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I think I can use the break, Your Honor, if you don't mind. I wouldn't mind waiting till tomorrow and --

THE COURT: Okay.
MS. HAACK: Would you mind? I want to make sure my statements are in better order. I could do a couple more if you want me to use a little time.

What do you think, John, should I do -- I was going to do the contracts, it's 15 more minutes.

MR. HOLIDAY: I've got questions that I want -MS. HAACK: Oh, okay.

MR. HOLIDAY: -- to ask, but I don't think that
it's -- it's informal and irregular in a certain sense of a bench trial with a pro se. I don't know if we can go back and forth without --

MS. HAACK: Are they regarding NRS?
MR. SHEEHAN: Well, Your Honor, I don't believe
Mr. Holiday should be allowed to ask any questions. She's been the one to ask the questions. They chose who they want --

MS. HAACK: But he can ask NRS.
MR. SHEEHAN: -- I mean, quite frankly she -- she --
THE COURT: I know, but I already said in the
beginning that I'm -- I understand your position because you articulated it before --

MS. HAACK: (inaudible) NRS.
THE COURT: -- but I said at the beginning, so long JD Reporting, Inc.
as they're not asking the same questions I would allow them both to.

MS. HAACK: Well, let me finish up the time then so that we don't --

MR. SHEEHAN: They chose her to ask the questions on behalf of the corporation --

MR. HOLIDAY: I don't believe that --
$\operatorname{MR}$. SHEEHAN: -- all the -- all of these questions have been on behalf of the corporation. There hasn't been a single question today that was asked that wasn't on behalf of the corporation and now a second lawyer is going to get -- ask questions on behalf of the corporation. I think that's highly --

MR. HOLIDAY: With all due respect, Your Honor, for one, I'm going to be a lot faster than she is --

THE COURT: Why don't we just have you finish up the questions.

Ms. Haack, you've done a really good job, but I'm really concerned that at this stage at the pace it's going -and I understand you're not a lawyer, but we're not going to be able to finish this this week because it's going exceedingly slow.

MR. HOLIDAY: I agree, Your Honor.
MS. HAACK: So if I turn my things that I'm interested in presenting to my questions I would probably be JD Reporting, Inc.
able to accomplish the same thing?
THE COURT: I think that your lawyer can get to the point a lot quicker --

MS. HAACK: Okay.
THE COURT: -- in all honesty --
MS. HAACK: I'll be good with that.
THE COURT: -- and he should be able to. He's gone to law school, and he's been a practicing lawyer. So I think because I only have a limited amount of time for this trial that it would speed it along --

MS. HAACK: Okay.
THE COURT: -- if Mr. Holiday would do it. You've done a very good job, but I think there needs to be some clarification on some issues.

MS. HAACK: Okay.
THE COURT: And I also think -- and, like, we've admitted the exhibits she said she wanted admitted out of her book, but so Kathy doesn't pull her hair out it would be easier if they're duplicated --

MS. HAACK: Do you want my book?
THE COURT: -- in the Bates stamped ones to use those from here on.

MS. HAACK: Okay.
MR. HOLIDAY: Right. So --
THE COURT: Because here's -- here's the problem -JD Reporting, Inc.
here's the problem we're --
MR. SHEEHAN: Let me -- let me and him get together tonight see if we can stipulate.

THE COURT: Yeah, because here's the problem. Usually I like to take notes, but because it's such a difficult -- it's such a mess, frankly, with the exhibits the way they are, and I know Ms. Haack has tried, but it's making it very hard for me to take the notes I want and make sure that the exhibits are admitted or not, you know.

MR. HOLIDAY: Right, Your Honor. Originally I
outsourced because I came to this very late. So I just took the pretrial memorandum, and we had the professional printer do the exhibits --

THE COURT: Uh-huh.
MR. HOLIDAY: -- she wanted to reorganize them for things. So she's taken those and dismantled some of them and so what I received was -- the short answer is that the ones that I had brought here before are not still put together the way they were originally. So I would have to somehow do these binders over again.

MR. SHEEHAN: It's fine. I'll probably be able to stipulate. We'll work on it tonight.

MR. HOLIDAY: Yeah.
THE COURT: Why don't y'all --
MR. HOLIDAY: Yeah.

THE COURT: -- I think it would really speed things up if you two before tomorrow could go through each other's exhibits, and if you could just stipulate to things makes it a whole heck of a lot easier.

MR. HOLIDAY: Right.
THE COURT: It's making it very -- you know, Mark is trying to take notes for me because I'm spending so much time on exhibits, but I like to take a lot more copious notes than I'm able to do --

MR. HOLIDAY: All right. Fair enough, Your Honor. THE COURT: -- and he doesn't know specifically what I'm looking for.

MR. HOLIDAY: All right.
MS. HAACK: And I -- I didn't get anybody else's exhibits so I was kinda --

THE COURT: You didn't do anything wrong --
MS. HAACK: Okay.
THE COURT: -- it's just I only have this week to get this finished.

MS. HAACK: I would have liked that. I was hoping I would have seen something and been able to make sure I had the right dates and everything so.

THE COURT: And probably for all of you, the longer these lawyers are here the more money you're going to have to spend. So let's -- we want to move it along. I think you all
have a common interest.
So do you want to kind of follow up and ask -- I can -- do something for 10 minutes. Let's see --

We can come back tomorrow if it takes that. Why don't you all just spend the next 20 minutes just going through the exhibits.

MR. HOLIDAY: Well, I can -- I think all the ones that we've already admitted I can fill up 10 minutes. I just wanted to get to some things about -- like, I've got a hunch I can just do this pretty fast and get it up.

THE COURT: Let's do it.
MR. HOLIDAY: All right. All right.
THE COURT: I think that we're on the same page.
MR. HOLIDAY: All right.

## DIRECT EXAMINATION

BY MR. HOLIDAY:
Q All right. So we've been focusing on the exhibits really fast. So just to clarify, in February there were negotiations going back and forth regarding Nancy possibly --

THE COURT: 2017?
MR. HOLIDAY: In 2017 exactly.
BY MR. HOLIDAY:
Q In February 2017, you guys were in a lot of negotiations, and I would characterize those negotiations as negotiations for a expansion, right? Into the space that Life JD Reporting, Inc.

Real Estate eventually took; right?
A Yes.
Q Okay. Negotiations to buy her out; is that right?
A (No audible response.)
Q Okay. THE COURT: Did you say, yes? THE WITNESS: Yes.

BY MR. HOLIDAY:
Q Okay. Now, your statement is that she made an oral resignation that was formal at Balboa Pizza while you guys were talking?

A Yes.
Q All right. And there's no written resignation; is that correct?

A Yes.
Q Okay. Now, negotiations, one, were this one, this one day it was the expansion; right?

A (No audible response.)
Q All right. Could you have expended without the lease?

A No.
Q Let me rephrase it. Isn't it true that you believe the lease was a necessary thing for the expansion?

A To run the business, yes.
Q Okay. And the lease was, you know, essential to this JD Reporting, Inc.
expansion?
A Yes.
Q All right. So there was no expansion without the lease; is that correct?

A Right.
Q Perfect. Okay. Now, also the guarantees were essential to that agreement to expand; is that correct?

A For the landlord, yes.
Q Okay. So we've got two things. We've got the lease contract and the guarantee; is that right?

A Yes.
Q Okay. Did Nancy ever sign a guarantee for that agreement?

A For that new space?
Q New space.
A We left a copy of it on her desk for signatures; I don't know if she signed it or not.

Q All right. So you have no evidence that she signed a guarantee; is that correct?

A For the new space I can't recall if she signed it or not.

Q All right. You don't recall.
Did she sign the lease?
A I don't recall if she signed the lease. But for the new space or the old space?

JD Reporting, Inc.

Q We're talking about the new space, the new --
A Okay.
Q -- the -- we're in February 2017.
A You just asked me that question, and I said I don't recall if she signed it or not. It was placed on her desk for signatures, and I don't know if she signed it or not.

Q Fair enough.
THE COURT: I have a quick question though. I'm a little confused because I thought the issue with the new space was according to landlord either you had to put the $\$ 200,000$ or you had to sign a personal guarantee?

THE WITNESS: Exactly, Your Honor.
THE COURT: So did the landlord still indicate that something was missing in order to be able to complete the lease for the new space?

THE WITNESS: The new space was with the six signatures, the three of us and our spouses. And then we were all moving forward with it, and then Nancy said that she didn't want to be on the lease for another seven years and personally responsible for another build out and the move forward. And so at that time we tried to speak with the landlord and said if one of the three don't want to be a part of the lease moving forward, can we take them off the lease or take the personal guarantees off, and the landlord said with a $\$ 200,000$ deposit we could have no personal guarantees.

JD Reporting, Inc.

THE COURT: By anyone?
THE WITNESS: Right.
MR. HOLIDAY: Right.
BY MR. HOLIDAY:
Q And so it was for six personal guarantees -MR. SHEEHAN: Your Honor, I think Your Honor's confusion might be -- the NRS never signed the lease for the new space. The new space was taken in a separate company; you understand that?

THE COURT: Yeah.
MR. SHEEHAN: Okay.
MR. HOLIDAY: Right.
THE COURT: And that the 200,000 came from -- at least it's been the allegations from the separate -- from the property of Mr. Ayala and Mr. Evenden; right?

MR. SHEEHAN: Well, they didn't have to put up -they just signed -- since they formed --

THE COURT: They signed the personal guarantee.
MR. SHEEHAN: -- they signed the personal guarantees for a new company and put up $\$ 200,000$ for tenant improvements.

MR. HOLIDAY: Right. The point that I'm getting at is statute of frauds. There can be certain contracts or agreements which otherwise would be valid contracts except for the statute of frauds which says they're void if they aren't in writing and subscribed. So --

JD Reporting, Inc.

THE COURT: Well, hold on though. Your client never put up $\$ 200,000$, and she and her spouse never signed a personal guarantee; isn't that the dispute --

MR. HOLIDAY: This is the counterclaim breach of contract. So they're saying that she breached this unsigned lease by not signing it. In other words --

THE COURT: Well, let me ask this. And that's what I'm trying to ask. She never signed the lease for the new space; right?

MR. HOLIDAY: Right, Your Honor. In the cross-motion for summary judgment, prior counsel didn't bring up the statute of frauds which usually would have disposed of it. So the only thing that's really relevant in regards to the lease is that they were negotiating, no agreement can legally come until she subscribes. And not only that there were two people, one of them isn't a party to this action who refused to subscribe to that lease and prevented it from being signed.

So if there's a little bit of confusion, that's his counterclaim for breach of contracts was that she breached the agreement to expand, that's the line of questioning that I'm -that I feel I'm completing.

THE COURT: Just continue.
MR. HOLIDAY: All right.
BY MR. HOLIDAY:
Q So -- all right. So she never signed that. Now, in JD Reporting, Inc.
regards to the operating agreement -- we only have a few minutes, I'm just going to cover some things. There were some questions about consideration earlier. I'm just going to ask you do you understand the legal meaning of consideration? I'm assuming it's kind of a little bit more detailed, and I'm not allowed to explain it to you unless you don't understand. And then I'll offer potential explanation, and your lawyer will either object or agree with that explanation.

A Consideration in what regards, to money? To be a member?

Q Okay. So consideration means I give something, someone gives me that back. It can be payment for delivery, right, that can be considered consideration. Most often and what we usually deal with in written contracts and what we're dealing with in here is an exchange of promises, and the promise is a consideration for a contract, okay?

MR. HOLIDAY: Is that a fair description of -- any objections?

MR. SHEEHAN: (No audible response.)
MR. HOLIDAY: All right.
BY MR. HOLIDAY:
Q So now your understanding of the operating agreement, did you understand that you were making a promise to the other members?

A In regards to what?

JD Reporting, Inc.

Q For example, in I believe it's Section 3.6, but there is a section on salaries. You put in your operating agreement that no one could take a salary. Do you understand that you were making that promise to each other?

A Okay.
Q All right. But do you understand that?
A Yes.
Q And you agreed you promised each other that in the operating agreement at that time that you signed it?

A At the time we signed it, yes.
Q Understood. All right. Now, if you can in your operating agreement go to Section 14.1. I believe you already had it opened there. It's the first exhibit. It's the easiest one to find.

A 14 page 1 or --
Q Article XIV --
A Page 14.
Q -- Section 14.1 right after 13.1.
A Okay.
Q All right. So right before that is 13.1. Do you see that one?

A Yep.
Q All right. You see right there it says you can do an amendment with a majority or all?

A Correct.

Q Okay. In another part of the contract you agreed that by default it would take a unanimous vote for the NRS to have an action; do you remember that?

A What part?
Q 3.6, I believe. MS. HAACK: 6.8.

BY MR. HOLIDAY:
Q Or 6.8, excuse me, 6.8 on voting.
A It says a unanimous vote of all or -- or all the LLC interests shall be required to approve any actions unless a greater or lesser vote is required.

Q Right. Now --
MR. SHEEHAN: Your Honor, we warned that we should end at 4:45, and I don't want to get anybody in trouble and -THE COURT: Well, you know, this is what I think y'all should do -- we'll start tomorrow. I think all of you need to a little fresher for tomorrow, myself included.

Go through the exhibits right now with Kathy here because she's still on the clock until 5:00, and maybe you can figure it out, and then she can get everything marked and all that stuff. And then we'll just start right at 1:00 tomorrow. MR. SHEEHAN: Okay.

THE COURT: Yeah. Thanks.
MR. SHEEHAN: We don't want to keep them past 5:00. We don't want to get hit for overtime.

THE COURT: You pay for overtime if you keep them past 5:00; it's true. Okay. Thanks.
(Proceedings recessed for the evening 4:46 p.m.) - lOo-

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.


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DISTRICT COURT CLARK COUNTY, NEVADA
Plaintiff,
VS.
SEAN EVENDEN,

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CASE NO. A-17-753435-C

DEPT NO. XXIII PROCEEDINGS

\section*{TRANSCRIPT OF}

Defendant.
AND RELATED PARTIES
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BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE
WEDNESDAY, FEBRUARY 19, 2020

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\section*{BENCH TRIAL - FIRM - DAY 2}
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APPEARANCES:
FOR THE PLAINTIFF: JOHN R. HOLIDAY, ESQ.
FOR NANCY HAACK: Pro Se
FOR THE DEFENDANTS: PATRICK J.SHEEHAN, ESQ.
RECORDED BY: MARIA GARIBAY, COURT RECORDER TRANSCRIBED BY: JD REPORTING, INC.

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LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 19, 2020, 1:24 P.M. * * * * *

THE COURT: All right. So just as a housekeeping matter, my morning calendar has changed tomorrow. So if you want to start at 9:30 we can do that. I don't know how your witnesses are. I had an evidentiary hearing that's been moved. MR. SHEEHAN: Yeah.

MR. HOLIDAY: I think so. I just got an email saying my morning hearing, we can move it. So I think I -- yeah, let's just start at 9:30.

THE COURT: 9:30. Okay. Sounds good.
So we had Mr. Evenden on the stand when we last left off.

MR. SHEEHAN: And --
THE COURT: Were you finished, Counsel? I'm sorry, Mr. Sheehan, what?

MR. SHEEHAN: On the exhibits, we've stipulated to authenticity on all but one. There's a title report showing our damages with -- so that they have not agreed to the authenticity on that. We've agreed on the authenticity on everything else, but reserve all other objections on the documents.

THE COURT: Okay. All right. So we'll call Mr. Evenden back to the stand.

MR. HOLIDAY: Yes, Your Honor.

THE COURT: Okay. So continue, please.
THE CLERK: Mr. Sheehan, do you happen to know that exhibit number you're referencing just so I can -MR. SHEEHAN: Sure.

THE CLERK: -- flag that for my identification. MR. HOLIDAY: Your Honor, I was going to ask
questions from this table here so --
THE COURT: Just make yourself comfortable; that's fine.

MR. HOLIDAY: Okay. All right.

\section*{SEAN EVENDEN}
(having been called as a witness and previously sworn, testified as follows:) CONTINUED DIRECT EXAMINATION

BY MR. HOLIDAY:
Q All right. Good afternoon.
A Good afternoon.
Q All right. So --
THE COURT: Sir, you're still under oath. You're still under oath.

THE WITNESS: Yes.
BY MR. HOLIDAY:
Q All right. Mr. Evenden, we're just going to go through some things real quick. Can we go to the defendant's trial binder --

THE COURT: Oh, I am so sorry I did not -MR. HOLIDAY: Oh, that's okay.

BY MR. HOLIDAY:
Q The defendant's first trial binder and Nancy Haack's trial binder. All right. Your attorney did an excellent job of putting together these binders. We're going to use the exhibits in that binder wherever possible.

So can you open up Defense Binder Number 1. All right. Now, can you open up to Exhibit A, please. All right. So this is -- appears to be the operating agreement you first signed in May of 2010; is that right?

A That's what it looks like.
Q Okay. And can you go to Exhibit B.
\(A \quad B\) ?
Q B, yes.
A Okay.
Q All right. Now, the Exhibit B is another operating agreement that you signed in August 2010 to replace the one in May; is that right?

A Yeah, we looked through the two of them, and we couldn't see any changes between the two of them except for the date on the front.

Q All right. Let's start with that then. Can we go to -- well, can you flip to in the operating agreement Article 12.1 in A. All right. So in 12.1 B, that says that a JD Reporting, Inc.
majority or all of the LLC interests can vote to dissolve the company; is that right?

A On 12 B here. Okay.
Q Yes. 12.1 B.
A Yes.
Q All right. Now, can you flip to number -- the same spot, 12.1 B in the August operating agreement.

THE COURT: Hold on. The first date was signed on -which one's the first one, 2010, May and then the next one was August. Okay, great, thank you. BY MR. HOLIDAY:

Q All right. Excuse me. All right. So you -- using that -- in either one you did dissolve NRS by -- or you voted to dissolve NRS in March of 2017; is that right?

A We contemplated dissolving NRS after talking to counsel --

Q All right. Just for the -- sorry to interrupt, but you don't need to tell me anything that a lawyer told you or someone else told you. I'm just asking for your own testimony, okay?

A Okay.
Q So but in March 20 -- in March of 2017, you did vote, you and by you I mean Roger and you to dissolve the company; correct?

A Yes, we did vote to -- to dissolve the company after JD Reporting, Inc.

Nancy breached her obligations.
Q Okay. So now you're -- you're saying that you undid that by filing a correction afterwards; right?

A Yeah, I believe it was about a week or so after that, it was undissolved.

Q Okay. But let's go to Plaintiff's binder real quick, and if you could go to Exhibit 4S-2. So it's going to be 4 and then down to \(S\) and then the second page which has a dash 2 in it.

A Haack or NRS?
Q Haack.
A \(4 S-2\).
Q 4S-2, and it looks like 45 dash 2 in the handwriting in the upper right-hand corner, but it's 4S-2. All right.

THE COURT: Is this Ms. Haack's binder?
MR. HOLIDAY: This is Ms. Haack's binder.
MR. SHEEHAN: Your Honor, I'm going to object again. We went through this document and all this yesterday and the ground rules that Your Honor laid at the beginning was if Ms. Haack was going to question him then Mr. Holiday could not re-question him on the same documents, the same stuff.

THE COURT: I just said the same -- ask the same questions, but, yeah.

MR. SHEEHAN: And this is -- this has been went over ad nauseam yesterday.

JD Reporting, Inc.

MR. HOLIDAY: Well, Your Honor, I don't believe that it was gone over as I'm going to through the pertinent sections that they quote in the letter and the agreement to the operating agreement. So I'm not going to be asking the same questions as --

THE COURT: Just go through your questions, please. MR. HOLIDAY: Thank you.

THE COURT: Thank you.
BY MR. HOLIDAY:
Q All right. All right. So you and Roger caused this letter to be sent to Ms. Haack after reviewing it, 4S-2?

A Roger and I caused this? This letter came about after your client breached the operating agreement.

Q By -- I mean, you sent it, but or you had someone send it to her, if by you caused this letter to be sent.

A We sent this to Nancy.
Q Okay. So if you could go through this with me. All right. You claimed that she was no longer a member in this letter; is that what this says?

A Our counsel at the time ended up putting this letter together after the breach, and we read through this, and we submitted it to Nancy.

Q Okay. And a -- but you were making these representations; correct, in this letter? This is your letter.

A That your client breached. The operating agreement?

JD Reporting, Inc.

Q Yes. You were saying that she breached, and these were the consequences; correct?

A Yes.
Q Okay. And it says here that you said she withdrew purswayant [phonetic] to Section 2.5 and Section 4.3, she failed to make the capital call; is that correct?

A She told us that she no longer wanted to be part of the day-to-day operation of NRS. She told us that she would not put anymore money into NRS. She told us that she would no longer want to sign for seven more years of her life.

Q Okay. That's all right. If you could just --
A That's what she told us.
Q All right. That does not answer my question so. I asked you if that it's purswayant to this section and that section.

A That's how I interpreted it.
Q Okay. If that's how you interpret it that's fine. My understanding now is that you no longer interpret it that way; is that correct?

MR. SHEEHAN: Judge, he's vague and ambiguous.
THE COURT: You can answer if you don't -- if you understand. It's not asking you to clarify.

MR. HOLIDAY: Right.
BY MR. HOLIDAY:
Q Do you understand what I'm saying? In other words, JD Reporting, Inc.
you're saying that she actually is still a member; is that correct?

A She's still a member of NRS Realty Group, yes.
Q Okay. So she didn't actually lose her membership purswayant to Section 2.5 or --

A At the time --
Q -- Section 4.3?
A -- there was a lot of waffling going back and forth, if she was going to be involved, if she wasn't going to be involved.

Q I understand that, but that's not the answer to my question.

A I don't know what you keep on asking. THE COURT: Sir, if you -- just to clarify. If you don't understand, just ask him to rephrase it.

