- here. You're -- it's been a year.

4 Reintroduc -- reintroduce myself. We're here on case number
5 560737. Can I have, please, appearances for the record?

6 MR. JONES: John Jones, Bar number 6699, and
7 Michelle Lobello, Bar number 5527, appearing on behalf of the
8 Plaintiff, who is also present.

9 THE COURT: Thank you.

10 MR. GOLDSTEIN: Good morning, Your Honor. Shawn
11 Goldstein, Bar number 9813. I'm appearing in person with
12 Stephanie Stolz of the Abrams and Mayo law firm. My client is
13 also present, Dr. Danka Michaels. And present via video, is
14 Ms. Abrams and Bar number, she'll tell you.

15 THE COURT: Thank you so much.

16 MS. LOBELLO: Good morning, Your Honor.

17 THE COURT: All right, let's play a little
18 groundwork here. I reviewed everything. I looked at the
19 transcripts that somebody has pulled up. I didn't see where
20 you rested, but the court clerk, in the minutes, said you
21 rested. Is there a --

22 MR. GOLDSTEIN: You did -- he --

23 MS. LOBELLO: We did not.

24 MR. GOLDSTEIN: Yeah, you did.

1 MR. JONES: I think we did.
2 MR. GOLDSTEIN: Yeah, they did.
3 THE COURT: I just want to make sure --
4 MS. LOBELLO: Yeah.
5 THE COURT: -- before we start.
6 MR. JONES: Ri -- because they were --
7 MS. LOBELLO: They had a witness out of order, I
8 think.
9 MR. JONES: Yeah, we did -- well, we did witnesses
10 out of order, --
11 MR. GOLDSTEIN: But then they rested.
12 MR. JONES: -- but then we rested --
13 THE COURT: Okay.
14 MR. JONES: -- and --
15 (whispered conversation)
16 MR. JONES: -- the day --
17 THE COURT: You were --
18 MR. JONES: -- of the --
19 THE COURT: -- cross examining.
20 MR. JONES: -- third day of trial, --
21 THE COURT: Right.
22 MR. JONES: -- I believe we got here in the morning
23 and that was the day that the Defendant's mom died and we
24 adjourned --

1 THE COURT: Right.

2 MR. JONES: -- almost immediately. But at that
3 point, I think it was your case.

4 MR. GOLDSTEIN: Yeah, it wa -- she had been called
5 in our case-in-chief briefly, and then --

6 THE COURT: Okay, so this is your case-in-chief --

7 MR. GOLDSTEIN: Yes, Your Honor

8 THE COURT: -- and we'll start there.

9 MR. GOLDSTEIN: Great.

10 THE COURT: Is there any other things that we need
11 to do? You're going to be text messaging, I guess, between
12 yourself and Ms. Abrams if there's any problem or issue?

13 MR. GOLDSTEIN: I -- I'm going to certainly, try,
14 Judge. It's obviously -- you know, we -- we'll see.
15 Hopefully, we can --

16 THE COURT: Ms. Abrams, just so that there's no
17 miscommunication or downtime, if you need to say a moment,
18 Your Honor, or something like that so that you can converse
19 with your Counsel here, in the courtroom, that will be great.

20 MR. GOLDSTEIN: And --

21 MS. ABRAMS: Okay.

22 MR. GOLDSTEIN: And frankly, Judge, if there is
23 something, I -- I may just turn to Ms. Abrams and say -- you
24 know, miss -- if the Court --

1 THE COURT: Well, --
2 MR. GOLDSTEIN: -- permits --
3 THE COURT: -- if she -- well, if she doesn't have
4 your attention, then she --
5 MR. JONES: I don't think you want us to hear that
6 conversation.
7 THE COURT: Yeah, no.
8 MR. GOLDSTEIN: No, no, no, I mean, I may just say
9 miss -- Ms. Abrams may address this issue, Your Honor, and let
10 her speak about it if that's permissible by the Court. That's
11 all.
12 THE COURT: No --
13 MR. GOLDSTEIN: If it's just an issue that I --
14 THE COURT: I don't have a problem with that.
15 MR. GOLDSTEIN: -- do not --
16 THE COURT: You've got --
17 MR. GOLDSTEIN: -- have awareness --
18 THE COURT: -- both Counsel --
19 MR. GOLDSTEIN: -- of. That's all.
20 THE COURT: -- that have been --
21 MR. JONES: I -- I --
22 THE COURT: -- involved.
23 MR. JONES: Obviously, I --
24 THE COURT: All right.

1 MR. JONES: -- I generally decide it on a -- an
2 instance -- incident-by-incident basis.

3 THE COURT: Okay, that's fine. Then, I guess we can
4 proceed. Who's going to call who --

5 MR. GOLDSTEIN: Yea --

6 THE COURT: -- first or --

7 MR. GOLDSTEIN: Thank you, Your Honor. Just before
8 we get started on -- one issue, Judge, I wanted to make clear.
9 I -- I, obviously, read all the trial transcripts as well,
10 watched trial videos, the deposition video of the Plaintiff,
11 read my client's depo -- I mean, I've -- you know, a lot of
12 work and you can see all these binders, obviously. So it was
13 quite an undertaking.

14 However, Judge, it -- one of the things that I
15 wanted to address, I -- I spoke briefly with Mr. Jones about
16 this, was -- was by my understanding of the pleadings, the
17 Plaintiff had not -- was no longer pursuing his claim to a
18 marriage. And that was obviously, because there was the
19 original complaint, first amended --

20 THE COURT: To a --

21 MR. GOLDSTEIN: -- complaint --

22 THE COURT: -- marriage that --

23 MR. JONES: Right.

24 THE COURT: -- could resolved by divorce, yeah.

1 MR. GOLDSTEIN: Correct. However, Judge, you will
2 recall, at least, in my review of the video, that Mr. Jones
3 professed that my client acknowledged that there was a
4 marriage and said he would be or could be amending his
5 complaint, under N.R.C.P. 14, to confir -- you know, conform
6 to the evidence, as if there may have been this idea that we
7 are -- he -- he is now -- the Plaintiff is now going to
8 proceed without that claim. I -- there's no stipulation from
9 the other side to put on the record that he's not going to do
10 that.

11 And so in light of that, Judge, the reason I ra -- I
12 raise this issue is because at the outset of the day one of
13 trial, one of the things --

14 (whispered conversation)

15 MR. GOLDSTEIN: -- that Mr. Jones asked Ms. Abrams
16 was whether or not we waived our counterclaims in this case.
17 And Ms. Abrams, at the time, indicated that -- that they were
18 doing so because those counterclaims were related to the issue
19 of whether or not the -- the Plaintiff was asserting --

20 MR. JONES: It --

21 MR. GOLDSTEIN: -- that there --

22 MR. JONES: If --

23 MR. GOLDSTEIN: -- was a legal and valid marriage.

24 And so we don't want to be in a position where he amends

1 claims of marriage and then we're at the point where we're
2 waiving our counterclaims on these issues. And so that's --
3 that's an issue, I think that -- that I want to clarify for
4 the Court, that Ms. Abrams' statement on the record that we
5 weren't pursuing these counterclaims was based upon the
6 assumption that the Plaintiff was not, based on the pleadings
7 on file.

8 So I don't want to be in a position where they've
9 argued that we waived these counterclaims and we're no longer
10 able either to pursue them and/or to argue them because of
11 that issue and -- if they are, in fact, going to pursue that
12 claim of marriage. So, that's one of the things that we
13 wanted to make sure that this Court understood from our side,
14 is that this -- the -- there is no waiver of our counterclaims
15 in that regard, assuming -- and -- and the background kind of,
16 behind it was that, okay? That's my understanding of it and
17 if Ms. Abrams has anything else to add to that, she certainly
18 can.

19 But that's my understanding of what happened.
20 Again, I wasn't here, I wasn't Counsel the time, but that's --
21 that's my understanding, Judge. So I don't know if --

22 THE COURT: I'd like to --

23 MR. GOLDSTEIN: -- Mr. Jones --

24 MR. JONES: And --

1 THE COURT: -- hear --
2 MR. JONES: And --
3 MR. GOLDSTEIN: -- was --
4 MR. JONES: And --
5 THE COURT: -- from Mr. Jones --
6 MR. JONES: -- I don't think --
7 THE COURT: -- first and --
8 MR. JONES: -- we ever got a -- I don't think we
9 ever got a formal -- I -- if -- if the -- if it's an offer for
10 a stipulation that they are not pursuing their counterclaims
11 and he's not pursuing a valid marriage, then we can reach that
12 agreement and put it on the record right now.
13 THE COURT: Well, he's pur -- you're pursuing a
14 putative marriage?
15 MR. JONES: Sure, absolutely.
16 THE COURT: And so, --
17 MR. JONES: You've got a --
18 THE COURT: -- to the --
19 MR. JONES: -- an implied -- yeah, --
20 THE COURT: -- extent, the --
21 MR. JONES: -- you've got --
22 THE COURT: -- counterclaims --
23 MR. JONES: -- Michoff (ph)*** 09:36:45 and --
24 THE COURT: -- would address --

1 MR. JONES: -- and you've got duty to spouse (ph)***
2 09:36:46.

3 THE COURT: To the extent the counterclaims would
4 address a punitive --

5 MR. GOLDSTEIN: They shoul --

6 THE COURT: -- find a punitive marriage, those
7 counterclaims would click in.

8 MR. GOLDSTEIN: Would -- would still be able to be
9 prese -- exactly. That's the -- that's all I wanted to kind
10 of, clarify for this Court.

11 THE COURT: All right.

12 MR. GOLDSTEIN: So, with --

13 THE COURT: You understand that?

14 MR. JONES: Yes.

15 MR. JONES: Okay. And I'm good with that. All
16 right.

17 MR. GOLDSTEIN: Okay, great. Wonderful. All right.

18 THE COURT: Ms. Abrams, did you have anything that
19 you felt you needed to give input?

20 MS. ABRAMS: No. My understanding is if they're
21 pursuing a punitive marriage, we get to pursue the
22 counterclaims. I -- I'm fine with that.

23 THE COURT: Okay.

24 MR. GOLDSTEIN: Great.

1 THE COURT: Thank you.

2 MR. GOLDSTEIN: Thank you. I think that resolves --

3 THE COURT: Okay.

4 MR. GOLDSTEIN: -- that housekeeping.

5 THE COURT: And I don't know which camera's --

6 MS. LOBELLO: And we haven't --

7 THE COURT: -- picking me up --

8 MS. LOBELLO: -- put on that case, so.

9 THE COURT: -- for talking to Ms. Abrams, so if I'm

10 looking this way, Ms. Abrams, I'm looking at a screen and I'm

11 looking at you, okay? Sorry, I don't have a camera that I

12 understand where I can look at you and talk to you without

13 seeing you. All right.

14 MS. ABRAMS: Now you're looking at me, just so you

15 know.

16 THE COURT: Okay. All right, I'll try to do my

17 best. Okay, anything else? Any --

18 MS. ABRAMS: No worries.

19 THE COURT: -- other preliminary issues.

20 MR. GOLDSTEIN: I think as far as housekeeping

21 matters, Judge, no, that -- that should be -- that should be

22 it.

23 THE COURT: All right, call your first witness --

24 MR. GOLDSTEIN: Oh, --

1 THE COURT: -- or your --
2 MR. GOLDSTEIN: -- thank you.
3 THE COURT: -- next witness.
4 MR. GOLDSTEIN: Yes, the Defendant calls the
5 Defendant. I should say recalls; she was in the middle of her
6 testimony.
7 (whispered conversation)
8 THE CLERK: Your Honor, is she still under oath or
9 would you like me to swear her in?
10 THE COURT: Oh, I -- we'll swear her in fresh today.
11 Where does the witness sit?
12 THE CLERK: We believe it's right here.
13 THE COURT: Right there? Yeah, because I think --
14 yeah. I think that's something for the jury over there.
15 THE BAILIFF: Face the clerk, raise your right hand.
16 (Oath administered)
17 THE DEFENDANT: I do.
18 DANKA MICHAELS
19 called as a witness on her own behalf, did testify as follows
20 on:
21 THE CLERK: Thank you.
22 MR. GOLDSTEIN: Does she have a camera that focuses
23 on her? Is that --
24 THE COURT: That one --

1 MR. GOLDSTEIN: -- one of those?

2 THE COURT: -- over there.

3 MR. GOLDSTEIN: Okay.

4 THE COURT: Uh-huh (affirmative).

5 MR. GOLDSTEIN: I just wan -- I don't know if we can
6 see her over the tele -- the computer screen. That's all I
7 was --

8 THE COURT: I can see her, yes.

9 MR. GOLDSTEIN: Okay, great. All right. Just as a
10 preliminary matter, Your Honor, I -- I think you -- my client
11 had a surgery and she's had some complications from that
12 surgery, which may require her to quickly use the restroom
13 facilities.

14 THE COURT: Okay.

15 MR. GOLDSTEIN: So if she stands up and has to do
16 that rapidly, it's not offense, obviously, to --

17 THE COURT: I totally understand.

18 MR. GOLDSTEIN: Thank you. Okay.

19 DIRECT EXAMINATION

20 BY MR. GOLDSTEIN:

21 Q Can you just, please state and spell your name again
22 for the record?

23 A My name is Danka Michaels.

24 Q Great. You understand that you're under oath again

1 and this is a situation of the trial that happened about a
2 year ago, and we're going to pick back up with your testimony,
3 okay?

4 A Yes.

5 Q All right. I'm going to do my best not go over
6 everything again, obviously, but it has been a year, so in
7 light of that fact, we may touch on a few things to help
8 refresh everybody's recollection as we go. All right. So,
9 the first thing I -- I'd -- I'd like to ask you is, there was
10 an unfortunate event that happened on the day of trial -- or,
11 the morning of the last day of trial, right? And that was
12 your mother who had passed away. Is that right?

13 A That morning.

14 Q Okay. And -- and that was put on the record and --
15 and you wanted to proceed, I guess, and then trial is kind of,
16 shortened or -- or stopped, in light of what had happened,
17 right?

18 A Well, I was stubborn and I thought, I can do it.

19 Q And how were you feeling that day, in having now had
20 an opportunity to reflect back and look at it?

21 A I -- I didn't expect this to hit me so hard and you
22 were right, it hit me. And I disintegrated and I just -- I
23 have no recollection of half of the day and --

24 Q Okay. Now, --

1 A -- half of it -- all my emotions were up in the air
2 and --

3 Q A tough time for you, I guess, right?

4 A It was -- I was on the bottom, emotionally.

5 Q All right. Well, here we are now a year later.
6 You're able to give your testimony okay today?

7 A Yes, I am.

8 Q All right, great. I'd like to talk first about
9 where -- where we left off, briefly at your last examination,
10 just help refresh our recollection. Was -- you were asked
11 some questions about Tom, Tom's employment at Station Casinos,
12 him being laid off, and what was he doing for work you know,
13 after that time period. Do you -- do you recall that? And
14 there was a brief discussion about Blue Point Development. Do
15 you recall that?

16 A I don't remember that.

17 Q You don't remember. Okay, that's okay. Well --
18 well, a lot of us probably don't, but I watched it, so I do.
19 All right. So let's just talk about when Tom was laid off in
20 Station at Station Casinos in 2008. What did he do for work
21 after that?

22 A He was trying to find work, but he didn't have any
23 luck.

24 Q Okay.

1 A I don't know why.

2 Q And so, did he -- he have an opportunity to start a
3 business?

4 A He re -- he told me that he's going to restart the
5 Blue Point Development again and he was trying to get jobs.
6 Then he started another business.

7 Q Okay, well, let's start -- let's start off with Blue
8 -- re -- your statement about restarting Blue Point
9 Development, okay? Can you explain to the Court what Blue
10 Point Development was?

11 A Well, Tom and I started the Blue Point Development
12 in -- I think it was 2002.

13 Q And how -- when you --

14 A When he lost the -- the job in California and he
15 wanted to do a -- a construction and development and I gave
16 him money to start the business and --

17 Q All right, let's --

18 A -- we -- we started it together.

19 Q Okay. So let's take a -- a couple of those
20 statements. You said he started in 2002.

21 A I think so.

22 Q Okay. And that was, obviously, almost 20 years ago
23 now, so --

24 A Yes.

1 Q -- memories may fade a little bit. But to the best
2 of your recollection, that was when? Around the time -- I
3 think you said he got laid off. Was that from his job at Peck
4 Jones?

5 A Yes, Peck Jones.

6 Q Okay. And so you said that you gave him money to
7 start the business. Do you recall approximately, how much
8 money you provided?

9 A I gave him \$30,000 to -- to start the business.

10 Q All right. And -- and that -- well, let's -- tell
11 the Court -- let's talk about the discussions that you and Tom
12 had at time about starting the business and -- and the need
13 for \$30,000. What did Tom discuss with you or represent to you
14 as to why we needed \$30,000 to start the company?

15 A He needed to pass the exam -- construction -- oh,
16 what is it? The li -- the -- the licensing exam and --

17 Q Would that --

18 A -- he needed --

19 Q -- be the general contractor exam?

20 A Contract -- contractor's exam and --

21 Q Okay.

22 A -- he needed a license. And he was unsuccessful.
23 He needed money to buy the books, for the courses, I assume he
24 took the test, but I never heard that he passed.

1 Q All right, and did he say -- I mean, \$30,000 -- the
2 licensing, I'll just represent to you, doesn't cost that much
3 to take --

4 MR. JONES: Objection --

5 MR. GOLDSTEIN: -- the test.

6 MR. JONES: -- Your Honor.

7 MR. GOLDSTEIN: But --

8 MR. JONES: This is not a question. I -- I've been
9 letting the dialogue go for a while to speed things up, but
10 we're we're going to have to get to questions and answers.

11 MR. GOLDSTEIN: It -- it's fine.

12 BY MR. GOLDSTEIN:

13 Q What did you -- okay. Your understanding of the
14 \$30,000, was all of that used by Tom to --

15 THE COURT: Excuse --

16 MR. GOLDSTEIN: -- take --

17 THE COURT: -- me, that's still a leading question.
18 You need to --

19 MR. GOLDSTEIN: No, I -- I'm asking her what the
20 \$30,000 --

21 THE COURT: Go --

22 MR. GOLDSTEIN: -- was used --

23 THE COURT: Ask her a question that doesn't have a
24 yes or a no for an answer.

1 BY MR. GOLDSTEIN:

2 Q Was -- what was the \$30,000 that Tom -- that you
3 gave Tom, what was that used for, to the rest of your
4 recollection?

5 A I don't know what he used it for. He told me that
6 he was going to use it for the business loa -- business fees
7 and for the school and books and fees for the tests. And I
8 don't know what he did. I was not -- not watching him
9 everyday.

10 Q Okay. Did you -- do you know if -- you said Tom was
11 not successful in passing the license, to the best of your
12 knowledge. Do you know if Tom started doing any business wi -
13 - in that company at the time?

14 A No.

15 Q Okay. And did Tom go to work for another company?

16 A After about two years, he got a job with Station
17 Casinos.

18 Q Okay, and during that interim two-year time period,
19 to your knowledge, did Blue Point Development do any business?

20 A No.

21 Q And so what was Tom doing during that time period?

22 A Playing golf.

23 Q Was he working at all?

24 A You mean like, exercising?

1 Q No, no, worki -- not -- not working out, sorry. Was
2 he working -- employed? Was he --
3 A No.
4 Q -- earning money?
5 A No, he was using the golf as a networking tool, but
6 it was never result -- resulting in any jobs -- any contracts.
7 Q And so, were you supporting Tom during that time
8 period?
9 A Yes.
10 Q And -- and -- all right. And then when did Tom
11 become employed again?
12 A I think he started working for a Station Casinos in
13 2004.
14 Q Okay. And in -- and in the original Blue Point
15 Development company, how was that corporate entity held? Do
16 you know? Was it --
17 A I don't remember.
18 Q You don't know if it was a -- a company -- a --
19 like, a corporation or an LLC? Do you know?
20 A Oh, it was corporation.
21 Q Okay.
22 A Limited -- I think was a S-corporation.
23 Q On. And --
24 A The -- on the advise of our -- our CPA.

1 Q Okay. And the -- who were the owners of the
2 corporation? Do you --

3 A Tom -

4 Q -- recall?

5 A -- and I.

6 Q Okay, and how was that ownership interest held?

7 A As far as I remember, it was 50/50.

8 MR. JONES: Objection, foundation.

9 MR. GOLDSTEIN: She's testifying to the best of her
10 recollection.

11 MR. JONES: Upon -- so, she just -- she doesn't have
12 any basis for it then?

13 MR. GOLDSTEIN: Court can rule, I guess. I don't
14 see how that's --

15 THE COURT: I'm --

16 MR. GOLDSTEIN: -- any --

17 THE COURT: -- not understanding your question.

18 MR. GOLDSTEIN: No, I -- she answered it, John made
19 an ob -- I said, how was the -- how was -- how was the
20 ownership interest held, and she said 50/50, and he objected
21 to foundation. I don't understand.

22 MR. JONES: I'm asking what she's basing that upon.

23 THE COURT: That -- that's a good question.

24 MR. GOLDSTEIN: Okay.

1 THE DEFENDANT: On the paperwork of the corporation.

2 THE COURT: The corporation paperwork says that
3 you're 50/50?

4 THE DEFENDANT: Yes.

5 BY MR. GOLDSTEIN:

6 Q Okay. What was the name of the company at that
7 time? Do you recall?

8 A Blue Point Construction and Development.

9 Q All right. And the -- did there come to be a time
10 where that company went into default status?

11 A I wasn't following because Tom wasn't working, so I
12 had to work harder to cover up all of our expenses for both of
13 us, so I was swamped with work. When he started working for
14 Station Casinos, it helped.

15 Q During the time that Tom was working at Station
16 Casinos, was he doing any work for Blue Point Development?

17 A No.

18 Q And then I think we -- it's in the record that --
19 well, let me just make sure. Do you recall when Tom was laid
20 off from Station?

21 A I think he worked for Station Casinos for five
22 years, so they would have meant 2009.

23 Q Okay.

24 A I am not sure if it was laid off or fired because he

1 never applied for not -- unemployment.

2 Q Okay. During the --

3 A He --

4 Q -- ti -- okay. During the time that he was at
5 Station Casinos, did he do any work for Blue Point
6 Development?

7 A No.

8 Q So, let's talk about what happened when he was laid
9 off from Station Casinos, okay? What did Tom do for work at
10 that point?

11 A Same thing as before. He was trying to get jobs --
12 contracts for Blue Point Development and was telling me how
13 the market is hard and this and that and he was networking the
14 -- while golfing. And -- and I think, in 2013, he got
15 connections through Joe Healey (ph)*** 09:50:22 with the Dana
16 White.

17 Q Say that again? I'm -- I literally couldn't hear.
18 It's hard to hear in this room with masks.

19 A I think it was 2013, when through his old boss, Joe
20 Healey --

21 Q Uh-huh (affirmative).

22 A That's what I know from Tom.

23 Q Okay.

24 A And he got connected with Dana White.

1 Q Okay, got it.

2 A Dana White was the owner of UFC and they were
3 building their workout gym.

4 Q Got it.

5 A And Tom got the contract.

6 Q Okay, so let's -- before we -- before we go from
7 2008 to 2013, let's -- let's talk about those intervening
8 years in between, as there's --

9 (whispered conversation)

10 Q So, I'm going to direct your attention to Exhibit
11 13, and I'm going to approach the witness.

12 (whispered conversation)

13 THE COURT: Exhibit 13?

14 MR. GOLDSTEIN: 13, yes, Your Honor.

15 THE COURT: Oh, Plaintiff's?

16 MR. GOLDSTEIN: Correct.

17 BY MR. GOLDSTEIN:

18 Q You see that?

19 A Yes.

20 Q All right.

21 THE COURT: Has that been entered already, Madam
22 Clerk?

23 MR. GOLDSTEIN: Yes, that's in -- in by stipulation,
24 Your Honor.

1 THE COURT: Has not yet been entered?
2 MR. GOLDSTEIN: No, it --
3 MR. JONES: I think it is in, Your Honor.
4 MR. GOLDSTEIN: It is in by stipulation, Judge.
5 THE COURT: Okay, thank you. Go ahead.
6 MR. GOLDSTEIN: Thank you.

7 BY MR. GOLDSTEIN:

8 Q Just directing the -- your attention, this is
9 Plaintiff's Exhibit 13, which is stipulated into evidence,
10 which is the 2009 U.S. individual tax return for Tom Pickens,
11 the Plaintiff in this case. Do you see that? You see that,
12 Danko?

13 A Yes, I do.

14 Q Okay, sorry. You've got to answer orally and just
15 try to speak up because it's a little bit bigger courtroom
16 here. So, okay. And just, can you read for the Court, what
17 his income is on -- on the adjust --

18 MR. JONES: Your Honor, the document's in evidence.
19 It's speaks for itself.

20 MR. GOLDSTEIN: That's great. I -- I'd like her to
21 read it on the record. It's okay, she can say.

22 MR. JONES: Actually, no.

23 MR. GOLDSTEIN: Yes, she can. She can say --

24 MR. JONES: Once it's --

1 MR. GOLDSTEIN: -- what the --
2 MR. JONES: -- in evidence, reading from the
3 document's improper.
4 MR. GOLDSTEIN: She can --
5 THE COURT: It's already --
6 MR. GOLDSTEIN: -- say how much his adjusted gross
7 income is.
8 THE DEFENDANT: Adjusted gross income is \$15,469.
9 BY MR. GOLDSTEIN:
10 Q Thank you. All right.
11 THE COURT: Okay.
12 MR. GOLDSTEIN: So, at that time --
13 THE COURT: Something -- something deals (ph)***
14 09:53:02 are not that big a deal. I ag -- I get it off.
15 MR. JONES: It -- it's fine.
16 MR. GOLDSTEIN: Right. I mean, I -- I'm not having
17 her --
18 THE COURT: Sir, --
19 MR. GOLDSTEIN: -- the whole document.
20 THE COURT: -- I -- right, but do be a little bit
21 more concise about what's going on here, --
22 MR. GOLDSTEIN: All right.
23 THE COURT: -- because the time is moving along.
24 MR. GOLDSTEIN: Okay, I understand.

1 BY MR. GOLDSTEIN:

2 Q And so then, just 2010 tax return, if you just turn
3 to the next exhibit there. It was again, less than \$10,000 --
4 \$9,600. Do you see that?

5 A Yes, \$9,600.

6 Q All right. And then, 2011 as well.

7 MR. JONES: Judge, these are all in evidence.

8 MR. GOLDSTEIN: I -- I understand.

9 MR. JONES: He -- he doesn't --

10 MR. GOLDSTEIN: Let me --

11 MR. JONES: -- get to lead her.

12 MR. GOLDSTEIN: -- just get to two more. It -- it's
13 going to take you longer to say this than it would to let me
14 just do the two things and get --

15 THE COURT: Counsel, --

16 MR. GOLDSTEIN: -- question out.

17 THE COURT: -- can you just ask the overall question
18 that you want to ask about these returns, please?

19 MR. GOLDSTEIN: Sure. I want -- I have to give her
20 some context --

21 THE COURT: The --

22 MR. GOLDSTEIN: -- for it. That's --

23 THE COURT: There's context already.

24 MR. GOLDSTEIN: All right, it's -- well, I want to

1 ask her about 2009, '10, '11, and '12 tax returns, okay?

2 Those -- those are my questions.

3 BY MR. GOLDSTEIN:

4 Q In my review of the documents, Mr. Pickens didn't
5 make over \$10,000, in any one of those years and in 2000 --

6 MR. JONES: Objection, leading.

7 MR. GOLDSTEIN: I've got to lay the --

8 THE COURT: He's laying --

9 MR. GOLDSTEIN: -- foundation for the --

10 THE COURT: -- that foundation. I'll let him do
11 that.

12 MR. GOLDSTEIN: -- for the question.

13 THE COURT: For the question.

14 BY MR. GOLDSTEIN:

15 Q And then 2012, there was a -- a loss -- adjusted
16 loss of almost \$32,000. First of all, is that your
17 understanding as well? Have I represented these docu --
18 documents accurately?

