

Geraci vs. Cotton, et al.

**Reporter's Transcript of Proceedings
July 03, 2019**



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JULY 3, 2019

Margaret A. Smith, CSR 9733, RPR, CRR
Certified Shorthand Reporter
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1	I N D E X	
2		PAGE
3	OPENING STATEMENTS:	
4	On behalf of Plaintiff/Cross-Defendant	14
5	On behalf of Defendant/Cross-Complainant	39
6	WITNESSES:	
7	LARRY GERACI	
8	Direct by Mr. Weinstein	54
9	Cross by Mr. Austin	160
10	REBECCA BERRY	
11	Direct by Mr. Weinstein	190
12	Cross by Mr. Austin	200
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	I N D E X (continued)			
2				
3	EXHIBITS	IDENTIFIED / ADMITTED		
4	1	Letter of Agreement with	60	60
5		Bartell & Associates dated		
		10/29/15		
6	5	Text messages between Larry	71	71
7		Geraci and Darryl Cotton		
		from 7/21/16 to 5/08/17		
8	8	Email to Larry Geraci from	79	79
9		Darryl Cotton re 6176		
10		Federal Blvd property, dated		
11		9/21/16 with attached letter to		
		Dale and Darryl Cotton from Kirk		
		Ross regarding payoff, dated		
		9/21/16		
12	9	Email to Larry Geraci from	81	81
13		Darryl Cotton re GERL MAIN -		
14		Invitation to collaborate,		
		dated 9/26/16		
15	10	Draft Services Agreement	81	81
16		Contract between Inda-Gro and		
		GERL Investments, dated 9/24/16		
17	14	Email to Larry Geraci and Neil	84	84
18		Dutta from Abhay Schweitzer re		
		6176 Federal Blvd. - Site Visit,		
		dated 10/04/16		
19	15	Email to Rebecca Berry from	85	85
20		Abhay Schweitzer re Federal		
21		Blvd. - Proposal for Survey,		
		dated 10/06/16		
22	17	Email to Larry Geraci and	88	88
23		Neil Dutta from Abhay Schweitzer		
24		re Federal Blvd. - Width of		
		ROW, dated 10/18/16 with attached		
		Lundstrom Topographic Survey,		
		Project No. L222-01		
25	18	Email thread between Neil Dutta	88	88
26		from Abhay Schweitzer Re:		
27		FW: Federal Blvd. - Zoning,		
28		dated 10/19/16		

1	I N D E X (continued)			
2	EXHIBITS		IDENTIFIED / ADMITTED	
3	21	Email from Larry Geraci to	90	90
4		Darryl Cotton dated 10/24/16,		
5		attaching A102 Site Plan -		
6		Proposed - Scheme		
7	30	City of San Diego Ownership	93	93
8		Disclosure Statement		
9		(Form DS-318) signed,		
10		dated 10/31/16		
11	34	Forms submitted to City of	196	196
12		San Diego in relation to		
13		6176 Federal Blvd CUP		
14		Application, dated 10/31/16,		
15		Form DS-3032 General Application		
16		dated 10/31/2016		
17	38	Agreement between Larry Geraci	97	97
18		or assignee and Darryl Cotton,		
19		dated 11/02/16		
20	39	Excerpt from Jessica Newell	103	103
21		Notary Book dated 11/02/2016		
22	40	Email to Darryl Cotton from	106	106
23		Larry Geraci attaching Nov 2		
24		Agreement, dated 11/2/2016		
25	41	Email from Darryl Cotton to	107	107
26		Larry Geraci re Agreement,		
27		dated 11/2/16		
28	42	Email to Darryl Cotton from	109	109
		Larry Geraci re Agreement,		
		dated 11/2/16		
	43	Email to Becky Berry from	120	120
		Abhay Schweitzer re Federal		
		Blvd - Authorization to view		
		County Tax Assessor Records,		
		dated 11/07/16 with attachment		
	44	Email to Darryl Cotton from	121	121
		Larry Geraci re Federal Blvd		
		need sig ASAP, dated 11/14/16		
	46	Authorization to view records -	122	122
		signed by Cotton 11/15/16		
	59	Email to Darryl Cotton from	130	130
		Larry Geraci re Federal Blvd		
		Property, dated 2/27/17		

1	I N D E X (continued)			
2	EXHIBITS		IDENTIFIED /	ADMITTED
3	62	Email to Darryl Cotton from	132	132
4		Larry Geraci re Statement		
5		attaching draft Side Agreement,		
6		dated 3/2/17		
7	63	Email to Larry Geraci from	134	134
8		Darryl Cotton re Statement,		
9		dated 3/03/17		
10	64	Email to Darryl Cotton from	136	136
11		Larry Geraci re Contract		
12		Review, dated 3/7/17		
13	69	Email to Larry Geraci from	137	137
14		Darryl Cotton Re Contract		
15		Review, dated 3/17/17		
16	72	Email to Larry Geraci from	144	144
17		Darryl Cotton re Contract		
18		Review, dated 3/19/17		
19	137	Federal Blvd. - Summary of All	155	155
20		Expense Payments		
21		(Excel Spreadsheet)		
22				
23				
24				
25				
26				
27				
28				

1 July 3, 2019; San Diego, California; 8:55 a.m.

2 Hon. Joel R. Wohlfeil

3 -- o0o --

4 THE COURT: All right. Good morning,
5 everybody.

6 THE REPORTER: Morning, your Honor.

7 MR. WEINSTEIN: Good morning, your Honor.

8 MR. AUSTIN: Good morning, your Honor.

9 THE COURT: All right. So we'll be bringing
10 the jury in as soon as they have assembled.

11 Let me go to Plaintiff's counsel. Any issues
12 that we need to discuss?

13 MR. WEINSTEIN: Just one concerning the exhibit
14 books again for the defense. And I'll have Ms. Kulas
15 address that.

16 MS. KULAS: Yesterday, we received a digital
17 version from Mr. Austin's paralegal. But they didn't
18 have stamps on them. They weren't correctly Bates
19 numbered. I emailed this morning. And we don't have a
20 way of even correcting the exhibit list that's within
21 the witness's exhibit binder and your Honor's exhibit
22 binder.

23 So I don't really know how to move forward
24 because we don't have even a hard set of the exhibits
25 that are correct to -- to use.

26 MR. WEINSTEIN: I would note for the Court that
27 just because I know time is an issue, I don't anticipate
28 using any exhibits from the defense exhibit book in my

1 opening or in my direct. So if that --

2 THE COURT: Okay.

3 MR. WEINSTEIN: But at some point --

4 THE COURT: Okay. Counsel?

5 MR. AUSTIN: I've been trying to get everything
6 fixed. And I got a list of all the errors. And I had
7 somebody working on it all yesterday while we were in
8 trial. And all evening. And we're getting everything
9 electronically sent out.

10 The Bates number, I don't know why that ended
11 up being significantly --

12 THE COURT: Do you have a hard copy that you
13 provided?

14 MR. AUSTIN: I thought that I did provide a
15 hard copy.

16 MS. KULAS: That issue that I gave you
17 yesterday --

18 THE COURT: Counsel, speak to the Court.

19 MS. KULAS: Sorry, your Honor.

20 THE COURT: So your comments?

21 MS. KULAS: Yes. Yesterday, I provided
22 Mr. Austin with a list of the issues that were
23 reflective from the hard copy that you provided us the
24 day prior.

25 So we reviewed them, and as we discussed
26 yesterday, there were some discrepancies with what was
27 contained in those exhibits.

28 THE COURT: All right. So -- I don't know how

1 challenging some of these issues may be. So what we're
2 going to do is we're going to do the best we can, but at
3 some point in time, if either the plaintiff is being
4 prejudiced -- and I don't know if you are yet -- or the
5 Court is unable to follow whatever documents that you
6 have had marked, the price to be paid will be that I'll
7 sustain an objection and that document will not be
8 admitted.

9 So, ultimately, it's the risk you assume by not
10 reasonably complying with what the rules require.

11 Now, Counsel, there are other judges that would
12 respond to this issue very differently. Perhaps you
13 could even say much more draconian than I do. These
14 things happen. So I'm going to keep an eye on it, and
15 we'll do the best we can. But you should consider
16 yourself admonished. These are awful important things
17 that we need to have done.

18 So I've done my best right now.

19 MR. WEINSTEIN: Fair enough, your Honor.
20 Nothing else.

21 THE COURT: All right. Let me go to the
22 defense side.

23 Any -- any issues that you wanted to bring up?

24 MR. AUSTIN: Just yesterday when you were
25 asking if I wanted to reserve, were you only talking
26 about calling back witnesses or, like, after he does his
27 opening, do I get to do mine?

28 I was just wondering about --

1 THE COURT: Well, you are entitled to make an
2 opening statement immediately after Plaintiff's counsel
3 does during Plaintiff's case in chief, or you can
4 reserve the right to do an opening and do that at the
5 beginning of your case in chief.

6 I was actually referring to the examination of
7 witnesses. And as witnesses are called in Plaintiff's
8 case in chief, you have the right to not examine them at
9 that time but instead recall them in your case in chief.

10 Now, you have to first make sure you have the
11 power to have them recalled. If it's a party in the
12 courtroom, that's fine. If a party is under subpoena,
13 that's fine. But if it's a -- somebody else coming into
14 Court voluntarily, unless there's been a paper served
15 upon them, it's not my ability. The Court doesn't have
16 the power to tell somebody to come back.

17 So I'm going to ask you if you want to
18 cross-examine these witnesses at that time or reserve
19 your right to do so during your case in chief. And you
20 respond as you think. And then the risk you assume is
21 that these people are available for you to do that in
22 your case in chief.

23 But the context was in talking about time
24 estimates. That's all I was speaking about. I wasn't
25 trying to put any pressure on you.

26 So is there anything else you want to discuss
27 about that right now?

28 MR. AUSTIN: No. I just wanted to make sure I

1 wasn't locking myself down to something right now.

2 THE COURT: Well, at some point in time, you'll
3 have to make that decision, but that was not the Court's
4 intention yesterday.

5 All right. Anything else, Counsel?

6 MR. AUSTIN: No, your Honor.

7 THE COURT: As soon as we get the jury in,
8 we're going to start with opening statements. Are you
9 ready to go?

10 MR. WEINSTEIN: Yes, your Honor.

11 THE COURT: Are you going to give an opening
12 right after Plaintiff's counsel?

13 MR. AUSTIN: Yes, your Honor. And I do have
14 those lodgements from yesterday.

15 THE COURT: Okay. When you have a chance, just
16 give them to my deputy.

17 By the way, do we have our jurors here?

18 THE BAILIFF: Yes, your Honor.

19 MR. WEINSTEIN: There is one thing.

20 Apparently, we have to still focus this
21 projector.

22 MS. KULAS: I just want to make sure it's
23 focused, because we haven't touched it in a few days.

24 THE COURT: I'll give you the jury -- I'll take
25 you -- either as they are coming into the courtroom or
26 after I have begun -- after I've indicated it's time for
27 the opening statement, you can do that. Okay? Feel
28 free to turn it on now if you'd like to, but I don't

1 want to hold the jury up any longer.

2 So bring them in, Madam Deputy.

3 THE BAILIFF: Yes, your Honor.

4 THE COURT: All right. Good morning,
5 everybody. Thanks for being so good about assembling on
6 time. We were delayed a couple of minutes. I had
7 several hearings at 8:30, and I had to talk with counsel
8 for just a moment.

9 In just a few moments -- hmm. I'm looking. We
10 have an empty seat. One, two, three. Juror No. 4.

11 Oaxaca. We're usually very good about making
12 sure we have everybody assembled before bringing people
13 in.

14 Has anybody seen our Juror No. 4? Was he here
15 this morning?

16 All right. One moment. I'm going to talk to
17 my deputy.

18 Madam Deputy, may I see you for a moment.

19 THE BAILIFF: Yes, your Honor.

20 (Sidebar held and not reported.)

21 THE COURT: All right. We've got almost
22 everybody here.

23 All right. We would probably not have brought
24 you in to sit where you are if we were still waiting for
25 our remaining jurors. But we wouldn't have been able to
26 start before now.

27 So we're still on track.

28 So what we're going to do, we still have one of

1 our alternates, Mr. Dunbar. Counsel, I'm inclined to
2 excuse him so we can move forward.

3 Any objection?

4 MR. WEINSTEIN: No objection.

5 MR. AUSTIN: No objection.

6 THE COURT: All right. So Mr. Dunbar will be
7 excused. If he does appear, Madam Deputy, can you let
8 him know he's excused?

9 JUROR: Sir, I'm right here.

10 THE COURT: I'm sorry, Mr. Dunbar. I thought
11 we were -- I was informed that we were still waiting for
12 one more juror. So we do have everybody. I apologize.
13 That must have been an odd experience hearing me talk
14 about you and you're sitting right here.

15 We're getting off to a rough start this
16 morning. We try to be perfect, but it doesn't always
17 happen, folks.

18 All right. So we do have everybody.

19 All right. So very briefly, in just a few
20 moments, Counsel will give their opening statements.
21 When they're done, we'll take our morning break. Even
22 if we're not quite at 10:30, we'll take our 15-minute
23 break. And when we return, we'll start with witnesses
24 and go until noon and continue along that line until the
25 end of the day.

26 Please recall that we're dark tomorrow because
27 of the holiday and will not be returning until next
28 Monday, the 11th. And then you'll have a line-up of

1 witnesses. And the lawyers are working hard to have as
2 many witnesses lined up. Some of them will take a
3 little longer, like the parties. But you'll be seeing a
4 steady stream of witnesses through and including
5 Plaintiff and the defendant's case in chief.

6 So I'll keep you up to date on where we are in
7 the estimate, but as mentioned before, we will get you
8 the case at or before the close of business Thursday,
9 July 18th.

10 So it's now time for counsel to give an opening
11 statement. I mentioned to you yesterday that nothing
12 the lawyers say during the trial is evidence. The only
13 thing you're going to base your decision on ultimately
14 is the evidence and, of course, the law that I give to
15 you. But what they say in their opening statement will
16 give you an idea of what they expect the evidence to
17 consist of, at least from their perspective.

18 So with that in mind, Counsel, whenever you're
19 ready, please give your opening statement.

20 MR. WEINSTEIN: Thank you, your Honor.

21 (Opening statement on behalf of
22 Plaintiff/Cross-Defendant Larry Geraci)

23 MR. WEINSTEIN: Good morning, Mr. Dunbar, and
24 the rest of the jurors. Thank you for your patience
25 through jury selection yesterday. As your Honor has
26 just reminded you, nothing I say is evidence. It's what
27 I believe the evidence will show. So if I make a
28 statement and I don't preface it by saying the testimony

1 will show, it's really in front of every sentence
2 because I'm not a witness.

3 Now, it's my opportunity, as you were
4 pre-instructed yesterday, to present an opening
5 statement. It's really an outline, a road map of what I
6 expect the evidence will show, and it's going to allow
7 you to keep an overview of the case in mind during the
8 later presentation of evidence.

9 Evidence comes in out of order. These facts
10 are going -- the facts you'll hear are going to be new
11 to you for the first time. We've known them for a long
12 time. And as a result, it will take you a while to put
13 them all together. But when it's said and done,
14 hopefully, the overview I've presented to you will help
15 you understand the case as it's presented.

16 Now, as I mentioned in the mini opening
17 yesterday, this case involves a dispute between Larry
18 Geraci and Darryl Cotton concerning an agreement from
19 the purchase and sale of Mr. Cotton's property at 6176
20 Federal Boulevard.

21 Now, Mr. Geraci and Mr. Cotton dispute the
22 terms of the agreement. During my opening, I'll refer
23 to and show you some of the documents. These are some
24 of the exhibits that I anticipate you will see during
25 the evidence portion of the case. It will help me with
26 my overview and help you.

27 But before I jump into the story -- before I do
28 that, the setup is with the screen over here. And we

1 have jurors all the way extending to almost even with
2 me. If anybody at any time has trouble seeing the
3 screen, just give us a heads-up, and we'll make an
4 adjustment and move the attorneys back and forth to make
5 it clear.

6 So, anyway, before I jump into the story, I
7 need to introduce you briefly to some of the persons
8 whose names will come up in the testimony and who may
9 give testimony in the case. And there's eight people in
10 particular. I just want to identify it from the outset.

11 Of course, there's Darryl Cotton, who is the
12 defendant and cross-complainant. He was the seller of
13 the property. Mr. Cotton has developed hydroponic
14 systems for the growing of cannabis. He's very active
15 in the community regarding cannabis issues. You'll
16 learn more about that later.

17 Mr. Geraci, sitting in front of me next to the
18 bench, is the buyer. He owns a tax and financial
19 accounting business called The Tax and Financial Center.
20 He's been doing tax preparation work for about 40 years.
21 So that's basically been his profession his whole
22 career. He's licensed as an enrolled agent. This means
23 he has a federal license that allows him to represent
24 clients before the IRS.

25 And that will become an issue that you will
26 hear about later in the case.

27 Rebecca Berry, who sits to my left, because we
28 don't have room for everybody, who is sitting in the

1 first seat, is also my client, a cross-defendant in the
2 case. She's Mr. Geraci's administrative assistant.
3 She's worked in this business for 14 or 15 years.
4 Ms. Berry, acting as Mr. Geraci's agent, was the
5 applicant on the conditional use permit application that
6 you've heard about so far. And that was submitted to
7 the City of San Diego.

8 This was done with Mr. Cotton's knowledge.

9 She coordinated -- Ms. Berry did --
10 communications regarding the project with Mr. Geraci and
11 the project team that he hired. And along with the
12 project manager, a gentleman by the name of Abhay
13 Schweitzer, was the City's contract for this CUP
14 application.

15 The next person I want to mention is Jim
16 Bartell. Jim Bartell has a public government and media
17 relations business called Jim Bartell & Associates.
18 He's a registered lobbyist. He had been successful in
19 obtaining for his clients approval of CUPs for
20 dispensaries.

21 Mr. Geraci hired Mr. Bartell to be on his team
22 to help the efforts to develop and operate a medical
23 marijuana consumer cooperative, sometimes abbreviated
24 MMCC. And he was hired to do that.

25 Mr. Bartell is expected to testify about his
26 role in attempting to obtain a CUP for a dispensary on
27 the property.

28 I already mentioned Abhay Schweitzer. He owns

1 his own business called TECHNE, T-E-C-H-N-E, a design
2 and development firm. He's a project designer who has
3 experience working on marijuana dispensary projects and
4 had also been successful in guiding clients through and
5 obtaining approvals of condition use permits for
6 dispensaries for other of his clients.

7 Mr. Geraci, you'll learn, hired Mr. Schweitzer
8 to be on his team along with Mr. Bartell.

9 You will learn that -- in this case that
10 Mr. Schweitzer and his staff at TECHNE spent over 680
11 hours on this project, 150 or more of which was just for
12 preparation of drawings to be submitted to the City in
13 connection with this regulatory process that one has to
14 go through to obtain a conditional use permit.

15 Mr. Schweitzer is expected to describe to you
16 in detail the CUP application process and the
17 applications taken to process the CUP application for
18 the dispensary on this property.

19 He's going to also testify to you about
20 unsuccessful attempts to appeal the approval of a
21 competing CUP application on a nearby property. You've
22 heard a little bit earlier about a competing CUP
23 application. We'll get into more detail about that
24 later.

25 Gina Austin, you will hear about. Gina is an
26 attorney. She has her own law firm, the Austin Legal
27 Group. Her practice includes, in addition to corporate
28 and securities, land use entitlements. She's

1 represented medical cannabis, collectives and
2 cooperatives with regard to regulatory compliance
3 issues. She's also been successful in obtaining permits
4 from local municipalities and representing them in front
5 of local municipalities.

6 Mr. Geraci, you will learned, hired Ms. Austin
7 to be on the team he put together to attempt to obtain
8 approval of the conditional use permit for the
9 dispensary on the property he was buying from
10 Mr. Cotton.

11 There are two more people on the long list I
12 need to introduce you to. The first one is Firouzeh.
13 And I'm hoping I'm pronouncing that right because it's
14 not -- it doesn't sound how it's spelled. But it's
15 Fairsday Tirandazi. Ms. Tirandazi was an employee of
16 the City of San Diego. She was an initial project
17 manager for the City responsible for the CUP application
18 that was submitted on this property. At that time, she
19 was the initial project manager, and she worked in the
20 San Diego -- City of San Diego's development services
21 department.

22 The last person is another City employee. Her
23 name is Sherlynn Tac, T-a-c. She's also employed by the
24 City of San Diego. And at a time, she was the second
25 project manager after Ms. Firouzeh (sic) was transferred
26 from the department. Ms. Tac was the second manager at
27 the City for the CUP application that was being
28 processed that had been applied for by Ms. Berry on

1 behalf of Mr. Geraci.

2 I know that's a long list, and you'll become
3 familiar with those people as you hear the testimony.

4 And here's what I expect the evidence to show.
5 On November 2nd, 2016, Mr. Geraci and Mr. Cotton signed
6 before a notary a written agreement which set out the
7 material terms and conditions that was agreed to for the
8 purchase and sale of Mr. Cotton's property.

9 Would you bring up 38, please.

10 Of course, you'll be shown this agreement
11 again, I'm sure, many times during the trial. This is
12 an agreement that Mr. Geraci will tell you was drafted
13 by he and Mr. Cotton together in his office on
14 November 2nd. He sat at his computer, did the typing.
15 His office has a 65-inch computer monitor on the wall.
16 Mr. Geraci viewed the computer monitor, and they
17 essentially went through and drafted the agreement
18 together and spoke about it as it was written. It
19 started out as a Word document with the date at the top.
20 And as it was written, they went through it, put the
21 words down, made suggestions, and then agreed that those
22 words were accurately reflecting what they had agreed
23 to. That's what Mr. Geraci will testify to.

24 When it was all agreed to and the words were
25 agreed to, they both signed it in front of the notary.

26 Would you show us 39, please.

27 And 39, it's not that big of a deal. But it's
28 just a notary acknowledgment that shows it was signed by

1 Mr. Geraci at 3:05 p.m. on November 2nd by Mr. Cotton
2 two minutes before that.

3 Now, Mr. Geraci will testify that this
4 agreement was the culmination of a series of phone calls
5 and a couple of face-to-face meetings, including the
6 meeting on November 2nd, when they discussed and
7 negotiated the terms of the agreement.

8 Mr. Geraci will testify that this was intended
9 to be their final agreement. It was a simple one, as
10 reflected in the written document.

11 Now, both Mr. Cotton and Mr. Geraci signed the
12 agreement, and Mr. Geraci on that day provided
13 Mr. Cotton with \$10,000 in cash as a deposit called for
14 in the agreement. It was to be applied against the
15 purchase price of \$800,000 with a balance due upon
16 approval, if there was approval of a conditional use
17 permit for the medical marijuana dispensary.

18 Now, Mr. Cotton will not deny that he signed
19 the written agreement. However, he's expected to
20 testify that the document was not intended as an
21 agreement but rather as a receipt for the \$10,000 of
22 cash that he received. He's expected to testify that as
23 of November 2nd, 2016 when they each signed the
24 document -- if you could put it back up -- they had
25 orally agreed to additional terms and conditions for the
26 purchase.

27 Among other terms and conditions, he's expected
28 to testify or claim that they agreed to a nonrefundable

1 deposit of \$50,000, not \$10,000. He's expected to claim
2 that in addition to the total purchase price of
3 \$800,000, he and Mr. Geraci had orally agreed that the
4 dispensary was built, that Mr. Cotton would receive
5 a 10-percent equity stake or ownership interest in the
6 medical -- in the dispensary with a right to receive
7 guaranteed minimum cash distributions of \$10,000 a
8 month.

9 Mr. Cotton will testify that all these terms
10 and conditions were orally agreed to as of November 2nd,
11 2016.

12 What he won't -- what he will agree to, though,
13 and is not expected to dispute is that the sale was
14 intended to be conditional upon the obtaining of a
15 conditional use permit for the operation of a
16 dispensary.

17 The testimony will show that neither party
18 disputes that was part of the agreement. It's not going
19 to be disputed that they discussed and it was agreed
20 that approval was to be obtained by Mr. Geraci at his
21 expense. They discussed that if the Geraci -- if the
22 CUP wasn't approved, Mr. Cotton would get his -- would
23 keep his 10,000-dollar nonrefundable deposit, and
24 Mr. Geraci would have to have borne all the expenses
25 that he invested in trying to obtain approval of the
26 dispensary that never came to fruition.

27 Now, you're going to hear testimony -- I
28 started with the agreement on November 2nd. You're

1 going to hear testimony about the events that led up to
2 the signing of the agreement on November 2nd. You will
3 learn that in late 2015 or in 2015, Mr. Geraci became
4 interested in the possibility of acquiring a property to
5 develop and operate a dispensary.

6 You will learn that in the City of San Diego,
7 there are nine council districts, and four principals
8 are permitted maximum in each council district. So this
9 was in a council district, and there was the possibility
10 of that district having four principals.

11 You'll also learn that the City's zoning
12 ordinance limits the locations where operations of a
13 dispensary are allowed in use. So if a property is
14 located within district but it's not zoned for operation
15 of a dispensary, you can't operate one there, unless and
16 until the City approves a conditional use permit that
17 allows you to do so. But they won't do that if their
18 zoning isn't approved.

19 Now, you will hear a lot in this case about the
20 regulatory permit process as applying for and obtaining
21 that conditional use permit was a condition of the
22 purchase. Mr. Geraci is not an expert in the medical
23 marijuana industry. So he decided to assemble a team
24 that I described to provide him with guidance through
25 that process.

26 He hired Mr. Bartell in October of 2015, the
27 lobbyist I mentioned, who was familiar with the process.
28 And they started looking for properties, trying to

1 identify properties that might be feasible to acquire
2 and to then obtain and operate -- a conditional use
3 permit to operate a dispensary.

4 And in approximately -- you'll learn that in
5 approximately mid-2016, Mr. Cotton's property at 6176
6 Federal Boulevard was identified as a possible feasible
7 location. Now, it was located in zoning -- a zone
8 called CO-2-1.

9 Would you put up 27, please.

10 You're going to hear a lot about a zoning issue
11 in this case and correcting a zoning problem. You'll
12 hear testimony from multiple witnesses on that issue.
13 But for purposes of the road map, the crux of it is that
14 the City -- would you blow that up, please. Especially
15 2D2 on the left side.

16 Keep going. Perfect.

17 So this is an information bulletin put out by
18 the City of San Diego for medical marijuana consumer
19 cooperatives. And you'll notice in Section 2D, it says
20 MMCCs are allowed only in the following zones.

21 If you can blow up that paragraph.

22 And you'll see that CO-2-1 is an allowable use
23 in that zone according to this information bulletin.

24 However, it turns out, the City's Municipal
25 Code didn't have that particular zone, CO-2-1, didn't
26 have a dispensary as an allowable use in the CO-2-1 zone
27 under the zoning ordinances in the Municipal Code. So
28 there was a conflict. You'll hear about the crux of

1 that conflict and the problems and what efforts were
2 made to amend the zoning ordinance to resolve that
3 problem before the City would continue with the process
4 of CUP application. I'll get to that a little bit
5 later.

6 Now, for purposes of where we are in the
7 opening, it's important to know that the evidence will
8 show that both Mr. Geraci and Mr. Cotton were aware of
9 this potential zoning problem at the time Mr. Cotton
10 first made -- Mr. Geraci first made contact with
11 Mr. Cotton about his property. So when did that happen?

12 You'll learn that Mr. Geraci's first contact
13 with Mr. Cotton about the property was in mid July of
14 2016. Mr. Geraci called Mr. Cotton to see if he was
15 interested in selling his property. He didn't -- he
16 knew nothing about Mr. Cotton's background.

17 Mr. Geraci will testify to the details of that
18 conversation, which lasted about 20 minutes. But among
19 other things, he will tell you that he introduced
20 himself and explained to Mr. Cotton that he was looking
21 to purchase a property that could be used to develop a
22 medical marijuana consumer cooperative. And he asked
23 Mr. Cotton -- and to develop a dispensary. And he asked
24 Mr. Cotton if he would be interested in selling.
25 Mr. Geraci told him he did not want to waste his time if
26 the asking price was outside his budget. And he asked
27 what price he would want to sell the property.
28 Mr. Cotton told him \$800,000. Mr. Geraci told him that

1 was in his budget and asked if they could meet to
2 discuss specifics.

3 Now, this was the first contact, this telephone
4 call in mid July 2016 where they discussed the terms of
5 a potential purchase. Not all the terms but that
6 particular term, the price.

7 The next time that -- the first time they had a
8 face-to-face meeting was in September of 2016.
9 Mr. Geraci is going to testify about the details of that
10 conversation as well, as I expect Mr. Cotton will.
11 Among other things, Mr. Geraci is going to tell you that
12 he told Mr. Cotton he was still interested in exploring
13 the purchase of his property, but his team still had
14 some work to do to determine if it was even feasible
15 enough to go forward. They knew for sure they had the
16 zoning issue, but they wanted to determine if there were
17 other issues.

18 Mr. Geraci said he would be back in contact
19 with him when it was determined whether the property was
20 feasible and he was ready to move forward. And they
21 discussed other things, which I will leave to the
22 testimony.

23 Mr. Cotton said he wanted to send him and was
24 going to send him a proposed agreement.

25 Would you go to No. 9, please.

26 So you will see an email on November -- I'm
27 sorry -- on September 26th, 2016, after that initial
28 face-to-face meeting where Mr. Cotton did what he said

1 he was going to do, sent Mr. Geraci a proposed contract.
2 And this is the email.

3 And then would you go to Exhibit 10, please.
4 Blow that up.

5 So you'll see this. This is a draft agreement.
6 You'll get to see it in more detail with Mr. Cotton and
7 Mr. Geraci.

8 Now, Mr. Cotton -- paragraph 1, highlight one,
9 please.

10 Mr. Geraci reviewed the agreement. He noticed
11 in paragraph 1 that one of the things Mr. Cotton wanted
12 was a 10 percent equity position or one of the things he
13 was proposing was a 10 percent equity position in the
14 new licensed entity, which refers to the dispensary,
15 we'll hear.

16 Mr. Geraci had some prior communications before
17 this with Mr. Cotton in which Mr. Cotton was trying to
18 persuade him to invest in Mr. Cotton's -- we'll call it
19 grow business. Mr. Cotton produces cannabis. He is a
20 hydroponic grower, as I understand it. He'll talk about
21 it, though. He was trying to persuade Mr. Geraci to
22 invest in his growing business in exchange for which he
23 would get a 10 percent interest -- interest in the
24 dispensary. They had discussed that. Mr. -- they
25 discussed that when Mr. Geraci called Mr. Cotton back
26 after receiving this draft agreement he told him he was
27 not interested in doing that. He told Mr. Cotton that
28 he was getting ahead of himself. He told him he was

1 focused on getting the CUP. And he never signed the
2 agreement.

3 Nevertheless, the parties proceeded forward,
4 and in October of 2016, you'll see communications
5 between the parties. You'll see texts, some
6 photographs, of which they communicated during that
7 period of time on issues that dealt with investigating
8 the feasibility of the property.

9 For example, Mr. Cotton provided access to his
10 property for a topographic survey, which was going to be
11 necessary -- which is done by an engineering firm, paid
12 for by Mr. Geraci, which was going to be necessary if
13 they were going to move forward with the CUP
14 application.

15 Would you show us Exhibit 21, please. And on
16 October 24th, 2016, Mr. Geraci sent Mr. Cotton an
17 email -- just highlight the date at the top.

18 I'll represent to you while we're struggling
19 with that it's October 24th. And the second page.

20 I guess we lost the zoom for now. We'll wait
21 for that until we present the evidence.

22 Effectively what happened on October 24th is
23 you'll learn that Mr. Geraci had hired an engineer, had
24 a topographic study done and he also had site drawings
25 prepared by his project designer, Mr. Abhay Schweitzer's
26 firm. He shared those with Mr. Cotton to show him what
27 was being proposed to be done on the property.

28 So after that proposal for the agreement, which

1 was not signed, they went forward with these kind of
2 communications, working towards potentially still doing
3 a deal.

4 Mr. Geraci going to testify in about the third
5 week of October he had a phone conversation with
6 Mr. Cotton in which he told Mr. Cotton they were close
7 to being ready to submit a CUP application, that they
8 should get an agreement signed in writing.

9 They subsequently arranged for Mr. Cotton to
10 come to Mr. Geraci's office on November 2nd to put
11 together a written agreement.

12 Would you show Exhibit --

13 But before that happened, in connection with
14 submitting the CUP application, there was a form that
15 needed to be signed by Mr. Cotton. So Mr. Geraci will
16 testify he contacted Mr. Cotton on October 31st of 2016
17 and told him there was a form that needed to be signed
18 to submit the CUP application. Mr. Cotton came to the
19 office and signed the application. And when we're able
20 to blow it up, you'll be able to see that better. And
21 Mr. Geraci told him this was going to be used in
22 connection with submitting the CUP application.

23 Then the meeting on November 2nd happens.
24 We've discussed that. On October 31st, though, after
25 this form was signed, the CUP application was submitted
26 to the City for what is called the completeness review.
27 It's the initial phase when you submit your application.
28 Mr. Schweitzer will describe what that is.

1 The November 2nd meeting happened, and they
2 signed the agreement, which I've discussed.

3 Mr. Geraci will also testify that in advance of
4 that meeting, he had had discussions with Mr. Cotton
5 about the amount of a nonrefundable deposit. He had had
6 prior discussions before that meeting. Mr. Cotton
7 wanted a 50,000-dollar nonrefundable deposit.
8 Mr. Cotton -- Mr. Geraci said he was not willing to take
9 that because he was going to be putting all this money
10 into getting the CUP application and had substantial
11 risk. He would only agree to pay a 10,000-dollar
12 nonrefundable deposit. And Mr. Cotton told him that's
13 okay.

14 So Mr. Geraci, on November 2nd, when he knew he
15 was going to meet with Mr. Geraci, went and got \$10,000
16 in cash and brought it to his office so that when the
17 agreement was signed, if and when it was signed, he
18 would put the 5- to 10,000-dollar nonrefundable deposit
19 that they had agreed to would be appropriate in the
20 prior meeting.

21 Now, after signing the agreement, the testimony
22 will show that Mr. Geraci really tried to renegotiate
23 the deal.

24 Would you show Exhibit 40. We'll go quickly
25 through those.

26 Before Mr. Cotton left the office on
27 November 2nd, he asked if Mr. Geraci would email him the
28 agreement. And Mr. Geraci did. You're going to see an

1 email where Mr. Geraci sent him the agreement on -- at
2 3:11 p.m. on November 2nd, a few minutes after
3 Mr. Geraci -- Mr. Cotton had left.

4 Show Exhibit 41, please. You're going to see
5 an email -- you're going to see an email from later that
6 evening from Mr. Cotton to Mr. Geraci at six -- it was
7 sent at 6:56 p.m., in which he wrote an email that said
8 thank you for meeting with me today. And then the
9 balance of the email -- I'm going to go over there and
10 read it because I know you can't see it -- the second
11 sentence says since we executed the purchase agreement
12 in your office for the sale price of the property, I
13 just noticed the 10 percent equity position in the
14 dispensary was not language added in the contract -- or
15 into that document. I just want to make sure that we're
16 not missing that language in any final agreement, as it
17 is a factored element in my decision to sell the
18 property. I'd be fine if you would simply acknowledge
19 this in a reply.

20 Mr. Geraci will testify he got that email after
21 9 o'clock that evening because he gets his emails on his
22 phone.

23 Show us Exhibit 42, please. When he looked at
24 that email, he read the first sentence thank you for
25 meeting with me and immediately replied, no, not a
26 problem, and didn't read the body of the email. He's
27 going to then testify that he had a phone call with
28 Mr. Geraci the next day -- or Mr. Cotton the next day in

1 which they discussed where Mr. Geraci asked him about
2 what is it -- what is this 10 percent equity interest
3 and told him he did not agree to that.

4 Mr. Geraci will testify Mr. Cotton replied,
5 well, you can't -- you know, something to the effect of
6 well, you can't blame a guy for trying. And Mr. Geraci
7 said I'm not going to agree to 10 percent equity
8 interest, and Mr. Cotton said, okay, and added, well,
9 we're still going to all make a lot of money on this or
10 something to that effect.

11 Now, I'm going to come to this later -- I
12 expect Mr. Geraci -- Mr. Cotton -- I'm sorry -- to
13 testify that he viewed this as a written confirmation of
14 the 10 percent equity interest. The evidence is going
15 to show otherwise.

16 Would you turn to No. 69. I apologize we're
17 not able to blow this up. But you will see this
18 March 16th, 2017 email from Mr. Cotton where he goes
19 through in the second paragraph of this email at the
20 bottom, his view of what the discussions and
21 negotiations have been. And at the end, he writes, "You
22 did not respond and confirm the 10 percent as I
23 requested." Mr. Cotton was acknowledging in this email
24 what -- that Mr. Geraci had not in fact confirmed he was
25 agreeable to a 10 percent equity position, because
26 that's how -- what the evidence will show Mr. Cotton
27 understood at the time of the dispute.

28 Mr. Geraci will testify I didn't even see that

1 second sentence when I sent the first reply, and I never
2 confirmed expressly that I was going to be agreeing to
3 a 10 percent equity position. It was not part of their
4 deal that they discussed, Mr. Geraci will testify at
5 their November 2nd meeting. It was not part of any
6 agreement they had reached prior to that meeting when
7 they signed the written agreement, which doesn't include
8 that provision.

9 Now, I mentioned earlier that expect
10 Mr. Geraci -- Mr. Cotton -- I apologize -- Mr. Cotton to
11 also claim that they agreed to a 10 percent -- I'm
12 sorry -- a guaranteed 10,000-dollar minimum monthly
13 distribution from the dispensary at the time they signed
14 the November 2nd, 2016 agreement. The evidence will
15 show that there's no mention of any guaranteed monthly
16 payments in any communications between Mr. Geraci and
17 Mr. Cotton prior to Mr. Geraci or Mr. Cotton having a
18 telephone call on February 7th, 2017.

19 Now, what had happened between the
20 November 3rd, 2016 telephone call that I described, the
21 agreement was signed on November 2nd, the telephone call
22 on November 3rd, and on February 7th, Mr. Geraci then
23 talked about a telephone call he had with Mr. Cotton in
24 which he started in earnest to try to renegotiate the
25 agreement.

26 What happened was the zoning -- you'll learn
27 the zoning got approved. It was approved by an
28 amendment to the Municipal Code. The zoning ordinance

1 was changed. It was submitted to the legislative
2 process on January 31st of 2017. And Mr. Geraci, who
3 had been having continual communications with Mr. Cotton
4 about the progress of the resolution of the zoning
5 issue, because the CUP application was essentially stuck
6 in the mud and couldn't be processed until the zoning
7 issue was resolved, Mr. Geraci -- Mr. Cotton was asking
8 for updates. And you'll see text message -- messages
9 from Mr. Geraci to Mr. Cotton and vice versa about that
10 in the period between November 3rd and February 7th.
11 And you'll find that Mr. Geraci communicated to him,
12 because he had been told by his lobbyist, Mr. Bartell,
13 that the zoning issue had been resolved. And he
14 communicated that to Mr. Geraci -- or Mr. Cotton.

15 At that point, this February 7th, 2017 phone
16 call occurred that Mr. Geraci will describe.

17 And in that phone call, Mr. Geraci is going to
18 testify about all the details because he remembers it
19 vividly. It was disturbing him to have the phone calls,
20 he will tell you. But the crux of the call is, you will
21 learn, that Mr. Cotton had been talking to some people
22 that told him they would give him 10,000 a month
23 guaranteed once the dispensary was in operation.
24 Mr. Geraci told him that he could not do that, that it
25 was a high number for a brand-new business, and
26 explained why it was not possible. Mr. Geraci reminded
27 Mr. Cotton of that phone conversation that they had the
28 signed agreement, but Mr. Cotton insisted that

1 Mr. Geraci work with him, because other people would pay
2 him that.

3 Mr. Geraci will tell you that this position --
4 at this time, he felt trapped because he had invested
5 money towards getting a CUP application. He will tell
6 you he knew and needed Mr. Cotton's cooperation to be
7 able to process -- continue to process the CUP
8 application, clearly getting access to the property.
9 And he felt that he was in a corner. And he didn't know
10 what to do. He contacted a number of people, but one
11 person he contacted was Ms. Austin.

12 Ms. Austin is going to testify, and she's going
13 to tell you about the phone call that she had with
14 Mr. Geraci. Mr. Geraci is going to tell you that he
15 felt he was being extorted by Mr. Cotton who was trying
16 to renegotiate their deal. And he told that to
17 Ms. Austin. Ms. Austin is going to come in and testify
18 that Mr. -- I believe that Mr. Geraci told her he was
19 being extorted and he felt like he needed to try and
20 renegotiate to save the deal. He felt he was between a
21 rock and a hard place.

22 So at that point in time and only at that point
23 in time, he will testify he directed Gina Austin to try
24 and draft up a more formal agreement that would provide
25 Mr. Cotton with some things, but he wasn't going to
26 agree to provide him with an ownership interest or with
27 guaranteed distributions, because that just wasn't going
28 to be possible, given that it was a new business and

1 wouldn't make money.

2 He tried to renegotiate because he was trying
3 to determine, you know, he either was going to lose his
4 investment or he was going to try to go forward with the
5 investment and try to renegotiate. He even offered to
6 renegotiate a new agreement and provide some cash
7 distributions, lesser for the first six months, and
8 then 10,000 after the seventh month. But during all of
9 these renegotiations, you will learn from emails,
10 Mr. Cotton's demands kept escalating. He wanted a 10
11 percent equity stake. He wanted the minimum guaranteed
12 distribution of 10,000 a month, and it had to start
13 right when the dispensary opened. He wanted consent
14 rights as a minority shareholder to approve things. He
15 wanted to be able to put a -- I may misstate this. But
16 he asked for other things with respect to the accounting
17 of the business, things that had never been discussed.

18 Mr. Geraci will testify he realized that there
19 was no way he was going to be able to renegotiate the
20 agreement to something acceptable. Told Mr. Cotton, you
21 know, that they had an agreement, and went forward with
22 the lawsuit.

23 Now, you're going to hear about the conduct of
24 Mr. Cotton after the lawsuit was filed, and you're going
25 to hear about the conduct of Mr. Geraci after the
26 lawsuit was filed. We're going to present evidence of
27 attempts by Mr. Cotton to interfere with the CUP
28 application process. There's going to be evidence that

1 he signed another offer to sell the property. The
2 written agreement he signed said he couldn't enter into
3 other contracts, but he did.

4 He's going to -- we're going to -- we're going
5 to have testimony that he blocked access and refused to
6 allow access to the property to do geotechnical studies,
7 essentially soils testing, that was required by the City
8 as part of the permit process.

9 And you will learn that Mr. Geraci had to go to
10 court twice to get court orders that would get him onto
11 the property so the soil testing could be done so we
12 could move forward with the CUP application process.

13 Mr. Geraci, on the other hand, you will learn,
14 despite even after the lawsuit was filed, continued to
15 diligently prosecute the CUP application through his
16 team. He's going to testify that they were -- and they
17 did -- were instructed to move forward as fast as they
18 could to resolve the problems. But you will learn as a
19 result of the delays in the soils testing, they lost a
20 number of months off the CUP application process because
21 until they submitted the soils testing report, they
22 could not resubmit a CUP application to the City.

23 So the way it works is once you get through the
24 completeness review -- you'll learn once you get through
25 the completeness review of the application, then they go
26 forward with the review process where they have all
27 these different disciplines within the City, review
28 drawings, review the parking, review all the

1 requirements that they have to look at for a new
2 development on a property. They then provide you with
3 comments of things they want corrected or changed. You
4 then have to attempt to correct those, and then you
5 resubmit at one time.

6 Well, they could not resubmit until the soils
7 testing was done, and that's why there was a delay,
8 you'll learn. As a result, you'll hear about a
9 competing CUP application that started later, but it was
10 a competing CUP application on a nearby property. That
11 competing CUP application was able in the end, the
12 evidence will show, as a result of these delays, get
13 ahead of the CUP application for this property and get
14 approved first.

15 Mr. Geraci and Mr. Schweitzer will testify
16 about how they attempted to appeal the approval of the
17 competing CUP application because they felt there were
18 deficiencies in it. Mr. Schweitzer and Mr. Bartell
19 appeared at a planning commission appeal of that, which
20 is where you go to appeal the approval of the CUP
21 application. But they were unsuccessful.

22 The rules are you can't have a CUP -- I'm
23 sorry -- you can't have a dispensary within a thousand
24 feet of one another, and this nearby property was too
25 close. So once that planning commission appeal of the
26 competing CUP application was denied -- and that was in
27 December of 2018 -- there was nothing else to be done.
28 And Mr. Geraci had to give up on getting the CUP

1 application.

2 Now, finally -- and I appreciate your
3 patience -- you'll be presented with evidence of the
4 money that was extended by Mr. Geraci after he entered
5 into the written agreement with Mr. Cotton in an attempt
6 to get the CUP application submitted and approved.
7 He's -- we're going to be asking you to return a verdict
8 for Mr. Geraci for damages in the amount of the money he
9 spent in reliance on the promise in this written
10 agreement of November 2nd to -- to sell the property
11 conditioned upon getting the CUP approval. And we're
12 going to -- we're going to show in the evidence that it
13 was Mr. Cotton's interference with that process that
14 resulted in Mr. Geraci having invested that money and
15 then having lost it.

16 Thank you very much.

17 THE COURT: Thank you, Counsel.

18 All right. Counsel, would you like to give an
19 opening statement.

20 MR. AUSTIN: Yes, your Honor.

21 THE COURT: All right. Whenever you're ready.
22 (Opening statement on behalf of
23 Defendant/Cross-Complainant Darryl Cotton)

24 MR. AUSTIN: Good morning, everyone. Thank you
25 for being here. The jury is integral in our system for
26 resolving disputes. And that's all we're asking you to
27 do here.

28 And I think --

1 THE REPORTER: I'm sorry, Counsel. Could I
2 please get you to speak up or move closer, whichever is
3 easier for you. Thank you.

4 MR. AUSTIN: As you all know now, this case is
5 primarily about a contract for real property, and
6 presumably, this property could qualify as a marijuana
7 dispensary. However, what this case is really about and
8 what you may have already guessed already is this is a
9 case about greed. You're going to hear testimony during
10 this trial about Mr. Cotton's property that's qualified
11 for a conditional use permit or a CUP to operate the
12 marijuana dispensary.

13 You've already heard that the parties met mid
14 July, 2016, and they had a face-to-face meeting on
15 September 26th. And also Mr. Geraci's counsel has shown
16 you an agreement following that face-to-face meeting
17 where Mr. Cotton was sent a proposed contract. So this
18 is in September. This is a full two-page contract with
19 a multitude of terms. Counsel only showed you the one
20 section requesting 10 percent, but it is a two-page
21 contract. It's just a proposal. It's just a working
22 document. He calls it a memorandum of understanding
23 based on their conversation.

24 At no point does Mr. Geraci send any revisions,
25 suggestions, or have any complaints to that document.
26 And they continue to communicate for another five weeks.

27 So you will also hear testimony from Mr. Cotton
28 other parties had been in contact with him over this

1 property, because in San Diego, only a very limited set
2 of properties can qualify for a CUP permit for the
3 marijuana dispensary, and his location just so happened
4 to be in the sweet spot, so to speak.

5 Mr. Cotton is going to tell you why he picked
6 Mr. Geraci over potential buyers. And what he's going
7 to tell you is that he chose Mr. Geraci primarily for
8 two main reasons: These reasons are specified in his
9 memorandum of understanding that he sent on
10 September 26th.

11 Mr. Geraci claimed to also have other marijuana
12 dispensaries, and he knew about their operation and that
13 he would be the most qualified buyer and most likely
14 person to have a CUP approved.

15 Mr. Geraci also offered to give him a 10
16 percent equity stake in the property with also a
17 minimum 10,000-dollar distribution per month. And
18 Mr. Cotton knows that the CUPs presumably in San Diego
19 are supposed to be good for a period of 10 years. So
20 he's looking at a significant income with just a 10
21 percent equity stake.

22 An equity is different than just profit
23 sharing. It also means ownership. So, essentially,
24 they were entering into a joint venture.

25 You will hear about Mr. Geraci asking
26 Mr. Cotton to sign an ownership document prior to
27 finalizing their agreement to clear the so-called zoning
28 issue. In fact, he was shown that exhibit, and in that

1 exhibit, Rebecca Berry signs off as on the -- the
2 ownership disclosure statement as an owner of the
3 property. Mr. Cotton signed this because he was told
4 that it was a necessary step in order to get the CUP
5 approved.

6 That document was dated October 31st.

7 And as you have heard, on November 2nd, 2016,
8 as you were shown on the board, there's a three-sentence
9 document when Mr. Geraci gave Cotton \$10,000. This date
10 is very important to the trial. This is the date that
11 Mr. Geraci and Mr. Cotton agreed to certain terms, and
12 Mr. Geraci paid a 10,000-dollar deposit.