THE WITNESS: Okay.
MR. HOLIDAY: All right.
BY MR. HOLIDAY:
Q So what I'm asking though is in here, in this letter you said she's no longer a member, but you've since changed your mind, she did remain a letter -- a member; correct?

A Yes.
Q Okay. Now, here you say this action constitutes an action by written consent without a meeting pursuant to Section 6.11 of the remaining members, and you put that in
bold; correct?
A Yes.
Q All right. You did not receive written consent from Nancy Haack to have this meeting; did you?

A We did not receive written consent from her that she was retiring?

Q No. You did not receive written consent to have this meeting without her; did you?

A At that -- at the time I don't recall.
Q And yet did you have written consent from her?
A To have a meeting to discuss this?
Q Did she give you a letter saying go ahead and have a meeting without me, here's my signature?

A Of course not. She kept on telling us --
Q Of course she didn't. Thank you. And you put this in there --

MR. SHEEHAN: Your Honor, he -- objection. Argumentative, and he won't let the witness answer the question.

THE COURT: Overruled. Just one person talking at a time or we can't make a good record, please.

MR. HOLIDAY: Very well, Your Honor.
BY \(\operatorname{MR}\). HOLIDAY:
Q Very well. But you put that you did have written consent in the letter; yes or no?

JD Reporting, Inc.

A It states that in this letter that was put together by our counsel.

Q Very well, the letter speaks for itself. So you also said you were dissolving, and you were designating yourself and Sean purswayant to Section 2, excuse me, 12.2 as basically what would have been a receiver in charge of the dissolution of the company; is that correct?

A Because of her breach, yes.
Q Okay. And just for clarity's sake, it's a yes-or-no answer that's fine. Your attorney's going to get an opportunity to ask you questions as well, and he's making a mental list of all these things and he'll ask you the why.

And we understand being that you have a belief that she caused the dissolution or that she caused you to both to dissolve; correct?

A Yes.
Q In other words, she was so egregious in what she was doing that you had no choice but to vote to dissolve; correct?

A Correct.
Q All right. And as part of this plan to save the business of Life Realty you created a new LLC called Life Real Estate, LLC; is that correct?

A That's correct.
Q Okay. All right. You incorporated Life Real Estate, LLC in February before this letter; right?

A I believe we created that company at that time when she told us to create another company across the hall. So because of --

Q Okay. So you created it in -- so you're saying in February when you created it, you were no longer -- I'm sorry, could you -- I guess, we'll come back to that, but the point is you created Life Real Estate in February; right?

A If that's when the Secretary of State says it was then, yes, in February.

Q Okay. And it was your intent to continue the business of Life Realty through the LLC of Life Real Estate?

A No. Our intent was to expand across the hall, and we wanted Nancy to be a part of that expansion across the hall, and we --

Q You're going off on --
A You'd asked me what my intent was.
Q I understand, sir, but -- all right. You need to answer the questions that I'm doing -- and I hate to seem rude, but when you start going on a narrative about everything else that's happened that's not an answer to my question. I'm trying --

THE COURT: Just reask the question, please.
MR. HOLIDAY: All right. Thank you.
BY MR. HOLIDAY:
Q So let's -- all right. So here we go. Can you go to JD Reporting, Inc.

4T, please, in the plaintiffs' exhibits. All right. Are you there? Okay. Are those your and Roger's signatures?

A Yes.
Q Okay. So this is an action by written consent that you put it in lieu of a special meeting of NRS Realty Group, LLC. Here at the end it says, Further resolved that as the -the defaulting member, Nancy Haack has no authority to vote on matters concerning her default?

A Correct.
Q Okay. So your position at that point on March 22nd, 2017, is that she didn't have the ability to vote on anything?

A As being the breaching member in our LLC -- or in our operating agreement that's what we took it as.

Q All right. That's what you took it as. Well, this is an action. So you're saying that by majority vote you said that she couldn't vote on anything anymore; is that right?

A I don't know of all the technical terms with one attorneys write these and attorneys put together operating agreements, but I do know after her breach we were instructed that because of her default that we had every right to go forward with plan two.

MR. HOLIDAY: All right. Well, objection, hearsay. Again, I don't want what you were instructed by other people that aren't in this court. I don't want their statements to JD Reporting, Inc.
you. I want --
THE COURT: So just when you testify, sir, just testify as to your own knowledge. Don't speculate and don't testify regarding what someone else may have told you.

THE WITNESS: Okay.
MR. HOLIDAY: All right.
BY MR. HOLIDAY:
Q All right. So let's go to 4U, please. All right. That letter is dated March 10th, 2017. This is the cease and -- did you receive this letter on March 10th?

A Yes.
Q All right. MR. HOLIDAY: Move to admit Exhibits 4U, 4T, and 4S-2.

MR. SHEEHAN: No objection, Your Honor.
THE COURT: They'll be admitted.
(Exhibit Nos. 4S-2, 4T, 4U admitted.)
BY MR. HOLIDAY:
Q And after receiving that cease-and-desist letter it would have been 12 days later then on the 22nd that you voted that Nancy Haack had no voting rights in the company anymore?

A Yes.
Q Okay. Okay. So can you go to 4-BB, please. All right. It says right here that the two of you in an action by written consent of the members to dissolve the limited
liability company in lieu of a special meeting of NRS Realty Group, LLC, this is where you came together and you said that this was a dissolved corporation; you voted for the dissolution on March 28th; right?

A Yes.
Q All right. Now, at this point it was your intent to move everything over to Life Real Estate, LLC so you and Roger could continue as partners without Nancy; correct?

A I don't recall of all of our thoughts at that time.
Q So you don't remember what you were thinking?
A I believe Nancy had said create another company across the hall and --

Q Okay.
THE COURT: I need one point of clarification from the clerk because she and I heard things differently. My understanding was all of the defense exhibits are stipulated to be admitted and --

THE CLERK: Except for one.
THE COURT: We're going off of the plaintiff's binder now; right?

MR. SHEEHAN: I stipulated to all authenticity on all of the plaintiffs'.

THE COURT: Okay.
MR. HOLIDAY: Right. You know, we're okay on authenticity. I have other objections such as hearsay.

JD Reporting, Inc.

There's dozens of text messages that aren't really pertinent, they just show my client cursing, and I think it's prejudicial and irrelevant. So we reserve other objections.

MR. SHEEHAN: Both sides reserve other objections. MR. HOLIDAY: Right.

MR. SHEEHAN: But authenticity is on all.
THE COURT: Okay. So they're not admitted, they're just admit -- they're just agreed as far as the authentic. Got it.

MR. HOLIDAY: Right.
THE COURT: So not admitted.
THE CLERK: Okay. It's going to be mass confusion when you have one exhibit with multiple subexhibits because that's normally not how it's done. It's going to be total chaos.

MR. HOLIDAY: I understand.
THE CLERK: It's like being piecemealed so --
MR. HOLIDAY: I understand. If -- I would suggest --
I've had cases where they did post-trial briefs that could summarize things so that way we could sort of line up all the exhibits as he does and I do, and you'll have it there like that, and we can just submit the post trials --

THE COURT: You can do that. It's just Kathy keeping track of what's admitted and what's not.

THE CLERK: Because it has to be lodged with the JD Reporting, Inc.
vault.
MR. SHEEHAN: I was hoping that we would just do closing arguments and get a decision. This thing's been going on forever. I don't think we need post-trial briefs, but let's address that we get there.

THE COURT: I'll probably issue a written decision; I usually do on bench trials, but I can only consider exhibits that are in evidence. So we're having a hard time keeping track.

MR. HOLIDAY: I understand.
MR. SHEEHAN: I have a feeling at the end of this we might just say everybody comes in. I'm willing to do that as long as they're willing to do that, but we'll get there.

MR. HOLIDAY: Yeah, I'm just worried about my ethical obligations as far as --

THE COURT: I don't care if your client cusses, I really don't. I mean, you know, it would be easiest if everything came in. Not everything that you both have presented is necessarily relevant, but I know what I need to go through and look for and find.

MR. HOLIDAY: I understand, Your Honor. I'm trying to --

MR. SHEEHAN: I'm willing to stipulate to everything coming in.

THE COURT: That will be a lot easier.

JD Reporting, Inc.

MR. HOLIDAY: I know it would be a lot easier, Your Honor, and I wish I could do that and still feel like I was doing my job.

THE COURT: What's your concern?
MR. HOLIDAY: There's exhibits that I don't want to get admitted and that I would object to on behalf of NRS. There's affidavits. There's unverified emails. There's numerous -- my client was starting to, or excuse me, Nancy Haack was starting to introduce things that were letters from them that I think of as self-serving statements that they wouldn't be able to introduce on their own.

So generally speaking I just can't let everything in. I wouldn't be doing my job, Your Honor.

MR. SHEEHAN: So you're objecting to your own client's exhibits.

MR. HOLIDAY: Well, my pro se cocounsel took the original binders that we had and reorganized them in an order of what she was going to ask, and included therein are some things that I just differ with her on as to whether or not they should be in or not.

THE COURT: Then you need to figure out a better way for us to keep track of what's in and what's not because we, we can't keep track.

MR. HOLIDAY: All right.
THE COURT: Can we just use the exhibits, I mean, is JD Reporting, Inc.
there -- are these exhibits you're referencing, are they in defendants' exhibits or yours?

MR. HOLIDAY: In his exhibits he has a number that I objected to. I made a list of everything I was willing to stipulate to, and when I gave him that list he said we were just going to have to go through it one by one because it was --

THE COURT: The reason I asked that question is it's easier to keep track if they're Bates stamped.

MR. HOLIDAY: Right.
THE COURT: So to the extent there's duplicates, can we just utilize your exhibits and the defendants' exhibits? No offense to Ms. Haack, but this is just a nightmare.

MS. HAACK: No, no, I don't mind at all.
MR. HOLIDAY: All right. As far as there being duplicates in both binders I'll submit to that.

THE COURT: Well, can just we just reference the ones that are in your binders then so that we can -- they're a little bit easier to identify?

MR. HOLIDAY: No, but the NRS binder is -- so what it was is she redid it, and she made a table of contents that she sent me. So I just put things that weren't in there in her binder, and she took my original binders and used those to reorganize them into these binders.

THE COURT: Oh, heck. Can we just then to the extent JD Reporting, Inc.
that there's duplicates use the defendants' then because they're a little bit easier to identify?

MR. HOLIDAY: I'm doing that right now with the operating agreement. For example, in his -- with the resolutions and things of those -- like the -- like I got a list of things that I'll stipulate to in his exhibits. The things that I wasn't going to stipulate to are --

THE COURT: Well, why don't we give that to Kathy right now then so she at least has those.

MR. SHEEHAN: Your Honor, may I have a suggestion which is, let's admit everything that's in these except for the affidavits; I don't have a problem with the affidavits not being admitted except for that we have to do the authenticity on the chart of the damages for our side. I'll get Kathy both those things and then, sir, when you have -- well, if there's some other thing that you think is prejudicial or whatever, you can tell Your Honor I don't think you should consider this for that reason or whatever that reason is, and then she can make her own decision on that. It'll be admitted, but she can make her decision whether she wants to consider it or not consider it.

I think that's the easiest way to go. She's the Judge trial here anyway. Let's just say everything's admitted except for the two things that you raised there that I'm fine with. Everything else is admitted. I'll admit to everything JD Reporting, Inc.
even if it doesn't have a Bates stamp in here just to get this trial moving, and the Judge can hear your objections on the relevance grounds, on the prejudicial grounds, on the hearsay grounds, whatever, and make a decision whether she wants to consider that document or not. She's certainly capable of doing that.

MR. HOLIDAY: Can we just get through this question first?

THE COURT: Sure, but if you have more exhibits you're going to admit, we're having difficulty keeping track of them.

MR. HOLIDAY: I understand.
THE COURT: Okay.
BY MR. HOLIDAY:
Q All right. Here we are on March 22nd, 2017. So you dissolved the company; right? Or you voted to dissolve the company and you actually did file a dissolution; correct?

A On March 28th?
Q March 28th, yes, on 4BB.
A Yes.
Q Okay. So you decided to take away that or file a correction undoing the dissolution because this case was filed; is that right?

A There was a lot of things going on at the time, and at the time when we decided to undissolve it we --

JD Reporting, Inc.

Q I'm sorry. Can you say that answer again.
A There was a lot of things going on at the time, and then when we decided to undissolve it, there was -- we -- we looked at it and we said -- Nancy said you can have your company on this side. You run it, don't put any money into it, NRS money. You go in it independent. On this side you keep NRS going --

Q All right. Stop. Mr. Evenden?
MR. SHEEHAN: Again, he's cutting --
MR. HOLIDAY: He's not answering my question.
MR. SHEEHAN: He's asked an open-ended question and this is a very good explanation for exactly what happened.

MR. HOLIDAY: He's going into the same narrative every time. That's not an answer to the question. These are leading questions.

THE WITNESS: I'm sorry that I'm not giving you the answer that you're looking for.

THE COURT: You have to -- he is responding. He's just not giving you an answer that you want.

MR. HOLIDAY: He's not giving me a yes or no. It's not responsive.

THE COURT: Then you have to phrase it that way, but you're still on direct you're not on cross.

MR. HOLIDAY: So --
THE COURT: You're asking open-ended questions and he JD Reporting, Inc.
is responding. And you're asking in a way that doesn't necessarily limit him to a yes-or-no answer.

MR. SHEEHAN: I ask that he be allowed to finish his answer, Your Honor.

THE COURT: And I agree. He needs to be allowed to finish the answer.

BY MR. HOLIDAY:
Q All right. So I asked you --
MR. SHEEHAN: Again, I ask that he be allowed to finish the answer.

THE COURT: I think at this point we need to reask the question and let him respond in his -- in the entirety. MR. HOLIDAY: All right. BY MR. HOLIDAY:

Q I asked you if true or not you undid the dissolution because this case was filed?

A Yes. And the reason why we chose to undissolve it at the time was because we listened to what your client told us to do was to create a company across the hall, use our own money, use our own everything of our own but don't include her on it --

MR. HOLIDAY: All right. Did --
MR. SHEEHAN: You're not --
THE WITNESS: -- to keep NRS going --
THE COURT: You gotta let him finish.

JD Reporting, Inc.

THE WITNESS: -- over here, and she didn't want anything to do with it on that side. So we decided to take the high road, do exactly what she told us to do. BY MR. HOLIDAY:

Q So you're saying you did exactly what she told you to do; that's correct?

A She told us to create a new company without using any of her money, not using her personal guarantee, and not having her involved with it. Keep NRS going over here until she was off the lease, and that's exactly what we did.

Q So you're saying you had a mutual agreement that you could just --

A We followed exactly what she told us to do.
Q All right. When did she tell you to do this?
A During this period of time there was a lot of things going on back and forth between all three of us, and she told us that we could do --

Q I haven't heard when yet.
A I don't know the exact date.
Q Mr. Evenden, you're not being responsive; you're being evasive. I asked when did she tell you that you could do all of this?

THE COURT: He said he doesn't know the exact date. Are you asking by what mechanism such as verbal, meeting, text, phone call?

BY MR. HOLIDAY:
Q Well, first of all when, what month?
A I don't recall.
Q You don't recall what month. Do you recall what year?

A 2017 .
Q So sometime in 2017 she told you that -- all right. And was this via a letter?

A I don't recall.
Q You don't recall if it was a letter? Was it via a text message?

A I don't recall.
Q You don't recall. Was it via a lawyer's letter?
A I don't recall.
Q All right. But you recall what -- you can't recall whether it was in person, via text message or via letter; is that what you just said?

A Yes.
Q But you do recall that she told you to do this; is that correct?

A During this time there was a lot of infighting, and there was a lot of waffling going on back and forth on what should we do to make this company move forward.

Q All right. There was a lot of waffling; is that correct?

JD Reporting, Inc.

A Going back and forth.
Q You were going back and forth. You were negotiating? A Yes.

Q Okay. And when did that waffling decisively end?
A We're still here.
Q We are still here. That's right. So at what point did you come to a mutual agreement as to all the material terms of the expansion?

A When did we come to terms with the expansion? I'm not --

Q Okay. In other words, you were negotiating. We both agree with that statement; right?

A Uh-huh.
Q She wanted to open a new office in Summerlin, and you wanted a new office next to the current offices, you and Roger; is that right?

A No. We didn't talk about Summerlin office ever. We talked about across the hall. We started talking about opening up the space across the hall in 2016, and your client was on board with us, and she brought agents from our office across the hall and said, hey, look we're expanding, come across. Look, this is what we're building, and then your client had an issue in January --

Q Mr. Evenden, thank you. I think you're a bit beyond the scope of the question.

MR. SHEEHAN: Again, Your Honor, can he please stop cutting the answer off.

THE COURT: You need to let him finish.
MR. HOLIDAY: Well, he can just sit here and tell a story, Your Honor. At a certain point he needs to be giving responsive answers.

THE COURT: Well, he believes he is responding and it's for me to direct him to respond to the question which I have, and if you believe he's giving a narrative you need to ask me to tell him not to give a narrative. But again your questions are not limiting him to yes-or-no answers.

MR. HOLIDAY: All right. Very well, Your Honor. BY MR. HOLIDAY:

Q Did you guys -- so you were in negotiations up until let's say March 10th; is that fair to say?

A On the space across the hall? It's -- I don't know exactly what you're asking on negotiations because we negotiated on --

THE COURT: Sir, if you don't understand the question just tell him you don't understand.

THE WITNESS: Okay.
BY MR. HOLIDAY:
Q All right. You don't understand. Were you in negotiations until March 9th?

MR. SHEEHAN: Objection. Vague and ambiguous. JD Reporting, Inc.

Negotiations about what.
BY MR. HOLIDAY:
Q All right. Were you in negotiations about the expansion until March 9th?

A I don't recall exactly the time frames.
Q You don't recall if it was until March 8th?
A I don't recall.
Q You don't recall if the end of the negotiations was the letter that you sent on March 10th?

A I don't recall.
Q Okay. So you don't recall if she told you this in person, on the phone, via email, in a text, and you don't recall if negotiations ended March 9th, 8th, 7th. You can't tell me what month negotiations ended, but you do recall that she told you that you could do all of these things; is that what your testimony is?

A My testimony is that we always wanted her to be a part of it up until we got the lease, even in the summer of 2017 after she moved her license to a competing company we even offered her an opportunity to come back. We've offered her three times to come back. We never wanted her to leave the company. She chose to leave the company. From that day in Balboa in January of 2017 --

Q You never --
A -- she told us that she didn't want to be a part of JD Reporting, Inc.
it. We have offered her --
MR. HOLIDAY: Your Honor --
THE WITNESS: -- numerous times to be a part -THE COURT: Let him finish.

THE WITNESS: -- of NRS.
BY \(\operatorname{MR}\). HOLIDAY:
Q All right. You -- so you're saying you never wanted her to leave?

A We invited her back at least three times.
Q Okay. So you did want her to leave?
THE COURT: No, he said they did not want her to leave.

BY MR. HOLIDAY:
Q Okay. You never wanted her to leave is what came out of your mouth during that very long answer. Do you feel like you saying you never wanted her to leave is inconsistent with the letter that you sent out on March 10th?

A The three of us had a plan to move the company forward, and we were moving the company forward, and then when your client told us she didn't want to be part of --

MR. HOLIDAY: Your Honor, my question is whether or not what he just said was inconsistent with the letter on March 10th.

MR. SHEEHAN: Your Honor, he has to -- he has to give an explanation to answer this question.

JD Reporting, Inc.

THE COURT: Overruled. The way you're asking and he is responding it.

MR. SHEEHAN: Go ahead, sir.
MR. HOLIDAY: All right.
THE COURT: Keep going, please.
MR. SHEEHAN: Go ahead.
THE COURT: I think he's forgotten what the question was. BY MR. HOLIDAY:

Q All right. The question was saying that you never wanted her to leave is inconsistent with the letter you sent on March 10th; is that correct?

A It is, and for the reason she told us she didn't want to be part of the expansion. She told us she didn't want to put any more money in. She told us that she didn't want to sign the lease, and we have a bunch of agents behind us, and they were expanding across the hall, and she chose not to move forward with it. And so were we supposed to just stop and not move forward with the company when she made promises to us and to the agents of moving the company forward.

And so at this time with her telling us she didn't want to be a part of it, she didn't want to put any more money into it. She's already built out enough. She told us numerous times, I don't know how many times that we could keep on coming back to her and asking her do you want to be a part of this.

And so at this time, I believe it came to a head, going if you don't want to be a part of it, let us go across, let us do it, and she said we could.

Q All right. So you had to kick her out?
A Pardon me?
Q You had to kick her out of the business?
A Today she's still part of the business.
Q Well, you didn't think that she was in March; did you?

A When she breached the operating agreement? I believe that she wasn't because she wasn't looking for the best interests of the company at that time.

Q All right. Well, let's -- let's go to this contention that she breached the operating agreement. Which section of the operating agreement did she breach?

A I don't know the exact numbers.
Q Do you know the particular promise in the operating agreement that she broke, or do you recall a clause or consideration, the list of promises there?

A She -- she promised to move forward with the company and made promises to the agents, made promises to us. You talked about promises yesterday and what the operating agreement was all about was promises. She broke her promise. She completely reneged on what she told us she was going to do because she had health scares. She said that she didn't want
to be part of the day-to-day operations. She didn't want to invest any more money. She didn't want to have anything to do with the company. That to me is a breach. I don't know exact what number it is in the operating agreement, but I do know that that was a breach.

Q Okay. So her breach of the operating agreement was because she wouldn't go forward with the expansion; is that what you're saying?

A On the promises that she made to us and to our agents.

Q Okay. So, but she breached by not going through with the -- she breached the operating agreement by not going through with the expansion is what you're saying?

A That's one of them.
Q Okay. What's the other breach of the operating agreement?

A For -- she didn't want to go ahead with the -- move forward with the lease. She didn't want to sign. She didn't want to put any money into the company to be able to build across the hall even though she said that she was willing to. She didn't want to sign, and she didn't want to be a part of the day-to-day operations anymore. So if you don't want to be day to day, you don't want to put money in, you don't want to be part of running it, what is she there for?

