

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

CAN IV PACKARD SQUARE LLC, a)
Delaware Limited Liability)
Company,)
)
Plaintiff,)
)
VS.) No. 16:000990-CB
)
PACKARD SQUARE, LLC, a Michigan)
Limited Liability Company,)
et al.,)
)
Defendant.)
_____)

DEPOSITION OF GERALD GOLDMAN

Los Angeles, California

Friday, May 4, 2018

REPORTED BY:

DEBORAH L. LUNDGREN
CSR NO. 6727, RPR

JOB NO.
91613SWI

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
3
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6 Plaintiff,)
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7 VS.) No. 16:000990-CB
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8 PACKARD SQUARE, LLC, a Michigan)
Limited Liability Company,)
9 et al.,)
)
10 Defendant.)
_____)
11
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14 Deposition of GERALD GOLDMAN,
15 taken on behalf of the Defendant
16 Packard Square, LLC, at Sidley
17 Austin, 1999 Avenue of the Stars,
18 17th Floor, Los Angeles, California,
19 commencing at 9:13 a.m. on Friday,
20 May 4, 2018, before DEBORAH L.
21 LUNDGREN, CSR No. 6727, a Certified
22 Shorthand Reporter in and for the
23 County of Los Angeles, State of
24 California.
25

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22

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MARCUS NEUPERT,

23

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24

VIDEOGRAPHER:

25

MIGUEL EVANGELISTA

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10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

EXAMINATION BY:	PAGE
MR. MILLER	10

E X H I B I T S

	PAGE
Exhibit 1 E-mail string re Packard Square - Receiver - Attorney-Client Privilege, Bates CANIV072392 to 395 (4 pages)	171
Exhibit 2 E-mail string re Letter from Packard Square LLC (3 pages)	225
Exhibit 3 E-mail string re Game Plan, Bates CANIV067903 to 915 (13 pages)	97
Exhibit 4 Notice of Intent to Proceed with Project between Packard Square and C.E. Gleeson Constructors, Inc. (13 pages)	98
Exhibit 6 Borrower's Requisition Summary and Letters (31 pages)	148
Exhibit 7 E-mail string re Packard Square (5 pages)	87
Exhibit 8 E-mail string re Packard Square media coverage (1 page)	250
Exhibit 9 E-mail string re Pinnacle (1 page)	101

1 INDEX (Continued):

2

3

E X H I B I T S

4

PAGE

5

Exhibit 10 E-mail string re Packard
Square - Delays due to lack
of City-approved/stamped
plans incorporating all
changes (5 pages)

44

6

7

8

Exhibit 11 Document titled "Sworn
Statement," dated September
2016 (3 pages)

106

9

10

Exhibit 12 10-11-16 E-mail from Freeman
to Hogan re Packard Square,
with attachment (2 pages)

108

11

12

Exhibit 13 E-mail string re gift
delivery (2 pages)

251

13

14

Exhibit 14 E-mail string re Packard
Square, Bates CANIV005555
(1 page)

65

15

16

Exhibit 15 E-mail string re Canyon -
Packard Square -
Reinstatement Agreement
(2 pages)

151

17

18

Exhibit 16 E-mail string re Packard
Square - revision to business
plan, Bates CANIV051307
(1 page)

133

19

20

Exhibit 19 11-7-16 Letter to Page and
Goldman from Packard Square
Team (7 pages)

209

21

22

Exhibit 20 8-29-16 E-mail to Schubiner
from Goldman re Packard
Square, Bates CANIV051621
(1 page)

240

23

24

25

INDEX (Continued):		
E X H I B I T S		PAGE
1	Exhibit 21	8-10-17 E-mail to Goldman from Chaves re Call with Albert (1 page) 156
2		
3	Exhibit 22	E-mail string re Milestone, Bates CANIV051344 to 345 (2 pages) 79
4		
5	Exhibit 23	E-mail string re Packard Square site visit, Wednesday, August 10, Bates CANIV051515 to 529 (15 pages) 70
6		
7	Exhibit 24	E-mail string re Packard Square - Responses to Ten Recent Letters (5 pages) 73
8		
9	Exhibit 25	Document titled "Packard Square high-level summary of costs overruns" (2 pages) 232
10		
11	Exhibit 26	E-mail string re Packard Square - Draw 17/Pay Application 20, Bates CANIV074104 to 106 (3 pages) 110
12		
13	Exhibit 27	E-mail string re Packard Square site visit, Bates CANIV051204 (1 page) 137
14		
15	Exhibit 28	E-mail string re Packard Square Lien Amounts, Bates CANIV079041 to 42 (2 pages) 116
16		
17	Exhibit 29	E-mail string, Bates CANIV059103 to 108 (6 pages) 118
18		
19	Exhibit 30	The Private Bank statement, May 31 to June 30, 2017 (4 pages) 126
20		
21		
22		
23		
24		
25		

1 INDEX (Continued):

2

3 E X H I B I T S

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

		PAGE
Exhibit 31	E-mail string re Packard Square - Attorney-Client Privilege (1 page)	194
Exhibit 32	E-mail string re Packard Square Jan 17 draw, Bates CANIV066897 (1 page)	163
Exhibit 33	8-22-17 E-mail to Mason from Scholz re Packard Square Budget with attachment, Bates CANIV064906 to 907 (2 pages)	157
Exhibit 34	E-mail string re Packard Square - Contracts, Bates CANIV079047 to 049 (3 pages)	166
Exhibit 35	2-15-17 E-mail to Scholz and Mason from Van Curen re Packard - Owner direct materials with attachment, Bates CANIV059757 to 758 (2 pages)	160
Exhibit 36	E-mail string re Packard Square - Draw 17/Pay Application 20, Bates CANIV059315 (1 page)	282
Exhibit 37	E-mail string re Packard Square replacement contractor (28 pages)	205
Exhibit 38	E-mail string re Packard Square - site visit - Wednesday, August 10 (4 pages)	215

1 INDEX (Continued):

2	E X H I B I T S		PAGE
3	Exhibit 39	E-mail string re Packard Square update on Q's 7/21 & 7/27 letters re demand for payment & notice to stop work with attachment (4 pages)	217
4			
5			
6	Exhibit 40	10-18-16 Letter to Can IV Packard Square, Jonathan Kaplan from Schubiner (3 pages)	238
7			
8			
9	Exhibit 41	The George, Confidential Offering Memorandum, March 2018 (32 pages)	264
10			
11	Exhibit 42	E-mail string re Proposed Quandel termination letter (2 pages)	290
12			
13	Exhibit 43	9-20-16 Letter to Schubiner from Kaplan (3 pages)	290

14
15

16 PREVIOUSLY MARKED EXHIBITS

17			PAGE
18	Exhibit 17	Construction Loan Agreement (marked and attached in deposition of Maria Stamolis)	36

20

21 QUESTIONS REFUSED TO ANSWER

22	PAGE	LINE
23	22	15
	23	11
24	28	20
	30	3
25	30	17

1 Los Angeles, California; Friday, May 4, 2018

2 9:13 a.m.

3

4 THE VIDEOGRAPHER: Good morning. We are on
5 the record. This is the videotaped deposition of
6 Gerald Goldman being taken at 1999 Avenue of the
7 Stars, Los Angeles, California 90067.

8 Today is May 4, 2018, and the time is
9 9:13 a.m.

10 Would the attorneys please introduce
11 themselves and would the court reporter please swear
12 in the witness.

13 MR. MILLER: Good morning. My name is
14 I. Matthew Miller, and I'm here on behalf of the
15 defendant/counter-plaintiff Packard Square LLC.

16 MR. DOLAN: Benjamin Dolan on behalf of
17 plaintiff.

18 MR. PASCOE: Michael Pascoe on behalf of
19 Quandel and Western Surety.

20 THE REPORTER: Please raise your right
21 hand.

22 Do you declare under penalty of perjury to
23 tell the truth, the whole truth, and nothing but the
24 truth?

25 THE WITNESS: I do.

1 MR. MILLER: Before we get started, Ben,
2 would you like to introduce the people who are in
3 the room, please.

4 MR. DOLAN: Yes. We have Marcus Neupert
5 and Maria Stamolis.

6 MR. MILLER: And Craig Schubiner is here
7 with Packard Square.

8 Is there anybody else that is listening on
9 line or on the phone that hasn't introduced
10 themselves?

11 THE WITNESS: Ariana Pellegrino for
12 plaintiff.

13 MR. MILLER: Okay. Bruce is muted.

14 Okay. Bruce Measom may also be on the
15 phone. It's hard to tell.

16

17 EXAMINATION

18 BY MR. MILLER:

19 Q All right. Sir, I already forgot if you
20 even introduced yourself. What is your name just in
21 case you didn't.

22 A **Gerald Goldman.**

23 Q Very good.

24 Sir, today is the time and date set for a
25 deposition for you relative to the case that the

1 videographer just mentioned, Can IV Packard Square
2 LLC versus Packard Square, LLC in the Washtenaw
3 County Circuit Court in the State of Michigan.