13 Mr. Cotton will tell you that this was only a
14 partial deposit. Mr. Cotton will tell you that Geraci
15 had promised him a 50,000-dollar deposit down and had
16 Mr. Cotton come in but then at the last minute, he said
17 he only had \$10,000. And he asked if that would be
18 okay. And it was -- it was told to you guys that this
19 contract was drafted jointly, but Mr. Cotton will
20 testify that when he came in, this document was already
21 drafted. To him, it looked like a receipt, he
22 got \$10,000, and notarized it. It was \$10,000 in cash,
23 mind you. So signing a receipt was completely
24 reasonable. It was notarized. He left. It was an
25 in-and-out interaction. And Mr. Geraci did not provide
26 a copy to Mr. Cotton of that receipt as he left. In
27 fact, he got an email a few hours later, and then when
28 Mr. Cotton noticed it, he saw that on the email, it was

1 written as a contract. So, obviously, he had
2 reservations about that language. So he just wanted to
3 be clear that not all terms were specified within that
4 email.

5 So in that email, which you were also shown,
6 Mr. Cotton says, "I just want to" -- "I want you to
7 acknowledge that the 10 percent equity stake will be
8 included in any final agreement." That language, "in
9 any final agreement," shows his knowledge and intent
10 that this not be construed as a final agreement. This
11 was a three-sentence document. He had already sent a
12 multi-page document a month and a half prior.

13 What counsel left out when describing
14 Mr. Geraci and Ms. Berry is that Mr. Geraci, in addition
15 to his tax and financial planning, he is also a
16 real estate agent. And Ms. Berry is a real estate
17 broker. This is important because this property is
18 potentially worth tens of millions of dollars over the
19 next several years. Do any of you think a real estate
20 agent would --

21 MR. WEINSTEIN: Objection. Argumentative.

22 THE COURT: Sustained.

23 MR. AUSTIN: Withdrawn.

24 Anyway, this is a property worth millions of
25 dollars. It contains typographical errors. The last
26 sentence -- the last line of that three-sentence
27 paragraph says Mr. Cotton is not going to enter into any
28 contacts with anyone on the property. Presumably, he

1 meant contracts. This was something that was whipped
2 together. It looks like nothing more than a receipt.
3 And only because some of the terms are contained within
4 that document are they able to look back at it and try
5 to tell you that this is a fully binding, integrated
6 contract, which is an incredulous assertion.

7 As this trial goes on, the judge is going to
8 tell you to look at the intent of the parties -- did
9 they intend to enter into a contract? Did they intend
10 on certain terms to be entered into that contract. We
11 have document evidence and emails sent that very day
12 that this document was signed in which Mr. Cotton states
13 equivocally that he wants all terms included in a final
14 contract to which shortly thereafter Mr. Cotton -- or
15 Mr. Geraci -- I apologize -- responds, no, no problem at
16 all. You were shown that email.

17 In that email, I would say there was, like, a
18 rather large paragraph, and Mr. Geraci expects you to
19 believe that --

20 MR. WEINSTEIN: Objection. Argumentative.

21 MR. AUSTIN: With --

22 THE COURT: Overruled.

23 MR. AUSTIN: Okay. Mr. -- Mr. Geraci is going
24 to ask you to believe that he was only responding to the
25 first eight or nine words of this entire paragraph when
26 he says, no, no problem at all. You're supposed to
27 believe that he is referring to, like, oh, it was good
28 to see you today.

1 MR. WEINSTEIN: Objection. Argumentative.

2 THE COURT: As phrased, sustained.

3 MR. AUSTIN: Mr. Cotton's email to Mr. Geraci
4 was over a paragraph long, and it talked in great detail
5 about some of his other expectations and how, at
6 minimum, in a final agreement, he would like for a 10
7 percent equity stake to be included in their final
8 contract to which Mr. Geraci, whether it be on his phone
9 or late at night, regardless, he responded, no, no
10 problem at all.

11 You're -- you will be told by Mr. Geraci
12 he's -- I anticipate he will testify that the next day
13 on November 3rd, he made a phone call to Mr. Cotton.
14 And he's going to say that Mr. Cotton orally agreed that
15 he didn't need any of those terms, but a problem will
16 arise when I introduce an exhibit also on November 3rd,
17 which is another email where they basically reiterate
18 that phone conversation, and that term is never
19 discussed. In fact, what is discussed is potentially
20 branding products when they're going to be working
21 together if this dispensary goes through.

22 What you will also see and what has been
23 discussed by opposing counsel is there's an attorney
24 named Mrs. Austin, who created multiple drafts of
25 contracts that were delivered to Mr. Cotton. And the
26 dates of those drafts are months after the November 2nd
27 agreement. You will see a chain of text messages.
28 You'll see a chain of emails. Never once does

1 Mr. Geraci refer back to this November 2nd document
2 which we assert is a little more than a receipt. He
3 never says, Mr. Cotton, why are you asking for more?
4 They're trying to say that he was pressuring Mr. Geraci
5 into including more terms and that he was extorting him
6 when in fact he never has any qualms or issues with
7 Mr. Cotton's requests for what they had originally been
8 agreeing upon. Keep in mind, they had known each other
9 from July to November before any money is exchanged.
10 All these terms Mr. Cotton had been consistent with the
11 entire time, and after that date, all the way to March
12 when this lawsuit was filed, he was also just requesting
13 the same things that were written in his memorandum of
14 understanding. And he will testify to all the things
15 that -- that were scuds and expected.

16 It's also important to note that the CUP
17 application was initially submitted on October 31st
18 without Mr. Cotton's knowledge.

19 Mr. Geraci had represented to Mr. Cotton that
20 he would get the full 50,000-dollar deposit before --
21 before the application could go through, and he was also
22 told that unless the zoning issue was resolved, an
23 application could not even be submitted.

24 Ultimately, you will note that Mr. Geraci's
25 case is incredulous because of the emails and text
26 messages between Mr. Cotton and Mr. Geraci, the multiple
27 draft revisions between February and March of 2017.
28 When Ms. Austin was emailing drafts to Mr. Geraci and

1 Geraci was sending those to Mr. Cotton for his final
2 agreement, Mr. Cotton was responding back and putting in
3 his suggestions and edits. And then he would get a
4 revision back with some of those suggestions and edits.
5 And it was clearly a back-and-forth situation where a
6 final agreement had not yet been reached.

7 Further, you will also hear testimony from a
8 man named Joe Hurtado. He is a transactional advisor
9 who met with Mr. Cotton and started working with them.
10 He spoke to Geraci's attorney, Gina Austin, who
11 confirmed that the final agreement had not yet been
12 reached and that she was working on reducing that
13 agreement to writing. Keep in mind the final agreement
14 had not yet been reached.

15 Ultimately, it wasn't until Mr. Cotton told
16 Mr. Geraci that he would be terminating the agreement
17 and selling the property to someone else after four
18 months of negotiation, asking for updates, asking for
19 the remainder of the deposit, asking that Mr. Geraci
20 confirm again that he would have an equity interest. It
21 wasn't until then that Mr. Geraci filed this lawsuit to
22 stop Mr. Cotton from being able to sell his property to
23 someone else who would give him what he was asking for
24 since they met.

25 Ultimately, ladies and gentlemen, the evidence
26 in this case is clear. The parties agreed to a joint
27 venture. Then Mr. Geraci attempted to reduce the
28 contract to writing over the course of four months, but

1 more importantly, over two separate occasions, there's
2 an attempt to change the deal that they had made in
3 November, which luckily for Mr. Cotton, he caught on to
4 and pointed out. Do not be distracted by its lawyers.
5 The judge will tell you what the lawyers say is not
6 evidence, not the questions we ask, not the opening
7 statements, not the closing arguments that we give. Do
8 not allow them to paint the picture using rhetoric and
9 distractions --

10 MR. WEINSTEIN: Objection. Argumentative.

11 THE COURT: Overruled.

12 MR. AUSTIN: A lot of their arguments will be
13 unsupported by the evidence, I suspect. I am confident
14 that once you review the communications between
15 Mr. Cotton and Mr. Geraci on that alone, the only
16 verdict you will be able to return is one in favor of
17 Mr. Cotton on all causes of action. Thank you.

18 THE COURT: All right. Thank you, Counsel.

19 All right. Ladies and gentlemen, we're going
20 to take our morning break at this time. It's
21 about 10:15. When we do get back, we'll begin with the
22 plaintiff's case in chief and begin with the first
23 witness.

24 Do not form or express an opinion or discuss
25 the case, if you do, so with your fellow jurors. We'll
26 be in recess now for 15 minutes.

27 (Discussion off the record.)

28 THE COURT: All right. The jury is out of the

1 courtroom. Counsel, we'll be in recess now.

2 (Recess from 10:12 a.m. to 10:24 a.m.)

3 THE COURT: All right. Counsel, do you need to
4 see the Court for any reason?

5 MR. WEINSTEIN: Yes, your Honor.

6 So Plaintiffs would ask that nonsuit be granted
7 on behalf of Ms. Berry. There's been no mention of her,
8 no proffer or statement in the opening statement that
9 she made any representations of any kind to anybody. In
10 fact, there was barely a recitation of that evidence as
11 it relates to Mr. Geraci, something about relying on the
12 fact that he owed -- said he owed a number of
13 dispensaries. That was the only thing that was said as
14 to Mr. Geraci.

15 As to Ms. Berry, nothing. And there has to be
16 evidence of a direct false misrepresentation to
17 Mr. Cotton. And there's been no indication in the
18 opening statement that there's going to be any proof of
19 that.

20 And, your Honor, I'm sorry. We actually
21 prepared a very short brief on the issue. May we
22 present that.

23 THE COURT: You bet. Well, yes. But my deputy
24 is not here.

25 So, Counsel, I agree with Plaintiff's counsel.
26 I don't recall hearing any references to Ms. Berry in
27 your opening statement.

28 MR. AUSTIN: I did make two references. I

1 talked about how she was on the ownership disclosure
2 statement, which is like the initial application for the
3 CUP. Granted, that was brief. But I also did mention
4 how she's a real estate agent and that she works in
5 Mr. Geraci's --

6 MR. COTTON: Broker.

7 MR. AUSTIN: I did say broker. And that she
8 worked in Mr. Geraci's office.

9 Essentially, she was being used as a proxy for
10 Mr. Geraci. This whole thing because he had represented
11 to Mr. Cotton that he could not have his name on the CUP
12 application because he was an enrolled agent with the
13 IRS. But I did mention her, and I think evidence is
14 going to show that, you know, she is integral in his
15 ability to purchase this property to go for the
16 condition precedent, which is the CUP.

17 THE COURT: All right. Well, it's one thing
18 for her to be connected to Mr. Geraci or his business,
19 but it's something else for her to have allegedly
20 engaged in conduct that would subject her to individual
21 or direct liability.

22 MR. AUSTIN: But she ratifies it by having her
23 name on the entire CUP application, which is the whole
24 purpose of Mr. Geraci purchasing the property or
25 attempting to acquire the property.

26 THE COURT: All right. If that's the full
27 extent of the evidence that you base your claims against
28 Ms. Berry individually --

1 MR. AUSTIN: And by her signing this
2 disclosures agreement -- I can pull it out -- it says
3 that she has to have an ownership interest. Like she
4 put -- by signing two or three of these documents, she's
5 essentially also committing fraud because the City of
6 San Diego --

7 MR. WEINSTEIN: Your Honor, do you wish --
8 well, may I respond briefly?

9 THE COURT: Well, there were a couple of
10 references to Ms. Berry. But I'm --

11 MR. WEINSTEIN: The fact that she -- may I add
12 the fact that she's on the ownership disclosure
13 statement is not a representation to Mr. Cotton. The
14 fact that he wants to argue she's a proxy, he's going to
15 argue that because we've stipulated she's an agent.

16 THE COURT: All right.

17 MR. WEINSTEIN: There's no basis for a
18 direct -- or basically no liability on either of the
19 tort claims.

20 THE COURT: So you accused Ms. Berry of fraud.
21 What representation did she make to Mr. Cotton that you
22 allege to have been fraudulent? That's what I -- and,
23 Counsel, help me out, if I missed something. Did you
24 tell the jury that she made a statement that you
25 consider to be fraudulent to Mr. Cotton?

26 MR. AUSTIN: I did not tell the jury that, your
27 Honor.

28 THE COURT: All right. See, it's your theory.

1 So merely because she's either connected to Mr. Geraci
2 or she signs a document, that's not going to be enough
3 for you to sustain or make a prima facie showing that
4 would give that part of your case to the jury.

5 So do you have anything -- if I were to grant
6 your request to reopen opening, is there anything that
7 you could tell the jury that would get you beyond a
8 nonsuit motion for Ms. Berry in fraud?

9 MR. AUSTIN: Only to reiterate what I told you.

10 THE COURT: All right. I'm not persuaded that
11 that would be enough. Now, granting a nonsuit motion
12 after an opening statement is a very strong ruling. So
13 I'm not leaping into this, I can assure you. But if
14 you're not telling me that if I were to give you leave
15 to reopen you could say something that would get you
16 beyond a nonsuit motion, it seems to the Court that it
17 would be a futile exercise to engage in.

18 So one more time, is there anything else that
19 you could tell the jury about Ms. Berry about fraudulent
20 statements? That's the core of your fraud case against
21 Ms. Berry. She may have made intentionally or
22 negligently fraudulent statements to Mr. Cotton?

23 MR. AUSTIN: Just by having her name on all of
24 the CUP paperwork.

25 THE COURT: You can file this.

26 The Court grants the motion for nonsuit in
27 favor of Ms. Berry as a cross-defendant only and against
28 Mr. Cotton as a cross-complainant only.

1 MR. WEINSTEIN: Right. And that's as to the
2 two tort claims that she's named in?

3 THE COURT: The only tort claims -- well,
4 remind me.

5 MR. WEINSTEIN: She's not on the false claim.

6 THE COURT: How about the declaratory relief?

7 MR. WEINSTEIN: That's the third claim. I'm
8 not sure what they're seeking declaratory relief of at
9 this stage.

10 I was only seeking it on the --

11 THE COURT: Fraud claims?

12 MR. WEINSTEIN: -- for the fraud claims. As to
13 the declaratory relief, my argument is completely
14 separate as to that, as I don't know what relief is
15 required in terms of declaratory relief.

16 THE COURT: If that's encompassed, that motion
17 is denied without prejudice of you renewing a motion at
18 a later time on the subject of the declaratory relief
19 action.

20 So just give me one moment.

21 All right. So Ms. Berry's name will not appear
22 on the verdict form as a result of the Court's ruling.

23 All right. Madam Deputy, are the jurors ready?

24 THE BAILIFF: Yes.

25 THE COURT: All right. You can bring them in.

26 All right. Welcome back, everyone. All of our
27 jurors are present.

28 Counsel, your first witness will be?

1 MR. WEINSTEIN: The plaintiffs call Larry
2 Geraci.

3 THE COURT: All right. Good morning,
4 Mr. Geraci.

5 Larry Geraci,
6 being called on behalf of the plaintiff, having been
7 first duly sworn, testified as follows:

8
9 THE CLERK: Please state your full name and
10 spell your first and last name for the record.

11 THE WITNESS: Larry Geraci. L-a-r-r-y
12 G-e-r-a-c-i.

13 THE COURT: All right. Thank you very much.
14 Counsel, whenever you're ready, please begin
15 your examination.

16 MR. WEINSTEIN: Thank you.

17 (Direct examination of Larry Geraci)

18 BY MR. WEINSTEIN:

19 Q Good morning, Mr. Geraci.

20 A Good morning.

21 Q How old are you?

22 A Fifty-eight.

23 Q And are you married?

24 A Widowed.

25 Q Do you have any children?

26 A Five.

27 Q What are their ages?

28 A 33, 28. I have 25, 19 and 12.

1 Q And are you currently employed?

2 A Yes.

3 Q Before I get there, did you -- did you graduate

4 from high school?

5 A Yes.

6 Q Where?

7 A University High School.

8 Q When?

9 A 1979.

10 Q Okay. And did you attend college at all?

11 A Yes.

12 Q What college did you attend?

13 A Grossmont and San Diego City.

14 Q Did you receive a degree from either of those

15 institutions?

16 A No, I didn't.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom? By whom?

20 A Tax and Financial Center.

21 Q And what type of business is Tax and Financial

22 Center?

23 A We prepare tax returns and bookkeeping services

24 and payroll services.

25 Q And who owns that business?

26 A I do.

27 Q And how long have you owned that business?

28 A I've owned that business since 2001.

1 Q And currently how many employees do you have?

2 A Eight employees.

3 Q Before I forget, how long have you been engaged
4 in preparing taxes for people?

5 A Forty years.

6 Q Now, you said you have eight employees. Are
7 they divided into any departments within your business?

8 A Yes. I've got two employees in accounting, one
9 employee in payroll. I've got two administrators and
10 two more people in bookkeeping.

11 Q So when you say you have two people in
12 accounting, what services do the people in accounting
13 provide?

14 A Bookkeeping.

15 Q For whom?

16 A Businesses.

17 Q Okay. And the other folks are in the tax
18 preparation side of the business?

19 A Yes.

20 Q Okay. And who do they prepare taxes for?

21 A My clients.

22 Q And who -- what types of clients?

23 A Individuals and businesses, small corporations,
24 and small partnerships.

25 Q Okay. Now, do you currently hold any licenses
26 associated with tax preparation?

27 A Enrolled agent.

28 Q Is the answer yes?

1 A Yes.

2 Q And what license do you hold?

3 A Enrolled agent.

4 Q What is an enrolled agent?

5 A We are licensed by the Internal Revenue Service

6 to represent clients when they get audited by the IRS.

7 Q And is that a federal, or state license?

8 A That's a federal license.

9 Q And how long have you been licensed by -- as an

10 enrolled agent?

11 A Since 1999.

12 Q Now, have -- do you have a real estate license

13 currently?

14 A Yes. No. No.

15 Q Have you had a real estate license?

16 A Yes.

17 Q What kind of a real estate license?

18 A Salesperson.

19 Q And when did you hold that license?

20 A From 1993 to 2017.

21 Q Okay. And during that period of time, what

22 types of -- or how many transactions have you engaged in

23 where you were acting as a real estate agent?

24 A Probably under 10 since 1993.

25 Q And of those 10, are those residential, or

26 commercial transactions, or both?

27 A Both.

28 Q Now, have you, for your personal investment,

1 bought and sold real property?

2 A Yes, I have.

3 Q Have you served as your own real estate agent
4 in connection with any of those transactions?

5 A No.

6 Q Okay. Do you know Rebecca Berry?

7 A Yes.

8 Q And you see her in this courtroom?

9 A Yes.

10 Q And who is Rebecca Berry?

11 A She's my administrator.

12 Q And how long has she worked for you?

13 A Fourteen years.

14 Q And you said she was an administrator. What's
15 her role as an administrator?

16 A She's the front desk booking -- booking
17 clients' appointments, administering the bills when they
18 come in to the payables department. She's like the
19 gatekeeper of everything that comes into the office.

20 Q Have you ever owned a medical marijuana
21 dispensary?

22 A No, I haven't.

23 Q Have you ever operated or managed a medical
24 marijuana dispensary?

25 A No, I haven't.

26 Q Have you ever told Darryl Cotton that you owned
27 or managed a marijuana dispensary?

28 A No.

1 Q In connection with -- we'll get to it. But in
2 connection with the transaction, the sale of -- the
3 purchase and sale of his property, in connection with
4 any communications with Mr. Cotton, did you indicate to
5 him that you operated or owned multiple dispensaries?

6 A No, I didn't.

7 Q Did you talk to him about anybody within your
8 team that managed or operated dispensaries?

9 A No, I didn't.

10 Q Okay. Now, when did you first have any
11 communication with Darryl Cotton?

12 A About mid July.

13 Q And why did you contact -- first of all, what
14 year?

15 A 2016.

16 Q Why did you contact Mr. Cotton or have
17 communication with him in July of 2016?

18 A The team had identified a property on Federal
19 Boulevard that may qualify for a dispensary.

20 Q Okay. And you mentioned the team. What was
21 the team?

22 A Jim Bartell, Abhay Schweitzer, and Gina Austin.

23 Q And when did you form -- for what purposes was
24 that team formed?

25 A They were going to facilitate to proceed to get
26 the CUP on Mr. Cotton's property.

27 Q When did you first hire Mr. Bartell?

28 A In October of 2015.

1 Q Now, at that time, had you had any contact with
2 Mr. Cotton?

3 A No, I didn't.

4 Q So why did you -- well, first of all, can you
5 tell the jury who Mr. Bartell is, to your understanding.

6 A Mr. Bartell is a liaison lobbyist between
7 myself and the City.

8 MR. WEINSTEIN: Okay. I'm going to show the
9 witness a stipulated exhibit, Exhibit 1.

10 THE COURT: Any objection if Exhibit 20 is
11 admitted, Counsel?

12 MR. AUSTIN: No.

13 MR. WEINSTEIN: Exhibit 1. It's Exhibit 1.

14 THE COURT: Exhibit 1?

15 MR. WEINSTEIN: Yes.

16 THE COURT: Oh, I'm sorry. Any objection to
17 the admission of Exhibit 1?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 1 will be admitted.

20 (Premarked Joint Exhibit 1, Letter of Agreement
21 with Bartell & Associates dated 10/29/15, was
22 admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Geraci, there are books up there. If it's
25 easier for you, there are books up there.

26 THE COURT: Counsel, they may have been moved.
27 Do you want to approach?

28 MR. WEINSTEIN: If you need to look at the

1 books, let us know. We'll approach. If you can see the
2 screen, that's fine too.

3 THE WITNESS: Can we make that bigger?

4 THE COURT: Can you see that, Mr. Geraci?
5 All right.

6 BY MR. WEINSTEIN:

7 Q First of all, do you recognize that document?

8 A Yes, I do.

9 Q What is it?

10 A It's a contract between myself and Mr. Bartell.

11 Q And on the second page, there's a signature
12 over a typed name of Larry Geraci, with a date of
13 10-29-15. Is that your signature?

14 A Yes, it is.

15 Q Is that your handwriting with the date?

16 A Yes, it is.

17 Q And did you date it on or about October 29th,
18 2015?

19 A Yes, I did.

20 Q All right. Now, what services did you -- were
21 you hiring Mr. Bartell to perform pursuant to your
22 agreement with him?

23 A He had -- he was known in the community for --
24 for getting CUPs for other clients that I had heard of,
25 and also he does a lot of Code violations, things like
26 that, within the City to help residents in the City to
27 work them through Code.

28 Q How did you come to that information?

1 A Talking to Mr. Bartell.

2 Q Okay. How did you make contact with him the
3 first time? What brought you two together?

4 A I have a staff member -- I was at a business
5 meeting, and one of his staff members was there.

6 Q Who was that?

7 A Bianca Martinez.

8 Q Okay. And did you have a conversation with
9 her -- what conversation did you have with her that
10 related to Mr. Bartell?

11 A She explained to me what they do and their
12 successes of what they have done within the City.

13 Q With respect to what?

14 A Obtaining CUPs.

15 Q All right. Now, at that point in time, were
16 you interested in finding a property to obtain a CUP?

17 A Yes.

18 Q And when did you -- how did you become
19 interested in finding a property to obtain a CUP for
20 operation of a dispensary?

21 A Just talking to Bianca Martinez, listening to
22 their successes. And that's when I decided that I'd
23 like to employ them.

24 Q Okay. And what did they do after October of
25 2015 in connection with the services they were providing
26 you?

27 A We had met, and they started searching
28 properties in -- around the City to see if we could find

1 a property that would be a possible location.

2 Q And what -- at any point in time was a property
3 identified?

4 A Yes.

5 Q What was the first property that was
6 identified?

7 A Mr. Cotton's.

8 Q Okay. And when did that become identified to
9 you?

10 A That would be the following year, about July
11 approximately.

12 Q Okay. Now, after that property was identified,
13 what step did you take to move forward and explore
14 whether you were interested in purchasing it?

15 A We had Bianca Martinez look at the property and
16 was looking at a little bit of law. I also had -- I had
17 a builder take a look at also the zoning and take a look
18 that the property would be feasible, which would be if
19 it was close to churches, to schools, residential, just
20 how difficult the property would be.

21 Q Okay. Did you learn there were any issues with
22 the property after it was identified?

23 A We were made aware of that the zoning was a
24 problem and it could be a possible distance requirement
25 that had to be overcome from a residential.

26 Q Okay. So with respect to the zoning problem,
27 what was your understanding at that time of the zoning
28 issue, the zoning problem?

1 A That the area was not zoned correctly. It once
2 was, and then it wasn't. And I was informed that it was
3 City paperwork that was the problem.

4 Q And you mentioned an issue with respect to it
5 being too close to a property. Can you tell us what you
6 meant by that.

7 A It has to be 100 feet away from residential,
8 and it was only 90 feet away from residential.

9 Q Okay. Now, what activities, if any, did you
10 have your team do to investigate the feasibility of the
11 property?

12 A Well, putting the team together, they did their
13 own work, trying to see if these problems could be
14 overcome.

15 Q Okay. And at some point in time, did you have
16 a first contact with Mr. Cotton?

17 A Yes, I did.

18 Q When was that?

19 A About July 19th or 20th.

20 Q Okay. And how did that -- was that contact
21 face to face, or by phone, or text? How did you --

22 A That was by phone.

23 Q Okay. And who called whom?

24 A I called Mr. Cotton.

25 Q Why did you call Mr. Cotton?

26 A I wanted to discuss with him about purchasing
27 this property.

28 Q And can you tell me what was discussed by the

1 two of you in that first telephone conversation.

2 A I introduced myself, and I asked Mr. Cotton --
3 I told Mr. Cotton that I was looking to purchase
4 property, purchase his property for a possible
5 dispensary in that location.

6 Q Okay. Anything else? Did he respond to that?

7 A And I -- and I asked him if he was interested
8 in selling his property.

9 Q And what did he say?

10 A He said yes.

11 Q What else did either one of you say during that
12 conversation? Just take us through it.

13 A I was -- I wanted to get down to very quickly,
14 you know, what he was asking for his property. And he
15 said \$800,000. And I had asked him if there was any --
16 was he in any other contracts at the time or any
17 interest. And he said, yes, people have been
18 interested.

19 And he said you're going to have a zoning
20 issue. And I said I was aware of that.

21 Q He told you you were going to have a zoning
22 issue?

23 A Yes.

24 Q Okay. What exactly what was discussed between
25 the two of you about the zoning issue?

26 A Since we had both known that the zoning issue
27 was going to be a problem, we didn't spend a lot of time
28 on that. But he did -- we both agreed that, yes, we

1 heard of -- he knew of the zoning issue, and I knew it
2 as well.

3 Q Did he tell you how he knew there was a zoning
4 issue?

5 A No, he did not.

6 Q Did you have any discussion in that
7 conversation about why -- what purpose you wanted to
8 purchase the property for?

9 A Yes. I told him I wanted to put a dispensary
10 there, and he seemed very knowledgeable about the whole
11 situation to begin with. And I, frankly, just asked him
12 why he didn't do it himself.

13 Q And what did he say to you that made you
14 believe that he was knowledgeable about the subject?

15 A He knew -- he knew a lot of the zoning codes
16 that I was not familiar with, because the team was
17 taking care of that. So he was talk -- talking very --
18 extremely knowledgeable on the subject and the zoning.

19 Q Did you have any discussion with him about
20 medical marijuana dispensaries in particular?

21 A Well, what it was is when I asked him why he
22 did not do it himself, he said because he was in
23 litigation with the City. He told me that he had rented
24 to a dispensary on his property, an unlicensed
25 dispensary, and that he was currently in a lawsuit with
26 the City.

27 And I had responded back to him I got the same
28 kind of lawsuit on two of our properties that we have.

1 Q So you had lawsuits brought by the City against
2 you on two properties?

3 A Yes.

4 Q Okay. And what was the situation in those
5 cases? How -- did you own the properties?

6 A Yes. I had two properties.

7 Q Were you the owner of the dispensaries?

8 A No.

9 Q Okay. Who owned the dispensaries?

10 A The -- there was a tenant. I don't remember
11 their names.

12 Q Okay. Do you remember any other discussion
13 with Mr. Cotton at that time about the issues the two of
14 you had had with the City suing you with respect to
15 having tenants at the property to operate --

16 A It was kind of a very friendly phone call
17 because we both were in the same boat, if you will, that
18 the City didn't send out any kind of notices. They
19 didn't send out a warning. They just hit you with a
20 very, very aggressive lawsuit that, to me, was just
21 unbelievable. But we both had discussed that. And
22 we -- I asked him if he had settled his yet, and he said
23 it wasn't settled yet. And I said I believe we have
24 settled ours, and I think you just need to do it quickly
25 because the City is not giving up on this.

26 Q Okay. Now, did you discuss at all with him
27 during that conversation your plans regarding a medical
28 marijuana dispensary?

1 A Just that we had to -- before I could enter
2 into any contracts -- or that I wasn't interested in any
3 contracts until we were to do more research on the
4 property to see if it still would be viable. There were
5 still a number of issues with the property. Let alone
6 tearing the whole building down. But, of course, the
7 residential problem and the zoning was the biggest
8 problem that we had.

9 Q Did you discuss with him the team that you had
10 at that time?

11 A Yes. He --

12 Q What was discussed about that?

13 A He asked me, you know, what my plan was because
14 they had not had any success with him or other
15 investors. And I said I had had a team in place. And
16 he said who? And I said I had Jim Bartell. And he
17 immediately knew who Jim Bartell was.

18 Q Did he tell you how he knew who Jim Bartell
19 was?

20 A He didn't -- he said he had heard of him.

21 Q Okay.

22 A Because Jim is very -- in the -- in the
23 cannabis industry, he's known very well. And he was one
24 of the main people in the City who has been successful
25 at getting CUPs for his clients.

26 Q Okay. Go on. You were talking about what you
27 were discussing about a marijuana dispensary during that
28 conversation, and I cut you off.

1 **Anything else that was discussed?**

2 A I believe that was it.

3 **Q Do you recall whether you had talked to him**
4 **about anybody else on your team at that time?**

5 A I don't recall exactly, but I believe I would
6 have told him about the whole team. Jim Bartell, we
7 just got stuck on him because it was a moment of, oh,
8 yes, we know Jim. And then it was -- I believe I said
9 Abhay Schweitzer and Gina Austin. But --

10 **Q You don't recall?**

11 A I don't recall.

12 **Q Okay. Anything else that was said in that**
13 **conversation that you haven't already told us?**

14 A Oh. I did ask him if he had any long-term
15 tenants on the property because that would be a problem
16 if we went to build something or we had to buy tenants
17 out. He said he had no long-term tenants. He said he
18 was the only one on the property, and he said he was a
19 grower.

20 **Q Okay. And did he explain to you what he meant**
21 **when he said he was a grower?**

22 A I said to him are you growing marijuana on the
23 site? And he said, yes.

24 **Q And anything else that was discussed between**
25 **the two of you about him being a grower?**

26 A I said if we get further along -- well, not --
27 no.

28 **Q Did you discuss in that conversation what**

1 further steps might be taken between the two of you?

2 A I said that we're going to need to keep in
3 contact because the team has got to start getting on the
4 property, taking measurements, you know, surveyors.
5 There was just a whole host of things that they had to
6 start doing to see if this property -- if it was viable
7 to move forward on the property.

8 Q And what was his response to that?

9 A He said, "Okay."

10 Q Had you discussed with him whether you would
11 contact him again, what the next step would be?

12 A I gave him my phone number, and I said that
13 we'll be contacting him or maybe somebody on the team
14 will be contacting him to get access to the property.

15 Q Okay. After -- anything else you recall about
16 that initial conversation?

17 A I did say if we get far enough along in this
18 process, he's going to have to move his grows.

19 Q Okay. And did -- and I don't recall if I asked
20 you this. I apologize. Did he respond as to what price
21 he would entertain selling the property?

22 A Yes. That was \$800,000.

23 Q Okay. Was there any other possible term of the
24 purchase that was -- of the possible purchase that was
25 discussed at that time?

26 A Nothing else. I just told him that it was
27 reasonable, it's within my budget.

28 Q Okay. After that first conversation, did you

1 continue to have communications with Mr. Cotton?

2 A Yes. I was giving him updates as we -- through
3 the weeks and giving him updates. And, actually, the
4 next day, he was sending me pictures of all his grows.

5 MR. WEINSTEIN: Would you bring up Exhibit 5.
6 Your Honor, I offer 5. It's been stipulated
7 to.

8 THE COURT: Any objection, Counsel?

9 All right. Exhibit 5 will be admitted into
10 evidence.

11 (Premarked Joint Exhibit 5, Text messages
12 between Larry Geraci and Darryl Cotton from
13 7/21/16 to 5/08/17, was admitted into evidence.)

14 BY MR. WEINSTEIN:

15 Q Okay. Now, I do think you have the book in
16 front of you.

17 MR. WEINSTEIN: May I approach, your Honor?

18 THE COURT: Yes. Absolutely.

19 BY MR. WEINSTEIN:

20 Q Mr. Geraci, this is a multiple-page document.
21 So would you look at it in your book and then tell me
22 what -- if you recognize it. It will be under Tab 5.

23 A Yes, I do.

24 Q Okay. What is -- how many pages are there?
25 Just go to the end of the page. There are Bates numbers
26 at the bottom. If you tell me how many pages there are.

27 A Oh. This is 5-025. And the first one is -- 25
28 pages.

1 Q Okay. Now, what is Exhibit 5?

2 A It's text messages between Mr. Cotton and
3 myself.

4 Q Okay. And where did those text messages come
5 from?

6 A Our cell phones.

7 Q When you say "our cell phones," whose cell
8 phone?

9 A My cell phone.

10 Q Okay. And how was this document prepared, if
11 you know?

12 A These are screenshots that have been printed.

13 Q Okay. Now, if you look at -- you said you
14 communicated with him the next day after you spoke with
15 him on the phone. Would you look at page 1, please.

16 And would you highlight the first. All right.
17 The very first -- first of all, can you tell what the
18 date range is of these text messages?

19 A On this page, it would be July 21st to -- all
20 the way -- this first page is July 21st.

21 Q Okay. And then are those the text messages in
22 chronological order?

23 A Yes, they are.

24 Q So what's the last one that's shown on page 25?

25 A May 8th, 2017.

26 Q All right. Does Exhibit 5 represent all your
27 cell phone text messages between you and Mr. Cotton
28 during the period of July 21st, 2016 through May 8,

1 2017?

2 A Yes, they do.

3 Q Okay. Now, focusing on the one on the top of
4 page 1, is that the first text message you received from
5 Mr. Cotton?

6 A Yes, it is.

7 Q Okay. And what did you understand was being
8 depicted here?

9 A This was the beginnings of a grow for
10 Mr. Cotton.

11 Q Okay. And do you know how he sent you pictures
12 of his grow?

13 A He was just sending me what he was doing on his
14 property?

15 Q I'm now having you look at page 2. Do you see
16 the text, the photographs at the top of the page?

17 A Yes.

18 Q Okay. And what are the dates of those?

19 A These are July 25th.

20 Q Of what year?

21 A 2016.

22 Q Okay. And do you remember receiving these
23 photos?

24 A I'm sorry?

25 Q Do you remember receiving these photos from
26 Mr. Cotton?

27 A Yes.

28 Q And, again, what did you understand the reason

1 was he was sending these to you?

2 A He was just showing me his success at his
3 grows.

4 Q All right. Now, I'm not going to have you go
5 through every page, I promise. But we talked about the
6 July -- mid July telephone conversation where you
7 discussed 800,000.

8 When is the next time you had any conversation
9 or discussion with Mr. Cotton about terms of a potential
10 purchase?

11 A The next time was September 20th, I believe.

12 Q Okay. And what kind of -- how was that -- how
13 did you speak with him at that time? Was it -- was it
14 by phone? Face to face?

15 A That was a face-to-face meeting.

16 Q Had you met with Mr. Cotton face to face before
17 September 20th, 2016?

18 A No.

19 Q All right. Now, at that meeting, did you
20 discuss the terms of the potential purchase of the
21 property?

22 A Yes.

23 Q Okay. Now I'm going to move away from that.
24 Between the July 21st, I think you said, or July 20th
25 phone call where you discussed 800,000, and this
26 face-to-face meeting, did you have communications with
27 Mr. Cotton that were about things other than the terms
28 of the potential purchase?

1 A Yes.

2 Q So what kind of things did you communicate with
3 him about during that period of time?

4 A Mr. Cotton expressed that he would like to have
5 me invest -- or he had investors and he'd like me to
6 invest in his grow business.

7 Q And were those communications by phone? By
8 text? By email? How did you communicate with him?

9 A Those were -- along with the pictures, we would
10 have conversations about his grows and him wanting to
11 bring me into the grow business and how he would supply
12 his product to the dispensary.

13 Q Okay. And did you ever -- during those
14 conversations, did you have a response to those ideas?

15 A I just said that, you know, we're getting so
16 far ahead of ourselves here. We've got years to go, and
17 this is -- this is not even -- I can't consider that.

18 Q When you said you've got years to go, what did
19 you mean by that?

20 A The process is going to take some time.

21 Q What process?

22 A Going through the whole CUP process. We have
23 not even submitted the application yet. We're still
24 doing our -- our work on just trying to see if we can
25 get this thing to a stage where we could submit the CUP.

26 Q Okay. And did you have an understanding at the
27 time of what the likely time frame would be to submit a
28 CUP application and get it processed?

1 A I left that up to the team.

2 Q Okay. Now, at the time in terms of your
3 planning, if a CUP had been able to be approved on a
4 property, would there have to be other steps taken
5 before a dispensary could be opened?

6 A Yes. On this location, there was quite a bit
7 of work to do.

8 Q What would you have to do?

9 A Currently, we'd have to tear the entire
10 building down. There was grading to do. There was
11 some -- I believe there was some water issues of
12 drainage. It would -- to build the building, I think
13 our time frame was going to be almost two years just to
14 get the building up.

15 Q All right. But at this point in time, you
16 haven't even submitted the CUP application. Correct?

17 A No, I haven't.

18 Q Now, other than talking about his grows or him
19 asking you to invest in his grows, what other
20 communications did you have during that time period
21 between the first call and this face-to-face meeting on
22 September 20th about other subjects?

23 A We -- we talked about mainly Mr. Cotton was
24 talking about his grows pretty much straight through.
25 He talked about possibly getting a percentage --
26 switching percentages from his grow to the dispensary.
27 And I just told him I wasn't prepared to do that. And
28 that was just thrown in every now and then.

1 Q Did you have any communications with him during
2 that time about feasibility issues like zoning or the
3 setback you talked about?

4 A Yes. That's what the team was. That's the
5 updates I was giving him through the process.

6 Q Okay. Let's move forward to the
7 September 20th, I think you said 2016, face-to-face
8 meeting. Where did that occur?

9 A In my office.

10 Q And who was present?

11 A Mr. Cotton and myself.

12 Q And where was it within your office?

13 A In my actual office.

14 Q All right. Now, what was the purpose of that
15 meeting?

16 A We had not met before. So we just wanted to
17 sit down and talk and just maybe hash out a few things
18 on what our terms were, but the meeting quickly went to
19 Mr. Cotton and his grows and what he was, you know,
20 wanting to do with his grows. It was --

21 Q How long -- how long did that meeting last?

22 A About 30 minutes.

23 Q Okay. You need to wait for me to --

24 A Well --

25 Q -- finish my question, because the court
26 reporter has to type everything --

27 A Okay.

28 Q -- and I don't want any bad looks.

1 All right. So just tell -- tell me what you
2 recall being discussed between you and Mr. Cotton at
3 that September 20th, 2016 face-to-face meeting.

4 A He was trying to get me to invest in his grow
5 or he was going to take 10 percent of the dispensary
6 and 10 percent in the -- I was going to take 10 percent
7 in the grow. And I just said I still can't do that.
8 And he said, well, let me put a proposal together for
9 you.

10 Q Was anything else discussed in that 30-minute
11 meeting that you recall?

12 A We kind of went over the process. He was
13 very -- you know, we were going through the process of
14 what the team had been doing and updates on what they
15 were finding out and what they could do.

16 Q Okay. You said he -- you mentioned that he
17 said he wanted to put something together. I don't want
18 to put words in your mouth. What were you telling me?

19 A He wanted to put together a proposal.

20 Q Okay. And your response to that?

21 A I said just go ahead and email me a proposal.

22 Q And did he do that?

23 A Yes, he did.

24 Q Okay. Before I leave this, do you recall
25 anything else being discussed in the September 20th,
26 2016 meeting that you haven't already told me?

27 A I can't recall at this point.

28 Q Okay. But he did then send you a proposal?

1 A Yes, he did.

2 Q Do you recall when that was?

3 A I think that was on the 24th.

4 Q Okay. Well, we'll get there.

5 MR. WEINSTEIN: So would you show him
6 Exhibit 8, please.

7 Your Honor, I'd like to offer Exhibit 8. It's
8 been stipulated.

9 THE COURT: Any objection?

10 MR. AUSTIN: No, your Honor.

11 THE COURT: Exhibit 8 will be admitted.

12 (Premarked Joint Exhibit 8, email to Larry
13 Geraci from Darryl Cotton re 6176 Federal Blvd
14 property, dated 9/21/16 with attached letter to
15 Dale and Darryl Cotton from Kirk Ross regarding
16 payoff, dated 9/21/16, was admitted into
17 evidence.)

18 BY MR. WEINSTEIN:

19 Q Mr. Geraci, I want you to look at Exhibit 8.
20 And tell me if you recognize it.

21 A Yes, I do.

22 Q Okay. And what is Exhibit 8?

23 A It's an attachment -- it's -- it's an email
24 with the attachment of the proposal -- with the
25 proposal.

26 Q Okay. And do you recall why Mr. Cotton was
27 sending you this email?

28 A He said he was going to send over a proposal.

1 Q Okay. Well, we haven't gotten to that. Can
2 you look at the attachments and let me know if that
3 refreshes your recollection. The attachments would be
4 at the back of the email.

5 A Oh. Yes. These are -- these are the -- it
6 looks like the liens on the property.

7 Q Had you had discussions about him sending you
8 information regarding the liens on the property?

9 A Yes, I did.

10 Q When did that discussion take place?

11 A It, I'm sure, happened during one of my phone
12 calls when we were talking.

13 Q And why did you want to know what liens were on
14 the property?

15 A I was looking to see if there was a judgment on
16 the property as well.

17 Q Okay. And what did you determine?

18 A I didn't see a judgment on the property for the
19 current lawsuit.

20 MR. WEINSTEIN: Okay. Would you go to -- show
21 Exhibit 9.

22 Your Honor, I'd like to offer Exhibit 9.
23 Again, it's been stipulated to.

24 THE COURT: Any objection?

25 MR. AUSTIN: No, your Honor.

26 THE COURT: Exhibit 9 will be admitted.

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 9, email to Larry
2 Geraci from Darryl Cotton re GERL MAIN -
3 Invitation to collaborate, dated 9/26/16, was
4 admitted into evidence.)

5 BY MR. WEINSTEIN:

6 Q So, Mr. Geraci, would you look at Exhibit 9 and
7 tell me if you've seen it before.

8 A Yes, I have.

9 Q What is it?

10 A This is a Dropbox or where you can pick up
11 documents.

12 Q Who sent this to whom?

13 A Darryl Cotton sent it to me.

14 Q And on what date?

15 A On 9/26.

16 Q Okay. And was there anything attached or in
17 the Dropbox that you found?

18 A Yes. I found a proposal.

19 MR. WEINSTEIN: Your Honor, I'd like to offer
20 Exhibit 10, please.

21 THE COURT: Any objection?

22 MR. AUSTIN: No objection.

23 THE COURT: Exhibit 10 will be admitted.

24 (Premarked Joint Exhibit 10, Draft Services
25 Agreement Contract between Inda-Gro and GERL
26 Investments, dated 9/24/16, was admitted into
27 evidence.)

28

1 BY MR. WEINSTEIN:

2 Q Mr. Geraci, if you look -- have you seen
3 Exhibit 10 before?

4 A Yes, I have.

5 Q And what is it?

6 A This is a proposal from Mr. Cotton.

7 Q And did you receive it in the Dropbox with the
8 email from September 20th?

9 A Yes, I did.

10 Q Okay. And at the time, what did you understand
11 this to be?

12 A His proposal that he had talked -- said that he
13 would send over.

14 Q Okay. And did you review that proposal?

15 A Yes, I did.

16 Q And then did you have a discussion at any point
17 in time subsequent to reviewing it with Mr. Cotton?

18 A Yes, I did.

19 Q And how did that discussion take place?

20 A By phone.

21 Q And when did that discussion take place in
22 relation to you getting this email on September 26th?

23 A I believe it was either the next day or --
24 within 48 hours, I think.

25 Q Okay. And tell us what your discussion was
26 with Mr. Cotton about this proposal that's marked as
27 Exhibit 10.

28 A Well, the first thing I ran down and looked at

1 is I saw the 10 percent equity position that I just was
2 not prepared to do.

3 Q How --

4 A And then the --

5 Q Go ahead.

6 A And then reading further down, he wanted to, it
7 looked to me, intertwine his business, Inda-Gro 151,
8 with the new dispensary.

9 Q Anything else you noticed when you reviewed it?

10 A He wanted a 400,000-dollar relocation. He
11 wanted it split up. \$400,000 for the property and
12 \$400,000 as a relocation expense.

13 Q Now, did you discuss any of these things you
14 noticed in the proposal with Mr. Cotton during that
15 telephone call?

16 A I'm sorry. Can you repeat that.

17 Q You told us what you noticed when you looked at
18 it. I want to know what you talked with Mr. Cotton
19 about with respect to the proposal.

20 A Yeah. I told him this just wouldn't work. I
21 can't agree to the 10 percent, and I'm not looking for a
22 partnership. We've got a lot -- we've got a long way to
23 go, and it's not what I've agreed to.

24 Q And what was his response?

25 A He said okay. He said -- I think he actually
26 just said, hey, this could work out well.

27 Q Anything else you recall being discussed by you
28 and Mr. Cotton about this proposal?

1 A I don't believe so.

2 Q Okay. Now, did you ever sign this proposal?

3 A No, I didn't.

4 MR. WEINSTEIN: Okay. Would you -- I'd like to
5 offer, your Honor, Exhibit 14.

6 THE COURT: Any objection?

7 MR. AUSTIN: No, your Honor.

8 THE COURT: Exhibit 14 will be admitted.

9 (Premarked Joint Exhibit 14, email to Larry
10 Geraci and Neil Dutta from Abhay Schweitzer re
11 6176 Federal Blvd. - Site Visit, dated 10/04/16,
12 was admitted into evidence.)

13 BY MR. WEINSTEIN:

14 Q Okay. Mr. Geraci, are you looking at
15 Exhibit 14?

16 A Yes, I am.

17 Q Have you seen that before?

18 A Yes, I have.

19 Q And what is it?

20 A This is an email from Abhay Schweitzer.

21 Q Concerning what?

22 A He visited the property.

23 Q After you had your face-to-face meeting with
24 Mr. Cotton and again after you had reviewed this
25 proposal with him, did you continue to explore the
26 feasibility of the property?

27 A Yes, we did.

28 Q And did Mr. Cotton continue to allow you to

1 explore the property?

2 A Yes, he did.

3 Q So at this point in time, what did you
4 understand about the concerns of the feasibility of the
5 property?

6 A It looked like he had some un- -- unpermitted
7 construction on the property towards the rear. There
8 was a number of -- there was parking issues, ceiling
9 height.

10 Q Okay. And is this -- was this as part of your
11 effort to figure out whether the property would be
12 feasible?

13 A Yes, it was.

14 MR. WEINSTEIN: And would you -- I'd like to
15 offer 15, your Honor.

16 THE COURT: Any objection?

17 MR. AUSTIN: No, your Honor.

18 THE COURT: Exhibit 15 will be admitted.

19 (Premarked Joint Exhibit 15, Email to Rebecca
20 Berry from Abhay Schweitzer re Federal Blvd. -
21 Proposal for Survey, dated 10/06/16, was
22 admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Geraci, would you take a look at
25 Exhibit 15.

26 Mr. Geraci, have you seen Exhibit 15 before?

27 A Yes, I have.

28 Q What is it?

1 A This is a proposal from Lundstrom Engineering
2 and Surveying.

3 Q And who sent -- who sent this email?

4 A Abhay Schweitzer.

5 Q Okay. And why was -- do you understand why you
6 were receiving that email from Mr. Schweitzer?

7 A Yes.

8 Q Why?

9 A We needed to do a survey on the property, and
10 this was a proposal.

11 Q Okay. And was Mr. Schweitzer responsible for
12 dealing with vendors to do studies on the property?

13 A Yes, he was.

14 Q Okay. And what was his role in the team?

15 A His main role was he was part of actually
16 getting the application entered. He was the designer.
17 He would coordinate all the contractors and vendors
18 together to start looking at the feasibility of this
19 property.

20 Q And when you -- do you remember when you
21 brought on Mr. Schweitzer to the team?

22 A I believe it was midyear. But I -- I don't
23 remember exactly.

24 Q Did you have an understanding at the time of
25 his experience in obtaining CUP approvals for
26 dispensaries?

27 A I had -- Abhay was a recommendation from Jim
28 Bartell.

1 Q Okay. And what did you understand
2 Mr. Schweitzer's experience was from Mr. Bartell?

3 A That he was a very good designer and was very
4 good at putting projects together and he had worked with
5 him before. And it was a good recommendation.