19 A Yes.

20 Q Okay. All right. Now, during that time, were you
21 supporting Tom entirely?

22 A Yes.

23 Q Okay. Was he contributing to the household
24 expenses, in any way?

1 A No.

2 Q Did he, to the extent that there were any assets
3 acquired during that time period, did Tom contribute to the
4 purchase of any assets, --

5 A No.

6 Q -- during that time period?

7 A Not at all.

8 Q During that time period, were -- was your medical
9 practice paying Tom?

10 A I can't hear you.

11 Q Sorry. During that time period, was your medical
12 practice paying Tom?

13 A Yes.

14 Q And the salaries, as indicated in the tax return on
15 those years, was that from --

16 A Yes.

17 Q -- your medical practice?

18 A Yes.

19 Q Were you -- was your medical practice, di -- did it
20 have a 401k program?

21 A Yes.

22 Q All right. And was Tom in that 401k program?

23 A Yes.

24 Q All right. And did your medical practice contribute

1 to Tom's 401k?

2 A Yes, every penny.

3 Q All right. And did Tom want to be in the 401k
4 program?

5 A No.

6 Q And can you explain to the Court what discussions
7 you had with Tom about your 401k or about your -- your,
8 meaning the practice's 401K program that Tom was en --
9 enrolled in?

10 A I suggested we do 401k because it's a tax deduction
11 and at certain age, you pull it out as tax de -- without
12 taxes. Huge benefit in this country, huge, and he was not
13 interested. He was totally against it. We had multiple
14 arguments about it. I won the argument.

15 Q You won the argument?

16 A Yes.

17 Q And by that, what do you mean, exactly? That --

18 A I said I -- we -- he's going to do it because it's
19 good for him. It's good for us. If we're going to continue
20 together in a relationship, it's good for both of us to have
21 an IRA.

22 Q And did you say IRA? Is that what you said?

23 A Individual retirement account, 401k.

24 Q Okay. All right. Okay, and so, when Tom was on the

1 payroll for the medical practice during those years, was he --
2 was he actively working for your practice during that time?

3 A He helped out here and there.

4 Q And can you explain to the Court what you mean by
5 that or what Tom did?

6 A If I needed help with computers, he would come and
7 fix it. If we had a problem -- we had once, this huge problem
8 with employees and he said he will take care of it. And I
9 wasn't really happy how he took care of it, but he tried, I
10 guess to help. So, it wasn't daily, it wasn't even once a
11 week, but it -- he was there if I needed something.

12 Q Okay. Let's talk about -- you were asked questions
13 about a -- an email. Do you recall where you indicated that
14 Tom was taking over the practice -- you sent an email out to -
15 - apparently, it was your staff at the time. Is that right?
16 And you (sic) were taking over the practice. Do you recall
17 that? That -- that was Exhibit 141. Well, let me just --

18 A Yes, I remember that. Mr. Jones asked me about
19 that and I remember that very well.

20 Q All right, so --

21 A That was very upsetting.

22 Q I just want to have this in front of you, just so,
23 while we talk about it, you can reference. This is what --

24 (whispered conversation)

1 MR. JONES: It's fif -- it was 5376.

2 THE COURT: And so 5376 is your Bates stamp?

3 MR. GOLDSTEIN: Bates stamp is -- yeah, the
4 Plaintiff's Bates stamp 5376, of Exhibit 141.

5 BY MR. GOLDSTEIN:

6 Q Okay. All right, take a look at that. Just -- just
7 review that email real quick to refresh the recollection. I
8 know it's been over a year. Once you finish reading it, let
9 me know.

10 A So, there was a situation where --

11 Q Ho -- hold on a second. Just --

12 A -- I had some employees in my office.

13 MR. JONES: Objection, there's no question --

14 MR. GOLDSTEIN: Wait --

15 MR. JONES: -- before the --

16 THE COURT: Hold on.

17 MR. GOLDSTEIN: Wait -- wait one second here, --

18 MR. JONES: -- before the --

19 MR. GOLDSTEIN: -- okay?

20 MR. JONES: -- witness.

21 BY MR. GOLDSTEIN:

22 Q I just --

23 A Okay.

24 Q I just want to make sure. Did you read it?

1 A Yes.

2 Q Okay. All right, so you were asked about this
3 document. And this document represents that Mr. Pickens is
4 taking over the practi -- off -- management of your practice.
5 Can you explain to the Court, what -- what -- the facts and
6 circumstances surrounding this email and what led you to
7 sending this email to your --

8 THE COURT: I'm not --

9 MR. GOLDSTEIN: -- staff?

10 THE COURT: -- looking at the same thing she's
11 looking at. I can tell just -- mine has a chart. No, no, no.

12 THE DEFENDANT: I don't need it.

13 THE COURT: It's okay. Mine has a chart.

14 MR. GOLDSTEIN: Fi -- 5376, is --

15 THE COURT: I'm --

16 MR. GOLDSTEIN: -- the Bates label.

17 THE COURT: -- looking at 5376, Danica (sic)
18 Michaels.

19 THE DEFENDANT: Volume 12, Exhibit 121-145?

20 MR. GOLDSTEIN: One -- 141?

21 MS. STOLZ: 141.

22 MS. LOBELLO: Volume 12.

23 THE DEFENDANT: Uh-huh (affirmative).

24 MR. JONES: Yeah, --

1 THE COURT: We have volume --
2 THE BAILIFF: Ma'am?
3 THE COURT: -- one with --
4 THE BAILIFF: Ma'am?
5 THE COURT: -- 5376. You --
6 THE BAILIFF: Ma'am?
7 THE COURT: Have a seat.
8 THE BAILIFF: Ma'am? Ma'am?
9 THE COURT: No, you -- no, no, no. I know you're
10 trying to be helpful, but --
11 THE BAILIFF: It's okay, we'll figure it out.
12 MR. GOLDSTEIN: This is exhibit -- this is volume --
13 I'll say it's book 12, Your Honor.
14 THE COURT: Exhibit which number?
15 MR. GOLDSTEIN: Exhibit 141.
16 (whispered conversation)
17 MR. GOLDSTEIN: It's not numbered consecutively, so
18 you need to go about, I'd say 20 pages in or so, and then
19 you'll see 5376.
20 THE COURT: I have it, thank you.
21 MR. GOLDSTEIN: Great, thank you.
22 BY MR. GOLDSTEIN:
23 Q Okay, so you -- you've read this email and you had
24 your re -- recollection refreshed on it, so can you just

1 explain to the Court, the facts and circumstances that led up
2 to the sending up you sending this? Why did you send --

3 MR. JONES: And --

4 MR. GOLDSTEIN: -- this email?

5 MR. JONES: And actually, Judge, just so we're
6 clear, this page of Exhibit 141 was made Exhibit 146, and
7 admitted into evidence. Because we took it out of ---

8 MR. GOLDSTEIN: Next in line?

9 THE COURT: Okay.

10 MR. JONES: Yeah.

11 MR. GOLDSTEIN: Admitted next in line? Okay, that's
12 fine.

13 MR. JONES: Just so we have a clear record.

14 MR. GOLDSTEIN: I don't have it. I mean, that --
15 that's the only reason I say -- I mean, don't have your
16 exhibit --

17 MR. JONES: Well, but --

18 MR. GOLDSTEIN: -- book, but --

19 MR. JONES: -- the --

20 MR. GOLDSTEIN: -- there's not --

21 MR. JONES: I think the clerk's list --

22 THE COURT: The clerk's copy. Do you have 146,
23 Madam Clerk?

24 THE CLERK: (indiscernible)

1 (Pause - whispered conversation)

2 THE CLERK: I have 146 as an exhibit -- or, as a --
3 an email.

4 MR. JONES: Yes.

5 THE COURT: Thank you.

6 MR. JONES: April 3, 2014.

7 THE CLERK: Yes.

8 THE COURT: It may not have been updated in your
9 books --

10 MR. GOLDSTEIN: Ye -- correct.

11 THE COURT: -- because it happened in court.

12 MR. JONES: Right.

13 MR. GOLDSTEIN: That's right. And so whichever the
14 Court wants to use and reference, please let me --

15 THE COURT: We'll use 146, please.

16 MR. GOLDSTEIN: Okay, 146. Is this -- it's this is
17 the same email.

18 BY MR. GOLDSTEIN:

19 Q But again, the question is, can you just explain to
20 the Court, the facts and circumstances to why you sen -- sent
21 this email?

22 A I have a lot of this -- I had a lot of discontent
23 about my employees and I was coming home, complaining and
24 complaining and complaining until he got upset and said he'll

1 take care of it. And I --

2 Q Is this --

3 A -- said --

4 Q -- Tom you're talking about?

5 A Yes. And --

6 Q Okay.

7 A -- I said you just cannot take care of it because
8 you are just as employee as anybody else, officially. Yo -- I
9 will have to put you in a position of something. And so then
10 we -- I came up with the idea that I'm going to name him as a
11 manager so he can take care of the issues.

12 Q And so --

13 A He --

14 Q Okay.

15 A He scheduled appointment with all of the employees
16 up, in his office upstairs, and I didn't know his plans. I
17 thought he was going to smooth the ruffled feathers. Instead,
18 he prepared this huge financial board, where may told
19 everybody what my collections, wha -- how much I'm making,
20 what the -- the insurance are paying, what they are not paying
21 what's my rent, what's my utilities. I was floored. It's
22 absolutely inappropriate.

23 Q This was the financial -- this was --

24 A Yeah.

1 Q -- the finances of your --

2 A That --

3 Q -- of your company?

4 A That's not what the -- these people were unhappy.

5 They wanted to have more money. They want -- if you give an
6 employee who makes \$12-an-hour these kind of numbers, they are
7 not going to comprehend it. They're not going to understand
8 it. They're going to want twice as much money, looking at the
9 numbers.

10 Q And so --

11 A So I was unhappy, everybody was unhappy, and I lost
12 all of the employees within a few months.

13 Q So after this -- this meeting that Tom had with the
14 employees, was he involved in the management of your practice
15 after that date?

16 A No.

17 THE COURT: What date was that, I'm sorry?

18 MS. LOBELLO: April 2013.

19 THE COURT: Okay.

20 BY MR. GOLDSTEIN:

21 Q Wha -- when -- approximately, when after this email
22 was the meeting that you referenced? How long after this
23 email was sent was the meeting?

24 A I don't remember.

1 Q Do you recall if -- if it was within the month of
2 April?

3 A Most likely, within three days.

4 Q Okay. Let's -- sorry.

5 (Pause)

6 Q Now, during that time that you were -- this 2009,
7 '10, '11, '12 time period, where Tom was playing golf,
8 approximately how many -- what was your work schedule like?

9 A I worked seven days a week, Monday through Friday.
10 I started somewhere between 5:00 and 6:00. I came home
11 between 7:00 and 10:00. Saturday, I started about 7:00, came
12 home about noontime and Sunday, about the same thing.

13 Q And why was your work schedule so demanding?

14 A I was seeing patients in the office Monday through
15 Friday and all of my patients in the hospital every day.

16 Q And at that time, who was financially responsible
17 for all of the bills?

18 A I was.

19 Q And --

20 MR. JONES: Objection, foundation. When -- when was
21 this?

22 MR. GOLDSTEIN: That same time period.

23 MR. JONES: Which was?

24 MR. GOLDSTEIN: 2009-12. Sa --

1 MR. JONES: '09-12?

2 MR. GOLDSTEIN: That's the time period that we're
3 talking about.

4 THE COURT: Thank you for the clarification. Go
5 ahead.

6 BY MR. GOLDSTEIN:

7 Q Now, who controlled the payment of the bills during
8 this same time period? In other words, how were the bills
9 actually paid?

10 A I transferred to our joint checking account every
11 month, the money needed to cover all the bills. I gave Tom
12 extra to cover the credit cards. So, every month, he had to
13 come and tell me how much extra money he needs to pay the
14 credit card off.

15 Q And did you give him that money?

16 A Yeah.

17 Q And did you review the credit card charges during
18 that time period?

19 A I had no time for that.

20 Q All right. Were you the one writing checks to the
21 credit card companies to pay these monthly bill?

22 A No, Tom said he had everything set up in his
23 computer and it's all going electronically. So he was just
24 transferring money from account to account.

1 Q All right.

2 MR. GOLDSTEIN: I just wanted to clarify because I
3 don't have this. It -- Exhibit 148, Madam Clerk, is an email
4 -- or, excuse me, is a Bates -- was a -- was Exhibit 124,
5 Bates label 81, and I just want to --

6 THE CLERK: I have 81.

7 MR. GOLDSTEIN: Yeah, I want to clarify that again.
8 And I apologize, I don't have these -- you know, these
9 exhibits were not put in my book. So 148 being that email
10 from 124, I just want to make sure it's -- it's only the --
11 (whispered conversation)

12 MR. GOLDSTEIN: So, this was 81, do you -- so, being
13 148 now, is it only the top email?

14 THE DEFENDANT: I don't --

15 MS. LOBELLO: I'm sorry --

16 THE DEFENDANT: -- know where we are.

17 MS. LOBELLO: -- to interrupt you, but I want to
18 clarify. You're saying 81. You're not saying Exhibit 81,
19 you're saying --

20 MR. GOLDSTEIN: Bates --

21 MS. LOBELLO: -- Bate --

22 MR. GOLDSTEIN: -- 81.

23 MS. LOBELLO: -- Bate 81.

24 MR. GOLDSTEIN: Yes, sorry.

1 MS. LOBELLO: Okay, I just wanted to make sure.

2 MR. GOLDSTEIN: No, no. Yeah, when I say Bates, it
3 -- okay. So, the original exhibit was 124.

4 MR. JONES: Right.

5 MR. GOLDSTEIN: And then -- and then within 124,
6 there was a discussion about a Bates label 81. My
7 understanding is that Bates label 81 was then admitted as 148,
8 --

9 MR. JONES: That is --

10 MR. GOLDSTEIN: -- next --

11 MR. JONES: -- correct.

12 MR. GOLDSTEIN: -- in line. Okay. Is it the entire
13 -- there's two emails there. And when I reviewed the record,
14 I want -- I -- I'm just trying to clarify that it was only the
15 email from Danka that was admitted, and not the email from Mr.
16 Wallace (ph)*** 10:09:55 that's below that. But I don't know,
17 the record isn't entirely clear, and so I -- I'd like to know
18 --

19 THE COURT: Madam Clerk, was 148 admitted?

20 THE CLERK: Yes.

21 THE COURT: Yes.

22 THE CLERK: And it's --

23 MR. JONES: Over their --

24 THE CLERK: -- just the --

1 MR. JONES: -- objection.

2 THE CLERK: -- one page.

3 MR. JONES: You already ruled on the entirety of
4 Bates number 81 coming into evidence.

5 THE COURT: Okay.

6 MR. GOLDSTEIN: Okay. That's wha --

7 THE COURT: Thank you.

8 MR. GOLDSTEIN: -- I wanted -- that's what I wanted
9 to clarify. Okay. All right.

10 BY MR. GOLDSTEIN:

11 Q The -- and then now, I want to -- same thing for --
12 I guess it's the -- next in line would be Exhibit 149. Do you
13 have 149 in your book up here?

14 (whispered conversation)

15 MR. GOLDSTEIN: The witness' cop -- the witness copy
16 --

17 MR. JONES: It's part of 124, as well.

18 THE COURT: It's --

19 MR. GOLDSTEIN: Because the witness' copies don't
20 have these. This i -- this is why I'm asking which one we're
21 using. The witness' copies don't have --

22 THE COURT: We just didn't update all of these
23 additional --

24 MR. JONES: Yeah, we didn't -- we didn't update --

1 MR. GOLDSTEIN: Oh, I --

2 MR. JONES: -- the book.

3 MR. GOLDSTEIN: -- know, but I -- when I ask her to
4 look at it, she -- she can't --

5 THE COURT: She couldn't --

6 MR. GOLDSTEIN: -- look at --

7 THE COURT: -- find it.

8 MR. GOLDSTEIN: -- 149; --

9 THE COURT: Right.

10 MR. GOLDSTEIN: -- doesn't exist over there, so --

11 MR. JONES: Correct.

12 THE CLERK: What is it, 90?

13 MR. JONES: It's Bates numbers --

14 MR. GOLDSTEIN: 90-93, right?

15 MR. JONES: -- 90-93, of Exhibit 124.

16 MR. GOLDSTEIN: Yes. Yeah. All right.

17 (Pause)

18 BY MR. GOLDSTEIN:

19 Q You were asked about -- okay, turn to 93. Bates
20 label 93, please.

21 A Say it again?

22 Q Bates label 93, of Exhibit 124.

23 A 124.

24 (Pause)

1 A Okay.

2 Q Okay. Mr. Jones asked you -- well, Mr. Jones said
3 that this document stated, my husband and I are partners in
4 this deal together, and he asked you if that was a -- a true
5 statement. So I just want to refresh your recollection as to
6 what it was that you were -- to -- to help you recall what --
7 what were you asked at that time and your testimony that it
8 was a true statement. Do you recall being asked that
9 question?

10 A Yeah.

11 Q Okay. And do -- do you recall reviewing this
12 document at that time?

13 A I don't remember.

14 Q All right. Do -- do you recall what deal this is
15 referencing?

16 A Say it again?

17 Q Do you recall what deal this is ref -- what -- what
18 deal this is referencing?

19 A This -- 2012, this is the building.

20 Q Okay.

21 A This is office building.

22 Q Okay. All right. Just want to make sure you're
23 following. Now, the statement about, my husband and I are
24 partners in this deal together, okay? You were asked if that

1 was a true statement. Is the entirety of that statement true?

2 MR. JONES: Objection, asked and answered, Your
3 Honor. Just because he doesn't like what happened on day one
4 of trial doesn't mean he gets to ask the same question and
5 have already prepared her to give a different answer today.

6 MR. GOLDSTEIN: Well, that's a speaking objection if
7 I've ever heard one.

8 THE COURT: Well, it's not really a stupid ob --
9 objection. I mean, he's allowed to say asked and answered.

10 MR. GOLDSTEIN: No, I said speaking.

11 THE COURT: Okay.

12 MR. GOLDSTEIN: I sa -- I didn't say stupid, Your
13 Honor.

14 THE COURT: Oh, okay. Sorry.

15 MR. JONES: He knows better than to say that.

16 THE COURT: I hate these masks because --

17 MR. GOLDSTEIN: It's really --

18 THE COURT: I -- I'm sorry.

19 MR. GOLDSTEIN: -- hard to -- I understand. And I
20 only call him stupid in private, not in public.

21 MR. JONES: He knows better than to do that too.

22 MR. GOLDSTEIN: No. But, I -- I want to ask her if
23 the entirety of the statement is true or not.

24 MR. JONES: Your Honor, I -- I asked that question

1 and she answered affirmatively.

2 THE DEFENDANT: Yeah.

3 MR. GOLDSTEIN: All right.

4 THE COURT: And she's answered it --

5 MR. GOLDSTEIN: All right.

6 THE COURT: -- yes again.

7 MR. GOLDSTEIN: That's fair enough. I'll move on.

8 BY MR. GOLDSTEIN:

9 Q Let's talk about your estate planning. Who is your
10 estate planning attorney?

11 A Shannon Evans.

12 Q Ms. Evans has already testified in this matter and
13 she provided her documents, which include your estate
14 planning, which is Plaintiff's -- excuse me, Defendant's
15 Exhibit B.

16 (Pause)

17 Q And while I'm getting this, do you have a trust?

18 A Yes, I do.

19 Q Okay. And what is the name of that trust?

20 A Mich-Mich Trust.

21 Q All right. And Ms. Evans prepared that trust for
22 you. Is that right?

23 A Correct.

24 Q Bates label 581, of Exhibit B. Are you at 581?

1 Sorry, can you hear me? 581, on Exhibit B, there.

2 A Exhibit D?

3 Q B. B, as in boy. The same one that I've turned it
4 open to.

5 A Oh, here?

6 Q Yes, --

7 A Okay.

8 Q -- I want you to turn to fi -- 581. Let me help
9 you.

10 A I can't hear it's hard. It -- it's hard. It's hard
11 with these masks.

12 THE COURT: I know, this -- this --

13 MR. GOLDSTEIN: It's terrible.

14 THE COURT: -- air system is just like, really loud.
15 Is there anything we can do about it, Marshall? Can we as
16 Elaine to turn it off? I don't know. We're not cold.

17 THE BAILIFF: I'll --

18 THE COURT: We're --

19 (whispered conversation)

20 THE BAILIFF: -- ask her.

21 THE COURT: We're warm.

22 MR. JONES: Oh, is -- is it heat that's coming out?

23 THE COURT: I think so.

24 MR. JONES: I mean, the only thing that turning it

1 off will do is make sure that we're not breathing in asbestos
2 through our masks, based upon the age of this building.

3 MR. GOLDSTEIN: What's worse, the COVID or the
4 asbestos? Either way, huh?

5 MS. LOBELLO: We could move out table back.

6 THE COURT: You can proceed while he investigates --

7 MR. GOLDSTEIN: Yes, thank you.

8 THE COURT: -- our situation.

9 MR. GOLDSTEIN: Is the Court there, 581?

10 THE DEFENDANT: Yes, I've got it.

11 BY MR. GOLDSTEIN:

12 Q Okay, you got it? All right, great. Is this the --
13 is this Mich-Mich Trust that we've just been discussing?

14 A Yes.

15 Q Okay, great. And you're the settler and trustee,
16 right?

17 A Yes.

18 Q And can you turn to 585?

19 A Yes.

20 Q And what is the marital status of your -- that you
21 represented in -- in your trust?

22 A I am single.

23 Q Okay. And do you see where that says that at
24 section 1.4?

1 A Settler is unmarried.

2 Q Okay. Did you -- well, let me ask you. Why is it
3 that you referenced yourself to be unmarried in your trust
4 documents?

5 A Because we have -- Tom and I have never been married
6 and I have not married since I divorced my ex-husband.

7 Q Who are -- who are the successor trustees of this
8 trust? And just to -- I -- I would have you turn to Bates
9 label 594.

10 A Which one?

11 Q 594.

12 A 594. First was my son, second was my brother.

13 Q And roughly, do you a call, approximately when this
14 was -- what year this was prepared?

15 A 2010

16 Q And --

17 A April the 5th 2010.

18 Q And is that your signature there, on Bates label
19 608?

20 A I don't know what 608 is, but there is my signature
21 on --

22 Q Page -- page 608. Can you turn to page --

23 A 579 and -- six -- six oh -- correct. Yes, that's my
24 signature on page 608.

1 Q Okay, thank you. Thank you. Now, who -- who did
2 your name as the beneficiary of your assets on that?

3 A My --

4 MR. JONES: Your Honor, this document's in evidence
5 already.

6 MR. GOLDSTEIN: Yeah.

7 MR. JONES: It means that, at the time of closing,
8 whether it's written or oral, he can reference it.

9 THE COURT: Right.

10 MR. GOLDSTEIN: I get it.

11 MR. JONES: These facts -- we're -- we're going to
12 be here all day --

13 THE COURT: That's right.

14 MR. GOLDSTEIN: Well, we --

15 MR. JONES: -- if we ask her to read portions of it
16 for us.

17 MR. GOLDSTEIN: I'm not asking her to read, I asked
18 her a question of who the beneficiary was.

19 MR. JONES: But the trust is in evidence.

20 MS. ABRAMS: Your Honor, just because the trust is
21 in evidence, doesn't mean that these questions are prohibited
22 from being asked.

23 MR. JONES: They're cumulative, is what they are.

24 THE COURT: Well, it's in --

1 MR. GOLDSTEIN: I never --

2 THE COURT: They can --

3 MR. GOLDSTEIN: -- asked that question.

4 THE COURT: Excuse me.

5 MR. GOLDSTEIN: Sorry.

6 THE COURT: They can become cumulative. If you're
7 going to point her to a specific spot in the trust, ask a
8 question about what that -- or a follow-up question would be
9 nice, not just -- otherwise, it is already in evidence and you
10 can reference it in your closing.

11 MR. GOLDSTEIN: Okay, I -- I understand, Judge, but
12 there's -- there's been a multiple amendments to this trust,
13 okay? And yes, those --

14 THE COURT: Are those in evidence?

15 MR. GOLDSTEIN: Yes, they're -- those --

16 THE COURT: Great.

17 MR. GOLDSTEIN: -- are in evidence as well.

18 THE COURT: So, you --

19 MR. GOLDSTEIN: And --

20 THE COURT: -- can ask about the intentions of the
21 differences, but --

22 MR. GOLDSTEIN: All right. But see, the problem is,
23 and then I don't ask these questions and then objection,
24 foundation, as John was doing earlier in -- in this case.

1 THE COURT: You can --

2 MR. GOLDSTEIN: So --

3 THE COURT: -- say --

4 MR. GOLDSTEIN: -- now, I'm trying --

5 THE COURT: -- foundation to the trust. Go ahead.

6 MR. GOLDSTEIN: I'm just trying to lay some
7 foundation for this so that I can move forward. That's all.

8 BY MR. GOLDSTEIN:

9 Q So, was the tru -- all right.

10 A So --

11 Q Do you recall who the beneficiary was?

12 A My son, Jacob.

13 Q Okay. And did you have cause to amend this trust at
14 some point?

15 A Yes.

16 Q All right. And was that in or about 2000 and thir -
17 -- 16, September 13th?

18 A Yes.

19 Q Thank you. Do you know if Tom had estate planning
20 documents prepared as well?

21 A He declined at that time.

22 Q Okay. Did Tom, at some point, have estate planning
23 documents prepared?

24 A Yes.

1 Q All right. And who prepared those for Tom?

2 A Shannon Evans.

3 Q Let's -- let's talk about your property that you had
4 purchased. Let's -- let's go to the 2011 time period and talk
5 about the purchase of the Lowe property. Do you recall that?

6 A Yes.

7 Q All right. And can you explain to the Court, how
8 that property came about to be purchased?

9 A I decided to purchase a property because it was a --
10 market was low and I had an employee who had no place to live,
11 so I decided if I buy a house (sic.) And I put down as much
12 as -- as much to make the mortgage payment around \$800, which
13 she was willing to pay an able to pay, then I have a good
14 tenant and I have a rental property.

15 Q And did you have discussions with Tom about this?

16 A Yes.

17 Q Okay. And what -- how did you originally -- what
18 was your intent on how you were going to hold title to this
19 property, originally?

20 A I was going to buy the rental property. By myself.

21 Q Okay. And -- and did Tom come to learn that, at
22 some point?

23 A Yes.

24 Q And what happened?

1 A He wasn't happy about it.

2 Q And so did he do or say anything?

3 A Yes, we have argu -- we had arguments about it and
4 then after -- he didn't believe I will buy it, but I bought
5 it. And then we changed -- we went to the title company and
6 then we -- I added him on the title of the property.

7 Q And so, why did you add him on the title?

8 A There's only so many battles you can fight every
9 day.

10 (whispered conversation)

11 Q Did you -- did Tom put any of the money down for
12 that?

13 A No, he promised to help with the management of the
14 property.

15 Q Where did the money come from that you put down on
16 that property?

17 A Well, my savings account.

18 Q And do you recall, approximately, how much that was?

19 A Somewhere betwe -- or, between \$30- and \$40,000,
20 maybe 45. And the purchase price was \$145,000, --

21 Q Okay.

22 A -- and so I would have to put a down probably,
23 \$45,000, for the mortgage to be about \$800. Judy was willing
24 to pay \$800, because between her salary, alimony, child

1 support, and whatever, that's what she was able to do. So
2 that was the deal.