4 This deposition can be used for any reason
5 pursuant to the Michigan court rules, the Michigan
6 Rules of Evidence.

7 I know that you have sat in on the last two
8 days of depositions; so I'm sure you've heard me
9 give my little instructions before, but just in case
10 you weren't paying attention to the boring part, I'm
11 going to go through it again.

12 I'm going to ask you questions. I'm not
13 trying to trick you; I'm not trying to fool you; I'm
14 not trying to confuse you. I'm just trying to get
15 information. Make sure that when you answer, you
16 answer audibly so that the reporter can take down
17 the statements that you're saying correctly.

18 Also, it is important that we not talk over
19 each other; so please let me finish and I will
20 endeavor to do the same. If there are any questions
21 that you have relating to a question that I have
22 asked you, don't interrupt, just let me finish the
23 question, and then at the end you can say, "I'm
24 sorry. I don't understand your question," and I'll
25 rephrase it because the interruption is what gives

1 the court reporter fits.

2 Just to confirm, though, you did sit in on
3 the last few days of the depositions; correct?

4 **A Portions of them.**

5 Q Oh, I didn't notice you had left during any
6 time.

7 Do you record that?

8 The reporter is nodding that she recorded
9 your coming and going. I wasn't looking at that
10 side of the room.

11 Sir, what is your current job?

12 **A I'm a managing director at Canyon Partners**
13 **Real Estate.**

14 Q And what does -- what do you do as a
15 managing director at Canyon Partners Real Estate?

16 **A Managing director manages a portfolio of**
17 **real estate investments on behalf of Canyon's**
18 **clients.**

19 Q And how many different investments are
20 under your portfolio?

21 **A 12.**

22 Q And that is a different number than
23 Ms. Stamolis mentioned was in her portfolio and also
24 a different number than Mr. Scholz mentioned was in
25 his portfolio. Can you briefly describe the

1 difference as to why you have different numbers in
2 the varying portfolios related to the different
3 roles you play at Canyon?

4 **A Sure. I have a subset of the assets of the**
5 **real estate as a managing director.**

6 **Ms. Stamolis yesterday described her role**
7 **as director of asset management for the -- all of**
8 **the assets.**

9 **And Kevin Scholz works on my team and also**
10 **handles assets for other managing directors.**

11 **Q Got it.**

12 **So that -- when you refer to your team,**
13 **then, there must be -- just to short-circuit this --**
14 **if I'm wrong, tell me. There must be a variety of**
15 **teams because Mr. Scholz isn't on every one of your**
16 **teams?**

17 **A That's correct.**

18 **Q Okay. So how many different teams are you**
19 **involved with that you are a part of with those**
20 **assets that you are managing?**

21 **A I'm on one team. So the team I'm on is my**
22 **team.**

23 **Q Okay. So Mr. Scholz is on other teams, but**
24 **you are only on one team?**

25 **A Yes.**

1 Q And every -- for all the 12 assets, then,
2 the same people are on your team?

3 A No.

4 Q Okay. So there are different players on
5 your team?

6 A Correct.

7 Q Okay. So how many different -- how many
8 different rosters would you have on your team?

9 A I generally have Kevin and one other person
10 predominantly handling my portfolio.

11 Q All right. So who is the one other person?

12 A Alison Weinberger.

13 Q Got it.

14 So is it safe then to -- I'm not going to
15 assume anything.

16 So who is on the Packard Square team?

17 A Kevin Scholz and I work on The George.

18 Q And Ms. Stamolis is not officially on the
19 team?

20 A She supervises the team, yes.

21 Q Okay. It is interesting that you are
22 referring to it to as The George. Has that name
23 become the lexicon here at Canyon?

24 A We refer to it as The George, yes.

25 Q When did you start doing that?

1 **A When the receiver changed the name.**

2 Q What was your involvement in the decision
3 for the receiver to change the name?

4 **A I didn't decide to change the name.**

5 Q What was your involvement in the decision
6 to change the name?

7 **A They informed me they were changing the
8 name.**

9 Q Did they ask your input before they did so?

10 **A I think they may have.**

11 Q And what was your opinion of the name?

12 **A That's fine.**

13 Q What was wrong with the existing name?

14 **A I don't have an opinion.**

15 Q Did the receiver share with you a reason
16 why it wanted to change the name?

17 **A No.**

18 Q You just were notified one day, "Hey, we're
19 going to change the name. What do you think of
20 The George?" And you said, "Sounds good to me"?

21 **A Exactly.**

22 Q That's exactly how it happened?

23 **A Uh-huh.**

24 Q How long have you been working at Canyon?

25 **A A little over ten years.**

1 Q And have you been serving as a managing
2 director that entire time?

3 A No. When I joined Canyon, I had a
4 different title.

5 Q What was that called?

6 A I was a director.

7 Q Is that -- how does that differ from a
8 managing director?

9 A It is a similar role, managing a portfolio
10 of assets.

11 Q Lesser number? Is that how it is
12 differentiated?

13 A No.

14 Q Not necessarily?

15 A No.

16 Q So it's virtually the same job, just with a
17 different title?

18 A Yes. I've always managed the portfolio of
19 assets in the ten years I've been at Canyon.

20 Q Have you always been located in Los Angeles
21 during that period of time?

22 A Yes.

23 Q And prior to joining Canyon, where did you
24 work?

25 A I was at a firm called American Realty

1 **Advisors.**

2 Q Where is that located?

3 **A Glendale, California.**

4 Q What did you do for them?

5 **A I was a portfolio manager.**

6 Q And how long were you there?

7 **A Two years.**

8 Q And as a portfolio manager, were you
9 managing assets similar to managing assets at
10 Canyon?

11 **A I was managing apartments, office
12 buildings, retail centers, and industrial parks.
13 (Whereupon Mr. Azran entered the
14 proceedings.)**

15 BY MR. MILLER:

16 Q What brought you from American Realty
17 Advisors to Canyon?

18 **A I thought it was a good opportunity and I
19 changed jobs.**

20 Q How long -- sorry. Strike that.

21 Where were you employed prior to American
22 Realty Advisors?

23 **A I was at a firm called the Arcon Group.**

24 Q What do they do?

25 **A The Arcon Group is the real estate**

1 **subsidiary of Goldman Sachs.**

2 Q Was that also located in California?

3 **A Right here in Century City, yes.**

4 Q And how long were you there?

5 **A About five and a half years.**

6 Q And what did you do there?

7 **A I managed a portfolio of office buildings,**
8 **retail centers, and industrial parks.**

9 Q When you say "managed," were those
10 operational management-type issues, or were those
11 investment managements?

12 **A Investment and asset management functions.**

13 Q Okay. Do you do -- I probably should have
14 asked the other two people before you, but I didn't.

15 Do you -- in management of whatever it is
16 that you do at the job that you described or here at
17 Canyon, do you actually manage operations of any
18 assets?

19 **A In my career all of the operations of**
20 **existing operating assets, the day-to-day**
21 **operations, have been managed by property management**
22 **companies.**

23 Q I see.

24 **A Once they're operating.**

25 Q I understand. Okay. I just wanted to make

1 sure I understood your term "management"?

2 **A Sure.**

3 Q Okay. Prior to the Arcon Group, where were
4 you working?

5 **A I was at American Realty Advisors for a
6 first time.**

7 Q I see. So can you explain to me why you
8 left American Realty to go to Arcon and why you left
9 Arcon to go back to American Realty?

10 **A Just felt at each change the opportunity
11 was greater at the place I went to.**

12 Q Was the type of work you were doing at
13 American Realty similar to work -- the first time at
14 American Realty similar to the work you were
15 performing at the Arcon Group?