Q So you wrote the March 10th letter because of that JD Reporting, Inc.
list of grievances?
A What's that?
Q So you wrote the March 10th letter for that list of grievances?

A At the time there was -- we ended up sending the letter to her because at the time that's what we thought we were going to do.

Q All right. The letter told her to come get her license, she wasn't allowed to be a real estate agent at Life Realty anymore; is that correct?

A It did and never happened.
Q Okay. Lastly, your real estate license will be sent to the real estate division on Monday, March the 13th, two days after the letter, 2017, so that you may affiliate with another real estate broker. Is that a correct reading of what's in the letter?

A That's what it wrote, but it never happened.
Q So you just told her you were going to send her license back?

A We contemplated it.
Q You contemplated it. Would you say you threatened it?

A I don't know if it was a threat.
Q All right. Why isn't it a threat to say that in two days you're going to send her license back to the real estate JD Reporting, Inc.
division?
A I don't recall all the conversations that we had at the time, but I just know it never happened. It never came to fruition.

Q Okay. So earlier you said you never told her you were going to send her license back and that she couldn't work there anymore. What you meant is that you didn't follow through with the threat or the statement in this letter that, lastly your real estate license will be sent to the real estate division on Monday, March 13th, 2017, so that you may affiliate with another real estate broker; is that fair to say?

A Yes.
Q Okay. Now, after receiving this letter she came and got her real estate license?

A A month later.
Q Okay. So a month later in order for her to keep -well, all right. So a month later she came and got the real estate broker's license. Now, it's interesting you saying a month later, did you -- did she have any reason to believe that she could still come and work out of the office during the month of March?

A She had every right to.
Q She had every right to, did she have any reason to think that you would let her?

A She still had a key. She still was a member of the JD Reporting, Inc.
company.
Q All right. So you never told her to stay away or told other people she couldn't come in and go to her office?

A I don't think I've ever told her that she was not allowed to come in.

Q You rekeyed the office, didn't you?
A What's that?
Q You rekeyed the office, didn't you?
A No, we actually rekeyed it with the same -- a different type of key, but I -- she -- her key still worked up until last month.

Q So you rekeyed it with a different type of key?
A We rekeyed it, but her key still worked. We didn't take and we never limited her and the key to be able to come into the office except for up to about a month ago we finally rekeyed it.

Q All right. I don't understand what it means when you rekeyed it, but it's a different type of key, but her key still works. Could you explain what that means.

A The locks that were on there were a lock that the landlord had put on there, and the landlord's locksmith wanted \$10 a key, and for NRS I thought that was sort of crazy for us to pay \(\$ 10\) a key. So we had it rekeyed on a lock that actually worked that we could buy -- get the keys from our locksmith at a greatly reduced price than \(\$ 10\) a key.

Q Okay. So you changed the locks after -- so after March you changed the locks, fine.

Now, you're saying that she had every right to come in, but you aren't saying that you invited her in in March; right?

A In March I don't recall all of that. I know the letter we sent, but at numerous times we did invite her back over the years, and her legal counsel would send us letter stating that she didn't want to have any part of it.

Q Okay. Again, don't tell me, like, communications of other people, all right? Well, can you -- I'm sorry, it's hard to explain what hearsay is, but just moving on.

Look, we're at here on March 28th, 2017, you signed saying you were going to do the dissolution; right? That's the dissolution action that I'm looking at. It's fair to say that March 28th you were dissolving NRS?

A What number?
Q That's 4BB.
A Okay.
Q All right. So if Nancy told you, you could go ahead and open up another company in the new expansion space, why were you dissolving NRS?

A Because at the time we thought that was the best course of action.

Q Why did you think it was the best course of action? JD Reporting, Inc.

A Because she no longer wanted to be a part of NRS. She told us at great lengths that she didn't want to put any money in. She didn't want to run the company on a day-to-day operation. She didn't want to be involved at all.

Q All right. And you received a cease-and-desist letter on March 10th, 2017, you stated earlier; right?

A Uh-huh.
Q Okay. Did that cease-and-desist letter immediately served on you after you served her with your letter say that she didn't want anything to do with the company?

A I don't recall.
Q Did it say go ahead and open a new company that competes with NRS?

A I don't think so.
Q Okay. It didn't say that; did it?
A I don't think so.
Q Okay. So immediately responding to the March 10th, 2017, letter was a cease-and-desist letter that you admit didn't show any indication that she had abandoned NRS; correct?

A The letter? On the cease-and-desist --
Q The cease-and-desist letter, yeah.
A It didn't say that she didn't want to have anything to do with the day-to-day operations, what she verbally told us. The cease-and-desist told us to cease-and-desist.

Q All right.

MR. HOLIDAY: Move to admit Exhibit 4U; any
objections?
THE COURT: 4U.
MR. HOLIDAY: Cease-and-desist letter.
MR. SHEEHAN: No objection, Your Honor.
THE COURT: Do you have plaintiffs' binder?
THE CLERK: [Indiscernible.]
THE COURT: Okay. I mean, there's been -- yeah, but that was moved in previously. Plus \(4 T\) and S. Thank you.

THE CLERK: S-2.
THE COURT: S-2. Thank you.
BY MR. HOLIDAY:
Q All right. So let's see -- so in April you undid the dissolution; is that right?

A I don't know the exact time frame.
Q If I represent to you that it was April 12th, you filed a correction --

MR. SHEEHAN: We'll so stipulate.
MR. HOLIDAY: Okay.
BY MR. HOLIDAY:
Q So on April 12th you filed a correction of the dissolution; correct?

A Yes.
Q After this case was filed; is that right?
A I don't recall exactly.

Q You don't recall. Okay. Now, let's go back to -well, let's just keep going and then we'll bounce around a little bit, but let's do this here. There's the --

MR. HOLIDAY: Do you know which one of your exhibits
is the May resolution?
MR. SHEEHAN: No.
MR. HOLIDAY: It's May 2017.
BY MR. HOLIDAY:
Q So in May 2017, you noticed Nancy of a special meeting; correct?

A Yes.
Q All right. Why did you stop having special meetings by written consent or in lieu of? You had stated multiple times, right, that you were having special meetings that she didn't have to attend before April or May, left everything in March; right? You cite it as a special meeting by way of written consent. That -- is that correct? Yeah?

A Okay.
Q Okay. So why did you stop having those meetings and instead start having meetings that you were noticing her of, normal meetings, let's say?

A Because I believe we were looking at the operating agreement and --

Q You realized you kind of read the operating agreement wrong; is that right?

JD Reporting, Inc.

A The way that Nancy, Roger and I always operated is we would always have meetings ad lib. We would never have meetings that we would notice each other. We'd go into Nancy's office, Roger's office, my office, and we'd have a meeting and discuss things.

Q Yeah, and you -- that -- that's a meeting; right? You would also have, like, an annual meeting with minutes when you started?

A Yeah, when we started.
Q Okay. So in other words, in April some lawyers got involved and all of a sudden you're starting to comply with notice provisions in the operating agreement; right?

A Okay.
Q That's right?
A Yes.
Q Okay. And in all of the other times when you said you were having a meeting via written consent, right, you realized you couldn't do that without written consent of Nancy Haack; is that right?

MR. SHEEHAN: Objection. Mischaracterizes the evidence and the clause and calls for a legal conclusion.

MR. HOLIDAY: All right. There's a . 10 and a .11, let's just make sure we get to the right ones if we're going to go argue that right now. It's fine. Let's get that handled.

MR. SHEEHAN: Let's -- let's, yeah.

THE COURT: No, this is not -- y'all aren't witnesses.

MR. HOLIDAY: All right.
THE COURT: We're not gonna, I mean, this is not the time for you guys to argue these provisions.

MR. HOLIDAY: No, and I understand. When he was saying I was misstating -- objecting saying I was misstating, and so I thought that we would have to go through this as whether or not I was misstating it. Okay. BY MR. HOLIDAY:

Q All right. So let's look at that provision that you kept citing in all of your first meetings, and let's go to Exhibit B 6.11.

UNIDENTIFIED SPEAKER: (Indiscernible.)
BY MR. HOLIDAY:
Q In defendants', yeah.
A Defendants' 1? 2?
Q All right. Defendants' 1. We're only going to use Defendants' 1.

A E?
Q B.
A What section?
Q 6.11. All right. Now, here it says you can have one of these meetings, and tell me if this is correct. Is it correct that this says you can have one of these meetings if JD Reporting, Inc.
consent in writing setting forth the actions so taken are assigned by members holding LLC interests representing the aggregate number of votes equal to or greater than a minimum number of votes to authorize and to take such action in a meeting to which all see interests entitled to vote thereon were present and voted.

MR. SHEEHAN: Do you see the point now, sir? Only the necessary --

MR. HOLIDAY: All right.
MR. SHEEHAN: -- number of people -- only a majority --

THE COURT: Y'all, this is argument.
MR. HOLIDAY: All right.
MR. SHEEHAN: But he's been mischaracterizing that paragraph.

MR. HOLIDAY: Oh, all right, I'm sorry, it's 6.10
that I'm supposed to be reading.
BY MR. HOLIDAY:
Q So only if Nancy signs a written waiver of notice -MR. SHEEHAN: Same objection, Your Honor. This is -this is totally mischaracterizing this paragraph. It's legal argument for at the end. He's not a lawyer, but what that 6.10 says is --

THE COURT: Hold on a second. Your objection is calls for a legal conclusion.

JD Reporting, Inc.

MR. SHEEHAN: Calls for a legal conclusion. THE COURT: Sustained.

BY MR. HOLIDAY:
Q All right. Section 6.10 says, Waiver of notice or consent by absent members; correct?

A Yes.
Q Okay. Now, when you read this it says that, you know, a person may waive notice or consent by signing a written waiver of notice; is that right?

A If that's how it reads.
Q Okay. All right. Did you ever have a signed written waiver of notice from Nancy for any of those meetings?

A I don't recall.
Q You don't recall? Okay. All right. So where were we? Oh, right. So in May. So in May you had your first special meeting that you noticed Nancy of; is that right?

A Okay.
Q Yes or no?
A Yes.
Q Okay. Do you remember what you were intending to do at that meeting?

A I don't recall. Do you have which one it is for the exhibit?

Q You can look at in plaintiffs' binder 4 dash GG.
A GG?

Q Yes, 4 dash GG. All right. MR. SHEEHAN: It's OOO in mine. MR. HOLIDAY: It's OOO in yours? Okay. BY MR. HOLIDAY:

Q Let's go to Defense Binder OOO. Actually, since this binder's little bit clearer.

MR. SHEEHAN: Oops, it's not there. I apologize. MR. HOLIDAY: Okay. BY MR. HOLIDAY:

Q So this says First Amendment of operating agreement, that's what they have. All right. Well, that's fine. It's the amendment that you --

MR. SHEEHAN: WWW is the notice.
MR. HOLIDAY: Okay.
BY MR. HOLIDAY:
Q So this is the First Amendment to the operating agreement of NRS Realty Group; correct? And we're at 000 .

A Okay.
Q All right. Now, the operating agreement says that Section 2.6 is deleted, and you're inserting the new 2.6 that says registered agents is this; is that right? So you changed the registered agent?

A If that's what it reads, yes.
Q Yeah. Okay. Nothing wrong with that. You deleted 2.7 and then -- here we go. All right. You delete 3.6

JD Reporting, Inc.
compensation and -- and what did -- what did you do in this amendment?

A I'm sorry?
Q What did you do in this amendment for compensation, 3.6?

A \(\quad 3.6\) ?
Q Yeah.
A Do you want me to read it to you?
Q No, in your own words.
MR. SHEEHAN: Objection to the extent it calls for a legal conclusion.

THE COURT: What are you -- do you just want him to read it?

MR. HOLIDAY: Well, we can read it into the -- read it or not. It's -- I'll rephrase the question. BY MR. HOLIDAY:

Q In this you authorize giving yourselves salaries and by yourselves I mean Mr. Roger Ayala and you; correct?

A Yes.
Q Okay. And before this read that you guys couldn't have salaries; is that right?

A Correct.
Q And you didn't vote to give Nancy a salary?
A If she was running the company with us, she would have got a salary. We all agreed once the company became JD Reporting, Inc.
profitable we would all be paid a salary.
Q Okay. Let's go back to the letter of March 10th -MR. SHEEHAN: Your Honor, this we definitely covered yesterday.

THE COURT: We have covered this yesterday and Ms. Haack did a very good job of this yesterday. MR. HOLIDAY: All right.

BY MR. HOLIDAY:
Q Now, you just had two votes; is that right?
A We had a majority.
Q Yeah, two -- two votes out of three; right?
A Correct.
Q Okay. And let's see -- and then you -- and then in Section 6.8, this is a really big one; right. In Section 6.8 you said the majority of all LLC interests shall be required to approve any action, and the amendment in 000; right?

A Yes.
Q All right. So everything that happened before March 1st -- or excuse me, everything that happened before May 1st when this was signed was before you had operated -- you had --

A I think this was a clarification.
Q Okay. So what did it say before?
A A majority or all.
Q Okay. Well -- all right. If I represent to you that JD Reporting, Inc.
it actually said a unanimous vote, does that sound right? Do you deny that?

MR. SHEEHAN: Objection. Mischaracterizes 6.8.
MR. HOLIDAY: All right. It doesn't -- all right. BY MR. HOLIDAY:

Q If I told you it doesn't say majority or all in 6.8; is that okay?

A That was misunderstood.
Q Yeah. I'd represent to you it says the unanimous vote of all the LLC interests and your amendment says a majority.

MR. SHEEHAN: Your Honor, again --
MR. HOLIDAY: Is that right?
MR. SHEEHAN: -- mischaracterizes the evidence. It says unanimous vote of all of the LLC [indiscernible] should be part of the --

THE COURT: Y'all are basically testifying.
MR. SHEEHAN: Right. Unless or --
THE COURT: I mean, you're supposed to be asking him questions. BY MR. HOLIDAY:

Q All right. So you amend it -- let's get to the point. Basically, here you amend it to give yourself a salary, and you amend it to be able to take action individually. All right, excuse me. You and Roger just -- your majority vote to JD Reporting, Inc.
have all the authority over NRS; is that right?
A We voted that the members would have a majority, and I think it was the -- cleared up the operating agreement with the majority or all.

Q All right. So you said the majority or all was in there by mistake; right?

MR. SHEEHAN: Objection. Mischaracterizes. When did he say that, Your Honor?

MR. HOLIDAY: Oh, all right. Fine. Very well.
THE COURT: Sustained.
BY MR. HOLIDAY:
Q Was majority or all in there by mistake?
A When we talked to Gary Schnitzer, we questioned him if what he meant by majority or all and he had that in there --

Q All right. Are you talking about the deposition?
A I wasn't at the deposition.
Q Okay.
THE COURT: I think these questions are better for Mr. Schnitzer. Because he's telling the same thing, he doesn't know, and it calls for a legal conclusion.

BY MR. HOLIDAY:
Q All right. Did you read the operating agreement all the way through when you signed it?

A I don't recall.
Q Okay. So you don't recall what you intended when you JD Reporting, Inc.
signed it 10 years ago?
A I don't recall.
Q Okay. Very well. So you can't remember that. So here's a issue that I have. If we can go back to the operating agreement. Now, your interpretation, majority or all, is that or all is just nothing; right? Like all is always a majority so majority can always --

A My understanding of majority or all is we could have a simple majority or we could have all of us. All would be all three of us or a majority would be two.

Q Okay. So did you intend when you managed the company for two to be able to take action against one?

A Ask it again, please.
Q All right. Did you intend for two members to be able to take action against one member?

A No.
Q Okay. So you didn't intend for two people to --
A When we put this together, the three of us were all together. We were all moving forward with building this company and creating a great company. And the attorney that put it together, put it together as a majority or all, and it was something that Roger and I asked your client to help put the operating together or operating agreement together with the attorney at the time.

Q All right. One second. All right. So if you could JD Reporting, Inc.
flip back to the operating agreement, I've got a question about the section right after -- well, let me just ask you this.

When you made these amendments to the operating agreement, did you get Nancy Haack, Nancy Haack's written consent?

A I don't believe Nancy showed up to the meeting so I don't believe we did get her written consent to it.

Q Okay. And so all of the -- have you ever gotten any written consent from Nancy to any of the amendments?

A I don't believe so.
Q Okay. All right. I think that's it for the operating agreement. So let's get out of the binder for a second, and let's just talk about what happened.

The lease for Life Realties or Life -- Life Real Estate eventually leased the expansion space; is that right?

A Across the hall?
Q Correct.
A Yes.
Q Okay. And you operated both as Life Realty; is that correct?

A No. We operated NRS aside which is Life Realty, and we operated across the hall as Life Realty District.

Q All right. So did you produce any documents showing Life Realty District on any memorandum or paper or sign?

A You mean to the State of Nevada that we had to apply and get the office up and running?

JD Reporting, Inc.

Q No, I mean in this case.
A How so?
Q All right. Well, have you disclosed anything from Life Real Estate in this case?

A In regards to what?
Q In regards to discovery. In other words, were you producing financial information for Life Real Estate, LLC?

A Life Realty or Life Realty District are completely separate entity that your client told us to create and put together because she didn't want to be a part of expanding across the hall.

Q Right.
A And so we are here for NRS Realty Group.
Q Okay. But right now Life Real Estate has taken over everything that used to be Life Realties; correct?

A Are you talking about the lease space?
Q The lease space, the furniture, the sign's still there.

A The --
Q Is that right?
A We have asked your client if she wanted to be a part of it, even as far as February of this last year, 2019. We said the lease is coming due for NRS Realty, do you want to be a part of expanding and moving forward with a new lease on this space under NRS's name. And she clearly said no. She didn't
want to be a part of it any longer.
Q Do you remember what my question was, Mr. Evenden?
A You asked if we were -- we took over the space and we did.

Q Right.
A After we gave your client an opportunity to continue in the space.

Q Okay. How many agents does Life Real Estate have now?

A I think we're about 104.
Q You have 104 agents. Okay. How many agents did NRS have in May of 27 -- or, yeah, in May of 2017?

A I think we had dropped down into the 30s.
Q Okay. And did Life Realty continue to have about 30 real estate agents all the way up until November?

A We actually hired more agents. Yesterday your client touched on us hiring Kevin Difiore [phonetic] and his team. So we tried to hire back and have 30, 40 agents in NRS's side, to be able to fill that space up after your client's exodus and all of her agents that she took with her.

Q Okay. Did you purposely take business from Life Realty to Life Real Estate?

A How so?
Q Did you purposely move any agents to Life Real Estate? Let's start with that.

A The agents that moved over to Life Realty or Life Realty District were ones that were promised with Nancy, your client, that they were able to move over into the new space. We recruited them to be in the new space.

Q All right.
A So the agents, the core agents that were there when your client was there were still there up until the lease expired at the end of October of 2019.

Q All right. Did you intentionally run NRS to not make a substantial profit?

A No.
Q Okay. So you're saying that you were trying to make as much money for NRS as possible; is that right?

A We -- we kept the business afloat as to your client's promise to get me off of the lease. As soon the lease is done I don't want to be a part of it any longer. So we kept it afloat. We did everything that we could do after she tried to burn it down and steal all the agents, threaten all the agents that she was going to sue us, and we kept it together as best that we could, and the expense that we had to pay in defending against this lawsuit is what brought most of the profits out of the company.

Q Okay. All right. All right. So what I heard is that your intent was to keep NRS afloat, not to make, like, any great amount of profit.

A We ended up filling the company back up from the agents that left. We ended up recruiting and putting and filling the offices back up to be able to keep the company afloat and keep the company profitable so we would not have to ask your client to do a capital call to infuse money into the company. We did exactly what she told us to do.

Q Okay.
A Keep it afloat, keep the --
Q So you're at 104 agents now, about three times as much as a couple years ago; is that right? For your new -- you as a broker, your new company; is that right?

A Yeah, and it's actually far short of what we thought we'd be when we all discussed opening up across the hall with Nancy, Roger and I; we expected it to be about 150 agents at this time.

Q All right. Nevertheless, you're more profitable now than you've ever been; is that right?

A We haven't made money. So in -- on our new space your client didn't want to put any money in. We explained to her there's going to be a capital call to put money into the company. She didn't want to put money in. Roger and I actually funded that, and we're still paying off of that capital call investment. So no, we're not making money on it at this time. Just like when your client said that NRS has never made money --

Q On Life Real Estate or on NRS Realty?
A Pardon me? Sorry?
Q On Life Real Estate or NRS Realty?
A On Life Realty or Life Real Estate or Life Realty District.

Q Life Realty District.
A District. The new space.
Q Okay. So your testimony is that company isn't profitable?

A We haven't made money on it. We're still paying off of our -- the buildup.

Q You're still -- okay. You didn't disclose any financial documents about that in this case because you didn't think it was relevant?

A It's a completely separate entity.
Q Okay. Did you ever -- let's take some of the employees. You have Jessica Johnson?

A Yes.
Q Okay. Did Jessica Johnson do the bookkeeping for both companies?

A She did.
Q Okay. Did she receive a salary from both companies?
A She received a salary from NRS and myself.
Q Okay. Not from Life Real Estate?
A I paid for Life Real Estate.

Q So did you submit any documents showing that she was receiving that money from Life Real Estate or from you personally?

A From my checks?
Q Yeah, from you personally?
A Nancy can see and read access of the checks going into the general account at Chase that I've deposited checks into that account paying for my half of what Jessica did.

Q All right. Jessica was a full-time employee of NRS though; is that -- is that right?

A No, 50 percent.
Q So it's 50 percent NRS, 50 percent Life Real Estate?
A No, 50 percent Sean Evenden, 50 percent NRS.
Q Okay. As a matter fact, you hired an office -- a new office manager, Kathy; is that right?

A Yes.
Q All right. Does she work on Lone Wolf for both companies?