6 Q Okay. And did you talk with Mr. Schweitzer
7 about his experience? Did you talk to Mr. Schweitzer
8 about his experience processing CUP applications?

9 A Yes. Very -- very detailed, an impressive
10 individual when I met him.

11 Q What did he tell you about his experience?

12 A He said he had designed and put in place some
13 CUPs at the time, and he had some extensive experience
14 on that.

15 Q Okay. So when you got this proposal -- or this
16 email on October 6th -- would you go to the next page,
17 please -- what did you understand -- did you have an
18 understanding as to why a topographic survey was
19 required?

20 A I have limited knowledge on that, but I believe
21 it's to determine property lines and topography of the
22 property.

23 MR. WEINSTEIN: Okay. Your Honor, I'd offer
24 Exhibit 17, please.

25 THE COURT: Any objection?

26 MR. AUSTIN: No objection.

27 THE COURT: Exhibit 17 will be admitted.

28 \ \ \

1 (Premarked Joint Exhibit 17, Email to Larry
2 Geraci and Neil Dutta from Abhay Schweitzer re
3 Federal Blvd. - Width of ROW, dated 10/18/16
4 with attached Lundstrom Topographic Survey,
5 Project No. L222-01, was admitted into
6 evidence.)

7 BY MR. WEINSTEIN:

8 Q Would you look at Exhibit 17 in your book,
9 Mr. Geraci.

10 Have you seen that before?

11 A Yes, I have.

12 Q What is it?

13 A This is an email from Abhay Schweitzer.

14 Q And was anything attached to it?

15 A Yes. There was a plan attached to it.

16 Q Would you go to the second page, please. And
17 did you understand this to be the topographic survey
18 performed by the engineering firm that had been hired?

19 A That was my understanding.

20 MR. WEINSTEIN: Okay. Your Honor, I offer
21 Exhibit 18, please.

22 THE COURT: Any objection?

23 MR. AUSTIN: No objection.

24 THE COURT: Exhibit 18 will be admitted.

25 (Premarked Joint Exhibit 18, Email thread
26 between Neil Dutta from Abhay Schweitzer Re: FW:
27 Federal Blvd. - Zoning, dated 10/19/16, was
28 admitted into evidence.)

1 BY MR. WEINSTEIN:

2 Q Okay. Mr. Geraci, have you seen Exhibit 20
3 before (sic)?

4 A Yes, I have.

5 Q What is it? Exhibit 18. I apologize.
6 Have you seen Exhibit 18 before?

7 A I have seen Exhibit 18.

8 Q What is it?

9 A It looks like it was a -- they were trying to
10 explain the -- there was a conflict in here between the
11 zoning. There was a bulletin that said one thing, and
12 the Code said something else, I believe.

13 Q Okay. And was that your understanding at the
14 time of the zoning problem that existed at the property?

15 A Yes.

16 Q Okay. Now, did you have discussions during
17 this time period after you talked to Mr. Cotton about
18 his proposal and submitting this CUP application about
19 the zoning issues?

20 A Yes, I did. I said we've narrowed this down to
21 the zoning problem. And I said I believe we may be able
22 to work forward on this.

23 Q What was your understanding of -- what -- had
24 your team advised you there was a way that you might be
25 able to get around the zoning problem?

26 A Yes. They had said that they may be able to
27 work with the City to get around the zoning problem or
28 get it corrected. I don't know what language they

1 exactly used.

2 Q Did you communicate that to Mr. Cotton?

3 A Yes, I did.

4 MR. WEINSTEIN: Okay. Now, would you -- I'd
5 like to offer Exhibit 21, your Honor.

6 THE COURT: Any objection?

7 MR. AUSTIN: No, your Honor.

8 THE COURT: Exhibit 21 will be admitted.

9 (Premarked Joint Exhibit 21, Email from Larry
10 Geraci to Darryl Cotton, dated 10/24/16,
11 attaching A102 Site Plan - Proposed - Scheme B,
12 was admitted into evidence.)

13 BY MR. WEINSTEIN:

14 Q So Mr. Cotton -- I'm sorry -- Mr. Geraci, have
15 you seen Exhibit 21 before?

16 A Yes.

17 Q Okay. And what is Exhibit 21?

18 A It's an email from Darryl Cotton.

19 Q Okay. On what date?

20 A October 24, 2016.

21 Q And what was attached to that email?

22 A The -- it looks like the drawings for the
23 property.

24 Q Would you blow that up. Okay. You'll
25 notice -- keep going.

26 So you'll notice in the bottom right-hand
27 corner -- I don't know if the jury can see it. If you
28 can't, let me know. It says site plan, proposed, scheme

1 B.

2 Do you see that? Mr. Cotton (sic), do you see
3 that?

4 I'm sorry. Mr. Geraci.

5 A I do you see that.

6 Q I'm sorry. I will get this right. I
7 apologize. I'm glad you didn't respond.

8 You had a site plan prepared by your team as
9 part of this CUP process?

10 A Yes, I did.

11 Q And did you share -- were you sharing that with
12 Mr. Cotton by this email?

13 A Yes, I was.

14 Q Why were you sharing it with Mr. Cotton?

15 A To let him know the progress that we had been
16 making.

17 Q Okay. Now, after the phone call in which you
18 discussed the draft services agreement -- I think you
19 said it was within 48 hours of September 26th, 2016
20 email -- did you have any subsequent communications with
21 Mr. Cotton about the terms of a potential purchase?

22 A About --

23 Q Is that a yes or a no?

24 A Yes.

25 Q When did that happen?

26 A About October 18th, 19th.

27 Q And was that face to face, or by phone?

28 A That was by phone.

1 Q And what discussion did you have in that phone
2 call with Mr. Geraci about any potential terms for
3 purchase of the property, Mr. -- let me rephrase that.

4 What discussions did you have with Mr. Cotton
5 at the time about any potential terms of the purchase of
6 the property?

7 A We had discussed that we're moving along here
8 and that I would like to sit down and get something in
9 writing because we're getting ready to submit the CUP
10 application.

11 Q And did he respond to that?

12 A He said, "Very good."

13 Q Okay. And did you have any discussions about
14 the terms at that time?

15 A He had -- he had asked for a 50,000-dollar
16 nonrefundable deposit at that time.

17 Q And what was your response to that ask?

18 A I just said that's -- that's too big of an ask
19 for the money that I am having to put out at this point,
20 and I think we should be able to drop that down to
21 maybe \$10,000.

22 Q Did you explain to him why you thought it was
23 too big of an amount?

24 A The amount of risk I was taking, first of all,
25 and the money that was going out, I said it was just too
26 much money.

27 Q What risk was that?

28 A All the money I was paying all the

1 professionals, the team, to move forward with the
2 progress on this CUP.

3 Q And what was his response to saying you will --
4 you suggesting it be 10,000?

5 A He said that was fine.

6 Q Okay. And do you recall anything else that you
7 discussed with Mr. Cotton during that phone conversation
8 around October 18th or so, 2016?

9 A I said we'll be -- we may be calling him for a
10 couple of signatures and because we're getting close
11 here to submitting the CUP.

12 Q And after that phone call, did you have an
13 occasion to need his signature on a document?

14 A Yes, we did.

15 MR. WEINSTEIN: Your Honor, I'd offer
16 Exhibit 30.

17 THE COURT: Any objection?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 30 will be admitted, then.
20 (Premarked Joint Exhibit 30, City of San Diego
21 Ownership Disclosure Statement (Form DS-318)
22 signed, dated 10/31/16, was admitted into
23 evidence.)

24 BY MR. WEINSTEIN:

25 Q Okay. Mr. Cotton, have you seen Exhibit 30
26 before?

27 A Mr. Geraci. I have seen Exhibit 30.

28 Q I apologize. And what is Exhibit 30?

1 A Hold on. This is the ownership disclosure
2 statement.

3 Q Okay. And did you need Mr. Cotton's signature
4 on the ownership disclosure statement?

5 A Yes, we did.

6 Q How did you advise him of that, if you did?

7 A We told him that he -- if he could come by and
8 sign the ownership disclosure statement.

9 Q Okay. And what was the response to that?

10 A He said he could do it.

11 Q Okay. And when did you make that request of
12 him?

13 A It may have been within a day or two of this
14 signature. I -- I don't recall exactly when we had
15 talked with him to get him over here.

16 Q Okay. And to your understanding, did he come
17 in and sign that document?

18 A Yes, he did.

19 Q Did you meet with him at that time?

20 A No, I didn't.

21 Q When did you next meet with him?

22 A I met with him on November 2nd.

23 Q Okay. And this is, again, of 2016?

24 A Yes, it is.

25 Q Okay. And where?

26 A At my office.

27 Q Who was present?

28 A Yes. Mr. Cotton was present.

1 Q And anybody besides you and Mr. Cotton?

2 A No.

3 Q Okay. And where in your office did you meet?

4 A In my office specifically.

5 Q Okay. And what was the purpose of the meeting?

6 A To sit down and draft a agreement between
7 Mr. Cotton and myself.

8 Q Okay. And how did Mr. -- did you communicate
9 to Mr. Cotton that would be the purpose of the
10 agreement?

11 A Yes.

12 Q When did you do that?

13 A I had made a variety of phone calls. There was
14 a lot that day, and there was some made from the office
15 that week. So I can't tell you exactly when I requested
16 that he come over.

17 Q What did you -- when you requested him to come
18 over, what did you say to him?

19 A I said we -- we want to submit this, get
20 this -- the CUP is going to be submitted, and I'd like
21 to get something in writing.

22 Q Okay. And his response to that was?

23 A He said, okay. I'm free.

24 Q Okay. And so that was the purpose of this
25 meeting on November 2nd?

26 A Yes.

27 Q Okay. So when he arrived, do you remember what
28 time of day it was?

1 A It was approximately 230.

2 **Q Okay. And did you discuss -- what -- what**
3 **happened in that meeting?**

4 A We sat down, and I -- I have a big 65-inch
5 monitor on my wall. And we started talking out the
6 document. I said we're -- we want to get this -- the
7 CUP process started, and we're going to get going on
8 this. Oh, actually, you know what, when he walked in,
9 he was kidding. He said do you have my \$50,000? And I
10 said, no. I have 10,000. And he just kind of chuckled.
11 And we sat down. I put a Word document up on the
12 screen, and I said, look, let's -- let's work together
13 on this and get this typed out.

14 **Q And who was actually doing the typing?**

15 A I was doing the typing.

16 **Q And so when you say we were drafting, what did**
17 **you mean by that?**

18 A We were putting together an agreement that --
19 for the property at the time.

20 **Q Okay. And did you go through each of the**
21 **provisions in that agreement with Mr. Cotton?**

22 A Well, we were type -- as we both were kind of
23 talking back and forth, we were typing out the
24 agreement.

25 **MR. WEINSTEIN:** Okay. I'd like to offer
26 Exhibit 38, your Honor.

27 **THE COURT:** Any objection?

28 **MR. AUSTIN:** No, your Honor.

1 THE COURT: Exhibit 38 will be admitted.

2 (Premarked Joint Exhibit 38, Agreement between
3 Larry Geraci or assignee and Darryl Cotton,
4 dated 11/02/16, was admitted into evidence.)

5 BY MR. WEINSTEIN:

6 Q Mr. Geraci have you seen Exhibit 38 before?

7 A Yes, I have.

8 Q And what is it?

9 A This is an agreement between Larry Geraci and
10 Darryl Cotton.

11 Q Okay. Is this the agreement you just described
12 drafting with Mr. Cotton when he was in your office on
13 November 2nd?

14 A Yes.

15 Q Okay. Now, did you and Mr. Cotton review each
16 line and word of that agreement?

17 A Yes, we did.

18 Q And did you have a discussion that this was an
19 agreement?

20 A Yes.

21 Q Did you have any discussion that it was a
22 receipt?

23 A No.

24 Q And then the first line of the agreement says
25 it's an agreement between Larry Geraci or assignee and
26 Darryl Cotton.

27 Did you have any discussion about the language
28 "or assignee"?

1 A Yes.

2 Q What was that discussion?

3 A On the assignee I was -- at the time, we had
4 not picked out a corporate name or who the -- you know,
5 who -- what entity I would put it into at the time or I
6 needed an agent to work with me, which was Rebecca Berry
7 as well. So the assignee was sort of a general term out
8 there.

9 Q Okay. And so what was the purpose of that
10 provision, then?

11 A So I could have somebody step in in my place.

12 Q All right. And Mr. Cotton agreed to that?

13 A Yes, he did.

14 Q Okay. Now, it says Darryl Cotton has agreed to
15 sell the property located at 6176 Federal Boulevard,
16 California, for a sum of \$800,000 to Larry Geraci or
17 assignee on the approval of a marijuana dispensary,
18 period. And then parentheses, CUP for a dispensary,
19 close parens.

20 Do you see that?

21 A Yes, I do.

22 Q Okay. Did you discuss when that was drafted by
23 the two of you for the sum of \$800,000 as the purchase
24 price?

25 A Yes, we did.

26 Q And had that purchase price ever changed since
27 you started initially discussing a possible purchase
28 price for the property?

1 A That had never changed.

2 Q Okay. Now, it's -- the sentence says also on
3 the approval of a marijuana dispensary, period.

4 A Yes.

5 Q Parentheses, CUP for a dispensary, close
6 parens.

7 Did you have a discussion with Mr. Cotton about
8 that language at the time you drafted the -- the two of
9 you drafted the agreement?

10 A Yes. It was understood that on the approval of
11 the marijuana dispensary that, you know, I'd be bearing
12 the cost, and we needed to get approval to complete the
13 actual purchase for the property.

14 Q Okay. When you said it was understood, what
15 was said? I mean, how did you have that understanding?

16 A As I was typing, I said, and I will, of course,
17 be paying for the -- the process to get CUP.

18 Q Did Mr. Cotton respond to that?

19 A He said yes. He agreed.

20 Q Had you had prior discussions before you put
21 this in the -- the signed document that you would bear
22 the expense of applying and obtaining the approval of
23 the condition use permit?

24 A Yes. It was -- it was just understood. And he
25 and I discussed that I'm paying for all the expenses to
26 move forward with this CUP.

27 Q The next sentence says "\$10,000 cash" -- cash
28 is in parentheses -- "has been given in good faith

1 earnest money to be applied to the sales price of
2 \$800,000 and to remain in effect until license is
3 approved."

4 Do you see that?

5 A Yes, I do.

6 Q Did you discuss that language with Mr. Cotton?

7 A Yes, we did.

8 Q Okay.

9 A Just like --

10 Q And what was -- what were his comments about
11 that language?

12 A He said everything is fine, as we typed it out.

13 Q Okay. Did you have a discussion about what
14 good faith earnest money was?

15 A Yes, we did.

16 Q What was that discussion?

17 A It was money that I was to give Mr. Cotton to
18 show my seriousness for closing this transaction.

19 Q Okay. And what was the amount of that good
20 faith earnest money?

21 A \$10,000.

22 Q On the date of this meeting, November 2nd, did
23 you have discussions with him about whether that deposit
24 was refundable or nonrefundable?

25 A As I was typing it out, he said that's
26 nonrefundable. And I said, yes, that's fine.

27 Q Okay. Now, it also says "to be applied to the
28 sales price and to remain in effect until the license is

1 approved."

2 Did you have a discussion with him about what a
3 license was?

4 A Yes. The CUP license.

5 Q Okay. And did you have a discussion about
6 what -- when the balance of the money would be due after
7 payment of the nonrefundable deposit?

8 A When -- on approval of the CUP, the balance of
9 the money would be due.

10 Q Now, there's no specific time in this document
11 for you to accomplish that. Is that correct?

12 A That is correct.

13 Q Did you have a discussion with Mr. Cotton at
14 the time about whether or not to put in a time frame in
15 the agreement?

16 A Yes, we did.

17 Q What was that discussion?

18 A We discussed -- we talked approximates, but I
19 couldn't give any solids. The team couldn't give me the
20 solid numbers because it's all left up to the City, the
21 cycle reviews. You don't know the problems you're going
22 to run into. So we just couldn't pin down the date when
23 you could do this.

24 Q Okay. So is that why no date is specified?

25 A That is correct.

26 Q Okay. Did you have an understanding when you
27 signed this that you would have to pursue that CUP
28 application in good faith?

1 A Yes.

2 Q Now, the last sentence says "Darryl Cotton has
3 agreed to not enter into any other contacts on this
4 property."

5 Do you see that?

6 A Yes, I do.

7 Q Do you see the word "contacts"?

8 A Yes.

9 Q And did you mean contacts, or was that a
10 typographical error?

11 A That was a typographical error.

12 Q And what was it intended to say?

13 A Contracts on this property.

14 Q And why was that sentence added to the
15 agreement?

16 A I had told Darryl that, as I was -- I'm
17 pursuing this, I don't want any other -- I would like
18 him not to enter into any more contracts on this
19 property.

20 Q Did he respond to that?

21 A He said that's fine.

22 Q Okay. And then after you -- after you typed
23 that sentence, did you guys read through the document
24 together?

25 A Yes. We were staring at it up on the big
26 screen.

27 Q Okay. And then I see your signature on the
28 bottom left-hand side above the words "Larry Geraci."

1 Is that your signature?

2 A That is my signature.

3 Q And did Mr. Cotton sign the agreement at that
4 time as well?

5 A Yes, did he.

6 Q And was that document signed in the presence of
7 anybody?

8 A We had a notary.

9 MR. WEINSTEIN: Okay. Would you -- Your Honor,
10 I'd offer Exhibit 39.

11 THE COURT: Any objection?

12 MR. AUSTIN: No, your Honor.

13 THE COURT: Exhibit 39 will be admitted.

14 (Premarked Joint Exhibit 39, Excerpt from
15 Jessica Newell Notary Book dated 11/02/2016, was
16 admitted into evidence.)

17 BY MR. WEINSTEIN:

18 Q Okay. It's a little dark, Mr. Geraci.

19 Do you recognize Exhibit 39?

20 A Yes, I do.

21 Q What is it?

22 A This is the notary's ledger that records who
23 she's notarizing.

24 Q Okay. And you were there when that occurred?

25 A Yes.

26 Q Okay. And can you read -- it may be hard for
27 the jury to see.

28 Can you read a time on there at which -- the

1 time that Mr. Darryl Cotton signed, according to this
2 notary?

3 A 3:03 p.m.

4 Q And what time does it indicate you signed?

5 A 3:05 p.m.

6 Q Is that accurate, to the best of your
7 knowledge?

8 A I believe so.

9 Q Now, at the time of this November 2nd meeting
10 when this document was drafted up and signed -- go back
11 to 38.

12 At the time you were meeting on November 2nd,
13 2016 and you signed what's been marked as Exhibit 38,
14 did you have any discussions with Mr. Cotton about there
15 being any other terms and conditions for the purchase?

16 A There was no other terms and conditions.

17 Q That wasn't my question.

18 My question was whether there was any
19 discussion between you at the time as to whether there
20 were any other terms and conditions.

21 A No.

22 Q And had you agreed as of November 2nd, 2016 to
23 pay Mr. Cotton a 10 percent equity stake in -- or
24 ownership interest in the dispensary as past the
25 purchase of this property?

26 A No.

27 Q Did you ever agree or tell Mr. Cotton before
28 November 2nd, 2016 that you would agree to pay him a 10

1 percent equity or ownership interest in the dispensary
2 in addition to the 800,000-dollar purchase price?

3 A No.

4 Q Now, at some point in time, did Mr. Cotton ask
5 you to pay him a guaranteed 10 percent cash
6 distribution -- monthly cash distribution when the
7 dispensary opened?

8 A No, he didn't.

9 Q Ever?

10 A Ever.

11 Q Okay. Well, did you have a phone call with him
12 on February 7th, 2017? I'm not talking about this time.
13 I'm talking about at any time in history.

14 A Yes. February 7th, he did.

15 Q Okay. At the time that you signed this
16 agreement, Mr. Geraci, with Mr. Cotton, had there been
17 any discussions between you about a -- his request for
18 a 10,000-dollar-a-month guaranteed minimum cash
19 distribution?

20 A There was no discussion.

21 Q When was the first time that came up?

22 A February 7th.

23 Q Okay. And at the -- as of this date,
24 November 2nd, 2016, had you had any discussions with him
25 about that proposed agreement that he had drafted on
26 September -- on September 26th that you had already met
27 and talked about?

28 A No, there was nothing more on that.

1 Q To your understanding, was there any term and
2 condition of the purchase agreement discussed between
3 you and Mr. -- or agreed between you and Mr. Cotton as
4 of the date that you signed this November 2nd, 2016
5 agreement, other than the terms that are stated in the
6 agreement?

7 A There was nothing else.

8 Q Now, did you provide a copy of the
9 November 2nd, 2016 signed agreement to Mr. Cotton?

10 A I emailed it to him.

11 Q And when did you email it to him?

12 A Within 5, 10 minutes maybe.

13 MR. WEINSTEIN: Your Honor, I'd offer
14 Exhibit 40.

15 THE COURT: Any objection?

16 MR. AUSTIN: No, your Honor.

17 THE COURT: Exhibit 40 will be admitted.

18 (Premarked Joint Exhibit 40, Email to Darryl
19 Cotton from Larry Geraci attaching Nov 2
20 Agreement, dated 11/2/2016, was admitted into
21 evidence.)

22 BY MR. WEINSTEIN:

23 Q Okay. Have you seen Exhibit 40 before?

24 A Yes, I have.

25 Q What is Exhibit 40?

26 A This is the email I sent to Mr. Cotton.

27 Q To do what?

28 A It's the copy of the agreement.

1 Q And what time did you send that to him?

2 A 3:11 p.m.

3 Q And how long after you had signed the agreement
4 was that emailed to him?

5 A I believe six minutes.

6 Q Did you wait two hours before sending it to
7 him?

8 A No.

9 Q Now, did you ever receive a response to this
10 email?

11 A I'm sorry. Say that again.

12 Q Did you ever receive a response to this email?
13 Just a yes or a no.

14 A Yes.

15 MR. WEINSTEIN: Okay. Your Honor, I'd offer
16 Exhibit 41.

17 THE COURT: Any objection?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 41 will be admitted.

20 (Premarked Joint Exhibit 41, Email from Darryl
21 Cotton to Larry Geraci re Agreement, dated
22 11/2/16, was admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Cotton -- Mr. Geraci, have you seen
25 Exhibit 41 before?

26 A Yes, I have.

27 Q And what is it?

28 A This is an email sent from Darryl Cotton.

1 Q Okay. At what time?

2 A 6:56 p.m.

3 Q When did you take a look at this email?

4 A That -- later that night.

5 Q Okay. Now, did you -- did you look at that
6 email -- do you get emails at both work and on your
7 phone?

8 A On my phone, yes. Work and phone, yes.

9 Q When you looked at this email, were you at
10 work, or did you look at it on your phone?

11 A On my phone.

12 Q Okay. And did you read the entire email?

13 A No, I did not.

14 Q What did you do?

15 A My email shows me, like, the first part of the
16 sentence, and so I expanded it. And it said thank you
17 for your meeting today.

18 Q And did you read the rest of the email?

19 A Not at that time.

20 Q And did you respond after you received this
21 email back to Mr. Cotton?

22 A Yes, I did.

23 MR. WEINSTEIN: I offer Exhibit 42, your Honor.

24 THE COURT: Any objection?

25 MR. AUSTIN: No objection.

26 THE COURT: Exhibit 42 will be admitted.

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 42, Email to Darryl
2 Cotton from Larry Geraci re Agreement, dated
3 11/2/16, was admitted into evidence.)

4 BY MR. WEINSTEIN:

5 Q Okay. Mr. Geraci, do you recognize Exhibit 42?

6 A Yes, I do.

7 Q What is it?

8 A This is my response to the email he had sent
9 me.

10 Q And what did you respond?

11 A No, no problem at all.

12 Q What were you referring to?

13 A I read thank you for the meeting today. And it
14 should have said no problem at all.

15 Q All right. And what time did you send that to
16 Mr. Cotton?

17 A 950 -- 9:13 at night.

18 Q And did you subsequently read the entire email?

19 A Yes. The following day.

20 MR. WEINSTEIN: Okay. Your Honor, this is a
21 good breaking point.

22 THE COURT: Good what?

23 MR. WEINSTEIN: This is a good breaking point.
24 And I know you like to break 10 minutes before to talk
25 to counsel.

26 THE COURT: All right. We'll stop a little bit
27 earlier at this time.

28 Folks, we're going to be in recess until 1:30.

1 If you want to assemble just a little bit earlier. I
2 need to talk to the lawyers for just a few moments.
3 We'll get started talking at 1:30. So we'll be in
4 recess at this time. Do not form or express any
5 opinions or discuss the case until you deliberate.
6 We'll be in recess until then.

7 THE WITNESS: Can I step down?

8 THE COURT: Yes. All right. The jurors left
9 the courtroom. Feel free to step down, Mr. Geraci.

10 I wasn't necessarily expecting to stop that
11 many minutes before.

12 MR. WEINSTEIN: I thought you said 10. And it
13 was sort of a subject matter break. So --

14 THE COURT: Oh, okay. I like to get a little
15 bit closer to noon before we stop.

16 MR. WEINSTEIN: I apologize, your Honor.

17 THE COURT: All right. So issues, if any, that
18 either one of you need to bring up at this time?

19 MR. WEINSTEIN: Give me a moment, your Honor,
20 please.

21 No. I'll think about it over lunch.

22 THE COURT: Okay.

23 Counsel, anything?

24 MR. AUSTIN: No.

25 THE COURT: All right. So why don't you try to
26 be back by --

27 MR. WEINSTEIN: I do. I prepared to raise it,
28 your Honor. I did -- I will bring an oral motion for

1 nonsuit, unless it's too late, on breach of contract
2 claim asserted by Mr. Cotton. And if I could explain
3 the basis, I would appreciate it.

4 THE COURT: As a result of what he said within
5 his --

6 MR. WEINSTEIN: As a result of the opening
7 statement.

8 THE COURT: All right. I'm going to deny that
9 without prejudice.

10 MR. WEINSTEIN: Okay.

11 THE COURT: You can renew whatever motion you
12 think appropriate at the close of the next stage of
13 evidence.

14 MR. WEINSTEIN: Thank you.

15 THE COURT: So we'll be in recess now. And try
16 to get back here by 1:20. And then we will try to
17 resume as promptly as possible at 1:30. Thank you.

18 MR. WEINSTEIN: Thank you.

19 (Lunch recess from 11:47 a.m. to 1:20 p.m.)

20 THE COURT: All right. We've got a couple
21 minutes before we bring our jury in.

22 Counsel, how are we doing?

23 MR. WEINSTEIN: Doing good, thanks.

24 THE COURT: All right.

25 MR. WEINSTEIN: Although, I'm not as good
26 standing all that time as I used to be.

27 THE COURT: Well --

28 MR. WEINSTEIN: That's my own fault.

1 THE COURT: -- you have not drawn a judge who
2 manages his courtroom with a heavy hand. All right? I
3 need all of you just to reflect upon that.

4 You did put the Court in a little bit of a
5 difficult position. I don't usually stop quite that
6 early. But, quite frankly, it looked to me like it was
7 time -- it was a good time for a break. All right?

8 MR. WEINSTEIN: And I think I misunderstood.
9 You want about five minutes more then normally?

10 THE COURT: Well, usually. I'll give counsel a
11 queue or heads-up, something like "when it's convenient"
12 when we get a little bit closer to noon.

13 All right. So we might want to think about
14 that as we go down the road.

15 Now, I really would like to see us make as much
16 progress as is possible this afternoon.

17 Do you expect you'll finish your direct
18 examination of Mr. Geraci?

19 MR. WEINSTEIN: I do.

20 THE COURT: This afternoon?

21 MR. WEINSTEIN: Yes.

22 THE COURT: All right. And then will you be
23 conducting your cross-examination this afternoon of
24 Mr. Geraci?

25 MR. AUSTIN: If necessary, your Honor.

26 I find the time Mr. Weinstein's opt to be very
27 convenient for this case because I almost didn't catch
28 it. I would like to make an oral motion for a nonsuit.

1 Essentially what just transpired right before
2 Mr. Geraci corrected himself is it comes down to what
3 we've been arguing this whole time. It's what we call
4 the confirmation email where he says, no, no problem at
5 all.

6 Mr. Geraci says, yes, I made a mistake. I
7 meant "No problem." What's happening here is they're
8 asserting the affirmative defense of mistake.

9 This confirmation email goes to the whole heart
10 of the email, which is Mr. Cotton alleging that that
11 document you have is not the full contract and
12 Mr. Geraci is agreeing that's not the contract.

13 I don't know if we need to pull back the
14 transcript. But I don't think this could be more clear.
15 Like, if this isn't a nonsuit, I don't know if this is
16 potentially grounds for mistrial. This is, I feel, case
17 dispositive. It goes right to the heart of the matter
18 of whether that contract was disputed or not. If they
19 don't have that affirmative defense, they don't have the
20 affirmative defense to any of the cross-complaints to
21 Mr. Cotton.

22 THE COURT: Well, your oral motion for nonsuit
23 is denied without prejudice and even premature. We're
24 now into evidence. And the time for you to bring your
25 motion, if at all, will be at the close of Plaintiff's
26 case in chief.

27 And if Plaintiff has failed to make the prima
28 facie showing of each of the elements in which they bear

1 the burden of proof, the motion in whole or part will be
2 well-taken. I'm not predicting that that will be the
3 case. But I understand your argument. But at this
4 point, that's what it is.

5 So we've got that taken care of. No need to
6 rewind any testimony.

7 But going back to just a moment ago, do you
8 expect to do your cross-examination of Mr. Geraci at the
9 close of direct, or do you intend to reserve?

10 MR. AUSTIN: Close of direct.

11 THE COURT: All right. So any estimate of how
12 much more time you'll be with your client on direct?

13 MR. WEINSTEIN: I'm thinking an hour, but I'm
14 not -- it's hard to predict.

15 THE COURT: No, that's fine. The parties are
16 obviously important witnesses. So it sounds like this
17 afternoon, if not well before the close of business
18 today, you'll be in your cross-examination of
19 Mr. Geraci.

20 Again, I'm not putting any pressure on you at
21 all. But do you have any estimate of how long you might
22 go on cross?

23 MR. AUSTIN: Maybe 40 minutes to an hour.

24 THE COURT: All right. So it's possible you
25 might be done with Mr. Geraci today? All right. And
26 then with redirect.

27 All right. So your next witness, if we get to
28 that point, will be?

1 MR. WEINSTEIN: Well, assuming -- if we
2 finish -- I mean, if we don't get past Mr. Geraci today,
3 I'll be calling Gina Austin first thing Monday morning
4 because she's available then.

5 THE COURT: All right. That's fine. But I do
6 not want to shut down too much earlier.

7 MR. WEINSTEIN: No. If -- if --

8 THE COURT: So if we have extra time, and that
9 meaning if we get too much beyond 4 o'clock, maybe we'll
10 call it a day. But let's assume we're going to need --
11 you're going to need to have somebody else lined up.

12 MR. WEINSTEIN: It would be Rebecca Berry.

13 THE COURT: All right. Ms. Berry. I gotcha.
14 So you've got the witnesses lined up. So then assuming
15 for the moment that neither you nor you complete your
16 examination of Ms. Berry if she's called today, then we
17 would interrupt her to call Ms. Austin?

18 MR. WEINSTEIN: I would probably, depending on
19 how far we got with Ms. Berry, probably just have
20 Ms. Austin go on after Ms. Berry.

21 THE COURT: All right. And recall we'll have a
22 full day of testimony Monday, Tuesday, and Wednesday.

23 How many witnesses altogether will you be
24 calling?

25 MR. WEINSTEIN: At least six.

26 THE COURT: All right. But I'm wondering --

27 MR. WEINSTEIN: So some are short.

28 THE COURT: Yeah.

1 MR. WEINSTEIN: And some are longer. So I can
2 give the Court an estimate. I mean, Schweitzer will
3 probably be longer.

4 THE COURT: Any longer than Mr. Geraci?

5 MR. WEINSTEIN: No.

6 THE COURT: Right. I'm wondering -- again, I'm
7 not putting pressure on anybody. We're just getting
8 started. But it sounds to me -- it looks to me like
9 you'll wrap before the close of business Thursday if not
10 the close of business Wednesday.

11 MR. WEINSTEIN: It's possible. But we have a
12 half day Thursday. That's what I represented to the
13 Court too.

14 THE COURT: You did. But I'm just doing the
15 math here. These days can get to be pretty long once we
16 get used to getting started on time at 9:00 and we don't
17 end too prematurely and then we go to 4:30. All right.
18 So we're making progress.

19 Just in case, though, you need to make sure you
20 have witnesses lined up before we anticipate ending for
21 the week at noon on Thursday. It's possible that you
22 might have to have witnesses lined up to begin your case
23 in chief. And then once we get started, do you think
24 you can do it in a couple days?

25 MR. AUSTIN: Absolutely, your Honor.

26 MR. WEINSTEIN: Actually, your Honor, I
27 neglected to include in my count Mr. Cotton. So I think
28 I have seven total.

1 THE COURT: That's fine. Again, this is a
2 sheer number of witnesses. It's nothing unreasonable.

3 All right. Do either one of you -- now, we
4 haven't gone sidebar yet, but we did spend some time
5 picking our jury yesterday afternoon, which was outside
6 the presence of the reporter. Although, the reporter
7 wasn't in Court yesterday, I guess.

8 But if at any time we go sidebar, I usually
9 don't invite the court reporter to go sidebar at that
10 time. But at the first available moment, I make sure
11 that if you'd like to make a record of what we
12 discussed, you can do so. It's your responsibility to
13 make a note of what we discussed. I usually have a
14 pretty good idea of what we discussed. And I do my best
15 to recite it. And then I always ask counsel to make
16 comments or objections.

17 But don't be shy about insisting or reminding,
18 I should say, of your right to make a record.

19 All right. Anything else before we bring the
20 jury in?

21 MR. WEINSTEIN: No, your Honor.

22 THE COURT: Counsel, anything else?

23 MR. AUSTIN: No, your Honor.

24 THE COURT: All right. So stand down, and as
25 soon as the jury is available, we'll bring them in.

26 (Discussion off the record.)

27 THE COURT: Thank you, ladies and gentlemen.
28 So we're all ready to go to resume the direct

1 examination of Mr. Geraci.

2 Mr. Geraci, welcome back. You understand
3 you're still under oath?

4 THE WITNESS: Yes, I do.

5 THE COURT: Thank you very much. All of our
6 jurors are present and accounted for.

7 Counsel, whenever you're ready, please resume
8 your direct examination.

9 MR. WEINSTEIN: Sure.

10 BY MR. WEINSTEIN:

11 Q Mr. Geraci, after you received Exhibit 42 --
12 that was the 9:13 p.m. email on November 2nd -- did you
13 respond to Mr. Cotton?

14 A Yes, I did.

15 Q And when did you respond to him?

16 A Right after I read it at 9:13.

17 Q You said you -- when did you read -- did you
18 read the email on -- when did you have the phone call
19 with him, I guess, is the better question?

20 A Back up. Where are we now?

21 Q So let's do this.

22 Would you put Exhibit 42 back on.

23 A Okay.

24 Q Did you subsequently have a phone call with
25 Mr. Cotton about this email to be sent to you?

26 A Yes. The following day.

27 Q All right. And what day was that?

28 A That was the 3rd.

1 Q All right. How long was the phone call, if you
2 recall?

3 A Probably several minutes.

4 Q And what was said between you and him in that
5 phone call?

6 A After I opened the email and took a look at the
7 rest of it, I said -- I called Darryl. And I said what
8 is up with this email and the 10 percent? And he
9 replied lightheartedly, you don't get what you don't ask
10 for. We're going to make some money. And I said,
11 Darryl, you asked me for this 10 percent, and I -- and
12 I've said no. And I said so let's just stick with no
13 right now.

14 Q And did he have a response to that?

15 A Yeah. He said okay. And I said I'll call you
16 later during the week.

17 Q And did you have subsequent communications with
18 him during the week, as you proceeded on with the CUP
19 application?

20 A Yes, I did.

21 MR. WEINSTEIN: Your Honor, I'd like to admit
22 Exhibit 43.

23 THE COURT: Any objection?

24 MR. AUSTIN: No, your Honor.

25 THE COURT: Exhibit 43 will be admitted.

26 \ \ \

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 43, Email to Becky
2 Berry from Abhay Schweitzer re Federal Blvd -
3 Authorization to view County Tax Assessor
4 Records, dated 11/07/16 with attachment, was
5 admitted into evidence.)

6 BY MR. WEINSTEIN:

7 Q Mr. Geraci, would you please read Exhibit 43 to
8 yourself and let me know if you've seen it before.

9 A Yes, I have seen this.

10 Q What is it?

11 A It is an email to Becky Berry from Abhay
12 Schweitzer.

13 Q Were you copied on that email?

14 A Yes, I was.

15 Q And what was your understanding after you saw
16 this email?

17 A It was giving -- Darryl was giving three people
18 authorization to view and copy the County of San Diego
19 tax assessor's records.

20 Q And Mr. Cotton is not on this email, is he?

21 A To -- no. It was not sent to him.

22 Q Okay. Did you subsequently communicate to
23 Mr. Cotton that you requested that he sign authorization
24 forms so people could look at the county assessor's
25 record related to the property?

26 A Yes, I did.

27 MR. WEINSTEIN: Your Honor, I'd like to offer
28 Exhibit 44.

1 THE COURT: Any objection?
2 MR. AUSTIN: No, your Honor.
3 THE COURT: Exhibit 44 will be admitted.
4 (Premarked Joint Exhibit 44, Email to Darryl
5 Cotton from Larry Geraci re Federal Blvd
6 need sig ASAP, dated 11/14/16, was admitted into
7 evidence.)

8 BY MR. WEINSTEIN:

9 Q Mr. Geraci, have you seen Exhibit 44 before?

10 A Yes, I have.

11 Q Okay. And what is Exhibit 44?

12 A It's an email to Darryl Cotton.

13 Q Okay. It says "Can you sign and email back to
14 me ASAP?"

15 Do you see that?

16 A Yes, I do.

17 Q Is there an attachment to that email?

18 A Yes, there is.

19 Q And for clarity, why were you sending this
20 attachment to Mr. Cotton?

21 A So he could sign it and get it back to us.

22 Q And did he do that?

23 A Yes, he did.

24 MR. WEINSTEIN: I'd offer Exhibit 46, please.

25 THE COURT: Any objection?

26 MR. AUSTIN: No, your Honor.

27 THE COURT: Exhibit 46 will be admitted.

28 \ \ \

1 (Premarked Joint Exhibit 46, Authorization to
2 view records - signed by Cotton 11/15/16, was
3 admitted into evidence.)

4 BY MR. WEINSTEIN:

5 Q Mr. Geraci, have you seen Exhibit 46 before?

6 A Yes.

7 Q And what is Exhibit 46?

8 A It's Darryl's authorization giving
9 authorization to Abhay, Benjamin, and Carlos of TECHNE
10 to view and make copies of the County of San Diego tax
11 assessor records.

12 Q These last emails were an issue related to
13 getting authorization to seek county assessor records
14 that took place after a telephone conversation on
15 November 3rd?

16 A Yes.

17 Q Did you continue to have your team process the
18 CUP application?

19 A Yes, I did.

20 Q Okay. Now, at some point in time after
21 November 3rd telephone call with Mr. Cotton, did you
22 have a subsequent communication with him in which he
23 claimed your agreement contained terms that weren't
24 spelled out in the written agreement you had signed on
25 November 2nd?

26 A That would be --

27 Q Just a "yes" or "no" is fine.

28 A Yes.

1 Q Okay. And do you recall when that conversation
2 was -- or communication was?

3 A Yes.

4 Q When was it?

5 A February 7th.

6 Q And was that communication in person? By
7 phone? By text? How did it happen?

8 A That was by phone.

9 Q And how is it that you're able to remember the
10 exact date of that phone call?

11 A Because the phone call was very disturbing.

12 Q How was it disturbing?

13 A Mr. Cotton had started the conversation off in
14 a tone that I hadn't heard before from Mr. Cotton.
15 We -- I -- we had a very good relationship up until this
16 point. And he said he had been talking to other people.
17 And he had said that they were willing to give
18 him \$10,000 a month guaranteed. And I said, Darryl, who
19 are the other people? And he said I've got investors
20 that will give me \$10,000 a month.

21 And I said, Darryl, that is very difficult to
22 do. I said we've got a signed contract. And \$10,000 a
23 month, you know, is very difficult on a new business,
24 especially a new business -- the first 12 months of a
25 business with all the capital expenditures I am spending
26 on this to get the doors open. I'm starting in the hole
27 the day we open the doors at \$10,000 a month. And I
28 said that was not the agreement.

1 And he said I gave you a good deal, and I think
2 you should help me.

3 And I said look at, even with Section 28E --
4 the first problem is just the -- the 10,000 a month in
5 the hole, new business. We have no branding. We have
6 no customers. We have no proven product at this point.
7 And the competition, by the time this thing is open,
8 which is four years from date of contract, I said the
9 competition is going to be all over the place. I cannot
10 guarantee 10,000 a month at any cost. I don't know.
11 And not even that, it's the Section -- Code Section 280E
12 of the Internal Revenue Service code that we've got to
13 contend with as well.

14 **Q Had you had discussion with Mr. Cotton before**
15 **about IRS Code Section 280E?**

16 A Yes, I did.

17 **Q When?**

18 A This is back early on. I would say sometime in
19 September.

20 **Q And could you explain what IRS Code**
21 **Section 280E, what the impact would be on a dispensary**
22 **business.**

23 A The federal law does not allow -- okay. The
24 federal law still sees the marijuana business as an
25 illegal activity. So it doesn't allow you to write off
26 all your expenses, we'll call it, below the line. So
27 you've got gross income minus the cost of the product,
28 which in this case would be marijuana, and then you have

1 gross income. The IRS right there stops you and applies
2 39-percent tax code to it. Now, it's 37. Back then, it
3 was 39. And says you're done. Cut me a check for that
4 amount.

5 Under normal business, you could get down to
6 that gross sales number and go ahead and write off your
7 rent, your labor costs, and mind you, the dispensary is
8 a heavy retail business. So you've got lots of labor.
9 You've got labor. You've got rental costs. You've got
10 advertising, supplies, contractors. Your networking
11 systems, point of sale systems. You have got an
12 enormous amount of expenses. So if we just start with
13 \$1 million and we get it down 500,000 in marijuana
14 costs. Now, you're at 500,000. The marijuana business
15 will pay 37 percent now of that number. You cut a
16 check, and no more write-offs.

17 Over here, on the normal business, that 500,000
18 with the additional amount of expenses may bring you
19 down to about \$150,000 of taxable income. I'm just
20 going to simplify that and not go any further than that.
21 So we start with 150-.

22 Well, you're talking a huge disparity. You're
23 talking an enormous tax bill over here as opposed to
24 maybe paying 25,000 over here.

25 180-, 25,000. There's a huge difference there.
26 We're waiting for -- the industry is waiting for that to
27 be corrected. So you've got the states that have
28 approved -- the 36 states have approved it right now,

1 approved the use of marijuana. And the federal
2 government still sees it as illegal activity. So until
3 they fix it, there's a big problem even today out in the
4 industry right now.

5 So it almost makes it I'm going to say close to
6 impossible to make a profit right now in this industry
7 because of that Code section.

8 **Q Now, did -- in the conversation on the phone**
9 **with Mr. Cotton, what specifically did you discuss about**
10 **Section 280E?**

11 A Well, I had told him, because we both were
12 familiar with it, I said because of 280E, let's just
13 start with just the fact that we're a new business is
14 going to be very difficult to show a profit in the first
15 12 months, very difficult. 280E is even going to make
16 it more difficult. As I've explained, you can't even
17 show a profit -- you may even show a loss at some point
18 in time. So I tried to explain this to Darryl.

19 And I said if I show losses, I've still got to
20 write you a check for \$10,000. I said I -- I can't put
21 that -- I can't get risk for that amount of money
22 because that's just -- it's sure bankruptcy. You're
23 going right into bankruptcy guaranteeing somebody 10,000
24 a month. It's just going to be very difficult to match.

25 **Q What was Mr. Cotton's response to that**
26 **discussion?**

27 A He said see what you can do. And I was so
28 angry and extremely upset.

1 Q Now, had he indicated in that phone
2 conversation that he had talked to anybody else that was
3 willing to pay him guaranteed distributions?

4 A He just said he had other investors that were
5 willing to pay.

6 Q Did he tell you who they were?

7 A No, he didn't.

8 Q Okay. When you left that conversation, was he
9 still insisting on 10,000 a month guaranteed
10 distributions?

11 A Yes, he was.

12 Q Okay. And how did -- how did you feel?
13 What -- how did you decide to react to that after you
14 got done with the phone call?

15 A I just needed to get off the phone, and I said
16 I will -- I'll get back with you. And got off the
17 phone. And immediately started calling some of the
18 people that I know in the industry. And they were
19 saying that that is -- that is going to be difficult,
20 very, very difficult to get to that number.

21 And I -- I just couldn't figure out why
22 the \$10,000 a month and where that came from.

23 Q And --

24 A So my thought process --

25 Q Go ahead. Sorry.

26 A My thought process, we had just cleared the
27 zoning on the record property on January 31st -- it
28 was -- we knew it was January 18th and then there was

1 some paperwork to go. But we had cleared the zoning on
2 the property, which was the biggest hurdle in this whole
3 situation, was the zoning. It cleared it for that
4 property. But it also cleared it for everybody else.

5 So that was -- that was huge. That was
6 enormous.

7 And a week later, Mr. Cotton is now
8 demanding \$10,000 a month. And I -- my thought pattern
9 was, you know, wait a minute. You know, I trusted him.
10 I thought he was acting in, you know, good faith at this
11 point.

12 Q Mr. Geraci, if you're able to proceed. Do you
13 recall any discussions in that February 7th telephone
14 call about the agreement that had been signed on
15 November 2nd?

16 A I'm sorry. Could you repeat that.

17 Q Sure.

18 In the February 7th, 2017 telephone call you've
19 been telling us about, were there any discussions
20 between the two of you about the November subcontracted,
21 2016 agreement that had been signed?

22 A I had told him that we had an agreement, that
23 that was our agreement, and it was signed.

24 Q Now, anything else that took place in that
25 conversation or that was said in that conversation that
26 you haven't already mentioned?

27 A I can't recall at this time.

28 Q Okay. What course of action, if any, did you

1 decide to embark upon once you got that demand on
2 February 7th?

3 A After -- after the conversation I had with --

4 Q Yes. How did you decide to proceed?

5 A I started calling people around to find out
6 about, first of all, how this is going to work out
7 because I couldn't see how it could -- it was very
8 difficult to get past that 10,000. I -- I called an
9 operator that I knew, and they were saying that is very,
10 very tough. We tried to figure out how we could get
11 that to work. And then I -- I called my attorney, Gina
12 Austin.

13 Q And what discussion did you have with -- when
14 did you call her in relation to your phone call with
15 Mr. Cotton?

16 A I think it was within a few days. This is in
17 the middle of tax season. So it's -- I have
18 appointments every hour. So I'm working 18 hours a day.
19 So I think I waited a couple days. Or maybe -- I can't
20 recall exactly. But it was within a few days, I called
21 Gina Austin.

22 Q And what did you discuss with Ms. Austin in
23 that phone call?

24 A I said that -- on the project we're working on,
25 I said Mr. Cotton is now demanding \$10,000 a month, and
26 I am not sure we can even do that. And I said it feels
27 like Mr. Cotton is extorting me at this point because we
28 just got this zoning approved.

1 **Q And did she respond to that?**

2 A She said well, you may have to renegotiate.
3 You may get him back to the table. And I said -- and I
4 was just very upset at that point.

5 And she said -- I told her well, why don't we
6 just put together a contract and maybe get Mr. Cotton to
7 sit down with us and go through the contract.

8 **Q Okay. Did you then proceed to try to**
9 **renegotiate the agreement you had?**

10 A I wanted to start off with the one we had
11 except split it up, as Mr. Cotton requested. He wanted
12 400,000 in relocation costs and then \$400,000 for the
13 property instead of the \$800,000 that we had written up
14 with the contract. And I said that's fine. Just draw
15 that up just so it adds up to \$800 still. So it was
16 still the same.

17 And so Ms. Austin did draw that up.

18 MR. WEINSTEIN: Okay. Your Honor, I'd like to
19 offer Exhibit 59.

20 THE COURT: Any objection?

21 MR. AUSTIN: No, your Honor.

22 THE COURT: Exhibit 59 will be admitted.

23 (Premarked Joint Exhibit 59, Email to Darryl
24 Cotton from Larry Geraci re Federal Blvd
25 Property, dated 2/27/17, was admitted into
26 evidence.)

27 BY MR. WEINSTEIN:

28 **Q Mr. Geraci, would you take a look at**

1 Exhibit 59, please. You might want to look at it in
2 your book because it has an attachment.

3 A Yes, I recognize it.

4 Q Okay. Have you seen Exhibit 59 before?

5 A Yes, I have.

6 Q What is it?

7 A It's an email I sent Darryl Cotton.

8 Q And it says it's a draft purchase of the
9 property for 400K. The additional contract for the 400K
10 should be in today and I will forward it to you as well.