3 Q Okay. And do you recall the purchase price?

4 A I think it was 145.

5 Q Just going to have you turn to Exhibit 8.

6 MR. JONES: Exhibit 8?

7 MR. GOLDSTEIN: Yeah.

8 (whispered conversation)

9 MR. GOLDSTEIN: Plaintiff's Exhibit 8.

10 BY MR. GOLDSTEIN:

11 Q Okay, look at Bates label 59, five-nine.

12 A Page 759?

13 Q No, just -- just 59. Just five-nine. Let me -- let
14 me help you.

15 THE COURT: What's the Bates stamp, please?

16 MR. GOLDSTEIN: Bates stamp was five-nine.

17 THE DEFENDANT: I -- I ca --

18 MR. JONES: Actually, unfortunately, there's two
19 Bates numbers.

20 MR. GOLDSTEIN: Oh.

21 THE DEFENDANT: I don't --

22 MR. GOLDSTEIN: Which one am I reading?

23 MS. STOLZ: That's the title company's.

24 THE DEFENDANT: So, this is 703.

1 MR. JONES: The title company has a Bates number --
2 MS. STOLZ: Yeah.
3 MR. JONES: -- then --
4 THE DEFENDANT: 736, seven --
5 MR. GOLDSTEIN: Oh, I apologize.
6 MR. JONES: -- the Defendant has a Bates number.
7 MS. LOBELLO: Yeah, that's --
8 MR. GOLDSTEIN: You're right, --
9 MS. LOBELLO: -- what happened.
10 MR. GOLDSTEIN: -- I'm reading the title company's
11 Bates number, so you're right.
12 THE COURT: This is volume one.
13 MR. GOLDSTEIN: This is volume one, Exhibit 8.
14 THE COURT: Exhibit 8.
15 MR. GOLDSTEIN: And Danka Michaels-762 and/or TTN-0
16 --
17 THE COURT: Okay.
18 MR. GOLDSTEIN: -- 0059
19 THE COURT: Thank you.
20 MR. GOLDSTEIN: This is Ticor Title, I guess, who
21 Bates labeled the --
22 THE COURT: This exhibit, by the way, is already in.
23 Go ahead.
24 MR. GOLDSTEIN: Yes.

1 BY MR. GOLDSTEIN:

2 Q Just looking at that, that's a de -- State of Nevada
3 declaration of value form, there. It says the sales price is
4 \$129,900. Does that --

5 A Oh.

6 Q -- refresh your recollection as to how much that re
7 -- property cost?

8 A So, it was \$130,000. I don't know how much I put
9 down. It was just to make sure that the mortgage was \$800.

10 Q Okay.

11 (Pause - whispered conversation)

12 Q Okay, I don't -- one of the issues that came up on
13 this particular Exhibit -- and I don't know, so you'll have to
14 help me, John, on this -- was this intended to be entirety of
15 the exhibits from -- received from the Ticor Title, according
16 to the certificate of custodian of records, that are here?
17 The reason I say it is, because when I went through it, we
18 found documents that weren't -- that weren't in here that was
19 (sic) actually part of the -- the file. And so I -- I wanted
20 to add those documents to this exhibit so that this exhibit
21 would be complete.

22 MS. LOBELLO: No, we -- we have -- we have it the
23 way we wanted it.

24 MS. STOLZ: Yeah, it's not -- so, there's actually

1 like, almost 300 pages missing.

2 MR. GOLDSTEIN: I see.

3 MS. STOLZ: So those are just --

4 MS. LOBELLO: (indiscernible) what I wanted from day

5 --

6 MS. STOLZ: -- pieces that show --

7 MR. JONES: The --

8 MS. STOLZ: -- the payments.

9 MR. JONES: The -- the settlement statement's

10 already in there.

11 MR. GOLDSTEIN: Yes, okay.

12 MS. STOLZ: Well, yours ends --

13 MR. GOLDSTEIN: Okay, so --

14 MS. STOLZ: -- on 841, and this is 1009.

15 MR. GOLDSTEIN: Yeah.

16 MS. STOLZ: Some might be duplica --

17 MR. GOLDSTEIN: For example, this -- set -- this

18 settlement statement. So, this is where I -- I'm trying to

19 understand. Do you see what I mean?

20 MR. JONES: Yeah, I don't have that in any of my --

21 MR. GOLDSTEIN: Right.

22 MR. JONES: -- prior exhibits.

23 MR. GOLDSTEIN: Okay, so is there -- do you have an

24 objection to this?

1 MR. JONES: I -- I do.

2 MR. GOLDSTEIN: Well, what's your objection? What's

3 the --

4 MR. JONES: Was it produced in -- in your exhibits?

5 MR. GOLDSTEIN: This is your exhibits. What are you

6 talking about?

7 MR. JONES: I -- I know --

8 MR. GOLDSTEIN: This is Bates labeled --

9 MR. JONES: -- it wasn't produced in our exhibits.

10 I mean, --

11 MR. GOLDSTEIN: This is Bates labeled. What would

12 your objection be to this document?

13 MR. JONES: Let me look at it.

14 MS. LOBELLO: Because we went through the documents

15 that --

16 MR. GOLDSTEIN: It's a record.

17 MS. LOBELLO: -- we received and we picked what we

18 wanted to use as our exhibits at trial. So -- and --

19 MR. GOLDSTEIN: Unders --

20 MS. LOBELLO: -- that wasn't part of what we wanted

21 in our exhibit.

22 MR. GOLDSTEIN: I understand that.

23 MS. LOBELLO: And that --

24 MR. GOLDSTEIN: So, --

1 MS. LOBELLO: -- unfortunately, I don't remember why
2 at this moment.

3 MR. GOLDSTEIN: Okay. Then I'll present it as our
4 next in line exhibit.

5 MR. JONES: Is -- is the purpose -- did I -- that
6 there was \$24,000 put down? Well, what is it being offered
7 for? Maybe we can save some time.

8 MR. GOLDSTEIN: This is being offered because this -
9 - my understanding is, this is the settlement statement.
10 There's a different settlement statement in here, --

11 MR. JONES: Okay.

12 MR. GOLDSTEIN: -- so I don't know why the title
13 company gave two settlement statements.

14 MR. JONES: I -- I --

15 MR. GOLDSTEIN: But this is the one that's certified
16 by them, so I want this one in e -- in evidence.

17 MR. JONES: But what -- what is the reason?

18 THE COURT: Are they different?

19 MS. LOBELLO: What Bate number is that?

20 MR. GOLDSTEIN: Ye --

21 MR. JONES: This is --

22 MR. GOLDSTEIN: This -- this says --

23 MR. JONES: 1009.

24 MR. GOLDSTEIN: Right. Where is -- where is -- it's

1 1009. Which one is the -- what's the numbers for that one?

2 (whispered conversation)

3 MR. GOLDSTEIN: The one that's in there is not a
4 certified copy. That's my understanding, okay?

5 THE COURT: Is it exactly the same?

6 MR. GOLDSTEIN: It -- it's not, at least in the way
7 I'm reading it. So --

8 THE COURT: Do you need to take a break?

9 THE DEFENDANT: No, I'm just hot.

10 THE COURT: Yeah.

11 MR. JONES: Yeah, well, we --

12 THE DEFENDANT: Hot flash.

13 THE BAILIFF: I talk to ar --

14 (whispered conversation)

15 THE BAILIFF: -- Eileen and she's going to call the
16 maintenance people to try to get it turned off.

17 (whispered conversation)

18 THE BAILIFF: But I -- I pushed these and
19 apparently, they don -- they don't do anything.

20 THE COURT: No, they're just for decoration. The
21 put them up there to think you're in control.

22 (whispered conversation)

23 MR. JONES: I know, but what's the purpose, just to
24 show the amount? My guy will stipulate that \$27,000, total

1 was put down -- or, roughly \$27,000, if that's the reason.

2 MR. GOLDSTEIN: I -- wha -- what is your objection
3 to the document?

4 MS. LOBELLO: We don't know if this is authentic, --

5 MR. JONES: Yeah, I --

6 MS. LOBELLO: -- for starters.

7 MR. GOLDSTEIN: How can you not? It's --

8 MS. LOBELLO: Do you --

9 MR. GOLDSTEIN: -- part of --

10 MS. LOBELLO: -- have a --

11 MR. GOLDSTEIN: -- the ti --

12 MS. LOBELLO: -- certificate of custodian of
13 records?

14 MR. JONES: If you --

15 MR. GOLDSTEIN: It's part of their documents that
16 they produced to you with the --

17 MR. JONES: But it --

18 MR. GOLDSTEIN: -- certificate --

19 MR. JONES: -- isn't one of --

20 MR. GOLDSTEIN: -- of records.

21 MR. JONES: -- your exhibits --

22 MS. LOBELLO: No, they --

23 MR. JONES: -- and it's --

24 MS. LOBELLO: -- produced it --

1 MR. JONES: -- not one of --
2 MS. LOBELLO: -- to you, not to me.
3 MR. JONES: -- our exhibits.
4 MS. STOLZ: We disclosed it to you.
5 MS. LOBELLO: You subpoenaed Ticor.
6 MR. GOLDSTEIN: Correct. It's the same certificate
7 of records that's already in exhi -- in evidence with --
8 THE COURT: Counsel, --
9 MR. GOLDSTEIN: -- your documents.
10 THE COURT: -- did you --
11 MS. ABRAMS: If I may? When we -- when we -- when
12 they were trying to admit these into evidence, we indicated
13 that we were -- our -- we were reserving an objection for
14 being incomplete.
15 THE COURT: Yes, I recall that.
16 MS. ABRAMS: And so we didn't have to -- I'm sorry.
17 So, because the -- the production from the custodian of
18 records, the documents attached were incomplete, we reserved
19 that. The Court said that we could go back --
20 MR. JONES: The --
21 MS. ABRAMS: -- and fill in --
22 MR. JONES: Let's just call --
23 MS. ABRAMS: -- the missing pages.
24 MR. JONES: -- it Defendant's next in order. We're

1 call this settlement statement Defendant's next in order and
2 it can come it.

3 MR. GOLDSTEIN: Thank you.

4 THE COURT: Very good.

5 THE CLERK: It'll be O.

6 THE COURT: It will be O -- Defendant's O.

7 THE COURT: Do we have copies for the clerk?

8 MR. GOLDSTEIN: Yes, Judge, we do.

9 THE COURT: And for Opposing Counsel?

10 MR. GOLDSTEIN: You already had it.

11 THE COURT: Defendant's O.

12 MR. JONES: Actually, Your Honor --

13 THE COURT: Proposed Exhibit O.

14 MR. JONES: Here -- here's the problem.

15 THE COURT: Hmm?

16 MR. JONES: We know that they're both borrowers on
17 the loan for this property.

18 MR. GOLDSTEIN: This is not a -- this is a speaking
19 objection, Your Honor.

20 MR. JONES: No, no.

21 MR. GOLDSTEIN: What's the problem?

22 MR. JONES: Well, I -- I'm just now getting an
23 opportunity to look at this document and it only -- this can't
24 be the right settlement statement because they were both

1 borrowers on the loan and this has her listed as the only
2 borrow, whereas the one that's already in evidence has them
3 both as borrowers.

4 MS. ABRAMS: Your Honor, Counsel can make his
5 arguments if he wants to, but that's the document that wa --
6 they pulled out of the -- of the documents produced in
7 response to the subpoena. They selected and they left out
8 specific documents, instead of attaching everything that was
9 produced.

10 MR. GOLDSTEIN: And it doesn't go to the
11 admissibility of the document, Judge. It go -- it may go to
12 the weight, which he can argue at the time, but it doesn't go
13 to the admissibility of it. This document is a --

14 MS. LOBELLO: We didn't say --

15 MR. GOLDSTEIN: -- record, has been --

16 MS. LOBELLO: -- these are the documents --

17 MR. GOLDSTEIN: -- authenticated by --

18 MS. LOBELLO: -- (indiscernible).

19 MR. GOLDSTEIN: -- the custodian of records, --

20 MS. LOBELLO: We just said --

21 MR. GOLDSTEIN: -- it's stamped in the middle --

22 MS. LOBELLO: -- certificate of custodian of record.

23 MR. GOLDSTEIN: -- that says, I hereby certify that
24 this is a true and exact copy of the original Ticor Title of

1 Nevada by, with a signature on page one. So there's no reason
2 this document, from an evidentiary perspective, shouldn't be
3 admitted. He can make the arguments about the weight all he
4 wants.

5 MS. LOBELLO: It also doesn't have this at the top,
6 it's -- looks different, I -- I don't know. I -- it makes me
7 a little -- queasy.

8 MR. GOLDSTEIN: It's got their Bates label on it.

9 MS. ABRAMS: And if you look at their exhibit,
10 you'll see it's missing from their exhibit, Bates stamp
11 number-wise.

12 THE COURT: I -- I'm going to let this in as O --
13 Defendant's O.

14 (Defendant's Exhibit O admitted)

15 THE COURT: I don't know -- you'll probably have to
16 make argument on it. There's no signature anywhere here.
17 There's no date, --

18 MS. LOBELLO: Doesn't have the --

19 THE COURT: -- in which the -- this was --

20 MR. GOLDSTEIN: You don't -- there's no signature on
21 their settlement statement either, Judge.

22 THE COURT: I got it.

23 MR. GOLDSTEIN: And this one, compared to theirs, --

24 MS. LOBELLO: 03/04 --

1 THE COURT: I don't --
2 MS. LOBELLO: -- 11.
3 THE COURT: -- know which one was done first or
4 second --
5 MS. LOBELLO: 03/04/11.
6 THE COURT: -- or third.
7 MR. GOLDSTEIN: This one actually has a stamp on the
8 front, in the middle that's stamped --
9 THE COURT: Very -- fine.
10 MR. GOLDSTEIN: -- by Ticor.
11 THE COURT: That's fine.
12 MR. GOLDSTEIN: And their's don't.
13 THE COURT: I -- I get it.
14 MR. GOLDSTEIN: All right. So -- so, I'm sorry, --
15 THE COURT: So, this --
16 MR. GOLDSTEIN: -- did the --
17 THE COURT: -- may be something --
18 MR. GOLDSTEIN: -- witness have a --
19 THE COURT: -- you guys need to address, as to when
20 it was --
21 MR. GOLDSTEIN: Is it --
22 THE COURT: -- prepared by the title company and
23 which one was first and which one was second and all kinds of
24 fun stuff.

1 MR. JONES: Well, I mean, that's the problem with --

2 MR. GOLDSTEIN: It's not a problem.

3 MS. LOBELLO: You have book one.

4 BY MR. GOLDSTEIN:

5 Q Does it -- does it ha -- does the witness have a
6 copy?

7 A Yes.

8 Q Great. All right. Just looking at the bottom of
9 this number, it says cash from borrow, \$24,961. Does that
10 your recollection as to how much money was put down?

11 A Yes.

12 MR. JONES: Well,

13 MR. GOLDSTEIN: And that --

14 MR. JONES: -- just so we're clear, there was \$2,000
15 in-hand money also referenced on it, so the total would --

16 MR. GOLDSTEIN: Is that an objection?

17 MR. JONES: -- have been \$26,000.

18 THE COURT: Where is the -- the duplicate settlement
19 conference (sic) Bates stamp? Is that the 132, or is there a
20 different number?

21 MR. GOLDSTEIN: Yes, 132.

22 THE COURT: The settlement that you're referring to,
23 Mr. Jones.

24 MR. JONES: I'm sorry, Your Honor.

1 THE COURT: The s -- Bates stamp on the settlement -
2 -
3 MR. GOLDSTEIN: Is one thir --
4 THE COURT: -- statement.
5 MR. JONES: On the one that was in our --
6 THE COURT: In -- in the exhibit, yes, sir.
7 MR. GOLDSTEIN: 132, Judge. Danka Michaels-835,
8 TTN-00132.
9 THE COURT: They look really different.
10 (Pause - whispered conversation)
11 MR. GOLDSTEIN: So, I want to go through -- and then
12 I have two more -- I two more exhibits -- well, two more sets
13 --
14 THE COURT: They're vastly different documents.
15 MR. JONES: They are.
16 MR. GOLDSTEIN: That's -- okay, well, I --
17 THE COURT: But this one is stamped with, I certify
18 this is accurate, so we'll go from --
19 MR. GOLDSTEIN: To u --
20 MR. JONES: So, Judge, here's the thing is.
21 MR. GOLDSTEIN: To use Mr. Jones' statement, he can
22 argue it in his closing, --
23 THE COURT: True.
24 MR. GOLDSTEIN: -- Your Honor.

1 THE COURT: The deed of trust, which is already in
2 evidence, has them both as borrowers. So we --
3 MR. GOLDSTEIN: Make an argument --
4 MR. JONES: -- know that that document can't be
5 right.
6 MR. GOLDSTEIN: Make your argument, John.
7 MR. JONES: No, no.
8 MR. GOLDSTEIN: Make your --
9 THE COURT: He can --
10 MR. GOLDSTEIN: -- argument --
11 THE COURT: -- make it at closing.
12 MR. GOLDSTEIN: -- at closing or whatever.
13 MS. LOBELLO: We're objecting --
14 MR. JONES: That's fine.
15 THE COURT: But I'm going to --
16 MS. LOBELLO: -- to the authenticity --
17 THE COURT: -- let this in
18 (Defendant's Exhibit O admitted)
19 MS. LOBELLO: -- of this document.
20 MR. GOLDSTEIN: You can't --
21 THE COURT: I --
22 MR. GOLDSTEIN: -- object to its authenticity when
23 it was in with the custodian of records --
24 MR. JONES: I -- I --

1 MR. GOLDSTEIN: -- that's --
2 MR. JONES: Listen --
3 MR. GOLDSTEIN: -- already in
4 MR. JONES: -- I -- I -- we --
5 THE COURT: I've already --
6 MR. JONES: -- know what --
7 THE COURT: -- ruled.
8 MR. JONES: -- the deed of trust says, so I really -
9 -
10 THE COURT: It's coming --
11 MR. JONES: At this --
12 THE COURT: -- in as O.
13 MR. JONES: -- point, we're wasting a lot of time.
14 THE COURT: Figure it out. Thank you.
15 MS. LOBELLO: Can I clarify that --
16 MR. GOLDSTEIN: Let me --
17 MS. LOBELLO: -- our Exhibit 8 does not purport to
18 be the entire set of documents that were provided to the
19 Defendant --
20 THE COURT: Correct.
21 MS. LOBELLO: -- in discovery from Ticor Title, --
22 THE COURT: Right.
23 MS. LOBELLO: -- pursuant to their subpoena? They
24 purport to be some of the documents and a copy of the

1 certificate of custodian of records.

2 MR. JONES: True.

3 MS. LOBELLO: I never said -- we never -- the
4 Plaintiff never said that that was an entire --

5 MR. JONES: File.

6 MS. LOBELLO: -- file of every document from Ticor.

7 THE COURT: And --

8 MS. LOBELLO: And it -- and that's what's being --

9 THE COURT: At the --

10 MS. LOBELLO: I think --

11 THE COURT: -- last hearing, --

12 MS. LOBELLO: -- that's what they're inferring and
13 that's not right.

14 THE COURT: -- the Defendant --

15 MR. GOLDSTEIN: I'm not inferring that.

16 THE COURT: -- the Defendant did say that this was
17 not a complete and she didn't want it in at all. And I let it
18 in --

19 MR. GOLDSTEIN: Subject to the completeness.

20 THE COURT: -- subject to completion documents that
21 they may produce.

22 MS. LOBELLO: Got it.

23 MR. JONES: And that's fine.

24 MR. GOLDSTEIN: And I have two more --

1 THE COURT: So, it's in --
2 MR. GOLDSTEIN: -- documents.
3 THE COURT: -- as O.
4 MR. GOLDSTEIN: Thank you.
5 THE COURT: Figure it out.
6 MR. GOLDSTEIN: I have two more front Ticor Title
7 and I -- I don't know if the Court wants to just add it all as
8 part of -- as --
9 MR. JONES: Can I see them?
10 MR. GOLDSTEIN: -- Exhibit O, --
11 THE COURT: What is it?
12 MR. GOLDSTEIN: -- or if -- it's -- it's additional
13 Ticor Title documents. And so they're --
14 THE COURT: What kind of document? I want to keep
15 them separate. This is settlement. What's the --
16 MR. GOLDSTEIN: Right, --
17 THE COURT: -- next one?
18 MR. GOLDSTEIN: -- the -- these are receipts
19 acknowledging the -- the monies that Mr. Jones, for example
20 indicated, the \$2,000, and then a receipt acknowledging
21 \$27,394.56 from -- from Wells Fargo Bank.
22 THE COURT: Is there any problem with including
23 those in the par -- in -- in Exhibit O?
24 MR. GOLDSTEIN: Well, just make them next in line.

1 Make it easy, Judge.

2 MR. JONES: No, that's fine.

3 MS. LOBELLO: No, this one --

4 THE COURT: We're just--

5 MS. LOBELLO: -- says estimate.

6 THE COURT: -- going to put them ne -- next in --

7 not next in line, ju -- it will be a part of -- of O.

8 MR. GOLDSTEIN: Okay, fine.

9 THE COURT: Here, Madam Clerk.

10 (whispered conversation)

11 MR. GOLDSTEIN: All right.

12 THE COURT: Thank you.

13 MR. GOLDSTEIN: Ready?

14 THE COURT: That's my copy?

15 THE CLERK: Yes, I --

16 THE COURT: Thank you.

17 THE CLERK: -- have a copy.

18 THE COURT: Include those in -- in O, since it has

19 to do with the settlement.

20 MR. GOLDSTEIN: Thank you. So, let me give --

21 (whispered conversation)

22 MR. GOLDSTEIN: -- these -- this is additional

23 Exhibit O, so --

24 MS. LOBELLO: This is not the final settlement

1 statement.

2 MR. JONES: No. No. And just so we're clear, the
3 first part of Exhibit O has the word estimated on it.

4 THE COURT: Thank you.

5 MR. JONES: Figure is subject to change.

6 (whispered conversation)

7 MR. GOLDSTEIN: I think I gave you my copy. I think
8 I gave her my copy.

9 THE COURT: Well, you can get it back from your
10 witness when you're finished.

11 MR. GOLDSTEIN: I've just got to look at it.

12 (whispered conversation)

13 THE COURT: It is becoming unbearably warm in here.

14 THE CLERK: Is is. Would you like to use this
15 little fan?

16 THE COURT: No, it's -- thank you so much. You --
17 you --

18 THE CLERK: I turned it off and --

19 THE COURT: -- were --

20 THE CLERK: -- (indiscernible)

21 THE COURT: -- smart enough -- yes. You were smart
22 enough to bring yours.

23 THE CLERK: No, it's -- that was already here.

24 THE COURT: Oh.

1 MS. LOBELLO: You all right?

2 BY MR. GOLDSTEIN:

3 Q All right. Do you see these two documents, 866, and
4 867, and 874, and 875? You see those, Dr. Michaels?

5 A I have 866, --

6 Q Yes.

7 A -- 874, 875.

8 Q Okay. The -- do you see that -- that the \$27,394.56
9 from Wells Fargo Bank, received by wire transfer? Did you
10 cause that wire transfer to --

11 A Yes.

12 Q -- go through? All right. And then on the next
13 page -- or the next set of documents here, 875, do you see
14 that \$2,000 wire tranfer, also -- or, excuse me, \$2,000 book
15 transfer credit? Do you see that?

16 A Yes.

17 Q And that \$2,000, do you recall where that \$2,000 --

18 A Yes.

19 Q -- came from? Where? Was that from you?

20 A Yes.

21 Q Okay, thank you.

22 (Pause - whispered conversation)

23 Q Okay. Did Tom make any promises to you about the
24 Lowe property, helping with it?

1 A Yes.

2 Q Okay, and what did he say?

3 A He will help with the management, collect the -- the
4 rent, and check on it, change the air filters, that kind of
5 stuff.

6 Q All right.

7 MR. GOLDSTEIN: Judge, I don't know when a good time
8 would be to take the morning break, but if I'm going to start
9 to transition, I -- I don't know if --

10 MR. JONES: This is fine. We would like one too --

11 THE COURT: Let's --

12 MR. JONES: -- if it's --

13 THE COURT: -- take a --

14 MR. JONES: -- okay with --

15 THE COURT: -- morning break.

16 MR. JONES: -- the Court.

17 MR. GOLDSTEIN: If we could take a --

18 THE COURT: That's fine. I'm going to go chat with
19 maintenance.

20 MR. GOLDSTEIN: Thank you, Judge.

21 MR. JONES: 10 minutes?

22 THE COURT: 10 minutes.

23 MR. GOLDSTEIN: Thank you, Your Honor.

24 MS. LOBELLO: Thank you, Judge.

1 THE BAILIFF: Court will be --

2 (Off record)

3 THE COURT: Back on the record.

4 BY MR. GOLDSTEIN:

5 Q Okay. I just had a -- one -- a couple more follow-
6 ups on the Lowe property then. Did you -- so, originally --
7 this is my understanding, make sure I got it right.
8 Originally, you intended to buy it without Tom, Tom made some
9 arguments, yelled at you, wanted -- demanded to be put on to
10 it, you said, --

11 MR. JONES: Objection, Your Honor --

12 MR. GOLDSTEIN: -- and then --

13 MR. JONES: -- leading.

14 MR. GOLDSTEIN: I'm just trying to lay the
15 foundation --

16 THE COURT: Sustained --

17 MR. GOLDSTEIN: -- for this question.

18 THE COURT: -- because you said yelled. Go ahead.
19 You argued, was the --

20 MR. GOLDSTEIN: Argued --

21 THE COURT: -- better word.

22 BY MR. GOLDSTEIN:

23 Q -- with you about it an demanded to be put on the
24 loan.

1 MR. JONES: She sustained my objection.

2 MR. GOLDSTEIN: I understand.

3 THE COURT: He changed the wording. Go ahead.

4 MR. GOLDSTEIN: Yeah.

5 BY MR. GOLDSTEIN:

6 Q So -- so, did you -- did you apply for a loan with
7 Tom for this property?

8 A Initially, no. Initially, everything was just me.

9 Q All right. And then that -- did that change?

10 A With -- I think it was, then changed after he
11 bullied me into it and I'm like, whatever.

12 Q All right. And so at the time that you purchased
13 this property in 2011, based on the tax returns that we had
14 already seen in record, he -- so -- earned very little income,
15 less than \$10,000 a year, do you believe that -- that his
16 income was needed to assist you in qualifying for that loan?

17 A No.

18 Q Okay. All right, well, let's talk about the
19 Patients One (ph)*** 10:54:35 building.

20 A Okay.

21 Q Okay? And about when did you purchase that
22 building?

23 A 2012.

24 Q Okay. And can you just describe to the Court --

1 tell the Court the facts and circumstances that led up to you
2 purchasing that building?

3 A I had been in private practice by then for nine --
4 eight -- after eight years, I realized that mortgage is
5 cheaper than rent and the market dropped. The prices of the
6 real estate dropped at the time and I decided that I -- if --
7 I will be much better off saving a lot of money if I buy my
8 own building. And I started looking around and it took a long
9 time and a couple of real estate agents to find this building.
10 This building was found by an agent whose name was Roy Fritz.
11 And I really liked the building because the -- of the parking.
12 The parking is fabulous.

13 It was too big, but Roy and I figured out that this
14 building has been in foreclosure and Bank of America sold the
15 foreclosure -- I don't really know the banking deals, but they
16 gave it to somebody else to manage, then that somebody made it
17 -- gave it to somebody else, and so on, so on. And we put a -
18 - I put an offer on the building.

19 Q All right. And well, let -- I --

20 A I don't know, but --

21 Q Bef --

22 A -- Tom --

23 Q Before you do that, can I have you just describe the
24 building? How big is it?

1 A The building is 30,000 square feet.

2 Q And --

3 A It's two stories.

4 Q And where is it located?

5 A It's on Buffalo and Cheyenne.

6 Q Okay. And you said it was 30,000 square feet, two
7 stories, right? So, is it -- what kind of office space is it?
8 Class A, B, what kind of office space? Do you know?

9 A I think it's A.

10 Q Okay. Are you familiar with the classifications of
11 office space?

12 A No.

13 Q All right, no problem. I'm just trying to
14 understand the classifications of office space you know, some
15 are nicer than others, and so I just want to have the Court
16 kind of, get a picture in its mind. We're obviously, all not
17 going to drive over and take a look at this building, so if
18 you --

19 A No, I --

20 Q -- can describe --

21 A -- think it's a --

22 Q -- the building to the judge, so she has a picture
23 of it, --

24 A I think --

1 Q -- that would be great.

2 A -- it's a class -- it's a regular building. Two-
3 story -- there has (sic) atrium in the middle and the -- the
4 building is around the atrium. I put the new -- after a
5 couple of years later, I put in new plants and roses and
6 whatever in the middle, so it's really pretty.

7 Q What -- what was its condition like when you
8 purchased it?

9 A It wasn't in a good condition.

10 Q Okay.

11 A The --

12 Q And what do you mean by that?

13 A It means it was sitting abandoned for a few years
14 because it was a -- a fore -- foreclosure. The bottom had
15 only two tenants, upstairs, were only two tenants, so the rest
16 of the office space needed work. I was going to take over the
17 rest of the bottom and was hoping to rent out the rest. Roy
18 and I talked about it and I realized that I can buy the
19 building because it was for sale for 1.85, and I could put
20 down only 10-percent at the time and I saved \$185,000. And
21 when Tom found out how much money I saved, he went ballistic
22 and was very upset and very angry with me and said then no,
23 there's no way we're going to buy this building. He was so
24 angry, he actually threatened the real estate agent.