16 **A I didn't follow the question.**

17 Q I'll ask it differently. What kind of work
18 were you doing the first time at American Realty?

19 **A I was an asset manager.**

20 Q Okay. And how long were you there that
21 first time?

22 **A Approximately five years.**

23 Q And where were you working prior to that?

24 **A Prior to that I was self-employed.**

25 Q And what kind of -- what kind of business?

1 **A Mortgage brokerage business.**

2 Q How long were you in that business?

3 **A I would say seven years.**

4 Q And where were you -- what kind of work did
5 you do prior to being in the mortgage brokerage
6 business?

7 **A I -- now we're going way back. I worked**
8 **for a real estate development company, and then**
9 **prior to that my first job out of college was**
10 **working for a firm that acquired and syndicated**
11 **apartment buildings.**

12 Q So it has been virtually the same type of
13 industry your entire career except for --

14 **A I've always been in the real estate**
15 **industry, yes.**

16 Q Except for the mortgage part?

17 **A That's the real estate industry.**

18 Q No. I understand. But you're not managing
19 assets while you were acting as a mortgage broker,
20 were you?

21 **A There were times when I originated loans**
22 **and managed them for my clients.**

23 Q Okay. Fine.

24 You said when you left college. Where did
25 you go to college?

1 **A I went to San Diego State University.**

2 Q And when did you graduate?

3 **A 19 -- boy, 1985.**

4 Q Don't you get reunion requests from time to
5 time? You're supposed to know that. No?

6 Did you -- what kind of a degree did you
7 get there?

8 **A I have a Bachelor of Science in finance.**

9 Q Have you studied for or achieved any
10 graduate degrees?

11 **A No.**

12 Q Have you been licensed in any field or
13 industry?

14 **A Yes.**

15 Q Which ones?

16 **A I have a California broker's license, real
17 estate broker's license, which is not actively used
18 in Canyon's business.**

19 Q Did you have to get a license to act as a
20 mortgage broker?

21 **A The California broker's license is what you
22 use to act as a mortgage broker.**

23 Q Oh, I didn't realized you could be a
24 mortgage broker with a real estate license. I
25 thought it might be a separate license, but --

1 **A In California it is the same license.**

2 Q Got it.

3 Any other licenses or certificates or -- I
4 don't know -- industry certifications that you have
5 achieved?

6 **A I have an RPA designation from the BOMA**
7 **Institute.**

8 Q What does that mean?

9 **A It is a real property administrator**
10 **certification. It is the equivalent to a certified**
11 **property manager. It is issued by the BOMA, which**
12 **is the Building Owners/Managers Association's in**
13 **education arm, and it deals with operating and**
14 **managing office buildings.**

15 Q Okay. What is your birth date, sir?

16 **A Why do you need my birth date?**

17 Q So that I can confirm your identity.

18 **A I told you under oath my identity.**

19 Q Why are you -- what is the secret of your
20 birth date?

21 **A I wasn't asked to give you my birth date in**
22 **my deposition notice; so I'm not giving it to you.**

23 Q Your deposition notice was actually as to
24 you as an individual. So it wouldn't be in the
25 notice.

1 **A** **Okay. I've told you under oath who I am.**

2 **Q** And so what is the problem with the birth
3 date?

4 **A** **I don't want to give it to you is the**
5 **problem.**

6 **Q** Why?

7 **A** **I don't want to give it to you.**

8 **Q** Why?

9 **A** **I don't have to answer why. I don't want**
10 **to give it to you.**

11 **Q** What's your address?

12 **A** **I'm not giving that to you either.**

13 **Q** Oh, are you -- is there a reason for that?

14 **A** **Yes.**

15 **Q** What is that?

16 **A** **I would prefer your client not have my home**
17 **address.**

18 **Q** Has -- is there a reason why you prefer my
19 client doesn't have your home address?

20 **A** **Yes.**

21 **Q** What is that reason?

22 **A** **That he has threatened me.**

23 **Q** When did he threaten you?

24 **A** **At the hearing appointing a receiver.**

25 **Q** And what -- what was the threat?

1 **A It was a verbal threat.**

2 Q What was the threat?

3 **A It was a verbal threat.**

4 Q What was the threat?

5 **A I told you. It was a verbal threat.**

6 Q That's not a threat. If I say -- if I
7 walked up to you and I said "a verbal threat," that
8 is not actually a threat.

9 **A What if you say, "I'm coming after you,**
10 **Gerald. I'm coming after you personally"?**

11 Q Is that what he said?

12 **A Yes.**

13 Q Well, that is what I asked you, what he
14 said.

15 **A Now I've told you.**

16 Q And you took that to be coming after you
17 physically personally?

18 **A I took it as a threat.**

19 Q Did you perceive it as perhaps a legal
20 threat?

21 **A I perceived it as a threat.**

22 Q I see. Did you call the police?

23 **A No.**

24 Q Okay.

25 Have you been convicted of felony, sir?

1 **A I have not.**

2 MR. DOLAN: Actually, for the record, I
3 did.

4 THE WITNESS: Oh. Mr. Dolan called the
5 police.

6 MR. DOLAN: The sheriffs had to come up and
7 escort the Schubiners out of the room, the two of
8 them.

9 BY MR. MILLER:

10 Q So you -- okay. So was it -- was it
11 Mr. Schubiner who made the comment, or was it his
12 80-year-old mother who made the comment?

13 **A Mr. Schubiner.**

14 Q I see.

15 Have you been convicted of a misdemeanor in
16 the last ten years?

17 **A No.**

18 Q What is your -- when did you first learn
19 about the Packard Square deal?

20 **A When the asset was assigned to me around
21 the time the asset closed.**

22 Q So after the loan was signed?

23 **A I was aware that the loan was being
24 underwritten, and then when it closed, it was
25 assigned to my team.**

1 Q I see. And at that point what was your
2 involvement and/or responsibility in the deal?

3 A To manage the investment in accordance with
4 the loan documents that were signed.

5 Q And how did you go about doing that?

6 A My team began processing the draw requests,
7 ensuring that the proper insurance was in place,
8 generally, you know, monitoring the investment.
9 And, again, doing what we're required to do under
10 the loan documents.

11 Q Do you believe that Canyon fully and
12 completely at all times fulfilled its obligations
13 under the loan documents?

14 A I do.

15 Q Do you know why Jonathan Roth left Canyon?

16 A I do not.

17 Q Did you ever speak with Mr. Roth?

18 A I have not.

19 Q In your entire career?

20 A Since he has left, I haven't spoken with
21 him.

22 Q Did you speak to him before he left?

23 A Yes.

24 Q And the reason for his leaving did not come
25 up in conversation?

1 **A It did not.**

2 Q Never once?

3 **A We never spoke about it.**

4 Q What about Marti Page? Why did she leave
5 Canyon?

6 **A I don't know why Marti Page left Canyon.**

7 Q Wasn't she part of the team on this loan?

8 **A She originated the loan, yes.**

9 Q Well, but didn't she continue to work on it
10 like Ms. Stamolis described yesterday?

11 **A The asset management team manages the asset
12 post closing.**

13 Q Didn't Ms. Page continue to work with the
14 loan after the loan was closed?

15 **A I wouldn't characterize it as "work with
16 the loan."**

17 Q What would you characterize her involvement
18 as being?

19 **A She may have had conversations with the
20 borrower.**

21 Q That's the extent of your belief of her
22 involvement?

23 **A Yes.**

24 Q When did you last speak with her?

25 **A I would imagine that would be prior to her**

1 **leaving Canyon.**

2 Q And the reason for her leaving never came
3 up in conversation?

4 **A No.**

5 Q You never asked, "Hey, Marti, why you are
6 leaving?"

7 **A No, I didn't.**

8 Q What is Canyon Capital Realty Advisors
9 Mortgage Investment account?

10 **A I don't know.**

11 Q Never heard that name in your life?

12 **A I have not.**

13 Q During the time of your involvement with
14 Packard Square, has your role in it changed?

15 **A Has -- I'm sorry?**

16 Q During the time that you've been involved
17 with Packard Square, has your role with Packard
18 Square changed?

19 **A No.**

20 Q Is your compensation based at all on the
21 amount of return on investment on the deals you've
22 worked on?

23 **A My compensation is a private matter.**

24 Q Well, it is a yes-or-no question.

25 **A My compensation is a private matter. It is**

1 **not a yes-or-no question.**

2 Q Well, actually it is a yes-or-no question.

3 **A Then it is a yes-or-no question I'm not**
4 **answering.**

5 Q And what is the reason you're not
6 answering?

7 **A I'm not giving you the reason I'm not**
8 **answering it, but I'm not answering it.**

9 Q Do you believe there is some type of legal
10 privilege that applies?

11 I don't hear your attorney objecting.

12 **A Do you have another question?**

13 Q Yeah. I'm asking what privilege applies to
14 the reason --

15 **A I'm not a lawyer. I don't know what**
16 **privilege applies. You've asked me if I'm**
17 **answering, and I'm not answering.**

18 Q Do you believe that the Michigan Rules of
19 Evidence and Michigan court rules allow you to
20 decline to answer?

21 **A I don't have a belief. I am not a lawyer**
22 **licensed in Michigan.**

23 Q Doesn't even concern you in the slightest
24 if you might be violating Michigan court rules?

25 **A If my lawyer informs me that I'm violating**

1 rules and I shouldn't do that, then I'll change my
2 decision.