11 You wrote that?

12 A Yes, I did.

13 Q Okay. And draft purchase, was that attached to
14 the email?

15 A Yes. The 400 -- yes. The first 400 was.

16 Q Would you go to the attachment.

17 And is this the agreement that you had asked
18 Ms. Austin to draft to try and start renegotiating the
19 deal?

20 A Yes, it is.

21 Q And had you instructed Ms. Austin to draft an
22 agreement like this?

23 A Yes, I did.

24 Q And you provided it to Mr. Cotton. Is that
25 correct?

26 A That is correct.

27 Q Was there any -- was there a second part to
28 this agreement you had asked Ms. Austin to draft?

1 A That was \$400,000.

2 MR. WEINSTEIN: Offer Exhibit 62, please.

3 THE COURT: Any objection?

4 Any objection, Counsel?

5 MR. AUSTIN: No, your Honor.

6 THE COURT: All right. Exhibit 62 will be
7 admitted.

8 (Premarked Joint Exhibit 62, Email to Darryl
9 Cotton from Larry Geraci re Statement
10 attaching draft Side Agreement, dated 3/2/17,
11 was admitted into evidence.)

12 BY MR. WEINSTEIN:

13 Q Would you take a look at Exhibit 62 and let me
14 know if you have seen that email before.

15 A Yes, I have.

16 Q And what is it? What -- did you send that
17 email?

18 A Yes, I did.

19 Q To whom?

20 A Darryl Cotton.

21 Q On what date?

22 A March 2nd.

23 Q What did you send to him?

24 A I'm understanding. What did you say?

25 Q What did you send to him?

26 A The second part of the agreement.

27 Q Okay. Would you bring up the attachment,
28 please. If you would look at the attachment,

1 Mr. Geraci, and let me know if this is the second part
2 of the agreement that you had asked Ms. Austin to draft
3 up at that time.

4 A Yes.

5 Q Now, did either of these two draft agreements
6 that had been drawn up for -- by Gina Austin contain
7 a 10 percent equity at this ownership or stake for
8 Mr. Cotton?

9 A No, they didn't.

10 Q Did any of these agreements contain a provision
11 for \$10,000 a month guaranteed minimum cash
12 distributions?

13 A No, they didn't.

14 Q Why not?

15 A That was not what we agreed to -- as of the
16 11-two agreement, that's not what we agreed to.

17 Q Okay. Were you willing to agree to it at the
18 time that these were drafted?

19 A I was willing to agree with this contract.

20 Q My question was were you willing to agree
21 with 10,000-dollar equity ownership stake --

22 A No.

23 Q -- at the time this was drafted?

24 Were you willing to agree to a 10
25 percent -- 10,000-dollar-a-month guaranteed distribution
26 at the time these agreements were drafted?

27 A Absolutely not.

28 Q Okay. Now, you sent these emails to Mr. Cotton

1 with the draft agreements. Did you get a response from
2 him?

3 A Yes, I did.

4 MR. WEINSTEIN: Your Honor, I'd offer 63.

5 THE COURT: Any objection?

6 MR. AUSTIN: No objection.

7 THE COURT: Exhibit 63 will be admitted.

8 (Premarked Joint Exhibit 63, Email to Larry
9 Geraci from Darryl Cotton re Statement,
10 dated 3/03/17, was admitted into evidence.)

11 BY MR. WEINSTEIN:

12 Q Mr. Geraci, have you seen Exhibit 63 before?

13 A Yes, I have.

14 Q And what is Exhibit 63?

15 A This is an email sent to me from Darryl Cotton.

16 Q And he's responding -- if I understand
17 correctly, he's responding to the issues with a side
18 agreement and the other agreement that had been sent to
19 you -- to him by you. Correct?

20 A That is correct.

21 Q Okay. And he attached to this email what he --
22 what he refers to as my Inda-Gro GERL service agreement.

23 Do you see that?

24 A Yes, I do see it.

25 Q Would you look at the attachment, please.

26 Do you recognize the document attached to this
27 email on March 3rd, 2017?

28 A Yes.

1 Q Had you seen this document before you received
2 it on March 3rd?

3 A Yes, I did.

4 Q When had you received it before?

5 A That was presented to me after the
6 September 20th meeting.

7 Q Okay. So this is what you testified earlier
8 you saw received by the September 26th email. Correct?

9 A Yes.

10 Q And were you willing to -- to enter into an
11 agreement that was -- contained the terms -- terms and
12 conditions that are in what he had previously proposed
13 on September 24th, 2016?

14 A No.

15 Q Did you ever sign this agreement after he sent
16 it to you the second time?

17 A No, I didn't.

18 Q Did you direct Gina Austin to prepare a draft
19 agreement that contains all the terms and conditions in
20 this proposed agreement back in September 24, 2016?

21 A No, I didn't.

22 Q So how did you respond to Mr. Cotton's email?
23 Did you have further discussions with him?

24 A No. At this point, Mr. Cotton had cut off the
25 communications.

26 Q Okay. Well, let's -- let me have you look
27 at --

28 MR. WEINSTEIN: I'd offer, your Honor,

1 Exhibit 64.

2 THE COURT: Any objection?

3 MR. AUSTIN: No, your Honor.

4 THE COURT: Exhibit 64 will be admitted.

5 (Premarked Joint Exhibit 64, Email to Darryl
6 Cotton from Larry Geraci re Contract
7 Review, dated 3/7/17, was admitted into
8 evidence.)

9 BY MR. WEINSTEIN:

10 Q Now, does this refresh your recollection that
11 you had further communications with him after you
12 responded to those draft agreements?

13 A Yes. I meant verbally. But email, yes.

14 Q Okay. And have you seen Exhibit 64 before?

15 A Yes, I have.

16 Q Okay. And what -- did you send it to
17 Mr. Cotton?

18 A Yes, I did.

19 Q On March 7th, 2017?

20 A Yes.

21 Q And this email says, "I have not reviewed this
22 yet but wanted you to look at it and give me your
23 thoughts. Talking to Matt, the 10K a month might be
24 difficult to hit until the six month. Can we do 5K, and
25 on the seventh month start 10K?"

26 Do you see that?

27 A Yes, I do.

28 Q Why did you send Mr. Cotton this email?

1 A I wanted to preserve my investment. So some of
2 the operators were telling me I might have to get some
3 investors come in and cover me for about two years. So
4 I did not want to lose the deal. I had spent hundreds
5 of thousands trying to get this thing through. And I
6 thought I would at least try to negotiate and get
7 something through at this point. But -- and taking on
8 just a couple of investors, then.

9 Q So did Mr. Cotton respond to this proposal by
10 you to renegotiate the agreement?

11 A He did respond to me.

12 Q Okay. And did he accept that proposal?

13 A No, he didn't.

14 Q Okay.

15 MR. WEINSTEIN: Your Honor, I'd offer
16 Exhibit 69.

17 THE COURT: Any objection?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 69 will be admitted.
20 (Premarked Joint Exhibit 69, Email to Larry
21 Geraci from Darryl Cotton Re Contract
22 Review, dated 3/17/17, was admitted into
23 evidence.)

24 THE WITNESS: Can I get that book over there?

25 MR. WEINSTEIN: I think he has to go to the
26 next volume.

27 THE COURT: Counsel can approach. You can
28 help.

1 MR. WEINSTEIN: Thank you.

2 BY MR. WEINSTEIN:

3 Q Mr. Geraci, would you turn to Exhibit 69. It's
4 a series of email threads. I'd like you to read all the
5 emails to yourself carefully. They're in reverse
6 chronological order.

7 Let me know when you have done that. It's a
8 long email thread, I realize.

9 A I've read it.

10 Q Okay. I'd like you to look in reverse
11 chronological order. Go to the last email. It starts
12 at the bottom of the second-to-last page.

13 Okay. So the very bottom of the second to the
14 last page, there's one line that refers to an email you
15 wrote on March 7th at 12:05 p.m.

16 Do you see that?

17 A Yes, I do.

18 Q It continues on to the next page.

19 So this was the email that we just looked at
20 that you had sent on March 7th that was marked as
21 Exhibit 64. Correct?

22 A Correct.

23 Q All right. I just want to get that for
24 orientation. So let's go to the next email up in the
25 thread.

26 So do you recognize this email from Mr. Cotton?

27 A Yes, I do.

28 Q Okay. And did you receive it on or about

1 March 16th at 8:23 p.m.?

2 A Yes.

3 Q All right. So was this Mr. Cotton's response
4 to your email of March 7th, as far as you recall?

5 A Yes, it was.

6 Q I'd like to focus on the second paragraph where
7 he recaps his understanding of the agreement.

8 Do you see that?

9 A Yes, I do.

10 Q Okay. The first line -- do one line at a time.

11 Okay. Did you have discussions -- he says
12 "Throughout October, we had discussions regarding the
13 sale of my property."

14 Is that true, or false?

15 A That is true.

16 Q He next says "We met on 11/2 and agreed upon an
17 800,000-dollar purchase price, a 50,000-dollar
18 nonrefundable deposit, a 10,000 equity stake with a
19 monthly guaranteed minimum \$10,000."

20 Do you see that?

21 A Yes, I do.

22 Q Is any of that true?

23 A The purchase price is the only thing that's
24 correct.

25 Q Okay. Now, it continues on and says -- and it
26 refers to definitive agreements that contained a few
27 conditions. And he writes "Investigate the property if
28 the CUP is issued until construction starts."

1 Is that true? Had you discussed that?

2 A I'm going to need you to back that up a little
3 bit.

4 Q Sure. I cut off part of the sentence. So this
5 is the rest of the sentence. He said we had discussions
6 regarding definitive agreements that contained a few
7 other conditions, and he gives an example.

8 Is that true?

9 A That is not true.

10 Q Okay. The next line says "We executed a good
11 faith agreement that day stating the sale of the
12 property was for 800,000, and as a sign of good faith,
13 you were providing a 10,000-dollar deposit towards the
14 required 50,000-dollar nonrefundable deposit."

15 Is any portion of that statement true?

16 A The 800,000-dollar price tag is the only number
17 I see is correct.

18 Q Had you agreed to a 50,000-dollar nonrefundable
19 deposit --

20 A No, I did not.

21 Q -- on November 2nd?

22 A No, I did not.

23 Q It goes on to say that same day you scanned and
24 emailed the agreement. Is that true?

25 A Yes.

26 Q And Mr. Cotton says "I replied and noted that
27 the agreement did not contain the 10 percent equity
28 stake in the dispensary."

1 Did you receive an email from Mr. Cotton on
2 November 2nd that said that in the text of the email?

3 A Yes.

4 Q Okay. That email, which we've seen before,
5 asks -- says "Mr. Cotton, I asked you to please respond
6 and confirm via email that a condition of the sale was
7 my 10 percent equity stake."

8 Did he ask you to do that in that email?

9 A Yes, he did.

10 Q And this is an email we talked about in which
11 you then subsequently had a conversation with him on
12 November 3rd?

13 A Correct.

14 Q All right. In the last sentence, he says "You
15 did not respond and confirm the 10 percent as I
16 requested."

17 Was that true?

18 A That is true.

19 Q Now, did you make -- or did you respond -- and
20 he goes on to talk about some of the emails you see.

21 Did you respond to Mr. Cotton's email on
22 March 16th, 2007, if you recall?

23 A I don't recall at this point.

24 MR. WEINSTEIN: Okay. I'd like to offer 70 --
25 strike that. Could you pull up the top email, please?

26 THE COURT: Seven-zero?

27 MR. WEINSTEIN: I withdraw that, your Honor. I
28 need to make sure -- I can't see the top of the email

1 until I have it blown up. So I need to have a quick
2 look.

3 BY MR. WEINSTEIN:

4 Q Do you remember -- the very first email at the
5 top of the first page of Exhibit 69, do you recall
6 receiving that?

7 A Yes.

8 Q Okay. And in that, he says "You told me
9 repeatedly that you could not submit a CUP application
10 until certain zoning issues had been resolved."

11 Is that true?

12 A That is not true.

13 Q What discussions -- well, strike that.

14 Did you tell Mr. Cotton you were submitting a
15 CUP application back in October of 2016?

16 A Yes, I did.

17 MR. WEINSTEIN: One minute, your Honor. Would
18 you go back to Exhibit 5, please.

19 BY MR. WEINSTEIN:

20 Q Mr. Geraci, I'm going to have you go back to
21 Exhibit 5 and go to a text on November 14th, 2016. Find
22 the page that it's located on and tell me what page
23 number it is at the bottom.

24 So look at page 19 of Exhibit 5.

25 A Yes, I have it.

26 Q Okay. Now, on November -- you said you had
27 discussions with Mr. Cotton that you were filing the CUP
28 application. Is that correct?

1 A That is correct.

2 Q He acknowledged you in those conversations that
3 he knew you were filing that application?

4 A Yes, he did.

5 Q Okay. On November 14th, do you see the text
6 at -- it says 1626, which I assume is 4:26 p.m.

7 Do you see that? Go down further.

8 It says "Did they accept the CUP application?

9 Do you see that?

10 A Yes, I do.

11 Q Okay. And is that a text that you received
12 from Mr. Cotton on November 16th, 2016?

13 A Yes, it is.

14 Q Okay. And was that consistent with your
15 understanding that he knew a CUP application had been
16 previously admitted to the City?

17 A Yes, it is.

18 Q Now, was it your understanding at the time that
19 the CUP application had been submitted but it was stuck
20 in the completeness review phase until the zoning issue
21 was resolved?

22 A That was my understanding.

23 Q Okay. So would it have been -- the application
24 had been submitted, but it wasn't going anywhere at that
25 time?

26 A Correct.

27 Q Okay. And at some point in time, did the CUP
28 application again start to move forward?

1 A Yes, it did.

2 Q And when did that occur?

3 A Once the zoning issue was corrected.

4 Q All right.

5 MR. WEINSTEIN: Okay. Would you -- your Honor,
6 I'd like to offer Exhibit 72.

7 THE COURT: Any objection?

8 MR. AUSTIN: No, your Honor.

9 THE COURT: Exhibit 72 will be admitted.

10 (Premarked Joint Exhibit 72, Email to Larry
11 Geraci from Darryl Cotton re Contract
12 Review, dated 3/19/17, was admitted into
13 evidence.)

14 BY MR. WEINSTEIN:

15 Q Mr. Cotton, would you -- Mr. Geraci, would you
16 review Exhibit 72 and let me know whether you've seen
17 those emails in that email thread before.

18 A Yes, I've seen this.

19 Q Okay. And was this an email that you sent to
20 Mr. Geraci on March 19th, 2017 at 3:11 p.m.?

21 A This is an email I sent Mr. Cotton, yes.

22 Q I'm sorry. Mr. Cotton. I'll probably get this
23 right a week from Thursday.

24 It's an email you sent to Mr. Cotton on or
25 about that date and time.

26 A Yes, it is.

27 Q Okay. And in it you say, "Darryl, at this
28 point, you keep changing your mind every time we talk."

1 Do you see that?

2 A Yes.

3 Q What did you mean by that?

4 A Mr. Cotton, as he was making demands, was
5 adding additional items to each email he would send
6 over.

7 Q And were you willing to continue to consider
8 those escalating demands?

9 A At that point, no.

10 Q Would you go back to Exhibit 69, please. Take
11 69 back up. I apologize. Go to the next page.
12 All right.

13 So, Mr. Geraci, I want to have you look at the
14 email that starts on the page 4 at the bottom. It's
15 part of this email we've looked at before.

16 Go to the previous page, please.

17 And it's that entire email. So we did look
18 at -- we looked at part of the email but not the whole
19 thing. So this was the March 16th email that he sent
20 you that we previously discussed. Correct?

21 A Yes, it is.

22 Q I've gone -- I went through that in the
23 subcontracted paragraph. Now, I want to look to the
24 next page, which is a continuation of that email. And
25 if you could highlight where it says "Please have" in
26 the second paragraph.

27 Do you recall receiving and seeing this portion
28 of the email when you got it on March 16th, 2017?

1 A Yes, I do.

2 Q Okay. And had you agreed on a 50,000-dollar
3 nonrefundable deposit?

4 A No, I didn't.

5 Q But he still wanted that to be in the
6 agreement. Correct?

7 A Yes, he did.

8 Q He mentions a 10 percent equity stake with a
9 minimum guaranteed monthly distribution. He was still
10 continuing to insist on that demand. Correct?

11 A Correct.

12 Q And were you willing to do that?

13 A No.

14 Q You had indicated you were -- you had made an
15 offer to do some partial distributions as part of the
16 negotiations, though. Correct?

17 A Correct.

18 Q And he didn't accept that. Correct?

19 A He did not.

20 Q And then the next bullet point, would you
21 highlight the whole bullet point.

22 In this, he insists on a, quote, clause that
23 my 10 percent equity stake carries with it consent
24 rights for any material decisions. Those items that are
25 to require my consent can be standard minority consent
26 rights, but basically that my consent is required for
27 large decisions like the issuance of employee bonus and
28 for agreements with suppliers and vendors that are not

1 done on an arm-length's basis. A friend of mine said
2 that these are standard minority shareholder protection
3 rights.

4 Do you see that?

5 A I do.

6 Q Had you ever received that demand from
7 Mr. Cotton before this email?

8 A Never.

9 Q Had it ever been discussed?

10 A Never been discussed.

11 Q Were you willing to do that?

12 A No.

13 Q The next provision says -- bullet point says "A
14 provision requiring that upon the creation of the
15 formation and governance documents -- upon the creation
16 of the formation and governance documents of this CUP
17 entity, that there's a requirement that the accounting
18 is to be done by a third-party accounting firm that will
19 also be responsible for calculating my 10 percent
20 monthly equity distributions."

21 Do you see that?

22 A Yes, I do.

23 Q Had that been something that had been demanded
24 before by Mr. Cotton?

25 A No.

26 Q Were you willing to do that at this time?

27 A No.

28 Q Okay. The next bullet point item is the

1 incorporation of all the items -- all the terms in the
2 MOU that I created that Gina references in the draft
3 purchase agreement.

4 Do you see that?

5 A Yes, I do.

6 Q Were you willing to do that at this time?

7 A No.

8 Q Okay. And then he asks for a provision to be
9 deleted.

10 When you subsequently emailed him on March 19th
11 and talked about him changing his mind and you testified
12 that he was escalating his demands, were these the
13 things that you were referring to?

14 A Yes, they are.

15 Q Were there any other demands he made that you
16 had not discussed before that came up at this point in
17 time, if any?

18 A I think this covers it.

19 Q All right. So I want to take you back to
20 Exhibit 72. Middle email.

21 And after you sent Mr. Cotton this email, what
22 action did you take?

23 A At this point, I felt that Mr. Cotton didn't
24 want to negotiate anymore. So I had to look at
25 protecting the -- my investment that I had. And I
26 sought out legal advice at this point.

27 Q Okay. Did you subsequently file a lawsuit?

28 A Yes, I did.

1 Q Okay. Now, after you filed the lawsuit, did
2 you consider -- continue to pursue the CUP application
3 through your team?

4 A Yes, we did.

5 Q Why?

6 A I was going to satisfy our agreement.

7 Q And what instructions, if any, did you give to
8 the team at that time in terms of pursuing the CUP
9 application?

10 A I told them just continue to move forward.

11 Q Okay. Now, was it important to you that the
12 CUP application be approved?

13 A Yes.

14 Q Why?

15 A Number one, I -- I have to complete the
16 contract. And, number two, I had learned that a
17 competing -- a competing CUP was coming up behind us.

18 Q Do you recall when you learned that
19 approximately?

20 A It was -- I'm thinking it was somewhere at the
21 end of March, somewhere around there. I can't tell you
22 the exact date.

23 Q Do you have a clear recollection of that? Do
24 you have a clear recollection of when you were told
25 about the competing CUP application?

26 A Oh, yes.

27 Q And who were you told by?

28 A I believe it was Abhay.

1 Q And that's Mr. Schweitzer?

2 A Yes.

3 Q And when he told you that there was a competing
4 CUP application on a property, where did you understand
5 that property was?

6 A He told me -- I said where was it? And he said
7 it's within 1,000 feet of Mr. Cotton's property.

8 Q And did you understand that that had
9 significance for the CUP application that you were
10 pursuing?

11 A Yes.

12 Q Why?

13 A Because you can't have two dispensaries within
14 a thousand feet of each other.

15 Q At this point, you're in a race?

16 A In a race.

17 Q Okay. Now, after March of 2017, did you become
18 aware of any conduct by Mr. Geraci that interfered with
19 the ability to move forward with this CUP application?

20 A The conduct of Mr. Cotton?

21 Q I'm sorry. Mr. Cotton.

22 A Yes.

23 Q All right. And what did you -- what conduct
24 did you learn of?

25 A Well, he was calling the City and trying to
26 insert his name on the application. He told the gal at
27 the City that he had no idea that somebody submitted an
28 application, a CUP application.

1 Q And this person at the City, who was that?

2 A Tirandazi.

3 Q Is that Mr. Tirandazi?

4 A Tirandazi, yes.

5 Q Anything else that he did that you're aware of
6 that interfered with your team's ability to obtain a
7 CUP?

8 A That's just the beginning.

9 Q What do you remember happening next?

10 A We needed to get a survey -- a soil sample done
11 on the property. While before that, we had to post.
12 Post a permit. And it disappeared off the fence. So --

13 Q So this was a requirement of the CUP process
14 that once your application is deemed complete, you have
15 to go forward and post notice of it on the property?

16 A Right.

17 Q Okay. Did -- who handled that on the team?

18 A Abhay Schweitzer.

19 Q He'll be able to tell us that from firsthand
20 knowledge?

21 A Yes.

22 Q All right. What else happened that you recall
23 that interfered with the ability to process a CUP
24 application?

25 A We needed to get the soils sample -- soil
26 samples out from the property, and Mr. Cotton prevented
27 us from getting onto the property.

28 Q And do you recall whether you were eventually

1 able to get access?

2 A Eventually, we did.

3 Q What did you have to do in order to get access
4 to the property?

5 A We had to take court action.

6 Q And on how many occasions?

7 A Two.

8 Q And did that result, to your knowledge, in any
9 kind of delay in the process of the CUP application?

10 A Well, we had three --

11 MR. AUSTIN: Objection. Speculation.

12 THE COURT: Sustained.

13 BY MR. WEINSTEIN:

14 Q Would that be a better question for
15 Mr. Schweitzer?

16 A Yes, it would.

17 Q Now, did the competing CUP application receive
18 approval before your application?

19 A Yes. Yes, it did.

20 Q And did you take any action to try and
21 challenge the approval of that competing CUP
22 application?

23 A We --

24 Q That's a "yes" or "no."

25 A Yes.

26 Q What did -- what did you do?

27 A I hired an attorney.

28 Q And did you have somebody appear to -- did

1 somebody within your team handle the actual appeal at
2 the planning commission?

3 A Yes.

4 Q And who was that?

5 A Abhay Schweitzer and Jim Bartell.

6 Q And they would be able to tell us about what
7 deficiencies they claimed in the competing CUP
8 application?

9 A Yes, they would.

10 Q All right. We'll leave that for them. Was
11 that appeal successful?

12 A No, it wasn't.

13 Q And that appeal of the competing CUP
14 application was unsuccessful, did you do anything else
15 to try to pursue the CUP application?

16 A Well, I hired another attorney to get some
17 advice on what we could do with -- with -- if they
18 didn't accept the appeal, which they didn't. So I just
19 got a third-party attorney to take a look at it and see
20 if there was anything else we could do.

21 Q And did you then pursue any other action?

22 A No, not at that point.

23 Q And was that based on the advice of that
24 counsel?

25 A Yes, counsel.

26 Q Who was that attorney?

27 A I can't pronounce her name.

28 Q Okay. Would you look at Exhibit 134. It might

1 refresh your recollection. It might be in the other
2 volume.

3 A 130 --

4 THE COURT: If it's in another volume --

5 MR. WEINSTEIN: 137.

6 THE WITNESS: Yeah. It's in the other volume.

7 MR. WEINSTEIN: May I approach?

8 THE COURT: You bet.

9 MR. WEINSTEIN: Thank you.

10 BY MR. WEINSTEIN:

11 Q Are you taking a look at 137?

12 A Yes, I am.

13 THE COURT: I'm sorry?

14 MR. WEINSTEIN: 137. I'm just going to use it
15 to refresh his recollection.

16 THE COURT: I understand. Was there an
17 objection?

18 MR. AUSTIN: Your Honor, in my exhibit folder,
19 it's not in there.

20 THE COURT: All right. Why don't you talk
21 among yourselves. Just take a moment, please.

22 MR. AUSTIN: I have it, your Honor.

23 THE COURT: Got it? All right. Thank you very
24 much. Let's continue with 137.

25 BY MR. WEINSTEIN:

26 Q So take a look at Exhibit 137. Does that
27 refresh your recollection as to the name of the
28 attorney?

1 A Yes, it does.

2 Q What was this attorney's name?

3 A McElfresh.

4 Q So now I'm going to switch subjects completely.
5 I'm going to talk about the money that was expended in
6 connection with the CUP application. Continue to look
7 at Exhibit 137.

8 MR. WEINSTEIN: Your Honor, we're offering 137
9 pursuant to the advanced trial review orders requirement
10 of Evidence Code 1561. I think it is summary of
11 damages.

12 THE COURT: All right.

13 MR. AUSTIN: No objection.

14 THE COURT: All right. Exhibit 137 will be
15 admitted.

16 (Premarked Joint Exhibit 137, Federal Blvd. -
17 Summary of All Expense Payments (Excel
18 Spreadsheet), was admitted into evidence.)

19 BY MR. WEINSTEIN:

20 Q All right. Mr. Geraci, did you have a summary
21 prepared of the amounts of money you expended in
22 connection with seeking this CUP application after you
23 entered into the November 2nd written agreement with
24 Mr. Cotton?

25 A Yes, I did.

26 Q And did you review and approve that summary?

27 A Yes, I did.

28 Q Okay. And did you -- were there supporting

1 documentation -- documents that you reviewed in
2 connection with this summary?

3 A Yes, I did.

4 Q Okay.

5 MR. WEINSTEIN: Your Honor, may I have a quick
6 sidebar?

7 THE COURT: Ladies and gentlemen, if you want
8 to stretch your legs for just a moment, I need to talk
9 to counsel for just a quick moment. We'll be right
10 back.

11 (Sidebar held and not reported.)

12 THE COURT: All right. We're going to be going
13 a little bit longer. Then we'll be taking our afternoon
14 break in just a few minutes.

15 All right. So Exhibit 137 has been admitted.

16 Counsel, why don't you continue.

17 MR. WEINSTEIN: Put it back up.

18 BY MR. WEINSTEIN:

19 Q Is this a summary that you had prepared and
20 reviewed with respect to the expenses you paid from the
21 CUP application?

22 A Yes, they are.

23 Q Did you review all the supporting documentation
24 for that summary?

25 A Yes, I did.

26 Q And it lists amounts paid for both -- are these
27 different persons with whom you contracted in connection
28 with obtaining the CUP application?

1 A Yes.

2 Q The first line says "Payments for Federal
3 Avenue."

4 Who -- what payments are those to?

5 A That's to Austin Legal Group.

6 Q All right. And then the next line,
7 Bartell & Associates.

8 Is that to Mr. Bartell's company?

9 A Yes, it is.

10 Q Payments listed to the City treasurer. What
11 are those for?

12 A Those would be for the CUP application fees.

13 Q Now, there's an entry for Lundstrom
14 Engineering. Do you remember what they did?

15 A I believe that was the topographical
16 engineering report.

17 Q The next entry is for McElfresh Law. What was
18 that vendor?

19 A That was the attorney I hired for the appeal.

20 Q This is the appeal of the competing CUP
21 application?

22 A Yes, it is.

23 Q The next entry is for Mituza Traffic
24 Consulting.

25 Do you see that?

26 A Yes, I do.

27 Q What was that company hired to do?

28 A They were to analyze traffic along Federal

1 Boulevard.

2 Q By the way, did -- strike that.

3 Sam Wade Landscape Architect, what vendor was
4 that?

5 A The City requires you to get runoff, how water
6 runs off on your property and how much landscape they
7 want on your property as well. So we had to hire a
8 landscape architect.

9 Q SCST, what is that vendor?

10 A That is Southern California Soils Testing.

11 Q And what were they hired to do?

12 A They were hired to get core samples of -- of
13 dirt from the property.

14 Q Okay. Did they prepare any kind of a report,
15 if you know?

16 A I believe they did.

17 Q I'll ask Mr. Schweitzer about that.

18 Snipes-Dye Associates, what was that group
19 hired to do?

20 A Okay. That was the grading of the property.

21 Q The what of the property?

22 A That was the people who were doing the grading
23 of the property. So they had to make plans to -- on how
24 the property was going to be grading. It was conceptual
25 grading plans.

26 Q I see.

27 And then TECHNE, that's Mr. Schweitzer's
28 business?

1 A Yes.

2 Q Those were the fees paid to his business for
3 all the work he did on the CUP application?

4 A Yes.

5 Q And then Title Pro, a small amount, what was
6 that for?

7 A That was to run title on the property.

8 Q Okay. And that totaled 213,503.28.

9 Is that the total that you're claiming for the
10 payments you made in connection with the CUP application
11 after you signed the agreement -- or -- in reliance on
12 the agreement you signed with Mr. Cotton?

13 A Yes.

14 Q And you still have bills owing to Mr. Bartell
15 of \$46,606?

16 A That is correct.

17 Q The competing CUP application on the nearby
18 property, did you ever learn who the owner of that
19 property was?

20 A Yes, I did.

21 Q What was that -- what was that person's name?

22 A Aaron Magagna.

23 Q And when did you learn that he had a competing
24 CUP application -- or when did you learn his name that
25 he was a property owner?

26 A Through the team.

27 Q Through what? I'm sorry?

28 A Through the team.

1 Q Okay. Have you ever met Mr. Magagna?

2 A No.

3 Q Have you ever spoken to him?

4 A No.

5 Q Do you know whether you've ever seen him?

6 A I have never seen him.

7 MR. WEINSTEIN: I think that's it, your Honor.

8 I appreciate the time.

9 Thank you.

10 THE COURT: Cross-examination.

11 MR. AUSTIN: Yes, your Honor.

12 (Cross-examination of Larry Geraci)

13 BY MR. AUSTIN:

14 Q Good afternoon, Mr. Geraci.

15 A Good afternoon.

16 Q Earlier, you testified that Rebecca Berry works
17 with the Tax and Financial Group that you run?

18 A Yes.

19 Q Yes. You called her your gatekeeper?

20 A Yes.

21 Q So she's like the first point of contact when
22 anyone enters your office?

23 A For the most part, yes.

24 Q For the most part.

25 Is she a licensed real estate broker?

26 A Yes, she is.

27 Q Have you ever utilized her in that capacity?

28 A No, I haven't.

1 Q You've never engaged her services as a broker?

2 A No, I haven't.

3 Q Okay. And you were a licensed real estate
4 agent from 1993 to 2017?

5 A That is correct.

6 Q So is that license lapsed right before this
7 lawsuit -- or you let it go?

8 A I just let it go. I haven't been practicing
9 for years.

10 Q Okay. So you have had experience with tenants
11 that have had marijuana dispensaries on the properties
12 before?

13 A Yes. Tenants on the -- my property, yes.

14 Q Okay. So there's two -- two cases where you
15 were -- you were named in a lawsuit against (sic) the
16 City?

17 A That is correct.

18 Q Okay. Are you aware of how much money the --
19 your tenants were pulling in with their dispensaries?

20 A I had no idea.

21 Q But you got the sense that this could be a
22 profitable industry if done legally?

23 A I did not get into their business. We -- they
24 paid us rent.

25 Q Yes. But that -- is this how you learned of
26 the industry?

27 A No.

28 Q Oh, okay.

1 Anyway, you assembled a team starting in 2015?

2 A That is correct.

3 Q All right. So Jim Bartell, I see Exhibit 1, we
4 had a contract with Mr. Bartell. Right?

5 A That is correct.

6 Q And about how long was that contract, the
7 length?

8 A I don't recall how long it was supposed to be.
9 I think it was just an ongoing monthly thing until --

10 Q Oh, what I'm referring to is the length of the
11 actual written contract. You can refer to Exhibit 1 if
12 that would help refresh your recollection.

13 A Okay. It looks like a page and a half.

14 Q And I see there's a lot of terms and specific
15 items in there. Did you pay him cash in this
16 transaction? It looks like on page 3 of Exhibit 1, you
17 gave him a check for \$7,500. Is that correct?

18 A Yes.

19 Q Okay. So, typically, when you're dealing with
20 professionals or you're doing anything with a sum of
21 money that's more than nominal, you typically use
22 contracts, do you not?

23 A It depends on the situation.

24 Q Okay. We just looked at Exhibit 137 -- I'm
25 sorry. It's a different volume. You probably don't
26 have to refer to it. But there were 11 vendors on
27 there. Correct?

28 A That is correct.

1 Q Yes. So these were all professional groups,
2 institutions, attorneys, other professionals. Correct?

3 A That is correct.

4 Q All right. Did -- did you enter into any oral
5 contracts with any of those vendors for those services
6 specified in Exhibit 137?

7 A No oral contracts.

8 Q No oral contracts?

9 A No.

10 Q Were all of your contracts very specific with
11 all the fine terms?

12 A It depends on who was writing the contract.

13 So --

14 Q Okay. So you met Mr. Cotton July 2016?

15 A I didn't meet him. I talked to him on the
16 phone.

17 Q Oh. You spoke with him over the phone. Right.
18 And you guys started immediately going through phone
19 calls and text messages and developing some sort of
20 professional relationship or prospective professional
21 relationship?

22 A It was more or less a friendship.

23 Q Okay. Remind me what date it was that
24 Mr. Cotton and you came to some sort of agreement that
25 you would be willing to buy his property?
26 Approximately?

27 A When we discussed terms or --

28 Q Or when you figured out that you wanted to make

1 **an offer.**

2 A The first time I talked with him was 800-. We
3 had a meeting I believe it was September 20th.

4 **Q Around September 20th.**

5 A That didn't change. And then we signed a
6 contract November 2nd.

7 **Q Right.**

8 **What would you estimate the fair market value**
9 **of Mr. Cotton's property to be?**

10 MR. WEINSTEIN: Objection. Lacks foundation.

11 MR. AUSTIN: At -- at the time --

12 THE COURT: One moment.

13 Do you want the Court to rule on the objection?

14 MR. AUSTIN: Yes, your Honor.

15 THE COURT: The objection is overruled.

16 THE WITNESS: Could you repeat the question?

17 BY MR. AUSTIN:

18 **Q Approximately what do you think the fair market**
19 **value of Mr. Cotton's property was?**

20 MR. WEINSTEIN: I'm going to object for just as
21 to time.

22 THE COURT: That's --

23 MR. AUSTIN: In --

24 THE COURT: One moment. The objection is
25 sustained. Please narrow the scope of the time.

26 BY MR. AUSTIN:

27 **Q Yes. September 2016.**

28 A Considering its current condition, it was

1 probably worth -- I'm just going to guess. My estimate,
2 225- to \$250,000.

3 Q Are you aware of -- well, you described
4 Mr. Cotton's business as a grow operation. But are you
5 aware of what his company's name was?

6 A I believe it was Inda-Gro.

7 Q Yes. And do you know what they actually did?

8 A It looked like he was growing marijuana.

9 Q It looks like he was growing several different
10 things.

11 But would it be fair to say that he had a
12 lighting company that -- that focused in on growing
13 medical cannabis and other plants?

14 A I don't ever recall hearing a lighting company
15 in our conversations. He did say -- he did say he had I
16 think it was watering and the way he lights it. I'm not
17 in the industry. So I couldn't tell you. He tried to
18 explain it to me one time, and it went right over my
19 head.

20 Q So you say you came to an agreement for a sale
21 price of \$800,000?

22 A That is correct.

23 Q Okay. And on September 24th, Mr. Cotton sent
24 you a link to a Dropbox with documents in it. Correct?

25 A I believe so.

26 Q Did you look at those documents?

27 A It was the one proposal.

28 Q Was there also a memorandum of understanding

1 within that Dropbox?

2 A No, there wasn't.

3 Q Is it fair to say that maybe you just don't
4 recall seeing it?

5 A I don't recall seeing it.

6 Q Okay. And if I can bring your attention to
7 Exhibit 5, the text messages. If we go to page 11.
8 September 26th. Five text messages down. If I may,
9 I'll just read.

10 From Darryl Cotton. "Good morning" --

11 A Excuse me. I'm not there yet. Where are you
12 again?

13 Q Are you still -- page 11 on Exhibit 5.

14 A Yes, I'm there.

15 Q All right. So Darryl writes "Good morning.
16 Were you able to see the share folder I sent over this
17 a.m.? Feel free to comment and edit these docs as we
18 work out the details. I'm no lawyer, but from my
19 perspective, it's a good thought. Let me know your
20 thoughts."

21 To which you respond, "I will be reviewing
22 today."

23 Do you recall that?

24 A Yes, I do.

25 Q Did you in fact review the documents that he
26 sent?

27 A The proposal, yes, I did.

28 Q Okay. Did you return any comments or edits

1 to --

2 A I don't believe so.

3 Q Oh. If I can direct your attention to that
4 services contract, as it's entitled by Mr. Cotton.
5 That's Exhibit 63. I apologize. It's actually
6 Exhibit 10.

7 THE COURT: What exhibit number?

8 MR. AUSTIN: Exhibit 10.

9 THE COURT: Ten.

10 THE WITNESS: Okay. I'm there.

11 BY MR. AUSTIN:

12 Q Could you read -- could you read that first
13 paragraph for me.

14 A "Pursuant to our conversation, I have developed
15 this document to act as a contract between us that will
16 serve to define our relationship, services, fees, for
17 the development of 6176 Federal Boulevard, San Diego,
18 92114, hereafter referred to as the property, as a new
19 dispensary to be owned and managed by your company, GERL
20 Investments."

21 Q All right. And you see where he continues to
22 lay out six terms in six different paragraphs. Correct?

23 A I do see that.

24 Q It looks like he's trying to be pretty specific
25 on how he wants this sale to go down under his
26 understanding of where you guys were at in the
27 negotiation phase.

28 Is that a fair representation?

1 MR. WEINSTEIN: I'm going to object that it
2 calls for speculation as to what --

3 THE COURT: Sustained.

4 BY MR. AUSTIN:

5 Q Would you agree that this is a relatively
6 detailed attempt at a first draft of a contract?

7 A I would say it's fairly detailed.

8 Q So upon receiving this, you didn't feel it was
9 necessary to make any comments, edits, or ask him to
10 change anything?

11 A We had a conversation about this.

12 Q Okay. So every conversation that you had in
13 regards to modifying this contract was all oral?

14 MR. WEINSTEIN: Objection. Ambiguous as
15 phrased as to "this contract."

16 THE COURT: Overruled.

17 THE WITNESS: Could you repeat the question.

18 BY MR. AUSTIN:

19 Q So any comments you had regarding modifications
20 to this contract were oral conversations?

21 A It wasn't a big conversation with him. I just
22 saw pretty much the 10 percent and how he wanted to
23 integrate Inda-Gro into the new dispensary. This just
24 wasn't -- I wasn't going to entertain anything on this.

25 Q Okay. Going back to Exhibit 5 -- actually, on
26 the first page, halfway down --

27 A What page number, please?

28 Q Page 1.

1 A Okay.

2 THE COURT: Counsel, it's nearly 3 o'clock. Is
3 it a convenient time for a break?

4 MR. AUSTIN: Yes, your Honor.

5 THE COURT: All right. So we're going to take
6 our afternoon break now. We're going to be in recess
7 for approximately 15 minutes. Do not form or express an
8 opinion or discuss the case until you deliberations.

9 We'll be in recess for 15 minutes.

10 All right. The jury has left the courtroom.
11 We'll be in recess.

12 (Recess from 2:54 p.m. to 3:08 p.m.)

13 THE COURT: Let me talk to counsel for just a
14 quick moment.

15 The pace was beginning to slow down just a
16 little bit this afternoon. Remember, you have an
17 audience, those folks. And it's hard for you to keep
18 their attention if they're -- if they're struggling to
19 stay awake.

20 So you might want to inject a little bit more
21 pace into your presentation. I'm not being critical.
22 It's just something to think about.

23 All right. Let's see. Mr. Geraci, may I ask
24 that you take the witness stand. And as soon as the
25 deputy has the jury assembled.

26 All right. Mr. Austin, please continue your
27 cross-examination of Mr. Geraci.

28

1 BY MR. AUSTIN:

2 Q So just to backtrack just ever so slightly, you
3 said in July is when you developed a friendship with
4 Mr. Cotton?

5 A It wasn't in July. My first contact with
6 Mr. Cotton.

7 Q Well, over the proceeding couple months that
8 you were speaking with him, you were developing some
9 sort of friendship is what you said.

10 A Yeah. Some sort of friendship, correct.

11 Q Okay. So what I was trying to draw your
12 attention to earlier was texts and emails where it
13 indicates that you're working together. You did use
14 language multiple times with the words "we" and "we're
15 going to make money together."

16 A Are you pointing to a page, please?

17 Q Yes. Page 1 on Exhibit 5, you say that -- so
18 Mr. Cotton sends pictures of some basil growing. And
19 then he kind of discusses what's going on. Was it you
20 that responded with "If we can get this through, that
21 should work great as an asset to the business"?

22 A Do you want me to define that?

23 Q No. Is that -- is that your response to the
24 text message? Are you the one who sent that text "If we
25 get this through, that should work as a great asset to
26 the business"?

27 A If we could get this deal through, this could
28 work as an asset to the business because Mr. Cotton

1 was -- do you want me to explain it or --

2 Q I don't -- I don't need an explanation.

3 A Okay.

4 Q Did you send that text message?

5 A Yes, I did.

6 Q Okay. Thank you.

7 And when on September 24th you were given a
8 draft of what Mr. Cotton indicated he would like the
9 contract to be, you did not send him any edits in
10 writing or any suggestions, nothing in writing?

11 A No, I did not.

12 Q Okay. So he comes in on November 2nd. You
13 give him \$10,000. And he gives you -- or -- and he
14 signs this quote-unquote receipt.

15 Why -- why in this three-sentence document that
16 you allege as the contract did you not have more
17 specific terms?

18 MR. WEINSTEIN: Objection. Vague.

19 THE COURT: Overruled.

20 THE WITNESS: We had an understanding as we
21 were talking through the contract.

22 BY MR. AUSTIN:

23 Q So, basically, at this point, you guys have a
24 friendly relationship. So whatever oral understandings
25 you have together, that's good enough to go forward with
26 this contract, in your mind? Let -- do I need to
27 rephrase that?

28 A Yeah.

1 Q So at this time, because of the relationship
2 you had with Darryl, you thought the three-sentence --

3 THE COURT: Counsel, no first names. All last
4 names, please.

5 MR. AUSTIN: I apologize, your Honor.

6 BY MR. AUSTIN:

7 Q Because of your relationship with Mr. Cotton,
8 you felt this three-sentence contract was good enough?

9 A Yes. I trusted Mr. Cotton. Absolutely.

10 Q And you were a real estate agent at this time?

11 A At that time, I was.

12 Q Would you recommend that -- if you were still
13 practicing real estate, would you recommend that any of
14 your clients sign this very contract?

15 A Absolutely.

16 Q Are you familiar with CAR forms?

17 A Yes, I am.

18 Q Could you tell the jury what those are.

19 A Those are forms you can use in real estate
20 transactions if you choose to use them.

21 Q Yes. While not mandatory, they are -- they are
22 a good source, and a lot of people use them for
23 real estate transactions, wouldn't you say?

24 A You can, yes.

25 Q Yes.

26 Do you know approximately how long those
27 contracts typically are, those forms?

28 A Approximately six pages, I believe.

1 Q Yes, somewhere in that range.

2 A Mm-hmm.

3 Q Fine print and a lot of terms, I recall.

4 MR. WEINSTEIN: Objection. Your Honor, that's
5 not a question.

6 THE COURT: I'm sorry?

7 MR. WEINSTEIN: My objection is he's testifying
8 about a CAR form and not asking the question.

9 THE COURT: Your objection is overruled.

10 BY MR. AUSTIN:

11 Q So despite trusting Mr. Cotton, some of this
12 your attorney went over with you, but why wouldn't you
13 include language within that contract on who would bear
14 the expense of pursuing the CUP?

15 A When Mr. Cotton and I got together, it was an
16 understanding as we were drawing those -- that contract
17 up and we were talking it out to girth, we drew the
18 contract -- contract up. And we understood who was
19 paying for the CUP as we drew the contract up.

20 Q Okay. And you also had an understanding that
21 the \$10,000 was nonrefundable?

22 A That is correct.

23 Q So that's why you didn't include that term in
24 that document?

25 A We -- we talked as we were across from each
26 other, yes.

27 Q Okay. So furthermore, you orally discussed
28 that the -- or did you discuss when the balance of the

1 **\$800,000 would be due?**

2 A When the CUP was issued, the balance that was
3 \$790,000.

4 Q **So when it's issued or not necessarily when the**
5 **business starts?**

6 A But when the CUP is issued, we were going to
7 close the deal.

8 Q **Okay. Do you have a notary on staff at tax and**
9 **financial industries -- or did -- at your business, do**
10 **you have a notary on staff?**

11 A Yes, I do.

12 Q **Okay. So if that was the contract, why didn't**
13 **you have a separate receipt for a 10,000-dollar deposit?**

14 A That was the receipt.

15 Q **That was --**

16 A That was him -- me giving him \$10,000. That
17 was part of the contract. And I'm not sure what else
18 you're trying to ask me here.

19 Q **Why did you pay him \$10,000 in cash and not by**
20 **check?**

21 A Because he required it. He asked me to do it.

22 Q **And when he came in and he mentioned five --**
23 **\$50,000, he -- he did so in a joking manner?**

24 A Yes, he did.

25 Q **So you had no actual expectation that he wanted**
26 **or he actually expected, himself, a 50,000-dollar**
27 **retainer on that day -- or not retainer, but deposit?**

28 A He knew he wasn't getting \$50,000 that day.

1 Q So after leaving your office that day, you
2 almost immediately scanned and sent a copy of the
3 contract, as you call it, to Mr. Cotton?

4 A I didn't leave my office. I scanned it to him
5 within six minutes.

6 Q Okay.

7 A And then sent it to him.

8 Q Why didn't you give him a copy on the spot?

9 A He asked me to email it to him.

10 Q Oh, okay.

11 So the couple hours later when he opens his
12 email, he sends you a rather lengthy response. It's a
13 pretty big paragraph.

14 A Could you tell me where that is, please.

15 Q That would be Exhibit 41, page 1. So in this
16 email, you write -- or Mr. Cotton writes, "Hi, Larry.
17 Thank you for meeting today. Since we executed the
18 purchase agreement in your office for the sale price of
19 the property, I just noticed the 10 percent equity
20 position of the dispensary was not language added into
21 that document. I just want to make sure that we're not
22 missing that language in the new final agreement as it
23 is a factored element in my decision to seel my
24 property. I'll be fine if you simply acknowledge that
25 here in a reply. Regards."

26 Do you recall reading that?

27 A The next day, yes.

28 Q So what you testified to earlier was that you

1 responded to this email but only to the first five
2 words --

3 A That is correct.

4 Q -- "Thank you for meeting today."

5 A Yes.

6 Q And your response was what? What was your
7 response?

8 A No, no problem.

9 Q No, no problem. Earlier, you were a little bit
10 unclear. You said you made a mistake in saying no, no
11 problem before -- before we took our lunch.

12 A I doubled the no because I was texting on my
13 phone, probably.

14 Q Okay. So are we to believe that you routinely
15 just answer emails that you don't read, you respond
16 without reading?

17 A My phone shows the first two lines in my email.

18 Q So --

19 A And so the first two -- do you want an answer?

20 Q Yes. Go on.

21 A Okay. So the short part, he put "Thank you for
22 meeting today." That line showed up in my email viewing
23 section.

24 Q So the beginning of the next sentence, "Since
25 we executed the purchase agreement," that wasn't in the
26 second line?

27 A No. Because the first line is "Hi, Larry."
28 The second line is "Thank you for meeting

1 today."

2 Q Well, it's all one paragraph. I mean, I don't
3 know --

4 A Are you understanding how the cell phone works
5 on the -- when you read a cell -- a message?

6 Q Yeah. I'm familiar. Maybe it did cut off at
7 that period.

8 A I -- I have it right now if you want to look at
9 it.

10 Q No, that's quite all right. All right. So you
11 never -- you never send Mr. Cotton a denial in
12 writing -- you never refute this. You say you had an
13 oral conversation the next day.

14 A That is correct.

15 Q Okay. So I have a lengthy gap between exhibits
16 here.

17 But when it comes to contracts on
18 February 27th, which is Exhibit 59, the first page --

19 A What page are you on?

20 Q It's the first page, Exhibit 59. So, here, we
21 have on the third page starts an agreement. And this
22 was drafted by Gina Austin.

23 A That is correct.

24 Q Okay. And here we have a one, two, three,
25 four, five, six, seven, eight, nine, 10, 11, 12, 13, 14,
26 15, 16 -- we have a 17-page draft agreement. And this
27 was only one of two contracts that Gina was drafting.
28 Is that correct?