1 Q What -- why -- why did he -- why was he so upset
2 that you saved a bunch of money?

3 A Because I think he wanted the money. He didn't want
4 me to --

5 MR. JONES: Objection, --

6 THE DEFENDANT: -- invest.

7 MR. JONES: -- move to strike, speculative.

8 THE DEFENDANT: And --

9 THE COURT: I -- I would -- you need to rephrase
10 your question. She cannot speculate as to what his purpose
11 is.

12 BY MR. GOLDSTEIN:

13 Q Did Tom ever -- did -- did Tom ever express to you
14 why he was so upset?

15 A Yes, he --

16 Q Okay.

17 A -- said it was a -- a total stupidity to buy this
18 building because we just -- we're just going to go bankrupt on
19 it. When Roy and I calculated it, the -- if I put 10-percent
20 down, my mortgage would be \$8,600. That would be basically,
21 my rent if I could pay my rent and I will have only two
22 tenants, I can get the building, no problem. So I don't --
23 didn't understand his concern.

24 Q Okay. Just before you bought the building, where --

1 where was your practice?

2 A I was pra -- my practice, I was renting space from
3 somebody else two blocks away. I had 4,500 square feet and I
4 paid \$6,500 for it.

5 Q Okay. And so -- so, did you decide to -- well,
6 obviously, you decided to proceed with the purchase. So, how
7 much money do you put down?

8 A I put 10 percent down.

9 Q Okay. And did Tom contribute any of that down
10 payment?

11 A No.

12 Q And then, let's talk about the loan on the -- the
13 building. Tom didn't wa -- your testimony is, he was upset,
14 he didn't want to purchase the building. So let's talk about
15 how this building was purchased, the loan, and the subsequent
16 you know, titling of this. So, first, you put the money down.
17 Now let's talk about the loan. Can you explain to the Judge
18 about the circumstances ar -- surrounding the loan?

19 A I don't know. It went through the bank. You fill
20 out paperwork, you get --

21 Q I understand --

22 A -- a loan.

23 Q -- that. Did -- it -- was it in both of your names?

24 A I was the borrower, he was co-borrower because he

1 had no income.

2 Q And whose idea was (sic) to put him on as a
3 borrower?

4 A We agreed that if I buy the building, he -- because
5 I don't have the time and I don't have the experience in
6 management of real estate, that he will successfully manage
7 the building and -- in exchange of 50-percent partnership.

8 Q And so, at the time in 2012 -- again, I believe the
9 tax return references that Tom had a loss -- was that in --
10 was Tom's loss, did impact the ability to get the loan?

11 A No, he was not significant. That -- he did not --

12 Q Did it help in getting the loan?

13 A Not at all. I mean, it would have been detrimental,
14 except that my business was successful and the buil -- the
15 building would have been occupied by, I think it was like, 60
16 percent. It -- I think, at that time, I don't know. It was
17 the occupancy of the building and I was the guarantor and my
18 business was the guarantor, so there was enough.

19 Q All right. And when you purchased it, you said
20 there was (sic) two tenants in the top and nobody in the
21 bottom. Is that right?

22 A No, wa -- on the --

23 Q Sorry.

24 A -- bottom, we had two tenants --

1 Q Okay.

2 A -- and upstairs, we had -- I remember one. I don't
3 remember if there was anybody else upstairs at that time.

4 Q And so then, what happened after you purchased the
5 building?

6 A I borrowed the money from Bank of America to remodel
7 my space and --

8 Q And what -- what space was yours? Upstairs,
9 downstairs?

10 A Downstairs.

11 Q Okay.

12 A I took the rest of the downstairs that was available
13 and Tom moved upstairs, to suite one oh -- 208.

14 Q Okay. Well, let's talk about your space downstairs
15 first. Approximately, how much space was that?

16 A So, my medical -- medical was 6,000 square feet and
17 my medical spa was 2,200-2,300, something like that.

18 Q All right. So, in 2012, though, did you have both
19 of those businesses?

20 A Yes.

21 Q The med spa and your's?

22 A Yes.

23 Q All right. Did you do -- did you do the build-out
24 on those two at the same time?

1 A Yes.

2 Q Okay. And are they interconnected, I guess I should
3 say?

4 A There is a back door from medical to the medical
5 spa, so it connects so I can go back-and-forth.

6 Q All right. Okay, perfect. And so you mentioned
7 borrowing money to pay for those improvements.

8 A Yes.

9 Q To build out your suite, I guess you can call it,
10 right?

11 A Yes.

12 Q And so, how much was that?

13 A I borrowed 400 and s -- I -- I paid back \$464,000.

14 Q Do you re -- do you recall how much the original
15 loan was, approximately?

16 A 450.

17 Q All right. And did you -- did -- was Tom on that
18 loan as well?

19 A No.

20 Q All right. And of that \$450,000 loan, how much of
21 that was used for tenant improvement -- for your suite tenant
22 improvement? All of it?

23 A No.

24 Q Okay. Can you tell -- do --

1 A I only --

2 Q -- you recall --

3 A -- found out earlier this year that the remo --
4 remodeling of my space was \$250,000, or something like that.

5 Q Well, let me ask you, where did this loan money go?
6 Once you received it, where did it go?

7 A I don't know. I -- Tom was telling me that all of
8 the money went to remodeling of my office.

9 Q Okay. Where was the money deposited? Do you
10 recall?

11 MR. JONES: Objection, foundation. Does she know it
12 by her personal knowledge, without -- without having looked at
13 a document that could be hearsay?

14 MR. GOLDSTEIN: No, if it's a business record, it
15 wouldn't be hearsay --

16 MR. JONES: It's not in evidence.

17 MR. GOLDSTEIN: -- and she can testify if she knows
18 where the money was deposited. She would have that --

19 THE COURT: Do you know where the money was
20 deposited?

21 BY MR. GOLDSTEIN:

22 Q Do you know what bank account it was deposited in?
23 about?

24 A Tom had full power over transfer ---

1 THE COURT: So your is no?

2 MR. GOLDSTEIN: Do --

3 THE COURT: She doesn't know.

4 THE DEFENDANT: No.

5 BY MR. GOLDSTEIN:

6 Q You don't -- you don't recall which bank account it
7 was deposited in?

8 A No.

9 Q Okay, fair enough. The -- who did you con -- well,
10 who was in charge of the ti -- the TI improvements for your
11 suite? Who was handling that process?

12 A Tom.

13 Q And so, can you te -- describe to the Court, a
14 little bit about how that came about?

15 A We --

16 Q The tenant improvement --

17 A We --

18 Q -- process.

19 A After we bought the building, I decided which area
20 am I (sic) going to take. I decided to take the bottom
21 because a lot of my patients are on canes and front-wheel
22 walkers or wheelchairs, so I wanted a bottom space and that's
23 space needed a lot of work, he said. And so we hired a
24 construction company. He arranged for everything and he paid

1 them.

2 Q And did you -- did you have an opportunity to -- for
3 example, did Tom show you any of the invoices that were
4 created for this tenant improvement?

5 A No, I was told that -- that, don't worry about it;
6 you're too busy, I -- and you don't even understand it anyway.

7 Q All right. And so were you aware of how much the
8 tenants improvements (sic) cost at the time?

9 A No.

10 Q Did Tom you know, explain this to you or go over it
11 with you?

12 A No.

13 Q Did he show you any invoices?

14 A No, honey, you are too busy. Don't worry about it.
15 It's all taken care of.

16 Q How about paying the vendors who did this? Did you
17 write any checks to pay the vendors for their services?

18 A N -- I don't think so.

19 Q Okay. Who --

20 A I could have paid for the --

21 MR. JONES: Objection, calls for speculation.

22 THE DEFENDANT: I don't remember.

23 MR. JONES: She -- she's saying it's speculation.

24 MR. GOLDSTEIN: Okay. It's okay. Do you --

1 THE COURT: She doesn't remember. Go ahead.

2 MR. GOLDSTEIN: It's not a problem.

3 BY MR. GOLDSTEIN:

4 Q Do you -- do you -- who was in charge of paying the
5 vendors, you or Tom?

6 A Tom.

7 Q All right. When was the -- when were those tenant
8 improvements completed?

9 A February -- the first week of February 2013, we
10 moved over the -- Valentine's weekend. I closed Friday, we
11 packed Thurs -- started packing Thursday evening, we moving
12 (sic) Friday, we finished moving --

13 Q Okay.

14 A -- Friday evening, and we settled Saturday, --

15 Q All right.

16 A -- opened up for business Monday morning.

17 Q And the -- you mentioned Tom having a suite upstairs
18 --

19 A Yes.

20 Q -- for his business, correct? What business was
21 that?

22 A Blue Point Development.

23 Q And how big was Tom's space?

24 A I think his suit was 6,000 square feet.

1 Q Okay. And your's was also 6,000 square feet?

2 A Medical, 6,000, and the spa was like, 23,000 at that
3 time.

4 Q Yeah, okay. And was any portion of the \$450,000
5 loan that you took out, was any portion of those monies used
6 for the improvement for Tom's suite?

7 A Shouldn't have been. That was my money from my --
8 it was my loan from my business.

9 MR. JONES: Objection, move to strike, non-
10 responsive.

11 THE COURT: Sustained.

12 MR. GOLDSTEIN: Okay.

13 BY MR. GOLDSTEIN:

14 Q You -- do you know -- you -- you, earlier testified
15 that -- that the amount spent on your suite was about
16 \$250,000. Is that right?

17 A Yes.

18 Q Okay. Do you know what happened to the other
19 \$200,000?

20 A Not really.

21 Q Okay. Did you get the -- did you get the \$200,000
22 back?

23 A No.

24 Q Did Tom ever tell you what he did with the

1 \$200,000?

2 A I didn't find out until --

3 Q First tell me if he told you what he did, yes or no.

4 A N -- I didn't know until -- I didn't know that the -
5 - my office suite remodeling was not \$464,000.

6 Q Right, I understand.

7 A I found out last year.

8 Q Okay. So, my question is, did Tom ever tell you
9 what he did with the \$200,000?

10 MR. GOLDSTEIN: Objection, assumes facts not in
11 evidence, Your Honor.

12 MR. GOLDSTEIN: No, she testified that he was in
13 charge of all the money.

14 MR. JONES: The question assumes that he had control
15 over the money.

16 MR. GOLDSTEIN: And the -- she testified to that
17 already.

18 THE COURT: Yes, she did.

19 MR. JONES: Okay, I'll withdraw the objection.

20 THE COURT: Thank you.

21 BY MR. GOLDSTEIN:

22 Q Did Tom ever tell you what he did with that extra
23 \$200,000?

24 A No.

1 Q Did he give you the money back?

2 A No.

3 Q How did you repay the loan?

4 A I paid back the loan in seven -- in eight years. I
5 couldn't pay it back faster because I had a prepayment
6 penalty.

7 Q I see. And so --

8 A I think it was about eight years.

9 Q Okay, so the loan was in 2012, eight years would put
10 it in 2020. Was that last year?

11 A No, 2019, I paid it off.

12 Q Okay. And how did you learn how much was actually
13 spent on your -- the tenant improvements for suite? How did
14 you come to find that out?

15 A During the -- this is because of the investigation
16 of all the money and Patients One and Tom and money and here
17 and there. And -- bu -- the question arose about the -- who -
18 - who -- got the money for the remodeling. And my business
19 lawyer said there is no way you spent \$464,000 --

20 MR. JONES: Objection, Your Honor, hearsay.

21 THE COURT: Sustained.

22 MR. JONES: Move to strike.

23 THE COURT: You can't say what somebody else said.

24 BY MR. GOLDSTEIN:

1 Q I just want to know how you came to learn --

2 THE COURT: Strike it, --

3 MR. GOLDSTEIN: -- okay?

4 THE COURT: -- her --

5 MR. GOLDSTEIN: Without --

6 THE COURT: -- last statement.

7 BY MR. GOLDSTEIN:

8 Q Without telling the Court what was told to you by
9 someone else -- and I just want to caution you, certainly,
10 don't tell the Court anything about what your business lawyer
11 may have said to you because we don't want to get into
12 attorney-client privilege issues -- I just want you to explain
13 the -- to the Court, how it was that you came to learn about
14 this.

15 A I asked the Bank of America to send me a -- a spread
16 out (sic) of money paid out of the \$464,000, that I paid them.

17 Q All right.

18 A I called the -- the phone (ph)*** 11:12:13
19 construction and I asked them for copy of the bill and the
20 bill was about 250 --

21 MR. JONES: Objection, Your Honor, hearsay.

22 THE COURT: Sustained.

23 THE DEFENDANT: I have the bill.

24 MR. GOLDSTEIN: It would be a business record

1 exception to the hearsay.

2 MR. JONES: Only if it was in evidence, Your Honor.

3 THE COURT: That's true.

4 THE DEFENDANT: And so that told me that I am
5 missing --

6 BY MR. GOLDSTEIN:

7 Q Well, hold on a second. -

8 A -- \$210,000.

9 Q All right. Okay. Did you ha --

10 MR. JONES: Objection, hearsay, move to strike.
11 Sorry, I was looking at another document.

12 THE COURT: I'm sorry? She said that's -- she said
13 she learned that she'd lost out on \$210,000.

14 MR. GOLDSTEIN: Yeah.

15 MR. JONES: By looking at a document that you've
16 already ruled would be hearsay.

17 MR. GOLDSTEIN: It's not offered for the truth of
18 the matter asserted, it's offered to -- to go to her mental
19 sense impression of how she learned.

20 MR. JONES: No, that --

21 THE COURT: I don't know --

22 MR. JONES: -- that's --

23 THE COURT: I'm -- I'm not --

24 MR. JONES: Then the amount is immaterial.

1 THE COURT: I'm overruling it.

2 MR. GOLDSTEIN: Okay.

3 (whispered conversation)

4 BY MR. GOLDSTEIN:

5 Q Did you hire a -- a forensic accountant in another
6 case?

7 A Yes.

8 Q All right. And as part of that forensic accounting,
9 is that --

10 MR. JONES: Objection, Your Honor. We're going to
11 stop right here on this. They hired an expert in the civil
12 case. They've never produce the report here. It's never been
13 produced in discovery.

14 MR. GOLDSTEIN: I'm not a -- I'm not --

15 MR. JONES: They can't even talk about it.

16 MR. GOLDSTEIN: I -- no, that's not sure. I'm not
17 going to ask what the report said.

18 THE COURT: Let me hear the question. Before you
19 answer it, I'll make the ruling. What's your question?

20 BY MR. GOLDSTEIN:

21 Q You -- you hired accountant, right? All right. Did
22 --

23 A Yes.

24 Q -- you ha -- did -- through that forensic accounting

1 process, it that --

2 THE COURT: Don't answer his question until I --

3 MR. GOLDSTEIN: Is that --

4 THE COURT: -- overrule.

5 MR. GOLDSTEIN: -- how you learned of how much was
6 spent?

7 MR. JONES: Objection. It's still hearsay.

8 MR. GOLDSTEIN: No, that's not hear --

9 THE COURT: It's --

10 MR. GOLDSTEIN: I'm -- I'm asking her how she
11 learned.

12 MR. JONES: By looking at a --

13 MR. GOLDSTEIN: It's not a --

14 MR. JONES: -- a forensic accountant report --

15 THE COURT: She --

16 MR. JONES: -- or talking to a forensic --

17 THE COURT: She learned --

18 MR. GOLDSTEIN: It's not --

19 MR. JONES: -- accountant.

20 THE COURT: -- by looking at a report. I don't know
21 how that's going to help you, Counsel. Go ahead.

22 MS. LOBELLO: It's also beyond the discovery date.

23 MR. GOLDSTEIN: Okay, sorry. Sorry.

24 THE COURT: She can say she learned by looking at a

1 document. We don't have the document, I can't bring any of
2 the document stuff in.

3 BY MR. GOLDSTEIN:

4 Q Why -- why did you do that? Why -- why hire a
5 forensic accountant?

6 A To find out how much money Tom stole from me.

7 Q All right. So you -- what was the source of monies
8 that you used to pay back this 400 -- you said \$464,000. What
9 -- where did that (sic) monies come from?

10 A My income.

11 Q From your --

12 A From --

13 Q -- medical practice or from where?

14 A From medical practice.

15 Q Okay. Did Tom contribute or make any payments to
16 that 400 and fi -- \$64,000?

17 A No.

18 Q So now, let's talk about the tenants in the Patients
19 One at the time. You said there were the people downstairs.
20 Are -- who were those -- well, let's just pick one and then
21 who -- who was the tenant and how big was the space and how
22 much did they pay?

23 A The two companies down stairs was (sic) a company
24 that -- one was some beauty magazine and the other one was a

1 real estate company.

2 Q Okay. And those two tenants, they wer -- were they
3 in place when you purchased the building? Were they already
4 there?

5 A Yes.

6 Q Were there already leases in place for those
7 businesses?

8 A Yes.

9 Q And so, do you recall the terms of those leases?

10 A No.

11 Q Were you involved in handling that?

12 A No.

13 Q Okay.

14 THE COURT: Just as advisory, I can hear stuff going
15 on over there because the masks, you're talking a little
16 louder, so --

17 MR. JONES: Sorry, Your Honor.

18 THE COURT: -- you might want to pass notes. Go
19 ahead.

20 MR. GOLDSTEIN: Thank you, Judge. It -- it's really
21 hard to be loud enough to talk --

22 THE COURT: I know.

23 MR. GOLDSTEIN: -- so everybody hears and not loud
24 enough so that the mic's picking it up.

1 BY MR. GOLDSTEIN:

2 Q Okay, so -- so these two tenants were already there.
3 Are either one of them -- are they still there now?

4 A No.

5 Q Okay, so let's start with real estate company. What
6 happened there?

7 A I applied for a small business loan through Bank of
8 America and the small business loan requested that the -- the
9 tenants sign a (sic) addendum to their leases, subjugating
10 their leases to the small business loans. And they all
11 refused and they eventually left. I never got the loan and
12 the -- when I realized that we are going to -- not able to get
13 the loan, I called a friend at Wells Fargo and refinanced the
14 building.

15 Q Okay. Just quickly, do you have a -- do you have a
16 lease for your medical practice with Patients One?

17 A Yes.

18 Q All right. And how much is that lease for?

19 A \$8,600.

20 Q And what is this per-square-foot rental rate?

21 A \$1. 15.

22 Q Okay. And was that the per-square (sic) rental rate
23 for that building at the time?

24 A Yes.

1 Q Okay. Did Tom -- Blue Point Development company,
2 did that have a lease with Patients One as well?

3 A Yes.

4 Q And how much was Tom's lease for? Do you recall?

5 A He paid \$4,000 for 6,000 square feet. I don't know
6 how much it is per-square-foot.

7 Q Okay. And then, so do -- did you -- when Tom
8 entered into the lease with Patients One with his company,
9 Blue Point Development, did he discussed that with you?

10 A I insisted that he create a -- a lease with Patients
11 One.

12 Q Okay. All right.

13 A Good business is good business.

14 Q Okay.

15 A That's a good business.

16 Q And so, did you discuss the terms?

17 A No.

18 Q Okay, who came up --

19 A He --

20 Q -- with the number of how much was going to be paid
21 on rent?

22 A Tom decided that's all he ca -- he could afford, was
23 \$4,000, so that's what he paid, occasionally.

24 Q I'll represent to you, the math on \$4,000 for 6,000

1 square feet is 66.66 -- 66.67 cents a square-foot, which is
2 less than -- well, it's approximately, half of -- of the
3 rental rate was at. Did Tom discuss the rental rate, other
4 than saying this is all I can afford?

5 A That's all he said.

6 Q Okay. Now, so, the real estate people that were
7 there, they ended up -- what -- what was their lease terms?
8 Do you recall, as far as how much they were paying?

9 A I don't remember that.

10 Q Okay. How about the other company that was
11 downstairs?

12 A I don't remember that either.

13 Q And who dealt with those companies?

14 A Tom did.

15 Q All right. What about upstairs?

16 A Upstairs, we had -- one or two tenants, I'm not
17 sure.

18 Q Okay. And do you recall who they were?

19 A So, the one tenant is still there. It's financial
20 services. And the other, I don't -- I'm not sure. I'm
21 blanking on it. I don't remember. I think maybe, there was
22 somebody. I'm not sure.

23 Q Okay.

24 MR. JONES: Objection, calls for speculation. When

1 you --

2 THE COURT: Sir, --

3 MR. JONES: -- say I don't remember --

4 THE COURT: We're -- she said she doesn't remember,
5 so it's fine.

6 BY MR. GOLDSTEIN:

7 Q The -- did you deal with either of those companies?

8 A No.

9 Q Who did?

10 A Tom.

11 Q Okay. Are -- you said the financial services
12 company is -- is the only one that's still there. So there
13 have been other tenants, so let's talk about the other
14 tenants. When they came, who they were, and the like, okay?
15 So when the real estate company left, how long was their space
16 open for -- vacant for?

17 A I don't know. I don't remember. I don't --

18 Q Okay, and do you recall that somebody took their
19 space?

20 A Yes, I actually found that tenant. It's a friend of
21 mine who is a podiatrist and they moved from Summerlin
22 Hospital and they've been there for four years now.

23 Q Okay. And -- and so this is somebody you found. Is
24 that right?

1 A Yes.

2 Q Okay. And how long have they been there?

3 A I think -- wait a minute. It's 2001 now, right?

4 THE COURT: '21.

5 BY MR. GOLDSTEIN:

6 Q No, '21.

7 A Two -- 2021. Oh my gosh, maybe five years, maybe
8 six years.

9 Q Okay.

10 A 2016. I think it was 2015 -- it's been six years.

11 Q You -- do you recall who negotiated the terms of
12 that lease? Do you recall?

13 A Tom did.

14 Q Do you recall the terms of that lease?

15 A No.

16 Q Did you have to you have to incur any TI
17 improvements in order for that company to lease that space?

18 A I don't know about that.

19 Q Okay. And were -- did they build anything out? Did
20 they rip anything out and build stuff? Do you recall if there
21 was construction?

22 A I know that some work was done and I know that they
23 want -- he wanted -- they wanted a shower in there. And then
24 a -- because they are doing procedures, they needed a special

1 room for autoclave. So I know that because that's medical
2 stuff. So there had to be an exhaust and some space around
3 it, the pressure and whatever and I talk --

4 Q Did Tom handle those things?

5 A Yes.

6 Q All right. And did you pay for those things or did
7 that come out of their rent or was the rent reduced? How do -
8 - how did those get paid for?

9 A That's Tom's dealings with the tenants. I --

10 Q That's fine.

11 A I assume that --

12 Q Don't -- don't assume, John will object.

13 A Okay, I don't know. I -- the way --

14 Q It's okay.

15 A -- it was --

16 Q If you don't --

17 A -- dealt with --

18 Q -- recall, it's okay.

19 A -- me before, as a tenant, I can tell you how it
20 works and how we ha -- Tom did with tenants. I don't know.

21 Q And that's all right. That's okay. I just want to
22 -- we -- we're just here to try to get what you do now on the
23 record and then we'll talk to Tom about he knows later. So
24 you know that they're there now, though, right?

1 A Yes.

2 Q Still there. Do you know what the terms of their
3 lease is, currently?

4 A No.

5 Q Okay.

6 A I just know they extended their lease last year, I
7 think.

8 Q All right. Who handles it for -- for the Patients
9 One now? Who handles it now?

10 A My son, Jacob.

11 Q Go it. All right, so next, did -- did Tom -- during
12 this time period, did Tom have, since you bought it until
13 2016, when it was -- when you guys separated it, did Tom have
14 occasion to bring new tenants in?

15 A I don't remember him bringing -- I brought another
16 tenant. It was the bookkeeping company upstairs. Oh, yes,
17 his friend who had a mobile radiology rented the small suite
18 upstairs. He needed a space for bookkeeping and billing, so
19 he was there for a few years. And when Tom and I split, he
20 left. The bookkeeping was there -- I brought in the
21 investment company. I brought another -- a podiatrist. After
22 Tom and I split, we brought in a real estate agency. And
23 downstairs, is some kind of a marketing group.

24 Q Okay. Between 2012, when you purchased it, and --

1 and the September 13, 2016 date, was there any additional
2 monies paid for improvements on behalf of other tenants, no
3 you and not Tom's company?

4 A I don't know.

5 Q Okay. All right. Now, so just going back to 2012,
6 all right? My understanding is Tom's name is on the Queen
7 Charlotte (ph)*** 11:25:22 home, the Lowe property, and then
8 the Patients One building is held in an LLC, of which each of
9 your respective trusts were 50-percent members at the time.
10 Is that accurate?

11 A Yes.

12 Q All right. Did you and Tom, in talking about your
13 estate planning, did you and Tom ever have discussions about
14 which one of you was -- was likely to die first?

15 A Yes.

16 Q Okay, and what were those discussions at the time?

17 A Tom was s -- convinced that he's going to die within
18 10 years.

19 Q And so at -- at this time in 2012, did Tom have
20 estate planning documents prepared?

21 A I don't think so.

22 Q Okay. Do you kn -- do you know when, about Tom did?
23 Well, they're in the record, right? So, let's -- let's just
24 move on to Tom had Shannon Evans prepare his estate planning

1 documents, correct?

2 A Yes.

3 Q All right. And were you there -- where you present
4 at Tom's initial meeting with Shannon Evans for this estate
5 planning?

6 A No.

7 Q All right.

8 A I don't remember.

9 Q Okay.

10 A I don't think so.

11 Q All right. Do you -- do you recall whether or not
12 Tom had a handwritten will?

13 A No.

14 Q You don't recall?

15 A Yes, I was there the first time because when I was
16 doing my family trust, I asked him if he wants to do his
17 family trust and he said no, I have nothing to give anybody; I
18 don't own anything. So then, when I put 50-percent ownership
19 of the building, then he created his own trust. We went to
20 Shannon Evans and she insisted that he wrote (sic) the -- his
21 will, just in case something happens next day (sic.) And he
22 hand-wrote, right there in front of her, what he wanted.

23 Q All right, I'll -- I -- I'll just have you -- just
24 to refresh her recollection on that, Exhibit B, Bates label

1 1068. B, this one.

2 (Pause - whispered conversation)

3 THE COURT: 1068 ?

4 MR. GOLDSTEIN: 1068, yes, Your Honor. Thank you.

5 THE DEFENDANT: And to Danka K. Michaels. Yep,
6 that's his note.

7 BY MR. GOLDSTEIN:

8 Q Is that the hand-written note that you were
9 referencing?

10 A That's what he wrote.

11 Q All right. And do you recognize the signature on
12 that?

13 A Yep.

14 Q And whose signature is that?

15 A Tom's.

16 Q All right. And it was dated May 17, 2012. Is that
17 right?

18 A Yes.

19 Q Was around the time -- was that the date of the
20 meeting that -- that Mr. Pickens and you had with Shannon?

21 A It must have been.

22 Q All right. And at that meeting, did you discuss
23 your and Tom's marital status?

24 A Yes.

1 MR. GOLDSTEIN: Objection, foundation. Who are we
2 talking about?

3 THE DEFENDANT: Yes.

4 MR. JONES: It's -- who's discu -- who's in the
5 discussion?

6 THE COURT: Lay the foundation. Who was there?

7 BY MR. GOLDSTEIN:

8 Q Who -- who was present?

9 A Tom, Shannon, and I.

10 Q Okay. And -- and your testimony -- your answer was
11 yes, right?

12 MR. JONES: I -- I still need to know who's part of
13 the discussion. He's -- the question was discussions. Is it
14 --

15 THE COURT: Who was part of the discussion?

16 THE DEFENDANT: Tom, Shannon, and I.

17 MR. GOLDSTEIN: That's what I --

18 THE COURT: So, you --

19 MR. GOLDSTEIN: -- thought her --

20 THE COURT: -- all said --

21 MR. GOLDSTEIN: -- testimony was.

22 THE COURT: -- words.

23 BY MR. GOLDSTEIN:

24 Q Okay. So, who -- during that time, did -- did

1 Shannon Evans ask Tom whether he was single or married?

2 MR. JONES: Objection, hearsay.

3 THE COURT: Sustained.

4 MR. GOLDSTEIN: It's no problem, we'll do this.

5 BY MR. GOLDSTEIN:

6 Q Did you hear -- did Tom state during this meeting,
7 his marital status?

8 A Yes.

9 Q And what did he say?

10 A Single.

11 Q Okay. Was there any further discussion by Tom --
12 any further statements by Tom, at -- at this meeting, where
13 Tom discussed or stated anything about the validity of the
14 marriage and whether he acknowledged it was valid or not?