3 Q Have you met Maria's husband, Michael
4 Stamolis?

5 A I'm not going to discuss any personal
6 matters.

7 Q Have you met him?

8 A I'm not going to discuss any personal
9 matters.

10 Q Do Mr. and Mrs. Stamolis still live in
11 Rancho Palo Verdes?

12 A I have no idea where they live.

13 Q Okay. You know, I'm a little concerned
14 with this line of questioning because Ms. Stamolis
15 is in the room, and I was hoping to talk to you
16 about her frankly while she's here.

17 Are you going to be able to have a frank
18 conversation with me while she's in the room about
19 her?

20 A It is an interesting question. I'll answer
21 your question.

22 Q Well, can you answer that one?

23 A Can we have a frank conversation about
24 Maria Stamolis?

25 Q While she's sitting in the room three seats

1 down?

2 **A I will answer your questions.**

3 Q I would like you to answer that question.

4 MR. DOLAN: I think he just did.

5 MR. MILLER: No, he didn't.

6 MR. DOLAN: Yeah, because I think you're
7 trying to say -- insinuate something that really is
8 inappropriate.

9 MR. MILLER: No, it is not.

10 MR. DOLAN: He said he'll answer your
11 questions. You said, "Will you answer them
12 frankly?" I don't even know what that means.

13 He's under oath; so what does "frankly"
14 mean versus "under oath"?

15 MR. MILLER: Well, I want to make sure that
16 he's --

17 MR. DOLAN: Is frankly more powerful than
18 under oath?

19 MR. MILLER: No. I just want to make sure
20 that he is not in some way, shape, or form
21 intimidated by the fact that his boss is sitting in
22 the room, and I'm going to be asking him questions
23 about her.

24 THE WITNESS: I'll answer your questions.

25 BY MR. MILLER:

1 Q All right. How is Maria as a boss?

2 A Great.

3 Q She's -- she seemed quite tough yesterday.
4 Is that her normal demeanor?

5 A You asked me if she is a good boss, and I
6 said she was a great boss.

7 Q I then asked you another question.

8 A Please repeat your question.

9 Q Sure. Yesterday in this deposition she
10 seemed quite tough. Was that her normal demeanor?

11 A How do you define "quite tough"?

12 MR. DOLAN: Yeah, I'm just going to object
13 to the characterization. That is your
14 characterization.

15 BY MR. MILLER:

16 Q The -- the manner in which she was
17 answering my questions and responding to them
18 yesterday seemed a little bit confrontational. Is
19 that -- is that the way -- whether you like my
20 adjective or not, you were sitting in the room.
21 Would you describe the manner in which she behaved
22 yesterday as common for her the way she acts as a
23 boss or in the office?

24 A Your question --

25 MR. DOLAN: Object to the form of question.

1 I'm sorry, Gerald. I do need to have a
2 second or two to make an objection.

3 THE WITNESS: Certainly.

4 MR. DOLAN: And I apologize for
5 interrupting you, but I needed to do that.

6 So I am objecting to the form of question.

7 Please go ahead.

8 THE WITNESS: Rephrase your question,
9 please.

10 BY MR. MILLER:

11 Q Yes. Was Ms. Stamolis's behavior and the
12 manner in which she was answering questions
13 yesterday consistent with the behavior that is her
14 normal day-to-day behavior in the office?

15 A I honestly don't know how to answer that
16 question.

17 Q Well, does -- does she act in a
18 confrontational manner from time to time?

19 A How do you define "confrontational"?

20 Q Short, arrogant, argumentative, all of
21 those.

22 A No.

23 MR. DOLAN: I'd just object to the whole
24 line of questioning as completely irrelevant,
25 designed to simply harass this witness. You can go

1 on for a couple more questions and then I'm shutting
2 it down.

3 MR. MILLER: I'm not harassing him at all.
4 I might be offending Ms. Stamolis, but I'm not --
5 she's not here.

6 MR. DOLAN: I would really like to have
7 this conversation in front of the judge.

8 Go ahead.

9 BY MR. MILLER:

10 Q How often does she lose her temper in the
11 office?

12 A I haven't seen her lose her temper in the
13 office.

14 Q You've never seen her scream or yell at
15 anyone in the office?

16 A I have not.

17 Q What is a PCO log?

18 A Potential change order log.

19 Q And what is it used for?

20 A It is a log that is typically generated by
21 a contractor to inform the parties to the contract
22 that the work scope of a project may change in the
23 future.

24 Q So how does that differentiate between an
25 actual change order?

1 **A A change order, if it has been executed, is**
2 **an actual change to the work scope. A potential**
3 **change order is something that may change the work**
4 **scope.**

5 Q Is there anything negative or wrong or bad
6 about having a potential change order?

7 **A Rephrase the question, please.**

8 Q Yeah. I mean is there anything by itself
9 about a potential change order that is negative on a
10 project?

11 **A It is specific to what that change order**
12 **would be.**

13 Q So there could be potential change orders
14 that never actually result in a change order;
15 correct?

16 **A Hence the word "potential."**

17 Q Right. So it is a -- would you agree with
18 me that it is sort of a prediction of uncertainty
19 for what could possibly happen in the future?

20 **A That is your characterization of it.**

21 Q Well, I am trying to understand, you know,
22 what it is.

23 **A It is just a common tool used in**
24 **construction.**

25 Q Okay. Is there anything wrong with them?

1 **A Again, it is specific to what that**
2 **potential change order would be.**

3 Q But in and of itself, a potential change
4 order, which may never become a change order, is
5 just a potential item that may or may not ever
6 happen in the future?

7 **A Hypothetically it could or could not be**
8 **something. Specifically is what we deal with when**
9 **we administer construction projects.**

10 Q And they are not uncommon; correct?

11 **A Potential change order logs --**

12 Q Yes.

13 **A -- are very common.**

14 Q Right. And potential change orders are
15 common as well?

16 **A Having a potential change order on a job is**
17 **common, yes.**

18 Q All right. How -- and forget it.

19 I'm going to show you, sir, what has been
20 marked as Exhibit 17 from Ms. Stamolis's deposition.
21 I didn't want to kill any more trees.

22 I am going to ask you to turn to section
23 6.15, please.

24 Why don't you take a moment and look at
25 that.

1 **A Yes.**

2 Q Have you had an opportunity to review
3 section 6.15?

4 **A I've reviewed 6.15, yes.**

5 Q And just so we're clear, if you would turn
6 to the front page of Exhibit 17 from Ms. Stamolis's
7 deposition, this is, in fact, the Construction Loan
8 Agreement between my client and Can IV Packard
9 Square LLC from October 21, 2014; correct?

10 **A I don't know.**

11 Q You don't know?

12 **A I don't know if you've provided me a full
13 and complete copy of that document.**

14 Q Well, having looked at section 6.15, do you
15 believe that comports with the language that was in
16 the complete document?

17 **A It is a lengthy document.**

18 Q So you're going to sit here and you're
19 going to tell me you're not sure if that is part of
20 the actual loan agreement?