1 A Yes, that's correct.

2 Q Okay. So I see in this agreement there are a
3 lot of terms. There are defined terms, addresses,
4 purchase price, how deposits are supposed to go.

5 It does seem to indicate that a 10,000-dollar
6 deposit was made already. Is that correct?

7 A That is correct.

8 Q It discusses escrow, title matters --

9 THE REPORTER: I'm sorry, Counsel. Can the
10 reporter hear again after title matters.

11 MR. AUSTIN: Title policy, title survey costs,
12 physical inspections, covenants.

13 BY MR. AUSTIN:

14 Q These are all typical terms in real estate
15 contracts, aren't they?

16 A I -- yes, they are.

17 Q And these are designed to protect both sides in
18 a contract, are they not?

19 A Yes, they are.

20 Q On page 16 at the top, I see they even have
21 attorney fees, governing law under the State of
22 California, interpretation of this agreement.

23 So going back to page 1, actually, you refer to
24 the additional contract for \$400,000. How come in --
25 to -- to your knowledge, how come in Mr. Cotton's
26 September services agreement he mentions breaking it up
27 in \$400,000 and then in November, you don't mention
28 breaking it up in \$400,000. But then when it comes to

1 you sending drafts, the \$400,000 in two separate
2 contracts comes back into play?

3 A Could you repeat that again.

4 Q Why is it that initially the idea was to have
5 two different payments of \$400,000 for different
6 purposes and then this resurfaces several months later
7 but it does not appear in the November 2nd document?

8 A Mr. Cotton and I sat down at my desk and
9 developed that agreement. Okay. That agreement can be
10 submitted to escrow to create all these same pages.
11 Okay. So --

12 Q Okay.

13 A -- the 400,000 Mr. Cotton decided he wanted to
14 have relocation costs of \$400,000. So in one of the
15 emails, he said he wanted it split up in February, I
16 believe. I was trying to appease him and just give
17 him -- split up the \$400,000 like he wanted on one of
18 the emails. But it still added up to \$800,000.

19 Q But November, when he comes in, give
20 him \$10,000 cash and he's on his way, he -- he doesn't
21 care about the \$400,000 at that point? He doesn't care
22 about how it's broken up? It just --

23 A I couldn't read his mind.

24 THE COURT: Hold on. Was there an objection?

25 MR. WEINSTEIN: No.

26 THE COURT: I'm sorry. Excuse me for
27 interrupting, Mr. Geraci. Please continue.

28

1 BY MR. AUSTIN:

2 Q So in Exhibit 62, there's the second half of
3 the contract, which is also relatively lengthy. But
4 perhaps more like five or six pages.

5 A What page are you on, please?

6 Q Exhibit 62. Bates numbered 1 through 8.

7 So in response to these two contracts that you
8 send, if you could refer to Exhibit 63, Mr. Cotton --
9 wait. Let's see. Yes.

10 Mr. Cotton responds to you, "Larry, I read the
11 side agreement and your attachment, and I still see that
12 no reference is made to the 10 percent equity position
13 as per my Inda-Gro service agreement in the new store.
14 In fact, paragraph 3.11, which looks to avoid our
15 agreement completely, looks like counsel did not get a
16 copy of that document. Can you explain."

17 A At that time --

18 Q What's that? That's page 1, Exhibit 63.

19 A I have it. Did you want a response?

20 Q No. You didn't actually respond in email. So
21 when he's asking why that's not in there, I don't -- I
22 don't have a response. So did you -- did you call
23 him --

24 A This was a very contentious time, and I was
25 talking to my attorney explicitly because Mr. Cotton
26 wouldn't take my phone calls after this point.

27 Q So he was trying to communicate via writing?

28 A Okay.

1 Q Through email, did you ever email him back?

2 A Because -- no, I did not.

3 Q Okay. So is that why you also did not respond
4 on March 16th in Exhibit 69?

5 A No. 69, you said?

6 Q Yes. Exhibit 69.

7 A I need the other book.

8 Q Oh.

9 A Thank you.

10 And what page are you on, please?

11 Q Page 1 on 69.

12 A Okay.

13 Q So towards the bottom of the page on
14 March 16th, he refers to the draft side agreements that
15 were emailed to him from Gina Austin.

16 A How far down on the page, please?

17 Q The last two paragraphs --

18 A Okay.

19 Q -- mentions March 2nd and March 7th.

20 So upon receiving the first draft of the main
21 and side agreement from Gina Austin, Mr. Cotton said he
22 didn't like some of the terms. And you testified that
23 you did have some modifications made. And then he was
24 given a second set of draft agreements. Correct?

25 A Okay. So from the first set to the second set,
26 you're saying there was --

27 Q So he was --

28 A -- negotiating?

1 Q Was there negotiation there?

2 A Yes, there was.

3 Q Yes. How come at no point did you either in
4 text message that we saw or email, how come you never
5 refuted what Mr. Cotton was asking? Essentially, what
6 you're telling us is you only orally disagreed with what
7 cotton was requesting --

8 A I was talking to my attorney at this -- do you
9 want me to answer?

10 Q Yes.

11 A I was talking -- right here, this email is
12 dated 3/17. It's extremely contentious at this time, at
13 this point right now. And I felt litigation coming on.
14 Mr. Cotton knew we had a contract. We had a signed
15 contract. And what he was doing here was trying to
16 renegotiate his way up is what he was doing here. I
17 wasn't going to entertain that.

18 Q Are you familiar with the statute of frauds?

19 A I couldn't read it to you. I don't --

20 Q Well, are you aware of if it has a legal
21 construct that contracts regarding land should be in
22 writing?

23 A Don't know that.

24 Q As a real estate agent, you're not aware of
25 that?

26 A No. I submitted a lot of contracts into escrow
27 that are not on CAR forms as you suggest, or air forms
28 or any of the rest of them. And escrow takes care of

1 it, and they produce all of the escrow statements, which
2 gives you the document at which you're -- what you're
3 referring to.

4 Q Well, I also see these -- these contracts
5 written by Gina Austin. They're not -- they're not
6 standardized forms at all. But they are rather lengthy
7 contracts containing various and numerous provisions
8 and --

9 A She's the attorney.

10 Q Yes. So not -- they don't all have to be on
11 forms. But I was just curious why you have contracts
12 with everyone except -- standardized contracts with just
13 about everyone but Mr. Cotton.

14 MR. WEINSTEIN: Objection. Vague and ambiguous
15 and --

16 THE COURT: Sustained.

17 BY MR. AUSTIN:

18 Q All right. So you have a written contract with
19 Mr. Bartell, who is a lobbyist. Correct?

20 A That is correct.

21 Q Did you have a retainer with Abhay Schweitzer,
22 some sort of written contract?

23 A I believe I did.

24 Q And I would say Bartell is someone you paid the
25 most money to. So it makes sense that to be in writing.

26 In your assessment, would it be fair to say
27 that Mr. Cotton's property, if a CUP were to be approved
28 upon it, would be worth millions of dollars?

1 A I wouldn't know that. I was giving him
2 \$800,000, which is four times the amount that it was.
3 That was a very high premium for a big risk not knowing
4 you were going to get it. And, of course, I took a
5 beating for it.

6 Q So long story short, you're willing to put a
7 quarter million dollars into this property on top of the
8 \$800,000 you're willing to pay, and you expect all of us
9 to believe it's all hinged on this one three-sentence
10 document?

11 A That document --

12 MR. WEINSTEIN: Objection. Vague as phrased.

13 THE COURT: The objection is -- I'm sorry?

14 MR. WEINSTEIN: It's -- it's an incomplete
15 hypothetical. It's vague and ambiguous. I'm not sure
16 what he's referring to, it all hinges on.

17 THE COURT: That objection is overruled.

18 THE WITNESS: Could you state your question
19 again, please.

20 THE COURT: Madam Reporter, could you read it
21 for us?

22 (The following was read by the reporter:

23 Q. So long story short, you're willing to put a
24 quarter million dollars into this property on
25 top of the \$800,000 you're willing to pay, and
26 you expect all of us to believe it's all hinged
27 on this one three-sentence document?)

28 MR. WEINSTEIN: I'll also object it's

1 argumentative.

2 THE COURT: The objection is sustained.

3 Next question, Counsel.

4 BY MR. AUSTIN:

5 Q So from November 2016 to March 2017, I count
6 Mr. Cotton made at least seven requests to include
7 the 10 percent equity stake or a minimum of \$10,000 and
8 a remainder of a 50,000-dollar deposit. Not once in
9 text message or email do you deny that those were terms
10 that were discussed?

11 A I did deny it.

12 Q In writing?

13 A I did not sign his contract.

14 Q You did not sign his contract.

15 Did you ever send him an email to the effect
16 of, Darryl, why are you trying to change these terms?
17 Why are you trying to add terms?

18 A I don't think so.

19 Q Okay. Actually, I think there is one -- one
20 time you say something like that. It's late March. Let
21 me find that language. It's in one of the emails.

22 A What page is it, please?

23 Q Quick aside, Exhibit 69, page 3. This email,
24 you say, "Hi, Darryl. I've not reviewed this yet, but I
25 want you to look at it and give me your thoughts.
26 Talking to Matt, the \$10,000 a month might be difficult
27 to hit until the sixth month. Can we do 5K and on the
28 seventh start 10K?"

1 Who is Matt?

2 A Matt is a consultant/operator.

3 Q Is he an attorney?

4 A No, he's not.

5 Q Okay. Does he work in your office?

6 A No, he doesn't.

7 Q Just an independent consultant of some sort?

8 A Yes, he is.

9 Q Okay. I recall you testifying towards the end
10 of the negotiation phase. You said you were having your
11 attorneys look at it. I believe that was in reference
12 to one of the changes Mr. Cotton wanted.

13 A Could you refer me to that document, please.

14 Q I'm trying to find that. I believe it was
15 March 16th or 17th.

16 At that -- let's see.

17 A March 16th.

18 I do have in front of me a No. 68.

19 Q Yeah. Sixty-eight.

20 At that time, was Gina Austin still on your
21 team?

22 A I believe so.

23 Q As of March 16th or 17th, have you hired
24 Mr. Weinstein yet?

25 A I can't re -- I can't recall when I hired
26 Mr. Weinstein.

27 Q Do you recall the day you initiated your
28 lawsuit against Mr. -- or Mr. Cotton?

1 A I -- I don't recall that day.

2 Q Was it approximately March 21st?

3 A I was working 18 hours a day. So I could not
4 tell you what day I picked.

5 Q So at no point after things started to get
6 messy on February 7th did any attorney advise you to put
7 your objections to Mr. Cotton's demands in writing?

8 MR. WEINSTEIN: Object. It's unlimited as to
9 time. Therefore, calls for -- potentially calls for
10 privileged information.

11 THE COURT: The objection is sustained.

12 BY MR. AUSTIN:

13 Q Why did you feel it was unnecessary of all --
14 I'll start over.

15 So you expect us all to believe you feel it was
16 unnecessary at any point to have in writing any
17 objection to Darryl's alleged escalating demands?

18 MR. WEINSTEIN: Objection. Argumentative, as
19 phrased.

20 THE COURT: Argumentative? Is that what you
21 said?

22 MR. WEINSTEIN: Yes. Argumentative as phrased.

23 THE COURT: The objection is sustained.

24 No first names, Counsel.

25 MR. AUSTIN: I apologize, your Honor.

26 BY MR. AUSTIN:

27 Q At any point when you saw Mr. Cotton's very
28 specific written requests for assurances that those

1 terms be included in a final agreement, at no point did
2 you feel it was necessary to tell him no in writing?

3 A I think the fact that he signed a contract
4 between November 2nd and I did not sign his proposal, I
5 believe, is very clear.

6 Q So in all the emails that we went through and
7 the text messages and all your testimony, I never saw
8 anyone reference back to November 2nd until the lawsuit
9 was filed.

10 MR. WEINSTEIN: The best --

11 BY MR. AUSTIN:

12 Q So the question is, did you actually believe
13 the November 2nd document was a contract on November 2nd
14 for the entire property?

15 A It was a contract.

16 Q For the sale of a property --

17 A Yes.

18 Q -- that could potentially be a marijuana
19 dispensary?

20 A It wasn't a dispensary at the time.

21 Q But could -- could have been.

22 A Yes. It could have been. As we know, it's not
23 now. So it's just a property. It's a sale -- it's a
24 straight sale of a piece of property that was paid four
25 times its value.

26 Q That's speculation as to value.

27 MR. WEINSTEIN: Is that a question? If it's a
28 question, I object as argumentative.

1 THE COURT: As framed, sustained.

2 MR. AUSTIN: Withdrawn. I have no further
3 questions.

4 THE COURT: All right. Redirect.

5 MR. WEINSTEIN: No, your Honor.

6 THE COURT: All right. May Mr. Geraci be
7 excused?

8 MR. WEINSTEIN: Yes, your Honor.

9 THE COURT: Counsel?

10 MR. AUSTIN: Yes, your Honor.

11 THE COURT: Thank you very much, Mr. Geraci.
12 All right. Counsel, your next witness?

13 MR. WEINSTEIN: Rebecca Berry.

14
15 Rebecca Berry,
16 being called on behalf of the Plaintiff/Cross-Defendant,
17 having been first duly sworn, testified as follows:

18

19 THE CLERK: Please state your full name and
20 spell your first and last name for the record.

21 THE WITNESS: Rebecca Ann Berry.

22 THE REPORTER: May the reporter have the
23 spelling of Ann?

24 THE COURT: Could you spell your middle name,
25 please.

26 THE WITNESS: Ann, A-n-n.

27 THE COURT: Thank you.

28 Counsel, please continue.

1 MR. WEINSTEIN: Thank you.

2 (Direct examination of Rebecca Berry)

3 BY MR. WEINSTEIN:

4 Q Ms. Berry, are you -- first of all, let's talk
5 about your education. Have you graduated from high
6 school?

7 A Yes.

8 Q And when?

9 A 1967.

10 Q From where?

11 A Granite Hills High School.

12 Q And did you take college after that?

13 A Some college.

14 Q Where at?

15 A Grossmont College.

16 Q And when was that?

17 A 1968 and then 10 years later, I took classes
18 probably in -- no. Fifteen years later. So --

19 Q Okay. And did you get a degree from Grossmont?

20 A No.

21 Q Okay. Other than attending Grossmont, have you
22 attended any -- any schooling since you graduated from
23 high school?

24 A Real estate and as the real estate broker
25 ministerial training.

26 Q Okay. And let's take the latter first. Would
27 you -- did you say ministerial training?

28 A Yes.

1 Q Okay. What training did you have that was
2 ministerial?

3 A Through my church and as a licensed
4 practitioner and counselor.

5 Q Okay. And when -- did you get some type of
6 license with respect to that?

7 A Yes.

8 Q What license is that?

9 A Licensed counselor in 1991 and a minister,
10 1999.

11 Q Okay. And are you still counselor or a
12 minister?

13 A Counselor but not a minister.

14 Q Okay. Now, you had -- you obtained a
15 real estate license?

16 A Yes.

17 Q Is that a -- well, when did you obtain a
18 real estate license?

19 A It's been 10, 12 years.

20 Q From today?

21 A From today.

22 Q Okay. And was it a salesperson's license? A
23 broker's license? What kind of license?

24 A Salesperson's license.

25 Q And have you used that salesperson's license in
26 connection with real estate transactions?

27 A Yes.

28 Q Okay. Now, did you act as a real estate agent

1 or broker with respect to the sale of -- the agreement
2 to sell property that's the subject of this lawsuit?

3 A No.

4 Q Okay. Were you involved at all in the
5 negotiation of -- of that agreement?

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

9 Q Have you -- when is the first time you ever saw
10 him?

11 A Yesterday in the courtroom.

12 Q Okay. Have you ever spoken to him on the
13 phone?

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

20 A Tax and Financial as the real estate broker and
21 through my church as a teacher and counselor.

22 Q Okay. Let's focus on Tax and Financial.

23 How long have you worked at Tax and Financial
24 Center?

25 A Almost 15 years.

26 Q And what's your current job position at Tax and
27 Financial Center?

28 A I'm an assistant to Larry Geraci, and I manage

1 the office.

2 Q And how long have you been in that position?

3 A Almost 15 years.

4 Q So the entire time you've been there?

5 A Yes.

6 Q Now, in -- as you know, this case -- do you
7 know -- do you understand this case involves an attempt
8 to obtain a CUP conditional use permit to operate a
9 dispensary at a property that Mr. Geraci was attempting
10 to purchase?

11 A Yes.

12 Q Okay. Were you the applicant on that CUP
13 application?

14 A Yes.

15 Q Okay. And as -- as the applicant -- as the
16 applicant, did you understand that you were acting at
17 all times as the agent for and on behalf of Mr. Geraci?

18 A Yes.

19 Q Why -- what was your understanding as to why
20 you were the applicant on that CUP application?

21 A Mr. Geraci has a federal license, and we were
22 afraid that it might affect it at some point.

23 Q What lines -- what federal license is that?

24 A He's an enrolled agent.

25 Q And did you have a discussion with him about
26 the fact that there was a possibility or it was unknown
27 whether him being an applicant on the property would
28 affect his enrolled agent license?

1 A Yes.

2 Q All right. Were there any other reasons that
3 you recall that you were the applicant -- chose to be
4 the applicant on the project?

5 A No.

6 Q Were you willing and -- were you willing to be
7 the applicant on the project as Mr. Geraci's agent?

8 A Yes.

9 Q Now, in connection with the CUP application
10 project, were you involved at all in the communications
11 with the City?

12 A Yes.

13 Q Okay. And what was your involvement in
14 communications with the City?

15 A They -- I -- what I would do is if I got any
16 information, I would simply direct it to Mr. Geraci or
17 his team.

18 Q Okay.

19 A And then I made no decisions.

20 Q Okay. And so did you also have any
21 communications with the team that Mr. Geraci had put
22 together to pursue the CUP application?

23 A I had some interaction.

24 Q And -- and which members of the team do you
25 recall having interaction with?

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

1 Q What did you understand his role as?

2 A He had something -- he was -- he had an
3 architect company or something like that. And so I -- I
4 wasn't really sure. I didn't know who the people were.
5 And so I would just get this information and direct it
6 to Mr. Geraci and the team for their approval.

7 Q Okay. So you would receive information from
8 the team -- from the team in connection with the CUP
9 application?

10 A Yes.

11 Q And then what would you do with that
12 information?

13 A I would forward it to Mr. Geraci for his
14 direction.

15 Q Okay. And then what would happen after you
16 forward it to him for his direction?

17 A He would tell me what to do with it.

18 Q Okay. And then did you carry out his
19 instructions?

20 A Yes.

21 Q Did you make any discussions with respect to
22 the CUP application?

23 A No decisions.

24 Q Now, in connection with the CUP application,
25 did you have to sign forms to be submitted to the City
26 of San Diego?

27 A Yes.

28 Q Okay. Did you prepare those forms?

1 A No.

2 Q Who prepared those forms?

3 A The team.

4 Q Okay. And, generally, who on the team prepared
5 those forms?

6 A I really don't know because I -- just whoever
7 would give it to me. And -- or through Mr. Geraci, I
8 would sign it and take care of it.

9 MR. WEINSTEIN: Okay. And -- could you bring
10 up Exhibit 34, please.

11 I offer Exhibit 34.

12 THE COURT: Any objection?

13 MR. AUSTIN: No, your Honor.

14 THE COURT: Exhibit 34 will be admitted.

15 (Premarked Joint Exhibit 34, Forms submitted to
16 City of San Diego in relation to 6176 Federal
17 Blvd CUP Application, dated 10/31/16, Form
18 DS-3032 General Application dated 10/31/2016,
19 was admitted into evidence.)

20 BY MR. WEINSTEIN:

21 Q So, Ms. Berry, this is called the general
22 application form. It's the first page of Exhibit 34.

23 Is that your signature at the bottom of the
24 page?

25 A Yes.

26 Q Okay. And did you prepare that form?

27 A No.

28 Q Was it prepared for you?

1 A Yes.

2 Q And did you sign it on or about October 31st,
3 2016?

4 A Yes.

5 Q Okay. When you signed that form, was it your
6 understanding that the form had been prepared under the
7 direction of either Mr. Schweitzer or Ms. Austin?

8 A Simply by the team. I did not know who
9 prepared it.

10 Q Okay. Would you go to the next form, please.
11 The next form is a D.S. 190 form, an affidavit for
12 medical marijuana consumer cooperatives for conditional
13 use permit.

14 Was that one of the forms that you were
15 provided to sign for the CUP application?

16 A Yes.

17 Q Did you prepare that form?

18 A Yes.

19 Q Did you --

20 A I'm sorry. I did not prepare it. I'm so
21 sorry.

22 Q Is that your signature and date at the bottom
23 of the page?

24 A Yes.

25 Q When you signed this form, did you understand
26 that it had been prepared by somebody on the team?

27 A Yes.

28 Q And were you involved in making any decisions

1 as to how this form would be filled out?

2 A No.

3 Q Next document. Okay. This next form is
4 deposit account/financially responsible party. Is that
5 another form that you signed in connection with the CUP
6 application?

7 A Yes.

8 Q Okay. And did you date it, sign it on
9 October 31st, 2016?

10 A Yes.

11 Q And did you prepare that form?

12 A No.

13 Q Did you understand it was prepared by somebody
14 on the team?

15 A Probably, yes.

16 Q And did you understand -- have an understanding
17 as to -- well, do you have any responsible --
18 responsibility for deciding how to fill out the form?

19 A No.

20 Q Okay. The last form, please. Okay. This form
21 is called ownership disclosure statement. Would you go
22 to the signature section.

23 And was this a form that you signed in
24 connection with the CUP application?

25 A Yes.

26 Q Okay. And did you prepare this form?

27 A No.

28 Q Did you understand it was prepared by somebody

1 on your team?

2 A Probably.

3 Q Okay. And did you -- were you responsible for
4 making any determinations as to how to fill out this
5 form?

6 A No.

7 Q So in signing these forms, you were relying on
8 the team to properly prepare the forms?

9 A Yes.

10 Q Did you get involved in any discussions that
11 you recall with them about how to fill these forms out?

12 A No.

13 Q So is it fair to say that your role in
14 connection with the application was simply to be the
15 liaison between the team and the City and Mr. Geraci?

16 A Yes.

17 Q Did you ever become aware of any issues related
18 to problems in getting the CUP application processed,
19 that you recall?

20 A I really didn't get that involved. I knew
21 there were things going on, but I didn't really pay that
22 much attention to it. I wasn't really that involved
23 with it.

24 Q Did you get emails concerning issues regarding
25 the CUP application that you simply forwarded on to
26 Mr. Geraci?

27 A Yes.

28 Q And was he the one making decisions with

1 **respect to those issues?**

2 A Yes.

3 MR. WEINSTEIN: Your Honor, may I have a
4 moment.

5 THE COURT: You may.

6 BY MR. WEINSTEIN:

7 Q **Just in case I missed it, I know it's been**
8 **quick. But am I correct you've never spoken to**
9 **Mr. Cotton?**

10 A No.

11 Q **Have you ever communicated with him by email if**
12 **you're aware?**

13 A He sent one email, but I've never sent him
14 anything.

15 Q **Okay.**

16 A I got one email from him.

17 Q **And what did you do with that email?**

18 A I read the first line or two and forwarded it
19 to Larry.

20 MR. WEINSTEIN: Okay. I think that's all I
21 have, your Honor.

22 THE COURT: All right. Cross-examination.

23 (Cross-examination of Rebecca Berry)

24 BY MR. AUSTIN:

25 Q **Good afternoon, Ms. Berry.**

26 A Good afternoon.

27 Q **So on Exhibit 30, you signed a document saying**
28 **that --**

1 A Do I need to look it up?

2 Q Yeah, if you could. Exhibit 34. On the first
3 page at the very bottom, is that your signature? I
4 think we've already established that it is.

5 A Yes.

6 Q It's dated October -- October 31st. So at that
7 time, do you -- do you know whether Mr. Cotton and
8 Mr. Geraci had entered into a real estate contract?

9 A No.

10 Q And why were you told to be the applicant on
11 this?

12 A Like I said, it was because Larry -- or
13 Mr. Geraci had a federal license.

14 Q So because of this license, you did not -- let
15 me put this differently.

16 So if you go to page 4 on that same exhibit.

17 A Page 4.

18 Q It's fine print, but in Part 1.

19 A Okay.

20 Q Starting at the third sentence, it says the
21 list must include the names and addresses of all persons
22 who have an interest in the property recorded or
23 otherwise and state the type of property interest,
24 whether --

25 A Okay. So you're saying page 4, part 1 to be
26 completed when property is held. Is that what you're
27 talking about?

28 Q That is the section, yes.

1 A Okay. And then what are you saying?

2 Q The third sentence, starting halfway through
3 the third line down.

4 A Okay.

5 Q The list must include the names and addresses
6 of all persons who have an interest in the property.

7 So why upon signing this did you not include
8 Mr. Geraci's name? Did -- was he not to have any
9 interest in the CUP?

10 A I simply signed this. It was filled out by our
11 team and I signed it. Trusting Mr. Geraci and the team.

12 Q Did it concern you at all that this could
13 potentially either lead to the denial of the application
14 for being incomplete or possibly even legal penalties
15 against you?

16 A No. I didn't -- I was not involved in it.

17 Q So you had no concern?

18 A It didn't even -- no. It didn't even enter my
19 mind.

20 Q So on that same page, it's checked off that
21 you're the tenant/lessee.

22 Do you see that a couple lines above your
23 signature there in the --

24 A Yes.

25 Q Okay. And going back a page to page 3, also
26 October 31st, you say you're the president. What are
27 you the president of?

28 A I believe that I put president because I'm the

1 real estate -- I -- I don't even remember. There -- it
2 was -- it seemed like a good reason to do it.

3 Q Okay. So going back another page, page 1, on
4 this page, you check off the part -- there's two
5 options: There's owner and there's agent. You check
6 off owner. Is that correct?

7 A I did not check that box.

8 Q Someone else checked it?

9 A Yes.

10 Q Okay. Then on page 1, that's where it says
11 you're the applicant. So there's just a lot of
12 contradiction. But it didn't matter to you what was
13 being signed?

14 A I simply signed it and under direction from our
15 team.

16 Q Okay.

17 A And Mr. Geraci.

18 Q Have you ever been the applicant on any other
19 CUPs?

20 A No.

21 Q So you have no involvement with any other CUPs
22 at all?

23 A No.

24 Q Okay. Did Mr. Geraci offer to pay you more to
25 sign these documents?

26 A No mention of any money was ever -- never
27 talked about, any money.

28 Q Even in the event of the CUP application being

1 approved?

2 A No.

3 Q Okay. So are you still a real estate broker?

4 A Yes.

5 Q Have -- so as of now, you've definitely seen
6 the November 2nd document that your boss, Mr. Geraci,
7 alleges was the official contract?

8 A Yes.

9 Q You've seen and read it?

10 A Yes.

11 Q Do you feel in your experience and expertise
12 that that contract contains all the essential elements
13 that a California real estate contract should contain?

14 A Quite often buyers and sellers will get into --
15 make up -- get an arrangement together and make up their
16 own contract. It happens a lot.

17 Q Right.

18 A So I was not involved in this.

19 Q Okay. I mean, if someone asks you to write a
20 real estate contract, would yours be at all similar to
21 that particular contract?

22 MR. WEINSTEIN: Object. It's an incomplete
23 hypothetical. Vague and ambiguous.

24 THE COURT: Sustained.

25 BY MR. AUSTIN:

26 Q If someone asked you to complete a real estate
27 contract for them, do you think you would submit a
28 three-sentence document similar to the November 2nd

1 document?

2 MR. WEINSTEIN: Same objection. Still that
3 it's an incomplete hypothetical.

4 THE COURT: Your objection is sustained.
5 BY MR. AUSTIN:

6 Q Looking at that document and knowing California
7 real estate law, what essential terms do you think you
8 would like to see added?

9 A As a real estate agent and licensed broker, I
10 have my own ideas and training about something that I'm
11 an agent for. So if I'm an agent, it's going to be
12 completely different.

13 But, like I said, buyers and sellers will get
14 together and make arrangements all the time. Whatever
15 works for them is -- is perfectly acceptable. Okay.

16 Q Ordinarily, would you prefer to see more
17 specificity and more terms included?

18 MR. WEINSTEIN: Objection. Vague and
19 ambiguous.

20 THE COURT: Sustained.

21 BY MR. AUSTIN:

22 Q Looking at that document, in your estimation,
23 would an escrow company be willing to accept that
24 document?

25 A Yes.

26 Q In your experience, how many three-sentence
27 real estate contracts have you conducted a sale with?

28 A The real estate agent representing a buyer or

1 seller, I would use the CAR -- CAR. But this is between
2 a seller and a buyer. So it's a different arrangement.
3 I have never -- so I -- I believe that Mr. Geraci has --
4 I have seen contracts in this same format.

5 Q Aren't all real estate purchases sales between
6 sellers and buyers?

7 A Yes. Yes. But if an agent gets involved, it's
8 going to be -- have a whole new set of rules because I'm
9 liable too. Okay.

10 Q Right.

11 A Okay.

12 Q Are you an independent contractor?

13 A No.

14 Q Are you a W-2 employee?

15 A Yes.

16 Q So even though you didn't read the forms and
17 you were just signing what you were told was prepared by
18 the team, do you think it's a problem that Mr. Geraci's
19 interest was not disclosed anywhere on that form?

20 MR. WEINSTEIN: Objection. Lacks foundation.

21 BY MR. AUSTIN:

22 Q Well --

23 THE COURT: The objection is sustained.

24 BY MR. AUSTIN:

25 Q So in that first subsection I referred you to,
26 it did say -- you read this -- that the list must
27 include the names and addresses of all persons that have
28 an interest in this property.

1 So you didn't see that at all?

2 A I simply signed it.

3 MR. AUSTIN: Okay. No further questions.

4 THE COURT: Redirect?

5 MR. WEINSTEIN: No, your Honor.

6 THE COURT: May Ms. Berry be excused?

7 MR. WEINSTEIN: Yes, your Honor.

8 THE COURT: Counsel?

9 MR. AUSTIN: No objection.

10 THE COURT: Thank you very much, Ms. Berry.

11 All right. Folks, we've finished the last of
12 our witnesses that we're going to hear from this week.
13 You're off tomorrow. We'll see you bright and early
14 Monday morning on the 11th -- the 8th. July 8th at
15 9 o'clock. Do not form or stress an opinion or discuss
16 the case until deliberations.

17 We'll see you Monday, July 11th. Thank you.
18 All right. The jury has left the courtroom.

19 Let me spend just a moment catching up, making
20 sure we know where we stand.

21 So you ended up finishing two witnesses. I
22 don't know if that's how you expected or are ahead of
23 pace. Who do you have lined up for Monday?

24 MR. WEINSTEIN: So the plan -- I have to get
25 ahold of her, but I believe Gina Austin will start off.
26 She -- and then it will be followed by Mr. Cotton. And
27 then --

28 THE COURT: Mr. Cotton?

1 MR. WEINSTEIN: Yes. Then -- he'll be a rather
2 lengthy witness. And then likely by Schweitzer. But I
3 have to -- I have some schedule issues with various
4 witnesses. So I have to make sure it works. He's the
5 lengthiest of the witnesses after Mr. Cotton.

6 THE COURT: Well, and do you expect to complete
7 your examination of Mr. Cotton and Mr. Schweitzer within
8 the same period of time as you did with Mr. Geraci?

9 MR. TOOTHACRE: I would suspect a little bit
10 longer than Mr. Schweitzer.

11 THE COURT: All right.

12 MR. TOOTHACRE: He's going to go through what
13 he did for the CUP process, and it's pretty lengthy.

14 THE COURT: Okay. Well, even if you do that
15 with both Mr. Cotton and Mr. Schweitzer, you got through
16 Mr. Geraci in about half a day.

17 MR. WEINSTEIN: I -- what the Court is driving
18 at is I believe I will be done certainly by the 11th and
19 maybe a little sooner. It depends. I've got --

20 THE COURT: After Austin -- by the way, before
21 I forget, I did hear and made note of Mr. Geraci talking
22 about conversations he had with Ms. Austin.

23 MR. WEINSTEIN: Those were waived, have been
24 waived. Documents have been produced.

25 THE COURT: Once the waiver -- or once the
26 privilege is waived in part, it becomes a slippery
27 slope. And I'm going to have to evaluate the content --
28 context, I should say, of what's left, if any of the

1 communications that could be protected.

2 But I just wanted to make note of that.

3 So after Ms. Austin, Mr. Cotton,
4 Mr. Schweitzer, who do you have left?

5 MR. TOOTHACRE: Bartell.

6 MR. WEINSTEIN: Mr. Bartell, who is not
7 available until the 10th, I believe. But between Cotton
8 and Schweitzer and -- and I've got two City of San Diego
9 witnesses that I would hope to, if I needed to, schedule
10 before Mr. Bartell.

11 THE COURT: I don't think there's much doubt --
12 again, based on your pace, which I'm not criticizing,
13 we're going to have to fill -- I can see the 8th being
14 filled up. But I'm wondering about --

15 THE WITNESS: Well, the 8th --

16 THE COURT: -- 9th. We're not going to wait
17 until the 10th if you only have half a day of witnesses
18 lined up on the 9th. That's all I'm trying to
19 emphasize. We have to use our jury time.

20 MR. WEINSTEIN: Yeah. I think I have that
21 managed.

22 THE COURT: All right.

23 MR. WEINSTEIN: But --

24 THE COURT: So is Bartell going to be your last
25 witness?

26 MR. WEINSTEIN: If I take the City witnesses
27 before him, because they need to go on the stand.

28 THE COURT: Right.

1 MR. WEINSTEIN: And they would fill up then the
2 9th if that becomes necessary. Then I put the City
3 witnesses up.

4 THE COURT: Who are those witnesses?

5 MR. WEINSTEIN: Firouzeh and Tirandazi. And
6 Sherlyn Tac, T-a-c.

7 THE COURT: And how long are you expecting with
8 Mr. Bartell?

9 MR. WEINSTEIN: I think he's going to be an
10 hour at the most.

11 THE COURT: Boy. Again, at this rate or pace,
12 I should say, I question just how deep into the 10th.
13 Certainly, if Bartell is the last witness.

14 MR. WEINSTEIN: Then we'd be ready to move on.

15 THE COURT: Right. So you need to have
16 witnesses -- I think you're going to need to have
17 witnesses lined up as early as the 10th, which suggests
18 to me that if you get your case in chief as early as the
19 10th, recognizing we're going to finish at noon on the
20 11th, I would expect that you'll probably be done with
21 your case in chief sometime on Monday, the 15th. At
22 this point, can you imagine any rebuttal? Not --

23 MR. WEINSTEIN: I can imagine it, but right
24 now, I don't anticipate it.

25 THE COURT: All right. So I -- we're not going
26 to tell them -- tell them this yet, but it's real easy
27 for me to see us instructing you arguing on Tuesday, the
28 16th right now. Sometime early to mid next week, I will

1 be able to turn around to you a set of jury
2 instructions, a draft set of jury instructions, plus
3 verdict forms, recognizing that the ones that you had
4 submitted previously, meaning the verdict forms, will
5 now be modified to exclude Ms. Berry.

6 All right. Before we wrap up -- oh, one more
7 thing. The courtroom belongs to you. You can leave as
8 much or as little stuff behind as you'd like. But we
9 are going to have a lot of people coming through the
10 courtroom on Friday.

11 And so if you -- to the extent you leave
12 anything behind, talk to my deputy. We want to make
13 sure it's secure. I don't think anybody will pick up --
14 pick up or take it with them. But they could rearrange
15 things. So be careful about that.

16 Anything else from Plaintiff's side before we
17 wrap up for the day?

18 MR. WEINSTEIN: No, your Honor. Thank you.

19 THE COURT: Defense side, anything?

20 MR. AUSTIN: Just this lodgement.

21 THE COURT: Madam Deputy, can I see that
22 lodgement?

23 MR. AUSTIN: Should I have a cover page on it?

24 THE COURT: Well -- now, you've seen it.
25 Right?

26 MR. WEINSTEIN: I have not.

27 THE COURT: Just to be sure, let's make sure
28 Mr. Weinstein has looked at it. I think it's the two

1 settlement agreements that Mr. Geraci entered into with
2 the City. I might be mischaracterizing. I'm not trying
3 to do so.

4 MR. AUSTIN: There's only one, which is just
5 printed right off the registry of actions. And it's
6 just the one dated 9/26/2014.

7 THE COURT: All right. Do you object if I look
8 at this?

9 MR. WEINSTEIN: Let me look.

10 MR. AUSTIN: And the other -- just the other
11 two parts are Business and Professions Code 480.2,
12 Business and Professions Code 26057. And then the
13 actual forms themselves, the OSHA disclosure form --

14 THE COURT: Now, what -- okay. I --

15 MR. AUSTIN: -- which is the City of San Diego
16 development services form. They have already been
17 admitted as exhibits. But the language within them --

18 THE COURT: Well, it's becoming a little late
19 in the day. But I'm recalling that it seemed to make
20 sense that I look at these in the context of an argument
21 or two that somebody had been making. So --

22 MR. WEINSTEIN: My reaction is I haven't -- I
23 don't know that I've ever seen this one. So I would
24 like to review it.

25 THE COURT: Does it appear to be something your
26 client signed?

27 MR. WEINSTEIN: It -- certainly, he's named in
28 the caption. I would agree with that. And he did sign

1 it.

2 THE COURT: All right. I know you've been
3 trying to get to me for the last day or so. And I
4 appreciate you being diligent.

5 MR. WEINSTEIN: And, actually, I finished
6 reviewing it. I don't have a problem, because I just
7 read the order.

8 THE COURT: Now, I'm not clear on the other
9 items. They were a couple of B&P code sections and
10 what?

11 MR. AUSTIN: And then, like, actual development
12 services forms.

13 THE COURT: Now, why are you asking me to look
14 at those?

15 MR. AUSTIN: Well, it just shows that -- it
16 actually applies to both sides, really. But Mr. Geraci
17 would not qualify to have his name on a CUP application,
18 which is also relevant because Rebecca Berry, as his
19 agent, was submitting this all on his behalf.

20 THE COURT: Okay. Now, here's the way I'm
21 looking at it. If counsel were to restyle this as a
22 brief and were to file it, I would give him leave. And,
23 obviously, you need to make sure opposing counsel gets a
24 copy. But I would look at it just as I would look at
25 anything that you were to file. And you wouldn't need
26 leave to file a brief with the Court.

27 So I'll accept it. But, Counsel, just assure
28 me you've given a copy of everything you want me to look

1 at to the other side. Right?

2 MR. AUSTIN: I'll confirm that it's been
3 emailed. But I know I have all the PDFs saved and
4 queued up.

5 THE COURT: Can you exchange filings with the
6 Court by way of email?

7 MR. WEINSTEIN: Filings with the Court?

8 THE COURT: Well, he's giving me something to
9 look at. And he's telling me he emailed it to your
10 side. Is that an agreement you all have?

11 MR. WEINSTEIN: I agree he can email me things.
12 But I had not received such an email by the time I came
13 to court this morning. So if it's been emailed by his
14 office since then, I have no knowledge.

15 THE COURT: I'm going to refrain from looking
16 at anything until noon tomorrow. Between now and then,
17 Counsel, make sure you email a duplicate copy of
18 everything you're providing to my deputy to the other
19 side.

20 And then between noon tomorrow and when I see
21 you Monday at 9:00 a.m., I will have looked at it. And
22 if there's anything you want to file in response to
23 that, feel free to do so.

24 MR. WEINSTEIN: Fair enough. Thank you, your
25 Honor.

26 THE COURT: All right. So anything else from
27 the defense side? I mean, anything else tonight?

28 MR. AUSTIN: No, your Honor.

1 THE COURT: All right. So then we'll be in
2 recess. Thank you all very much.

3 MR. WEINSTEIN: Thank you.

4 (The proceedings concluded at 4:22 p.m.)

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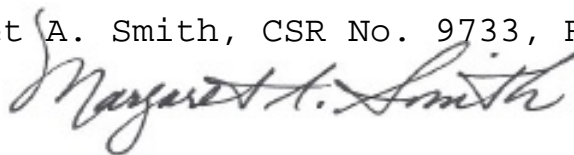
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1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 215, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 3, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 22nd day of July 2019.

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15 Margaret A. Smith, CSR No. 9733, RPR, CRR

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	1,000 150:7	10:12 49:2	15 17:3 48:26 85:15, 18,19,25,26 169:7,9 177:26 192:25 193:3
\$	10 27:3,12,13,23 31:13 32:2,7,14,22, 25 33:3,11 36:10 40:20 41:15,19,20 43:7 45:6 57:24,25 78:5,6 81:20,23,24 82:3,27 83:1,21 104:23,28 105:5 106:12 109:24 110:12 119:8,11 133:7,24 140:27 141:7,15 146:8,23 147:19 167:6,8 168:22 175:19 177:25 180:12 185:7 190:17 191:19	10:15 48:21 10:24 49:2 10:30 13:22 10K 136:23,25 185:28 10th 209:7,17 210:12, 17,19 11 162:26 166:7,13 177:25 11-two 133:16 11/02/16 97:4 11/02/2016 103:15 11/07/16 120:4 11/14/16 121:6 11/15/16 122:2 11/2 139:16 11/2/16 107:22 109:3 11/2/2016 106:20 11:47 111:19 11th 13:28 207:14,17 208:18 210:20 12 54:28 123:24 126:15 177:25 191:19 12:05 138:15 13 177:25 130 154:3 134 153:28 137 154:5,11,14,24, 26 155:7,8,14,16 156:15 162:24 163:6 14 17:3 84:5,8,9,15 177:25 14th 142:21 143:5	15-minute 13:22 150 18:11 150- 125:21 151 83:7 1561 155:10 15th 210:21 16 177:26 178:20 1626 143:6 16th 32:18 139:1 141:22 143:12 145:19,28 181:4,14 186:15,17,23 210:28 17 87:24,27 88:1,8 17-page 177:26 17th 186:15,23 18 88:21,24,25 89:5, 6,7 129:18 187:3 180- 125:25 18th 14:9 91:26 93:8 127:28 19 54:28 142:24 190 197:11 1967 190:9 1968 190:17 1979 55:9 1991 191:9 1993 57:20,24 161:4 1999 57:11 191:10 19th 64:19 91:26 144:20 148:10 1:20 111:16,19
\$1 125:13 \$10,000 21:13,21 22:1,7 30:15 42:9, 17,22 92:21 99:27 100:21 123:18,20, 22,27 126:20 127:22 128:8 129:25 133:11 139:19 171:13 173:21 174:16,19 179:20 185:7,26 \$150,000 125:19 \$250,000 165:2 \$400,000 83:11,12 130:12 132:1 178:24,27,28 179:1, 5,14,17,21 \$46,606 159:15 \$50,000 22:1 96:9 174:23,28 \$7,500 162:17 \$790,000 174:3 \$800 130:15 \$800,000 21:15 22:3 25:28 65:15 70:22 98:16,23 100:2 130:13 165:21 174:1 179:18 184:2,8,25	10,000 34:22 36:8,12 93:4 96:10 124:4,10 126:23 127:9 129:8 139:18 10,000-dollar 22:23 30:11,18 33:12 41:17 42:12 133:21 140:13 174:13 178:5 10,000-dollar-a- month 105:18 133:25 10-29-15 61:13 10-percent 22:5 10/04/16 84:11 10/06/16 85:21 10/18/16 88:3 10/19/16 88:27 10/24/16 90:10 10/29/15 60:21 10/31/16 93:22 196:17 10/31/2016 196:18 100 64:7		
1	1 27:8,11 60:9,13,14, 17,19,20 72:15 73:4 162:3,11,16 168:28 170:17 175:15 178:23 180:6,18 181:11 201:18,25 203:3,10		

1:30 109:28 110:3 111:17	21st 72:19,20,28 74:24 187:2	204:6,28	3rd 33:20,22 34:10 45:13,16 118:28 122:15,21 134:27 135:2 141:12
<hr/> 2 <hr/>	225- 165:2	<hr/> 3 <hr/>	<hr/> 4 <hr/>
2 73:15 106:19	230 96:1	3 162:16 169:2 185:23 202:25	4 12:10,14 115:9 145:14 201:16,17,25
2/27/17 130:25	24 90:20 135:20	3.11 180:14	4 12:10,14 115:9 145:14 201:16,17,25
20 25:18 60:10 89:2	24th 28:16,19,22 79:3 135:13 165:23 171:7	3/03/17 134:10	40 16:20 30:24 106:14,17,18,23,25 114:23
2001 55:28	25 54:28 71:27 72:24	3/17 182:12	400 131:15
2007 141:22	25,000 125:24,25	3/17/17 137:22	400,000 130:12 179:13
2015 23:3,26 59:28 61:18 62:25 162:1	25th 73:19	3/19/17 144:12	400,000-dollar 83:10
2016 20:5 21:23 22:11 25:14 26:4,8, 27 28:4,16 29:16 33:14,20 40:14 42:7 59:15,17 72:28 73:21 74:17 77:7 78:3,26 90:20 91:19 93:8 94:23 104:13, 22,28 105:24 106:4, 9 128:21 135:13,20 142:15,21 143:12 163:14 164:27 185:5 197:3 198:9	26057 212:12	3/2/17 132:10	400K 131:9
	26th 26:27 40:15 41:10 82:22 91:19 105:26 135:8 166:8	3/7/17 136:7	41 31:4 107:16,19,20, 25 175:15
	27 24:9	30 77:22 93:16,19,20, 25,27,28 200:27	42 31:23 108:23,26 109:1,5 118:11,22
	27th 177:18	30-minute 78:10	43 119:22,25 120:1,7
	28 54:28	31st 29:16,24 34:2 42:6 46:17 127:27 197:2 198:9 201:6 202:26	44 120:28 121:3,4,9, 11
	280E 124:11,15,21 126:10,12,15	33 54:28	46 121:24,27 122:1,5, 7
	28E 124:3	34 196:10,11,14,15, 22 201:2	48 82:24 91:19
	29th 61:17	36 125:28	480.2 212:11
	2:54 169:12	37 125:2,15	4:22 215:4
	2D 24:19	38 20:9 96:26 97:1,2, 6 104:11,13	4:26 143:6
	2D2 24:15	39 20:26,27 103:10, 13,14,19 125:3	4:30 116:17
	2nd 20:5,14 21:1,6,23 22:10,28 23:2 29:10, 23 30:1,14,27 31:2 33:5,14,21 39:10 42:7 45:26 46:1 94:22 95:25 97:13 100:22 104:9,12,22, 28 105:24 106:4,9 118:12 122:25 128:15 132:22 140:21 141:2 155:23 164:6 171:12 179:7 181:19 188:4,8,13	39-percent 125:2	<hr/> 5 <hr/>
2017 32:18 33:18 34:2,15 46:27 57:20 72:25 73:1 105:12 128:18 134:27 136:19 144:20 145:28 150:17 161:4 185:5		3:03 104:3	5 71:5,6,9,11,22 72:1, 26 106:12 142:18, 21,24 166:7,13 168:25 170:17
2018 38:27		3:05 21:1 104:5	
20th 64:19 74:11,17, 24 76:22 77:7 78:3, 25 82:8 135:6 164:3, 4		3:08 169:12	
21 28:15 90:5,8,9,15, 17		3:11 31:2 107:2 144:20	
213,503.28 159:8			