A Yes. We have two separate Lone Wolfs.
Q Okay. And there was another Kathy; wasn't there, besides the office manager that was an employee of NRS? Kathy Caruso.

A Oh, that's an accountant. That's the tax preparer.
Q Okay. All right. Is she on payroll as a \(\mathrm{W}-2\) person?
A Pardon me?

Q Is she on your payroll?
A No.
Q Okay. Other than the receptionists at the two different desks, are there any other employees that didn't work for both companies?

A Is there any other employees that didn't work for both companies?

Q Right. Because you said they -- they both do the bookkeeping for both companies; is that right?

A Jessica does, yes.
Q Okay.
A No, I don't think there was any other people on the payroll that NRS paid for.

Q Okay. What kind of protections did you have in place for invoices made out to life Realty to make sure NRS didn't accidentally pay Life Real Estate's expenses?

A We would go through and audit the books and try to find as many -- if there was any, how to say it, any payments that were made out of NRS or Life Real Estate and we would go through and double check to make sure.

Q All right. And Jessica Jones is the bookkeeper for both companies?

A Jessica Johnson?
Q Or Johnson, excuse me, yes. Jessica Johnson's bookkeeper for both companies? She's your sister-in-law; is JD Reporting, Inc.
that right?
A Yes.
Q Okay. Is it possible that Jessica Johnson -- well, let me -- let me ask another -- let me ask a specific example. Can you open up the NRS binder behind you.

A All right.
Q And they -- they renumbered those to be something different; I think it says 101 on the tabs.

THE CLERK: It begins at 51, Counsel.
MR. HOLIDAY: Okay. 51. All right.
BY MR. HOLIDAY:
Q All right. Do you recognize what that document is?
A I do.
MR. SHEEHAN: Where are we at right now?
MR. HOLIDAY: In the NRS binder it would be your
Number 1.
MR. SHEEHAN: The operating agreement.
THE WITNESS: No.
MR. HOLIDAY: No, the NRS binder not the Nancy --
THE WITNESS: It's the thin one in the back.
MR. SHEEHAN: NRS binder.
MR. HOLIDAY: I dropped it off at the desk on Friday. You got two binders on Friday.

MR. SHEEHAN: Oh.
MR. HOLIDAY: It's probably thinner.

JD Reporting, Inc.

MR. SHEEHAN: Plaintiffs' trial binder 2, 2. \(\operatorname{MR}\). HOLIDAY: All right.

THE COURT: Are y'all ready to take a little break and then we can deal with the exhibit things with Kathy? MR. HOLIDAY: Sure.

THE COURT: Okay. So let's just take a break. So let me know, Kathy, when you get it handled. Okay.
(Recess taken 2:42 p.m. to 3:14 p.m.)
THE COURT RECORDER: Okay. We're on the record. THE COURT: Alrighty. So Mr. Evenden is back on the stand.

And my understanding is at the break y'all came to some kind of resolution on the exhibits?

MR. HOLIDAY: Yes, Your Honor, we agreed that all but two exhibits of defendants were admitted namely CCCC.

THE COURT: Uh-huh.
MR. HOLIDAY: And \(Z\) are not admitted which -- and then we just had to admit all of Nancy's binder. It's just in so we'll go through it. Maybe we could get a courtesy copy with better tabs.

THE COURT: We'll figure it out, but --
MR. HOLIDAY: Okay.
THE COURT: -- but you're a lot better off than you were before.

JD Reporting, Inc.

MR. HOLIDAY: All right.
MR. SHEEHAN: Thank you, Your Honor.
THE COURT: Okay. So let's continue with
Mr. Evenden, please.
BY MR. HOLIDAY:
Q All right. So we are in the NRS binder. This is the smallest binder. It's just little things that we've being adding.

So we were on Exhibit 1; is that right, Mr. Evenden?
A Yes.
Q All right. And is it true that NRS paid the Nevada Secretary of State fees for Life Real Estate? Yes or no.

A I don't know for sure.
Q You don't know? Okay. Let's go to the next -- do you see here? All right. Let's see -- let's skip Number 2 and here we are. Now, this is an expense or excuse me, do you -do you recognize this -- this is -- do you recognize this is a Quick Book expense for NRS?

A Yes.
Q Okay. Did you and Roger agree to pay half of a Christmas party this last December with NRS funds?

A Are we on Tab 3?
Q We're on Tab 3, yes.
A Yeah, the Christmas Party's always been something that we've thanked the agents for the whole year of production
and what they've done, and this expense was for half of the Christmas party venue. It wasn't for completely half of the entire expense.

Q Okay. So this was paid after all the agents had left NRS; is that right?

A It was for -- it was paid after -- after the agents had transferred their license.

Q Okay. So this was an expense for a Christmas party --

A The entire year.
Q -- for Life Real Estate employees; correct?
A And NRS.
Q Okay. Going to Number 4. All right. Can you just --

MR. SHEEHAN: This I actually do object to, Your
Honor. I had -- this has never been --
MR. HOLIDAY: I think you're on Number 5 .
MR. SHEEHAN: Pardon me?
MR. HOLIDAY: That looks like Number 5.
MR. SHEEHAN: The management report?
MR. HOLIDAY: Yeah.
MR. SHEEHAN: It doesn't belong in my book then. I don't have -- you put two management reports in my book. So what's 4?

MR. HOLIDAY: 4 is your payments to Fennemore Craig.

JD Reporting, Inc.

MR. SHEEHAN: Okay. Fine.
MR. HOLIDAY: Okay.
THE COURT: Objection withdrawn?
MR. SHEEHAN: Yes.
THE COURT: Okay.
BY MR. HOLIDAY:
Q All right. So you and Roger voted to pay your legal fees from NRS funds; is that right?

A Yes.
Q All right. And you stated that you wrote a handwritten note that made it okay for you to do that; is that right?

A That we would reimburse if we were --
Q Saying you would reimburse if you lost; is that right?

A Right.
Q Okay. And I'd represent if you could just go through Exhibit 4. Do you deny that you paid approximately \(\$ 97,000\) after July of 2018?

MR. SHEEHAN: We'll stipulate.
MR. HOLIDAY: Okay. You'll stipulate? Okay.
BY MR. HOLIDAY:
Q Moving on. All right. So let's go to Exhibit 5.
MR. SHEEHAN: This is the one I object to, Your
Honor. I have no idea what it is. I've never seen it before.

It certainly has never been produced in this case.
MR. HOLIDAY: Yes, Your Honor. It was attached to the 35 documents in the motion in limine where he agreed to let all these things in.

MR. SHEEHAN: But not subject to the objection. I mean, I -- did you prepare it, Counsel?

MR. HOLIDAY: All right. Very well. I think Nancy needs to authenticate this anyway so we'll just go ahead and get that.

THE COURT: Okay.
MR. HOLIDAY: All right.
THE CLERK: I'm sorry, Counsel, are you referring to your NRS binder?

MR. HOLIDAY: I am.
THE CLERK: Okay. And it would be Exhibit --
MR. HOLIDAY: Oh, it's 50 -- 50 --
THE CLERK: 51 through 57?
MR. HOLIDAY: Exactly. 51, 52, 53, and 54. Okay. BY MR. HOLIDAY:

Q So let's go to Exhibit Number 7 then, Mr. Evenden. All right. If you could just flip through these records. These are records that represent actual payments you made to yourself that were reported as expenses of NRS?

A 7 ?
Q Number 7, yeah, it's the --

A I've got it. It says Life Real Estate, LLC. It looks like the Secretary of State filing.

Q That would be Number 8. So go to the one right before that.

A Okay. I'm there. What's your question?
Q All right. So you made these payments to yourself; is that right?

A That's payroll. Yes.
Q Okay. These are recorded -- I would represent that these were recorded as expenses not as payroll, Mr. Evenden, and I'm asking you to provide an explanation why that would be.

A I don't know.
Q So you don't know why you paid these checks to yourself other than you're claiming that they were payroll?

A You asked me why I was --
Q No, it's okay. If you don't know then you don't know. Okay. All right. So finally I'd like to ask some questions just about why exactly did you use the name Life Real Estate, LLC and Life Realty District for your new company?

A Why -- why did we choose that?
Q Yeah. Why did you choose that like -- an open-ended question?

A Your client told us that we could use the derivative of Life Realty or any form of it.

Q Right. And you don't -- we're talking about the you JD Reporting, Inc.
don't remember when if it was in person, text message she told you; right?

A (No audible response.)
Q Okay. But aside from the fact that she gave you permission, you didn't have to use that name. So as an open-ended question just why did you choose those two names?

A I don't recall.
Q Did you feel you wanted to be related to NRS that did business as Life Realty in some way?

A It was a completely separate entity.
Q It was a completely separate entity in some respects, yes, but did your customers know the difference between the two entities?

A I don't know.
Q Okay. It's fair to believe that some of them wouldn't have realized they were two different companies. Is that -- is that a reasonable assumption with names like Life Realty and Life Realty District when they're both in The District?

A I don't know.
Q Okay. It's reasonable to assume that you wanted to use the power of the Life Realty brand for your new company; is that true?

A Well, when your client told us that we could use the name or any derivative of it, we chose to use it.

JD Reporting, Inc.

Q You chose to use it. So I'm just asking you an open-ended question just why and then when you couldn't supply a why, I suggested that you wanted to use the Life Realty brand; is that correct?

A It might be, yes.
Q Oh, it might be. Okay. Now, do you feel like you -you're still using the same Life Realty brand with Life Realty District today?

A We might be.
Q You might be?
A But your client told us that the name --
Q Well, that -- we understand. We don't need you to repeat anymore.

A Do you want my answer?
Q We don't need -- if you're going to repeat that she gave you permission --

A No, I'm not. I'm not.
Q Okay. Then proceed.
A Before we became Life Realty, we were with RE/MAX. And I have a letter from your client to Dave Liniger, the owner of RE/MAX International telling him that the name, the brand doesn't mean anything. It's the individual agents and the brokers that are there --

Q Well, that's irrelevant.
A -- that actually means something, and so for you to JD Reporting, Inc.
try to say that we're using the brand name, in your client's own writing she's telling us --

Q Okay. First of all it's hearsay --
A -- there's no value in the brand or the name.
MR. HOLIDAY: Your Honor?
THE COURT: Yes, sir.
MR. HOLIDAY: All right. I don't believe -- like, how am I supposed to -- I need to treat this as an adverse witness cross-examination, and he's going off and talking about hearsay that was from 10 years ago.

THE COURT: Let's do this. Your attorney is going to have his time to follow up so simply respond to his questions. Do not give any other elaboration.

THE WITNESS: Okay.
THE COURT: If your attorney believes there's elaboration needed, he will prompt you for that.

MR. HOLIDAY: Thank you, Your Honor.
THE COURT: You're welcome.
BY MR. HOLIDAY:
Q All right. So do you think there's any value to the brand Life Realty?

A Little to -- little amount. I think the only value would -- might be a small -- small percentage.

Q Okay. Do you think it helps getting new clients for Life Real Estate that it was so similar to Life Realty?

JD Reporting, Inc.

A If Life Realty was a huge international company it might, but we're a small local company, and I'm still explaining on who Life Realty District is to new clients. It's not like a huge brand that we're buying in to.

Q Okay. Are you well known in the real estate community as a brokerage with 104 agents?

A We're getting to be.
Q Okay. Do you believe that Life Real Estate was benefiting from the goodwill that you guys had built up all those years building Life Realty in the community? And if you don't understand what I mean just go ahead and ask, and I'll explain.

A It might have had some advantage. The main reason why we went that way was because your client didn't want to move forward with us, and so she told us to create a whole separate entity across the hall, and we did that.

Q Okay. Have you changed -- you said they're a completely different entity; right?

A Correct.
Q Okay. Have you changed the sign that says Life Realty since closing NRS?

A On the exterior or the interior?
Q Exterior and interior just let's talk about the signs.

A On the exterior we're working with the property JD Reporting, Inc.
manager to change it.
Q All right.
A And the interior, yes.
Q All right. When did you change it?
A The sign?
Q Inside, yes, say at the receptionist.
A It was taken down.
Q You just took it down?
A No, it's been down. We've been doing remodeling.
Q Okay. So you're saying after you took over in November --

A Correct.
Q -- you took the Life Realty sign down?
A Yes.
MR. HOLIDAY: No further -- oh, yeah, no further questions, Your Honor.

MR. SHEEHAN: I think I'll reserve to call him in
my --
THE COURT: Case in chief?
MR. SHEEHAN: -- my case in chief.
THE COURT: Okay. Sounds good. Thank you.
MR. HOLIDAY: All right.
THE COURT: Go ahead and step down, sir. We're just going to keep you under oath, okay.

MR. HOLIDAY: I would like to call --

THE COURT: Next time you're called up you'll still be under oath. Okay.

MR. HOLIDAY: -- Mr. Jeff Fulton.
Your Honor, this -- this individual is not probably
going to take very long and --
THE COURT: Okay.
MR. HOLIDAY: -- Ms. Haack would like to ask these
questions.
THE COURT: Okay. Exclusively?
MR. HOLIDAY: Exclusively, Ms. Haack will ask
questions.
THE COURT: Sure.
MR. HOLIDAY: Okay. JEFRIE FULTON
[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Would you please state and spell your first and last name for the record.

THE WITNESS: Jefrie Fulton. J-e-f-r-i-e, F-u-l-t-o-n.

THE COURT: Whenever you're ready, ma'am.
MS. HAACK: Did you say we were ready?
THE COURT: You're ready whenever.
MS. HAACK: Oh, okay.

JD Reporting, Inc.

BY MS. HAACK:
Q Jefrie, thank you for coming today. I wanted to ask you first of all do you -- are you familiar with all the owners of NRS Realty?

A Yes.
Q In this room, yes, thank you. And how long have you been a Realtor?

A I'm in my 17th year in the State of Nevada, third year in California.

Q Have you worked with NRS for a very long time?
A I was one of the, what I term, as one of the originals.

Q So since 2010?
A Yes.
Q Okay. Did you move over to The District with Life Realty when they moved over there?

A Yes, I did.
Q Yes. Are you still with life Realty?
A No, I'm not.
Q Okay. How long have you worked with the brokers as brokers? Is this the only time or didn't you have a relationship with Roger before this?

A Yeah, actually I started my career at RE/MAX Associates, and I was an independent agent there, and one of my
friends introduced me to Roger, and I hooked up with Roger and started up with him.

Q Okay. All right. I didn't want the Court to think you only knew us three for that short time.

While you were at NRS did you go to work on a regular basis?

A Yes, I did.
Q Would you say you went to the office on a daily basis?

A Yeah, I would say I was there probably about five to six hours a day.

Q Okay. Were you at Life Realty when there was an announcement of my departure, Nancy Haack?

A Yes, I was there.
Q Were you in a meeting when you were told that I was leaving?

A I heard it basically through the grapevine, but there was a meeting that was held, I can't recall --

MR. SHEEHAN: Objection. Hearsay now, Your Honor.
THE COURT: Overruled.
THE WITNESS: It was, I believe early part of April, end of March, early part of April there was a meeting saying that Life Realty was being dissolved. BY MS. HAACK:

Q Were you given an email with instructions telling you JD Reporting, Inc.
that Life Realty was not going to exist anymore?
A Yes, I was.
MS. HAACK: I have it in my exhibit book, Your Honor. Should I bring it out and ask him to confirm that or -MR. SHEEHAN: We'll stipulate. MR. HOLIDAY: It's already, yeah, it's already -MS. HAACK: Okay. It's already in there. Okay. BY MS. HAACK:

Q When you reached -- got that email telling you that Life Realty was going to be exhausted, did you get a contract for a new company at that time?

A Yeah, it was put on my desk, and it stated that I -if I didn't sign the contract within 10 days, I think it was a deadline of the 26th of March of 2017, that our licenses would be turned back over to the division.

Q Okay. When did you leave Life Realty -- or did you leave Life Realty?

A Yes, I left on my own. I left on my own, and it was on a Saturday. I had a conversation with one of the agents there on a Friday afternoon and -- a good friend of mine -- and we discussed what I was going to do. And the next morning by 8:00 o'clock the next morning, Saturday morning, my son and I went into the office, cleared my stuff out and that was it.

Q Did you move your license to work with Ms. Haack after she left?

A No, I did not.
Q Do you work with Ms. Haack now?
A No, I don't.
Q Do you work with Signature Realty?
A Now I do, yes.
Q Did you when you left in 2017?
A No, I went to Prosperity Realty. I worked for [indiscernible]. It was just myself and her, and I would stay with her until, I'd say, June 2018. And I went over to Signature.

Q Okay. Did you leave because you were told Nancy might freeze the assets?

A No.
Q Did Nancy ever tell you she was going to freeze the assets?

A No.
Q I'm going to be cautious not to get into hearsay. So when you were told that Ms. Haack was gone, did you get the impression she had gone on her own or was asked to leave?

A I would say I -- I was under the impression that you had left on your own. I was under that impression there. I wasn't under the impression that you were forced to leave at all.

Q Okay. Did you ever get told a reason why Ms. Haack left at those meetings?

JD Reporting, Inc.

A No.
Q Okay.
A What I heard was that you were tired, and you were ready to leave because you had gotten sick.

MS. HAACK: Okay. I have no --
MR. HOLIDAY: Your Honor, can you -- I'm going to just object that she needs to clarify when she --

MR. SHEEHAN: Your Honor, this is ridiculous.
MS. HAACK: I'm ready. I'm finished. That's all the questions I have. Thank you, Judge.

MR. SHEEHAN: Okay.
MS. HAACK: Anybody else?
MR. HOLIDAY: Okay.
THE COURT: No?
Mr. Sheehan, your turn?
MR. SHEEHAN: Thank you, Your Honor. CROSS-EXAMINATION

BY MR. SHEEHAN:
Q Along that last line you actually signed an affidavit in this case stating that you believed she left because of her health issues; correct?

A Okay.
Q That's -- that's true; right?
A I may have signed it. I don't recall. It was a while before I signed anything.

Q Okay. And you -- you left because there was infighting between the partners, and you were getting a little concerned; fair enough?

A I would say yes.
Q And do you know who caused that infighting?
A No, I don't.
Q You were aware that NRS was going to be expanding across the hall; correct?

A Yes.
Q And that all three partners had agreed to that, in fact, they had even taken the agents across the hall to see that space; correct?

MR. HOLIDAY: Objection. Hearsay.
THE COURT: Overruled.
THE WITNESS: I know Nancy never came across the hall. I was shown by Roger and Sean.

BY MR. SHEEHAN:
Q Well, in fact, are you sure about that because Ms. Haack herself has testified that she was part of that?

A Well, she may have been part of that, but she never walked into that workspace with me.

Q Are you sure about that because she testified she was the person that took the agents across the hall with Roger and Sean.

A Well, I recall being over there with Sean and Roger. JD Reporting, Inc.

We talked about that.
Q Okay. And was it possible Nancy was there that day too?

A It could have been.
Q Okay. Now, it is true that although they contemplated dissolving NRS and having everybody move their licenses over, they did not do that and NRS exists today or existed past -- past when you left; correct?

A Yeah, I guess. I guess they -- well, I don't know all the different circumstances, but, you know, from what I observed, you know, the contract that they gave me saying that I had to --

Q But the question is, is that they didn't go forward with that. In other words --

A Well, I don't know what happened, I was gone.
Q Okay. But -- but you said --
A But they were still operating because I do recall Life Realty they were still there in The District.

Q Right. And in March they said they were -- doing this -- contemplating this dissolution. Everybody was going to have to move their licenses over in -- by -- the 10 days came and went, nobody's license moved and in April NRS was still in operation with all the same agents; correct?

A I guess so.
Q Because you were there; right? JD Reporting, Inc.

A Well, I was on my way out. I was out searching for other places to go.

Q Yeah. But you don't -- you never transferred your license --

A Afterwards.
Q Yeah, but NRS remained in -- you didn't have to transfer your license from NRS to a company called Life Real Estate; fair enough?

A Fair enough. Well, I didn't sign a contract, that's -- printed my name on it, I didn't sign it.

Q Okay. But nobody actually moved from NRS to Life Real Estate at that time?

A Probably not. I don't think so.
Q Okay. Roger Ayala is a long-time acquaintance -he's actually a friend of yours; isn't he?

A I wouldn't say now, we are acquaintances, but we used to be friends.

Q Okay. Right. And he's an honest fellow; would you agree with that?

A No.
Q Okay. You and Roger don't see eye to eye anymore?
A No.
Q Okay. Was Roger the person that recruited you?
A No.
Q Okay. Who recruited you to come to NRS?

A Rick Shelton. No, I -- when I first started because I knew Roger when I was back at RE/MAX Associates and worked with him, you know, since then.

Q Okay. But NRS -- Rick Shelton didn't work for NRS; did he?

A No, no, no.
Q Okay. So who --
A So now you're talking about NRS. Okay.
Q Yeah. So who recruited you to NRS?
A Actually, I think I recruited myself, and I just went over with these guys, okay, but I did talk to Roger about going over there.

Q Did you know that Roger was the -- do you know what the rules were amongst NRS between the three of them?

A No, I don't know.
Q No.
MR. SHEEHAN: All right. No further questions, Your Honor.

THE COURT: All right. Any redirect?
MS. HAACK: No, Your Honor.
THE COURT: All right, sir, I think you're done.
You're free to go.
THE WITNESS: All right. Thank you. Can I stay? Is that possible?

THE COURT: Yes, if you're not going to be recalled JD Reporting, Inc.
as a witness, you sure can.
THE WITNESS: Okay.
THE COURT: Okay. The next witness, please.
MR. HOLIDAY: All right. All right. Your Honor, I'd like to call Mr. Roger Ayala as my next witness.

THE COURT: Sure. So are you questioning him or is Ms. Haack?

MR. HOLIDAY: I am, Your Honor.
THE COURT: Okay. ROGER AYALA
[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Please be seated. Would you please state and spell your first and last name for the record.