21 **A That's not what you asked me. You asked me
22 if this was the loan document.**

23 Q I did. Do you have reason to believe it is
24 not?

25 **A No.**

1 Q What would make you even question whether
2 it is not?

3 A **It is a lengthy document.**

4 Q Well, do you -- they're all lengthy
5 documents, are they not, sir?

6 A **Yes, they are.**

7 Q How would you ever know if it were the
8 proper document if they're all lengthy?

9 A **I would have to check all the pages and all
10 the addendums. That's how I would know.**

11 Q Against what?

12 A **Against the set that Canyon has.**

13 Q Okay. So but for the fact that I haven't
14 presented you the set that Canyon has, you're not
15 sure that this is actually the document that is the
16 contract between our parties?

17 A **Again, it is a lengthy document with a lot
18 of addendums.**

19 Q I'll fully aware that it is a lengthy
20 document with a lot of addendums, but is it your
21 testimony that you do not believe this is a, in
22 fact, a true and accurate copy of the contract
23 between our clients?

24 A **I have no way of verifying it sitting here.
25 So I can take your word for it.**

1 Q Are you prepared to do that?

2 A If you're telling me it is and you would
3 like me to focus on a section, I would be happy to
4 do that.

5 Q Thank you. So -- so back to 6.15, can you
6 tell me in your understanding as the manager of this
7 project what section 6.15 is supposed to express?

8 MR. DOLAN: Just going to object to the
9 extent it calls for any legal interpretations or
10 conclusions. This is a lay witness.

11 MR. MILLER: I'm not asking for a legal.

12 MR. DOLAN: I am just making sure.

13 THE WITNESS: I could read it.

14 BY MR. MILLER:

15 Q Well, I'm not asking you to read it.
16 You've already read it. After having read it, do
17 you understand it?

18 A I believe I understand it.

19 Q What is your understanding?

20 A That it gives the borrower certain rights
21 in the event of disputes with the contractor.

22 Q Even if a contractor assesses a lien
23 against the property?

24 A There is a lot of sections that apply to
25 what happened if a contractor assesses a lien on the

1 **property.**

2 Q But one of them has a right to contest
3 that; correct?

4 A **This section doesn't appear to deal with**
5 **contesting a lien.**

6 Q Well, turn back to the heading, if you
7 would, of the chapter, chapter 6. I believe it is
8 on page -- Construction Covenants.

9 Okay. So your position is that section
10 6.15 does not reference liens?

11 A **The section says that if a claim or lien or**
12 **a bonded stop notice is served section 6.13 shall**
13 **apply.**

14 Q Okay.

15 A **This section doesn't appear to me to deal**
16 **with liens.**

17 Q Well, then let's go back to section 6.13,
18 if you don't mind. It is on the previous page. Why
19 don't you read to yourself the first sentence of
20 6.13.

21 A **I've read it.**

22 Q Having read it, would you agree with me
23 that when it says, "Subject to Borrower's right to
24 contest set forth in section 6.15, if a claim of
25 lien is recorded," and then the rest of the

1 paragraph.

2 So doesn't that mean that there is a right
3 to contest liens between these two sections?

4 **A If all of the conditions are met.**

5 Q Of course. But the right exists?

6 **A The right exists, yes.**

7 Q Yeah.

8 **A But I'm not a lawyer, but it appears that**
9 **that is what it says.**

10 Q I understand.

11 What does force majeure mean?

12 **A It is defined within this agreement.**

13 Q Does the -- do Canyon agreements have
14 different definitions of force majeure among them,
15 or do they use the same language?

16 **A I don't -- haven't read all of Canyon's**
17 **agreements.**

18 Q All of the agreements in the projects that
19 are under your team, are they all -- do they all
20 share the same force majeure language?

21 **A I would have to review them to answer that**
22 **question.**

23 Q You haven't noticed if they were different?

24 **A I haven't noticed. But, again, I would**
25 **have to review all the agreements.**

1 Q Uh-huh. Well, let's look at the definition
2 of it in this agreement, shall we? It is on page 7,
3 I believe.

4 Have you had a chance to read the
5 definition?

6 **A I have.**

7 Q Is this a definition with which you're
8 familiar?

9 **A I'm familiar, yes.**

10 Q So are strikes, lockouts, or labor disputes
11 considered force majeure under this definition?

12 **A I would assume provided they're properly
13 noticed, they are.**

14 Q Well, I didn't ask that. I just asked
15 about under the definition, you see that under
16 section B, those items exist; correct?

17 **A I see that under that they exist, yes.**

18 Q Okay. And under section C, "an inability
19 to obtain an adequate supply of materials, fuel,
20 water, electricity, labor, or other supplies despite
21 the commercially reasonable efforts of Borrower to
22 obtain such supplies" is also a force majeure issue,
23 is it not?

24 **A Per this paragraph, yes.**

25 Q Okay. And then just so we're clear,

1 "Governmental regulation on the sale or
2 transportation of materials, supplies, or other
3 governmental action, but excluding in all instances
4 the lack of funds to observe or perform any
5 obligations hereunder" -- that is also a force
6 majeure example, is it not?

7 **A It is in the definition, yes.**

8 Q All right. And you have no reason or basis
9 to contest the definition that is in the agreement,
10 do you?

11 **A No. I don't contest that that is what the
12 agreement says.**

13 Q Okay. Let's -- did Newbanks ever inform
14 Canyon of any force majeure issues at the property?

15 **A I can't recall.**

16 Q Did Canyon -- not Canyon. Strike that.
17 Did Newbanks ever inform you that there
18 were labor issues at the property?

19 **A I don't recall.**

20 Q Did Newbanks ever inform you that there may
21 have been governmental regulation issues at the
22 property?

23 **A I don't recall.**

24 Q Is there a reason why that is not something
25 that sticks in your memory?

1 **A Just doesn't stick in my memory that they**
2 **did that.**

3 Q Might they have?

4 **A I would have to go back and review all of**
5 **the reports and correspondence to know that.**

6 Q Well, is it possible they did?

7 **A Possible, sure.**

8 Q Sir, I'm going to show you what has been
9 marked as Exhibit 10 for today's deposition.

10 Can you tell me if you've seen this before.

11 (Exhibit 10 was marked for
12 identification.)

13 BY MR. MILLER:

14 Q Have you had chance to review Exhibit 10,
15 sir?

16 **A I have not.**

17 **I have.**

18 Q Are you familiar with the e-mail string?

19 **A Honestly, no, due to the time I received**
20 **it, but I've read it.**

21 Q What do you mean due to the time you
22 received it?

23 **A This is a more-than-two-year-old e-mail, or**
24 **year-and-half-old e-mail.**

25 Q But do you deny sending and receiving these

1 e-mails?

2 **A No.**

3 Q Okay. The last page -- I'm sorry. The
4 second-to-last page of the document is an e-mail
5 that you were copied on, it looks like, about delays
6 due to the lack of city-approved/stamped plans
7 incorporating all changes. Do you -- do you know as
8 we sit here today what -- what those
9 approved/stamped plans were referring to?

10 **A My assumption would be the plans to build**
11 **the project.**

12 Q Any -- but any particular part of the plans
13 or the changes?

14 **A No.**

15 Q No recollection there?

16 **A No.**

17 Q As we move to the first page of the
18 exhibit, can you tell me what you were -- what you
19 meant by the e-mail you wrote at 12:45 p.m. and to
20 whom? It is hard to tell who it was sent to. Maybe
21 it was sent to Mr. Lewis, I don't know.

22 **A It looks like an e-mail I received.**

23 Q Well, it says,

24 "At Tuesday, September 6, 2016, at

25 12:45 p.m., Gerald Goldman wrote:

1 Please review this e-mail and provide
2 me your assessment of the status of
3 the approved plans as this continues
4 to be an issue raised by Quandel and
5 one I would like clarity on.

6 Thanks."

7 So I am quite sure you wrote it.

8 **A I thought you were talking about the top**
9 **half.**

10 Q No, no. The bottom one.

11 **A I think I was just simply asking what the**
12 **status of the plans were.**

13 Q So you received a response, looks like, a
14 few hours later from Mr. Lewis at the top of the
15 page, and he makes reference to inspectors, and then
16 "not solely on a comparison of the work in place
17 versus approved plans," and then goes on to say,
18 quote,

19 "In fact, it is more common for
20 inspectors to use a more stringent
21 standard than whatever has been
22 approved by the plan review staff."

23 Do you agree with that sentence?

24 **A Can you clarify if you're asking me about**
25 **this in the context of this force majeure in this**

1 **document --**

2 Q No.

3 **A -- or you're just asking me about this**
4 **separately.**

5 Q I'm just asking you the question.

6 **A Okay. Please rephrase your question.**

7 Q Yeah. I just read the sentence into the
8 record. I'm not going to do it again. It is the
9 sentence that -- "In fact," and ends in "review
10 staff."