15 A No.

16 Q Okay. Was there any other dis -- statements by Tom
17 with reference to the marriage?

18 A No.

19 Q Were Tom's parents alive at that time?

20 A Yes.

21 Q Okay. And did he have any siblings?

22 A Yes, he has four siblings.

23 Q And do you recall who Tom's estate plan -- who the
24 beneficiary of Tom's estate plan was?

1 A My son.

2 Q Okay, and anybody else?

3 A And myself.

4 Q Okay. And did you -- did Tom ever explain to you
5 why you left everything to you and your son and not anybody in
6 his family?

7 A Yes.

8 Q And what did Tom explain?

9 A He said everything is mine anyway. Everything is
10 all mine. It's all mine.

11 Q And what are you referencing? Specifically, what --

12 A That I bought all the property and he did not -- he
13 did not -- support any purchases. He did not have any money
14 to support the purchases, so he acknowledged that basically,
15 all of our -- all of -- everything that we owned, property-
16 wise was mine.

17 Q Okay. Okay. Let's -- let's talk ab -- let's move
18 forward now, a couple of years from 2012, and Tom's estate
19 planning, to 2014. How -- do -- to the -- to your
20 recollection, how was Blue Point Development doing, as far as
21 business-wise in 2014?

22 A Which year?

23 Q 2014.

24 A 2014, he was flying high. He finally made it. His

1 company was making big money. He had several contracts. He
2 completed a construction in Las Vegas ahead of the time and
3 under the budget, so he earned himself a million-dollar bonus.
4 He was --

5 Q Let's talk about that for a second. Do you recall
6 what job that was?

7 A That was what they call the LV Blue. It was the
8 Wyndham on the -- the other side of the strip.

9 Q Okay. And you indicated that Tom received a
10 million-dollar bonus. Is that right?

11 A Yes.

12 Q All right. And do you recall what that was for?
13 Why he got that bonus.

14 Q He re -- he finished the construction -- or under
15 his supervision, the construction finished under budget and
16 ahead of the time.

17 Q And during that time period, was Tom traveling a
18 lot?

19 A He also was going to Colorado for -- to supervise a
20 -- another construction.

21 Q Okay. Do you recall what that was for?

22 A It -- construction management. It's -- his company
23 is construction management. Everything was construction
24 management.

1 Q I meant, do you recall if there was a specific
2 project in Colorado that that was for.

3 A Yeah, that was a hotel.

4 Q Okay. All right. And so approximately, how often
5 was Tom traveling to Colorado during that time period?

6 A Once-a-week.

7 Q Okay.

8 A Every other week, once to two -- once (sic) or two
9 weeks.

10 Q So, how long would he been gone?

11 A He would be gone for two, three days.

12 Q Okay. All right. When you -- did you change how
13 your office bills were paid in 2014?

14 A Did I change what?

15 Q How your office bills were pa -- I'm sorry, I know
16 it's hard. How your office bills were paid in 2014. Did you
17 change kind of, how they started getting paid? Either by a
18 check or credit card or online? Like, did you change how that
19 happened?

20 A No.

21 Q No? Okay. Do you recall putting a lot of office
22 expenses on an American Express card?

23 A A lot? No, nothing has changed.

24 Q Okay.

1 A There's no change from one year to another.

2 Q All right. Had it always been that way, that the
3 expenses were put on the American Express?

4 A No. There are --

5 Q Okay, I'm sorry.

6 A -- expenses that are purposely not put on American
7 Express or any credit card.

8 Q Okay. I'm sorry, can you ju -- just explain to the
9 Court, then the difference?

10 A Because if you buy something on American Express,
11 you get -- you bill for it immediately. They take your money.
12 If I have a 90 days on it, I have 90 days to sell it, get my
13 money, and maybe profit on it. So I like to milk the 90 days,
14 so it's paid by check.

15 Q And do you know if Tom had a Black Card with
16 American Express?

17 A Yes.

18 Q Okay. And was he asking -- was he asking you for --
19 you said he got \$1,000,000. Was Tom -- did he still ask you
20 for significant sums of money in 2014?

21 A 2014? He always told me how much I owe on my credit
22 card and I gave him the money. I gave him check (sic.)

23 Q And -- but did you -- did he show you those credit
24 card bills?

1 A No.

2 Q Okay. Was it his credit card or your credit card?

3 A He was the owner of the credit card and I was co-
4 carrier. I hadn't -- call it. I got a credit card under his
5 account.

6 Q Authorized user?

7 A Authorized user, thank you.

8 Q And so when he would say how -- you know, I need
9 whatever, X-amount of dollars for the American Express, you
10 would just write him a check and pay --

11 A Yes.

12 Q -- for it? Did you actually do -- did he show you
13 the statements?

14 A No, I --

15 Q Did you go --

16 A I just trusted him, that that's what I owe, to -- so
17 that's what I need to pay.

18 Q Okay. When he got the million-dollar bonus, do you
19 know what he did with all the money?

20 A Million-dollar bonus?

21 Q Yeah. Do you know what he did with the \$1,000,000,
22 that he got?

23 A I don't know what he did with all of it.

24 Q Okay. Do you know what he did with any portions of

1 it?

2 A The -- so, part of it went to remodeling of our
3 house.

4 Q Okay. Approximately, how much?

5 A He testified that he gave -- he -- that he put
6 \$100,000.

7 Q All right, I want to know your -- what your
8 knowledge is. What --

9 A I think it was twice as much, so I don't know if he
10 says \$100,000 because it -- I paid \$100,000, and he paid
11 \$100,000. That's a possibility. I don't remember.

12 Q Hold on a second. All right. I move to strike my
13 own client's testimony if she doesn't remember. Do you -- do
14 you recall, specifically, how much money from the \$1,000,000
15 Tom spent, yes or no?

16 A I don't know how he spent his \$1,000,000.

17 Q Okay, no problem. Do you -- do you know if Tom ever
18 discussed trying to reduce his tax obligation from --

19 A Yes.

20 Q All right. And can you -- can you tell the Court
21 what Tom stated in those discussions?

22 A He came home and said I need you to come with me and
23 look at something. And he took me to Porsche dealership and
24 said here, look at this car. I want to buy it. I'm like,

1 you're going to to have like a Range Rover and a Porsche? He
2 goes, no, you're going to drive this one. Why? I have a car.
3 No, I don't want you to drag the little car. It's not safe
4 for you. Okay, I am not going to drive such an expensive car.
5 Well, just go and drive it. See if you like it. Okay, I went
6 and drove it. I loved it. So I came back and he goes, so you
7 like it, I'm like, yes. So he --

8 Q And --

9 A -- said -- he looks at the salesperson, I said okay,
10 we'll take it.

11 Q All right. Did you -- did Tom ever discuss with you
12 and what kind of tax impact the purchase of this vehicle would
13 have?

14 A No.

15 Q Okay.

16 A That was the whole discussion about taxes. Either
17 we're going to buy the -- the car or we're going to pay taxes
18 on it.

19 Q Okay. Did he -- did he say -- did he make any
20 statements about how purchasing that particular car could --
21 would impact his tax obligations?

22 A No.

23 Q All right. Do you know if, by way of him purchasing
24 that vehicle, it reduced tax obligations?

1 A Yes.

2 Q Okay. So, let's start talking about 2015 now. Oh,
3 sorry. By the -- what time frame was the purchase of this
4 vehicle?

5 A November 2014.

6 Q Okay. So now, turning 2015, was Tom spending much
7 time in Las Vegas?

8 A No, he got -- he finished the Colorado, he got three
9 construction sites in Bahamas, and I don't really know,
10 exactly which ones. I have a hard time recalling it at this
11 moment, but he spent more and more time in Florida. He got
12 Hilton on Marco Island. He got something in -- Tommy Bahamas.
13 You can ask him later. There was a third construction, then
14 he went to London and then he went -- I don't know. He was
15 all over the place. He was really doing well. Oh, and he
16 started doing -- he started building rehab hospitals.

17 One was in Reno, one was in Albuquerque, one was in
18 -- one was in Las Vegas. They went kaboom because of asbestos
19 or something, I don't know. Then another one somewhere else.
20 There were three or four. He was still doing them when we
21 parted.

22 Q Okay, so going back to 2015, was he spending much
23 time in Las Vegas?

24 A No.

1 Q Okay. All right. Your personal relationship with
2 Tom in 2015, what -- we already esta -- I believe it's already
3 established on the record that you -- you were no -- you and
4 Tom's -- didn't have a sexual relationship, going back to
5 2004. Is that correct?

6 A Correct.

7 Q All right. And so, how was your -- how would you
8 describe your personal relationship with Tom in -- you know,
9 starting in the middle of 2015?

10 A 2015?

11 Q Correct.

12 A I don't have a definition for it.

13 Q Well, how would you describe?

14 A Cold, distant -- argumentative -- difficult. It was
15 difficult.

16 Q Okay.

17 A Everything was difficult.

18 Q Well, why do you say that?

19 A He couldn't commit to a dinner. In 2015, he asked
20 me to borrow \$30,000 for his payroll. I'm like, are you
21 telling me that you are not making any money? Well, they're
22 not paying me. Why aren't they paying you? Aren't you
23 invoicing your client? Oh, no, we don't invoice. What do you
24 mean? A pool person invoices you, a guardian invoi -- sends

1 you invoices, why wouldn't you invoice your clients every
2 month for whatever they are supposed to pay you? You don't
3 understand.

4 Q So it was time -- was Tom claiming that he was
5 having financial problems in 2015?

6 A Yes.

7 Q Okay. Do you recall how much revenue was received
8 by Tom's company in 2015?

9 A I don't know that.

10 (Pause - whispered conversation)

11 MR. GOLDSTEIN: I'll show you 59.

12 THE COURT: What exhibit?

13 MR. GOLDSTEIN: Let's start with 58.

14 THE COURT: Is it in?

15 MR. GOLDSTEIN: Yeah, 58 and 59 are stipulated in,
16 Your Honor.

17 (Pause - whispered conversation)

18 BY MR. GOLDSTEIN:

19 Q 58, are you looking at Bates label 1401? 1401, of
20 58. Are you looking -- I want to make sure you're looking at
21 the right one. Yeah, okay.

22 A Uh-huh (affirmative).

23 Q All right. Do you recall how much revenue Tom's
24 company, Blue Point Development had in 2014?

1 A According to this paper, his revenue was \$2.7-m
2 million.

3 Q All right. And -- and that was the year that we
4 discussed -- just discussed, where he received that million-
5 dollar bonus, right?

6 A Yes.

7 Q Okay. And then, do you recall -- well, do you know
8 -- was Tom the only officer of Blue Point? Do you know?

9 A That is an interesting question.

10 Q Well, it -- first of all, I need to establish
11 whether you know or not, so do -- do you know if he was -- in
12 2014, do you know if he was the only officer?

13 A At that --

14 MR. JONES: Objection, foundation.

15 MR. GOLDSTEIN: Well, I need to establish if she
16 knows, then I can get to the foundation of --

17 MR. JONES: What would be --

18 MR. GOLDSTEIN: -- how.

19 MR. JONES: -- the source of knowledge?

20 MR. GOLDSTEIN: Right. Well, --

21 MR. JONES: You've got to establish that first.

22 MR. GOLDSTEIN: If she's -- no, because if she says
23 no, I don't know, then there is no foundation, right?

24 MR. JONES: Right. I'll withdraw it.

1 THE DEFENDANT: I don't know.

2 BY MR. GOLDSTEIN:

3 Q Okay, fair enough.

4 A I am not sure.

5 Q According to this document, there was \$473,077 in
6 officer compensation received. Did you receive any of that
7 compensation?

8 A No.

9 Q Do you know, if anybody other than Tom received that
10 compensation?

11 A His employees.

12 Q No, no, no, the comp -- not the salaries and wages.
13 I'm sorry, I want you to make -- look --

14 A Oh.

15 Q -- look at line 12. Is --

16 A Compensation of officers. Oh, I see.

17 Q Yeah.

18 A I -- it wasn't me.

19 Q Okay. Do you know if it was anybody else, other
20 than Tom?

21 A I don't know that.

22 Q Okay, fair enough. Looking at the -- the next --
23 looking at the next one 2000 fif --

24 THE COURT: Exhibit?

1 MR. GOLDSTEIN: Sorry, --

2 THE COURT: The next exhibit?

3 MR. GOLDSTEIN: -- Exhibit 59.

4 THE COURT: Thank you.

5 BY MR. GOLDSTEIN:

6 Q Exhibit 59, Bates label 1417, and that's the next
7 U.S. tax return, 1120 for Blue Point Development. And do you
8 recall how much revenue was received in 2011 (sic)?

9 A \$1.68-million.

10 Q '15, sorry. Excuse me. That's right.

11 A 2015, the company made \$1.68-million.

12 Q All right. And then --

13 MR. JONES: Objection to the characterization of
14 made. The question was revenue.

15 MR. GOLDSTEIN: That's -- it's fine.

16 THE COURT: Sustained.

17 MR. GOLDSTEIN: That's fine. No -- nobody's going
18 to -- that's fine.

19 BY MR. GOLDSTEIN:

20 Q The revenue was 1.68, correct?

21 A Yes.

22 Q All right. And then again, the compensation of
23 officers, it says one s -- 1,000 -- \$173,077. Do you see
24 that?

1 A Yes.

2 Q Did you receive any of that money?

3 A No.

4 Q Do you know if anybody, other than Tom received any
5 of that money?

6 A No.

7 Q All right. And so, did you give Tom money in 2015,
8 when he asked and -- and --

9 A Yes.

10 Q And he's -- because your testimony just now was that
11 he claimed he couldn't make payroll. Was that 2015?

12 A Yes.

13 Q And do you recall how much money you gave him?

14 A \$30,000.

15 Q And roughly, when in 2015, was that?

16 A Springtime.

17 Q Okay. And did he pay you that money back?

18 A He said he's going to cover my credit card bills,
19 but I never found out. There was no trail that, okay, this is
20 what you owe this month and I will cover \$30,000 for you.
21 There (sic) was never clarified.

22 Q Did you ask him to clarify that?

23 A Yes, I asked him, when are you going to do it.
24 Don't worry about it.

1 Q And so, did he ever show you any proof of paying
2 your obligations for the \$30,000?

3 A No.

4 Q Okay. And he never wrote you a check back for the
5 \$30,000?

6 A No.

7 Q Okay. Did he ever transfer any monies or otherwise
8 deposit \$30,000 as repayment of this money?

9 A No.

10 MR. GOLDSTEIN: I'm going to move into a different
11 area, Judge. If -- do you want to break for lunch now, at 10
12 minutes before noon, or -- or how does the Court want to
13 handle it?

14 THE COURT: Counsel?

15 MR. JONES: Right now is fine.

16 THE COURT: Right now is fine. When do you want to
17 come back? Hour, hour-and-a-half? Because I've -- I --

18 MR. GOLDSTEIN: Come back at one --

19 THE COURT: -- logistic.

20 MR. GOLDSTEIN: -- 1:15?

21 MR. JONES: 1:15's good.

22 THE COURT: 1:15. We'll resume at 1:15.

23 MR. GOLDSTEIN: Thank you, Your Honor.

24 THE COURT: Thank you all.

1 THE DEFENDANT: Thank you.

2 THE COURT: We'll let -- secure the room if you want
3 to leave your things here.

4 MR. GOLDSTEIN: Yes, that --

5 (Off record)

6 THE COURT: Back on the record.

7 BY MR. GOLDSTEIN:

8 Q Dr. Michaels, when we left off, we had finished
9 discussing 2015, so I want to transition to 2016, in or about
10 the January time period. Did you have a discussion with Tom,
11 Plaintiff regarding the status of your relationship?

12 A Yes.

13 Q Okay. Can you, please tell the Court the nature --

14 A He was --

15 Q -- of that discussion?

16 A -- in Florida. He called me from Florida, told me
17 that it's over between the two of us.

18 Q And -- and what -- what did you understand that to
19 mean?

20 A That our relationship is over.

21 Q Okay, and so around what time period was this? Do
22 you recall the --

23 A Oh, I --

24 Q -- date?

1 A -- think it was about end of January.

2 Q And where was Tom at -- at this time? Did this
3 conversation take place in person?

4 A No, he lived in Florida at the time.

5 Q Okay. All right.

6 (Pause - whispered conversation)

7 THE CLERK: Oh, I'm sorry, that is Exhibit 93, that
8 had been fixed.

9 MR. JONES: Remember, we were supposed to bring the
10 redacted one that took off the word Tom's account, when it's
11 really the joint acco -- yeah, when it was really the account?

12 MS. ABRAMS: I'm sorry.

13 MR. JONES: So, right here --

14 MR. GOLDSTEIN: My apologi -- is this -- is this --

15 MR. JONES: So, it said Tom's --

16 MS. ABRAMS: It hasn't been admitted yet.

17 MR. JONES: -- there and the objection that was made
18 day one or day two, was it needs to not say Tom's account and
19 we said well, it's the joint account, so we changed it to
20 joint. And that was -- it's in evidence with the redaction.

21 MR. GOLDSTEIN: This is --

22 MS. ABRAMS: Which exhibit?

23 MR. GOLDSTEIN: -- already in evidence, Madam Clerk?

24 THE CLERK: Yes.

1 MR. GOLDSTEIN: Oh.
2 THE COURT: 93 is in.
3 THE CLERK: It's just a
4 THE COURT: It needed --
5 THE CLERK: -- redacted copy.
6 THE COURT: -- to have a correction.
7 MS. ABRAMS: Well, there was an objection with
8 regard to Exhibit 93, because it's inaccurate and we pointed
9 that out to the Court. And first of all, it's inaccurate.
10 Second of all, we don't have all statements to support those
11 figures. Number three, we know that it's absolutely
12 inaccurate. In December of 2014, there is no payment in the
13 amount of \$1,466.18 on December 31st. And the probative value
14 of this exhibit is far outweighed by the prejudice because the
15 purpose of the exhibit is the intention to show that these
16 payments were made from Tom's money, but there is nothing --
17 they have not pro -- produced any underlying evidence of that.
18 It completely lacks any foundation. In fact, the
19 Court has heard testimony that Tom was taking tens of
20 thousands of dollars from Danka every month and we --
21 MR. JONES: No, it hasn't.
22 MS. ABRAMS: -- don't know what money was used.
23 THE COURT: Okay.
24 MS. ABRAMS: So, we --

1 MR. JONES: Okay.

2 MS. ABRAMS: -- have objected to this exhibit and we
3 continue to maintain that objection --

4 MR. JONES: No.

5 MS. ABRAMS: -- on the record.

6 THE COURT: Hold on. Madam Clerk, did I enter it?

7 THE CLERK: Yes, and there was --

8 THE COURT: It's been entered.

9 THE CLERK: There was --

10 THE COURT: All right.

11 MR. JONES: It's --

12 THE CLERK: -- a note that --

13 MR. JONES: It was --

14 THE CLERK: -- just said --

15 MR. JONES: -- entered, over their objection with
16 the understanding we would change the word Tom's account to
17 joint account. And they want to argue that it's inaccurate by
18 \$1,100, which I'm sure the statement fared it out, they can do
19 that. But it doesn't mean that the summary --

20 MS. ABRAMS: Well, we don't even have all the
21 statements for all of the items that -- it lacks foundation.
22 We don't even have all the statements to support those --

23 MR. JONES: Every statement for --

24 MS. ABRAMS: -- alleged figures.

1 MR. JONES: -- Blue Point Development and every
2 statement for the joint account for the time frame here, is
3 already in evidence, Judge.

4 MS. ABRAMS: We do not -- we do not -- we do not
5 have a statement for the -- particularly, for the last payment
6 of -- of \$10,000, we don't have a statement to support that.

7 MR. JONES: All right. Well, I mean, the Court's
8 already ruled on this. I don't know --

9 THE COURT: I've already --

10 MR. JONES: -- really, why we're --

11 THE COURT: -- ruled on it.

12 MS. ABRAMS: Right, and I thin -- I believe the
13 Court said it would give it limited weight, given the fact
14 that it lacks foundation.

15 MR. GOLDSTEIN: Well, but from an evidentiary basis
16 --

17 THE COURT: Well, I had sa -- didn't say what weight
18 I would give it, but --

19 MR. JONES: Right.

20 THE COURT: -- I probably said I will weigh it.

21 MS. LOBELLO: 2016's --

22 THE COURT: Once you've given us --

23 MR. GOLDSTEIN: I -- I --

24 THE COURT: -- the information on the -- on your

1 side of things.

2 MR. GOLDSTEIN: I guess the question, though, Your
3 Honor, is if this is entered in as a summary, the underlying
4 documents do have to be in --

5 MR. JONES: They're --

6 MR. GOLDSTEIN: -- evidence.

7 MR. JONES: -- in evidence.

8 MR. GOLDSTEIN: Okay, Mr. Jones is saying there
9 isn't mi -- is, Ms. Abrams is saying not all of the underlying
10 documents are in. So, this is one of those, I wasn't here, I
11 don't know, so if we --

12 THE COURT: I --

13 MR. GOLDSTEIN: -- can --

14 THE COURT: I get it.

15 MR. GOLDSTEIN: -- figured that out, then I think we
16 can --

17 THE COURT: Mr. Jones, can you indicate which
18 exhibits are the underlying documents 293?

19 MR. JONES: Yes.

20 MS. LOBELLO: Exhibit --

21 MR. JONES: It's from 14-16, right?

22 MS. LOBELLO: No, no, no, those are tax returns.

23 MR. JONES: No, 2014-2016, is the time frame --

24 MS. LOBELLO: Yes.

1 MR. JONES: -- of the summary.

2 MS. LOBELLO: Yes.

3 MR. JONES: Okay. Blue Point Development -- for the
4 Blue Point Development payments, Exhibit 63, Exhibit 65,
5 Exhibit 67. For the ones from the Joint account, Exhibit 74,
6 Exhibit 76, Exhibit 78.

7 THE COURT: That's --

8 MR. JONES: Those cover 2014 --

9 THE COURT: Wait.

10 MR. JONES: -- through 2016, for both accounts.

11 MR. GOLDSTEIN: It goes from September to July.

12 There doesn't appear to be an August statement for -

13 MR. JONES: Oh, no, the Bank of America statement.
14 Sorry.

15 MR. GOLDSTEIN: No, no, Wells Fargo.

16 MR. JONES: It was a -- it was a B of -- no, it was
17 a B of A statement for Blue Point, initially.

18 MR. GOLDSTEIN: Was it?

19 MS. STOLZ: No, it's --

20 MR. JONES: And so, it was the B of A statement,
21 which is --

22 MS. STOLZ: No, we're missing August --

23 MR. GOLDSTEIN: No, no, I'm talk about --

24 MS. STOLZ: -- for Wells Fargo.

1 MR. GOLDSTEIN: -- August of 2016, --

2 THE COURT: For Wells Fargo.

3 MR. GOLDSTEIN: -- for Wells Fargo is not in the
4 Bates labels. If you look at your Bates labels, 5553455 is
5 July, and then 5557 is September.

6 MS. LOBELLO: Look at Exhibit 67.

7 (whispered conversation)

8 MR. GOLDSTEIN: That's what I'm looking at. That's
9 what I'm looking at, exhi -- Exhibit 67.

10 MS. LOBELLO: I was talking to John.

11 MR. GOLDSTEIN: Oh, sorry.

12 MR. JONES: August is not there.

13 (Pause - whispered conversation)

14 MR. GOLDSTEIN: Your Bates labels are consecutive
15 though, so it's not like it skipped Bates labels. You see
16 what I'm saying? Like, it goes five --

17 MS. LOBELLO: Just don't understand why it would be
18 missing, though.

19 MR. GOLDSTEIN: -- 5556, and then 5557.

20 MR. JONES: I got it. I understand. For some
21 reason, the August statement, Your Honor, for -- is that for
22 the Blue Point?

23 MR. GOLDSTEIN: Yes.

24 (whispered conversation)

1 THE COURT: You have it in one -- more than one
2 location in --

3 MR. JONES: We'll --

4 THE COURT: -- your exhibits?

5 MR. JONES: We'll -- we'll track it down, Your
6 Honor.

7 (whispered conversation)

8 THE COURT: So, they can still argue that it's
9 incomplete --

10 MS. LOBELLO: Sure.

11 MR. JONES: Sure.

12 THE COURT: -- and I've already ruled that it's in
13 and it's not just Tom's statement. So --

14 MR. JONES: Right.

15 THE COURT: -- we'll --

16 MR. GOLDSTEIN: I --

17 THE COURT: -- address it.

18 MR. GOLDSTEIN: I guess the issue is, from an
19 evidentiary perspective, it's not allowed to come in if the
20 underlying document's not in. It's not a matter of --

21 MS. LOBELLO: I --

22 MR. GOLDSTEIN: -- arguing whether the summary is
23 complete or incomplete, it's a -- it's a threshold evidentiary
24 issue that you are not allowed to have a summary if the

1 underlying document is not in, and that's the issue.

2 THE COURT: Does the summary reflect anything with
3 regard to August --

4 MS. STOLZ: Uh-huh (affirmative).

5 THE COURT: -- in it?

6 MR. JONES: I mean, --

7 MR. GOLDSTEIN: Yes.

8 MS. ABRAMS: It -- it does.

9 MR. JONES: -- I guess --

10 MS. ABRAMS: -- and it's --

11 MR. JONES: I guess --

12 MS. ABRAMS: -- inaccurate.

13 MR. JONES: I ca --

14 MS. ABRAMS: So, it's incomplete and it's inaccurate
15 and it lacks foundation.

16 MR. JONES: Well, it -- it has foundation, I guess,
17 except for the allegation that we can't back up \$10,000 of
18 \$103,000-worth of payments on the mortgage. So, I mean, the
19 reality is, is the statements that are in, prove \$93,000 of
20 the payments on the mortgage. None of her statements --

21 MS. ABRAMS: They prove nothing. That's the p --
22 that -- Your Honor, that --

23 MR. JONES: No, no, --

24 MS. ABRAMS: -- what he just --

1 MR. JONES: The --
2 MS. ABRAMS: -- said is exactly the reason why this
3 document --
4 MR. JONES: No, no, --
5 MS. ABRAMS: -- should not be admitted --
6 MR. JONES: Maybe she's --
7 MS. ABRAMS: -- into evidence.
8 MR. JONES: -- not listening.
9 MS. ABRAMS: -- because it was from a joint account
10 -- please don't interrupt me. It was from a joint account.
11 He's alleging that it sh -- proves that he paid --
12 MR. JONES: No --
13 MS. ABRAMS: -- this money. He did not pay this
14 money. It does not prove that.
15 THE COURT: When you say --
16 MR. JONES: It --
17 THE COURT: -- this --
18 MS. ABRAMS: The probative value is far outweighed
19 by the prejudice --
20 THE COURT: Counsel, --
21 MS. ABRAMS: -- because he's --
22 THE COURT: -- when you --
23 MS. ABRAMS: -- what he's trying --
24 THE COURT: Counsel?