THE WITNESS: First name is Roger, R-o-g-e-r. Last name's Ayala, A-y-a-l-a.

THE COURT: Whenever you're ready. DIRECT EXAMINATION

BY MR. HOLIDAY:
Q Hey, how's it going.
A Fine.
Q So Mr. Evenden has already gone through a lot so hopefully we'll be getting through this a little faster.

A Okay.
Q So real quick, could you go to NRS binder -- it JD Reporting, Inc.
should be the skinny one; there you go. All right. Number 3 in -- oh, it should be 53, excuse me. No, excuse me, Number 2. Now, do you recognize what this is? All right. I --

A I'm getting there. I'm sorry. It says, Expense 200 bucks; is that when you're talking about?

Q No, the next one. It should say 826.
MR. SHEEHAN: Probably, two down, Roger.
THE WITNESS: Okay. Yeah, it's two down. Okay. BY MR. HOLIDAY:

Q Okay.
A 826.82, yes.
Q All right. So you wrote yourself a check here for \$826.82; is that right?

A That's what it looks like, yes.
Q Okay. And it's recorded as an expense for a charitable contribution; is that right?

A Correct.
Q All right. So are you saying that you made a charitable contribution, and you and reimbursed yourself for that?

A We did functions for the Nevada Homeless Youth that we had set up when Nancy was there, and a lot of the agents participated, and then we would do either personally add money to it or have the company add money to different functions.

Q Okay. So why was the company writing a check to you JD Reporting, Inc.
though?
A Because I had probably paid for something that we had agreed to do on behalf of the company in some portion.

Q Okay. But there's -- you couldn't have just written a check from the company directly to the charity though?

A A lot of times I didn't.
Q A lot of times you didn't? So a lot of times you just wrote the checks to yourself?

A A lot of times I paid for things myself, I mean, Nancy reimbursed me several times when she was there on different things.

Q Okay. Were you making those charitable -- do you have anything to show you were making those charitable contributions in the name of the company NRS though?

A Yes, I believe there were receipts were provided.
Q Okay. You just believe receipts were provided?
A Yeah. I wrote a check to myself when receipts were provided, yes.

Q Okay. Very well. Can you go to Exhibit 4X, please, or actually wait, no, nevermind.

So Sean said that Nancy told him that you guys could just go open another company in another office over in the adjoining office space; do you recall?

A Yes.
Q Okay. And he said he couldn't remember if it was in JD Reporting, Inc.
writing, via text, an email, in person, over the phone; he just remembers that she told him that. So I was going to ask you, do you remember her giving you permission to open a new business in the next office over?

A Yes.
Q Okay. And how was that -- well, first of all, when was that?

A 2017, early part of 2017.
Q Sometime in the early part of 2017. Do you know if it was after March 10th?

A I believe there were verbal conversations with her telling us we could do it. I know there's text message telling her that we can do it. And I also believe she stated in her deposition for the record that we could do it.

Q All right. Well, the interesting thing about the deposition is we -- well, interesting thing. So aside from the deposition, can you recall another time when she wrote you an email saying go ahead and do this, I hereby authorize this. Anything in writing? Anything signed?

A We never did anything like that.
Q Okay. You never had anything in writing or anything signed. And you don't remember if this permission was before or after March 10th?

A I believe there's text messages to that.
Q Okay. Well, then I'll let your lawyer go ahead and JD Reporting, Inc.
show those text messages. However, you didn't have anything in writing or signed by her for something so big as this authorization. Let me put it this way: There's no email, and there was no signed delivery of writing, and you can't remember if it's before or after March 10th that she gave you permission, but you remember she gave you permission?

A She verbally gave us permission and sent us text messages and again, it's in the deposition that she gave.

Q Okay.
MR. HOLIDAY: All right. Your Honor, can you
instruct him that he can't talk about the deposition like that. MR. SHEEHAN: Why -- why is that, Your Honor? If she -- if he was present at the deposition and when she told these guys what they could do.

BY MR. HOLIDAY:
Q All right. Well, let me -- let me put it to you this way. Are you saying that her testimony in the deposition is what gave you permission?

A No.
Q Okay. So was it after the deposition that she gave you permission?

A No. I don't even think we talked to her really after the deposition.

Q Okay. So there's some time before the deposition that she gave you permission; is that right?

JD Reporting, Inc.

A I think I've already answered that.
Q Okay. You can't remember if it was before or after March 10th. If she gave you permission before -- it would make -- it would seem like she didn't give you permission before March 10th; don't you think?

MR. SHEEHAN: Objection. Argumentative.
BY MR. HOLIDAY:
Q I don't know -- let me see how to phrase this. THE COURT: Sustained.

BY MR. HOLIDAY:
Q Yeah. Let me phrase it this way. Why did you write that letter on March 10th if she said you guys could open your -- why would you have written that letter on March 10th if she said you could open an expansion with a different company in the adjoining office?

A The letter was written at the advice of our counsel after she had breached her operating agreement responsibilities to us.

Q All right. We've heard this before. Why did you send that letter on March 10th if she had already given you permission to open another company in the adjoining office?

A She had told us we could do it, and then she changed her mind the next day. She would tell us we could do it again with these stipulations, and then she would change her mind again.

Q All right. So you're saying that there was a lot of negotiations going on?

A No. As far as the space, no, there wasn't. She made it a hundred percent clear she wanted to have nothing to do with the new space. She was putting no money into the new space. She wanted to have nothing to do with management, running it. She did not want to contribute any money towards the TIs, nor any losses. When you start a new business you don't make money instantly. We're still not making money there. She didn't want to pay for any of those losses whatsoever. Again, it's all in the text messages.

Q All right. I gotcha. I'm sure your lawyer is going to go over the text messages with you. So it -- you felt that it wasn't fair for her to continue getting -- having a third interest in your partnership that you had up to that point if she wasn't going to take any of the liability; right?

A No. I didn't. I thought -- that's incorrect. She had a hundred percent interest in staying obligated to the obligations we had at NRS.

Q Okay. So she was obligated under NRS. Did she have the right to vote after March 10th?

A Yes, I believe so.
Q All right. Did you have the right to pass a resolution saying that she had no right to vote?

A I don't think that we took that away from her. We JD Reporting, Inc.
notified her of all the meetings. We invited her to all the meetings. Her attorney's representative even showed up to these meetings.

Q All right. Well, let's go to -- let me ask you, Roger, about a few things. Right here. There we go. All right. Let's go in that binder to 4S-2, please. That's the March 10th letter that you sent. All right.

A Which binder is that?
Q Right. That's the 4S-2, oh, I'm sorry, in Nancy's binder.

A Okay.
Q All right. So you and Sean Evenden are responsible for sending this letter; correct?

A We sent it to her after our attorney drafted it; correct.

Q Right. And you said this action constitutes an action by written consent without a meeting pursuant to Section 16.1 -- 11 of the remaining members; is that right?

A Again, our attorney drafted this.
Q Okay. Well, your attorney drafted it, but you knew what it said; right?

A I didn't understand a hundred percent what it said, no. I don't understand a hundred percent what it says now. I'm not a lawyer.

Q Okay. I understand you're not a lawyer, but what did JD Reporting, Inc.
you -- what was your command to the attorney?
A I didn't have a command to the attorney.
Q So you didn't instruct the attorney to do anything?
A We presented the situation to the attorney. We told her what had happened, and she drafted this letter for us.

Q So it's all on the attorney is what you're saying?
A To draft a letter like this?
Q Yes.
A Yes.
Q All right. So the attorney made the decision for you to do this letter?

A Based upon what I had told her about Nancy breaching; correct.

Q Okay. So you paid the attorney to do this; right?
A I believe we did.
Q Okay. In fact, you paid with NRS funds; is that right?

A I believe so.
Q So now, this action that you took with this letter, right, let's follow it up by a couple of other things. Let's look at the action you did on at 4T, if you could.

A 4 what, I'm sorry?
Q \(4 T\).
A Action of written consent?
Q In lieu of a special meeting of NRS Realty; correct. JD Reporting, Inc.

A Okay.
Q All right. And you put resolved. Nancy Haack has no authority to vote on matters concerning her default; is that right?

A I didn't put that, no, the attorney did.
Q Okay. So this attorney did it?
A Sir, with all due respect, I sell real estate.
Q All right. That's fine.
A I'm not a lea -- I'm not a lawyer. I don't even have a college education.

Q No, and I understand. So what were you trying to do at this point? Were you trying to dissolve the company and start a new company?

A I was trying to get some resolution. We talked to a lawyer, and this is what her advice was to us to do.

Q All right. And what was that resolution?
A I'm sorry, what?
Q What was the resolution you were trying to get?
A To move the company forward.
Q Okay. By -- but doesn't that not comport with your claim that you then voted to dissolve the company?

A We contemplated dissolving the company, but we never did dissolve the company.

Q Okay. Did you draft and sign a action dissolving the company?

JD Reporting, Inc.

A I filed, I believe, a dissolution was filed and then it was corrected.

Q All right. Is it fair to say you changed your mind?
A We agreed to take the high road.
Q Okay. So let's see. And you got cease-and-desist letter from Nancy on March 10th immediately after sending her the letter saying she was out. She had to -- that's the March 10th letter; right?

A I'm not sure of the date, but I know we got one, yes.
Q Okay. If Nancy had already given you permission to do all the things that you say she did, why did she fight so hard to stop you from doing what you did?

A She agreed to let us move across the hall. We were still disputing her wanting to be a part of the company and not wanting to retire and move back and what that was going to mean.

Q All right. In fact, you were in negotiations for a buyout; is that right?

A Both sides were, yes.
Q Before March 10th. Okay. And purswayant to those negotiations you never signed a contract for a buyout; is that right?

A Neither one of us did, no.
Q Okay. So is it fair to say that the negotiations never resulted in a contract?

JD Reporting, Inc.

A In regards to?
Q The buyout.
A There was never anything signed for a buyout.
Q Okay. And it seems that you felt that you had to send this March 10th letter. Did you in saying that you were only considering a dissolution when you passed these acts and you filed the dissolution, while you were considering between March 10th and March 28th, did you tell all of the agents that they had to switch to Life Real Estate, LLC?

A Yes, I believe so.
Q All right. So it looks to me like you were making moves to move the business to something that you owned on your own; is that fair to say?

A No.
Q Okay. So you were not making moves to move agents to Life Real Estate, LLC?

A There was a disagreement. The reason why we asked the agents to move their license is because Sean was going to be stepping out as broker. I could not be broker because I don't have a property management license. If you don't have a broker, there is no company. There's no -- there's no nothing. The agents would have to move their license. We gave them notice to do so. We asked them, we told them that we were looking at doing this, we never did it. We contemplated it. We never did it.

THE COURT: Oh, may I ask a -- just for clarification. So he was stepping down as broker for NRS? THE WITNESS: He was stepping down as broker from NRS .

THE COURT: And then was he going to be the broker at Life Real Estate, LLC?

THE WITNESS: Yes.
THE COURT: Okay.
BY MR. HOLIDAY:
Q All right. Why did you change your mind about the dissolution?

A We didn't want to be where we are now.
Q Okay. So you changed your mind about the dissolution because you didn't want to get sued?

A We didn't -- we didn't want to do that. We also didn't want the time, energy, emotion, restless nights and all the wastedness that's come with this.

Q All right.
A And we decided to take the high road. We did not dissolve. We did not force anyone to move their license.

Q All right. So this motion or excuse me, this case essentially the litigation, prelitigation at that stage motivated you to turn the dissolution around; is that right?

A Again, I think I've answered that.
Q Well, the threat of litigation caused you to undo the JD Reporting, Inc.
dissolution; correct? Yes or no.
A Yes.
Q Okay. So they didn't file a motion for receivership in this case; did you understand all those proceedings? I don't have to explain anything to you; right?

A I'd like for you to explain, yeah.
Q Okay. So Nancy Haack filed a motion, called a motion for receivership in which she wanted -- she's asking the Court to appoint someone to take over NRS because she said that you were attempting to transfer all of the NRS business to a new LLC which you and Sean Evenden had created, Life Real Estate, LLC.

MR. SHEEHAN: Objection, to the extent it mischaracterizes the motion.

THE COURT: How?
MR. SHEEHAN: She wanted the -- a pound of flesh in her own words, and she wanted the company auctioned off or something along these lines. I don't remember the --

THE COURT: Well, that wasn't -- I guess I asked it poorly. As far as like overall what the receivership was, I think he explained it correctly. Wanted someone else to come in and handle the company until this litigation could be resolved --

MR. SHEEHAN: That's fair.
THE COURT: -- to make sure that no monies were
misplaced or misused. So, yeah, if you want to continue. BY MR. HOLIDAY:

Q All right. So do you remember those proceedings?
A A little bit, yes.
Q All right. And do you remember saying that NRS was doing better than ever, having its most profitable year under your management; is that correct?

A I don't remember that.
MR. HOLIDAY: Okay. Now, I'll just -- I think we can stipulate that the order denying that receivership was filed at the very beginning of January.

Can we stipulate to that?
MR. SHEEHAN: I have no reason to disagree. I don't know.

MR. HOLIDAY: Okay.
MS. HAACK: February.
\(\operatorname{MR}\). HOLIDAY: At the beginning of February is when the order was?

MS. HAACK: Well, the meeting, no -- the hearing was on January \(23 r d\).

MR. HOLIDAY: Right. Okay.
THE COURT: Ms. Haack, I know it's tempting, but you can't testify from back there. Okay.

MS. HAACK: Oh, okay. Sorry.
MR. HOLIDAY: I'm sorry.

THE COURT: Thank you.
MR. HOLIDAY: All right. Understood.
BY MR. HOLIDAY:
Q So at the beginning of 2018, receivership threat is gone; correct?

A I don't know the date.
Q All right. So the receivership is gone. Now let's talk about what you did following that. When did the lease for Life Real Estate, LLC in the adjoining office space start?

A At the beginning of 2018 maybe.
Q So at the beginning of 2018. Okay. Right around the same time the receivership motion ended; is that right? Approximately, give or take; right?

A It took us six, seven months to even get that lease worked out.

Q Okay. So you were working on that during the pendency of the hearing for the receivership; is that right?

A I don't know if I had knowledge of that at the time.
Q Okay. All right. All right. Let's just go. So when Life Real Estate, LLC started, how many agents did they have?

A A couple.
Q Just a couple? Okay. How many agents does it have now?

A I think we were together over a hundred.

JD Reporting, Inc.

Q Okay. Now, earlier you said about 104, sounds about right.

A Around a hundred, yeah, yes, sir.
Q Okay. All right. So a couple to a hundred that's a good end. That was much faster than you grew when you first opened Life Realty in 2010?

A Not necessarily.
Q All right. In Life Realty in 2010 you started out with how many agents?

A We weren't Life Realty then, sir.
Q When you opened NRS.
A When we opened NRS we were RE/MAX, 2010.
Q Okay. So you were RE/MAX for -- when did you become Life Realty?

A I believe in 2015.
Q Okay. So when you opened your brokerage you started out with the three of you and how many other agents?

A Back in 2010?
Q Right.
A A couple.
Q So the three of you and then --
A I think it was my mom and maybe Irma.
Q Okay. So -- very good. By 2017 how many agents did NRS have?

A 2017, I think we had around 40.

Q Around 40. Okay. So seven years to get it up to 40 agents; correct?

A It works out like that, but it doesn't work out like that.

Q No, and I understand. Your lawyer can ask you additional questions. The market got better --

A I'd be wanting to expand I'll expand.
Q Yeah. Yeah. No, I -- he has his own opportunity to do that so we could get to that. So, yeah, took that long.

A No, it didn't.
Q Now, Life Real Estate, about how many of Life Real Estate's hundred agents are former NRS agents?

A Of the hundred?
Q Yes.
A 30 some.
Q All right. So essentially the entire NR -- the size of NRS is now at Life Real Estate; correct?

A I'm sorry, what?
Q So essentially everyone from NRS went to Life Real Estate around November 1st; is that right?

A Of last -- last year, is that what you're saying?
Q Yes, of last year.
A Yes, correct.
Q Okay. Did Life Real Estate ever buy anything from NRS?

A I don't believe so.
Q Okay. It's still using all of NRS's furniture; is that right?

A I believe it's using some of the furniture, yes.
Q Okay. And you had purchased high-end refrigerators. You're a very high-end establishment. All the furniture is very high-end in there; is that right?

A I mean, I wouldn't call a high-end but.
Q Okay. But it's -- it's not -- you, well -- you have like a giant wall sign that's made out of lights; is that right?

A Giant wall sign made out of lights?
Q Right. That says Life Realty?
A I'm not sure which one you're referring to.
Q All right. Perhaps I'll just go -- I'll just do it with pictures later.

A That would be better.
Q Thanks, yeah. So is -- what assets of NRS haven't been transferred to Life Real Estate at this point?

A Can you clarify assets.
Q Anything of value, tangible or intangible which is pretty vague, but generally, I think, the brand Life Realty and cash and any inventory that you would have. So I don't know if you -- all right. Explaining what an asset is, is a lot. Any -- how -- let's start this way. Well, can you name

JD Reporting, Inc.
anything that NRS has that hasn't been transferred to Life Real Estate for me.

A Can I name anything that NRS has --
Q Right.
A -- that hasn't been transferred?
Q Right.
A All of Nancy's items.
Q All right. Where are those?
A Those are still in the office.
Q Okay. So all of her items are still in the office that is now Life Real Estate's office?

A We took over the lease; correct.
Q Okay. And what are those items exactly?
A Nancy's items? I don't know exactly. A desk, some chairs.

Q Okay.
A Anything that she left.
Q Have you ever kicked Nancy out of the office?
A Have I kicked her out? No.
Q You've never asked her to leave?
A She came, I believe, twice. Once I think I asked her to leave. The second time, the police officer she brought asked me if I should ask her to leave and I said yes.

Q Okay. So two times you asked her to leave, both times. The second time she brought police to try to come in JD Reporting, Inc.
and you asked them to leave. You just told them it's a civil matter and said go -- well, I don't know. I don't want to put words in your mouth, but two times, one time you asked her to leave. The second time she came with police and you also asked her leave?

A Yes.
Q Okay. So it's not true that Nancy could just come back anytime she wanted; fair to say?

A In the end or the beginning?
Q After March 10th.
A Which year?
Q 2017.
A I don't think I -- I never told her not to come back.
Q Okay. But you did send the March 10th letter that told her to get her license out?

A Again, it never happened, and the letter was drafted by an attorney, but I never told Nancy face to face or in any correspondence to never come back or anything like that.

Q Okay. Do you feel that, how shall I word this. Do you feel you're not responsible for Nancy taking her license out of the office?

A Do I feel not responsible?
Q In other words, the March 10th letter, do you feel that's not responsible for her moving her real estate license?

A She didn't move it until a month or so later.

JD Reporting, Inc.

Q Okay. And you're saying that that whole time she could have just gone on with life as usual coming into the office; is that correct?

A I'm going to say, Mr. Holiday, you probably could testify you can't tell Nancy much of anything. She's a very strong-willed person, and she'll do what she wants to do. So me telling her not to come to the office probably wouldn't have worked anyway, even if \(I\) did say it, which I didn't.

Q All right. Did you ever tell agents that you were going to hire an armed guard to keep her out?

A I think after the one event where she came to the office and was throwing items I might have mentioned that it would have been a good idea for us to have security.

Q All right. So fair enough. You don't -- all right. So let me -- let me take a moment of silence here while I think.

How much was the monthly rent for NRS in its original lease? Approximately. I know there's slight increases sometimes in long leases that are factored in at the beginning, but was it approximately three grand?

A I'm sorry, what?
Q How much -- how much was the monthly rent for NRS in The District? And I'm talking about the lease that NRS was actually a party to that got signed.

A I don't recall exactly, but it was -- it was a lot JD Reporting, Inc.
more than 3,000.
Q All right. After March 10th, it appeared that -after March 10th, why would you start paying a lot more to a property manager on behalf of NRS in excess of the -- the monthly rent?

A I don't think that we did.
Q Okay. Let me see --
MR. SHEEHAN: What are you looking for?
MR. HOLIDAY: The expert report.
MR. SHEEHAN: The second to the last, I think, or something like that.

MR. HOLIDAY: There we go.
BY MR. HOLIDAY:
Q So you're saying that you didn't suddenly pay -- it's just not -- you didn't suddenly pay 30,000 or excuse me, \(\$ 29,224.90\) to Vestar Property Manager, on April 10th, \(2017 ?\)

A What are you looking at, sir?
Q No, I'm just asking you. Did you pay \(\$ 30,000\) on or about April 10th, 2017, to your property manager from NRS accounts?

A I don't have it in front of me. I don't recall, but I can tell you that I didn't pay a dime more of any of NRS's money to Vestar than we were -- than we were supposed to pay.

Q Okay. So are you saying -- were you making advance rent payments all of a sudden?

A No.
Q Okay. I understand that you have been negotiating with Vestar for a new office space and a build out; correct?

A At that time or what time?
Q In March, and I believe you were still negotiating with Vestar for the new space after that; is that right? After the March 10th letter you continued negotiating with Vestar for the new space; is that right?

A Okay.
Q Okay. That's correct?
A Yes.
Q Okay. And you're stating that you -- after the March 10th you didn't suddenly make a \(\$ 30,000\) payment recorded as NRS rent to Vestar management?

A Again, if you show it to me --
Q All right. So you just don't know?
A I -- I've gone through them.
Q Right.
A I believe we did. But if you're trying to say that we paid some other monies for something else, the reconciliation, the checks, the receipts, the cleared checks clearly show that we didn't.

Q All right. Now, you continued after undoing this dissolution to operate NRS; is that correct? And you continued to do business until November 1st; is that correct?

A At NRS?
Q Right.
A Yes.
Q Right. You stopped the dissolution, receivership denied, continue on until today. While you were doing that, you also ran another company starting apparently in the beginning of 2018 after -- around the beginning of 2018 when the -- commensurate with when the receivership motion was defeated called Life Real Estate, LLC; is that right?