11 In your experience do you believe that to
12 be a true and accurate statement?

13 **A I'm sorry. You're going to have to**
14 **rephrase.**

15 Q The following sentence, in your
16 experience -- is it a true and accurate statement as
17 it pertains to inspectors across your experience of
18 building projects, this sentence,

19 "In fact it's more common for
20 inspectors to use a more stringent
21 standard than whatever has been
22 approved by the plan review staff"?

23 **A I don't know.**

24 Q Do you even understand what Mr. Lewis is
25 referring to?

1 **A I'm not sure. The plans were a very**
2 **lengthy set of documents.**

3 Q No. Do you understand what Mr. Lewis is
4 referring to in this e-mail?

5 **A I'm not sure.**

6 Q Well, he is saying that -- in my
7 estimation, and correct me if I'm wrong -- that city
8 inspectors have the plans, but then when they go out
9 in the field, regardless of what the plans say, they
10 use a, quote, more stringent standard.

11 Has it been your experience that city
12 inspectors on projects have in the past, not just on
13 this project, have used more stringent standards
14 than the plans that were approved?

15 MR. DOLAN: Object -- I'll object on the
16 form of question.

17 Go ahead.

18 THE WITNESS: I am not a contractor and I'm
19 not a developer.

20 BY MR. MILLER:

21 Q Have you not come across this situation in
22 the past?

23 **A I don't develop properties and I'm not a**
24 **contractor.**

25 Q Oh, I understand both of those things, but

1 the issue of code enforcement has never been an
2 issue brought to your attention in another
3 construction project?

4 **A Again, I don't build projects. I finance**
5 **projects.**

6 Q Uh-huh. I got that. But my question
7 wasn't that. My question was have you ever been
8 informed on another project of a situation where
9 building inspectors have looked at the approved
10 plans and expressed that they needed to be stronger
11 on the job?

12 **A Yes.**

13 Q Okay. On what other properties has that
14 happened?

15 **A I can't recall, but I know that it has**
16 **happened.**

17 Q Was it unusual when it happened?

18 **A No.**

19 Q Okay. So it is something that happens from
20 time to time whether --

21 **A Yes, it does.**

22 Q -- you're a contractor or a developer?

23 **A Uh-huh.**

24 Q This would have been a lot easier if you'd
25 just answered the question the first time.

1 **A Okay.**

2 MR. DOLAN: I think you have to say "yes."
3 You said "uh-huh" to one of those.

4 THE WITNESS: I'm sorry. Yes.

5 MR. DOLAN: You've got to say "yes."

6 BY MR. MILLER:

7 Q Thank you.

8 Are you aware of a fire damper issue raised
9 by the city at the Packard Square project?

10 **A I have been on calls where the contractor**
11 **and the owner were discussing it.**

12 Q This was dated September 6, 2016. Was --
13 do you recall how much prior to the date of this
14 e-mail the fire damper issue was first raised to
15 you?

16 **A I do not.**

17 Q The sentence that ends the e-mail:
18 "In my opinion this issue is just
19 another bargaining chip being tossed
20 into the mix by the contractor" --
21 do you -- can you tell me what your belief was when
22 you received that e-mail as to what Mr. Lewis was
23 referring to there?

24 **A I have no belief around that sentence.**

25 Q Did you respond to this e-mail?

1 **A I don't recall if I responded to this**
2 **e-mail.**

3 **Q Were you aware of mechanical requirements**
4 **from the city to add 450 fire dampers that weren't**
5 **part of the original plans?**

6 **A Again, I had heard discussions between the**
7 **borrower and the contractor about the fire**
8 **"dampener" issue.**

9 **Q And if, in fact, the city had ordered that**
10 **that be done, even though it wasn't as part of the**
11 **original plans, wouldn't that be a governmental**
12 **regulatory change that would be a force majeure**
13 **event?**

14 **A No.**

15 **Q Why not?**

16 **A It would be the responsibility of the**
17 **developer to complete the project per the terms of**
18 **the loan documents.**

19 **Q Well, what is the purpose of having a force**
20 **majeure section?**

21 **A I don't agree that this is a force majeure**
22 **event, which is why I asked you if you are asking me**
23 **to review this in the context of force majeure about**
24 **five minutes ago.**

25 **Q Well, I wasn't asking you then, and I'm**

1 asking you now. Why wouldn't a governmental
2 regulation -- or a governmental action, I should
3 say, to require the contractor and developer to add
4 450 fire dampers that had not been previously
5 required -- why wouldn't that be subject to section
6 d of the force majeure section?

7 MR. DOLAN: I'm going to object to the form
8 of the question. Mischaracterizes the force majeure
9 definition.

10 Go ahead and answer.

11 THE WITNESS: It mischaracterizes the force
12 majeure definition.

13 BY MR. MILLER:

14 Q How so?

15 A **Because very commonly in construction**
16 **projects, inspectors inspect the project and create**
17 **additional requirements which the developer has to**
18 **comply with.**

19 Q Regardless of whether or not there is a
20 force majeure section that says "other governmental
21 action"? What does "other governmental action"
22 mean?

23 A **Are you telling me that this event resulted**
24 **in a delay?**

25 Q I'm about to ask you if you know if it did.

1 **A I don't know.**

2 Q Okay. Well, assume for the moment that it
3 did result --

4 **A I'm not going to assume anything.**

5 Q You're not going to assume that it resulted
6 in a delay?

7 **A No, I'm not.**

8 Q Okay. Well, let's assume it resulted in a
9 delay.

10 **A You'll assume that it is resulting in a**
11 **delay.**

12 Q Well, I could have a time machine and we
13 could all go back in time and we could go talk about
14 what was happening at the time, but since I don't
15 have one, and it is not a good use of any of our
16 time to talk about what we don't have, what we do
17 have is the fact that there was a requirement to
18 install dampers. And you can assume for the
19 purposes of this question that the contractor
20 complained, as it is suggested in Mr. Lewis's
21 e-mail, that this was a bargaining chip by the
22 contractor.

23 I think, if I read it that way, it sounds
24 like because it caused a delay. You don't -- you
25 don't see that?

1 **A Again, that is your opinion as to this.**

2 Q Okay. So assume for the moment that the
3 city came by and said you have to install 450
4 dampers -- dampeners -- dampers, I'm sorry, 450
5 dampers -- why isn't that a governmental action?

6 **A My understanding of force majeure, not**
7 **being a lawyer, is not that it is the city coming**
8 **inspecting the collateral and making fire-life**
9 **safety recommendations as to what the city believes**
10 **is the appropriate way to build the project to**
11 **ensure the safety of the inhabitants.**

12 Q Wait. Wait. Are you saying that it was an
13 option for the developer to adhere to the city's
14 requirement?

15 **A No, I'm not saying that. I'm saying the**
16 **opposite of that.**

17 Q Then I misunderstood your answer.

18 **A I'm saying if the city visited the project**
19 **and determined that in order to ensure the fire-life**
20 **safety systems were adequate to protect the**
21 **inhabitants of the property and asked the borrower**
22 **to make changes to the plans, that is not a force**
23 **majeure event.**

24 Q Well, what would be a government action
25 that would be a force majeure event if not what you

1 just described?

2 **A I'm not a lawyer. I can't give you an**
3 **example.**

4 Q Well --

5 **A You're asking me if this is, and I answered**
6 **you.**

7 Q Okay. So are you familiar with any example
8 that you've dealt with in your time at Canyon
9 whereby a governmental action was considered a force
10 majeure event?

11 **A I'm not familiar with any now.**

12 Q Is it -- does the question of how many
13 dampers affect the answer to your question? I mean
14 obviously if it were one damper or five dampers, I
15 mean, you and I could agree that is not a
16 significant issue to deal with, but if it is 450,
17 wouldn't that be a severe or significant change to
18 the plans?

19 **A Doesn't change my answer, no.**

20 Q What if it were 1,000?

21 **A Doesn't change my answer.**

22 Q What if it were 10,000? What if the city
23 came in and said you have to put 10,000 force
24 dampers -- fire dampers?