1 MS. ABRAMS: -- to say it says --
2 THE COURT: Counsel?
3 MS. ABRAMS: -- something it --
4 THE COURT: Counsel?
5 MS. ABRAMS: -- doesn't say.
6 THE COURT: When you say this money, do you mean the
7 August money or all that money?
8 MS. ABRAMS: All of it. Every --
9 MR. JONES: Okay, --
10 MS. ABRAMS: -- dollar of it, he has not established
11 where --
12 THE COURT: Okay.
13 MS. ABRAMS: -- that money came --
14 MR. JONES: Actually, --
15 MS. ABRAMS: -- from.
16 MR. JONES: -- Judge, the bank statements show
17 payment on the mortgage. That's where this came from. Did
18 she not look at the bank statements?
19 THE COURT: I don't know.
20 MS. ABRAMS: I did look at the bank statements.
21 Where --
22 MR. JONES: Okay.
23 MS. ABRAMS: -- did the money come -- that's just
24 the vehicle and I believe Mr. Pickens testifi -- may have

1 testified to this. That was just the vehicle that --

2 MR. JONES: Yes.

3 MS. ABRAMS: -- was used --

4 MR. JONES: Judge --

5 MS. ABRAMS: -- for the -- for the transfer to be
6 made. It doesn't show what money was used.

7 MR. JONES: Okay, Judge, I don't --

8 MS. ABRAMS: It doesn't --

9 MR. JONES: -- care whose money it was.

10 MS. ABRAMS: -- show --

11 MR. JONES: All we are showing is that every single
12 payment to pay off that mortgage came from either, the joint
13 account or the Blue Point account. I don't care how the money
14 got into those accounts. If that's what her argument is, it's
15 a s -- it's not well taken because that's not the purpose of
16 the exhibit, it's not the purpose of the underlying
17 statements.

18 THE COURT: What's the purpose of the exhibit?

19 MR. JONES: It's just to show -- so that the Court
20 doesn't have to read all of the statements and say, okay, here
21 they are.

22 MR. GOLDSTEIN: It's only two years of statements.
23 There's -- there's -- there's so many more statements in the
24 record and this is the issue with the summary. What is a

1 summary's purpose? To assist the Court to not have to look at
2 voluminous records, right? Mr. Jones is -- this summary
3 doesn't purport to summarize all of the statements in record
4 because that may be necessary. For example, the tax returns
5 where there's you know, 10,000 pages of doc -- not that many,
6 but you know, a lot. This is not the case.

7 You certainly could look, at any time, at 20 entries
8 and say this is the deal. He can argue it all in closing, but
9 from a summaries perspective, in order for the threshold
10 evidentiary issue of it to even come into evidence, 1) is the
11 documents have to be there; there's an acknowledgment already
12 that they're not.

13 MR. JONES: No, --

14 MR. GOLDSTEIN: So, that's first --

15 MR. JONES: No, --

16 MR. GOLDSTEIN: -- of all.

17 MR. JONES: -- that one document isn't there, so --

18 MR. GOLDSTEIN: That's right. And it has to be
19 complete and you know that, John.

20 MR. JONES: Then, you know what? We can --

21 MR. GOLDSTEIN: All right.

22 MR. JONES: We can --

23 MR. GOLDSTEIN: Second --

24 MR. JONES: Then you won with that last entry off of

1 it, Judge, if we can't find the August statement.

2 MR. GOLDSTEIN: The -- and then the second issue is
3 that the Court has to find the summary to be helpful to it, in
4 order for it to be admissible. And the issue there is, it's
5 not helpful because number one, it's not intending to
6 summarize off of the documents that are in -- in evidence,
7 which are voluminous. You, Judge, I know more -- having tried
8 cases in front of you, you -- you pride yourself on looking at
9 everything and reviewing all these documents, okay? This is
10 only two years that we're talking about here --

11 MR. JONES: Right.

12 MR. GOLDSTEIN: -- of -- of -- of you know, s -- a
13 few entries that you certainly can look at any time. So, how
14 is it helpful to the Court? Even if you disregard the
15 threshold issue of the documents not being in there, which you
16 can't, but even if you did, how is it helpful to you, Judge?
17 And you're asking that same question and that is why this
18 summary, for those two reasons, fails and shouldn't be
19 admitted into evidence, from an evidentiary perspective. Then
20 you get to the arguments about weight after that.

21 Which, I understand why everybody's addressing it
22 because of what you said at the last hearing as to, I will
23 give it the weight it deserves, but I don't think the Court --
24 it certainly wasn't appreciated and -- and we didn't have the

1 opportunity to make the arguments and the time and -- and I
2 think Ms. Abrams' point is that she reserved those ri -- the
3 rights to make those arguments now, today, as to why this
4 document shouldn't even be in evidence.

5 MR. JONES: And the testimony underlying the
6 exhibit, Your Honor, by my client at the time of trial, was
7 these are all the payments that were made from either, the
8 joint account or the Blue Point Development account to pay off
9 the mortgage on the Lowe hou -- the Lowe property.

10 MS. ABRAMS: And Your Honor, and -- and what I'd
11 like to point out is that there are numerous examples of where
12 they have a representation, for example, they say on
13 Wednesday, December 31, 2014, \$1,466.18 was paid out of the
14 joint checking account. If you look at the statement, there
15 is no transaction on December 31, 2014, in that amount. The
16 same is true for the January 31, 2016 entry, for the February
17 1, 2016 entry, for the April 30, 2016 entry, for the July 31,
18 2016 entry. You're not going to see on July 31, 2016, a
19 payment of \$8,462.62. I -- I mean, you're not going to see a
20 payment of \$1,731.31 out of the -3436 account.

21 So these are not -- this is not an accurate
22 representation. It -- and like I said, it -- it just doesn't
23 -- the purpose of the exhibit is misleading. And the reason
24 the purpose of the exhibit is misleading, is he's trying to

1 make it sound like this came from Tom's funds and that has not
2 been --

3 MR. JONES: That --

4 MS. ABRAMS: -- established.

5 MR. JONES: -- is not what we --

6 MS. ABRAMS: Absolutely --

7 MR. JONES: -- said, Judge.

8 MS. ABRAMS: -- has not been established.

9 MR. JONES: What -- we've said --

10 MS. ABRAMS: It is --

11 MR. JONES: -- is that it was --

12 MS. ABRAMS: -- gro --

13 MR. JONES: -- paid from the --

14 MS. ABRAMS: It is --

15 MR. JONES: -- joint account.

16 MS. ABRAMS: -- greatly missing foundation.

17 (Pause)

18 MR. GOLDSTEIN: And my understanding of the law
19 around summaries, Your Honor, is that in these kind of
20 circumstances, when you can't meet the threshold evidentiary
21 value, they don't come in. But secondly, and more
22 importantly, because the idea of a summary is to assist the
23 Court, when you have the underlying documents in evidence and
24 you can look at them without it being burdensome to you,

1 Judge, you -- you err on the side of, if this is a close call,
2 of not admitting the summary because you can always go to the
3 underlying documents and view it for yourself.

4 But to suggest that we now should disregard what is
5 the threshold evidentiary issues on a summary, the two that I
6 mentioned of the underlying documents and whether it assists
7 the Court, it is not something I believe the Court should
8 simply disregard.

9 MR. JONES: Actually, Judge --

10 MR. GOLDSTEIN: -- and -- and allow into evidence,
11 based on -- on the record that has now been made before you.

12 MR. JONES: And -- and Judge, the -- I -- I've -- I,
13 obviously, just answered the question. The December of 2014
14 payment, which was \$1,466.18, --

15 MS. LOBELLO: Yes.

16 MR. JONES: -- in December of 2014, there are two
17 \$733.09 payments on the mortgage.

18 MR. GOLDSTEIN: That's fine.

19 MR. JONES: Did we not have the opportunity to add
20 those two up before we made the argument that the payment
21 doesn't show up on the statement?

22 MR. JONES: No, you can't do that on per -- as far
23 as a summary is concerned. You have to list --

24 MR. JONES: Yes, --

1 MR. GOLDSTEIN: -- them down.

2 MR. JONES: -- you can say I'm summarizing how many
3 payments and how much is being made in a given month.

4 MS. ABRAMS: Your Honor, it --

5 MR. JONES: So --

6 MS. ABRAMS: -- doesn't say in the month of
7 December, this is how much it was paid. It says on December
8 31st, this is the amount that was paid, and it's not supported
9 by the underlying documents.

10 THE COURT: What --

11 MS. ABRAMS: He can't just make stuff up.

12 THE COURT: What --

13 MS. ABRAMS: -- okay?

14 THE COURT: Excuse me.

15 MS. ABRAMS: You don't get to --

16 THE COURT: Excuse me.

17 MS. ABRAMS: I don't care if --

18 THE COURT: Excuse me.

19 MR. GOLDSTEIN: Han --

20 MS. ABRAMS: -- you're John Jones.

21 MR. GOLDSTEIN: Hang on, Jen.

22 THE COURT: Excuse me, what Bates stamp are you
23 looking at, please? Ms. Abrams, you're saying --

24 MS. ABRAMS: Bates stamp for --

1 THE COURT: For the statement --

2 MS. ABRAMS: Oh, I --

3 THE COURT: -- you just made.

4 MS. ABRAMS: Honestly, I don't have the Bates stamp
5 number in front of me. Let me see. You mean for the December
6 31st?

7 THE COURT: Yes.

8 (whispered conversation)

9 MS. ABRAMS: It is Bates stamped --

10 MR. JONES: 5682, of Exhibit 74.

11 THE COURT: Okay, so I'm -- I'm on the summary,
12 she's somewhere else.

13 MR. JONES: Oh.

14 THE COURT: So that's where my confusion -- that's
15 my puzzled look; I'm trying to figure out what's going on
16 here.

17 THE COURT: Are, these records are very voluminous.
18 I'll give everybody that.

19 MR. GOLDSTEIN: But not the ones that are being
20 summarized, I guess, is my point. That's the -- that's the
21 difference, Judge.

22 THE COURT: Yeah.

23 MR. JONES: You're saying that --

24 MR. GOLDSTEIN: And so, --

1 MR. JONES: -- three years' worth of statements are
2 not voluminous?

3 MR. GOLDSTEIN: No, it's not. Compar -- and
4 compared to everything that's going on in this case when we
5 have 20 years of -- 15 years of tax returns that are in
6 evidence? Judge, when you have cases that three years of bank
7 statements are presented to you, you almost never see
8 summaries on three years of statements. If there was 15
9 years, sure. If there was a summary on the tax returns that
10 said listen, we've got 15 years of tax returns here, here's
11 the you know, adjusted gross income, here's the gross revenue,
12 et cetera, that would be a different thing. But you're
13 talking about this here, where you're talking about al -- a
14 three-year time period.

15 THE COURT: Both -- both --

16 MS. ABRAMS: So, --

17 THE COURT: -- parties have --

18 MS. ABRAMS: Your Honor, the --

19 THE COURT: Both --

20 MS. ABRAMS: -- Bates number --

21 THE COURT: Excuse me. Excuse me.

22 MR. GOLDSTEIN: Hang on, Jennifer, sorry.

23 THE COURT: Both parties have admitted that August
24 isn't there, I have to have the underlying documents, I'm

1 going to set aside my previous ruling. This will not be
2 admitted.

3 MR. JONES: It -- it's fine, Judge.

4 MS. ABRAMS: Thank you.

5 THE COURT: The summary.

6 MR. JONES: We'll give you a summary in our closing
7 argument of --

8 THE COURT: And --

9 MR. JONES: -- every --

10 THE COURT: And that's --

11 MR. JONES: -- payment.

12 THE COURT: -- what I was going to say. You can do
13 that in your closing, they'll have an opportunity to object to
14 it, --

15 MR. JONES: Sure, --

16 THE COURT: -- or however, they --

17 MR. JONES: -- I'll be --

18 THE COURT: -- want to --

19 MR. JONES: -- reading right from statements.

20 THE COURT: -- deal with that. But, I -- I agree
21 that if the -- if it's not there and I didn't notice it
22 earlier, then I have to set it aside.

23 MR. JONES: I understand, Your Honor.

24 THE COURT: All right? Thank you, everyone. You're

1 going to proceed now, Counsel?

2 MR. GOLDSTEIN: Yes, Your Honor, thank you.

3 THE COURT: Now, that's just the summary part of it.
4 There's some mortgage documents --

5 MR. JONES: Those are --

6 THE COURT: -- behind that.

7 MR. JONES: -- the mortgage statements that show
8 each payment. That's why this is all --

9 THE COURT: So, I'm --

10 MR. JONES: -- style over --

11 THE COURT: -- going --

12 MR. JONES: -- substance, Judge.

13 THE COURT: -- to rule --

14 MR. GOLDSTEIN: Well, are these already in?

15 MS. ABRAMS: I believe those are duplicates. Aren't
16 they duplicated in another exhibits? So, I don't think we
17 need to pull those out and let -- allow those to be --

18 MR. JONES: I don't --

19 MS. ABRAMS: -- admitted --

20 MR. JONES: -- know if --

21 MS. ABRAMS: -- separately.

22 MR. JONES: -- all the mortgage statements for Lowe
23 are in.

24 (whispered conversation)

1 THE COURT: I -- I'm only going to strike from this
2 exhibit, Bates stamp number 6233-6237, then that takes care of
3 all the summaries.

4 MS. ABRAMS: Thank you.

5 MR. JONES: Okay.

6 MR. GOLDSTEIN: But wh -- and why are --

7 THE COURT: Wait.

8 MR. GOLDSTEIN: -- we admitted -- why are we
9 admitting the rest of the documents?

10 THE COURT: Because it's mortgage payments. It's
11 just a regular document.

12 MR. GOLDSTEIN: Are these not in evidence in other -
13 -

14 MR. JONES: I don't know if they are, but --

15 THE COURT: We don't know.

16 MR. JONES: -- it wouldn't be the first time two s -
17 - two sets of documents of the same thing are admitted.

18 THE COURT: Do you know where there's other --

19 THE CLERK: That, I don't know. I was just --

20 THE COURT: Okay.

21 THE CLERK: -- curious --

22 MR. JONES: I'll --

23 THE CLERK: -- if you could read --

24 MR. JONES: I'll look --

1 THE CLERK: -- the Bates --
2 MR. JONES: -- for them.
3 THE CLERK: -- labels again.
4 MR. JONES: I --
5 THE COURT: Look and see --
6 MR. JONES: I'd like to just go ahead --
7 THE COURT: I'll --
8 MR. JONES: -- and move on.
9 THE COURT: -- give you the opportunity to move them
10 back in if there's no other duplicate, Mr. Jones, at the
11 appropriate time.
12 (whispered conversation)
13 THE COURT: It's a secret. 6233, -34, -35, skip -36
14 because that's some mortgage payment document, and 6237.
15 THE CLERK: 6233, -34, -35, and -37?
16 THE COURT: Yes.
17 THE CLERK: Okay.
18 (whispered conversation)
19 THE COURT: Okay.
20 MR. GOLDSTEIN: And you're just -- you're just going
21 to wait on ruling on the remainder of the documents unless --
22 MR. JONES: No, no, --
23 MR. GOLDSTEIN: -- if they're --
24 MR. JONES: -- she said the --

1 MR. GOLDSTEIN: -- not in there?

2 MR. JONES: -- said the statements are coming in.

3 MR. GOLDSTEIN: Okay, I thought she said if they
4 weren't there.

5 THE COURT: I said I'll give you an opportunity if -
6 -

7 MR. GOLDSTEIN: That's right.

8 THE COURT: -- they're not somewhere else, to --

9 MR. JONES: I don't see them anywhere else, Judge.

10 THE COURT: Okay.

11 MR. GOLDSTEIN: Okay, we'll --

12 MS. LOBELLO: They are not.

13 MR. JONES: We'll take --

14 MR. GOLDSTEIN: We'll look at it and we'll let you
15 know by either, --

16 THE COURT: Right.

17 MR. GOLDSTEIN: -- this afternoon or next time.

18 MS. LOBELLO: We're letting you know they're not
19 there.

20 MR. GOLDSTEIN: Thank you.

21 MS. LOBELLO: You don't need to wait until this
22 afternoon and we do need the -- those to be admitted.

23 THE COURT: At your next opportunity, Counsel, if
24 you could try to get them in, that'd be great. Unless --

1 MR. JONES: Well, --
2 THE COURT: -- you don't want them in?
3 MR. JONES: -- we already --
4 MR. GOLDSTEIN: The -- it's not on my questioning
5 and -- and my understanding of the argument last name was only
6 for the issue of a summary and not the statements.
7 MS. LOBELLO: That's not --
8 MR. GOLDSTEIN: There was no --
9 MR. JONES: No, the --
10 MS. LOBELLO: It was admitted the last time --
11 THE COURT: I admitted --
12 MS. LOBELLO: -- and now --
13 THE COURT: -- everything, --
14 MR. GOLDSTEIN: You admit --
15 THE COURT: -- except for the summary --
16 MR. GOLDSTEIN: Including --
17 THE COURT: -- needed to be --
18 MR. GOLDSTEIN: -- the statements?
19 MS. LOBELLO: Yes.
20 MR. JONES: Yeah, --
21 THE COURT: The summary --
22 MR. JONES: -- because --
23 THE COURT: -- needed to be corrected to say Tom's -
24 - not Tom's, but both of the parties.

1 MR. GOLDSTEIN: And -- okay, I don't know. I'll
2 have to defer to Jennifer as to whether or not that was the
3 case.

4 THE COURT: The summaries are not in at this point.

5 MR. GOLDSTEIN: Correct.

6 THE COURT: The underlying documents of payments on
7 the mortgage --

8 MR. GOLDSTEIN: Are?

9 THE COURT: -- need to be in.

10 MR. GOLDSTEIN: I didn't know that. I didn't think
11 they were offered last time. That -- that's --

12 THE COURT: Well, the --

13 MR. GOLDSTEIN: -- what I'm saying.

14 THE COURT: -- summary was a package with those
15 attached to it.

16 MR. GOLDSTEIN: I see. Was that right? Was that
17 right, Jenner? I don't know, I'm sorry. I just -- I wasn't
18 on it.

19 MS. ABRAMS: I believe those are duplicates of other
20 pages in other exhibits and --

21 MR. JONES: They are not.

22 MS. ABRAMS: -- if you give us just a few minutes,
23 we'll look at it. I -- I would like the opportunity --

24 MR. JONES: And --

1 MS. ABRAMS: -- to do --
2 MR. JONES: -- And Judge, --
3 MS. ABRAMS: -- that.
4 THE COURT: To the extent that --
5 MR. JONES: Can somebody tell me a reason why the
6 same document can't come in twice?
7 MS. ABRAMS: Because they're --
8 MR. GOLDSTEIN: Cumulative, John.
9 MS. ABRAMS: -- out of order and they're --
10 MR. GOLDSTEIN: Cumulative.
11 MS. ABRAMS: -- bits and pieces of non-consecutive
12 multiple different accounts in one exhibit. It's a mess. It
13 shouldn't be that way. If they're sequential by account
14 number or chronological somewhere else, then let's leave them
15 where they are --
16 THE COURT: Mr. Jones, --
17 MS. ABRAMS: -- where they --
18 THE COURT: -- I'll --
19 MS. ABRAMS: -- make --
20 THE COURT: -- give you --
21 MS. ABRAMS: -- more sense.
22 THE COURT: -- the opportunity to get them back in
23 later.
24 MR. JONES: Okay.

1 THE COURT: Can we proceed, please? We're going to
2 argue about this for \$1,000-worth --

3 MR. JONES: Already did.

4 THE COURT: -- of time. We've already done that.

5 MR. GOLDSTEIN: All right. Okay, sorry. You good,
6 John?

7 MR. JONES: Yeah, go ahead.

8 MR. GOLDSTEIN: All right.

9 BY MR. GOLDSTEIN:

10 Q Okay, just directing your attention back to what we
11 were talking about, there was a discussion between you and Tom
12 at the end of January of 2016, regarding the status of your
13 relationship, right?

14 A Correct.

15 Q Okay. So just refresh me again, what was said --
16 Tom ended the relationship and -- and what you understand, as
17 a result of that discussion? Just explain to the Court what
18 happened.

19 A He called me and told me that it's over between the
20 two of us and he's breaking up with me. And I said, oh, okay,
21 I would like to have a lawyer to get involved in all of the
22 financial issues. And he said no, that some necessary.

23 Q Why wasn't it -- why wasn't a lawyer necessary?

24 A Well, we were not married, so there was one reason.

1 The other reason would be that -- if he just splits up with me
2 and transfers back to me, all my ownership, then we are even.

3 Q Okay. And so this was the end of January time
4 period and I think you -- you testified that this was a
5 telephone conversation, right?

6 A It was a telephone conversa -- conversation when he
7 lived in Florida.

8 Q Okay. And so when, after the end of January of
9 2016, when wa -- was the last -- the next time that you saw
10 Tom?

11 A On the Valentine's weekend, he suddenly appeared in
12 my bedroom door.

13 Q How di --

14 A Suddenly --

15 Q Sorry.

16 A -- sneaked into the house, the dogs didn't hear him,
17 I am sitting there, reading and knitting, the dogs are besides
18 me, and he suddenly is in the door.

19 (whispered conversation)

20 THE COURT: This --

21 MR. GOLDSTEIN: And did To --

22 THE COURT: In 2016? Is that where we still are?

23 THE DEFENDANT: February --

24 MR. GOLDSTEIN: Yes, --

1 THE DEFENDANT: -- 2016.

2 MR. GOLDSTEIN: -- February of 2016, Your Honor.

3 BY MR. GOLDSTEIN:

4 Q Now, did Tom notify you beforehand that he was
5 coming to town?

6 A No.

7 Q And so were you surprised to see him?

8 A Yes.

9 Q And so, what -- what did he say when he showed up?

10 A I asked him, what are you doing here? He goes, it's
11 Valentine's. I don't celebrate Valentine, I didn't grow up
12 with it, it means -- has no meaning to me, and we never
13 celebrated Valentine's, so I could not understand why he came.
14 I said you broke up with me, what are you doing here. He
15 goes, oh, no, I didn't. You made it up. How could I have
16 made up such a thing? That's not true, you made it all up,
17 you're all wrong, and I brought you a present. And he put a -
18 - a little jewelry box there, in front of me and he goes, this
19 is your Valentine's present.

20 Q And did you open it?

21 A Yeah.

22 Q And what was it?

23 A Diamond earrings.

24 Q And were you surprised by this gift?

1 A I was not happy about it. Somebody -- a guy breaks
2 up with me and then sneaks up in my house a week later and
3 gives me pair of diamond earrings and told me that I all --
4 made it all up? I was upset.

5 Q All right. And --

6 A And the earrings were obviously, for the blond
7 woman. They were -- it's a -- a gold diamond with fire in it.
8 It's not for a brunette.

9 Q Okay. And so, did you -- did you -- didn't know you
10 need a certain color of hair for your diamonds.

11 MS. LOBELLO: I did not.

12 MR. JONES: For diamonds?

13 MR. GOLDSTEIN: I thought --

14 THE DEFENDANT: Yes.

15 MR. GOLDSTEIN: I thought girls, --

16 MR. JONES: You know what? Now --

17 MR. GOLDSTEIN: -- it didn't matter what hair.

18 THE COURT: All right, --

19 MR. JONES: -- I have an excuse.

20 THE COURT: -- let's go back to the trial, please.

21 MR. JONES: Yes, thank you.

22 MR. GOLDSTEIN: My apologies, Judge.

23 BY MR. GOLDSTEIN:

24 Q The -- all right. So -- so then what happened?

1 Okay, so he shows up unannounced on -- around Valentine's Day.
2 Did you -- did you get back together with Tom? Did you, you
3 know, restart your relationship at that time?

4 A We didn't have relationships for a long time. We
5 didn't have a relationship.

6 Q Okay.

7 A So I sent him to sleep in a -- a guest room and I
8 told him to think about it, to refresh his memory. This is
9 not normal.

10 Q And so, then did -- did Tom return to Florida?

11 A Yeah.

12 Q And were you aware, at this time, that Tom was
13 having a relationship with another woman?

14 A I was suspicious. I asked him, he denied it.

15 Q Okay. So let's -- so did Tom return back to Florida
16 then?

17 A Yes.

18 Q All right. And so let's talk -- fast-forward to
19 around June of 2016. So that was about the middle of
20 February, so let's -- let's fast-forward to like, June of
21 2016. Did you see Tom in or around that time period?

22 A Yes. I was going to go on vacation with a -- a
23 girlfriend of mine, was going to go for a knitting retreat to
24 Oregon. And one of my dogs was not doing well and I didn't

1 want to put her in kennel, and I couldn't find anybody to stay
2 with my dogs for nine days. So I begged him to come to town
3 and stay with dogs for a week. I said, well, you have to take
4 care of your business too. You have to come to Vegas
5 sometimes, at least once or tw -- or once in two months.

6 Q And so, did he come to town?

7 A He flew in Friday night, I left Saturday morning,
8 and I came back Su -- the following Sunday, but he was already
9 gone.

10 Q Okay. All right. And then from -- from June until
11 the September time frame when the deeds in question and
12 everything was signing, September 10th-ish through the 13th,
13 from June to then, did you see Tom in Las Vegas?

14 A Yes.

15 Q No, between that time period.

16 A Oh, between the time period? No.

17 Q Okay. And where was he during that time?

18 A I think it was in Florida.

19 Q Okay. All right. Now, when did you divide your
20 accounts? What time frame in 2016, did you divide your
21 account?

22 MR. JONES: Objection, foundation, what accounts?

23 THE COURT: Sustained.

24 BY MR. GOLDSTEIN:

1 Q The joint accounts. When did you divide those?

2 A We -- after the telephone conversation and no (sic)
3 having any clarification on it, I decided that it's time that
4 we -- I move forward and start dissolving certain financial
5 ties. And I asked him to give me a letter of power of
6 attorney to close every account in Bank of America that have
7 (sic) both of our names on it, so he did that. And I
8 maintained two business accounts. That's all I did with Bank
9 of America. I only had two business accounts and I closed
10 maybe, five or six diff -- other accounts. I was going to do
11 step-by-step to separate myself from him if he was going to be
12 difficult about this.

13 Q All right. And so you said step-by-step. So you
14 started that process in June of 2016, when he gave you this
15 letter for Bank of America. Is that right?

16 A No, I started --

17 Q I'm sorry.

18 A -- earlier.

19 Q My --

20 A We had a --

21 Q -- apologies. Let's --

22 A -- huge fight about me paying my own bills maybe, in
23 March.

24 Q Okay, then -- then let's -- please tell the Court

1 what happened in March that --

2 A I --

3 Q -- describe this March --

4 A I think it --

5 THE COURT: March of 2016?

6 MR. GOLDSTEIN: Correct.

7 THE DEFENDANT: Yes.

8 THE COURT: All right.

9 THE DEFENDANT: Yes.

10 THE COURT: Okay.

11 THE DEFENDANT: Yes, --

12 THE COURT: Go ahead.

13 THE DEFENDANT: -- spring 2016, I asked Tom that I
14 would like to pay my own bills and he would not allow me to
15 pay my own bills. He says everything he said, he has it all
16 nicely on his computer, it's all automatic sys -- system, he
17 has a nice system. And you are too busy, you will make
18 mistakes, you don't know how to do it, you don't understand
19 how to do it. I'm like, oh, my God. We had a huge argument
20 for about two weeks. We were fighting over it and then I gave
21 up.

22 BY MR. GOLDSTEIN:

23 Q Okay, but your testimony was that you -- that's when
24 you began separating accounts. Is that right?

1 A Yes.

2 Q So what did you do? What accounts did you begin
3 separating in that time period?

4 A I closed the accounts in Bank of America. We had
5 one checking account in Wells Fargo and that was about it.

6 Q Okay. Now let's talk about this letter that you
7 indicated -- what -- did you ask Tom --

8 A Yes.

9 Q -- for this? Okay, and -- and what was the purpose
10 of that?

11 A Close the accounts in Bank of America that could be
12 used, abused, misused. I wanted to have -- just very simple
13 connection with him.

14 Q Okay. And so did he --

15 A I want simplify everything so we can sl -- I can
16 slowly move away. We can dissolve the relationship.

17 Q And did he give you such a letter?

18 A Yes.

19 Q And did you present that letter to the bank?

20 A Yes.

21 Q And what did they do?

22 A The closed the account.

23 Q So moving forward to the June time period, did --
24 were you closing some accounts just, I think, over the course

1 of several months or how did that happen?

2 A Well, it took a few weeks for him to sign the
3 letter. And I think he probably signed it when he was in town
4 in June, maybe. So I went to the bank, had it done, then I
5 didn't see him until September.