A Yes.
Q Okay. And were you the broker of record for Life Real Estate, LLC?

A No.
Q Or who was?
A I believe Sean was.
Q Sean was? Okay. So then did you become the broker of record for NRS?

A I believe so.
Q Okay. Now, how much money did you make at the Life Real Estate, LLC in 2018?

A How much money did we make?
Q Yeah, about -- what were the, say, the gross
receipts; let's use that as the marker.
A I don't know. We're still losing money over there.
Q Okay. But by the end of 2018 how many agents did you JD Reporting, Inc.
have at Life Real Estate, LLC?
A I -- I don't know the exact number.
Q It doesn't have to be exact. Approximately.
A Want me to give you a guess?
Q Yeah, an estimate.
A \(20,25\).
Q 20, 25. Okay. Did any of them have their own assistants, real estate agents?

A They might have.
Q Okay. And did you pay those assistants as W-2 employees of NRS or Life Real Estate, LLC?

A My understanding was that Nancy set it up for the company to pay through ADP for different agents' assistants including mine.

Q At NRS?
A The agents were to reimburse.
Q Okay. So -- so you're the broker at NRS, and you have an assistant, and she is paid through -- or you're the broker at -- you're the broker at NRS; right?

A (No audible response.)
Q Okay. So we had real estate agents on both sides. They both had assistants, and were those assistants all being paid as \(W\)-2 employees of NRS?

A I don't recall.
Q You don't recall.

A If they were, then again, the billing was done through ADP; the agents reimbursed.

Q Right. I understand that, and we'll cover that later, but so you don't recall. But you're saying it's possible that NRS was paying all of the \(W\)-2 employees that were working as assistants for the 1099 agents at Life Real Estate, LLC?

A I'm saying that that's the way it was set up.
Q Okay.
A And the agents reimbursed.
Q All right. Fair enough. And so NRS is supposed to be reimbursed for all that by the agents?

A On the NRS side that -- yeah, that's how it was.
Q Okay. Let's see, was Jessica Johnson getting paid by Life Real Estate, LLC or NRS?

A I believe she was getting paid partially by NRS and in the partially by Sean.

Q Partially by NRS and partially by Sean. Okay. So did Sean -- well, I guess I missed that opportunity, but did you understand that Sean was paying her under the table?

A I don't know what you mean.
Q Well, was she getting pay stubs from what she was getting paid by Sean?

A I believe so.
Q Okay. And when she got those pay stubs being paid by JD Reporting, Inc.

Sean, were they supposed to say NRS on them, or did they say Sean Evenden, here's my personal ITIN number?

A I don't know. You'd have to ask Sean.
Q Okay. It's fair to say that Sean paid his half through NRS as well; is that correct?

A No.
Q So was she paid through ADP both ways?
A Again, I don't know.
Q You don't know.
A You'd have to ask Sean.
Q Okay. Fair enough. Let's see. Have you gotten anything from Nancy Haack showing written consent signed or otherwise to anything you've done since the March 10th letter?

A What do you mean?
Q Have you gotten a signed -- a written consent -first let's ask this. Have you gotten a written consent that was signed by Nancy Haack for anything that you've done with Life Real Estate, LLC or NRS since March 10th, 2017?

A And -- and to what regards?
Q All right. Have you gotten anything from Nancy Haack since March 10th that was signed by her?

A I don't know.
Q Okay. Did she ever give you any written paper saying I consent to blank?

A Has she given me a piece of paper that says I consent to blank? I don't think so.

Q Okay. So it's fair to say that she hasn't ever delivered to you a written consent except for what you're going to -- except you referenced that there might be a text message out there?

A In regards to what?
Q To you being able to amend the operating agreement, in regards to any action or resolution that you passed regarding the operating agreement, in regards to opening up Life Real Estate, LLC, in regards to waiving notice of meetings. She's never delivered any written consent in that way; right?

A She hasn't delivered consent to that. My understanding is that for the first couple items you mentioned we don't need to. The operating agreement says specifically majority.

Q Or all.
A Or all.
Q Okay. Let's go to that -- that operating agreement really quick here. Can you just go to in Exhibit D, Section 14.1.

A Which -- which book, I'm sorry?
Q That would be defense books by the letters.
A Letter B?

Q Yes. All right. So first off when you first formed the company it was like a family company. You guys were really good friends; correct?

A No. I actually didn't know Sean and Nancy very well, they were friends.

Q Okay. Fair enough. You guys agreed to create this new brokerage for what reason? Well, let me -- let me ask it more specifically. Did something happen at your old RE/MAX brokerages where you guys were just agents that made you form this new company?

A Yes.
Q Okay. And what happened?
A They sold their company to a different franchise.
Q Okay. And you all three lost a lot of business because of that; is that right?

A Initially.
Q Yeah. Before you started the new company; is that right?

A Yes.
Q Okay. All right. Is it fair to say that you guys started this company so no one could ever do that to you again?

A Do what? Sell to another franchise?
Q So that you wouldn't ever lose your business again;
is that fair to say?
A Lose our personal business?

Q Yeah, over something that's beyond your control.
A Yes.
Q All right. And, in fact, you agreed that you would run the company by a unanimous vote except for a couple of exceptions that we talked about?

A No.
Q Okay. Can you go to section, the voting section, Section 6.8.

A Okay.
Q All right. You don't have to read it to me or read it out loud. Does that say that -- well, it carves out an exception for if it says it anywhere different, if there's a special case mentioned in the operating agreement which you say 13.1 is which is the majority or all language. But it says the default for your company is that you ruled by unanimous vote; isn't that right?

MR. SHEEHAN: Objection. Calls for a legal conclusion. Mischaracterizes the paragraph.

MR. HOLIDAY: If the words unanimous vote are there, I don't think that's really a legal conclusion. I think that's a fact matter.

THE COURT: Just ask him what he understands it to be.

MR. SHEEHAN: It doesn't say unanimous vote either. It says more than that.

MR. HOLIDAY: It says -- okay.
THE COURT: Why don't you ask the witness that's on the stand, please. BY MR. HOLIDAY:

Q All right. There's some problems here. Can you just read the last sentence of Section 6.8 out loud.

A Yes. The unanimous vote of all of the LLC interests shall be required to approve any action unless a greater or lesser vote is required pursuant to this agreement or by the statute.

Q All right. Unless a greater or lesser vote is required pursuant to another part of the operating agreement; right?

A If you say so.
Q Okay. But did you agree that you were going to make the company run by unanimous vote?

A No.
Q Okay. So you didn't sign the operating agreement?
A I did sign the operating agreement.
Q Okay. Do you feel like the operating agreement is a valid contract?

A Yes.
Q All right. And it's an exchange of promises you made to each other on how you're going to run the company; is that correct?

A Of course.
Q Okay. And there in that it seems to indicate that you made a promise to each other to rule the company by unanimous vote; is that right?

A Again, I would disagree with that.
Q Okay. So you don't think it says unanimous vote?
A I can tell you honestly, sir, we didn't -- we never operated by unanimous vote. Even getting this operating agreement drafted and picking the attorney to draft it wasn't unanimous. It was a fight. It was a disagreement between Sean and Nancy, and I sided with Nancy to have Gary Schnitzer draft the operating agreement. So, no, that's not correct.

Q All right. Well, it says what it says. So you're saying --

MR. SHEEHAN: Can we put that quote in. It says what it says. I would like that on the record. MR. HOLIDAY: Yeah.

THE COURT: It is on the record.
BY MR. HOLIDAY:
Q All right. So can you go to Section 14.1. All right. You can go ahead and read that and then I'll ask my question.

A Okay.
Q All right. All right. Did you ever get an instrument in writing duly executed by Nancy for the

JD Reporting, Inc.
enforcement of any waiver change or modification you made to the operating agreement?

A Did I ever get anything from her?
Q Yeah, did you get -- anything that evidences an instrument in writing duly executed, which means signed, by Nancy for the enforcement of any of the modifications you made to the operating agreement?

A No.
Q Thank you. It says what it says.
MR. HOLIDAY: At this point I am done asking
questions of this witness and given we only have another 15 minutes I would just go ahead and pass so that --

THE COURT: Okay. Are you going to do cross or just do in your direct?

MR. SHEEHAN: In my -- in my case in chief.
THE COURT: Okay. Great. So do you have additional
witnesses for tomorrow, sir?
MR. HOLIDAY: Yes, we have two more witnesses and, you know, I'm just going to say three more witnesses.

THE COURT: Are you going to call Ms. Haack?
MR. HOLIDAY: I am. I want to try to get this done by Friday.

THE COURT: That would be great.
MR. HOLIDAY: So I'm just going to -- I'll talk
faster.

JD Reporting, Inc.

THE COURT: All right. And so who are you going to call? You're going to recall your clients.

MR. SHEEHAN: I'm going to recall real quick with them, spend a bunch of time with Nancy. Gary Schnitzer is out of town. So I would like to use his deposition or else we'll have to wait for his dep -- he'll be back on March 3rd. Again, I'll make the representation in court. He stipulated to that. He's now taking it back because of, I think his client. But that's the only reason that that wasn't addressed.

MR. HOLIDAY: Yeah, and I'll state under oath, Your Honor, that I hadn't read the deposition when we talked about it. It was our first or second talk. He said that the other guy was willing to stipulate to it. I said I haven't read it yet so I won't -- I'm not going to stipulate to anything.

MR. SHEEHAN: You said -- you said I'll stipulate to it too. Now, you're going backwards. But now I understand what you're saying, but you're right. Karl Shelton denied [indiscernible]. You said I will stipulate to it too. Now, you're going back on it because you've read it. That's fine but --

THE COURT: Mr. Schnitzer's not going to be back until the 3rd?

MR. SHEEHAN: Pardon me? Right. But again, all that I wanted to do is use six lines from his deposition, and he's out of town. So I believe that the Court has the prerogative JD Reporting, Inc.
to let me use the six lines from his deposition. Alls he has to do is read six lines. He's out of town, unavailable for the trial. I believe I have the right to use the deposition. MR. HOLIDAY: Right, Your Honor. So here's what I think we should do is we'll pull a late night. We'll just brief the issue. I actually had another trial where this came up where they tried to bring in a deposition where they hadn't subpoenaed anyone, and the lawyer didn't realize it was an issue until calendar call, and then he tried to subpoena the person and the --

MR. SHEEHAN: Waste of time.
MR. HOLIDAY: Yeah. And the -- the standard is
rather high to show that you tried your best to get this person in. If it's an issue as to the unavailability of the witness, I think that's a different issue, but the point is that there's been no representation. He's not representing that he ever tried to subpoena this witness to get them in here. So the fact that he turned him -- I mean, the standard is the standard. I want to be done by Friday.

THE COURT: The issue is more did he reasonably rely on representations of other counsel. And I understand that you're the most recent one in, but this case has been going on a long time. And I have no reason to believe that either one of you lie.

MR. HOLIDAY: Right. Well, Your Honor, I don't want JD Reporting, Inc.
to deposition in on someone that I didn't get to cross-examine. Different lawyers work differently, and I did not agree to the deposition coming in.

MR. SHEEHAN: First of all you did. But second of all, Your Honor --

MR. HOLIDAY: I'm not an agreeable lawyer to work with. I don't just agree to things. I think that's pretty clear from my record in this case so far. So, no, I --

MR. SHEEHAN: That I'll agree with.
MR. HOLIDAY: I do not -- I do not just agree to stuff easily, and I definitely -- it would be insane given the way I do my -- the way I represent my clients to say that I just, oh, I haven't read the deposition yet, but, yeah, just go ahead and put it in.

THE COURT: Let's not fight about it. I'm exhausted. I've been in court like nonstop all day.

MR. SHEEHAN: This trial was set on this stack.
THE COURT: Uh-huh.
MR. SHEEHAN: You know how long we got here to this stack.

THE COURT: Uh-huh.
MR. SHEEHAN: I can't change Gary Schnitzer's vacation plans. He was going to be on vacation this week regardless of whether I subpoenaed him, didn't subpoena him, anything else. He's unavailable. We're allowed to use the JD Reporting, Inc.
deposition.
THE COURT: Let me think about it.
MR. SHEEHAN: Okay.
THE COURT: And if I don't let the deposition come in then we'll just finish it up on March 3rd when Gary's available, Mr. Schnitzer's available. Okay.

MR. SHEEHAN: Okay.
MR. HOLIDAY: All right.
THE COURT: See you tomorrow at 9:30 we decided; right?

MR. SHEEHAN: Yes.
THE COURT: Alrighty. See you then.
(Proceedings recessed for the evening at 4:35 p.m.)
-oOo-

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.


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DISTRICT COURT CLARK COUNTY, NEVADA
        * * * * *
NANCY HAACK,
    Plaintiff,
vs.
SEAN EVENDEN,
    Defendant.
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$\qquad$解dant.

AND RELATED PARTIES $\qquad$ )

CASE NO. A-17-753435-C DEPT NO. XXIII

TRANSCRIPT OF PROCEEDINGS

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BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE
THURSDAY, FEBRUARY 20, 2020
BENCH TRIAL - FIRM - DAY 3
APPEARANCES:
FOR THE PLAINTIFF: JOHN R. HOLIDAY, ESQ.
FOR NANCY HAACK: Pro Se
FOR THE DEFENDANTS: PATRICK J.SHEEHAN, ESQ.
RECORDED BY: MARIA GARIBAY, COURT RECORDER TRANSCRIBED BY: JD REPORTING, INC.
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LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 18, 2020, 1:07 P.M.

THE COURT: All right. So when we left off we had Mr. Ayala on the stand, and you're going to call him your case in chief. So does the plaintiff -- do you have your other witnesses here?

MS. HAACK: Not till this afternoon.
MR. HOLIDAY: Yes, we have our expert coming this afternoon and I was just going to call Ms. Haack now. THE COURT: Okay. Come on up, Ms. Haack. NANCY HAACK
[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. Please state and spell your first and last name for the record. THE WITNESS: Nancy Haack.

THE CLERK: Please spell your last name.
THE WITNESS: It's H-a-a-c-k.
THE CLERK: Thank you.
THE COURT: Thank you, Ms. Haack.
Whenever you're ready, Counsel.
DIRECT EXAMINATION
BY MR. HOLIDAY:
Q Good morning, Nancy.
A Good morning, John.

JD Reporting, Inc.

Q So, Nancy, I'm just going to ask you a few questions to establish your background. How long have you been in real estate?

A I've been in real estate 18 years.
Q All right. As an agent broker?
A I've had my broker's license all those years, yes.
Q Okay. And before that did you have a career?
A Well, the broker's license is called salesperson broker until you broker an office so it's because I --

Q Oh, I meant before you became a real estate agent, did you have a career?

A Oh, yes, I did. But I wanted to clarify the broker.
Q Okay.
A So it's called salesperson broker; unless you're running an office you would be a broker.

Q I understand.
A And before that I owned a software development company. We did software development for the healthcare industry. I did that since 1991. I bought the company in 1996 for $\$ 600,000$ and I sold it in 2001 to WebMD for about 1.8 million.

Q Okay. So in 2010 you and the defendants worked together in a RE/MAX brokerage; is that right?

A Yes. We formed a RE/MAX brokerage and signed a RE/MAX franchise agreement, yes.

JD Reporting, Inc.

Q Okay. Well, let's back up just a little bit. The 1.8 million you took that as a -- in stock options?

A Yes. I have 20,000 shares of stock at $\$ 90$ a share.
Q Right. And then during the -- that -- that
1.8 million was -- wasn't liquid, it turned out to --

A Well, the 9/11 occurred 30 days after --
Q Right.
A -- and you couldn't take your stock out for 90 days, so, yes, it deflated quite a bit.

Q Okay. I understand.
A I was not one of those millionaires who killed myself.

Q All right.
A So I was lucky.
Q Okay. Very well. All right. From 2010 you worked with the defendants at a RE/MAX brokerage; is that right?

A Right. We formed our own brokerage, yes.
Q Okay. But before that you worked at --
A Oh, yes. We worked at RE/MAX affiliates.
Q Right. Okay. And I -- and you were doing a lot of REO business during the recession; is that right?

A Yes. I had a large REO account, yes.
Q Okay. And did you sell all those REOs or did you partially just farm your REO accounts out?

A I had so many. It was very hard to handle them JD Reporting, Inc.
myself especially with other things going on in my life. So Mr. Evenden was -- represented a buyer of mine and afterwards asked to meet with me and asked if he could partner to help me out because I was doing, you know, just turning them away. And so I did. I invited him to come and join RE/MAX, and I would share with him my five or so every week that I was getting because I couldn't handle more.

Q Okay. So it's fair to say you were extremely successful even during the recession as a real estate agent; right?

A Yes.
Q Okay. Now, what happened that you decided that the three of you wanted to form a brokerage together?

A Well, the RE/MAX office we were with decided to become a different franchise without telling us which changes all of our business model. It just changes our marketing, our strategy to Better Homes \& Gardens. We all met with RE/MAX International. All the agents, 170 or so of them, to see if they were going to help us out. And at the end of the day Roger, Sean and I were standing there and thought, wow, I need to -- let's just try this because we all had business that relied on RE/MAX. And the very next day the REO accounts I had through Wells Fargo said nope we don't want -- we're not going to keep you; you have to go to the bottom of the list now. So I lost 53 listings that day.

Q Oh. Sorry to hear that. Okay. So you formed NRS Realty Group around May of 2010; correct?

A Yes.
Q Okay. And what does NRS stand for?
A Nancy, Roger and Sean.
Q Right. You guys decided to hire a lawyer to draft a operating agreement for you; is that right?

A Yes.
Q Okay. And it looks like you had two operating agreements. Why are there two operating agreements?

A Well, we were in a hurry to get our business off the ground because RE/MAX or Better Homes \& Gardens found out we were doing this. We tried to go and tell them, and they were very upset. They were losing three big agents.

Q Right.
A So we had to hurry up and Roger and Sean both knew attorneys, I did not. We agreed to meet with Roger's recommendation, and that's Mr. Schnitzer, and we had to put everything together quickly so that we could open our doors. Otherwise, Roger, Sean and I could not sell property.

Q Okay.
A So we had to move pretty quick.
Q Okay. So you had an operating agreement in May that you all signed; right?

A Right. And it was just a draft.

Q Okay. Well, you all signed it; right?
A Yes.
Q Okay. And then around late July or August as you were reviewing the draft you realized there were some changes you wanted to make?

A Well, we looked at it right away; we just didn't get to it, you know --

Q Right.
A -- opening doors, finding rent, getting licenses. It was a lot of work for all three of us. So no, we did not do it that -- but by August we had it all ready to go.

Q All right. So you agreed you would have Mr. Schnitzer redo the operating agreement in August?

A Yes. I asked him to make the changes.
Q All right. And what were the changes that you told him to make?

A I told him that we wanted everything to be a unanimous decision since there were three of us. At no point should two people be able to take over someone else. That was our rule. Our agreement.

Q All right. And there's majority or all language in both the May operating agreement and the August operating agreement --

A Yes.
Q That you are aware of? Okay. So all of the changes JD Reporting, Inc.
from May to August were changing what language?
A We were just making sure all the sections referred to unanimous decisions.

Q Okay. And so those were your instructions to Mr. Schnitzer?

A Yes.
Q Okay. And there's a number of changes in the operating agreements that are the only changes that you confused from May to August. The majority were all exchanged to all in a couple of places?

A Yes. There's no other changes.
Q All right. Did he change majority or all in every spot?

A No.
Q Okay. All right. So let's fast-forward a little bit. You've got your second location in The District in Green Valley that you ended up using; right? And it's now 2017. In 2017, you started negotiating for -- did you and the defendants enter into negotiations for an expansion?

A Yes.
Q Okay. And about how long were you in negotiations?
A For the expansion going into 2017, could you clarify that?

Q Right. You only did start in 2016?
A Yes.

Q And go into 2017. Okay. Did you all ever agree to every material term of the expansion?

A No.
Q Okay.
A Not at all.
Q All right. And what were some of the terms that you didn't come to an agreement on?

A Well, Roger and Sean knew since the second expansion that we did that my husband would not sign extensions. I had a heart attack, a massive heart attack in 2014, and he said you are doing everything. I want to see a change. If you don't change the way you work, I'm not going to sign any more. And Roger and Sean said even in their deposition that they were mad that I wouldn't continue to work for free.

Q Okay. When you started in 2010, it was the three of you and how many agents?

A There were three of us and two agents, and we trickled up to 16 by the time we moved to The District in 2014.

Q Okay. And by 2017 about how many agents did you have?

A 40, 42, something like that.
Q All right. So is it fair to say that the number of transactions since you started were about eight times as many?

A Yes. Definitely.
Q All right. And that your bookkeeping JD Reporting, Inc.
responsibilities were about eight times as many?
A Yes. And I've always said, I'm not an accountant; I'll do what I can.

Q Right. And so you were also managing all the agents as well?

A Yes.
Q All right. Okay. The -- in general though by that point you felt -- well, why -- okay. Let me do this. Did you demand a salary in 2016 or $2017 ?$

A In 2015, December, I said to both Roger and Sean we need to hire an outside accountant. This is too much work. Roger and I interviewed a little bit, so did Sean, and we agreed to hire someone in February. There should be a letter in the documentation showing that he was agreeing and then in May -- so I was happy, you know.

In May they -- that accounting firm emailed me and asked for the QuickBooks records. And I emailed back and said we don't use QuickBooks. Somebody's going to have to come here and learn the new system. And I never heard from them again.

Q Okay. So there was 2017 -- in 2017 the lease for the expansion states they required personal guarantees?

A They again --
Q Of you and your spouses?
A Sean told me in September that he believed after the first two years in our contract we would no longer be required
to have our spouse's guarantee. So it sounded like the landlord gave us a two-year commitment for the guarantee and then going forward we wouldn't. When I found out that they did require a guarantee, I can't make my husband sign a lease.