25 **A That's a nonsense example.**

1 Q Well, at what point does the -- does the
2 balance tip, Mr. Goldman?

3 A If the fire department for the city
4 requires fire "dampeners," and the project is not
5 going to be inhabitable without fire dampeners,
6 they're going to require fire dampeners be put in.

7 Q I understand, but why wouldn't that be a
8 force majeure event to allow the contractor and the
9 developer more time to do that work when they didn't
10 have any expectation that they were going to have
11 to?

12 MR. DOLAN: Object to the form of the
13 question.

14 MR. MILLER: What is the objection?

15 MR. DOLAN: They didn't have any
16 expectation. That assumes that they didn't read the
17 code and understand what they were required to do
18 under the city rules and regulations.

19 MR. MILLER: No. That is not what
20 Mr. Lewis said. The permit was approved --

21 MR. PASCOE: I join -- I join in that
22 objection for the record.

23 MR. DOLAN: Mr. Lewis isn't the city
24 inspector or code enforcer or anything like that.
25 So you're making an assumption that is not included.

1 Go ahead. You can make that assumption, but it has
2 to be clear that that is the assumption.

3 BY MR. MILLER:

4 Q Mr. Goldman, are you aware that the plans
5 to build this project were approved by the city
6 prior to the beginning of construction?

7 A No. I don't recall whether the plans were
8 approved or not approved prior to the beginning of
9 construction.

10 Q Is it common for construction projects to
11 begin without city approval in advance?

12 A I have seen that, yes.

13 Q With -- are you aware of any permits that
14 weren't provided to my client?

15 A I'm not aware of the permits that were
16 provided to your client.

17 Q Are you aware of -- are you aware that the
18 city did, in fact, approve the plans in advance of
19 construction?

20 A I'm not aware of what plans the city
21 approved or didn't approve.

22 Q All right. Assuming the city approved
23 plans and assuming the city plans didn't include 450
24 fire dampers, and they approved those plans, and
25 then like Mr. Lewis described, the inspector came

1 out and said, "Hey, wait a minute, we have a more
2 stringent requirement than the approved plans,
3 change your plans," how is the -- how is the
4 developer and contractor supposed to act without
5 that knowledge in advance?

6 **A You're trying to get me to say that this is**
7 **a force majeure event, and I disagree with that.**

8 **Let's take a break.**

9 THE REPORTER: Off the record?

10 MR. MILLER: No, I didn't say you could
11 take a break.

12 MR. DOLAN: You don't get to decide,
13 Mr. Miller.

14 MR. MILLER: You have to ask, Mr. Dolan.
15 It is my deposition.

16 MR. DOLAN: Can we take a break?

17 MR. MILLER: Yes, you may.

18 MR. DOLAN: Thank you.

19 MR. MILLER: Let's go off the record.

20 THE VIDEOGRAPHER: Going off the record at
21 10:06.

22 (Recess.)

23 THE VIDEOGRAPHER: This is the beginning of
24 disk 2 of the deposition of Gerald Goldman. We're
25 back on the record at 10:16.

1 BY MR. MILLER:

2 Q Mr. Goldman, we were talking before about
3 force majeure issues. Have you ever honored a force
4 majeure provision with any contract you've been
5 managing?

6 A How do you define "honored"?

7 Q Have you provided for a delay based on a
8 force majeure claim for any project that you are
9 managing?

10 A Yes.

11 Q Okay. What projects have you done that
12 for?

13 A I recently did it on a project called
14 The Enclave.

15 Q Where is that located?

16 A In Port Hueneme, California.

17 Q And what type of project was that?

18 A It was a condominium project.

19 Q What was the force majeure issue?

20 A Weather.

21 Q What kind of weather?

22 A Bad weather.

23 Q Like a little bit of rain? What kind of
24 bad weather?

25 A A lot a bit of rain.

1 Q A lot a bit of rain?

2 A Yes.

3 Q Like a typhoon?

4 A Like heavy rains which delayed
5 construction.

6 Q How long did it rain for?

7 A Weeks.

8 Q Weeks of consistent rain? Wow.

9 MR. DOLAN: You have to say "yes" or "no."

10 THE WITNESS: I'm sorry. Yes. Weeks of
11 consistent rain.

12 BY MR. MILLER:

13 Q And so how long was the delay provided --
14 how long of a delay was provided as a result of the
15 weeks of consistent rain?

16 A Approximately a month.

17 Q Any others?

18 A Just one being discussed, but no others
19 granted yet.

20 Q Where is that one being discussed from?

21 A A project near Santa Barbara, California?

22 Q What is that called?

23 A That's called Refugio.

24 Q We talked about Refugio.

25 And what is the alleged force majeure issue

1 there?

2 **A Inability to deliver power to the site.**

3 Q And do you know what the cause of that
4 inability is?

5 **A The severe fires and mud storms that**
6 **California suffered recently.**

7 Q And what is the time delay that is being
8 considered?

9 **A I haven't received their proposal yet.**

10 Q All right. Any others?

11 **A No. None that I can recall.**

12 Q What number of fire dampers -- if the city
13 came in and said you have to put in 10,000 dampers,
14 you said that would be ridiculous. What -- what
15 number of dampers would be a significant enough
16 government action that would change your opinion as
17 to whether it would be a force majeure event?

18 **A Fire dampeners wouldn't change my opinion**
19 **about whether or not this would be a force majeure**
20 **event.**

21 Q So if the City of Ann Arbor came to my
22 client and said, "Put in 5,000 fire dampers" that
23 were not on the plans that you had no advance
24 knowledge of and that caused a delay to get the fire
25 dampers, install the fire dampers which may have

1 delayed other construction, it doesn't matter how
2 many there would have been, that would never be a
3 force majeure excuse?

4 **A You're aware that this is a 249-unit**
5 **apartment complex?**

6 Q I am aware of the complex.

7 **A Okay. So how are you arriving at the 5,000**
8 **fire dampener number that you're asking me about?**

9 Q I'm not. I'm asking you why 450 wasn't
10 significant enough, and I asked you at what point
11 would the balance tip that it would be significant?

12 **A And my answer is I don't believe the city**
13 **requirement to add fire dampeners is a force majeure**
14 **event.**

15 Q No matter what?

16 **A You could ask her to read back my answer.**
17 **That was my answer.**

18 Q Do you honestly believe that Canyon would
19 have provided my client \$20 million for construction
20 in the ground if it didn't have permits and approved
21 plans?

22 **A Permits and plans occasionally evolve as a**
23 **project is built.**

24 Q Okay. That wasn't my question. I didn't
25 ask you if permits and plans evolved. What I asked

1 you was do you honestly believe that Canyon would
2 have provided \$20 million of construction funding to
3 my client to put that construction into the ground
4 without approved plans and approved permits?

5 MR. DOLAN: Object to the form of question.

6 MR. MILLER: What is the wrong with the
7 form of my question?

8 MR. DOLAN: Because, one, the funding of
9 \$20 million is irrelevant. You're suggesting that
10 the money went to someplace. It was funded, but
11 draws have to be given so the money is then paid.

12 And you're also suggesting that his answer
13 didn't respond to your first question, which it did.

14 MR. MILLER: No.

15 MR. DOLAN: That's why I'm objecting to the
16 form of the question.

17 BY MR. MILLER:

18 Q Okay. Well, my question stands, sir.
19 Please answer it.

20 **A Please rephrase it.**

21 Q Okay. Here we go, No. 3.

22 Do you honestly believe that Canyon would
23 have provided \$20 million of construction funding
24 for construction to be put into place in Ann Arbor,
25 Michigan, without plans approved by the city and

1 approved permits?

2 **A Canyon made the loan that it made based on**
3 **the plans and permits that were in place when it**
4 **made the loan.**

5 Q So it sounds like that is an acceptance of
6 my presumption that Canyon would not have provided
7 the funding without those permits and plans being in
8 place.

9 **A First of all, you used \$20 million, and I**
10 **don't see \$20 million here, but my statement stands.**

11 Q Well, the loan was for \$53 million, sir.

12 **A Uh-huh.**

13 Q So I'm talking about the amount of
14 construction work that my client had done as of the
15 time of e-mail that was in front of you.

16 **A I can't verify what construction work was**
17 **done at the time of the e-mail. I don't have the**
18 **draws in front of me.**

19 Q Well, even if it were 10 million at that
20 point, would Canyon have provided \$10 million at
21 that time without plans and permits that were
22 approved?