5- 30:18	72 144:6,9,10,16 148:20	9th 209:16,18 210:2	accounted 118:6
5-025 71:27			accounting 16:19 36:16 56:8,12 147:17,18
5/08/17 71:13	7th 33:18,22 34:10,15 105:12,14,22 123:5 128:13,18 129:2 136:19 138:15,20 139:4 181:19 187:6	A	accurate 104:6
50,000-dollar 30:7 42:15 46:20 92:15 139:17 140:14,18 146:2 174:26 185:8		A-N-N 189:26	accurately 20:22
500,000 125:13,14,17	8	a.m. 49:2 111:19 166:17 214:21	accused 51:20
59 130:19,22,23 131:1,4 177:18,20	8 72:28 79:6,7,11,12, 19,22 180:6	A102 90:11	acknowledge 31:18 43:7 175:24
5K 136:24 185:27	800,000 74:7,25 140:12	Aaron 159:22	acknowledged 143:2
6	800,000-dollar 105:2 139:17 140:16	abbreviated 17:23	acknowledging 32:23
6176 15:19 24:5 79:13 84:11 98:15 167:17 196:16	800- 164:2	Abhay 17:12,28 28:25 59:22 69:9 84:10,20 85:20 86:4, 27 88:2,13,26 120:2, 11 122:9 149:28 151:18 153:5 183:21 194:26	acknowledgment 20:28
62 132:2,6,8,13 180:2,6	8:23 139:1	ability 10:15 50:15 150:19 151:6,23	acquire 24:1 50:25
63 134:4,7,8,12,14 167:5 180:8,18	8:30 12:7	able 12:25 29:19,20 32:17 35:7 36:15,19 38:11 44:4 47:22 48:16 76:3 89:21,25, 26 92:20 123:9 128:12 151:19 152:1 153:6 166:16 211:1	acquiring 23:4
64 136:1,4,5,14 138:21	8th 72:25 207:14 209:13,15		act 167:15 191:28
65-inch 20:15 96:4	9		acting 17:4 57:23 128:10 193:16
68 186:18	9 26:25 31:21 80:21, 22,26 81:1,6 207:15	Absolutely 71:18 116:25 133:27 172:9,15	action 48:17 53:19 128:28 148:22 152:5,20 153:21
680 18:10	9/21/16 79:14,16		actions 212:5
69 32:16 137:16,19, 20 138:3 142:5 145:10,11 181:4,5,6, 11 185:23	9/24/16 81:26	accept 137:12 143:8 146:18 153:18 205:23 213:27	active 16:14
6:56 31:7 108:2	9/26 81:15	acceptable 36:20 205:15	activities 64:9
6th 87:16	9/26/16 81:3	access 28:9 35:8 37:5,6 70:14 152:1,3	activity 124:25 126:2
7	9/26/2014 212:6	accomplish 101:11	actual 77:13 99:13 153:1 162:11 174:25 212:13 213:11
7/21/16 71:13	90 64:8	account/financially 198:4	add 51:11 185:17
70 141:24	92114 167:18		added 31:14 32:8 102:14 175:20 179:18 205:8
	950 109:17		adding 145:5
	9:00 116:16 214:21		addition 18:27 22:2 43:14 105:2
	9:13 109:17 118:12, 16		

additional 21:25 125:18 131:9 145:5 178:24 address 7:15 addresses 178:3 201:21 202:5 206:27 adds 130:15 adjustment 16:4 administering 58:17 administrative 17:2 administrator 58:11, 14,15 administrators 56:9 admission 60:17 admit 119:21 admitted 9:8 60:11, 19,22 71:9,13 79:11, 16 80:26 81:4,23,26 84:8,12 85:18,22 87:27 88:5,24,28 90:8,12 93:19,22 97:1,4 103:13,16 106:17,20 107:19,22 108:26 109:3 119:25 120:5 121:3,6,27 122:3 130:22,25 132:7,11 134:7,10 136:4,7 137:19,22 143:16 144:9,12 155:15,18 156:15 196:14,19 212:17 admonished 9:16 advance 30:3 advanced 155:9 advertising 125:10 advice 148:26 153:17,23 advise 94:6 187:6	advised 89:24 advisor 47:8 affect 193:22,28 affidavit 197:11 affirmative 113:8,19, 20 afraid 193:22 afternoon 112:16,20, 23 114:17 117:5 156:13 160:14,15 169:6,16 200:25,26 agent 16:22 17:4 43:16,20 50:4,12 51:15 56:27 57:3,4, 10,23 58:3 98:6 161:4 172:10 182:24 191:28 193:17,24,28 194:7 203:5 205:9, 11,28 206:7 213:19 ages 54:27 aggressive 67:20 ago 114:7 agree 22:12 30:11 32:3,7 35:26 49:25 83:21 104:27,28 133:17,19,20,24 168:5 212:28 214:11 agreeable 32:25 agreed 20:7,21,22,24, 25 21:25,28 22:3,10, 19 30:19 33:11 42:11 45:14 47:26 65:28 83:23 98:12, 14 99:19 102:3 104:22 106:3 133:15,16 139:16 140:18 146:2 agreeing 33:2 46:8 113:12	agreement 15:18,22 20:6,10,12,17 21:4, 7,9,12,14,19,21 22:18,28 23:2 26:24 27:5,10,26 28:2,28 29:8,11 30:2,17,21, 28 31:1,11,16 33:6, 7,14,21,25 34:28 35:24 36:6,20,21 37:2 39:5,10 40:16 41:27 43:8,9,10 45:6,27 47:2,6,11, 13,16 51:2 60:20 61:22 81:25 91:18 95:6,10 96:18,21,24 97:2,9,11,16,19,24, 25 99:9 101:15 102:15 103:3 105:16,25 106:2,5,6, 9,20,28 107:3,21 109:2 122:23,24 123:28 128:14,21, 22,23 130:9 131:17, 22,28 132:10,26 133:2,16 134:18,22 135:11,15,19,20 137:10 139:7 140:11,24,27 146:6 148:3 149:6 155:23 159:11,12 163:24 165:20 175:18,22 176:25 177:21,26 178:2,22,26 179:9 180:11,13,15 181:21 188:1 192:1,5 214:10 agreements 133:5, 10,26 134:1 136:12 139:26 140:6 146:28 181:14,24 212:1 ahead 27:28 38:13 75:16 78:21 83:5 125:6 127:25 207:22 ahold 207:25	air 182:27 allege 51:22 171:16 alleged 187:17 allegedly 50:19 alleges 204:7 alleging 113:10 allow 15:6 37:6 48:8 84:28 124:23,25 allowable 24:22,26 allowed 23:13 24:20 allows 16:23 23:17 alternates 13:1 altogether 115:23 ambiguous 168:14 183:14 184:15 204:23 205:19 amend 25:2 amendment 33:28 amount 30:5 39:8 92:23,24 100:19 125:4,12,18 126:21 159:5 184:2 amounts 155:21 156:26 analyze 157:28 angry 126:28 Ann 189:21,23,26 answer 56:28 176:15, 19 182:9 anticipate 7:27 15:24 45:12 116:20 210:24 anybody 12:14 16:2 49:9 59:7 69:4 95:1 103:7 116:7 127:2 211:13 anymore 148:24
---	---	--	---

<p>anyway 16:6 43:24 162:1</p> <p>apologize 13:12 32:16 33:10 44:15 70:20 89:5 91:7 93:28 110:16 145:11 167:5 172:5 187:25</p> <p>Apparently 11:20</p> <p>appeal 18:20 38:16, 19,20,25 153:1,11, 13,18 157:19,20</p> <p>appear 13:7 53:21 152:28 179:7 212:25</p> <p>appeared 38:19</p> <p>appease 179:16</p> <p>applicant 17:5 193:12,15,16,20,27 194:3,4,7 201:10 203:11,18</p> <p>application 17:5,14 18:16,17,21,23 19:17,27 25:4 28:14 29:7,14,18,19,22,25, 27 30:10 34:5 35:5,8 36:28 37:12,15,20, 22,25 38:9,10,11,13, 17,21,26 39:1,6 46:17,21,23 50:2,12, 23 75:23,28 76:16 86:16 89:18 92:10 101:28 119:19 122:18 142:9,15,28 143:3,8,15,19,23,28 149:2,9,12,25 150:4, 9,19,26,28 151:14, 24 152:9,17,18,22 153:8,14,15 155:6, 22 156:21,28 157:12,21 159:3,10, 17,24 193:13,20 194:9,22 195:9,22, 24 196:17,18,22</p>	<p>197:15 198:6,24 199:14,18,25 202:13 203:28 213:17</p> <p>applications 18:17 87:8</p> <p>applied 19:28 21:14 100:1,27</p> <p>applies 125:1 213:16</p> <p>applying 23:20 99:22</p> <p>appointments 58:17 129:18</p> <p>appreciate 39:2 111:3 160:8 213:4</p> <p>approach 60:27 61:1 71:17 137:27 154:7</p> <p>appropriate 30:19 111:12</p> <p>approval 17:19 18:20 19:8 21:16 22:20,25 38:16,20 39:11 98:17 99:3,10,12,22 101:8 152:18,21 195:6</p> <p>approvals 18:5 86:25</p> <p>approve 36:14 155:26</p> <p>approved 22:22 23:18 33:27 38:14 39:6 41:14 42:5 76:3 100:3 101:1 125:28 126:1 129:28 149:12 183:27 204:1</p> <p>approves 23:16</p> <p>approximately 24:4,5 63:11 96:1 149:19 163:26 164:18 169:7 172:26,28 187:2</p> <p>approximates 101:18</p>	<p>architect 158:3,8 195:3</p> <p>area 64:1</p> <p>argue 51:14,15</p> <p>arguing 113:3 210:27</p> <p>argument 53:13 114:3 212:20</p> <p>argumentative 43:21 44:20 45:1 48:10 185:1 187:18,20,22 188:28</p> <p>arguments 48:7,12</p> <p>arm-length's 147:1</p> <p>arranged 29:9</p> <p>arrangement 204:15 206:2</p> <p>arrangements 205:14</p> <p>arrived 95:27</p> <p>ASAP 121:6,14</p> <p>aside 185:23</p> <p>asked 25:22,23,26 26:1 30:27 32:1 36:16 42:17 65:2,7, 15 66:11,21 67:22 68:13 70:19 92:15 119:11 131:17,28 133:2 141:5 174:21 175:9 204:26</p> <p>asking 9:25 25:26 34:7 39:7,26 41:25 46:3 47:18,19,23 65:14 76:19 173:8 180:21 182:5 213:13</p> <p>asks 141:5 148:8 204:19</p> <p>assemble 23:23 110:1</p> <p>assembled 7:10</p>	<p>12:12 162:1 169:25</p> <p>assembling 12:5</p> <p>assert 46:2</p> <p>asserted 111:2</p> <p>asserting 113:8</p> <p>assertion 44:6</p> <p>assessment 183:26</p> <p>assessor 120:3 122:11,13</p> <p>assessor's 120:19,24</p> <p>asset 170:21,25,28</p> <p>assignee 97:3,25,28 98:3,7,17</p> <p>assistant 17:2 192:28</p> <p>associated 56:26</p> <p>Associates 17:17 60:21 157:7 158:18</p> <p>assume 9:9 10:20 115:10 143:6</p> <p>assuming 115:1,14</p> <p>assurances 187:28</p> <p>assure 52:13 213:27</p> <p>attached 79:14 81:16 88:4,14,15 90:21 131:13 134:21,26</p> <p>attaching 90:11 106:19 132:10</p> <p>attachment 79:23,24 120:4 121:17,20 131:2,16 132:27,28 134:25 180:11</p> <p>attachments 80:2,3</p> <p>attempt 19:7 38:4 39:5 48:2 168:6 193:7</p> <p>attempted 38:16</p>
---	---	--	--

47:27	129:12,21,22	back 9:26 10:16 16:4	basically 16:21 45:17
attempting 17:26	130:17,21 131:18,	21:24 26:18 27:25	51:18 146:26 171:23
50:25 193:9	21,28 132:5 133:2,6	44:4 46:1 47:2,4	basil 170:18
attempts 18:20 36:27	134:6 135:18 136:3	48:21 53:26 66:27	basis 51:17 111:3
attend 55:10,12	137:18 144:8 152:11	80:4 96:23 104:10	147:1
attended 190:22	154:18,22 155:13	108:21 110:26	Bates 7:18 8:10 71:25
attending 190:21	157:5 160:11,13	111:16 113:13 114:7	180:6
attention 166:6 167:3	164:11,14,17,23,26	118:2,20,22 121:13,	bear 99:21 113:28
169:18 170:12	167:8,11 168:4,18	21 124:18 125:2	173:13
199:22	169:4,26 170:1	127:16 130:3 135:20	bearing 99:11
attorney 18:26 45:23	171:22 172:5,6	140:2 142:15,18,20	beating 184:5
47:10 129:11 152:27	173:10 177:22	145:10,11 148:19	Becky 120:1,11
153:16,19,26 154:28	178:11,13 180:1	156:10,17 168:25	becoming 212:18
157:19 173:12	181:15,21 183:5,17	178:23 179:2 181:1	beginning 10:5 151:8
178:21 180:25 182:8	185:4 186:20	188:8 202:25 203:3	169:15 176:24
183:9 186:3 187:6	187:12,25,26 188:11	back-and-forth 47:5	beginnings 73:9
attorney's 155:2	189:2,10 196:13	background 25:16	begun 11:26
attorneys 16:4 163:2	197:7 200:24 204:25	backtrack 170:2	behalf 14:21 20:1
186:11	205:5,21 206:21,24	bad 77:28	39:22 49:7 54:6
audience 169:17	207:3,9,25 208:20,	BAILIFF 11:18 12:3,	189:16 193:17
audited 57:6	22 209:3 211:20,23	19 53:24	213:19
Austin 7:8 8:5,14,22	212:4,10,15 213:11,	balance 21:15 31:9	believe 14:27 35:18
9:24 10:28 11:6,13	15 214:2,28	101:6,8 173:28	44:19,24,27 66:14
13:5 18:25,26 19:6	Austin's 7:17	174:2	67:23 69:2,5,8 74:11
35:11,12,17,23	authorization 120:3,	bankruptcy 126:22,	76:11 82:23 84:1
39:20,24 40:4 43:23	18,23 122:1,8,9,13	23	86:22 87:20 89:12,
44:21,23 45:3,24	available 10:21 115:4	barely 49:10	21 104:8 107:5
46:28 47:10 48:12	117:10,25 209:7	Bartell 17:16,17,21,	149:28 157:15
49:28 50:7,22 51:1,	Avenue 157:3	25 18:8 23:26 34:12	158:16 164:3 165:6,
26 52:9,23 59:22	avoid 180:14	38:18 59:22,27 60:5,	25 167:2 172:28
60:12,18 69:9 79:10	awake 169:19	6,21 61:10,21 62:1,	176:14 179:16
80:25 81:22 84:7	aware 25:8 63:23	10 68:16,17,18 69:6	183:23 184:9,26
85:17 87:26 88:23	65:20 150:18 151:5	86:28 87:2 153:5	186:11,14,22 187:15
90:7 93:18 96:28	161:18 165:3,5	157:7 159:14 162:3,	188:5,12 202:28
103:12 106:16	182:20,24 199:17	4 183:19,24 209:5,6,	206:3 207:25 208:18
107:18 108:25	200:12	10,24 210:8,13	209:7
110:24 112:25	awful 9:16	Bartell's 157:8	belongs 211:7
114:10,23 115:3,17,	<hr/>	base 14:13 50:27	bench 16:18
20 116:25 117:23	B	based 40:23 153:23	
119:24 121:2,26	<hr/>	209:12	
	B&p 213:9		

Benjamin 122:9	blown 142:1	breaking 109:21,23 178:26,28	25,27,28 56:7,18 62:4 75:6,11 83:7 114:17 116:9,10 123:23,24,25 124:5, 22,24 125:5,8,14,17 126:13 158:28 159:2 161:23 165:4 170:21,26,28 174:5, 9 212:11,12
Berry 16:27 17:4,9 19:28 42:1 43:14,16 49:7,15,26 50:28 51:10,20 52:8,19,21, 27 58:6,10 85:20 98:6 115:12,13,16, 19,20 120:2,11 160:16 189:13,15,21 190:2,4 196:21 200:23,25 207:6,10 211:5 213:18	Blvd 79:13 84:11 85:20 88:3,27 120:2 121:5 130:24 155:16 196:17	brief 49:21 50:3 213:22,26	businesses 56:16,23
Berry's 53:21	board 42:8	briefly 13:19 16:7 51:8	buy 69:16 163:25
best 9:2,15,18 104:6 117:14 188:10	boat 67:17	bright 207:13	buyer 16:18 41:13 205:28 206:2
bet 49:23 154:8	body 31:26	bring 9:23 12:2 20:9 53:25 71:5 75:11 110:18,28 111:21 113:24 117:19,25 125:18 132:27 166:6 196:9	buyers 41:6 204:14 205:13 206:6
better 29:20 118:19 152:14	bonus 146:27	bringing 7:9 12:12	buying 19:9
beyond 52:7,16 115:9	book 7:28 71:15,21 88:8 103:15 131:2 137:24 181:7	broken 179:22	<hr/> C <hr/>
Bianca 62:7,21 63:15	booking 58:16	broker 43:17 50:6,7 160:25 161:1 190:24 192:1,20 204:3 205:9	calculating 147:19
big 20:27 92:18,23 96:4 102:25 126:3 168:21 175:13 184:3	bookkeeping 55:23 56:10,14	broker's 191:23	California 98:16 158:10 178:22 204:13 205:6
bigger 61:3	books 7:14 60:24,25 61:1	brought 12:23 30:16 62:3 67:1 86:21	call 26:4 27:18 31:27 33:18,20,21,23 34:16,17,20 35:13 45:13 54:1 64:25 67:16 74:25 76:21 83:15 91:17 92:2 93:12 105:11 113:3 115:10,17 118:18,24 119:1,5,15 122:21 123:10,11 124:26 127:14 128:14,18 129:14,23 175:3 180:22
biggest 68:7 128:2	borne 22:24	budget 25:26 26:1 70:27	called 10:7 16:19 17:17 18:1 21:13 24:8 25:14 27:25 29:26 54:6 64:23,24 115:16 119:7 129:8,
bill 125:23	boss 204:6	build 69:16 76:12	
bills 58:17 159:14	bottom 32:20 71:26 90:26 102:28 138:12,13 142:23 145:14 181:13 196:23 197:22 201:3	builder 63:17	
binder 7:21,22	bought 58:1	building 68:6 76:10, 12,14	
binding 44:5	Boulevard 15:20 24:6 59:19 98:15 158:1 167:17	built 22:4	
bit 18:22 25:4 63:16 76:6 109:26 110:1, 15 112:4,12 140:3 156:13 169:16,20 176:9 208:9	box 203:7	bullet 146:20,21 147:13,28	
blame 32:6	Boy 210:11	bulletin 24:17,23 89:11	
blocked 37:5	brand-new 34:25	burden 114:1	
blow 24:14,21 27:4 29:20 32:17 90:24	branding 45:20 124:5	business 14:8 16:19 17:3,17 18:1 27:19, 22 34:25 35:28 36:17 50:18 55:21,	
	breach 111:1		
	break 13:21,23 48:20 109:24 110:13 112:7 156:14 169:3,6		

11,20 160:19 189:16 196:21 198:21 calling 9:26 93:9 115:3,24 127:17 129:5 150:25 calls 21:4 34:19 40:22 80:12 95:13 163:19 168:2 180:26 187:9 cannabis 16:14,15 19:1 27:19 68:23 165:13 capacity 160:27 capital 123:25 caption 212:28 CAR 172:16 173:8 182:27 206:1 care 66:17 114:5 179:21 182:28 196:8 career 16:22 careful 211:15 carefully 138:5 Carlos 122:9 carries 146:23 carry 195:18 case 10:3,5,8,9,19,22 14:5,8 15:7,15,17,25 16:9,26 17:2 18:9 23:19 24:11 40:4,7,9 46:25 47:26 48:22, 25 52:4,20 110:5 112:27 113:16,26 114:3 116:19,22 124:28 169:8 193:6, 7 200:7 207:16 210:18,21 cases 67:5 161:14 cash 21:13,22 22:7	30:16 36:6 42:22 99:27 105:5,6,18 133:11 162:15 174:19 179:20 catch 112:27 catching 207:19 caught 48:3 causes 48:17 ceiling 85:8 cell 72:6,7,9,27 177:4,5 Center 16:19 55:20, 22 192:24,27 certain 42:11 44:10 142:10 certainly 208:18 210:13 212:27 chain 45:27,28 challenge 152:21 challenging 9:1 chance 11:15 change 48:2 164:5 168:10 185:16 changed 34:1 38:3 98:26 99:1 changes 186:12 changing 144:28 148:11 check 125:3,16 126:20 162:17 174:20 203:4,5,7 checked 202:20 203:8 chief 10:3,5,8,9,19,22 14:5 48:22 113:26 116:23 210:18,21	children 54:25 choose 172:20 chose 41:7 194:3 chronological 72:22 138:6,11 chuckled 96:10 church 191:3 192:21 churches 63:19 City 17:7 18:12 19:16, 17,20,22,24,27 23:6, 16 24:14,18 25:3 29:26 37:7,22,27 51:5 55:13 60:7 61:26 62:12,28 64:3 66:23,26 67:1,14,18, 25 68:24 89:27 93:20 101:20 143:16 150:25,27 151:1 157:10 158:5 161:16 194:11,14 195:25 196:16 199:15 209:8,26 210:2 212:2,15 City's 17:13 23:11 24:24 claim 21:28 22:1 33:11 53:5,7 111:2 claimed 41:11 122:23 153:7 claiming 159:9 claims 50:27 51:19 53:2,3,11,12 clarity 121:19 classes 190:17 clause 146:22 clear 16:5 41:27 43:3 47:26 113:14 149:23,24 188:5 213:8	cleared 127:26 128:1, 3,4 clearly 35:8 47:5 CLERK 54:9 189:19 client 17:1 114:12 212:26 clients 16:24 17:19 18:4,6 56:21,22 57:6 61:24 68:25 172:14 clients' 58:17 close 14:8 29:6 38:25 63:19 64:5 93:10 98:19 99:5 111:12 113:25 114:9,10,17 116:9,10 126:5 174:7 closer 40:2 110:15 112:12 closing 48:7 100:18 CO-2-1 24:8,22,25,26 code 24:25,27 33:28 61:25,27 89:12 124:11,12,15,20 125:2 126:7 155:10 212:11,12 213:9 codes 66:15 collaborate 81:3 collectives 19:1 college 55:10,12 190:12,13,15 come 10:16 16:8 29:10 32:11 35:17 42:16 58:18 61:28 72:4 94:7,16 95:16, 17 137:3 178:24,25 182:3,4 comes 15:9 58:19 113:2 171:12 177:17 178:28 179:2,19
--	--	--	---

coming 10:13 11:25 149:17 182:13 211:9	complaints 40:25	conducting 112:23	26:3,18 40:28 59:13, 16 60:1 62:2 64:16, 20 70:3,11 160:21 170:5
comment 166:17	complete 99:12 115:15 149:15 151:14 204:26 208:6	confident 48:13	contacted 29:16 35:10,11
comments 8:20 38:3 100:10 117:16 166:28 168:9,19	completed 201:26	confirm 32:22 47:20 141:6,15 214:2	contacting 70:13,14
commercial 57:26	completely 42:23 53:13 155:4 180:15 205:12	confirmation 32:13 113:4,9	contacts 43:28 102:3, 7,9
commission 38:19, 25 153:2	completeness 29:26 37:24,25 143:20	confirmed 32:24 33:2 47:11	contain 133:6,10 140:27 204:13
committing 51:5	compliance 19:2	conflict 24:28 25:1 89:10	contained 8:27 44:3 122:23 135:11 139:26 140:6
communicate 40:26 75:2,8 90:2 95:8 120:22 180:27	complying 9:10	connected 50:18 52:1	containing 183:7
communicated 28:6 34:11,14 72:14 200:11	computer 20:14,15, 16	connection 18:13 29:13,22 58:4 59:1, 2,3 62:25 155:6,22 156:2,27 159:10 191:26 194:9 195:8, 24 198:5,24 199:14	contains 43:25 135:19 204:12
communication 59:11,17 122:22 123:2,6	conceptual 158:24	consent 36:13 146:23,25,26	contend 124:13
communications 17:10 27:16 28:4 29:2 33:16 34:3 48:14 59:4 71:1 74:26 75:7 76:20 77:1 91:20 119:17 135:25 136:11 194:10,14,21 209:1	concern 202:12,17	consider 9:15 51:25 75:17 145:7 149:2	content 208:27
community 16:15 61:23	concerning 7:13 15:18 84:21 199:24	Considering 164:28	contentious 180:24 182:12
company 157:8,27 165:12,14 167:19 195:3 205:23	concerns 85:4	consist 14:17	context 10:23 208:28 212:20
company's 165:5	concluded 215:4	consistent 46:10 143:14	continual 34:3
competing 18:21,22 38:9,10,11,17,26 149:17,25 150:3 152:17,21 153:7,13 157:20 159:17,23	condition 18:5 23:21 50:16 99:23 106:2 141:6 164:28	construct 182:21 139:28	continuation 145:24
competition 124:7,9	conditional 17:5 18:14 19:8 21:16 22:14,15 23:16,21 24:2 40:11 193:8 197:12	construction 85:7 139:28	continue 13:24 25:3 35:7 40:26 71:1 84:25,28 122:17 145:7 149:2,10 154:24 155:6 156:16 169:26 179:27 189:28
	conditioned 39:11	construed 43:10	continued 37:14
	conditions 20:7 21:25,27 22:10 104:15,16,20 135:12,19 139:27 140:7	consultant 186:7	continues 138:18 139:25 167:21
	conduct 36:23,25 50:20 150:18,20,23	consultant/operator 186:2	continuing 146:10
	conducted 205:27	Consulting 157:24	contract 17:13 27:1 31:14 40:5,17,18,21
		consumer 17:23 24:18 25:22 197:12	
		contact 25:10,12	

<p>42:19 43:1 44:6,9, 10,14 45:8 47:28 61:10 81:25 111:1 113:11,12,18 123:22 124:8 130:6,7,14 131:9 133:19 136:6 137:21 144:11 149:16 162:4,6,11 163:12 164:6 167:4, 15 168:6,13,15,20 171:9,16,21,26 172:8,14 173:13,16, 18,19 174:12,17 175:3 178:18,24 180:3 182:14,15 183:18,22 185:13,14 188:3,13,15 201:8 204:7,12,13,16,20, 21,27</p> <p>contracted 156:27</p> <p>contractor 206:12</p> <p>contractors 86:17 125:10</p> <p>contracts 37:3 44:1 45:25 65:16 68:2,3 102:13,18 162:22 163:5,7,8,10 172:27 177:17,27 178:15 179:2 180:7 182:21, 26 183:4,7,11,12 205:27 206:4</p> <p>contradiction 203:12</p> <p>convenient 112:11, 27 169:3</p> <p>conversation 25:18 26:10 29:5 34:27 40:23 45:18 62:8,9 65:1,12 66:7 67:27 68:28 69:13,28 70:16,28 74:6,8 93:7 122:14 123:1,13 126:8 127:2,8</p>	<p>128:25 129:3 141:11 167:14 168:11,12,21 177:13</p> <p>conversations 75:10, 14 143:2 165:15 168:20 208:22</p> <p>cooperation 35:6</p> <p>cooperative 17:23 25:22</p> <p>cooperatives 19:2 24:19 197:12</p> <p>coordinate 86:17</p> <p>coordinated 17:9</p> <p>copied 120:13</p> <p>copies 122:10</p> <p>copy 8:12,15,23 42:26 106:8,28 120:18 175:2,8 180:16 213:24,28 214:17</p> <p>core 52:20 158:12</p> <p>corner 35:9 90:27</p> <p>corporate 18:27 98:4</p> <p>corporations 56:23</p> <p>correct 7:25 38:4 76:16 101:11,12,25 131:25,26 134:19,20 135:8 138:21,22 139:24 140:17 141:13 142:28 143:1,26 145:20 146:6,10,11,16,17, 18 159:16 161:5,17 162:2,5,17,27,28 163:2,3 165:22,24 167:22 170:10 173:22 176:3 177:14,23,28 178:1, 6,7 181:24 183:19, 20 200:8 203:6</p>	<p>corrected 38:3 89:28 113:2 125:27 144:3</p> <p>correcting 7:20 24:11</p> <p>correctly 7:18 64:1 134:17</p> <p>cost 99:12 124:10,27</p> <p>costs 125:7,9,14 130:12 178:11 179:14</p> <p>cotton 15:18,21 16:11,13 19:10 20:5, 13 21:1,11,13,18 22:4,9,22 25:8,9,11, 13,14,20,23,24,28 26:10,12,23,28 27:6, 8,11,17,19,25,27 28:9,16,26 29:6,9, 15,16,18 30:4,6,8, 12,26 31:3,6,28 32:4,8,12,18,23,26 33:10,17,23 34:3,7, 9,14,21,27,28 35:15, 25 36:20,24,27 39:5, 23 40:17,27 41:5,18, 26 42:3,9,11,13,14, 16,19,26,28 43:6,27 44:12,14 45:13,14, 25 46:3,10,19,26 47:1,2,9,15,22 48:3, 15,17 49:17 50:6,11 51:13,21,25 52:22, 28 58:26 59:4,11,16 60:2 64:16,24,25 65:2,3 67:13 71:1,12 72:2,27 73:5,10,26 74:9,16,27 75:4 76:23 77:11,19 78:2 79:13,15,26 81:2,13 82:6,17,26 83:14,18, 28 84:24,28 89:17 90:2,10,14,18 91:2, 12,14,21 92:4 93:7, 25 94:28 95:1,7,9</p>	<p>96:21 97:3,10,12,15, 26 98:12,14 99:7,18 100:6,17 101:13 102:2 103:3 104:1, 14,23,27 105:4,16 106:3,9,19,26 107:21,24,28 108:21 109:2,16 111:2 113:10,21 116:27 118:13,25 120:20,23 121:5,12,20 122:2, 21 123:13,14 124:14 126:9 128:7 129:15, 25,27 130:6,11,24 131:7,24 132:9,20 133:8,28 134:9,15 135:24 136:6,17,28 137:9,21 138:26 140:26 141:1,5 142:14,27 143:12 144:11,15,21,22,24 145:4 147:7,24 148:21,23 150:20,21 151:26 155:24 159:12 163:14,24 165:23 166:10 167:4 170:4,6,18,28 171:8 172:7,9 173:11,15 175:3,16 177:11 179:8,13 180:8,10, 25 181:21 182:5,7, 14 183:13 185:6 186:12,28 192:7 200:9 201:7 207:26, 28 208:5,7,15 209:3, 7</p> <p>Cotton's 15:19 17:8 20:8 24:5 25:16 27:18 35:6 36:10 39:13 40:10 45:3 46:7,18 59:26 63:7 94:3 126:25 135:22 139:3 141:21 150:7 164:9,19 165:4 178:25 183:27</p>
---	---	--	--

187:7,27	54:3,13 60:10,14,16,	courtroom 10:12	19 75:22,25,28 76:3,
council 23:7,8,9	19,26 61:4 71:8,18	11:25 49:1 58:8	16 86:25 87:8 89:18
counsel 7:11 8:4,18	77:25 79:9,11 80:24,	110:9 112:2 169:10	91:9 92:9 93:2,11
9:11 10:2 11:5,12	26 81:21,23 84:6,8	192:11 207:18	95:20 96:7 98:18
12:7 13:1,20 14:10,	85:16,18 87:25,27	211:7,10	99:5,17,26 101:4,8,
18 39:17,18 40:1,15,	88:22,24 90:6,8	covenants 178:12	27 119:18 122:18
19 43:13 45:23	93:17,19 96:27 97:1	cover 137:3 211:23	139:28 142:9,15,27
48:18 49:1,3,25	103:11,13 106:15,17	covers 148:18	143:8,15,19,27
51:23 53:28 54:14	107:17,19 108:24,26	create 179:10	147:16 149:2,8,12,
60:11,26 71:8	109:22,26 110:8,14,	created 45:24 148:2	17,25 150:4,9,19,28
109:25 110:23	17,22,25 111:4,8,11,	creation 147:14,15	151:7,13,23 152:9,
111:22 112:10	15,20,24,27 112:1,4,	critical 169:21	17,21 153:7,13,15
117:15,22 118:7	10,20,22 113:22	criticizing 209:12	155:6,22 156:21,28
132:4 137:27	114:11,15,24 115:5,	cross 114:22	157:12,20 159:3,10,
153:24,25 156:9,16	8,13,21,26,28 116:2,	cross-complainant	17,24 173:14,19
169:2,13 172:3	4,6,13,14 117:1,7,9,	16:12 52:28	174:2,6 183:27
178:9 180:15 185:3	22,24,27 118:5	cross-complaints	193:8,12,20 194:9,
187:24 189:9,12,28	119:23,25 121:1,3,	113:20	22 195:8,22,24
207:8 213:21,23,27	25,27 130:20,22	cross-defendant	196:17 197:15
214:17	132:3,6 134:5,7	17:1 52:27	198:5,24 199:18,25
counselor 191:4,9,	136:2,4 137:17,19,	cross-examination	202:9 203:28 208:13
11,13 192:21	27 141:26 144:7,9	112:23 114:8,18	213:17
count 116:27 185:5	152:5,12 154:4,8,13,	160:10,12 169:27	CUPS 17:19 41:18
county 120:3,18,24	16,20,23 155:12,14	200:22,23	61:24 62:14 68:25
122:10,13	156:7,12 160:10	cross-examine 10:18	87:13 203:19,21
couple 12:6 21:5 51:9	164:12,13,15,22,24	crux 24:13,28 34:20	curious 183:11
93:10 111:20 116:24	167:7,9 168:3,16	culmination 21:4	current 80:19 164:28
129:19 137:8 170:7	169:2,5,13 171:19	CUP 17:13,26 18:16,	192:26
175:11 202:22 213:9	172:3 173:6,9	17,21,22 19:17,27	currently 55:1,17
course 14:14 16:11	179:24,26 183:16	22:22 25:4 28:1,13	56:1,25 57:13 66:25
20:10 47:28 68:6	184:13,17,20 185:2	29:7,14,18,22,25	76:9 192:17
99:16 128:28 184:4	187:11,20,23 189:1,	30:10 34:5 35:5,7	customers 124:6
court 7:4,9,26 8:2,4,	4,6,9,11,24,27	36:27 37:12,15,20,	cut 68:28 125:3,15
12,18,20,28 9:5,21	196:12,14 200:5,22	22 38:9,10,11,13,17,	135:24 140:4 177:6
10:1,14,15 11:2,7,	204:24 205:4,20	20,22,26,28 39:6,11	cycle 101:21
11,15,24 12:4,21	206:23 207:4,6,8,10,	40:11 41:2,14 42:4	
13:6,10 37:10 39:17,	28 208:6,11,14,17,	46:16 50:3,11,16,23	D
21 43:22 44:22 45:2	20,25 209:11,16,22,	52:24 59:26 62:16,	D.S. 197:11
48:11,18,28 49:3,4,	24,28 210:4,7,11,15,		Dale 79:15
23 50:17,26 51:9,16,	25 211:19,21,24,27		damages 39:8 155:11
20,28 52:10,16,25,	212:7,14,18,25		
26 53:3,6,11,16,25	213:2,8,13,20,26		
	214:5,6,7,8,13,15,26		
	215:1		
	Court's 11:3 53:22		

dark 13:26 103:18	116:12 118:26,27	153:7	deposit 21:13 22:1,23
Darryl 15:18 16:11	123:27 129:18	define 167:16 170:22	30:5,7,12,18 42:12,
39:23 58:26 59:11	140:11,23 174:27,28	defined 178:3	14,15 46:20 47:19
71:12 79:13,15 81:2,	175:1,27 177:13	definitely 204:5	92:16 100:23 101:7
13 90:10,18 97:3,10,	186:27 187:1,3,4	definitive 139:26	139:18 140:13,14,19
26 98:14 102:2,16	208:16 209:17	140:6	146:3 174:13,27
104:1 106:18	211:17 212:19 213:3	degree 55:14 190:19	178:6 185:8 198:4
107:20,28 109:1	days 11:23 116:15,24	delay 38:7 152:9	deposits 178:4
119:7,11 120:17	129:16,19,20	delayed 12:6	deputy 11:16 12:2,17,
121:4,12 123:18,21	deal 20:27 29:3 30:23	delays 37:19 38:12	18 13:7 49:23 53:23
126:18 130:23 131:7	33:4 35:16,20 48:2	deleted 148:9	169:25 211:12,21
132:8,20 134:9,15	124:1 131:19 137:4	deliberate 110:5	214:18
136:5 137:21	170:27 174:7	deliberations 169:8	describe 18:15 29:28
144:11,27 166:10,15	dealing 86:12 162:19	207:16	34:16
172:2 185:16,24	dealt 28:7	delivered 45:25	described 23:24
192:7	December 38:27	demand 129:1 146:10	33:20 97:11 165:3
Darryl's 122:8 187:17	decide 127:13 129:1,	147:6	describing 43:13
date 14:6 20:19 28:17	4	demand 129:1 146:10	design 18:1
42:9,10 46:11 61:12,	decided 23:23 62:22	147:6	designed 87:12
15,17 72:18 81:14	179:13	demand 147:23	178:17
90:19 100:22	deciding 198:18	demanding 128:8	designer 18:2 28:25
101:22,24 105:23	decision 11:3 14:13	129:25	86:16 87:3
106:4 123:10 124:8	31:17 175:23	demands 36:10	desk 58:16 179:8
132:21 144:25	decisions 146:24,27	145:4,8 148:12,15	despite 37:14 173:11
149:22 163:23	194:19 195:23	187:7,17	detail 18:16,23 27:6
197:22 198:8	197:28 199:28	denial 177:11 202:13	45:4
dated 42:6 60:21	declaratory 53:6,8,	denied 38:26 53:17	detailed 87:9 168:6,7
79:14,16 81:3,26	13,15,18	113:23	details 25:17 26:9
84:11 85:21 88:3,27	deemed 151:14	deny 21:18 111:8	34:18 166:18
90:10 93:22 97:4	deep 210:12	185:9,11	determinations 199:4
103:15 106:20	defendant 16:12	department 19:21,26	determine 26:14,16
107:21 109:2 120:4	defendant's 14:5	58:18	36:3 80:17 87:21
121:6 130:25 132:10	Defendant/cross-	departments 56:7	determined 26:19
134:10 136:7 137:22	complainant 39:23	depending 115:18	develop 17:22 23:5
144:12 182:12	defense 7:14,28 9:22	depends 162:23	25:21,23
196:17,18 201:6	113:8,19,20 211:19	163:12 208:19	developed 16:13
212:6	214:27	depicted 73:8	167:14 170:3 179:9
dates 45:26 73:18	deficiencies 38:18		
day 8:24 13:25 21:12			
31:28 44:11 45:12			
71:4 72:14 82:23			
94:13 95:14,28			
109:19 115:10,22			

<p>developing 163:19 170:8</p> <p>development 18:2 19:20 38:2 167:17 212:16 213:11</p> <p>Diego 17:7 19:16,20, 24 23:6 24:18 41:1, 18 51:6 55:13 93:20 120:18 122:10 167:17 195:26 196:16 209:8 212:15</p> <p>Diego's 19:20</p> <p>difference 125:25</p> <p>different 37:27 41:22 156:27 162:25 165:9 167:22 179:5 205:12 206:2</p> <p>differently 9:12 201:15</p> <p>difficult 63:20 112:5 123:21,23 126:14, 15,16,24 127:19,20 129:8 136:24 185:26</p> <p>digital 7:16</p> <p>diligent 213:4</p> <p>diligently 37:15</p> <p>direct 8:1 49:16 50:21 51:18 54:17 112:17 114:9,10,12 117:28 118:8 135:18 167:3 190:2 194:16 195:5</p> <p>directed 35:23</p> <p>direction 195:14,16 197:7 203:14</p> <p>dirt 158:13</p> <p>disagreed 182:6</p> <p>disappeared 151:12</p> <p>disciplines 37:27</p>	<p>disclosed 206:19</p> <p>disclosure 42:2 50:1 51:12 93:21 94:1,4,8 198:21 212:13</p> <p>disclosures 51:2</p> <p>discrepancies 8:26</p> <p>discuss 7:12 10:26 26:2 48:24 64:26 67:26 68:9 69:28 74:20 83:13 96:2 98:22 100:6 110:5 126:9 129:22 169:8 173:28 207:15</p> <p>discussed 8:25 21:6 22:19,21 26:4,21 27:24,25 29:24 30:2 32:1 33:4 36:17 45:19,23 64:28 65:24 67:21 68:12 69:1,24 70:10,25 74:7,25 78:2,10,25 83:27 91:18 92:7 93:7 99:25 101:18 106:2 117:12,13,14 140:1 145:20 147:9, 10 148:16 163:27 173:27 185:10</p> <p>discusses 170:19 178:8</p> <p>discussing 68:27 98:27</p> <p>discussion 48:27 66:6,19 67:12 74:9 80:10 82:16,19,21, 25 92:1 97:18,21,27 98:2 99:7 100:13,16 101:2,5,13,17 104:19 105:20 117:26 124:14 126:26 129:13 193:25</p>	<p>discussions 30:4,6 32:20 80:7 89:16 92:4,13 99:20 100:23 104:14 105:17,24 128:13,19 135:23 139:11,12 140:5 142:13,27 195:21 199:10</p> <p>disparity 125:22</p> <p>dispensaries 17:20 18:6 41:12 49:13 59:5,8 66:20 67:7,9 86:26 150:13 161:11,19</p> <p>dispensary 17:26 18:3,18 19:9 21:17 22:4,6,16,26 23:5, 13,15 24:3,26 25:23 27:14,24 31:14 33:13 34:23 36:13 38:23 40:7,12 41:3 45:21 58:21,24,27 59:19 62:20 65:5 66:9,24,25 67:28 68:27 75:12 76:5,26 78:5 83:8 98:17,18 99:3,5,11 104:24 105:1,7 124:21 125:7 140:28 167:19 168:23 175:20 188:19,20 193:9</p> <p>dispositive 113:17</p> <p>dispute 15:17,21 22:13 32:27</p> <p>disputed 22:19 113:18</p> <p>disputes 22:18 39:26</p> <p>distance 63:24</p> <p>distracted 48:4</p> <p>distractions 48:9</p>	<p>distribution 33:13 36:12 41:17 105:6, 19 133:25 146:9</p> <p>distributions 22:7 35:27 36:7 127:3,10 133:12 146:15 147:20</p> <p>district 23:8,9,10,14</p> <p>districts 23:7</p> <p>disturbing 34:19 123:11,12</p> <p>divided 56:7</p> <p>docs 166:17</p> <p>document 9:7 20:19 21:10,20,24 31:15 40:22,25 41:26 42:6, 9,20 43:11,12 44:4, 11,12 46:1 52:2 61:7 71:20 72:10 93:13 94:17 96:6,11 99:21 101:10 102:23 103:6 104:10 113:11 134:26 135:1 167:15 171:15 173:24 175:21 179:7 180:16 183:2 184:10,11,27 186:13 188:13 198:3 200:27 204:6,28 205:1,6,22,24</p> <p>documentation 156:1,23</p> <p>documents 9:5 15:23 51:4 81:11 147:15, 16 156:1 165:24,26 166:25 203:25 208:24</p> <p>doing 16:20 27:27 29:2 70:6 73:13 75:24 78:14 96:14, 15 111:22,23 116:14 158:22 162:20</p>
---	--	--	---

182:15,16	due 21:15 101:6,9 174:1	element 31:17 175:23	138:5 141:20 144:17
dollars 43:18,25		elements 113:28	170:12 176:15
183:28 184:7,24	duly 54:7 189:17	204:12	179:15,18 185:21
doors 123:26,27	Dunbar 13:1,6,10 14:23	email 26:26 27:2	188:6 199:24
doubled 176:12		28:17 30:27 31:1,5, 7,9,20,24,26 32:18, 19,23 42:27,28 43:4, 5 44:16,17 45:3,17 75:8 78:21 79:12,23, 27 80:4 81:1 82:8,22 84:9,20 85:19 86:3,6 87:16 88:1,13,25 90:9,18,21 91:12,20 106:11,18,26 107:10,12,20,28 108:3,6,9,12,15,18, 21 109:1,8,18 113:4, 9,10 118:12,18,25 119:6,8 120:1,11,13, 16,20 121:4,12,13, 17 130:23 131:7,14 132:8,14,17 134:8, 15,21,27 135:8,22 136:5,13,21,28 137:20 138:4,8,11, 14,19,24,26 139:4 141:1,2,4,6,8,10,21, 25,28 142:4 144:10, 17,19,21,24 145:5, 14,15,17,18,19,24, 28 147:7 148:20,21 175:9,12,16 176:1, 17,22 180:20 181:1 182:4,11 185:9,15, 23 200:11,13,16,17 214:6,11,12,17	embark 129:1
doubt 209:11	duplicate 214:17		emphasize 209:19
draconian 9:13	Dutta 84:10 88:2,26		employ 62:23
draft 27:5,26 35:24			employed 19:23 55:1, 17 192:17
46:27 81:24 91:18	E		employee 19:15,22 56:9 146:27 206:14
95:6 131:8,13,18,21, 28 132:10 133:2,5 134:1 135:18 136:12 148:2 168:6 171:8 177:26 181:14,20,24 211:2	earlier 18:22 33:9 109:27 110:1 115:6 135:7 160:16 170:12 175:28 176:9		employees 56:1,2,6,8
drafted 20:12,17	early 112:6 124:18 207:13 210:17,18,28		empty 12:10
42:19,21 98:22 99:8, 9 104:10 105:25 133:18,23,26 177:22	earnest 33:24 100:1, 14,20		encompassed 53:16
drafting 96:16 97:12 177:27	easier 40:3 60:25		ended 8:10 207:21
drafts 45:24,26 46:28 179:1	easy 210:26		engage 52:17
drainage 76:12	edit 166:17		engaged 50:20 56:3 57:22 161:1
draw 130:14,17 170:11	edits 47:3,4 166:28 168:9 171:9		engineer 28:23
drawing 173:16	education 190:5		engineering 28:11 86:1 88:18 157:14, 16
drawings 18:12 28:24 37:28 90:22	effect 32:5,10 100:2, 28 185:15		enormous 125:12,23 128:6
drawn 112:1 133:6	Effectively 28:22		enrolled 16:22 50:12 56:27 57:3,4,10 193:24,28
drew 173:17,19	effort 85:11		enter 37:2 43:27 44:9 68:1 102:3,18 135:10 163:4 202:18
driving 208:17	efforts 17:22 25:1		entered 39:4 44:10 86:16 155:23 201:8 212:1
drop 92:20	eight 16:9 44:25 56:2, 6 177:25	emailed 7:19 106:10 107:4 140:24 148:10 181:15 214:3,9,13	entering 41:24
Dropbox 81:10,17 82:7 165:24 166:1	either 9:3 11:25 36:3 51:18 52:1 55:14 65:11 82:23 110:18 117:3 133:5 182:3 197:7 202:13	emailing 46:28	enters 160:22
DS-3032 196:18	electronically 8:9	emails 31:21 36:9 44:11 45:28 46:25 108:6 122:12 133:28	entertain 70:21 168:24 182:17
DS-318 93:21			

<p>entire 44:25 46:11 50:23 76:9 108:12 109:18 145:17 188:14 193:4</p> <p>entitled 10:1 167:4</p> <p>entitlements 18:28</p> <p>entity 27:14 98:5 147:17</p> <p>entry 157:13,17,23</p> <p>equity 22:5 27:12,13 31:13 32:2,7,14,25 33:3 36:11 41:16,21, 22 43:7 45:7 47:20 83:1 104:23 105:1 133:7,21 139:18 140:27 141:7 146:8, 23 147:20 175:19 180:12 185:7</p> <p>equivocally 44:13</p> <p>error 102:10,11</p> <p>errors 8:6 43:25</p> <p>escalating 36:10 145:8 148:12 187:17</p> <p>escrow 178:8 179:10 182:26,28 183:1 205:23</p> <p>especially 24:14 123:24</p> <p>essential 204:12 205:7</p> <p>essentially 20:17 34:5 37:7 41:23 50:9 51:5 113:1 182:5</p> <p>established 201:4</p> <p>estate 43:16,19 50:4 57:12,15,17,23 58:3 160:25 161:3 172:10,13,19,23 178:14 182:24</p>	<p>190:24 191:15,18, 26,28 192:20 201:8 203:1 204:3,13,20, 26 205:7,9,27,28 206:5</p> <p>estimate 14:7 114:11, 21 116:2 164:8 165:1</p> <p>estimates 10:24</p> <p>estimation 205:22</p> <p>evaluate 208:27</p> <p>evening 8:8 31:6,21</p> <p>event 203:28</p> <p>events 23:1</p> <p>eventually 151:28 152:2</p> <p>everybody 7:5 12:5, 12,22 13:12,18 16:28 128:4</p> <p>evidence 14:12,14, 16,26,27 15:6,8,9,25 20:4 25:7 28:21 32:14,26 33:14 36:26,28 38:12 39:3, 12 44:11 47:25 48:6, 13 49:10,16 50:13, 27 60:22 71:10,13 79:17 81:4,27 84:12 85:22 88:6,28 90:12 93:23 97:4 103:16 106:21 107:22 109:3 111:13 113:24 120:5 121:7 122:3 130:26 132:11 134:10 136:8 137:23 144:13 155:10,18 196:19</p> <p>exact 123:10 149:22</p> <p>exactly 65:24 69:5 86:23 90:1 94:14 95:15 129:20</p>	<p>examination 10:6 54:15,17 112:18 115:16 118:1,8 190:2 208:7</p> <p>examine 10:8</p> <p>example 28:9 140:7</p> <p>excel 155:17</p> <p>Excerpt 103:14</p> <p>exchange 27:22 214:5</p> <p>exchanged 46:9</p> <p>exclude 211:5</p> <p>excuse 13:2 166:11 179:26</p> <p>excused 13:7,8 189:7 207:6</p> <p>executed 31:11 140:10 175:17 176:25</p> <p>exercise 52:17</p> <p>exhibit 7:13,20,21,28 27:3 28:15 29:12 30:24 31:4,23 41:28 42:1 45:16 60:9,10, 13,14,17,19,20 71:5, 9,11 72:1,26 79:6,7, 11,12,19,22 80:21, 22,26 81:1,6,20,23, 24 82:3,27 84:5,8,9, 15 85:18,19,25,26 87:24,27 88:1,8,21, 24,25 89:2,5,6,7 90:5,8,9,15,17 93:16,19,20,25,27, 28 96:26 97:1,2,6 103:10,13,14,19 104:13 106:14,17, 18,23,25 107:16,19, 20,25 108:23,26 109:1,5 118:11,22</p>	<p>119:22,25 120:1,7, 28 121:3,4,9,11,24, 27 122:1,5,7 130:19, 22,23 131:1,4 132:2, 6,8,13 134:7,8,12,14 136:1,4,5,14 137:16, 19,20 138:3,21 142:5,18,21,24 144:6,9,10,16 145:10 148:20 153:28 154:18,26 155:7,14,16 156:15 162:3,11,16,24 163:6 166:7,13 167:5,6,7,8 168:25 170:17 175:15 177:18,20 180:2,6,8, 18 181:4,6 185:23 196:10,11,14,15,22 200:27 201:2,16</p> <p>exhibits 7:24,28 8:27 15:24 177:15 212:17</p> <p>existed 89:14</p> <p>expanded 108:16</p> <p>expect 14:16 15:6 20:4 26:10 32:12 33:9 112:17 114:8 184:8,26 187:15 208:6 210:20</p> <p>expectation 174:25</p> <p>expectations 45:5</p> <p>expected 17:25 18:15 21:19,22,27 22:1,13 46:15 174:26 207:22</p> <p>expecting 110:10 210:7</p> <p>expects 44:18</p> <p>expended 155:5,21</p> <p>expenditures 123:25</p> <p>expense 22:21 83:12</p>
--	---	---	---