6 Q Okay. But you had started closing accounts before
7 de -- September. Is that right?

8 A Yes.

9 Q Okay. And did you do so with John's (sic) authority
10 and permission?

11 MR. JONES: Tom?

12 MS. LOBELLO: Tom.

13 THE DEFENDANT: Ye --

14 MR. GOLDSTEIN: Tom, sorry. What did I say? John?

15 MR. JONES: She didn't know me yet.

16 MR. GOLDSTEIN: She doesn't need your authority.

17 BY MR. GOLDSTEIN:

18 Q All right, go ahead.

19 A Yes, I had a power of attorney signed by Tom.

20 Q All right. Did -- did Tom ever complain to you
21 about the division of these accounts?

22 A No.

23 Q Did he ever alleged to be under any kind of duress
24 and that you shouldn't have closed these accounts?

1 A No.

2 Q How about any kind of coercion of any kind?

3 A No.

4 Q Did you threaten him in order to get this letter?

5 A No.

6 Q Did you physically harm him in order to do so?

7 A No.

8 Q Did you threatened to confine him at all?

9 A No.

10 Q Is it your understanding that he gave you this

11 letter freely and voluntarily, of his own free will?

12 A Yes.

13 Q Okay. Now, so these -- but there was -- was there

14 still one joint account left for the mortgage, at that point?

15 Was there still one account?

16 A There was one joint account in Wells Fargo.

17 Q Okay, and can you tell the Court why you left that

18 account open there?

19 A I was depositing money for the mortgage. I had to

20 make sure that the mortgage is paid.

21 Q And so, this was the account that the -- was the

22 mortgage being directly debited from that account?

23 A I actually have no clue what he did with the money.

24 My purpose was give him money to pay the mortgage.

1 Q I understand.

2 A He took the money from the account and transferred
3 it somewhere.

4 Q Okay, but what -- but you were -- you -- you were --
5 your testimony was that you were closing these accounts but
6 you left this one account open to pay the mortgage. So --

7 A Yes.

8 Q -- I just want to ask -- is it fair to assume that
9 this one account that you left open was the account that the
10 mortgage was being paid from?

11 A Yes.

12 Q Okay. And so who was depositing money into that
13 account to pay the mortgage?

14 A I did.

15 Q Did Tom do so?

16 A I don't think so.

17 Q All right. Okay, so let's fast-forward -- I'm
18 sorry.

19 (whispered conversation)

20 Q Let's fast-forward to -- so, between June, now and
21 September -- the events of September that we talked about --
22 did you -- you didn't see Tom. However, were you still
23 communicating with him?

24 A Yes.

1 Q Okay, and how did you do so?

2 A We communicated through text messages and email,
3 mostly text messages.

4 Q Okay. Regarding what kinds of things?

5 A Work.

6 Q When you say work, what does that mean?

7 A The construction is delayed, everybody's stupid, how
8 is the air conditioning, is the air conditioning working on
9 this unite, is the electrical problem solved, the -- Henry's
10 wife is crazy, she's suing everybody, that --

11 Q Okay.

12 A -- been, that kind of stuff.

13 Q All right. With regard to -- since Tom was in
14 Florida this time, who was -- you know, who was running
15 Patients One in the building?

16 A I was going there two, three times a week to check
17 on things. I was in touch with Art (ph)*** 01:59:31 and --
18 Tom and he lost Scott, who gave him notice previously. And
19 there was kind of, a discontent in that company and I could
20 not figure out what was wrong. And nobody would talk to me
21 straight forward, so I just was trying to figure out you --
22 how are you guys doing on the construction sites. Is -- are
23 you -- do you need any help? Do you need me to help with
24 anything? Do you need me to talk to Tom about something? Do

1 I need to help with anything? I mean, I run two businesses so
2 I could help.

3 Q Okay. So, directing your attention to the evening
4 of September 8th, okay? What happened on the evening of
5 September 8th?

6 A The evening of September the 8th, I am sitting and
7 knitting and relaxing and I got a text message. It says I got
8 knocked up by Tom and I need money for abortion (sic.)

9 Q And how did that --

10 A And I'm looking at it, thinking --

11 Q How did you --

12 A -- wo --

13 Q How did you react to that? Sorry.

14 A I am thinking, wow, what an inventive way to get
15 money from people. People come up with all kinds of things.
16 I thought it was a hoax.

17 Q And so --

18 A So, being in a good mood, I responded,
19 congratulations. When you have a baby shower, let me know.
20 I'll send you a gift.

21 Q Okay, and then what happened next?

22 A Then I got a -- my phone rang and I was face-to-face
23 phone call (sic) from Florida. So I clicked on it, just being
24 curious, and a woman popped up, introduced herself as a Stacy,

1 and said anything that --

2 MR. JONES: Objection, anything that Stacy allegedly
3 said is hearsay.

4 THE COURT: Sustained.

5 MR. GOLDSTEIN: Not -- it's not going to be offered
6 for the truth of the matter asserted, Your Honor.

7 THE COURT: Then ask a question that won't require
8 her to repeat what Stacy said.

9 MR. GOLDSTEIN: What about -- well, if she does, it's
10 not going to be offered for the truth of the matter asserted,
11 so it's not hearsay if it's not --

12 THE COURT: Counsel, --

13 MR. GOLDSTEIN: I -- I'm just saying it's not
14 hearsay if it's not offered for the truth of the matter
15 asserted, right?

16 THE COURT: You can ask her what her understanding
17 of the conversation was. You cannot ask what Stacy said.

18 MR. GOLDSTEIN: Well, okay. May I be heard on the
19 evidentiary issue, Your Honor?

20 THE COURT: No.

21 MR. GOLDSTEIN: Okay.

22 THE COURT: We're done.

23 BY MR. GOLDSTEIN:

24 Q So, what did you learn by this conversation?

1 A I learned that Stacey and Tom have been living in
2 Florida together for two years, that he loves her, doesn't
3 love me. The conversation was spiced with the F-word very
4 frequently. And now she's pregnant with his child and --

5 MR. JONES: Objection, --

6 THE DEFENDANT: -- she needs --

7 MR. JONES: -- Your Honor. Now we're --

8 THE DEFENDANT: She's --

9 MR. JONES: I mean, --

10 THE DEFENDANT: That's what I learned.

11 MR. JONES: We're absolutely talking about specific
12 statements.

13 MR. GOLDSTEIN: No.

14 THE COURT: I'm going to take it that this is what
15 she believes she learned. Go ahead.

16 THE DEFENDANT: And that she needs money for the
17 abortion. So, I said I am sure Tom makes enough money to
18 afford an abortion.

19 BY MR. GOLDSTEIN:

20 Q Had you ever seen this person before?

21 A No.

22 Q Ever spoken to this person?

23 A No.

24 Q Had Tom ever told me about this person?

1 A Yes.

2 Q Before this conversation?

3 A Yes.

4 Q And what did he tell you about her?

5 A She was the bartender at the hotel where he was

6 staying and she arranged for him to rent a condominium from

7 her father, that he rented long-term so they don't have to pay

8 hotel fees, but he just rented condominium. And whoever was

9 coming to Florida for the construction --

10 Q Let me --

11 A -- site --

12 Q Hang on a second.

13 A -- would --

14 Q Let me --

15 A -- stay there.

16 Q All right. Let me ask you about this condo and when

17 di -- when did that happen? When did this conversation

18 between you and Tom about Stacy and this condo take place?

19 Was it before sep -- this -- it was for --

20 A In --

21 Q -- the September --

22 A In --

23 Q -- conversation, obviously.

24 A -- 2015, sometime.

1 Q I see. Okay. So in 2015, Tom had already rented
2 this other condo?

3 A Yes.

4 Q And do you know around what ti -- like, in the
5 summertime, fall, spring? Do you know?

6 A No recollection.

7 Q Okay. And so Tom -- did you have any other
8 conversations with Tom about this person, Stacy between that
9 initial conversation of, she's the bartender, she helped me
10 get a house, and then this next phone call that you actually
11 heard from Stacy in September of 2016? Did Tim ever bring up
12 Stacy in that intervening time period?

13 A No.

14 Q Okay. All right. Now, so -- so you're -- you're
15 having this conversation, you learn that she's pregnant, and
16 then what happens next? What do you do next?

17 A I told her it's none of my business. It's between
18 her and Tom, what to do with the pregnancy. I didn't really
19 think that she was pregnant, I just thought that maybe it was
20 a -- a play for her to brea -- him to break up with me, to
21 hurt me, to upset me, all kinds of things women do. And I
22 just wouldn't have it. I said it's none of my business.

23 Q Did -- did -- was there any communications from
24 Stacy to you, on a -- a personal nature that you were

1 surprised to learn? Bless you.

2 A Oh, she knew all kinds of personal stuff.

3 MR. JONES: I'm sorry, I couldn't hear what she
4 said, Your Honor.

5 THE DEFENDANT: She, apparently, knew all kinds of
6 personal stuff. I have learned that Stacy knew that we don't
7 have a sexual relationship, Tom and I.

8 BY MR. GOLDSTEIN:

9 Q Did she learn anything else about you, person --
10 without -- without saying maybe, what it was, okay? Because I
11 -- I don -- I don't want you to have to expose sensitive
12 stuff, but was there something --

13 A Yes.

14 Q -- that you learned about a sensitive personal issue
15 of yours?

16 A Yes.

17 Q Okay, and -- and it -- that -- that issue that --
18 could you -- who had you --

19 MS. LOBELLO: She's waiting for --

20 MR. GOLDSTEIN: -- confided to --

21 MS. LOBELLO: -- you to object to it.

22 MR. GOLDSTEIN: -- about that issue?

23 MR. JONES: Your Honor, how is this relevant?

24 THE COURT: How is it relevant?

1 MR. GOLDSTEIN: It's re -- it's relevant -- Judge,
2 this is relevant because it goes to the nature of the
3 relationship that he would had with my client, claiming
4 marriage and the like and that they were together and all of
5 this. And now, he's having this other relationship with this
6 woman and talking about these things to -- about my client.

7 MR. JONES: And -- and where does that translate
8 into an issue that's before the Court?

9 MR. GOLDSTEIN: It's -- all of this before the
10 Court. This is -- this is all before the Court.

11 THE COURT: That --

12 MR. GOLDSTEIN: Whether or not they were putative
13 spouses and whether or not they --

14 MS. LOBELLO: There is nothing --

15 MR. GOLDSTEIN: -- had a relationship --

16 MS. LOBELLO: -- in the case --

17 MR. GOLDSTEIN: -- at this time period, because this
18 occurred before the transfer of the deeds.

19 MS. LOBELLO: -- more or less likely --

20 MS. ABRAMS: Right, Your Honor, --

21 MS. LOBELLO: -- that has --

22 MS. ABRAMS: -- this is --

23 MS. LOBELLO: -- that's a fact is --

24 MS. ABRAMS: -- this is September 8th, so we're

1 talking about within five days of the dates that the deeds
2 were signed. And I can't think of any more relevant time
3 period than when they followed through with their agreements.

4 MR. JONES: But how does -- how does personal
5 information that the girlfriend knows have anything to do with
6 that.

7 THE COURT: I don't see any relevance, Counsel.

8 MR. GOLDSTEIN: Well, you know, Judge, I mean --

9 MS. ABRAMS: It goes to their states of mind, --

10 MR. GOLDSTEIN: I'm --

11 MS. ABRAMS: -- it goes to their motivations, it
12 goes to all kinds of things.

13 MR. GOLDSTEIN: He -- the -- the Plaintiff's making
14 a claim, Your Honor, that because of him being emotionally
15 distraught and my client took advantage of that and therefore,
16 he was under duress and it was her fault for doing all of
17 these things. We had to show the actions of the Plaintiff
18 here. This is wha -- not about what my client did because my
19 client didn't do anything. The Plaintiff put himself in these
20 positions. He's the one that did these kinds of things, so
21 this is not about my client taking advantage or any of these
22 issues, Judge. And this is exactly -- goes to the heart of
23 their argument.

24 MR. JONES: And -- and again, how does her personal

1 issues that this person allegedly knew have anything --
2 MR. GOLDSTEIN: Because they --
3 MR. JONES: -- to do --
4 MR. GOLDSTEIN: -- came from your client.
5 MR. JONES: -- with her -- I -- I'd like to --
6 MR. GOLDSTEIN: He's --
7 MR. JONES: -- finish, if --
8 MR. GOLDSTEIN: -- creating --
9 MR. JONES: -- that's okay.
10 MR. GOLDSTEIN: -- this situation.
11 MR. JONES: I -- I'll wait, Judge.
12 THE COURT: Let him finish.
13 MR. JONES: I'll wait --
14 THE COURT: Let him --
15 MR. JONES: -- until he's --
16 THE COURT: Mis --
17 MR. JONES: -- sure he's done.
18 THE COURT: Mr. Jones, please? Go ahead.
19 MR. JONES: Thank you. Are you su -- are we -- are
20 we sure we're --
21 THE COURT: Go --
22 MR. JONES: -- done?
23 THE COURT: -- ahead.
24 MR. JONES: The issue is -- and -- and how it was

1 characterized as to what his testimony is and what her
2 testimony was and what the lawyer's testimony was, as far as
3 the transaction at issue, couldn't be further from the truth.
4 You're talking about someone who had a fiduciary duty to the
5 Plaintiff. The Defendant had a fiduciary duty to the
6 Plaintiff on all of their dealings together, their
7 partnership, their LLC, the -- everything. And how does --
8 how does what this woman knew have anything to do with that
9 duty?

10 THE COURT: Oh, that changes everything.

11 MS. ABRAMS: And, I'm so glad that he brought that
12 up --

13 THE COURT: That --

14 MS. ABRAMS: -- because --

15 THE COURT: Excuse me --

16 MS. ABRAMS: -- I was just about --

17 THE COURT: Yeah, that --

18 MR. GOLDSTEIN: Well, --

19 THE COURT: -- changes everything. I'll let you go
20 a little way with it.

21 MS. ABRAMS: Thank --

22 MR. GOLDSTEIN: Thank --

23 MS. ABRAMS: -- you, Your Honor.

24 MR. GOLDSTEIN: Thank you, Your Honor.

1 BY MR. GOLDSTEIN:

2 Q I understand this is a -- a sensitive topic, Dr.
3 Michaels, and so I don't want you to reveal the actual
4 underlying issues that were discussed. But the question
5 really, before you is, did you learn about these sensitive
6 issues -- well, first of all, you didn't talk about these
7 sensitive things with Stacy, did you?

8 A No, she just --

9 Q All right.

10 A -- freely talked.

11 Q All right. And --

12 A Trying to --

13 Q -- did you --

14 A -- hurt me.

15 Q Had you discussed these -- this (sic) sensitive
16 issues with Tom? Had you revealed to Tom you know, the
17 sensitive things that happened to you in your past?

18 A This was discussed during the counseling when I was
19 trying to repair the relationship and I was trying to find out
20 what is happening. So, we had a -- a counseling with a guy
21 and this, somehow came up. And I --

22 Q And did you reveal these thin --

23 A -- opened up.

24 Q Sorry, I didn't mean to cut you off. Did you reveal

1 these things to Tom in confidence?

2 A It was said in confidence.

3 Q Okay. And was your expectation that Tom would keep
4 such information confidential?

5 A Absolutely. This is --

6 Q And --

7 A -- discrete information. This is something that's
8 between the two people.

9 Q And did he --

10 A There's --

11 Q -- breach that? Did he breached that confidence?

12 A Absolutely.

13 MR. JONES: Objection, Your Honor, --

14 MR. GOLDSTEIN: Okay.

15 MR. JONES: -- foundation. There's no way for her
16 to have information regarding Tom's conversations with this
17 person.

18 MR. GOLDSTEIN: And there's no way that this other -
19 - this -- his girlfriend --

20 THE COURT: That's --

21 MR. GOLDSTEIN: -- could have learned --

22 THE COURT: You guys can --

23 MR. GOLDSTEIN: -- this from --

24 THE COURT: -- save that --

1 MR. GOLDSTEIN: -- any other source.
2 THE COURT: -- for argument, please, both of you.
3 MR. GOLDSTEIN: Right. All right.

4 BY MR. GOLDSTEIN:

5 Q Let's -- let's move on to the -- the next issue.
6 (whispered conversation)

7 Q Did you -- in this time period, had you -- had you
8 ever told this to anybody else?

9 A No.

10 Q All right.

11 A Not even my brother knows.

12 Q All right, thank you. Now, so that -- you learned
13 this on -- so, okay. You have this face-to-face conversation
14 and then what happens? Did you hang up, so -- or she hang up,
15 or what happened next?

16 A She hung up on me because I repeated, this is a none
17 of my business, she has to deal with it the best way she can,
18 it's between her and Tom, and she hung up on me.

19 Q All right. And so what did you do next?

20 A I think -- I called his phone.

21 Q And did he -- did he answer?

22 A No, she picked -- she answered and was making stupid
23 faces at me, saying I'm so sorry, honey. I'm so sorry. So I
24 hung up on her, thinking, did I mis-dial. How is it possible?

1 Did I just re-dial her number? So I went and looked and made
2 sure that I am dialing face-to-face, Tom's phone, she picks up
3 again, I hung up again. So I texted him, Tom, please explain
4 yourself.

5 Q Okay. And did -- and -- and this was still the
6 evening of September 8th, correct?

7 A Yes.

8 Q And did Tom respond?

9 A Yes.

10 Q That evening?

11 A A few hours later.

12 Q Okay, and did -- well, did you try to call him
13 again?

14 A No.

15 Q Okay. Did he call you?

16 A No, he just texted me back.

17 Q All right, what did he say?

18 A I will come back to Vegas and I will --

19 MR. JONES: Objection, Your Honor, her memory of the
20 text message is not the best de -- best evidence of what he
21 said in the text message.

22 MR. GOLDSTEIN: So.

23 MR. JONES: And I'm pretty sure that the text
24 message is not in any of these binders.

1 MR. GOLDSTEIN: So, that -- what -- what objection
2 is that?

3 MR. JONES: It's the Best Evidence Rule.

4 MR. GOLDSTEIN: No, she can testify from her
5 knowledge as to what she believed the text message said.

6 THE COURT: Yes.

7 MR. JONES: So you're going to allow her to testify
8 -- basically, let her recollection --

9 THE COURT: Yes.

10 MR. JONES: -- of a writing in?

11 THE COURT: Absolutely.

12 MR. JONES: Okay.

13 BY MR. GOLDSTEIN:

14 Q Go ahead.

15 A He texted me saying that he will come back to Vegas
16 and he will sign back everything -- all the properties back to
17 me.

18 Q All right. And so when was the first time that you
19 talked to Tom after this -- after learning of all of this?

20 A I think he flew --

21 THE COURT: I think you need to be a little bit more
22 clear about all of what.

23 MR. GOLDSTEIN: I'm sorry.

24 BY MR. GOLDSTEIN:

1 Q After you had this unpleasant conversation on the
2 evening of September 8th, when was the next time that you
3 spoke with Tom?

4 A He texted me when he will (sic) be arriving to
5 Vegas, which was -- I think it was Friday night and he wanted
6 to meet with me. And it's Friday night and I am exhausted, so
7 I didn't want to spend the Friday night evening haggling and
8 arguing and crying until midnight. So I agreed that we will
9 meet Saturday after I'm done with work, --

10 Q Just for --

11 A -- Saturday afternoon.

12 Q My apologies. Just for the Court's purposes,
13 September 8, 2016, is a -- is a Thursday. And Friday that you
14 just testified to, would -- would that be the next day?

15 (No audible response)

16 Q Is that a yes?

17 A Yes.

18 Q All right. And then September 13th, which is the
19 date of the deeds in question, is -- is a Tuesday. Is that
20 right?

21 A Yes.

22 Q Okay. So that Friday, he sends you a text, had you
23 -- saying he's coming into town, et cetera. Had you talked to
24 him at that point yet? Had he picked up the phone and said

1 anything?

2 A No, he didn't call me.

3 Q All right. And so he came to town. Did you pick
4 him up from the airport?

5 A No.

6 Q All right. Do you know -- well, di -- okay, did he
7 come and stay at the Queen Charlotte residence?

8 A No.

9 Q Okay. Do you know where he went?

10 A He told me he went to -- he rented a room at Red
11 Rock.

12 Q Did you pick them up from the airport and take him
13 to the Red Rock?

14 A No.

15 Q So, when was -- so, this is September 9th. Did you
16 see him on -- at some point on September 9th?

17 A No.

18 Q Did you contact sha -- Shannon Evans, the attorney
19 on September 9th?

20 A Yes.

21 Q All right. And what was the purpose of contacting
22 Shannon -- Ms. Evans?

23 A I told her that Tom is agreeable to transfer the
24 deeds to the properties and if she can give us a time frame to

1 do that. And I asked for a lunch time so I could be between
2 the clinic.

3 Q Okay. So I want to under -- understand. Whose idea
4 was it to you know, transfer the Queen Charlotte property, the
5 Lowe property, and the assignment of interest here? Whose
6 idea was it to make those three transfers?

7 A Tom's.

8 Q All right. And so you contacted Shannon Evans on
9 Friday, the 9th and -- to effectuate these transfers, correct?

10 A Yes.

11 Q All right, so when was the first time after
12 September 9th and before September 13th, in that few day time
13 period, that you saw Tom?

14 A I saw him Saturday after my work. I texted him that
15 I am done with work and I am back home and sh -- he's welcome
16 to come and talk to me. It was an unpleasant conversation. I
17 did not hear I'm sorry or whatever. He was very upset that he
18 was found out, that he was having -- he's living with another
19 woman. He -- he was not apologetic. And I ask him (sic) if
20 he will keep his word and we'll do the transfer, he goes, yes.
21 So I said I spoke to Shannon and we had an appointment on
22 Tuesday. He does, okay. And then we got emotional about this
23 -- my childhood molestation stuff, how could you do that, how
24 could you say that, and I started crying and I told him to

1 leave.

2 Q Okay. And this was -- where did this conversation
3 take place?

4 A My house.

5 Q This is on Saturday, --

6 A Yes.

7 Q -- the 10th? Okay. All right, and so, did he
8 leave?

9 A Yes.

10 Q All right. And so then when -- what -- what was
11 your next communications with Tom after that?

12 A The -- he texted me Sunday morning and he asked me
13 if I would reconsider and give him another chance.

14 Q Okay. And this was on Sunday, the --

15 A Yes.

16 Q -- next day? All right.

17 A And if I would be willing to discuss it.

18 Q Okay. And what did you -- how did you respond?

19 A I was -- that was difficult. To discuss it, I was
20 willing to discuss it. So I said okay, I will be happy to
21 talk about it, and so we talked about it for several hours.
22 And we didn't really come to anything clear-cut, anything. It
23 was all about -- it was just kind of, around, around. I asked
24 him, why doesn't he marry this woman. If this is such a big

1 love and she's carrying his child and he always wanted to have
2 a family, why doesn't he marry her?

3 Q Okay, and wha -- and what was -- what was Tom's
4 response?

5 A Oh, he would never marry an alcoholic and a druggie.
6 She was only a girl that he was trying to help. And while he
7 was -- she was with him, she was not doing drugs and she was
8 not drinking, so he was the good guy. He helped her to clean
9 up.

10 Q And --

11 A And then it was back-and-forth. It can't be my
12 child because she was sleeping with all kinds of other men.
13 Then why are you taking responsibility for it? Well, because
14 da-da-da-da-da-da-da. And then it can't be my child, I -- I
15 de -- can't even get an erection. It was so confusing that
16 after few hours, I told him, you know what? Go away. I can't
17 take this anymore. Go away.

18 Q And so this was -- this conversation was Sunday
19 afternoon. Is that right?

20 A Yes.

21 Q All right. And so, did he leave?

22 A He left, yes.

23 Q And so when was your next communications with Tom?

24 A We met Tuesday at Shannons (sic) Evan's office.

1 Q So you didn't have any communication with him on
2 Monday -- that Monday?

3 A We could have exchanged text messages about the
4 building, business, money, whatever, but stu -- stuff like
5 that, but nothing private.

6 Q No -- and no conversations about your relationship?

7 A No.

8 Q No conversations about the -- the signing over of
9 the deeds and the membership interest?

10 A No.

11 Q Okay. So other than the initial conversation that
12 you have with Tom, where you asked -- I just want to walk
13 through the timeline. Your testimony is that he -- it was his
14 idea to transfer over these assets to you and then you talked
15 to him about it when he came to town on Septe -- on Saturday.
16 Is that correct?

17 A Yes.

18 Q And then no more discussions about these deeds or
19 the membership interest, no more discussion about that on
20 Sunday, correct?

21 A No.

22 Q And no discussion about that on Monday, correct?

23 A No.

24 Q Okay. So now we're -- now we get to Tuesday, the

1 thi -- the -- September 13th, okay?

2 A Okay.

3 Q All right. So Tuesday, September 13th, you had an
4 appointment at Shannon Evans' office, correct?

5 A Yes.

6 Q All right. Now, can you tell the Court
7 approximately, what time that was?

8 A I think it was 1:00.

9 Q Okay. All right, so middle of the day.

10 A Yes.

11 Q All right. Did you go to that meeting with Tom?

12 A No, I went by myself.

13 Q All right. And did you happen to see Tom when you
14 got there?

15 A The -- we met in the parking lot. I got out of --
16 out of the car and I saw him in the parking lot, so we walked
17 together to the office.

18 Q Okay. And so, at that time, did you discuss
19 anything about what was about to take place?

20 A Not really.

21 Q Okay. All right, just -- can you -- all right, then
22 tell -- can you tell the Court, to the best of your
23 recollection, what you and Tom discussed from the time you
24 went to the parking lot until the time you sat and met with

1 Shannon Evans?

2 A How are you doing? Were you busy in the office?
3 Are you ready to do this? Are you going to keep your word?
4 Yes, yes. Okay, let's go.

5 Q Okay. And so, at -- at any time during your
6 conversations with Tom from the September 9th through the time
7 you met with Shannon Evans, did Tom ever mention anything
8 about being coerced into signing these documents?

9 A No.

10 Q Did he ever mention anything about being threatened
11 by you into signing these documents?

12 A No.

13 Q Did he ever mention anything about you taking
14 advantage of him, in any way, in signing these documents?

15 A No.

16 Q Did he -- did you threaten him, physically --

17 A No.

18 Q -- to sign these documents?

19 Q Did you threaten to confine him, in any way, if he
20 didn't sign these documents?

21 A No.

22 Q So now you were finished walking through the parking
23 lot and you get into Shannon's Ev -- Evans' office. What
24 happens next?

1 A The receptionist takes us to the conference room, we
2 sit down, we wait for the Shannon (sic), Shannon walks in, we
3 chit-chat a little bit, she has some paperwork in her hand,
4 and I don't remember every word that was said. I do remember
5 her asking if he wants to have another lawyer present and he
6 goes, no, I don't need --

7 MR. JONES: Objection, hearsay, move to strike.

8 MR. GOLDSTEIN: It -- it's not offered for the truth
9 of the matter asserted.

10 MR. JONES: It absolutely is because Ms. Evans
11 testified just to the contrary.

12 THE COURT: I'll strike it.

13 THE DEFENDANT: Okay.

14 MR. GOLDSTEIN: Okay. She didn't -- wait, wait.
15 You said Ms. Evans testified to the contrary of what?

16 MR. JONES: I don't think Ms. Evans testified
17 consistent with what she just said.

18 MR. GOLDSTEIN: Okay.

19 MR. JONES: That -- that allegedly, she said.

20 MR. GOLDSTEIN: All right. Well, that's in the
21 record. We won -- we don't have to argue about that, I guess.

22 BY MR. GOLDSTEIN:

23 Q Okay. So during this time period, were you
24 presented the documents?

1 A Yes.

2 Q Okay. And did you sign them freely?

3 A Yes.

4 Q And voluntarily?

5 A Yes.

6 Q And you know, you -- did you -- were you coerced by
7 anybody into doing this?

8 A No.

9 Q Okay. Did you have an opportunity to observe Tom
10 that morning?

11 A Yes, of course. He was sitting right across the
12 table from me.

13 Q All right. And did Tom appear to be under the
14 influence of anything that would prohibit him from executing
15 these documents --

16 A No.

17 Q -- freely? All right. Did he say anything that
18 would give you pause as to his execution of these documents
19 being free?

20 A No.

21 Q Did -- did he complain about being threatened into
22 signing these documents?

23 A No.

24 Q Did he complain that you were taking advantage of

1 his allegedly feeble mental state?