Q Okay. Were there any other possible locations that you talked about or possible regions for opening a new office?

A We talked about expansion every year. We always thought about a second location. We've hired -- we brought agents in believing there would be a second location and that was not going to happen with these two because they live right there. They live real close to that office.

Q Okay. Didn't you open up an office on -- in Chinatown, at one point?

A We had an office in Chinatown, but that was for three Chinese agents who wanted to build their business among the people who are fluent in Japanese, I mean Chinese and they did really well.

Q Okay. So did you ever tell them that they could just open up a -- before -- let's put it this way. Before March 10th, 2017, did you ever tell them that they could just open up a new business?

A I made a suggestion when I talked to an attorney who said if your husband won't sign, Nancy, ask them to open an office under their name. You run this office and in two years when your husband and the lease is done, you can look at a
merger or an acquisition to bring the company together or you can retire.

Q Okay.
A And they did not like that. They never accepted anything I said.

Q All right. In fact, after March 10th, that was the offer that you instructed your attorney to send?

A Yes, I did. And he actually wrote some better things in there, but, yes, that's basically what it says.

Q All right. Can you grab your binder, Nancy's binder. Can you go to Nancy's binder Exhibit 4AA. All right. Do you recognize that email?

A Yes, I do.
Q All right.
MR. SHEEHAN: Your Honor, again, this is a settlement offer. I think I've objected to it before. I think you let it in, but just for the record I object again.

THE COURT: Overruled.
MR. SHEEHAN: Well, we stipulated to all of them, but I still want the same objection that this is settlement, but -THE COURT: Okay. All of them. I understand. BY MR. HOLIDAY:

Q All right. So --
MR. SHEEHAN: And incidentally, after the attorneys have gotten involved this is the settlement offer. So for the JD Reporting, Inc.
record.
MR. HOLIDAY: Right.
BY MR. HOLIDAY:
Q So this is a, like he said, a settlement offer on March 21st 2017; is that right?

A Yes, it is.
Q All right. And this is after your original ousting in March 10th, 2017; is that right?

A Yes. They had hired their own attorney and didn't include me, and that attorney contacted mine after that cease-and-desist letter, and this is the result of that.

Q Okay. It looks like there's two proposals here.
A Yes.
Q Okay. We've got one of those -- can you explain for the Court what those two proposals are.

A The first proposal was to go ahead and dissolve like they had written in their letter and had already started that process, and the second option was to build their own office in the same building, use the term [Indiscernible] if they wanted to as to make me broker of record for NRS. And then it goes on to explain that they would have to not take the NRS employees, agents, resources, just build your own business.

Q Okay. And did they send a letter out to the agents after this? Excuse me. Let me rephrase. Did the defendants send a letter out to the agents of NRS after this?

JD Reporting, Inc.

A They have a memo to the agents dated March 23rd, it's in the book.

Q Okay.
A Telling them that they did not --
Q Can you indicate which exhibit that is.
A Oh, sure. It is on 4CC.
Q 4CC.
A Dash CC.
Q All right. And what does that letter tell the agents?

A It says, Just wanted to give you all an update. At this point we have not been able to come to a mutual agreement. So in an effort to move the company onwards and forwards Roger and I are creating a new company starting on March 23rd, 2017. We hope all of you understand how important you are, and we would love to have you all join us in the transition to the new company. And then they attached independent agent of contracts to all of them.

Q All right. Were you CC'd on that email?
A No.
Q All right. But someone forwarded it to you?
A Yes.
Q Okay. And after that did it -- is that when you decided that we needed additional intervention?

A Oh, yes.

Q Okay. All right. Did you ever tell them that they could open up their own company, but not let you be broker of record of NRS?

A Never. Never told them I didn't want to work there. It's been written many, many times that I intend to stay there and work.

THE COURT: There being NRS or like --
THE WITNESS: I'm sorry. At NRS, is Life Realty, but I told defendants that never did I agree to let them start a new company -- the Life Real Estate and kick me out or make me leave NRS. Never.

THE COURT: Okay.
THE WITNESS: And I have that in writing many times. BY MR. HOLIDAY:

Q Right. So what's in writing is that they could do that if you got to run NRS?

A Right. I would run that office. I told them they would still be owners. They would still collect their share of income, that everything would be the same while they built it, I'd be right there to help them, but I would not be an owner or take money from their new company.

THE COURT: Oh, so then you would run NRS and then Life Realty would be all the defendants?

THE WITNESS: Yep, and then they'd --
THE COURT: You'd still be part of --

JD Reporting, Inc.

THE WITNESS: -- still owner of NRS, yes.
THE COURT: Okay. But you would have no part of Life?

THE WITNESS: Right. Of their office. They didn't like that.

MR. HOLIDAY: Right.
BY MR. HOLIDAY:
Q Now, this is a written offer for an agreement?
A Yes.
Q Okay. You didn't have some oral agreement where they got to start a new company in exchange for nothing?

A No.
Q All right.
A I didn't work seven years for nothing.
Q Right. So was the reversing of your ousting of NR -from NRS on March 10th in exchange for them being able to create their own company; is that right?

A Say back -- ask that question again, please, I'm sorry.

Q All right. In other words, you would let -- agree to let them create a competing company in exchange for reversing kicking you out and letting you run NRS?

A Correct. Yes.
Q Okay.
A I never wanted to be kicked out.

JD Reporting, Inc.

Q Exactly.
A I never said that.
Q All right. They claimed that you flippantly said that you quit at Balboa Pizza one day and that also was a withdrawal.

A At the Balboa meeting -- oh, I'm sorry.
Q So first of all I -- did you threaten to quit?
A No, I never said I'd quit.
Q Okay. Did Sean Evenden in 2017 ever threaten to quit?

A Yes. Always --
Q Okay.
A Sean quit quite often.
Q Okay. But then he just comes back. How many times has he, quote unquote, said that he quit since 2010 that you can remember?

A Well, at least three times, but I would -- I'd remind him you have contracts. You can't just up and say you -- you have RE/MAX International franchise. You have leases. You have agent -- you can't just up and quit when you have contracts.

Q Okay.
A And I would ask him to go home and think about it if he was mad at me and come back.

Q Okay.

A I never made him.
Q All right. And you never said I withdraw as a member at Balboa Pizza?

A Never. Never said that. Absolutely not. It was not my plan ever.

Q Okay. Let's go to -- can you go to the -- oh, also let's be -- before we get to March 10th in particular, you started negotiating to be bought out; is that right?

A No. I got a buyout letter from them dated February 27th; it came in an email and a letter. I gave them a counter, and they just started yelling at me and saying nobody will be bought out at that, and it was a very small difference. They just never looked at it.

Q Okay. And how much were you willing to be bought out for your third in February?

A For my third -- oh, well they gave -- can I back that up a little bit. Their buyout if you totaled the numbers then the years that they were going to pay me, came to 336,000 and my counter was 25,000 each in more.

MR. SHEEHAN: Can I just have a continuing objection on the buyouts and the settlements --

MR. HOLIDAY: All right. Well, this is -- let me to possibly cure this.

THE COURT: Yes.

JD Reporting, Inc.

BY MR. HOLIDAY:
Q This was before you had discussed any litigation over the issues; is that right?

A Correct.
Q All right. So --
A I didn't get the March 10th letter yet.
Q Right. So these weren't negotiations to settle a lawsuit?

A No.
Q Okay. These were negotiations for a buyout; is that correct?

A Right.
Q Okay. And they offered you 330,000, I'm sorry you know the numbers better than I do, Nancy. Can you just state --

A Okay. So it's 177,000 upfront in which they would give me two payments. And then 30 percent of the profits in 2018 and 33 and a third percent in '19. If you looked at the profits in 2017, you would see that without legal fees and salaries you can project what the profits would be. You can do that for '18 and you can do that and I reduced it to -- each year because without me there they were going to continue to grow, remember. So I put the numbers together, and I said, no, I've worked a long time. I want 25,000 more in the second year and 25,000 more in the third year. And they became very upset
with that.
Q All right.
A Otherwise I'd be gone.
Q So what was the -- so their offer was total, was 300
and --
A $36,000$.
Q -- 36,000 and your counteroffer was for 386,000?
A Correct.
Q For your third of the business. Okay. Understood. So at that time you estimated that the business with 30 or so agents or 40 or so agents was worth approximately a million dollars?

A I would say if you tried to put us on the market at that time you'd probably could get a company to come in, they wouldn't write a cash offer, but definitely would have a value of at least a million dollars. Anybody would want 45 strong agents. Anybody would.

Q Okay. So would it be worth more if it had continued to grow and had a hundred agents?

A Absolutely.
Q All right.
A Exponentially.
Q All right. And it's -- is it fair to say with twice as many agents you can within a reasonable degree of certainty estimate that it would be worth about twice as much?

JD Reporting, Inc.

A I would say with twice the agents it would be depending on the overhead. If we had another 10 year lease -MR. SHEEHAN: Objection. Foundation. On this, this is not an expert that has never sold --

MR. HOLIDAY: Right, Your Honor, it's -- well, she has sold a business, but --

THE COURT: You just need to lay foundation for how she would know this. MR. HOLIDAY: Okay. BY MR. HOLIDAY:

Q So you have -- so as a matter of law, a business owner is allowed to opine on the value of their business as a layperson, but in terms of your -- your expertise in valuing this business, what do you base your expertise on?

A Well, I wouldn't want to do that -- I honestly would not want to do that, but I do know from other companies that are in real estate that I've befriended, it's not based on your expenses; it's based on your income. So normally it would be about two and a half times your income.

Q Okay.
A That's a formula that was used for my sale in my business and that was considered -- even though I was an international company with 1100 clients, it was considered a small company.

Q Right. And that was your software company?

A That was my software company, yes.
Q Okay. Fair enough. So had NRS continued to operate normally and grown as it was growing, how much would you estimate it would be worth today?

A Well, again, I am not the expert on that, but if we were able to bring in agents that work from home which is the majority of agents and reduce our overhead, it would definitely be a lot -- I'd say at least a million and a half or more.

Q Okay. And earlier you heard testimony as to the amount they had spent on construction costs?

A Uh-huh.
Q With their -- do you remember how much that was?
A Well --
Q Or how much they said that was?
A Okay. Initially we have an estimate for $\$ 92,000$. The landlord was going to reimburse 53,000 plus give us a 2 percent commission. The tenant doesn't -- the tenant pays the fees up front, but the landlord before you sign a lease negotiates how they're going to cover the majority of your costs. So that money comes back.

Q All right. Just to clarify for the record are you -you're talking about the -- the lease you were negotiating in 2017 for the separate offices?

A Was 92,000, yes.
Q Okay. Construction costs. And I believe they JD Reporting, Inc.
claimed they both contributed --
MR. HOLIDAY: Let me ask. You both contributed 200,000 to the build out; is that what the testimony was? I don't want to misstate the testimony amount.

MR. SHEEHAN: I think, you can say that. I'm not going to let him testify again, but I -- I'm not going to dispute that.

MR. HOLIDAY: Okay. All right. BY MR. HOLIDAY:

Q Now, they -- I believe the testimony was they each contributed 200,000 to the build out instead of what you just said was 92,000 -- does that sound reasonable to you?

A Well, based on the testimony this week, my guess is that they were told if they put a $\$ 200,000$ security deposit their wife wouldn't have to sign. I did not get that offer. So I'm guessing they both put 200,000 --

Q Well, you don't need to -- you don't need to guess.
A Okay.
Q Okay.
A Well, I'm just saying I'm pretty sure their statement was to cover the cost of not including their spouse because they aren't on the final lease.

Q All right. So you don't believe that -- okay. But my question was, does it sound reasonable to you that the build out of an office of that size was $\$ 400,000$ ?

JD Reporting, Inc.

A No. Not at all.
Q All right.
A And their spouses might have signed the lease, I just have a draft about the lease. I want to correct that.

Q Right.
A I don't have the copy of their final lease.
Q Right. We -- you've never received a copy of the lease that Life Real Estate actually signed; is that right?

A I haven't, but I believe that was a message I got from my prior attorney.

Q Okay.
A That he received it and [indiscernible].
Q Okay. Well, I don't --
A Okay.
Q I understand that's hearsay. I didn't mean for it to --

A Yeah. I'm sorry too.
Q Okay. Fair enough. So now, you used to be the bookkeeper --

A $\quad$ I did.
Q -- among your duties; right?
A Yes, that was one of my duties.
Q All right. And have you had an opportunity to -well, let me ask you that. They said that you, this whole time had view access to all the accounting records; is that
accurate?
A No, it's not accurate.
Q Is it true?
A Not at all. No.
Q Okay. When was your view access, your personal view access turned off?

A Okay. So when the forensic accountant had access, I did not. He had access. I was not given access. And then we kept expecting court trials to go on so I never asked for it, but I would say January of this year is the first time after our hearing here that I got access to the information and only to some of it.

Q Right. You finally got a -- a workable login for the QuickBooks; is that right?

A Yes, for the QuickBooks.
Q All right.
A Not for Lone Wolf.
Q And not for Lone Wolf?
A No.
Q All right. Did you have a login for ADP?
A No.
Q Okay. Did you have a -- I believe there's one other specialty accounting?

A For the bank account.
Q For the bank account?

A Oh, for the portfolio, yeah, no, I didn't -- I didn't care about going into F Folio. It's very comprehensive. I had no reason to check that.

Q Okay.
A That's all guided under the state so their operating in trust accounts. I'm confident that Mr. Evenden didn't [indiscernible].

Q So F Folio was for the property management?
A Property management only, yes.
Q Okay. So could you explain for the Court what those different accounting programs are for.

A Well, Lone Wolf was accounting for real estate. It was -- allowed us to manage the commissions of the agents or any person, property management or regular so that we could prepare the 1099s. We would transfer the balances on a monthly basis to the operating account. It allowed you to do that. It did all the bookkeeping for any operating expenses, all your bank accounts, but we -- Sean wanted his own bookkeeping so he opened up a QuickBooks account, and then every year I would be required to take the information from his account and put it over into Lone Wolf so I could do taxes.

Q Okay. So the ADP is the payroll accounting; is that right?

A Yeah. We got really good reports from ADP. The only thing I had to do, and they did it for me automatically, was JD Reporting, Inc.
separate the portions of the contributions from the employer to FICA to the Social Security which is a 50-50 split so that I could make sure that the agents had their own expenses for their own tax keeping, for their own tax records because they got to deduct their own, you know, the agents who had employees wanted to deduct that, not me, not NRS.

Q Okay.
A We only deducted our own employees.
Q Now, you -- you could see in QuickBooks every month when money went out to ADP for payroll; is that right?

A Yes.
Q Okay. But could you see that was all one lump sum payment to ADP; is that right?

A Right.
Q So you didn't see a breakdown of who was getting what on their salary; is that right?

A $\quad$ No.
Q Okay.
A And I never saw how the money came back in.
Q Okay. All right. Going back to the operating agreement. Originally, section -- you agreed to the unanimous voting in Section 6.8; right?

A Yes.
Q Okay. 3.6, you agreed not to take salaries?
A Correct.

Q All right. Did you always plan on paying yourselves salaries once it became profitable, or were you taking distributions?

A Well, according to tax code it should be distributions unless you have a job description.

Q Okay.
A So if we didn't want to hire somebody to do the bookkeeping, the accounting, the office management and all those details, then they would give me the job description and I would be able to collect a salary.

Q Okay.
A But the IRS does not want you as an owner in an $S$ Corporation to collect a salary and a distribution, and I've met with them twice since this court process [indiscernible].

Q Okay. Can you explain the difference between taking a salary and getting distributions?

A The distributions have a different impact on a company's income and your tax base because you carry that shareholder or owner distribution on to your personal taxes. The salary has tax deductions, your Medicare, your FICA that the company does some contribution plus they now get to collect unemployment if they decide not to work where I was never allowed that privilege.

Q Right. So distributions don't have the payroll deductions which are about, like, 13 percent?

A Right.
Q Okay. Okay. Fair.
A And then payroll would be an expense to the company. It would just show different on the taxes.

Q Right. You guys did become profitable in 2016 and 2017; is that right?

A Yes. 2016 was our best year.
Q Okay. And there was a distribution at the end of 2017; is that right?

A 2016 or '17?
Q At the end of 2017 there was a distribution made?
A There was small distribution, yes.
Q Okay. Did you ever get a distribution after January 2018?

A No, I've never seen anything. Nope.
Q Have you gotten a dime?
A Nothing. No. None of my personal expenses or professional expenses, none of my rent or any of the things that they're using as a benefit was I able to receive since March 10th, 2017.

Q Okay. Aside from the distribution that we've --
A Well, the distribution was a carryover from 2016.
That isn't any money they earned from 2017.
Q Okay. Is it normal for brokers to receive salaries from two different brokerages?

JD Reporting, Inc.

A Oh, it's absolutely not allowed.
Q Okay. Now, going to section -- in the operating agreement if you can go to Section 14.1.

A Okay. It's my favorite one.
THE COURT: First or second one?
MR. HOLIDAY: We'll go with the second one, B in the
defendants' binder?
THE COURT: Okay.
MR. HOLIDAY: All right.
BY MR. HOLIDAY:
Q All right. Did you ever -- there was some amendments that were made after 2017; is that right?

A After March 10th, 2017, yes.
Q All right. They started amending with the -- a majority vote; is that right?

A I was never there so, yes.
Q Okay.
A I have records of it.
Q All right. Did you ever consent to those amendments?
A I never did. Never even saw them.
Q All right. Now, Section 14.1 talks about this evidence by an instrument in writing duly executed by the party against enforcement of any waiver, change, modification et cetera is sought. All right. Mainly that shall -- it's -it starts out this agreement in whole or in part, this is
generally what you would call an integration clause in a contract?

A Uh-huh.
Q It says, this agreement in whole or part cannot be changed, modified, extended or discharged orally and no waiver of compliance -- so no oral agreements to modify the operating agreement?

A No.
Q Okay. And no waiver or compliance with any provision or condition hereof, and no consent provided or therein shall be in effect unless evidenced by an instrument in writing duly executed by the party against whom enforcement of any modification is sought?

A Correct.
Q Okay. So earlier you said you agreed to a unanimous vote from the company; right?

A Correct.
Q Okay. And you sent this back in the operating agreement back in August because you noticed in a couple of spots it said the majority or all, and it was supposed to say all, and you instructed the attorney to make those changes?

A Correct.
Q All right. And he changed it in a few sections, but he didn't changes in every section; is that right?

A Can I respond to that a little bit more or, I mean JD Reporting, Inc.
there are some sections where you would have a conflict of interest so they left it in there, and I think that's
appropriate. I think there are some situations that you would need --

Q All right. Well, your understanding is that -MR. SHEEHAN: Objection, Your Honor. MR. HOLIDAY: Okay. MR. SHEEHAN: Even -- the witness -- let her finish
the --
BY MR. HOLIDAY:
Q All right. You can finish.
A But I do --
THE COURT: And I think he's changed, I mean -MR. HOLIDAY: Okay.

THE WITNESS: Yeah. I do believe that we would always have a unanimous consent for anything that involved finances, ownership, because we were all there together for the same reason.

BY MR. HOLIDAY:
Q Okay. And there's some talk in here about when people can't vote for something; is that right?

A There's a couple of sections, yes.
Q All right. It says they can't vote to indemnify themselves if they're a party to the suit; is that right?

A Correct.

Q Okay.
A 10.5.
Q Right. And your understanding was that the law imputed -- your lay understanding was the law imputed a rule that sometimes people can't vote if there's a conflict of interest?

A Correct.
Q That was your understanding? Okay. MR. SHEEHAN: Objection. Leading. THE WITNESS: Yes. THE COURT: It's sustained. You need to watch the form of the question, Counsel, please. MR. HOLIDAY: All right.

THE WITNESS: I believe that this operating agreement was designed to protect all the owners. BY MR. HOLIDAY:

Q Okay.
A Never was I led to believe that anyone would have a more of a benefit than anyone else. That was never the intent, and I worked really hard even when there was disputes to make sure if Sean wanted something we all got it. If Roger wanted something, we all got it. If I wanted something, we all got it. We never left anybody out of, it's unanimous. Does that help?

Q Sure. Okay. All right. In addition to that, do you JD Reporting, Inc.
think -- if I asked you questions about your perception of someone's good faith and bad faith, what would that mean to you?

A Well, from the company's perspective I would say that means that there was a good reason that everybody should make this change or a good reason that everybody shouldn't.

Q All right. Do you think their -- can you describe an example of how in a situation with three partners how two people could vote in bad faith to amend an operating agreement?

A No. There is no way I can see that. We are three owners. We are equal owners. We described all of that in the $1,6,1,8,110,4,1,5,6$. It's all laid out. There's nothing in there that I find that says two owners can get more than a third. Even if you vote a majority, in Amendment 13 that means everybody gets it. You don't amend the operating agreement to two people's benefit.

Q I'm not sure I understand that. Are you saying two people can't amend an agreement just for their own benefit?

A Correct.
Q Okay.
A Can I give you an analogy? THE COURT: No.

THE WITNESS: Okay.
MR. HOLIDAY: Yeah.

BY MR. HOLIDAY:
Q All right. Now, in the March 10th letter they told you to come -- well, they told you they were going to send your license to the division; what does that mean?

A That was the most heartbreaking thing about that. In fact, I think I would have gone back if I didn't see that on there. So taking my license back to the real estate division meant that I could not sell real estate until I ran around, found an office, got my marketing, got a name, all the licensing that would be necessary to continue my business.

Q All right.
A It was devastating.
Q And did you ever receive any sort of written offer to hang your license up at NRS ever again?

A Never.
Q Okay. And did you receive -- did you have any oral communication with them after March 10th outside of litigation?

A Never. No.
Q So there were no oral representations you could come back and hang your license up?