99:22 155:17 173:14		favor 48:16 52:27	figured 163:28
expenses 22:24	F	feasibility 28:8 64:10	file 52:25 148:27
99:25 124:26		77:2 84:26 85:4	213:22,25,26 214:22
125:12,18 156:20	face 64:21 74:14,16	86:18	filed 36:24,26 37:14
experience 13:13	91:27	feasible 24:1,6 26:14,	46:12 47:21 149:1
18:3 86:25 87:2,7,8,	face-to-face 21:5	20 63:18 85:12	188:9
11,13 161:10 204:11	26:8,28 40:14,16	February 33:18,22	filing 142:27 143:3
205:26	74:15,26 76:21 77:7	34:10,15 46:27	filings 214:5,7
expert 23:22	78:3 84:23	105:12,14,22 123:5	fill 198:18 199:4,11
expertise 204:11	facie 52:3 113:28	128:13,18 129:2	209:13 210:1
explain 69:20 89:10	facilitate 59:25	177:18 179:15 187:6	filled 198:1 202:10
92:22 111:2 124:20	fact 32:24 41:28	federal 15:20 16:23	209:14
126:18 165:18 171:1	42:27 45:19 46:6	24:6 57:7,8 59:18	final 21:9 31:16 43:8,
180:16	49:10,12 51:11,12,	79:13 84:11 85:20	9,10 44:13 45:6,7
explained 25:20	14 126:13 166:25	88:3,27 98:15 120:2	47:1,6,11,13 175:22
34:26 62:11 126:16	180:14 188:3 193:26	121:5 124:23,24	188:1
explanation 171:2	factored 31:17	126:1 130:24 155:16	finalizing 41:27
explicitly 180:25	175:23	157:2,28 167:17	finally 39:2
explore 63:13 84:25	facts 15:9,10	193:21,23 196:16	financial 16:18,19
85:1	failed 113:27	201:13	43:15 55:20,21
exploring 26:12	fair 9:19 164:8,18	feel 11:27 110:9	160:17 174:9
express 48:24 110:4	165:11 166:3 167:28	113:16 127:12	192:20,22,23,27
169:7	183:26 199:13	166:17 168:8	find 34:11 62:28
expressed 75:4	214:24	187:13,15 188:2	112:26 129:5 142:21
expressly 33:2	fairly 168:7	204:11 214:23	185:21 186:14
extended 39:4	Fairsday 19:15	feels 129:26	finding 62:16,19
extending 16:1	faith 99:28 100:14,20	fees 157:12 159:2	78:15
extensive 87:13	101:28 128:10	167:16 178:21	fine 10:12,13 31:18
extent 50:27 211:11	140:11,12	feet 38:24 64:7,8	61:2 93:5 100:12,26
extorted 35:15,19	false 49:16 53:5	150:7,14	102:21 114:15 115:5
extorting 46:5 129:27	139:14	fellow 48:25	117:1 122:27 130:14
extra 115:8	familiar 20:3 23:27	felt 35:4,9,15,19,20	163:11 173:3 175:24
extremely 66:18	66:16 126:12 172:16	38:17 148:23 172:8	201:18
126:28 182:12	177:6 182:18	182:13	finish 77:25 112:17
eye 9:14	far 17:6 70:17 75:16	fence 151:12	115:2 210:19
	115:19 139:4 181:16	Fifteen 190:18	finished 207:11 213:5
	fast 37:17	Fifty-eight 54:22	finishing 207:21
	fault 111:28	figure 85:11 127:21	firm 18:2,26 28:11,26
		129:10	

88:18 147:18	follow 9:5	foundation 164:10 206:20	FW 88:26
Firouzeh 19:12,25 210:5	followed 207:26	four 23:7,10 47:17,28 124:8 177:25 184:2 188:24	<hr/> G <hr/>
first 10:10 15:11 17:1 19:12 25:10,12 26:3, 7 31:24 33:1 36:7 38:14 44:25 48:22 53:28 54:7,10 59:10, 13,27 60:4 61:7 62:3 63:5 64:16 65:1 70:28 71:27 72:16, 17,20 73:4 76:21 82:28 92:24 97:24 105:21 108:15 115:3 117:10 123:24 124:4 126:14 129:6 131:15 139:10 142:4,5 157:2 160:21 164:2 167:12 168:6,26 170:5 172:3 176:1, 17,19,27 177:18,20 181:20,25 187:24 189:17,20 190:4,26 192:9 196:22 200:18 201:2 206:25	following 24:20 40:16 63:10 109:19 118:26 184:22	Fourteen 58:13	G-E-R-A-C-I 54:12
firsthand 151:19	follows 54:7 189:17	frame 75:27 76:13 101:14	gal 150:26
five 40:26 54:26 112:9 166:8 174:22 176:1 177:25 180:4	forget 56:3 208:21	framed 189:1	gap 177:15
fix 126:3	form 29:14,17,25 48:24 53:22 59:23 93:21 110:4 169:7 173:8 196:17,22,26 197:5,6,10,11,17,25 198:1,3,5,11,18,20, 23,26 199:5 206:19 207:15 212:13,16	frankly 66:11 112:6	gatekeeper 58:19 160:19
fixed 8:6	formal 35:24	fraud 51:5,20 52:8,20 53:11,12	general 98:7 196:18, 21
focus 11:20 139:6 192:22	format 206:4	frauds 182:18	generally 196:4
focused 11:23 28:1 165:12	formation 147:15,16	fraudulent 51:22,25 52:19,22	gentleman 17:12
focusing 73:3	formed 59:24	free 11:28 95:23 110:9 166:17 214:23	gentlemen 47:25 48:19 117:27 156:7
folder 154:18 166:16	forms 120:24 172:16, 19,27 182:27 183:6, 11 195:25,28 196:2, 5,15 197:14 199:7,8, 11 206:16 211:3,4 212:13 213:12	Friday 211:10	geotechnical 37:6
folks 13:17 56:17 109:28 169:17 207:11	forth 16:4 96:23	friend 147:1	Geraci 14:22 15:18, 21 16:17 17:10,21 18:7 19:6 20:1,5,12, 16,23 21:1,3,8,11,12 22:3,20,21,24 23:3, 22 25:8,10,14,17,25, 28 26:9,11,18 27:1, 7,10,16,21,25 28:12, 16,23 29:4,15,21 30:3,8,14,15,22,27, 28 31:1,3,6,20,28 32:1,4,6,12,24,28 33:4,10,16,17,22 34:2,7,9,11,14,16, 17,24,26 35:1,3,14, 18 36:18,25 37:9,13 38:15,28 39:4,8,14 40:24 41:6,7,11,15, 25 42:9,11,12,14,25 43:14 44:15,18,23 45:3,8,11 46:1,4,19, 26,28 47:1,16,19,21, 27 48:15 49:11,14 50:10,18,24 52:1 54:2,4,5,11,17,19
	Forty 56:5	friendship 163:22 170:3,9,10	
	forward 7:23 13:2 26:15,20 28:3,13 29:1 36:4,21 37:12, 17,26 63:13 70:7 77:6 89:22 93:1 99:26 131:10 143:28 149:10 150:19 151:15 171:25 195:13,16	front 15:1 16:17 19:4 20:25 58:16 71:16 186:18	
	forwarded 199:25 200:18	fruition 22:26	
	found 81:17,18	full 40:18 46:20 50:26 54:9 113:11 115:22 189:19	
		fully 44:5	
		further 47:7 69:26 70:1 83:6 125:20 135:23 136:11 143:7 189:2 207:3	
		furthermore 173:27	
		futile 52:17	

60:24 61:4,12 71:12, 20 79:13,19 81:2,6 82:2 84:10,14 85:24, 26 88:2,9 89:2 90:10,14 91:4 92:2 93:27 97:3,6,9,25 98:16 102:28 103:18 105:16 106:19 107:21,24 109:2,5 110:9 112:18,24 113:2,6,12 114:8,19, 25 115:2 116:4 118:1,2,11 120:7 121:5,9 122:5 128:12 130:24,28 132:9 133:1 134:9, 12 136:6 137:21 138:3 142:20 144:11,15,20 145:13 150:18 155:20 160:12,14 169:23,27 179:27 189:6,11 192:28 193:9,17,21 194:16,21 195:6,13 196:7 199:15,26 201:8,13 202:11 203:17,24 204:6 206:3 208:8,16,21 212:1 213:16	Gina 18:25 35:23 47:10 59:22 69:9 115:3 129:11,21 133:6 135:18 148:2 177:22,27 181:15,21 183:5 186:20 207:25 girth 173:17 give 11:11,16,24 13:20 14:10,14,16, 19 16:3,9 34:22 38:28 39:18 41:15 47:23 48:7 52:4,14 53:20 100:17 101:19 110:19 112:10 116:2 123:17,20 136:22 149:7 171:13 175:8 179:16,19 185:25 196:7 213:22 given 35:28 99:28 171:7 181:24 213:28 gives 140:7 171:13 183:2 giving 67:25 71:2,3 77:5 120:17 122:8 174:16 184:1 214:8 glad 91:7 go 7:11 9:21 11:9 13:24 18:14 26:15, 25 27:3 30:24 31:9 36:4 37:9,25 38:20 46:21 50:15 68:26 71:25 74:4 75:16,18 78:21 80:20 83:5,23 87:16 88:16 96:20 104:10 112:14 114:22 115:20 116:17 117:8,9,28 125:6,20 127:25 128:1 130:7 131:16 137:25 138:11,24 142:18,20,21 143:7 145:10,11,16 151:15	161:7,8 166:7 167:25 171:25 176:20 178:4 197:10 198:21 201:16 208:12 209:27 goes 32:18 44:7 45:21 113:9,17 140:23 141:20 going 9:2,14 10:17 11:8,11 12:16,28 14:13 15:6,10 18:19 22:18,27 23:1 24:10, 16 26:9,11,24 27:1 28:10,12,13 29:4,21 30:9,15,28 31:4,5,9, 27 32:7,9,11,14 33:2 34:17 35:12,14,17, 25,27 36:3,4,19,23, 24,26,28 37:4,16 39:7,12 40:9 41:5,6 43:27 44:7,23 45:14, 20 48:19 49:18 50:14 51:14 52:2 59:25 60:8 65:19,21, 27 70:2,18 74:4,23 75:20,22 76:13 78:5, 6,13 79:28 90:25 92:25 95:20 96:7 101:21 109:28 111:8 114:7 115:10,11 119:10 124:9 125:20 126:5,14,15,23,24 127:19 129:6 140:2 142:20 143:24 149:6 154:14 155:4,5 156:12 158:24 163:18 164:20 165:1 168:1,24,25 169:5,6 170:15,19 174:6 178:23 182:17 184:4 199:21 202:25 203:3 205:11 206:8 207:12 208:12,27 209:13, 16,24 210:9,16,19,	25 211:9 214:15 good 7:4,7,8 12:4,5, 11 14:23 39:24 41:19 44:27 54:3,19, 20 87:3,4,5 92:12 99:28 100:14,19 101:28 109:21,22,23 111:23,25 112:7 117:14 123:15 124:1 128:10 140:10,12 160:14,15 166:10, 15,19 171:25 172:8, 22 200:25,26 203:2 gotcha 115:13 gotten 80:1 governance 147:15, 16 governing 178:21 government 17:16 126:2 grading 76:10 158:20,22,24,25 graduate 55:3 graduated 190:5,22 Granite 190:11 grant 52:5 granted 49:6 50:3 granting 52:11 grants 52:26 great 45:4 170:21,25 greed 40:9 gross 124:27 125:1,6 Grossmont 55:13 190:15,19,21 grounds 113:16 group 18:27 157:5 158:18 160:17
---	---	--	--

groups 163:1	handled 151:17	held 12:20 156:11 201:26	17 87:23 88:20 90:5, 7 93:15,18 96:26,28 103:9,12 106:13,16 107:15,18 108:23 109:20 110:16,19,28 112:25 116:25,26 117:21,23 119:21,24 120:27 121:2,26 130:18,21 132:5 134:4 135:28 136:3 137:15,18 141:27 142:17 144:5,8 154:18,22 155:8 156:5 160:7,11 164:14 169:4 172:5 173:4 187:25 189:5, 8,10 196:13 200:3, 21 207:5,7 211:18 214:25,28
grow 27:19 73:9,12 75:6,11 76:26 78:4,7 165:4	handwriting 61:15	help 15:14,25,26 17:22 51:23 61:26 124:2 137:28 162:12	
grower 27:20 69:19, 21,25	happen 9:14 13:17 25:11 91:25 123:7 195:15	hey 83:26	
growing 16:14 27:22 69:22 165:8,9,12 170:18	happened 28:22 29:13 30:1 33:19,26 41:3 80:11 96:3 151:22	Hi 175:16 176:27 185:24	
grows 70:18 71:4 74:3 75:10 76:18,19, 24 77:19,20	happening 113:7 151:9	high 34:25 55:4,7 184:3 190:5,11,23	
guarantee 124:10	happens 29:23 204:16	highlight 27:8 28:17 72:16 145:25 146:21	
guaranteed 22:7 33:12,15 34:23 35:27 36:11 105:5, 18 123:18 127:3,9 133:11,25 139:19 146:9	hard 7:24 8:12,15,23 14:1 35:21 103:26 114:14 169:17	Hills 190:11	
guaranteeing 126:23	hash 77:17	hinged 184:9,26	
guess 28:20 117:7 118:19 165:1	he'll 27:20 151:19 208:1	hinges 184:16	
guessed 40:8	head 165:19	hire 59:27 158:7	Honor's 7:21
guidance 23:24	heads-up 16:3 112:11	hired 17:11,21,24 18:7 19:6 23:26 28:23 88:18 152:27 153:16 157:19,27 158:11,12,19 186:23,25	hope 209:9
guiding 18:4	hear 15:10 16:26 18:25 20:3 22:27 23:1,19 24:10,12,28 27:15 36:23,25 38:8 40:9,27 41:25 47:7 178:10 207:12 208:21	hiring 61:21	hopefully 15:14
guy 32:6	heard 17:6 18:22 40:13 42:7 61:24 66:1 68:20 123:14	history 105:13	hoping 19:13
guys 42:18 102:23 163:18 167:26 171:23	hearing 13:13 49:26 165:14	hit 67:19 136:24 185:27	host 70:5
	hearings 12:7	hmm 12:9	hour 114:13,23 129:18 210:10
H	heart 113:9,17	hold 12:1 56:25 57:2, 19 94:1 179:24	hours 18:11 42:27 82:24 91:19 107:6 129:18 175:11 187:3
half 43:12 116:12 162:13 180:2 208:16 209:17	heavy 112:2 125:8	hole 123:26 124:5	huge 125:22,25 128:5
halfway 168:26 202:2	height 85:9	holiday 13:27	hundreds 137:4
hand 37:13 112:2		Honor 7:6,7,8 8:19 9:19 11:6,10,13,18 12:3,19 14:20,25 39:20 49:5,20 51:7, 27 60:18 71:6,17 79:7,10 80:22,25 81:19 84:5,7 85:15,	hurdle 128:2
handle 153:1			Hurtado 47:8
			hydroponic 16:13 27:20
			hypothetical 184:15 204:23 205:3

I	incredulous 44:6 46:25	insists 146:22	interrupt 115:17
idea 14:16 117:14 150:27 161:20 179:4	Inda-gro 81:25 83:7 134:22 165:6 168:23 180:13	inspections 178:12	interrupting 179:27
ideas 75:14 205:10	independent 186:7 206:12	institutions 55:15 163:2	intertwine 83:7
identified 24:6 59:18 63:3,6,8,12,22	indicate 59:4 104:4 178:5	instructed 37:17 131:21	introduce 16:7 19:12 45:16
identify 16:10 24:1	indicated 11:26 127:1 146:14 171:8	instructing 210:27	introduced 25:19 65:2
illegal 124:25 126:2	indicates 170:13	instructions 149:7 195:19 211:2	invest 27:18,22 75:5, 6 76:19 78:4
imagine 210:22,23	indication 49:17	integral 39:25 50:14	invested 22:25 35:4 39:14
immediately 10:2 31:25 68:17 127:17 163:18 175:2	individual 50:20 87:10	integrate 168:23	investigate 64:10 139:27
impact 124:21	individually 50:28	integrated 44:5	investigating 28:7
important 9:16 25:7 42:10 43:17 46:16 114:16 149:11	Individuals 56:23	intend 44:9 114:9	investment 36:4,5 57:28 137:1 148:25
importantly 48:1	industries 174:9	intended 21:8,20 22:14 102:12	Investments 81:26 167:20
impossible 126:6	industry 23:23 68:23 125:26 126:4,6 127:18 161:22,26 165:17	intention 11:4	investors 68:15 75:5 123:19 127:4 137:3, 8
impressive 87:9	information 24:17,23 61:28 80:8 187:10 194:16 195:5,7,12	intentionally 52:21	Invitation 81:3
in-and-out 42:25	informed 13:11 64:2	interaction 42:25 194:23,25	invite 117:9
inclined 13:1	initial 19:16,19 26:27 29:27 50:2 70:16	interest 22:5 27:23 32:2,8,14 35:26 47:20 51:3 65:17 104:24 105:1 201:22,23 202:6,9 206:19,28	involved 192:4 194:10 197:28 199:10,20,22 202:16 204:18 206:7
include 33:7 116:27 173:13,23 185:6 201:21 202:5,7 206:27	initially 46:17 98:27 179:4	interested 23:4 25:15,24 26:12 27:27 62:16,19 63:14 65:7,18 68:2	involvement 194:13 203:21
included 43:8 44:13 45:7 188:1 205:17	initiated 186:27	interfere 36:27	involves 15:17 193:7
includes 18:27	inject 169:20	interfered 150:18 151:6,23	IRS 16:24 50:13 57:6 124:15,20 125:1
including 14:4 21:5 46:5	insert 150:26	interference 39:13	issuance 146:27
income 41:20 124:27 125:1,19	insist 146:10	Internal 57:5 124:12	issue 7:27 8:16 9:12 16:25 24:10,12 26:16 34:5,7,13 41:28 46:22 49:21
incomplete 184:14 202:14 204:22 205:3	insisted 34:28	interpretation 178:22	
incorporation 148:1	insisting 117:17 127:9		

63:28 64:4 65:20,22, 25,26 66:1,4 122:12 143:20 144:3	judge 44:7 48:5 112:1	knew 25:16 26:15 30:14 35:6 41:12 66:1,3,15 68:17,18 127:28 129:9 143:3, 15 174:28 182:14 199:20	<hr/> L <hr/>
issued 139:28 174:2, 4,6	judges 9:11		L-A-R-R-Y 54:11
issues 7:11 8:22 9:1, 23 16:15 19:3 26:17 28:7 46:6 63:21 67:13 68:5 76:11 77:2 85:8 89:19 110:17 134:17 142:10 199:17,24 200:1 208:3	judgment 80:15,18	know 7:23,27 8:10,28 9:4 13:8 20:2 25:7 31:10 32:5 35:9 36:3,21 40:4 50:14 53:14 58:6 61:1 65:14 68:13 69:8 70:4 72:11 73:11 75:15 77:19 78:13 80:2,13 83:18 89:28 90:27,28 91:15 96:8 98:4 99:11 101:21 109:24 113:13,15 120:8 123:23 124:10 127:18 128:9,10 132:14 133:1 138:7 144:16 158:15 160:5 165:7 166:19 172:26 177:3 182:23 184:1 188:22 192:7 193:6, 7 195:4 196:6 197:8 200:7 201:7 207:20, 22 212:23 213:2 214:3	L222-01 88:5
item 147:28	July 14:9 25:13 26:4 40:14 46:9 59:12,17 63:10 64:19 72:19, 20,28 73:19 74:6,24 163:14 170:3,5 207:14,17		labor 125:7,8,9
items 145:5 146:24 148:1 162:15 213:9	jump 15:27 16:6		Lacks 164:10 206:20
<hr/> J <hr/>	juror 12:10,14 13:9, 12		ladies 47:25 48:19 117:27 156:7
January 34:2 127:27, 28	jurors 11:17 12:25 14:24 16:1 48:25 53:23,27 110:8 118:6		land 18:28 182:21
Jessica 103:15	jury 7:10 11:7,24 12:1 14:25 39:25 48:28 51:24,26 52:4,7,19 60:5 90:27 103:27 111:21 117:5,20,25 169:10,25 172:18 207:18 209:19 211:1,2		landscape 158:3,6,8
Jim 17:15,16,17 59:22 68:16,17,18, 22 69:6,8 86:27 153:5 162:3	<hr/> K <hr/>	knowing 184:3 205:6	language 31:14,16 43:2,8 89:28 97:27 99:8 100:6,11 170:14 173:13 175:20,22 185:21 212:17
job 192:26	keep 9:14 14:6 15:7 22:23 24:16 46:8 47:13 70:2 90:25 144:28 169:17	knowledge 17:8 43:9 46:18 87:20 104:7 151:20 152:8 178:25 214:14	lapsed 161:6
Joe 47:8	kept 36:10	knowledgeable 66:10,14,18	large 44:18 146:27
joint 41:24 47:26 60:20 71:11 79:12 81:1,24 84:9 85:19 88:1,25 90:9 93:20 97:2 103:14 106:18 107:20 109:1 120:1 121:4 122:1 130:23 132:8 134:8 136:5 137:20 144:10 155:16 196:15	kidding 96:9	known 15:11 46:8 61:23 65:26 68:23	Larry 14:22 15:17 54:1,5,11,17 61:12 71:12 79:12 81:1 84:9 88:1 90:9 97:3, 9,25 98:16 102:28 106:19 107:21 109:2 121:5 130:24 132:9 134:8 136:6 137:20 144:10 160:12 175:16 176:27 180:10 192:28 200:19 201:12
jointly 42:19	kind 29:1 49:9 57:17 66:28 67:16,18 74:12 75:2 78:12 96:10,22 152:9 158:14 170:19 191:23	knows 41:18	lasted 25:18
joking 174:23	Kirk 79:15	Kulas 7:14,16 8:16, 19,21 11:22	late 23:3 45:9 111:1 185:20 212:18
			law 14:14 18:26 63:16 124:23,24 157:17 178:21 205:7
			lawsuit 36:22,24,26 37:14 46:12 47:21

66:25,28 67:20 80:19 148:27 149:1 161:7,15 186:28 188:8 192:2 lawsuits 67:1 lawyer 166:18 lawyers 14:1,12 48:4, 5 110:2 lay 167:22 lead 202:13 leaping 52:13 learn 16:16 18:7,9 23:3,6,11 24:4 25:12 28:23 33:26 34:21 36:9 37:9,13,18,24 38:8 63:21 150:24 159:18,23,24 learned 19:6 149:16, 18 161:25 leave 26:21 52:14 78:24 153:10 175:4 211:7,11 213:22,26 leaving 175:1 led 23:1 ledger 103:22 left 16:27 24:15 30:26 31:3 42:24,26 43:13 76:1 101:20 110:8 127:8 169:10 207:18 208:28 209:4 left-hand 102:28 legal 18:26 148:26 157:5 182:20 202:14 legally 161:22 legislative 34:1 legs 156:8 length 162:7,10	lengthiest 208:5 lengthy 175:12 177:15 180:3 183:6 208:2,13 lesser 36:7 Let alone 68:5 let's 77:6 96:12 115:10 118:21 119:12 126:12 135:26 138:24 154:24 169:23 180:9 186:16 190:4,26 192:22 211:27 letter 60:20 79:14 liability 50:21 51:18 liable 206:9 liaison 60:6 199:15 license 16:23 57:2,7, 8,12,15,17,19 100:2, 28 101:3,4 161:6 191:6,8,15,18,22,23, 24,25 193:21,23,28 201:13,14 licensed 16:22 27:14 57:5,9 160:25 161:3 191:3,9 205:9 licenses 56:25 liens 80:6,8,13 lightheartedly 119:9 lighting 165:12,14 lights 165:16 limited 41:1 87:20 limits 23:12 line 13:24 43:26 97:16,24 124:26 138:14 139:10 140:10 157:2,6 176:22,26,27,28	200:18 202:3 line-up 13:28 lined 14:2 115:11,14 116:20,22 207:23 209:18 210:17 lines 87:21 176:17 193:23 202:22 link 165:24 list 7:20 8:6,22 19:11 20:2 201:21 202:5 206:26 listed 157:10 listening 62:21 lists 156:26 litigation 66:23 182:13 little 14:3 18:22 25:4 46:2 63:16 103:18 109:26 110:1,14 112:4,12 140:2 156:13 169:16,20 176:9 208:9,19 211:8 212:18 lobbyist 17:18 23:27 34:12 60:6 183:19 local 19:4,5 located 23:14 24:7 98:15 142:22 location 24:7 41:3 63:1 65:5 76:6 locations 23:12 locking 11:1 lodgement 211:20,22 lodgements 11:14 long 15:11 19:11 20:2 45:4 55:27 56:3 57:9 58:12 77:21 83:22	107:3 114:21 116:15 119:1 138:8 162:6,8 172:26 184:6,23 192:23 193:2 210:7 long-term 69:14,17 longer 12:1 14:3 116:1,3,4 156:13 208:10 look 38:1 44:4,8 60:28 63:15,17 71:21 72:13,15 73:15 79:19 80:2 81:6 82:2 85:24 88:8 96:12 108:3,5,10 119:6 120:24 124:3 130:28 131:1 132:13,28 134:25 135:26 136:22 138:10 142:2,24 145:13,17,23 148:24 153:19,28 154:11,26 155:6 165:26 177:8 185:25 186:11 201:1 212:7,9,20 213:13, 24,28 214:9 looked 31:23 42:21 82:28 83:7,17 85:6 108:9 112:6 138:19 145:15,18 162:24 165:8 211:28 214:21 looking 12:9 23:28 25:20 41:20 63:16 65:3 80:15 83:21 84:14 86:18 205:6, 22 213:21 214:15 looks 44:2 77:28 80:6 89:9 90:22 116:8 162:13,16 165:9 167:24 180:14,15 lose 36:3 137:4 loss 126:17
--	---	---	---

losses 126:19	map 15:5 24:13	204:19 214:27	mentions 146:8 178:26 181:19
lost 28:20 37:19 39:15	March 32:18 46:11,27 132:22 134:27 135:2 136:19 138:15,20 139:1,4 141:22 144:20 145:19,28 148:10 149:21 150:17 181:4,14,19 185:5,20 186:15,17, 23 187:2	meaning 115:9 211:4	merely 52:1
lot 23:19 24:10 32:9 48:12 61:25 65:27 66:15 83:22 95:14 162:14 172:22 173:3 178:3 182:26 203:11 204:16 211:9	marijuana 17:23 18:3 21:17 23:23 24:18 25:22 40:6,12 41:3, 11 58:20,24,27 66:20 67:28 68:27 69:22 98:17 99:3,11 124:24,28 125:13,14 126:1 161:11 165:8 188:18 197:12	means 16:22 41:23	message 34:8 73:4 170:24 171:4 177:5 182:4 185:9
lots 125:8		meant 44:1 64:6 69:20 113:7 136:13	messages 34:8 45:27 46:26 71:11 72:2,4, 18,21,27 163:19 166:7,8 188:7
luckily 48:3		measurements 70:4	
lunch 110:21 111:19 176:11		media 17:16	messy 187:6
Lundstrom 86:1 88:4 157:13		medical 17:22 19:1 21:17 22:6 23:22 24:18 25:22 58:20, 23 66:20 67:27 165:13 197:12	met 40:13 47:9,24 62:27 74:16 77:16 87:10 94:22 105:26 139:16 160:1 163:14
<hr/> M <hr/>		meet 26:1 30:15 94:19,21 95:3 163:15	mid 25:13 26:4 40:13 59:12 74:6 210:28
Madam 12:2,18 13:7 53:23 184:20 211:21	marked 9:6 82:26 104:13 138:20	meeting 21:6 26:8,28 29:23 30:1,4,6,20 31:8,25 33:5,6 40:14,16 62:5 74:15, 19,26 76:21 77:8,15, 18,21 78:3,11,26 84:23 95:5,25 96:3 100:22 104:9,12 108:17 109:13 135:6 164:3 175:17 176:4, 22,28	mid-2016 24:5
Magagna 159:22 160:1	market 164:8,18		middle 129:17 148:20 189:24
main 41:8 68:24 81:2 86:15 181:20	married 54:23		midyear 86:22
making 12:11 91:16 116:18 145:4 197:28 199:4,28 207:19 212:21	Martinez 62:7,21 63:15		million 125:13 184:7, 24
man 47:8	match 126:24	meetings 21:5	millions 43:18,24 183:28
manage 192:28	material 20:7 146:24	member 62:4	mind 14:18 15:7 42:23 46:8 47:13 125:7 144:28 148:11 171:26 179:23 202:19
managed 58:23,27 59:8 167:19 209:21	Matt 136:23 185:26 186:1,2	members 62:5 194:24	mine 9:27 147:1
manager 17:12 19:17,19,25,26	matter 110:13 113:17 203:12	memorandum 40:22 41:9 46:13 165:28	mini 15:16
manages 112:2	matters 178:8,10	mention 17:15 33:15 49:7 50:3,13 178:27 203:26	minimum 22:7 33:12 36:11 41:17 45:6 105:18 133:11 139:19 146:9 185:7
mandatory 172:21	maximum 23:8	mentioned 14:7,11 15:16 17:28 23:27 33:9 59:20 64:4 78:16 128:26 174:22	minister 191:9,12,13
manner 174:23	Mcelfresh 155:3 157:17		ministerial 190:25,27
	mean 75:19 96:17 99:15 102:9 115:2 116:2 145:3 177:2		

191:2	164:12,24 169:14	113:22,25 114:1	nearby 18:21 38:10, 24 159:17
minority 36:14	200:4 207:19	MOU 148:2	nearly 169:2
146:25 147:2	moments 12:9 13:20 110:2	mouth 78:18	necessarily 110:10 174:4
minus 124:27	Monday 13:28 115:3, 22 207:14,17,23 210:21 214:21	move 7:23 13:2 16:4 26:20 28:13 37:12, 17 40:2 63:13 70:7, 18 74:23 77:6 93:1 99:26 143:28 149:10 150:19 210:14	necessary 28:11,12 42:4 112:25 168:9 188:2 210:2
minute 42:16 128:9 142:17	money 30:9 32:9 35:5 36:1 39:4,8,14 46:9 92:19,25,26,28 100:1,14,17,20 101:6,9 119:10 126:21 155:5,21 161:18 162:21 170:15 183:25 203:26,27	moved 60:26	need 7:12 9:17 16:7 19:12 45:15 49:3 60:28 67:24 70:2 77:23 93:13 94:3 110:2,18 112:3 113:13 114:5 115:10,11 116:19 121:6 140:2 141:28 142:1 156:8 171:2, 26 181:7 201:1 209:27 210:15,16 213:23,25
minutes 12:6 21:2 25:18 31:2 48:26 77:22 106:12 107:5 109:24 110:11 111:21 112:9 114:23 119:3 156:14 169:7, 9 175:5	monitor 20:15,16 96:5	moving 92:7	needed 29:15,17 35:6,19 86:9 98:6 99:12 127:15 151:10,25 209:9
mischaracterizing 212:2	month 22:8 34:22 36:8,12 41:17 43:12 123:18,20,23,27 124:4,10 126:24 127:9,22 128:8 129:25 133:11 136:23,24,25 185:26,27	mud 34:6	neglected 116:27
misrepresentation 49:16	monthly 33:12,15 105:6 139:19 146:9 147:20 162:9	multi-page 43:12	negligently 52:22
missed 51:23 200:7	months 36:7 37:20 45:26 47:18,28 123:24 126:15 170:7 179:6	multiple 24:12 45:24 46:26 59:5 170:14	negotiate 137:6 148:24
missing 31:16 175:22	morning 7:4,6,7,8,19 12:4,15 13:16,21 14:23 39:24 48:20 54:3,19,20 115:3 166:10,15 207:14 214:13	multiple-page 71:20	negotiated 21:7
misstate 36:15	motion 52:8,11,16,26 53:16,17 110:28 111:11 112:28	multitude 40:19	negotiating 181:28
mistake 113:6,8 176:10		Municipal 24:24,27 33:28	negotiation 47:18 167:27 182:1 186:10 192:5
mistrial 113:16		municipalities 19:4,5	negotiations 32:21 146:16
misunderstood 112:8		<hr/> N <hr/>	Neil 84:10 88:2,26
Mituza 157:23		name 17:12 19:23 50:11,23 52:23 53:21 54:9,10 61:12 98:4 150:26 153:27 154:27 155:2 159:21,24 165:5 189:19,20,24 202:8 213:17	neither 22:17 115:15
Mm-hmm 173:2		named 45:24 47:8 53:2 161:15 212:27	networking 125:10
MMCC 17:24		names 16:8 67:11 172:3,4 187:24 201:21 202:5 206:27	
MMCCS 24:20		narrow 164:25	
modifications 168:19 181:23		narrowed 89:20	
modified 211:5			
modifying 168:13			
moment 12:8,16,18 53:20 69:7 110:19 114:7 115:15 117:10 154:21 156:8,9			

<p>never 22:26 28:1 33:1 36:17 45:18,28 46:3, 6 99:1 147:8,10 160:6 161:1 177:11, 12 182:4 188:7 200:8,13 203:26 206:3</p> <p>Nevertheless 28:3</p> <p>new 15:10 27:14 35:28 36:6 38:1 83:8 123:23,24 124:5 126:13 167:18 168:23 175:22 180:13 206:8</p> <p>Newell 103:15</p> <p>night 45:9 108:4 109:17</p> <p>nine 23:7 44:25 177:25</p> <p>nominal 162:21</p> <p>nonrefundable 21:28 22:23 30:5,7,12,18 92:16 100:24,26 101:7 139:18 140:14,18 146:3 173:21</p> <p>nonsuit 49:6 52:8,11, 16,26 111:1 112:28 113:15,22</p> <p>noon 13:24 110:15 112:12 116:21 210:19 214:16,20</p> <p>normal 125:5,17</p> <p>normally 112:9</p> <p>notarized 42:22,24</p> <p>notarizing 103:23</p> <p>notary 20:6,25,28 103:8,15 104:2 174:8,10</p>	<p>notary's 103:22</p> <p>note 7:26 46:16,24 117:13 208:21 209:2</p> <p>noted 140:26</p> <p>notice 24:19 90:25,26 151:15</p> <p>noticed 27:10 31:13 42:28 83:9,14,17 175:19</p> <p>notices 67:18</p> <p>Nov 106:19</p> <p>November 20:5,14 21:1,6,23 22:10,28 23:2 26:26 29:10,23 30:1,14,27 31:2 33:5,14,20,21,22 34:10 39:10 42:7 45:13,16,26 46:1,9 48:3 94:22 95:25 97:13 100:22 104:9, 12,22,28 105:24 106:4,9 118:12 122:15,21,25 128:15,20 140:21 141:2,12 142:21,26 143:5,12 155:23 164:6 171:12 178:27 179:7,19 185:5 188:4,8,13 204:6,28</p> <p>number 8:10 34:25 35:10 37:20 49:12 68:5 70:12 85:8 117:2 125:6,15 127:20 140:16 142:23 149:15,16 167:7 168:27</p> <p>numbered 7:19 180:6</p> <p>numbers 71:25 101:20</p> <p>numerous 183:7</p>	<p style="text-align: center;">O</p> <p>o'clock 31:21 115:9 169:2 207:15</p> <p>o0o 7:3</p> <p>oath 118:3</p> <p>Oaxaca 12:11</p> <p>object 164:20 168:1 184:28 187:8 188:28 204:22 212:7</p> <p>objection 9:7 13:3,4, 5 43:21 44:20 45:1 48:10 60:10,16 71:8 79:9 80:24 81:21,22 84:6 85:16 87:25,26 88:22,23 90:6 93:17 96:27 103:11 106:15 107:17 108:24,25 119:23 121:1,25 130:20 132:3,4 134:5,6 136:2 137:17 144:7 152:11 154:17 155:13 164:10,13,15,24 168:14 171:18 173:4,7,9 179:24 183:14 184:12,13,17 185:2 187:11,17,18, 23 196:12 205:2,4, 18 206:20,23 207:9</p> <p>objections 117:16 187:7</p> <p>obtain 17:26 18:14 19:7 22:25 24:2 62:16,19 151:6 191:17 193:8</p> <p>obtained 22:20 191:14</p> <p>obtaining 17:19 18:5 19:3 22:14 23:20</p>	<p>62:14 86:25 99:22 156:28</p> <p>obviously 43:1 114:16 213:23</p> <p>occasion 93:13</p> <p>occasions 48:1 152:6</p> <p>occur 77:8 144:2</p> <p>occurred 34:16 103:24</p> <p>October 23:26 28:4, 16,19,22 29:5,16,24 42:6 46:17 59:28 61:17 62:24 87:16 90:20 91:26 93:8 139:12 142:15 197:2 198:9 201:6 202:26</p> <p>odd 13:13</p> <p>offer 37:1 71:6 79:7 80:22 81:19 84:5 85:15 87:23 88:20 90:5 93:15 96:25 103:10 106:13 107:15 108:23 120:27 121:24 130:19 132:2 134:4 135:28 137:15 141:24 144:6 146:15 164:1 196:11 203:24</p> <p>offered 36:5 41:15</p> <p>offering 155:8</p> <p>office 20:13,15 29:10, 19 30:16,26 31:12 50:8 58:19 77:9,12, 13 94:26 95:3,4,14 97:12 160:22 175:1, 4,18 186:5 192:15 193:1 214:14</p> <p>official 204:7</p> <p>oh 44:27 60:16 69:7, 14 71:27 80:5 96:8</p>
--	---	--	--

110:14 149:26 161:28 162:10 163:17 167:3 175:10 181:8 211:6 okay 8:2,4 11:15,27 30:13 32:8 42:18 44:23 55:10,17 56:17,20,25 57:21 58:6 59:10,20 60:8 62:2,8,24 63:8,12, 21,26 64:9,15,20,23 65:6,24 67:4,9,12,26 68:21,26 69:12,20 70:9,15,19,23,28 71:15,24 72:1,4,10, 13,21 73:3,7,11,18, 22 74:12,23 75:13, 26 76:2 77:6,23,27 78:16,20,24,28 79:4, 22,26 80:1,17,20 81:16 82:10,14,25 83:25 84:2,4,14 85:10 86:5,11,14 87:1,6,15,23 88:20 89:2,13,16 90:4,17, 19,24 91:17 92:13 93:6,25 94:3,9,11, 16,23,25 95:3,5,8, 22,23,24,27 96:2,20, 25 97:11,15 98:9,14, 22 99:2,14 100:8,13, 19,27 101:5,24,26 102:22,27 103:9,18, 24,26 105:11,15,23 106:23 107:15 108:1,5,12 109:5,20 110:14,22 111:10 118:23 119:15 120:22 121:11,13 122:20 123:1 124:23 127:8,12 128:28 130:8,18 131:4,13 132:27 133:17,28 134:21 135:7,26 136:14,16 137:12,14	138:10,13,28 139:10,11,25 140:10 141:4,24 142:8,26 143:5,11,14,23,27 144:5,19,27 146:2 147:28 148:8,27 149:1,11 150:17 151:17 153:28 155:28 156:4 158:14,20 159:8 160:1 161:3,10,14, 18,28 162:13,19,24 163:14,23 165:23 166:6,28 167:10 168:12,25 169:1 170:11 171:3,6,12 173:20,27 174:8,12 175:6,10 176:14,21 177:15,24 178:2 179:9,11,12 180:28 181:3,12,18,25 185:19 186:5,9 190:19,21,26 191:1, 5,11,14,22,28 192:4, 12,17,22 193:12,15 194:13,18,20 195:7, 15,18,28 196:4,9,26 197:5,10 198:3,8,20, 26 199:3 200:15,20 201:19,25 202:1,4, 25 203:3,10,16,24 204:3,19 205:15 206:9,11 207:3 208:14 212:14 213:20 old 54:21 once 34:23 37:23,24 38:25 45:28 48:14 64:1 116:15,23 129:1 144:3 151:14 185:8 208:25 ones 211:3 ongoing 162:9	open 123:26,27 124:7 opened 36:13 76:5 105:7 119:6 opening 8:1 9:27 10:2,4 11:8,11,27 13:20 14:10,15,19, 21 15:4,16,22 25:7 39:19,22 48:6 49:8, 18,27 52:6,12 111:6 opens 175:11 operate 17:22 23:5, 15 24:2,3 40:11 67:15 193:8 operated 58:23 59:5, 8 operation 22:15 23:14 34:23 41:12 62:20 165:4 operations 23:12 operator 129:9 operators 137:2 opinion 48:24 169:8 207:15 opinions 110:5 opportunity 15:3 opposed 125:23 opposing 45:23 213:23 opt 112:26 options 203:5 oral 110:28 112:28 113:22 163:4,7,8 168:13,20 171:24 177:13 orally 21:25 22:3,10 45:14 173:27 182:6 order 15:9 42:4 72:22	138:6,11 152:3 213:7 orders 37:10 155:9 ordinance 23:12 25:2 33:28 ordinances 24:27 Ordinarily 205:16 orientation 138:24 originally 46:7 OSHA 212:13 outline 15:5 outset 16:10 outside 25:26 117:5 overcome 63:25 64:14 overruled 44:22 48:11 164:15 168:16 171:19 173:9 184:17 overview 15:7,14,26 owed 49:12 owing 159:14 owned 55:27,28 58:20,26 59:5 67:9 167:19 owner 42:2 67:7 159:18,25 203:5,6 ownership 22:5 35:26 41:23,26 42:2 50:1 51:3,12 93:21 94:1,4,8 104:24 105:1 133:7,21 198:21 owns 16:18 17:28 55:25 <hr/> P <hr/> p.m. 21:1 31:2,7
---	--	--	---

104:3,5 107:2 108:2 111:19 118:12 138:15 139:1 143:6 144:20 169:12 215:4 pace 169:15,21 207:23 209:12 210:11 page 28:19 61:11 71:25 72:15,19,20, 24 73:4,15,16 74:5 87:16 88:16 138:12, 14,18 142:5,22,24 145:11,14,16,24 162:13,16 166:7,13 168:26,27,28 170:16,17 175:15 177:18,19,20,21 178:20,23 180:5,18 181:10,11,13,16 185:22,23 196:22,24 197:23 201:3,16,17, 25 202:20,25 203:3, 4,10 211:23 pages 71:24,26,28 172:28 179:10 180:4 paid 9:6 28:11 42:12 156:20,26 159:2 161:24 183:24 188:24 paint 48:8 paper 10:14 paperwork 52:24 64:3 128:1 paragraph 24:21 27:8,11 32:19 43:27 44:18,25 45:4 139:6 145:23,26 167:13 175:13 177:2 180:14 paragraphs 167:22 181:17 paralegal 7:17	parens 98:19 99:6 parentheses 98:18 99:5,28 parking 37:28 85:8 part 22:18 33:3,5 37:8 52:4 85:10 86:15 91:9 108:15 114:1 131:27 132:26 133:1 140:4 145:15,18 146:15 160:23,24 174:17 176:21 201:18,25 203:4 208:26 partial 42:14 146:15 particular 16:10 24:25 26:6 66:20 204:21 parties 14:3 28:3,5 40:13,28 44:8 47:26 114:15 partnership 83:22 partnerships 56:24 parts 212:11 party 10:11,12 22:17 198:4 patience 14:24 39:3 pattern 128:8 pay 30:11 35:1 104:23,28 105:5 125:15 127:3,5 162:15 174:19 184:8,25 199:21 203:24 payables 58:18 paying 92:28 99:17, 25 125:24 173:19 payment 101:7 payments 33:16	155:17 157:2,4,10 159:10 179:5 payoff 79:16 payroll 55:24 56:9 PDFS 214:3 penalties 202:14 people 10:21 12:12 16:9 19:11 20:3 34:21 35:1,10 56:4, 10,11,12 65:17 68:24 120:17,24 123:16,19 127:18 129:5 158:22 172:22 195:4 211:9 percent 27:12,13,23 31:13 32:2,7,14,22, 25 33:3,11 36:11 40:20 41:16,21 43:7 45:7 78:5,6 83:1,21 104:23 105:1,5 119:8,11 125:15 133:7,25 140:27 141:7,15 146:8,23 147:19 168:22 175:19 180:12 185:7 percentage 76:25 percentages 76:26 perfect 13:16 24:16 perfectly 205:15 perform 61:21 performed 88:18 period 28:7 34:10 41:19 57:21 72:28 75:3 76:20 89:17 98:18 99:3 177:7 208:8 permit 17:5 18:14 19:8 21:17 22:15 23:16,20,21 24:3 37:8 40:11 41:2	99:23 151:12 193:8 197:13 permits 18:5 19:3 permitted 23:8 person 17:15 19:22 35:11 41:14 123:6 151:1 person's 159:21 personal 57:28 persons 16:7 156:27 201:21 202:6 206:27 perspective 14:17 166:19 persuade 27:18,21 persuaded 52:10 phase 29:27 143:20 167:27 186:10 phone 21:4 29:5 31:22,27 34:15,17, 19,27 35:13 45:8,13, 18 64:21,22 67:16 70:12 72:8,9,15,27 74:14,25 75:7 80:11 82:20 91:17,27,28 92:1 93:7,12 95:13 105:11 108:7,8,10, 11 118:18,24 119:1, 5 123:7,8,10,11 126:8 127:1,14,15, 17 129:14,23 163:16,17,18 176:13,17 177:4 180:26 192:13 phones 72:6,7 photographs 28:6 73:16 photos 73:23,25 phrased 45:2 168:15 184:12 187:19,22
--	---	--	---

physical 178:12	110:20 118:7 120:7	193:26	155:16 196:15
pick 81:10 211:13,14	121:24 131:1 132:2, 28 134:25 141:5,25	possible 24:6 34:26 35:28 63:1,24 65:4 70:23,24 98:27 111:17 112:16 114:24 116:11,21	premature 113:23
picked 41:5 98:4 187:4	142:18 145:10,16,25 154:21 164:25 168:27 169:26 170:16 172:4 175:14 179:27 180:5 181:10,16 184:19 185:22 186:13 189:19,25,28 196:10 197:10 198:20	possibly 76:25 202:14	prematurely 116:17
picking 117:5	plus 211:2	post 151:11,12,15	premium 184:3
picture 48:8	point 8:3 9:3 11:2 34:15 35:22 40:24 62:15 63:2 64:15 76:15 78:27 82:16 85:3 92:19 105:4 109:21,23 114:4,28 122:20 123:16 124:6 125:11 126:17 128:11 129:27 130:4 135:24 137:7 141:23 143:27 144:28 145:9 146:20,21 147:13,28 148:16,23,26 150:15 153:22 160:21 171:23 179:21 180:26 182:3,13 187:5,16,27 188:1 193:22 210:22	potential 25:9 26:5 41:6 74:9,20,28 91:21 92:2,5	preparation 16:20 18:12 56:18,26
pictures 71:4 73:11 75:9 170:18		potentially 29:2 43:18 45:19 113:16 187:9 188:18 202:13	prepare 55:23 56:20 135:18 158:14 195:28 196:26 197:17,20 198:11,26 199:8
piece 188:24		power 10:11,16	prepared 28:25 49:21 72:10 76:27 83:2 91:8 110:27 155:21 156:19 196:2,4,28 197:6,9,26 198:13, 28 206:17
pin 101:22		practice 18:27	preparing 56:4
place 35:21 68:15 80:10 82:19,21 87:12 98:11 122:14 124:9 128:24		practicing 161:8 172:13	presence 103:6 117:6
plaintiff 9:3 14:5 54:6 113:27		practitioner 191:4	present 15:4 28:21 36:26 49:22 53:27 77:10 94:27,28 118:6
plaintiff's 7:11 10:2, 3,7 11:12 48:22 49:25 113:25 211:16		pre-instructed 15:4	
Plaintiff/cross- defendant 14:22 189:16		precedent 50:16	
plaintiffs 49:6 54:1		predict 114:14	presentation 15:8 169:21
plan 68:13 88:15 90:11,28 91:8 207:24		predicting 114:2	presented 15:14,15 39:3 135:5
planning 38:19,25 43:15 76:3 153:2		preface 14:28	preserve 137:1
plans 67:27 158:23, 25		prefer 205:16	president 202:26,27, 28
plants 165:13		prejudice 53:17 111:9 113:23	pressure 10:25 114:20 116:7
play 179:2		prejudiced 9:4	pressuring 46:4
please 13:26 14:19 20:9,26 24:9,14 26:25 27:3,9 28:15 31:4,23 40:2 54:9,14 72:15 79:6 81:20 87:17,24 88:16,21	portion 15:25 140:15 145:27	premarked 60:20 71:11 79:12 81:1,24 84:9 85:19 88:1,25 90:9 93:20 97:2 103:14 106:18 107:20 109:1 120:1 121:4 122:1 130:23 132:8 134:8 136:5 137:20 144:10	presumably 40:6 41:18 43:28
	position 27:12,13 31:13 32:25 33:3 35:3 83:1 112:5 175:20 180:12 192:26 193:2		pretty 76:24 116:15 117:14 167:24 168:22 175:13
	possibility 23:4,9		