2 A No.

3 Q Did he appear to be mentally sound to you?

4 A Absolutely.

5 Q All right. And then -- so, were you advised -- were
6 you and Tom both advised to get your own attorney?

7 MR. JONES: Objection, Your Honor, --

8 MR. GOLDSTEIN: Do you know?

9 MR. JONES: -- hearsay.

10 THE COURT: Sustained.

11 BY MR. GOLDSTEIN:

12 Q Did you execute a waiver of counsel?

13 A I beg your pardon?

14 Q Did you execute a waiver of counsel?

15 (whispered conversation)

16 MR. JONES: Conflict waiver?

17 THE DEFENDANT: I didn't.

18 BY MR. GOLDSTEIN:

19 Q Conflict waiver, sorry. My apologies. Yeah, did
20 you execute a -- not a waiver -- a conflict --

21 MR. JONES: The conflict waiver's already in
22 evidence, that was executed on September 13th.

23 MR. GOLDSTEIN: That's right.

24 BY MR. GOLDSTEIN:

1 Q And did -- where -- oh.

2 (whispered conversation)

3 THE COURT: Is that admitted already?

4 MR. JONES: Yep, it's part --

5 MR. GOLDSTEIN: Yes.

6 MR. JONES: -- of Exhibit B.

7 MR. GOLDSTEIN: B. I've just got to find that one.

8 I think it's in the back, here.

9 (whispered conversation)

10 MR. GOLDSTEIN: Do you remember the Bates label,

11 John?

12 (No audible response)

13 MR. GOLDSTEIN: Do you remember the Bates label,

14 John?

15 MR. JONES: Nope.

16 MR. GOLDSTEIN: Okay.

17 (whispered conversation)

18 BY MR. GOLDSTEIN:

19 Q Okay. Did you hear Tom respond to -- about getting
20 his own lawyer?

21 MR. JONES: Objection, Your Honor. The question is
22 now being asked so that it's his response to the alleged
23 question by someone in --

24 THE COURT: Sustained.

1 MR. JONES: -- the room.

2 MR. GOLDSTEIN: That's fine.

3 THE COURT: That would be hearsay.

4 BY MR. GOLDSTEIN:

5 Q Did -- did Tom say anything about getting his own
6 attorney at the time?

7 A No.

8 Q Did he say that he needed his own attorney?

9 A No.

10 Q Did he say he wanted to get his own attorney?

11 A No.

12 Q Did he say he wasn't going to sign these documents
13 until he had his own attorney --

14 A No.

15 Q -- review them?

16 A Nope.

17 Q Okay. Exhibit B, Bates label 1126 is -- do you have
18 Exhibit B?

19 (Pause)

20 Q Do you recognize the signatures on that document?

21 A Yes, that's my signature.

22 Q All right, is that Mr. Pickens' signature?

23 A Yes.

24 Q Okay. Did you witness him sign this document?

1 A Yes.

2 Q And did he appear to do so freely?

3 A Yes, totally.

4 Q Okay. Did he -- did he make any statements to you
5 during that time period that he didn't want to sign this
6 waiver?

7 A No.

8 Q That he was -- believed he was being coerced into
9 signing this waiver?

10 A No.

11 Q That he was under duress in his signing of this
12 waiver?

13 A No.

14 Q Did he appear to do so freely?

15 A Yes.

16 Q And voluntarily?

17 A Yes.

18 Q Okay. And with knowledge of what it is?

19 A Yes.

20 Q Thank you. And then, so at this meeting, you
21 executed a series of deeds for each of the two properties,
22 correct?

23 A Yes.

24 Q Okay. And my understanding is the first deed went

1 from you and Tom, husband and wife, joint tenants, to you and
2 Tom, individually, as unmarried, as joint tenants. Is that
3 right?

4 A Yes.

5 Q And do you know why it was done that way?

6 A Because we --

7 MR. JONES: Objection, --

8 THE DEFENDANT: -- were not --

9 MR. JONES: -- calls for --

10 THE DEFENDANT: -- married.

11 MR. JONES: -- a legal conclusion --

12 THE COURT: She --

13 MR. JONES: -- and/or is based upon --

14 THE COURT: She --

15 MR. JONES: -- hearsay.

16 THE COURT: She can say why she thought it was done
17 that way.

18 MR. GOLDSTEIN: Yeah.

19 THE DEFENDANT: We were not married.

20 BY MR. GOLDSTEIN:

21 Q Okay. And -- do you -- and then -- and so then it
22 went from you an -- okay. And so, for each one of these
23 deeds, did you happen to witness on Tom's signing of these
24 deeds?

1 A Yes.

2 Q All right. You were in the same room when this
3 happened?

4 A Yes.

5 Q All right. And did -- and did Tom execute these
6 deeds -- well, did he say -- make any statements that he was
7 being coerced into executing each of these deeds?

8 A No.

9 Q Did he make any statements to you that he was under
10 any kind of duress in executing these deeds?

11 A No.

12 Q Did he make any statements to you that he was too
13 emotional and didn't know what he was doing in -- in signing
14 these deeds?

15 A No.

16 Q Did he appear to sign --

17 MR. JONES: Objection, --

18 MR. GOLDSTEIN: -- these deeds --

19 MR. JONES: -- Your Honor, I -- I've let it go just
20 to try to take the time, but these are leading questions. She
21 -- if he wants to say what, if anything, did he say, now,
22 that's a proper question for a --

23 THE COURT: I know --

24 MR. JONES: -- direct --

1 THE COURT: -- you're trying --

2 MR. JONES: -- examination.

3 THE COURT: -- to cross all your --

4 MR. GOLDSTEIN: I'm just trying to --

5 THE COURT: -- Ts and dot your Is, --

6 MR. JONES: But --

7 THE COURT: -- but you do have to stop with the
8 leading questions.

9 MR. GOLDSTEIN: Okay, Judge, I'm sorry. These are
10 essentially, foundational in nature, --

11 MR. JONES: But --

12 MR. GOLDSTEIN: -- but --

13 MR. JONES: -- they're still leading.

14 MR. GOLDSTEIN: Okay, then I -- please don't
15 complain about the time.

16 BY MR. GOLDSTEIN:

17 Q Did you happen to witness Tom -- all right. Going
18 to make me do this for each deed. Okay. Well, all right.
19 When you were witnessing Tom sign these deeds, did he made any
20 comments to you at all? Did he say anything?

21 A In what way?

22 Q In any way. I want to know what, if anything, he
23 said during the signing of these deeds.

24 A He wa --

1 Q I mean, I don't need to say hi, how are you doing or
2 anything like that, but let's -- you know.

3 A After we signed everything, --

4 Q No, no, not after you signed.

5 A Oh, during we (sic) signing?

6 Q During the si --

7 A Nothing.

8 Q -- signing process.

9 A No.

10 Q Did he say anything to you?

11 A Okay. And that includes not only the deeds, but the
12 assignment of membership interest as well?

13 A No --

14 Q Is that right?

15 A -- conversation was held during thos -- the time.

16 Q Okay.

17 A We were shuffling papers, looking through them,
18 signing them, giving it to Shannon, Shannon wold give it to
19 me, to him. It was kind of like --

20 Q Okay.

21 A -- you're in a title company and signing papers.

22 Q All right. Now, when you're s -- when you're
23 finished signing these deeds -- well, who paid Shannon Evans?

24 A I wa --

1 Q Who paid -- who paid her

2 A I was --

3 Q -- for this work?

4 A -- going to, but Tom of pushed me away and paid for
5 it.

6 Q Okay. And do -- and do you recall roughly, how much
7 the cost was?

8 A I think it was about \$300.

9 Q Okay. And so, any other conversations or statements
10 that Tom made during this time, you sa -- you were about to sa
11 -- say something about after the signing of the deeds. So
12 what happened after the signing of the deeds?

13 A He asked Shannon Evans, if we get back together, if
14 we can trans -- if the deeds would be transferred back and if
15 we can have an agreement in that sense. And that was the
16 first time I heard about it. And I was very surprised that he
17 was making this conversation without talking it with me (sic)
18 beforehand. And she told him that --

19 MR. JONES: Objection, hearsay.

20 THE COURT: Sustained. You can't say what somebody
21 else said.

22 THE DEFENDANT: So, I understood from what Shannon
23 said, that the -- ca -- she --

24 MR. JONES: Judge, this is now way too --

1 MR. GOLDSTEIN: That's okay.
2 MR. JONES: -- important --
3 THE COURT: Sustained.
4 MR. JONES: -- to allow this summary of --
5 MR. GOLDSTEIN: Okay, it -- it --
6 MR. JONES: -- of --
7 THE COURT: That's right.
8 MR. JONES: -- what she understood.
9 MR. GOLDSTEIN: It's okay.
10 BY MR. GOLDSTEIN:
11 Q So -- so what happened -- what happened next?
12 A Nothing, we left.
13 Q Was there any other side agreement?
14 A No.
15 Q Was there any other side deal?
16 A No.
17 Q All right. Had you ever heard of anything about,
18 what if we get back together in a year, what would happen?
19 Had you ever heard of that before this -- before Tom mentioned
20 it for the first time?
21 A No.
22 Q And did he ever discuss it with you?
23 A No.
24 Q Was it a condition of him signing these documents --

1 A No.

2 Q -- that -- hold on, let me finish the question. Was
3 it a condition of him signing these documents that you would
4 agree to transfer them back to him in a year?

5 A No.

6 Q Was there any actual agreement for you to ever do
7 so?

8 A No.

9 Q All right. All right. So now, you're finished --
10 okay. Is there any -- any other statements by Tom after the
11 signing of these deeds -- until you left Shannon's office?

12 A No.

13 Q Okay. So now you and Tom, do you both leave
14 together?

15 A No, he left and I finished doing -- I was updating
16 my trust.

17 Q Okay. And so -- and -- and your trust. Let's talk
18 about your -- and this is the Mich-Mich Trust. Is that right?

19 A Yes.

20 Q All right. And did you execute --

21 (whispered conversation)

22 Q Did you execute amendments on that day to the Mich-
23 Mich Trust as well?

24 A Yes.

1 Q All right. Let's go -- have you turn to Exhibit B
2 again. And the Bates label is 637.

3 (Pause - whispered conversation)

4 Q Are you there?

5 A I don't know what I'm looking for.

6 Q Oh, I'm sorry. Are you on the Bates label?

7 A Say it again.

8 Q Sorry, I -- I'll come make sure. 637.

9 A What does it mean?

10 Q The number that I need -- the page I need to turn to
11 is 637.

12 A How do you know? This is 126.

13 Q Yeah, I know. That's why I'm -- that's right.

14 A 664.

15 (whispered conversation)

16 Q Okay.

17 A Oh, here we go.

18 Q You see that?

19 A Yes.

20 Q Okay, what is that document?

21 A It's the amendment to -- it says First Amendment to
22 Mich-Mich Trust.

23 Q Okay. And when did you --

24 (whispered conversation)

1 Q When did you sign this document? Well, first of
2 all, is this your signature? Just turn four more pages into
3 there, on 640 -- oh, sorry, 639.

4 A Yes.

5 Q Are those your two signatures there?

6 A Yes.

7 Q Okay. And this indicates that this document was
8 done on September 13, 2016. Is that right?

9 A Yes.

10 Q Okay. And this -- and do you recall what the
11 purpose of this amendment to Mich-Mich Trust was for?

12 A Yes.

13 Q Okay. And can you explain to the Court what it was?

14 A Tom signed over the deeds to me, but he was still on
15 the mortgages. And so, in case I died before the mortgages
16 are refinanced, I wanted him to receive 50-percent of
17 interest, like it was before. So, 50 percent was his and 50
18 percent will -- goes to my son. I went through this with my
19 first husband and it is an ugly situation when you transfer
20 deeds and you realize you're stuck with a mortgage. I --

21 Q Okay, --

22 A -- didn't want --

23 Q -- let's -- let's just direct -- you made that
24 statement, so I want to -- this kind of, ties back into

1 testimony from the first day of trial, so it was a while ago.
2 You were asked mi -- question by Mr. Jones about a bankruptcy.
3 Do you recall that?

4 A Yes.

5 Q All right. You declared personal bankruptcy in or
6 around 1990 --

7 A 1996.

8 Q That's when it was discharged, I think and you filed
9 it in '95, maybe? Is that right?

10 (No audible response)

11 Q It's okay.

12 THE COURT: Doesn't matter. Well, --

13 BY MR. GOLDSTEIN:

14 Q The -- it's -- don't matter.

15 A It's been so many --

16 Q The -- the point --

17 A -- years.

18 Q -- of it is this. Why did you do so?

19 A Because of that.

20 Q Okay, what do you mean --

21 A I trans --

22 Q -- of that?

23 A To -- in order to get rid of my ex-husband, I
24 transferred deeds of the two properties that we owned. I

1 would have done anything to get rid of him and he pro -- I had
2 a verbal promise that he will refinance. He never did.

3 (whispered conversation)

4 A He rented the properties and then he defaulted and I
5 was the main borrower on the mortgages and I went through hell
6 for that.

7 Q So you were no longer on the title, but you were
8 still obligated on the loan.

9 A Yes.

10 Q All right. And then he stopped paying and -- and
11 they --

12 A Yes, he --

13 Q -- came after you and --

14 A He just --

15 Q -- you declare --

16 A Yes.

17 Q Okay. And so, when you're testifying now about wha
18 -- the amendments here and what happened and why you did that,
19 is that -- is that the basis of it? Is that the reason why?

20 A Yes.

21 Q Okay. All right. So -- so then you -- there was
22 also a -- a (sic) execute on the same day there, the Second
23 Amendment to the Mich-Mich Trust, which is -- starts on 641.
24 Do you see that?

1 A Okay.

2 (whispered conversation)

3 Q All right. And so, is that your signature just a
4 few pages later, again?

5 A Yes.

6 Q All right. And that's 643. And then -- and -- and
7 what was the purpose of this second one? Do you recall?

8 A If both of us died, then Jacob will -- my son will
9 become the trustee. And if all three of us die, I wanted my
10 best friend to become the trustee and handle the trust for my
11 grandson.

12 Q And -- and your best friend, is that -- is that
13 Tamel --

14 A Tamela Kale (ph)*** 02:41:27.

15 Q Say that again?

16 A Tamela Kale.

17 Q Okay, all right. And is that the person who's
18 referenced on 643, on this document?

19 A Yes.

20 Q Okay, thank you. All right.

21 (whispered conversation)

22 Q Okay. So, did you and Tom ever have any other side
23 agreements or side deals in executing the transfer of these
24 deeds and the assignment of the membership interest?

1 A No.

2 Q So, did you -- at -- after this and you left the
3 office, when was your next con -- contact with Tom?

4 A He called in the evening and said that the room that
5 he rented at the Red Rock is being -- is already rented out
6 and there is no room available, would I allow him to stay in
7 my house for a couple of days until he goes back to Florida?

8 Q And did -- did you guys discuss anything regarding
9 to the execution of the deeds and the assignment of the
10 membership interest during this conversation?

11 A No.

12 Q And so, did you have any conversations with Tom
13 between the time that you left Stacy's (sic) office on
14 September 13th --

15 A Shannon's?

16 Q Excuse me, san -- Shannon's office on September 13th
17 until -- between then and the time that Tom left Las Vegas?
18 Did you have any conversations with him about the execution of
19 the deeds and the assignment of the membership interest?

20 A None, whatsoever.

21 Q And so then -- well, did you throw Tom out of the
22 house?

23 A I beg your pardon?

24 Q Did you throw Tom out of the house?

1 A No, he was -- he stayed for a couple of days and
2 then he went back to Florida. He couldn't wait to go back to
3 Florida.

4 Q Okay. And so after -- after -- okay, when -- about
5 when did he leave? So, if September 13th is a Tuesday and
6 this when all these documents signed (sic), do you recall when
7 he left to go back to Florida? Was it that same week, two
8 days later, the next day? Do you know?

9 A Maybe Sunday. I don't know, three, four days later.

10 Q Okay. All right.

11 A I didn't see him much. I mean, I got up early, went
12 back to -- back -- went to work, and came home and he wasn't
13 there yet, so I went to bed and walked the dogs, went to bed.
14 I didn't really see him much.

15 Q After he returned to Florida after these series of
16 events here, when -- did you have any other -- or further
17 communications with Tom about the facts and circumstances
18 surrounding the execution of these deeds or the assignment of
19 the membership interest? Did you have any other
20 communications with him until you were involved in litigation
21 with him?

22 A No.

23 Q And do you recall when the first time was that you
24 learned of -- of Tom's claims that he was either, somehow in -

1 - improperly or unduly influenced and/or coerced into
2 executing these deeds? Do you recall when that -- when you
3 were first made aware of that? Was it through the litigation?

4 A Yes.

5 Q Okay. And so, after September of 2016, and the
6 separation of these deeds, you were asked some questions by
7 Mr. Jones about whether or not you transferred any cash to Tom
8 when he executed these deeds and assignment of interest. Do
9 you remember those questions, whether you -- cash, whether
10 there was a check, did you transfer anything to him? Do you
11 remember being asked those questions?

12 A You said Mr. Jones?

13 Q Yes. Do you remember being asked the questions of
14 whether or not you provided Tom any cash, a check, --

15 A Oh, in exchange --

16 Q In exchange --

17 A -- for signing.

18 Q -- for signing these deeds.

19 A Oh, I see.

20 Q Yeah, I'm sorry.

21 A Yes, I do.

22 Q I -- I know it's hard to hear me.

23 A I remember.

24 Q Okay. Do you -- you remember being asked those

1 questions, right?

2 A Yes.

3 Q All right. And then Mr. Jones gave you a definition
4 of consideration and asked you a question about that. Do you
5 remember that?

6 A Yes.

7 Q All right. Okay. Was it your understanding that
8 you were giving up anything when you ex -- when Tom --

9 MR. JONES: Objection, --

10 MR. GOLDSTEIN: -- executed --

11 MR. JONES: -- Your Honor, leading.

12 MR. GOLDSTEIN: -- these? What? I haven't even --

13 THE COURT: You --

14 MR. GOLDSTEIN: -- finished --

15 THE COURT: You're --

16 MR. GOLDSTEIN: -- the question.

17 THE COURT: No, it's still leading.

18 MR. GOLDSTEIN: All right.

19 BY MR. GOLDSTEIN:

20 Q Did -- did you have a -- a -- what was your
21 understanding of what would happen to your interests in Tom's
22 assets when he executed these deeds?

23 A He will keep his assets.

24 Q All right. So, let's talk about it. For example,

1 Blue Point Development. Do you recall that?

2 A Yes.

3 Q All right. As -- as part of this separating of
4 assets, who was to receive Blue Point Development?

5 A We never discussed it, so I just let it go. I did
6 not claim 50 percent of the business and he never mentioned
7 it.

8 Q Okay. And did he have a -- a 401k through your
9 company? We established that, right?

10 A No, he never had 401k.

11 Q Sorry, Tom never had a 401k from your company?

12 A From my company? Yes.

13 Q Yeah, the -- oh, I'm sorry, you thought I meant Blue
14 Point Development.

15 A Uh-huh (affirmative).

16 Q No, no, Blue Point -- I -- I didn't ask about Blue
17 Point. Did -- Tom had a 401k,

18 A Yes.

19 Q -- correct? All right. Now, as -- as -- was it
20 your understanding of what was going to happen to that 401k as
21 a result of the transfer of these deeds?

22 A Well, it would be gentlemanly of him to give me back
23 my money, but he didn't.

24 Q Okay, well, all right. Did Tom -- so, Tom got the

1 entirety of the Blue Point company. He got the entirety of
2 his \$200,000-plus 401k. Did he receive anything else?

3 A He had four cars.

4 Q Okay, can you tell the Court -- first of all, can
5 just list the make and model of those cars, if you could?

6 A As far as I know, he has fo -- he had four cars. He
7 had the Range Rover, he had a Cadillac Escalade, and he had
8 two Ford Model Ts.

9 Q Do you have a rough understanding of the -- the
10 value of those vehicles?

11 MR. JONES: Objection, Your Honor, she's not able to
12 testify to it unless she's the owner of the vehicles.

13 MR. GOLDSTEIN: Well, isn't that interesting? Well.
14 Because if, under your theory of the case, she's --

15 THE COURT: Excuse me.

16 THE COURT: Titled owner. Titled owner, Your Honor.

17 THE COURT: Excuse me.

18 THE COURT: Only the titled owner can testify as to
19 the value of an assert.

20 MR. GOLDSTEIN: I -- okay, so, wait a minute. I
21 don't think so. I think that's the law at all. And if -- if,
22 under the --

23 MR. JONES: Your opinion.

24 MR. GOLDSTEIN: No, no. Under their theory of the

1 case, she is an owner. That's the beauty of it.

2 THE COURT: You want to go with their theory?

3 MR. GOLDSTEIN: No, I -- wha --

4 THE COURT: Okay.

5 MR. GOLDSTEIN: Am I -- am I --

6 THE COURT: Then I --

7 MR. GOLDSTEIN: -- not allowed to --

8 THE COURT: -- wouldn't.

9 MR. GOLDSTEIN: Am I not allowed to ask the
10 questions, though? I mean, I -- I have to be able to defend -
11 -

12 MR. JONES: The --

13 MR. GOLDSTEIN: -- my --

14 MR. JONES: The law is very, very clear and I -- I
15 can get it for us later or for the next day. But people who
16 are the titled owner of real property or other assets are the
17 only people who -- that are not experts who can offer an
18 opinion as to the value of something.

19 MR. GOLDSTEIN: Okay, let's ask this. Do you recall
20 when Tom purchased the Cadillac Escalade?

21 THE COURT: I'll sustain your objection. Go ahead.

22 MS. LOBELLO: Thank you, Judge.

23 BY MR. GOLDSTEIN:

24 Q Do you recall when Tom -- around when Tom purchased

1 the Cadillac Escalade, do you recall the appro -- the purchase
2 price paid for it?

3 A I actually don't know when he bought it. He bought
4 a Cadillac in Florida.

5 Q Okay.

6 A And le -- retrospectively, I found out that he
7 bought it for the girlfriend. But it was under Blue Point
8 Development because of the weight of the vehicle.

9 Q Do you recall how much was paid?

10 A I have no clue how much he paid.

11 Q So the answer's no?

12 A No.

13 Q Okay. How about, do you recall how much was paid
14 for the Range Rover?

15 A That was a brand new Range Rover. Somewhere around
16 130-140.

17 Q Okay. And then what were the other two vehicles?

18 A They were the Model T -- Ford Model T.

19 Q Okay. Both of them?

20 A Both of them. They are two different types. One
21 was a little truck and one was a -- a really cute four-seater
22 which way his father had a hobby to put these vehicles
23 together and he made one for each of his children. And he
24 made one for me. The -- he asked me what color I want and he

1 asked me what color I want of the lights and everything and I
2 chose red with golden trims and lights and that's how it came
3 up, but some took it away.

4 Q Yeah. All right. And so -- all right. And -- and
5 so as a result of this dividing up of these assets, did Tom
6 leave with any other assets?

7 A He had a -- a trust fund in Deutsche Bank in
8 Florida.

9 (whispered conversation)

10 Q He had some inheritance. I think that was about a
11 quarter-million dollars.

12 (Pause - whispered conversation)

13 MR. GOLDSTEIN: Court's indulgence here. These
14 records.

15 (Pause - whispered conversation)

16 BY MR. GOLDSTEIN:

17 Q So, do you recall how much was in the Blue Point
18 Development bank account at the time that you separated these
19 assets on September 13th of 2016?

20 A I did not have access to his account.

21 Q Okay.

22 A I had a signature of --

23 Q So you don't know?

24 A -- power. I have -- no.

1 Q All right, so let -- let -- let me turn you to
2 Exhibit 67, Bates label 5558.

3 A This is 65.

4 Q Correct. We've got to -- got --

5 (whispered conversation)

6 MR. JONES: Judge, this is already in evidence.

7 There was \$111,000, at the close of business, September 13.

8 (whispered conversation)

9 MR. GOLDSTEIN: Well, I -- that's not what I read.

10 (whispered conversation)

11 BY MR. GOLDSTEIN:

12 Q Can you read the balance, there?

13 MR. JONES: I'm sorry, my -- my --

14 THE COURT: What's your --

15 MR. JONES: -- my --

16 THE COURT: -- Bates --

17 MR. JONES: -- eyesight was bad for '13 versus '15.

18 It's \$150,000.

19 THE DEFENDANT: \$150,000 and 606 --

20 THE COURT: What Bates --

21 THE DEFENDANT: -- 660 --

22 THE COURT: -- stamp are you on, Counsel?

23 MR. GOLDSTEIN: 5558, Your Honor.

24 THE COURT: Thank you.

1 MR. GOLDSTEIN: Three fives and an eight.

2 THE COURT: All right, we're going to go with this.
3 You located it, you had her identify it, you got a question
4 about it?

5 MR. GOLDSTEIN: Yes.

6 BY MR. GOLDSTEIN:

7 Q Does this help res -- refresh your recollection as
8 to how much money Tom -- was in the Blue Point Development
9 bank account on September 13th, when you divided these assets?

10 MR. JONES: And -- and Judge, refreshing
11 recollection is something that she -- she knew at one point
12 and she just testified, I didn't have access to it in
13 September, so she couldn't testify to that. The document's
14 already in evidence.

15 MR. GOLDSTEIN: Fine, it's in evidence. There's
16 \$150,800 and -- excuse me, --

17 MR. JONES: I just said that.

18 MR. GOLDSTEIN: -- 660.04.

19 MS. LOBELLO: In the business operating account.

20 MR. GOLDSTEIN: All right. We're heading to 3:00,
21 Judge, would this be a good time for the afternoon break?

22 MR. JONES: That would be acceptable to us, Your
23 Honor.

24 THE COURT: Acceptable to all.

1 MS. LOBELLO: How much --
2 THE COURT: Let's go.
3 MS. LOBELLO: -- is --
4 THE COURT: 10 minutes. Huh?
5 MR. GOLDSTEIN: I'm going to finish her today.
6 MS. LOBELLO: You're going to finish her today and
7 that's it?
8 MR. GOLDSTEIN: Are you going to finish her cross
9 today? I mean, --
10 MR. JONES: Could be. I've only got like, three
11 pages.
12 MR. GOLDSTEIN: So far. Good.
13 MR. JONES: We --
14 MS. LOBELLO: I -- I thought we might even finish
15 the trial today and it doesn't look like we're even close, so
16 I'm just --
17 MR. GOLDSTEIN: No.
18 MS. LOBELLO: Are you going to finish next Friday?
19 MR. GOLDSTEIN: Yes.
20 MS. LOBELLO: And then if we need to put on a
21 rebuttal case, I don't -- I'm just worried that we might need
22 another day.
23 MR. GOLDSTEIN: That, I don't know. I guess --
24 MS. LOBELLO: This is going way slower than I

1 thought it would, so --

2 THE COURT: All right.

3 MR. GOLDSTEIN: Well, --

4 THE COURT: All right.

5 MR. GOLDSTEIN: -- there's a lot to go through.

6 THE COURT: We're off the record, right?

7 (Off record)

8 THE COURT: Thank you.

9 MR. GOLDSTEIN: Thank you, Your Honor.

10 THE COURT: Proceed.

11 MR. GOLDSTEIN: Thank you.

12 BY MR. GOLDSTEIN:

13 Q All right. After September of 2016, did you take
14 control of the management of Patients One?

15 A Yes.

16 Q And the building? All right. And did you attempt
17 to get the records, documents, and information from Tom?

18 A Yes.

19 Q Did he provide those to you?

20 A No.

21 Q Okay. Can you tell the Court what happened?

22 A He just said he doesn't have anything. We were --
23 we tried to get the rent roll information, deposit
24 information, security deposit information. The only -- there

1 were only a few pages of a couple of contracts. Some had
2 incomplete. It was just like, 10-12 pages that we got from
3 his office. And when I went to the bank, I found out that
4 there was only a recent rent roll. There was no security
5 deposit, there was no other money.

6 Q Did he provide you with copies of the leased of the
7 tenants at the time?

8 A I think we only got two or three.

9 Q Okay. And -- and did you ever find out where the
10 security deposits were held?

11 A No.

12 Q Did Tom transfer to you, the money for the security
13 deposits?

14 A No.

15 Q And so, have you had -- have you had to refund any
16 of those tenants, their security deposits since that 2016 time
17 frame?

18 A No.

19 Q And do you know how much money these security
20 deposits total?

21 A It was something abo -- over \$18,000.

22 Q Is that total for all of tenants?

23 A It was, at that time, for the three or four tenants
24 that were there.