A No. Never.
Q Nothing in writing. Nothing spoken.
A Never.
Q All right. So essentially the two of them told you JD Reporting, Inc.
that you couldn't work out of NRS anymore?
A Correct.
Q With that letter. And they never took that back?
A Never took that back. I was absolutely devastated.
Q I understand.
A I could barely talk.
Q All right.
A Let alone we meet with an attorney. It was very hard.

Q All right. Now, do you believe you had a duty to hang your license up at a different brokerage to mitigate your damages being caused to you?

A I definitely had to, otherwise, how would I pay for my -- my lawyer.

Q Okay.
A I -- it wasn't, I don't think our retirement provided.

Q Right. So in other words, as it stood after March you -- you couldn't have worked as a real estate agent unless you took your license?

A March 21st was the last communication with attorneys. I sought an attorney to file a lawsuit while I was running around the city trying to find an office, get licensing, new marketing, everything I needed, furniture.

Everything that I needed to open -- because I had at least one JD Reporting, Inc.
property on the market that I had to be able to protect.
Q Right. Did Roger and Sean try to take any clients away from you after you left?

A Oh, yeah. Yes, they did. Yes, they did.
Q Okay. About how many clients did they take away?
A Well, there was more than one attempt, but one client had four properties, I mean, he had three properties in property management which are mine, that's a referral back. Sean took it upon himself to sell that person a house. I have no idea what he told my client. Plus I learned -- that was in 2017 and '18, plus I learned he sold my client a new house in 2015 while I sat right next to him.

Q Okay.
A Without telling me.
Q Okay. When you worked at NRS, they paid your professional license fees and rent; is that right?

A Correct.
Q Okay. So one of your benefits of a member of NRS is you didn't have any overhead as a real estate agent; is that fair to say?

A Correct. That's stated in the March 10th letter to cover overhead and expenses with little or no income.

Q Right. So what was the value of NRS paying your professional fees and your rent and your marketing and other overhead?

A Okay. If I sat in the NRS office for the last three years that was beautiful, had $\$ 150,000$ in upgrades which we have the documents for that, with all the clerical staff, all the marketing that was being done compared to sitting in a 400 square-foot office that had only my own computer and no one to help me with marketing or advertising and pay my own legal fees it would be dramatic. I was a top agent in 2010. I agreed to do this so these two young gentlemen could rebuild their business.

Q Okay. No, I understand, Nancy.
A But, no, this --
Q Could you -- could you give me -- I understand it would be dramatic. Could you break it down in numbers for the Court.

A Oh, my gosh. I don't know how to do that. My expenses over the last three years probably came to about 90,000 so that's minimal. And I'm sure if I had to -- my income in that period of time, it doesn't even match that in three years.

Q Okay. Would you have gotten over $\$ 90,000$ worth of free marketing had you stayed at NRS?

A Probably not. Not in just marketing, no.
Q Okay. All right.
A Could have been. I mean, I don't know everything that they did over the last three years.

Q All right. Fair enough. You don't have to speculate, but you did incur approximately 90,000 in expenses --

A Yes.
Q -- over the last three years.
A That's office expenses, not lawyer fees.
Q All right. And you say that before about $\$ 150,000$ in upgrades that have been paid on behalf of -- by NRS with its own profits; can you explain --

A Yes, there's a letter in the evidence book that is from Roger to the property manager that says right in there, we've already spent this much money why are you hurting us --

Q Okay. Can you turn to that letter.
A I'm sorry, what?
Q Can you turn to that letter.
A Yeah. It should be 4A. Yes, 4A.
Q All right. Can you -- can you read us what that letter says.

A Okay. Roger wrote it. It says, have to say that finding out that a lease was granted to another real estate competitor for a downstairs space really has taken us by surprise, and we are extremely upset about it. We have asked repeatedly for office space downstairs and have been told no, that the landlord did not want office space downstairs no matter what. Then to find out that a competitor is going in
right below is insulting, upsetting and will definitely affect our business. We were -- we originally were told we would have exclusivity in this building as well.

Overall this really strikes us the wrong way. We have always been great tenants. Always paid on time, brought rent mistakes to your attention before any issues arise. Always been more than fair. Have invested over $\$ 150,000$ in improvements in our current space, and we are looking to take on another expansion. We should be offered that space as first right of refusal. At this point we are asking for something to be done.

Q All right. So how much does that say --
A 150,000 .
Q Okay. And so about 50,000 of that is money that you didn't get distributed to yourself because you were putting it back into the business; is that right?

MR. SHEEHAN: Objection, Your Honor. Totally mischaracterizes. This is talking about --

THE COURT: Sustained.
MR. HOLIDAY: Okay.
MR. SHEEHAN: -- 150,000 in tenant improvements.
THE COURT: Sustained. Just go ahead and ask your next question, please.

MR. HOLIDAY: Okay.

JD Reporting, Inc.

BY MR. HOLIDAY:
Q All right. All right. NRS had a lease at The District -- I'm going to ask about that lease. Do you know if they could've extended that lease?

A You mean when it expired in 2019? Are you -- I'm sorry you need -- okay.

Q Yes.
A Oh, yes, they could. I had actually called and asked. They could have done -- I asked for a month to month.

Q All right. And they were willing to give a month to month extension on the lease?

A They said they would -- they would --
MR. SHEEHAN: Objection. Hearsay, Your Honor.
THE COURT: Sustained.
MR. HOLIDAY: Okay. All right.
BY MR. HOLIDAY:
Q Do you -- could they have -- is it possible that they could have gotten, as a real estate person, is it possible that they could have leased another location if they couldn't renew that lease?

A Absolutely. We have a second office in Chinatown.
Q All right. Is in your experience as a real estate agent, is it reasonable that they just wouldn't extend a -- a landlord wouldn't extend the lease on someone who's made every rent payment?

A I don't see that they wouldn't unless they had other plans for the space.

Q All right. Now, given the -- you weren't willing to sign on to be personally liable for an extension in that space for a number of years or were you?

A I was given the option from Roger and Sean to sign a nine-year extension or they would dissolve the company. It was an either or option. That's it.

Q Okay. And at that point, that was in 2019?
A That was in February 1st, 2019, and my spouse had to sign that nine-year lease too, and he would not.

Q Okay.
A Not the way they treated me, there's no way.
Q All right. Now, Roger was negotiating the expansion lease in 2017; right?

A Primarily Roger, yes.
Q Okay. And did he repre -- well, I don't want to lead you. Can you explain about the representations he made during that. I don't want to lead you, but can you just tell us the story of how those negotiations went back and forth and the end result.

A Sure. Sure. Roger -- Roger didn't say it. Sean had said in fall of 2016 when we started getting contracts from agents who wanted an office that he was sure spouses would not need to guarantee the lease after the first two years we were
there. We were in our third year, and I said if my husband doesn't have to sign I'm happy to go forward. I'm very excited. I talked about that expansion extensively in the deposition. I was never against the expansion. I was against the fact that they found out we couldn't go forward without Bobb and that they were trying to force me to sign because they didn't want to look somewhere else. They did not try to accommodate me as a partner in any way after working seven years without compensation.

Q Okay. And in -- did he ever present to you -- were you ever presented a copy of the lease where the personal guarantee was taken out?

A I was presented a draft of the lease where it showed the language that Mr. Haack would not be responsible for the extension beyond the 2019 expiration of the first lease.

Q All right.
A And I said, great, let's go.
Q Okay. And did you -- so why didn't that lease get signed?

A Well, when I got the final lease and they had signed and their spouses had signed, I suggested -- I said I needed to take this to an attorney. It's a very large document. I'm busy. It's tax season. Come on. And nobody did the accounting in the whole year before, like they said, so I was really busy.

I want to take this to an attorney. They argued it. They wouldn't come with me. They just said do what you want, you do it, your attorney whatever and I did. And within minutes that attorney found a spot that said, Nancy, your husband is still a guarantor. And I texted Roger and Sean because I'm so foolish to think they would not cheat me and said, hey, guys, the language is back in their wrong. Could you ask them to fix it so I can sign this, and they never responded. Next thing I got a letter dated March 10th.

Q Okay. So fair enough. All right. I think I'll -is there anything else you'd like to tell the Court?

A I did want to say one thing that is really, really bothering me that when I had the deposition on November 14th, 2017, my attorney never did any subpoenas, any deposition. I had no knowledge of the resolution. No knowledge of their continued letters with the agents. I had no knowledge of the alterations they made to the operating agreement. I didn't know what the bank situation was. They didn't show me the checks they had already written to Life Real Estate had been getting paid already in August, and they gave me that letter August 22nd demanding I pay $\$ 55,000$ or else. I don't know, what was I supposed to do. Or else you have to be a good little girl. I didn't get that, and so when I had my deposition on November 14th, I knew none of those things. I think I was very ill prepared, but I'm very happy with my
answers.
Q Okay.
A So, but it was tough. I just want you to know that.
Q All right. Did you -- did you go to the office location and take pictures last night?

A I didn't. I had an agent do it for me.
Q Okay. When was the last time you -- well, and she texted you some pictures. Okay.

A Yes. And then my husband went in this morning and took some more.

Q Okay.
A It is very difficult for me to go there, near there. Very difficult. I'm humiliated. I'm so embarrassed.

Q All right. And you texted me those pictures as well. Are there any signs -- have you ever seen any signs that say Life Realty District?

A No. In fact, if I can elaborate on that. I have an email from the landlord to Sean, November 28th, 2017, saying why are you ordering a Life Realty sign when you signed a lease for Life Real Estate. And he responded and said we will be AKA Life Realty.

Q Is that in your binder?
A Yes, it is.
Q Okay.
A And then there's also a check showing the payment JD Reporting, Inc.
from NRS.
Q Okay. Can you indicate which exhibit that is. MR. SHEEHAN: We'll stipulate.

THE COURT: All right. Thank you.
MR. HOLIDAY: All right. All right.
BY MR. HOLIDAY:
Q So are there on the facade of the building there's two or three signs?

A There's two outside signs.
Q Okay.
A And then a pan -- a board that, you know, indicates all the offices in the building so that would be a third one.

Q Okay. And they all say Life Realty?
A Today they say Life Realty.
Q Okay. And on the placards do any of them say Life Realty District?

A I didn't see any of them that says Life Realty District. I just forwarded them to you.

Q All right. So as of today the placard still says Life Realty and Life Real Estate in the respective offices; is that right?

A I didn't see -- I didn't read any sign that said Life Real Estate. It may, but I didn't read any.

Q All right. Now, in your deposition did you talk about the settlement offer that you sent on March 21st, I

JD Reporting, Inc.
believe is the date?
A We never brought up a settlement offer. I have in the first hundred pages of the deposition, I have 19 questions that say did you tell them they could open a new office in the same building and use the name Life in a variation, but 19 times that question was asked.

Q Okay.
A In the first hundred pages.
Q All right. And at some point you started talking about -- well, all right. And in that did you -- was it clear to you that you were talking about -- was it clear to you if you were -- what he was asking about?

A I was clear what he was asking about. I know that I was never told it would be a part of negotiations, that no one else was sworn in but me. I was never told that whatever I said in my deposition would be valuable for them to move forward. I didn't even know what was going on. I had seen no bank records or anything.

Q Okay. All right. MR. HOLIDAY: I'll pass the witness, Your Honor. CROSS-EXAMINATION

BY MR. SHEEHAN:
Q Good afternoon or good morning. So I think I just heard you say that you were happy with your answers in your deposition?

A I'm not -- I'm not happy with them, Mr. Sheehan. I just know that the answers I gave were not to be used as mediation or negotiation for their benefit. That -- I was there to tell the truth of what happened to result in this dispute.

Q Okay. And you told the truth?
A Absolutely.
Q It's all your answers and they were true and correct?
A Yes, Mr. Sheehan. Have you found one that wasn't?
Q Okay. And can you switch to the exhibit book that defendant trial binder.

MR. SHEEHAN: And, Your Honor, if you would --
THE WITNESS: Number 1?
MR. SHEEHAN: Number 1, defendants' trial exhibit, binder index 1.

THE WITNESS: The less empty one?
MR. SHEEHAN: Not the empty one. May I approach the
witness, Your Honor?
THE COURT: Yes. Of course.
THE WITNESS: This one?
BY MR. SHEEHAN:
Q All right. So you just testified that there was an operating agreement that was quickly put together by Mr. Schnitzer in May. You need to get a draft done, but then you had four months to look it over and make whatever changes
you wanted to it, and you made several changes to make sure that it was --

A I never touched the operating agreement. I just called him and said we want everything to say unanimous.

Q Okay.
A And it was a template he gave up.
Q Okay. And he made those changes to the August 1 which everybody eventually signed?

A Yes.
Q Okay. So whatever changes to the operating agreement that you wanted to be made from the May 1 that was signed to the August 1, you had the attorney make those changes?

A I sent it over to the attorney and we signed it, yes.
Q All right. Let's -- and I'm going to give you also, by the way, all of lunch today to review the two operating agreements and show me any change that was made to these agreements because I don't see any change made to this agreement, but let's go to the key provision.

A Okay. Then I don't know --
Q But when I come back the next time I ask you, I'm going to ask you again can you please point to me any changes between the May agreement and the August agreement.

A Mr. Sheehan, I do not have a copy of that. And I haven't since I've signed the audit.

Q Okay. Well, here's the May 1 --

A So I have no idea.
Q Behind A is the May 1.
A Oh, okay.
Q Behind B is August 1.
A Okay.
Q But let's go to the relevant provisions.
MR. SHEEHAN: And again, Your Honor, if you'll
indulge me.
THE COURT: Of course.
BY MR. SHEEHAN:
Q If you could turn to Section 13.1 of the -- behind Tab A.

A I have both of them.
Q Turn behind Tab A.
A Uh-huh, I got both.
Q Which is the May 1. You see the May is on the front.
A Yeah. I see it. I see it.
Q Okay. And let's see what the language says regarding amendments under Section 13.1.

A Okay. No change.
Q Okay. Do you see that it says majority?
A Yes.
Q In 13.1.
A Yes, I do.
Q So the amendment can be done by majority in the May JD Reporting, Inc.

1; correct?
A Well, the amendment doesn't mean just the majority voters get to get the benefit. If you have a proposal on the table, and only two majority --

MR. SHEEHAN: Your Honor, I move as nonresponsive.
THE COURT: It is and you need to listen to the questions and respond.

THE WITNESS: Okay. No. I think that a majority -yes, a majority vote can pass.

BY MR. SHEEHAN:
Q Okay. And if you look at the August 1 behind Tab B --

A It says exactly the same thing, Mr. Sheehan.
Q It says the exact same thing. Majority can pass.
A Uh-huh.
Q That's a yes?
A Yes.
Q Okay. But again -- and that's really the only key provision we're talking about here, isn't it?

A I talk about a lot of them, but you're welcome to talk about 13.

Q All right. But again, if you can find me any other change I would be happy to submit. So, in essence, you had the opportunity to make whatever changes. It said majority could pass the amendment. You had the opportunity to make any

JD Reporting, Inc.
changes you wanted. My clients allowed a second operating agreement to be signed. Everybody signed a second one, and the second one said majority also; correct?

A That's not my interpretation of it, but, yes. We all signed it.

Q All right. Now, let's turn to -- let's stay behind Tab B because that's again, there's no diff -- from what I've seen there's no difference, but let's turn to behind Tab B, and let's look at -- but let's -- let's step back. We formed -you formed this company Nancy, Roger, Sean and the three of you came up with the idea let's form a closely knit company to hire real estate agents, sell our own real estate, and we'll all divide the work in three, we'll all divide the profits in three, and we'll all divide the losses in three; fair enough?

A That is not how it went, Mr. Sheehan, at all.
Q Okay. Well, let me ask you this. Was that the intent when you started?

A Yes.
Q Okay. All right.
A That was my intent.
Q Okay. So the idea was you'll divide the work in three, you'll divide the profits in three, and you'll divide the losses in three?

A Uh-huh. Yes.
Q And certainly you agree that if there were any losses JD Reporting, Inc.
you would pay your one third share?
A Never said I wouldn't.
Q So the answer to the question is yes?
A Yes. I would agree.
Q Because it wouldn't be fair for you to get the profits without sharing in the losses?

A That's right. And that's what I said.
Q Okay. And it wouldn't be fair for you to get profits without doing one third of the work?

A Correct. One third.
Q Okay.
A Not 50 percent, one third.
Q Because if you were doing all the work and they weren't doing any of the work --

A And they weren't.
Q -- that's why you believe you should have gotten a salary?

A No. I asked them to hire someone to do it so I could work like they do. Less on the company and sell real estate or if you don't want to hire an outsider, make the job available for me. That was the offer.

Q Okay. And then you would get paid the salary because you would be doing work that they were not doing.

A Well, I always did work they weren't doing, Mr. Sheehan. Don't say that again.

Q Okay. Well, the question is, if you were doing work that they weren't doing, you would think you would be entitled to a salary?

A I would --
Q To be fair.
A I would have a job description, and I would be paid a salary.

Q Okay. And I believe you testified in your deposition that you guys always envisioned that once you became profitable you would each get a salary?

A That is not what I said, Mr. Sheehan. What I said was I always envisioned. Mr. Ayala, every year when we did a construction project said, why after this project we'll all get more money, we'll all get more money. But I kept working more and more and more. It just never was going to happen.

Q All right. But you envisioned that --
A Yes.
Q Okay. And I heard you say, and we'll show you some stuff in here later, that if you look at 3.5 in this document regarding member --

A Withdrawals, yes.
Q Yeah, withdrawals, that you didn't think it was fair for Sean -- Sean tried to quit several times, and you said, Sean, you can't quit. We started this thing together. We all have to do one third of the work. It would be unfair for you
to quit.
A I never had that conversation. I said your name is on too many documents. Be careful, go home and think about it and come back and decide what you want to do. You want to quit, fine. But as long as your name is on these responsibilities they're not going to go off.

Q Okay. And if he quit obviously he wouldn't get any more profits from the company; fair enough?

A He didn't want any. He said he didn't want any.
Q Because if he quits he's not entitled to any; fair enough?

A No. Because if he didn't want any because he didn't want to do anything, that was his choice. I never asked him or swore or -- or made him admit to not wanting anything. He offered that.

Q All right. Now let's go to Section 6.7.
A Uh-huh.
Q How many members are needed to hold a meeting?
A It says an aggregate of 66 percent or more shall constitute a quorum. It doesn't say they can vote.

Q Okay. But -- so it does say that if two people are there then you can have the meeting.

A If two people are there, but it doesn't say you can vote.

Q Okay. Okay. Section 6.8. JD Reporting, Inc.

A Yes.
Q It says voting, it says, the unanimous vote of all the LLC -- the last sentence -- shall be required to prove any action unless a greater or lesser vote is required pursuant to this agreement or by statute; do you see that?

A Yes, I do. So if there's a section that says it requires less, then I would expect them to -- I mean if I get hit by a bus tomorrow and they don't want to -- and they would need to make a change because I'm not around, they're going to have to be able to use the majority.

Q Okay. So if there's a section in the agreement that requires less than unanimous then that -- then however many are set forth in that section --

A If it's required, yes.
Q It's required. And we've already covered that the amendment section says majority so that's --

A No, it says majority or all.
Q Okay.
A So all would be consistent with the practice of business unless there was either a conflict of interest or some other problem that didn't allow one of the members to vote.

Q Ms. Haack, about 10 minutes ago you agreed that the amendment section allowed a majority to amend.

A No.
Q Do you recall that? JD Reporting, Inc.

A Yeah, but it doesn't mean that your interpretation was right.

Q Well, the document says in Section 13.1, it has a lesser amount than unanimous; fair enough?

A No, it doesn't. It has majority or all.
Q All right.
A That is not less than unanimous.
Q Okay. Majority is not last --
A Majority the word is, but unanimous or, I mean, majority or all is equal to unanimous.

Q Okay.
A There is no reason to have a majority vote for your own benefit. Come on.

Q Okay.
A You're a lawyer. You know that.
Q But the agreement that Mr. Schnitzer drafted said allow the majority -- you were present at Mr. Schnitzer's deposition.

A No, I was not.
Q You were not present Mr. Schnitzer's --
A No, I wasn't even told about it.
Q Okay. All right. Now, let's look at Section 6.10.
A Okay.
Q I'm sorry. Section 6.11.
A Okay.

Q All right. Do you see where it says member action by written consent without a meeting?

A Uh-huh. I do.
Q Okay. Section 6.11 says,
Any action which may be taken at an annual or special meeting of members may be taken without a meeting and without prior notice if consent to writing setting forth the action so taken are signed by members holding LLC interests representing the aggregate number of votes equal to or greater than the minimum number of votes that would be necessary to authorize or take such action at a meeting which all LLC interest entitled to vote thereon were present and voted.

A Uh-huh. Yeah.
Q All right. So what that says is if enough people are -- agree -- without it -- the necessity of a meeting if enough people needed to pass an item agree, they can do it without a meeting; fair enough?

MR. HOLIDAY: Objection. Calls for a legal conclusion.

THE WITNESS: Requires --
THE COURT: She -- hold on a second. I'm going to let her answer because she's been testifying as to her
understanding of the operating agreement throughout this whole trial. So I guess she can testify as to her understanding. THE WITNESS: If there is a decision that needs to be made within 10 days and you can't post a notice, yes, you can have a meeting, but you still have if consent in writing. BY MR. SHEEHAN:

Q Okay. What this -- let's read this paragraph again.
A I've read it over 20 times.
Q All right. It says, right here, that an action can be taken without a meeting as long as the number of people who are required to vote for an item vote in that manner; do you see that?

A I see that. But that's not a blanket option to make changes to hurt another member. No lawyer would ever, ever suggest that. I'm embarrassed.

Q All right. But nevertheless, nevertheless on the meeting to amend all the -- the important meetings in this case, you were provided notice; correct?

A I was told I was no longer a member, Mr. Sheehan.
Q Okay.
A Why would I go to an agenda that has every item against me.

Q Okay.
A Every item in that meeting is going to hurt me.
Q All right. Ma'am, we've been through this and we can JD Reporting, Inc.


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