208:13	128:12 129:4 130:8	18:2,11 19:16,19,25	128:2,4 130:13,25
prevented 151:26	proceeded 28:3	28:25 88:5 129:24	131:9 139:13,27
previous 145:16	119:18	194:4,7,10	140:12 150:4,5,7
previously 135:12	proceeding 170:7	projector 11:21	151:11,15,26,27
143:16 145:20 211:4	proceedings 215:4	projects 18:3 87:4	152:4 158:6,7,13,20,
price 9:6 21:15 22:2	process 18:13,16,17	promise 39:9 74:5	21,23,24 159:7,18,
25:26,27 26:6 31:12	23:20,25,27 25:3	promised 42:15	19,25 161:13 163:25
70:20 98:24,26,28	34:2 35:7 36:28	promptly 111:17	164:9,19 167:18
100:1,28 105:2	37:8,12,20,26 39:13	pronounce 153:27	175:19,24 183:27
139:17,23 140:16	70:18 75:20,21,22	pronouncing 19:13	184:7,24 188:14,16,
165:21 175:18 178:4	77:5 78:12,13 91:9	proof 49:18 114:1	23,24 192:2 193:9,
prima 52:3 113:27	96:7 99:17 122:17	properly 199:8	27 201:22,23,26
primarily 40:5 41:7	127:24,26 151:13,23	properties 23:28 24:1	202:6 206:28
principals 23:7,10	152:9 208:13	41:2 62:28 66:28	proposal 28:28 40:21
print 173:3 201:18	processed 19:28	67:2,5,6 161:11	78:8,19,21,28 79:24,
printed 72:12 212:5	34:6 75:28 199:18	property 15:19 16:13	25,28 81:18 82:6,12,
prior 8:24 27:16 30:6,	processing 87:8	17:27 18:18,21 19:9,	14,26 83:14,19,28
20 33:6,17 41:26	produce 183:1	18 20:8 23:4,13 24:5	84:2,25 85:21 86:1,
43:12 99:20	produced 208:24	25:11,13,15,21,27	10 87:15 89:18
privilege 208:26	produces 27:19	26:13,19 28:8,10,27	137:9,12 165:27
privileged 187:10	product 75:12 124:6,	31:12,18 35:8 37:1,	166:27 188:4
Pro 159:5	27	6,11 38:2,10,13,24	proposed 26:24 27:1
probably 12:23 57:24	products 45:20	39:10 40:5,6,10	28:27 40:17 90:11,
115:18,19 116:3	profession 16:21	41:1,16 42:3 43:17,	28 105:25 135:12,20
119:3 144:22 162:25	professional 163:1,	24,28 47:17,22	proposing 27:13
165:1 176:13 190:18	20	50:15,24,25 58:1	prosecute 37:15
198:15 199:2 210:20	professionals 93:1	59:3,18,26 62:16,19	prospective 163:20
problem 24:11 25:3,9	162:20 163:2	63:1,2,5,12,15,18,	protect 178:17
31:26 44:15,26	Professions 212:11,	20,22 64:5,11,27	protected 209:1
45:10,15 63:24,26,	12	65:4,8,14 66:8,24	protecting 148:25
28 64:3 65:27 68:7,8	proffer 49:8	67:15 68:4,5 69:15,	protection 147:2
69:15 89:14,21,25,	profit 41:22 126:6,14,	18 70:4,6,7,14,21	proven 124:6
27 109:11,14 113:4,	17	73:14 74:21 76:4	provide 8:14 23:24
7 124:4 126:3 176:8,	profitable 161:22	79:14 80:6,8,14,16,	35:24,26 36:6 38:2
9,11 206:18 213:6	progress 34:4 91:15	18 83:11 84:22,26	42:25 56:13 106:8
problems 25:1 37:18	93:2 112:16 116:18	85:1,5,7,11 86:9,12,	provided 8:13,21,23
64:13 101:21 199:18	project 17:10,11,12	19 87:21,22 89:14	21:12 28:9 131:24
proceed 59:25		90:23 92:3,6 96:19	197:15
		98:15,28 99:13	providing 62:25
		102:4,13,19 104:25	140:13 214:18
		120:25 127:27	

provision 33:8 98:10 133:10 147:13,14 148:8 provisions 96:21 183:7 proxy 50:9 51:14 public 17:16 pull 51:2 113:13 141:25 pulling 161:19 purchase 15:19 20:8 21:15,26 22:2 23:22 25:21 26:5,13 31:11 50:15 59:3 65:3,4 66:8 70:24 74:10,20, 28 91:21 92:3,5 98:23,26,27 99:13 104:15,25 105:2 106:2 131:8,13 139:17,23 148:3 175:18 176:25 178:4 193:10 purchases 206:5 purchasing 50:24 63:14 64:26 purpose 50:24 66:7 77:14 95:5,9,24 98:9 purposes 24:13 25:6 59:23 179:6 pursuant 61:21 155:9 167:14 pursue 101:27 149:2 153:15,21 194:22 pursuing 102:17 149:8 150:10 173:14 put 10:25 15:12 19:7 20:20 21:24 24:9,17 29:10 30:18 36:15 51:4 66:9 78:8,17, 18,19 87:12 92:19	96:11 98:5 99:20 101:14 112:4 118:22 126:20 130:6 156:17 176:21 184:6,23 187:6 194:21 201:15 202:28 210:2 putting 30:9 47:2 64:12 87:4 96:18 114:20 116:7 <hr/> Q <hr/> qualified 40:10 41:13 qualify 40:6 41:2 59:19 213:17 qualms 46:6 quarter 184:7,24 question 77:25 104:17,18 118:19 133:20 152:14 164:16 168:17 173:5,8 184:18 185:3 188:12,27,28 210:12 questions 48:6 189:3 207:3 queue 112:11 queued 214:4 quick 142:1 156:5,9 169:14 185:23 200:8 quickly 30:24 65:13 67:24 77:18 quite 13:22 76:6 112:5,6 177:10 204:14 quote 146:22 quote-unquote 171:14	<hr/> R <hr/> race 150:15,16 raise 110:27 ran 82:28 range 72:18 173:1 rate 210:11 ratifies 50:22 reached 33:6 47:6,12, 14 react 127:13 reaction 212:22 read 31:10,24,26 102:23 103:26,28 108:12,18 109:13,18 118:16,17,18 120:7 138:4,9 166:9 167:12 176:15 177:5 179:23 180:10 182:19 184:20,22 200:18 204:9 206:16,26 213:7 reading 83:6 175:26 176:16 ready 11:9 14:19 26:20 29:7 39:21 53:23 54:14 92:9 117:28 118:7 210:14 real 40:5 43:16,19 50:4 57:12,15,17,23 58:1,3 160:25 161:3 172:10,13,19,23 178:14 182:24 190:24 191:15,18, 26,28 192:20 201:8 203:1 204:3,13,20, 26 205:7,9,27,28 206:5 210:26	realize 138:8 realized 36:18 really 7:23 15:1,5 30:22 40:7 112:15 195:4 196:6 199:20, 21,22 213:16 rear 85:7 rearrange 211:14 reason 49:4 73:28 203:2 reasonable 42:24 70:27 reasonably 9:10 reasons 41:8 194:2 Rebecca 16:27 42:1 58:6,10 85:19 98:6 115:12 160:16 189:13,15,21 190:2 200:23 213:18 rebuttal 210:22 recall 10:9 13:26 49:26 69:3,5,10,11 70:15,19 78:2,11,24, 27 79:2,26 83:27 93:6 94:14 115:21 119:2 123:1 128:13, 27 129:20 139:4 141:22,23 142:5 145:27 149:18 151:22,28 162:8 165:14 166:4,5,23 173:3 175:26 186:9, 25,27 187:1 194:3, 25 199:11,19 recalled 10:11 recalling 212:19 recaps 139:7 receipt 21:21 42:21, 23,26 44:2 46:2
--	--	--	---

<p>97:22 171:14 174:13,14</p> <p>receive 22:4,6 55:14 82:7 107:9,12 138:28 141:1 152:17 195:7</p> <p>received 7:16 21:22 73:4 108:20 118:11 135:1,4,8 143:11 147:6 214:12</p> <p>receiving 27:26 73:22,25 86:6 142:6 145:27 168:8 181:20</p> <p>recess 48:26 49:1,2 109:28 110:4,6 111:15,19 169:6,9, 11,12 215:2</p> <p>recitation 49:10</p> <p>recite 117:15</p> <p>recognize 61:7 71:22 79:20 103:19 109:5 131:3 134:26 138:26</p> <p>recognizing 210:19 211:3</p> <p>recollection 80:3 136:10 149:23,24 154:1,15,27 162:12</p> <p>recommend 172:12, 13</p> <p>recommendation 86:27 87:5</p> <p>record 48:27 54:10 117:11,18,26 120:25 127:27 189:20</p> <p>recorded 201:22</p> <p>records 103:22 120:4,19 122:2,11, 13</p> <p>redirect 114:26 189:4</p>	<p>207:4</p> <p>reduce 47:27</p> <p>reducing 47:12</p> <p>refer 15:22 46:1 162:11,26 178:23 180:8 186:13</p> <p>reference 180:12 186:11 188:8</p> <p>references 49:26,28 51:10 148:2</p> <p>referred 167:18 206:25</p> <p>referring 10:6 44:27 109:12 148:13 162:10 183:3 184:16</p> <p>refers 27:14 134:22 138:14 139:26 181:14</p> <p>reflect 112:3</p> <p>reflected 21:10</p> <p>reflecting 20:22</p> <p>reflective 8:23</p> <p>refrain 214:15</p> <p>refresh 136:10 154:1, 15,27 162:12</p> <p>refreshes 80:3</p> <p>refundable 100:24</p> <p>refused 37:5</p> <p>refute 177:12</p> <p>refuted 182:5</p> <p>regard 19:2</p> <p>regarding 16:15 17:10 67:27 79:15 80:8 139:12 140:6 168:19 182:21 199:24</p>	<p>regardless 45:9</p> <p>regards 168:13 175:25</p> <p>registered 17:18</p> <p>registry 212:5</p> <p>regulatory 18:13 19:2 23:20</p> <p>reiterate 45:17 52:9</p> <p>related 62:10 120:25 122:12 199:17</p> <p>relates 49:11</p> <p>relation 82:22 129:14 196:16</p> <p>relations 17:17</p> <p>relationship 123:15 163:20,21 167:16 171:24 172:1,7</p> <p>relatively 168:5 180:3</p> <p>relevant 213:18</p> <p>reliance 39:9 159:11</p> <p>relief 53:6,8,13,14,15, 18</p> <p>relocation 83:10,12 130:12 179:14</p> <p>relying 49:11 199:7</p> <p>remain 100:2,28</p> <p>remainder 47:19 185:8</p> <p>remaining 12:25</p> <p>remember 67:10,12 73:22,25 86:20,23 95:27 123:9 142:4 151:9 157:14 169:16 203:1</p> <p>remembers 34:18</p> <p>remind 53:4 163:23</p>	<p>reminded 14:26 34:26</p> <p>reminding 117:17</p> <p>renegotiate 30:22 33:24 35:16,20 36:2, 5,6,19 130:2,9 137:10 182:16</p> <p>renegotiating 131:18</p> <p>renegotiations 36:9</p> <p>renew 111:11</p> <p>renewing 53:17</p> <p>rent 125:7 161:24</p> <p>rental 125:9</p> <p>rented 66:23</p> <p>reopen 52:6,15</p> <p>repeat 83:16 128:16 164:16 168:17 179:3</p> <p>repeatedly 142:9</p> <p>rephrase 92:3 171:27</p> <p>replied 31:25 32:4 119:9 140:26</p> <p>reply 31:19 33:1 175:25</p> <p>report 37:21 157:16 158:14</p> <p>reported 12:20 156:11</p> <p>reporter 7:6 40:1 77:26 117:6,9 178:9, 10 184:20,22 189:22</p> <p>represent 16:23 28:18 57:6 72:26</p> <p>representation 51:13,21 167:28</p> <p>representations 49:9</p> <p>represented 19:1</p>
--	--	--	---

<p>46:19 50:10 116:12</p> <p>representing 19:4 205:28</p> <p>request 52:6 94:11 105:17</p> <p>requested 32:23 95:15,17 120:23 130:11 141:16</p> <p>requesting 40:20 46:12 182:7</p> <p>requests 46:7 185:6 187:28</p> <p>require 9:10 146:25</p> <p>required 37:7 53:15 87:19 140:14 146:26 174:21</p> <p>requirement 63:24 147:17 151:13 155:9</p> <p>requirements 38:1</p> <p>requires 158:5</p> <p>requiring 147:14</p> <p>research 68:3</p> <p>reservations 43:2</p> <p>reserve 9:25 10:4,18 114:9</p> <p>residential 57:25 63:19,25 64:7,8 68:7</p> <p>residents 61:26</p> <p>resolution 34:4</p> <p>resolve 25:2 37:18</p> <p>resolved 34:7,13 46:22 142:10 143:21</p> <p>resolving 39:26</p> <p>respect 36:16 62:13 63:26 64:4 67:14 83:19 156:20 191:6 192:1 195:21 200:1</p>	<p>respond 9:12 10:20 32:22 51:8 65:6 70:20 91:7 92:11 99:18 102:20 108:20 109:10 118:13,15 130:1 135:22 137:9, 11 141:5,15,19,21 166:21 176:15 180:20 181:3</p> <p>responded 45:9 66:27 136:12 170:20 176:1</p> <p>responding 44:24 47:2 134:16,17</p> <p>responds 44:15 180:10</p> <p>response 70:8 75:14 78:20 83:24 92:17 93:3 94:9 95:22 107:9,12 109:8 119:14 126:25 134:1 139:3 170:23 175:12 176:6,7 180:7,19,22 214:22</p> <p>responsibility 117:12 198:18</p> <p>responsible 19:17 86:11 147:19 198:4, 17 199:3</p> <p>rest 14:24 108:18 119:7 140:5 182:28</p> <p>restyle 213:21</p> <p>resubmit 37:22 38:5, 6</p> <p>result 15:12 37:19 38:8,12 53:22 111:4, 6 152:8</p> <p>resulted 39:14</p> <p>resume 111:17 117:28 118:7</p>	<p>resurfaces 179:6</p> <p>retail 125:8</p> <p>retainer 174:27 183:21</p> <p>return 13:23 39:7 48:16 166:28</p> <p>returning 13:27</p> <p>returns 55:23</p> <p>Revenue 57:5 124:12</p> <p>reverse 138:5,10</p> <p>review 29:26 37:24, 25,26,27,28 48:14 82:14 97:15 136:7 137:22 143:20 144:12,16 155:9,26 156:23 166:25 212:24</p> <p>reviewed 8:25 27:10 83:9 84:24 136:21 156:1,20 185:24</p> <p>reviewing 82:17 166:21 213:6</p> <p>reviews 101:21</p> <p>revision 47:4</p> <p>revisions 40:24 46:27</p> <p>rewind 114:6</p> <p>rhetoric 48:8</p> <p>right 7:4,9 8:28 9:18, 21 10:4,8,19,27 11:1,5,12 12:4,16, 21,23 13:6,9,14,18, 19 19:13 22:6 36:13 39:18,21 48:18,19, 28 49:3 50:17,26 51:16,28 52:10 53:1, 21,23,25,26 54:3,13 61:5,20 62:15 71:9 72:16,26 74:4,19 76:15 77:14 78:1</p>	<p>91:6 98:12 109:15, 26 110:8,17,25 111:8,20,24 112:2,7, 13,22 113:1,17 114:11,24,25,27 115:5,13,21,26 116:6,17 117:3,18, 19,24 118:16,27 119:1,13 125:1,28 126:4,6,23 132:6 138:23 139:3 141:14 144:4,23 145:12 148:19 150:23 151:16,22 153:10 154:20,23 155:12, 14,20 156:9,12,15 157:6 161:6 162:3,4 163:4,17 164:7 165:18 166:15 167:21 169:5,10,23, 26 177:8,10 182:11, 13 183:18 189:4,6, 12 194:2 200:22 204:17 206:10 207:11,18 208:11 209:22,28 210:15, 23,25,28 211:6,25 212:5,7 213:2 214:1, 26 215:1</p> <p>right-hand 90:26</p> <p>rights 36:14 146:24, 26 147:3</p> <p>risk 9:9 10:20 30:11 92:24,27 126:21 184:3</p> <p>road 15:5 24:13 112:14</p> <p>rock 35:21</p> <p>role 17:26 58:15 86:14,15 195:1 199:13</p> <p>room 16:28</p>
--	---	---	---

Ross 79:15	satisfy 149:6	197:7 208:2,7,10,15 209:4,8	5 98:20 100:4 102:5, 7,27 103:27 112:15 121:15 126:27 129:7 134:23,24 136:26 138:16 139:8,20 140:17 141:20,28 143:5,7,9 145:1 147:4,21 148:4 153:19 157:25 158:26 162:3,14 166:16 167:21,23 169:23 178:2,20 180:9,11 183:4 186:16 202:22 205:8,16 207:1,13, 17 209:13 210:27 211:21 214:20
rough 13:15	save 35:20		seeing 14:3 16:2 145:27 166:4,5
routinely 176:14	saved 214:3	Schweitzer's 28:25 87:2 158:27	seek 122:13
ROW 88:3	saw 42:28 83:1 120:15 135:8 168:22 182:4 187:27 188:7 192:9	scope 164:25	seeking 53:8,10 155:22
rule 164:13	saying 14:28 93:3 127:19 129:9 176:10 181:26 200:27 201:25 202:1	screen 15:28 16:3 61:2 96:12 102:26	seel 175:23
rules 9:10 38:22 206:8		screenshots 72:12	seen 12:14 81:7 82:2 84:17 85:26 88:10 89:2,6,7 90:15 93:25,27 97:6 106:23 107:24 120:8,9 121:9 122:5 131:4 132:14 134:12 135:1 136:14 141:4 144:16,18 160:5,6 192:15 204:5,9 206:4 211:24 212:23
ruling 52:12 53:22		SCST 158:9	sees 124:24 126:2
run 101:22 159:7 160:17	says 24:19 31:11 43:6,27 44:26 46:3 51:2 90:28 97:24 98:14 99:2,27 100:27 102:2 113:4, 6 121:13 125:3 131:8 136:21 139:11,16,25 140:10,26 141:5,14 142:8 143:6,8 145:25 147:13 157:2 201:20 203:10	scuds 46:15	selection 14:25
runoff 158:5		searching 62:27	sell 25:27 31:17 37:1 39:10 47:22 98:15 192:2
runs 158:6		season 129:17	seller 16:12 206:1,2
		seat 12:10 17:1	sellers 204:14 205:13
S		second 19:24,26 28:19 31:10 32:19 33:1 61:11 88:16 131:27 132:26 133:1 135:16 138:13 139:6 145:26 176:26,28 180:2 181:24,25	
sale 15:19 20:8 22:13 31:12 59:2,3 125:11 139:13 140:11 141:6 165:20 167:25 175:18 188:16,23,24 192:1 205:27	scanned 140:23 175:2,4	second-to-last 138:12	
sales 100:1,28 125:6 206:5	schedule 208:3 209:9	section 24:19 40:20 124:3,11,15,21 126:7,10 176:23 198:22 201:28	
Salesperson 57:18	scheme 90:11,28	sections 213:9	
salesperson's 191:22,24,25	school 55:4,7 190:6, 11,23	secure 211:13	
Sam 158:3	schooling 190:22	securities 18:28	
sample 151:10,25	schools 63:19	see 12:18 15:24 24:22 25:14 26:26 27:5,6 28:4,5 29:20 30:28 31:4,5,10 32:17,28 34:8 44:28 45:22,27,28 49:4 51:28 58:8 61:1,4 62:28 64:13 68:4 70:6 73:15 75:24 80:15,18 90:27 91:2,	
samples 151:26 158:12	Schweitzer 17:13,28 18:7,10,15 29:28 38:15,18 59:22 69:9 84:10,20 85:20 86:4, 6,11,21 87:6,7 88:2, 13,26 116:2 120:2, 12 150:1 151:18 152:15 153:5 158:17 183:21 194:27,28		
San 17:7 19:16,20,24 23:6 24:18 41:1,18 51:6 55:13 93:20 120:18 122:10 167:17 195:26 196:16 209:8 212:15			
sat 20:14 96:4,11 179:8			

206:6 selling 25:15,24 47:17 65:8 70:21 send 26:23,24 40:24 67:18,19 78:28 79:28 82:13 107:1 109:15 132:16,23,25 136:16,28 145:5 171:4,9 177:11 180:8 185:15 sending 47:1 71:4 73:13 74:1 79:27 80:7 107:6 121:19 179:1 sends 170:18 175:12 sense 161:21 183:25 212:20 sent 8:9 27:1 28:16 31:1,7 33:1 40:17 41:9 43:11 44:11 73:11 81:12,13 86:3 106:26 107:28 109:8 118:25 120:21 131:7 133:28 134:15,18 135:15 138:20 144:19,21,24 145:19 148:21 165:23 166:16,26 170:24 175:2,7 200:13 sentence 15:1 31:11, 24 33:1 43:26 99:2, 27 102:2,14,23 108:16 140:4,5 141:14 176:24 201:20 202:2 separate 48:1 53:14 174:13 179:1 September 26:8,27 40:15,18 41:10 74:11,17 76:22 77:7 78:3,25 82:8,22 91:19 105:26 124:19	135:6,8,13,20 164:3, 4,27 165:23 166:8 171:7 178:26 series 21:4 138:4 seriousness 100:18 serve 167:16 served 10:14 58:3 service 57:5 124:12 134:22 180:13 services 19:20 55:23, 24 56:12 61:20 62:25 81:24 91:18 161:1 163:5 167:4, 16 178:26 212:16 213:12 set 7:24 20:6 41:1 181:24,25 206:8 211:1,2 setback 77:3 settled 67:22,23,24 settlement 212:1 setup 15:28 seven 116:28 177:25 185:6 Seven-zero 141:26 seventh 36:8 136:25 185:28 share 91:11 166:16 shared 28:26 shareholder 36:14 147:2 sharing 41:23 91:11, 14 sheer 117:2 Sherlyn 210:6 Sherlynn 19:23	short 49:21 115:27 176:21 184:6,23 shortly 44:14 show 14:27 15:1,6,23 20:4,26 22:17 25:8 28:15,26 29:12 30:22,24 31:4,23 32:15,26 33:15 38:12 39:12 50:14 60:8 79:5 80:20 100:18 126:14,17,19 showed 40:19 176:22 showing 52:3 74:2 113:28 shown 20:10 40:15 41:28 42:8 43:5 44:16 72:24 shows 20:28 43:9 108:15 176:17 213:15 shut 115:6 shy 117:17 sic 19:25 89:3 91:2 161:15 side 9:22 24:15 56:18 102:28 132:10 134:17 180:11 181:14,21 211:16,19 214:1,10,19,27 sidebar 12:20 117:4, 8,9 156:6,11 sides 178:17 213:16 sig 121:6 sign 41:26 84:2 94:8, 17 103:3 120:23 121:13,21 135:15 140:12 172:14 185:13,14 188:4 195:25 196:8 197:2, 15 198:8 203:25	212:28 signature 61:11,13 93:13 94:3,14 102:27 103:1,2 196:23 197:22 198:22 201:3 202:23 signatures 93:10 signed 20:5,25,28 21:11,18,23 28:1 29:1,8,15,17,19,25 30:2,17 33:7,13,21 34:28 37:1,2 42:3 44:12 93:22 99:21 101:27 103:6 104:1, 4,10,13 105:15 106:4,9 107:3 122:2, 24 123:22 128:14, 21,23 159:11,12 164:5 182:14 188:3 197:5,25 198:5,23 200:27 202:10,11 203:13,14 207:2 212:26 significance 150:9 significant 41:20 significantly 8:11 signing 23:2 30:21 42:23 51:1,4 199:7 202:7 206:17 signs 42:1 52:2 171:14 similar 204:20,28 simple 21:9 simplify 125:20 simply 31:18 175:24 194:16 197:8 199:14,25 202:10 203:14 207:2 Sir 13:9
--	--	---	--

sit 12:24 77:17 92:8 95:6 130:7	sorry 8:19 13:10 26:27 32:12 33:12 38:23 40:1 49:20 60:16 73:24 83:16 90:14 91:4,6 107:11 127:25 128:16 144:22 150:21 154:13 159:27 162:25 173:6 178:9 179:26 184:13 197:20,21	207:19	23:28 33:24 38:9 47:9 62:27 96:5,7 98:27 110:3 116:8, 16,23 123:13 127:17 129:5 163:18 187:5
site 28:24 69:23 84:11 90:11,28 91:8	sort 98:7 110:13 163:19,24 170:9,10 183:22 186:7	spending 123:25	starting 123:26 162:1 201:20 202:2
sits 16:27	sought 148:26	spent 18:10 39:9 137:4	starts 138:11 139:28 145:14 174:5 177:21
sitting 13:14 16:17,28	sound 19:14	split 83:11 130:11 179:15,17	state 54:9 57:7 178:21 184:18 189:19 201:23
situation 47:5 66:11 67:4 128:3 162:23	sounds 114:16 116:8	spoke 20:18 47:10 72:14 163:17	stated 106:5
six 31:6 36:7 107:5 115:25 136:24 167:22 172:28 175:5 177:25 180:4	source 172:22	spoken 160:3 192:12 200:8	statement 10:2 11:27 14:11,15,19,21,28 15:5 39:19,22 42:2 49:8,18,27 50:2 51:13,24 52:12 93:21 94:2,4,8 111:7 132:9 134:9 140:15 198:21
sixth 185:27	Southern 158:10	spot 41:4 175:8	statements 11:8 13:20 48:7 52:20,22 183:1
Sixty-eight 186:19	speak 8:18 40:2 41:4 74:13	Spreadsheet 155:18	states 44:12 125:27, 28
slightly 170:2	speaking 10:24 170:8	staff 18:10 62:4,5 174:8,10	stating 140:11
slippery 208:26	specific 101:10 162:14 163:10 167:24 171:17 187:28	stage 53:9 75:25 111:12	statute 182:18
slope 208:27	specifically 95:4 126:9	stake 22:5 36:11 41:16,21 43:7 45:7 104:23 133:7,21 139:18 140:28 141:7 146:8,23 185:7	stay 169:19
slow 169:15	specificity 205:17	stamps 7:18	steady 14:4
small 56:23,24 159:5	specifics 26:2	stand 117:24 169:24 207:20 209:27	step 42:4 63:13 70:11 98:11 110:7,9
Snipes-dye 158:18	specified 41:8 43:3 101:24 163:6	standard 146:25 147:2	steps 70:1 76:4
so-called 41:27	speculation 152:11 168:2 188:26	standardized 183:6, 12	stick 119:12
soil 37:11 151:10,25	spell 54:10 189:20,24	standing 111:26	stipulated 51:15 60:9 71:6 79:8 80:23
soils 37:7,19,21 38:6 151:25 158:10	spelled 19:14 122:24	staring 102:25	stop 47:22 109:26 110:10,15 112:5
sold 58:1	spelling 189:23	start 11:8 12:26 13:15,23 36:12 70:3, 6 86:18 125:12,21 126:13 130:10 131:18 136:25 143:28 185:28 187:14 207:25	
solid 101:20	spend 65:27 117:4	started 20:19 22:28	
solids 101:19			
somebody 8:7 10:13, 16 70:13 98:11 115:11 126:23 150:27 152:28 153:1 197:26 198:13,28 212:21			
soon 7:10 11:7 117:25 169:24			
sooner 208:19			

stops 125:1	subpoena 10:12	184:15 195:4 207:20	85:24 108:3 130:28
store 180:13	subsection 206:25	208:4 211:13,27	132:13 145:10
story 15:27 16:6 184:6,23	subsequent 82:17 91:20 119:17 122:22	213:23 214:17	148:19,22 152:5,20
straight 76:24 188:24	subsequently 29:9 109:18 118:24	survey 28:10 85:21 86:9 87:18 88:4,17	153:19 154:21,26
stream 14:4	120:22 141:11	151:10 178:11	169:5,24 180:26
stress 207:15	148:10,27	Surveying 86:2	190:12,26 196:8
stretch 156:8	substantial 30:10	surveyors 70:4	209:26 211:14
strike 141:25 142:13 158:2	success 68:14 74:2	suspect 48:13 208:9	taken 18:17 70:1 76:4 114:5
strong 52:12	successes 62:12,22	sustain 9:7 52:3	takes 182:28
struggling 28:18 169:18	successful 17:18 18:4 19:3 68:24 153:11	sustained 43:22 45:2 152:12 164:25 168:3	talk 12:7,16 13:13 27:20 59:7 66:17
stuck 34:5 69:7 143:19	suggest 182:27	183:16 185:2	77:17 87:6,7 109:24
studies 37:6 86:12	suggesting 93:4	187:11,23 189:1	110:2 141:20 144:28
study 28:24	suggestions 20:21 40:25 47:3,4 171:10	204:24 205:4,20	154:20 155:5 156:8
stuff 211:8	suggests 210:17	206:23	169:13 190:4 211:12
subcontracted 128:20 145:23	suing 67:14	sweet 41:4	talked 33:23 45:4 50:1 69:3 74:5
subject 50:20 53:18 66:14,18 110:13 192:2	sum 98:16,23 162:20	switch 155:4	76:23,25 77:3 82:12
subjects 76:22 155:4	summary 155:10,17, 20,26 156:2,19,24	switching 76:26	83:18 89:17 94:15
submit 29:7,18,27 75:25,27 92:9 95:19 142:9 204:27	suppliers 146:28	sworn 54:7 189:17	101:18 105:27 127:2
submitted 17:6 18:12 19:18 29:25 34:1 37:21 39:6 46:17,23 75:23 76:16 95:20 143:19,24 150:27 179:10 182:26 195:25 196:15 211:4	supply 75:11	system 39:25	141:10 148:11
submitting 29:14,22 89:18 93:11 142:14 213:19	supporting 155:28 156:23	systems 16:14 125:11	163:15 164:2 173:25 203:27
	supplies 125:10	T	talking 9:25 10:23 34:21 62:1,21 66:17 68:26 76:18,24
	supply 75:11	T-A-C 19:23 210:6	80:12 96:5,23
	supporting 155:28 156:23	T-E-C-H-N-E 18:1	105:12,13 110:3
	supposed 41:19 44:26 162:8 178:4	Tab 71:22	123:16 125:22,23
	sure 10:10,28 11:22 12:12 20:11 26:15 31:15 53:8 80:11 116:19 117:10 118:9 126:22 128:17 129:26 140:4 141:28 174:17 175:21	table 130:3	136:23 171:21
		Tac 19:23,26 210:6	173:17 180:25
		tag 140:16	182:8,11 185:26
		take 11:24 13:21,22 14:2 15:12 30:8 48:20 63:13,17 65:12 75:20 78:5,6 80:10 82:19,21	201:27 208:21
			tax 16:18,19,20 43:15 55:20,21,23 56:17, 26 120:3,19 122:10 125:2,23 129:17 160:17 174:8 192:20,22,23,26
			taxable 125:19
			taxes 56:4,20

teacher 192:21	214:9	16:8,9 20:3 22:17,27	77:17 83:13 148:13
team 17:11,21 18:8	Ten 167:9	23:1 24:12 26:22	165:10 187:5 199:21
19:7 23:23 26:13	tenant 67:10	30:21 37:5 40:9,27	211:15 214:11
37:16 59:8,18,20,21,	tenant/lessee 202:21	47:7 114:6 115:22	think 10:20 39:28
24 64:10,12 66:16	tenants 67:15 69:15,	188:7	43:19 50:13 67:24
68:9,15 69:4,6 70:3,	16,17 161:10,13,19	testing 37:7,11,19,21	71:15 74:24 76:12
13 76:1 77:4 78:14	tens 43:18	38:7 158:10	77:7 79:3 82:24
86:14,21 89:24 91:8	term 26:6 45:18 70:23	text 34:8 45:27 46:25	83:25 91:18 92:20
93:1 101:19 122:17	98:7 106:1 173:23	64:21 71:11 72:2,4,	110:21 111:12
149:3,8 151:17	terminating 47:16	18,21,27 73:4,16	112:8,13 113:14
153:1 159:26,28	terms 15:22 20:7	75:8 123:7 141:2	116:23,27 124:1
162:1 186:21	21:7,25,27 22:9	142:21 143:5,11	129:16,19 137:25
194:17,21,24 195:6,	26:4,5 40:19 42:11	163:19 166:7,8	148:18 155:10 160:7
8 196:3,4 197:8,26	43:3 44:3,10,13	170:24 171:4 182:4	162:9 164:18 165:16
198:14 199:1,8,15	45:15 46:5,10 53:15	185:9 188:7	169:22 185:18,19
202:11 203:15	74:9,20,27 76:2	texting 176:12	188:3 200:20 201:4
206:18	77:18 91:21 92:2,5,	texts 28:5 170:12	204:27 205:7 206:18
team's 151:6	14 104:15,16,20	thank 14:20,24 31:8,	209:11,20 210:9,16
tear 76:9	106:5 122:23	24 39:16,17,24 40:3	211:13,28
tearing 68:6	135:11,19 148:1	48:17,18 54:13,16	thinking 114:13
TECHNE 18:1,10	149:8 162:14	108:16 109:13	149:20
122:9 158:27	163:11,27 167:22	111:14,17,18 117:27	third 29:4 53:7
telephone 26:3	171:17 173:3 178:3,	118:5 138:1 154:9,	177:21 201:20
33:18,20,21,23 65:1	14 181:22 185:9,16,	23 160:9 171:6	202:2,3
74:6 83:15 122:14,	17 188:1 205:7,17	175:17 176:4,21,28	third-party 147:18
21 128:13,18	testified 54:7 135:7	181:9 189:11,27	153:19
tell 10:16 20:12 25:19	148:11 160:16	190:1 207:10,17	thought 8:14 13:10
26:11 34:20 35:3,5,	175:28 181:22	211:18 214:24	92:22 110:12
13,14 41:5,7 42:13,	189:17	215:2,3	127:24,26 128:8,10
14 44:5,8 48:5	testify 17:25 18:19	thanks 12:5 111:23	137:6 166:19 172:2
51:24,26 52:7,19	20:23 21:3,8,20,22,	theory 51:28	thoughts 136:23
60:5 64:5,28 66:3	28 22:9 25:17 26:9	thing 11:19 14:13	166:20 185:25
68:18 71:21,26	29:4,16 30:3 31:20,	49:13 50:10,17	thousand 38:23
72:17 78:1 79:20	27 32:4,13,28 33:4	75:25 82:28 89:11	150:14
81:7 82:25 87:11	34:18 35:12,17,23	115:3 124:7 137:5	thousands 137:5
95:15 104:27 127:6	36:18 37:16 38:15	139:23 145:19 162:9	thread 88:25 138:8,
142:14,22 149:21	42:20 45:12 46:14	211:7	25 144:17
151:19 153:6 165:17	testifying 173:7	things 9:14,16 25:19	threads 138:4
172:18 175:14 187:4	186:9	26:11,21 27:11,12	three 12:10 51:4
188:2 195:17 210:26	testimony 14:28	35:25 36:14,16,17	120:17 152:10
telling 52:14 78:18		38:3 46:13,14 61:25	177:24
128:19 137:2 182:6		70:5 74:27 75:2	

three-sentence 42:8 43:11,26 171:15 172:2,8 184:9,27 204:28 205:26	192:9 193:4 201:7 205:14 208:8 209:19 214:12	topographical 157:15	try 13:16 33:24 35:19, 23 36:4,5 44:4 110:25 111:15,16 130:8 131:18 137:6 152:20 153:15
thrown 76:28	times 20:11 170:14 184:2 188:25 193:17	topography 87:21	trying 8:5 10:25 22:25 23:28 27:17, 21 32:6 35:15 36:2 46:4 64:13 75:24 78:4 89:9 137:5 150:25 167:24 170:11 174:18 179:16 180:27 182:15 185:16,17 186:14 209:18 212:2 213:3
Thursday 14:8 116:9, 12,21 144:23	Tirandazi 19:15 151:2,3,4 210:5	tort 51:19 53:2,3	Tuesday 115:22 210:27
time 7:27 9:3 10:9,18, 23 11:2,26 12:6 14:10 15:11,12 16:2 19:18,24 25:9,25 26:7 28:7 32:27 33:13 35:4,22,23 38:5 46:11 48:20 52:18 53:18 57:21 60:1 62:3,15 63:2,27 64:15 65:16,27 67:13 68:10 69:4 70:25 74:8,11,13 75:3,20,27 76:2,13, 15,20 77:2 82:10,17 85:3 86:24 87:13 89:14,17 92:5,14,16 94:19 95:28 96:19 98:3,5 99:8 101:10, 14 103:4,28 104:1,4, 9,12,19 105:4,12,13, 15,21 107:1 108:1, 19 109:15,27 110:4, 18 111:26 112:7,26 113:3,24 114:12 115:8 116:16 117:4, 8,10 122:20 124:7 126:18 128:27 133:3,18,23,26 135:16 139:10 143:18,25,27 144:25,28 147:26 148:6,17 149:8 160:8 164:2,11,21, 25 165:18 169:3 172:1,10,11 180:17, 24 182:12 185:20 186:20 187:9 188:20	title 159:5,7 178:8,10, 11 today 31:8 44:28 108:17 109:13 114:18,25 115:2,16 126:3 131:10 166:22 175:17 176:4,22 177:1 191:20,21 told 25:25,28 26:12 27:26,27,28 29:6,17, 21 30:12 32:3 34:12, 22,24 35:16,18 36:20 42:3,18 45:11 46:22 47:15 52:9 58:26 65:3,21 66:9, 23 69:6,13 70:26 76:27 78:26 83:17, 20 94:7 102:16 126:11 128:22 130:5 142:8 149:10,24,27 150:3,6,26 201:10 206:17 tomorrow 13:26 207:13 214:16,20 tone 123:14 tonight 214:27 TOOTHACRE 208:9, 12 209:5 top 20:19 28:17 73:3, 16 141:25,28 142:5 178:20 184:7,25 topographic 28:10,24 87:18 88:4,17	total 22:2 116:28 159:9 totaled 159:8 touched 11:23 tough 129:10 track 12:27 traffic 157:23,28 training 190:25,27 191:1 205:10 transaction 59:2 100:18 162:16 transactional 47:8 transactions 57:22, 26 58:4 172:20,23 191:26 transcript 113:14 transferred 19:25 transpired 113:1 trapped 35:4 treasurer 157:10 trial 8:8 14:12 20:11 40:10 42:10 44:7 155:9 tried 30:22 36:2 126:18 129:10 165:17 trouble 16:2 true 139:14,15,22 140:1,8,9,15,24 141:17,18 142:11,12 trusted 128:9 172:9 trusting 173:11 202:11	turn 11:28 32:16 138:3 211:1 turns 24:24 twice 37:10 two 12:10 19:11 21:2 41:8 48:1 49:28 51:4 53:2 56:8,9,10,11 62:3 65:1,25 66:28 67:2,6,13 69:25 70:1 76:13 94:13 98:23 99:8 107:6 128:20 133:5 137:3 149:16 150:13 152:7 161:14 176:17,19 177:24,27 179:1,5 180:7 181:17 200:18 203:4 207:21 209:8 211:28 212:11,21 two-page 40:18,20 type 55:21 77:26 96:22 191:5 201:23 typed 61:12 96:13 100:12 102:22

<p>types 56:22 57:22</p> <p>typical 178:14</p> <p>typically 162:19,21 172:27</p> <p>typing 20:14 96:14, 15,23 99:16 100:25</p> <p>typographical 43:25 102:10,11</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 9:9 14:13 46:24 47:15,25</p> <p>un- 85:6</p> <p>unable 9:5</p> <p>unbelievable 67:21</p> <p>unclear 176:10</p> <p>understand 15:15 27:20 73:7,28 82:10 85:4 86:5 87:1,17 88:17 114:3 118:2 134:16 150:4,8 154:16 193:7,16 195:1 197:25 198:13,16,28</p> <p>understanding 40:22 41:9 46:14 60:5 63:27 75:26 86:24 87:18 88:19 89:13, 23 94:16 99:15 101:26 106:1 120:15 132:24 139:7 143:15,18,22 165:28 167:26 171:20 173:16,20 177:4 193:19 197:6 198:16</p> <p>understandings 171:24</p> <p>understood 32:27 99:10,14,24 173:18</p>	<p>University 55:7</p> <p>unknown 193:26</p> <p>unlicensed 66:24</p> <p>unlimited 187:8</p> <p>unnecessary 187:13, 16</p> <p>unpermitted 85:6</p> <p>unreasonable 117:2</p> <p>unsuccessful 18:20 38:21 153:14</p> <p>unsupported 48:13</p> <p>updates 34:8 47:18 71:2,3 77:5 78:14</p> <p>upset 126:28 130:4</p> <p>use 7:25 17:5 18:5, 14,28 19:8 21:16 22:15 23:13,16,21 24:2,22,26 40:11 99:23 126:1 154:14 162:21 170:13 172:19,20,22 193:8 197:13 206:1 209:19</p> <p>usually 12:11 112:5, 10 117:8,13</p> <p>utilized 160:27</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vague 171:18 183:14 184:12,15 204:23 205:18</p> <p>value 164:8,19 188:25,26</p> <p>variety 95:13</p> <p>various 183:7 208:3</p> <p>vendor 157:18 158:3, 9</p>	<p>vendors 86:12,17 146:28 162:26 163:5</p> <p>venture 41:24 47:27</p> <p>verbally 136:13</p> <p>verdict 39:7 48:16 53:22 211:3,4</p> <p>versa 34:9</p> <p>version 7:17</p> <p>viable 68:4 70:6</p> <p>vice 34:9</p> <p>view 32:20 120:3,18 122:2,10</p> <p>viewed 20:16 32:13</p> <p>viewing 176:22</p> <p>violations 61:25</p> <p>Visit 84:11</p> <p>visited 84:22</p> <p>vividly 34:19</p> <p>volume 137:26 154:2, 4,6 162:25</p> <p>voluntarily 10:14</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>W-2 206:14</p> <p>Wade 158:3</p> <p>wait 28:20 77:23 107:6 128:9 180:9 209:16</p> <p>waited 129:19</p> <p>waiting 12:24 13:11 125:26</p> <p>waived 208:23,24,26</p> <p>waiver 208:25</p> <p>walked 96:8</p>	<p>wall 20:15 96:5</p> <p>want 10:17,26 11:22 12:1 16:10 17:15 25:25,27 31:15 38:3 43:6 60:27 77:28 78:17 79:19 80:13 83:18 95:19 96:6 102:17 110:1 112:9, 13 115:6 131:1 137:4 138:23 145:13,23 148:19,24 156:7 158:7 164:13 169:20 170:22 171:1 175:21 176:19 177:8 180:19 182:9 185:25 211:12 213:28 214:22</p> <p>wanted 9:23,25 10:28 26:16,23 27:11 30:7 36:10,11,13,15 43:2 64:26 65:13 66:7,9 77:16 78:17,19 83:6, 10,11 130:10,11 136:22 137:1 146:5 163:28 168:22 174:25 179:13,15,17 186:12 209:2</p> <p>wanting 75:10 77:20</p> <p>wants 44:13 51:14 167:25</p> <p>warning 67:19</p> <p>wasn't 10:24 11:1 22:22 35:25,27 47:15,21 64:2 67:23 68:2 76:27 104:17 110:10 117:7 143:24 153:12 166:2 168:21,24 170:5 174:28 176:25 182:17 188:20 195:4 199:22</p> <p>waste 25:25</p>
---	---	---	---

water 76:11 158:5	week 29:5 95:15	20 200:3,6,20	witness's 7:21
watering 165:16	116:21 119:16,18	204:22 205:2,18	witnesses 9:26 10:7,
way 7:20 11:17 16:1	128:7 144:23 207:12	206:20 207:5,7,24	18 13:23 14:1,2,4
36:19 37:23 46:11	210:28	208:1,17,23 209:6,	24:12 114:16
72:20 83:22 89:24	weeks 40:26 71:3	20,23,26 210:1,5,9,	115:14,23 116:20,22
158:2 165:16 179:20	Weinstein 7:7,13,26	14,23 211:18,26,28	117:2 207:12,21
182:16 208:20	8:3 9:19 11:10,19	212:9,22,27 213:5	208:4,5 209:9,17,26
213:20 214:6	13:4 14:20,23 43:21	214:7,11,24 215:3	210:3,4,16,17
we'll 7:9 9:15 13:21,	44:20 45:1 48:10	Weinstein's 112:26	wondering 9:28
22,23 16:3 18:23	49:5 51:7,11,17	welcome 53:26 118:2	115:26 116:6 209:14
27:15,18 28:20	53:1,5,7,12 54:1,16,	well-taken 114:2	word 20:19 96:11
30:24 48:21,25 49:1	18 60:8,13,15,23,28	went 20:17,20 29:1	97:16 102:7
59:1 61:1 70:13 79:4	61:6 71:5,14,17,19	30:15 36:21 69:16	words 20:21,22,24
93:9 109:26 110:3,6	79:5,18 80:20 81:5,	77:18 78:12 145:22	44:25 78:18 102:28
111:15 115:9,21	19 82:1 84:4,13	165:18 173:12 188:6	170:14 176:2
117:25 124:26	85:14,23 87:23 88:7,	weren't 7:18 122:23	work 16:20 26:14
153:10 156:9,13	20 89:1 90:4,13	whichever 40:2	35:1 61:27 64:13
169:9,11 207:13,17	93:15,24 96:25 97:5	whipped 44:1	75:24 76:7 83:20,26
215:1	103:9,17 106:13,22	Widowed 54:24	89:22,27 96:12 98:6
we're 8:8 9:1,2 11:8	107:15,23 108:23	Width 88:3	108:6,8,10 129:6,11
12:11,27,28 13:15,	109:4,20,23 110:12,	willing 30:8 123:17	159:3 166:18
22,26 28:18 29:19	16,19,27 111:6,10,	127:3,5 133:17,19,	170:21,25,28 186:5
31:15 32:9,16 36:26	14,18,23,25,28	20,24 135:10 145:7	worked 17:3 19:19
37:4 39:7,11,12,26	112:8,19,21 114:13	146:12 147:11,26	50:8 58:12 87:4
48:19 70:2 75:15,23	115:1,7,12,18,25,27	148:6 163:25 184:6,	192:23
92:7,9 93:10 96:6,7	116:1,5,11,26	8,23,25 194:6	working 8:7 14:1 18:3
109:28 113:23	117:21 118:9,10	205:23	29:2 40:21 45:20
115:10 116:7,18	119:21 120:6,27	wish 51:7	47:9,12 129:18,24
117:28 119:10	121:8,24 122:4	withdraw 141:27	170:13 187:3
125:26 126:13	130:18,27 132:2,12	Withdrawn 43:23	works 37:23 50:4
129:24 155:8 156:12	134:4,11 135:28	189:2	160:16 177:4 205:15
169:5,6 170:14	136:9 137:15,25	witness 15:2 48:23	208:4
175:21 207:12	138:1,2 141:24,27	53:28 54:11 60:9	worth 43:18,24 165:1
209:13,16 210:19,25	142:3,17,19 144:5,	61:3 110:7 114:27	183:28
we've 12:21 15:11	14 152:13 154:5,7,9,	118:4 137:24 154:6	wouldn't 12:25 36:1
29:24 51:15 75:16	10,14,25 155:8,19	164:16 167:10	83:20 172:23 173:12
83:22 89:20 111:20	156:5,17,18 160:7	168:17 169:24	180:26 184:1 213:25
113:3 114:5 123:22	164:10,20 168:1,14	171:20 184:18	wrap 116:9 211:6,17
124:12 141:4 145:15	171:18 173:4,7	189:12,21,26 208:2	write 124:25 125:6
201:4 207:11	179:25 183:14	209:15,25 210:13	126:20 175:16
Wednesday 115:22	184:12,14,28		
116:10	186:24,26 187:8,18,		
	22 188:10,27 189:5,		
	8,13 190:1,3 196:9,		

Index: write-offs–zoom