23 **A Again, plans and permits change over the**
24 **course of a construction project. That is common.**

25 Q Okay. But, again, I'm asking about initial

1 plans and permits. Wouldn't initial plans and
2 permits have to be approved before Canyon would have
3 started funding the project?

4 **A That's your statement. That is not my**
5 **statement.**

6 Q So Canyon would approve and allow for
7 construction to begin without plans approved and
8 without permits approved?

9 **A Again, plans and permits evolve over the**
10 **course of a construction project. There is not a**
11 **set of plans and there is not a permit.**

12 Q But you would agree with me that there have
13 to be a set of plans and a permit that exists at the
14 outset even though they may change down the road?

15 **A The plans and permits required to commence**
16 **construction and for us to fund whatever we funded**
17 **at the time we funded it must have been sufficient**
18 **for Canyon.**

19 Q That's what I was thinking. Thank you.

20 Let's look at Exhibit 14, sir.

21 Here you go.

22 (Exhibit 14 was marked for
23 identification.)

24 THE WITNESS: I've read the e-mail.

25 BY MR. MILLER:

1 Q Are you familiar with the e-mail string set
2 forth in Exhibit 14?

3 A I have read it just now.

4 Q Have you re -- have you refamiliarized
5 yourself with the e-mail that you sent and the
6 responses that you received?

7 A I have.

8 Q All right. You sent an e-mail to my
9 client's representative and some other folks, it
10 looks like, on Thursday, April 21, 2016, at
11 7:59 p.m.; right?

12 A Yes.

13 Q Now, up above at the top the person to whom
14 you copied, Ms. Hernandez, whom you asked for her
15 opinion, said, "Based on the information provided by
16 Craig, if no other force majeure events occur" -- do
17 you know what force majeure events had occurred that
18 she was referring to?

19 A I do not.

20 Q When you received this e-mail, did you
21 respond back with a concern? "Wait. Wait. There
22 is no force majeure events. What are you talking
23 about?"

24 A I don't recall what my response was.

25 Q Okay. Clearly there must have, therefore,

1 been some communication between you and
2 Ms. Hernandez that there had been in existence some
3 previous force majeure events.

4 **A I don't know.**

5 Q Would there be any other explanation as to
6 why that would be written to you?

7 **A I don't have an explanation as to what**
8 **Angie Hernandez wrote.**

9 Q And you also don't recall your response or
10 recollection when you initially received this
11 e-mail?

12 **A No, I don't.**

13 Q Assuming you received this e-mail today on
14 a different project, what would your response have
15 been?

16 **A I would probably ask somebody to detail for**
17 **me what the force majeure events were.**

18 Q Okay. And as we sit here today, were you
19 aware of any force majeure events at the project?

20 **A No.**

21 Q Had you heard about electrician issues --

22 **A No.**

23 Q -- at the project?

24 Had you heard about "contractor" labor
25 shortages at the issue -- at the project?

1 **A Maybe I'm not answering you clear enough.**
2 **I never received a force majeure notice under the**
3 **terms of the Construction Loan Agreement.**

4 Q That wasn't the question that I asked you.

5 **A Okay.**

6 Q So the question that I asked you was: Had
7 you received word or heard about an electrician
8 strike or labor issues?

9 **A I received e-mails detailing that there**
10 **potentially were issues regarding the electrical**
11 **labor force in the greater Michigan market.**
12 **Somebody had forwarded me such an e-mail.**

13 Q And do you recall who forwarded that to
14 you?

15 **A It might have been the sponsor.**

16 Q When you say "the sponsor," you're talking
17 about the developer or the borrower?

18 **A Talking about Mr. Schubiner.**

19 Q Yeah, sponsor was a term I was not familiar
20 with until Ms. Stamolis mentioned it yesterday.

21 What about the issue relating to labor
22 problems that Quandel, the general contractor, had
23 had? Did you hear about that?

24 **A No.**

25 Q Never throughout this entire process had

1 you heard about that?

2 **A No.**

3 Q Did Newbanks communicate with other people
4 at Canyon other than yourself and Tammy Ho on this
5 project at this time?

6 **A I can't recall.**

7 Q Well, was there anyone else on your team
8 who would have received such an e-mail other than
9 you and she?

10 **A Typically the day-to-day operations were
11 myself and one other person like Tammy, like Kevin.**

12 Q Well, Kevin testified, and I hope you would
13 confirm, that Kevin took over for Tammy?

14 **A Yes.**

15 Q Okay. So if it hadn't been Tammy, there
16 was nobody else; correct?

17 **A There was a previous person on this asset.**

18 Q Oh. I'm sorry. Who was that?

19 **A Alison Weinberger managed it for a short
20 period of time. I think Kevin mentioned that.**

21 Q Yes. Yes, he did.

22 Were you informed of an issue where
23 Quandel's personnel was significantly changed on the
24 job?

25 **A I believe there were some changes, yes.**

1 Q Do you recall when that occurred?

2 A **I do not recall when that occurred.**

3 Q Do you believe that -- assuming the
4 requirements were met, that a significant labor
5 issue with the general contractor could have or
6 would have been a force majeure event?

7 A **No.**

8 Q Under no circumstances?

9 A **No.**

10 Q Under what circumstances would a labor
11 shortage be a force majeure event?

12 A **I don't think this project suffered labor
13 shortages.**

14 Q Again, not the question I asked. Would you
15 like to answer my question?

16 A **Please rephrase it.**

17 Q Yeah. Under what circumstances would a
18 labor shortage be a force majeure event?

19 A **I can't tell you.**

20 Q Have you ever seen such a situation occur?

21 A **No, I haven't in my career.**

22 Q All right. Let's look at -- let's look at
23 Exhibit 23.

24 (Exhibit 23 was marked for
25 identification.)

1 BY MR. MILLER:

2 Q Let's take a look at Exhibit 23. I know
3 I've said that twice before. Sorry.

4 A **Is this all part of it?**

5 Q Yes.

6 A **Okay.**

7 Q Have you had a chance to review Exhibit 23?

8 A **Yes.**

9 Q And are you familiar with the e-mail string
10 of which you were a part?

11 A **Yes.**

12 Q And in this string would you agree with me
13 that there seems to be a conclusion that Quandel has
14 having -- had a problem with their employees on the
15 job site.

16 A **It is clear to me that the borrower thinks
17 that he made a poor contractor selection.**

18 Q Oh, my God, Mr. Goldman. That's not what I
19 asked you. I didn't ask you if my client made a
20 poor contractor selection. I asked you if this
21 e-mail string involves the indication that Quandel's
22 employees walked off the job, and it was sent to you
23 on August 5, 2016.

24 A **It appears to say that it is
25 Mr. Schubiner's opinion that Quandel's employees**

1 **walked off the job.**

2 Q Was there any contrary opinion at Canyon?

3 **A We don't take an opinion.**

4 Q What -- what was the action that Canyon did
5 take, if any, in response to this e-mail string?

6 **A We didn't hire Quandel; so we didn't take**
7 **any specific action with respect to the Quandel**
8 **contract.**

9 Q Did your team meet to discuss it?

10 **A We may have.**

11 Q What would be the point of doing that if
12 you don't have an opinion as to the Quandel
13 contract?

14 **A To understand what is happening with the**
15 **asset that we manage.**

16 Q How would you understand that if you're
17 only talking amongst yourselves?

18 **A Oh, we're getting information.**

19 Q Oh, I'm sorry. Who are you getting the
20 information from?

21 **A A variety of sources.**

22 Q Like who?

23 **A Like the borrower.**

24 Q Okay. Who else?

25 **A Our own research in the field, the draw**

1 **requests, or construction consultants.**

2 Q Okay. So you believe you did have a
3 meeting to discuss this after you received this
4 lengthy letter as -- Ms. Page referred to it as
5 having taken hours to prepare?

6 **A I'm sure we met about it, yes.**

7 Q Okay. Let's look at Exhibit 24, please.
8 (Exhibit 24 was marked for
9 identification.)

10 BY MR. MILLER:

11 Q That should stay nearby if you don't mind.
12 There you go.

13 **A Okay.**

14 Q Exhibit 24 -- are you familiar with this
15 e-mail string?

16 **A Just from rereading it.**

17 Q All right. Well, let's look at the dates
18 if you don't mind. You sent an e-mail reflected on
19 page 1 of the document at August 5, 2016, at
20 1:51 p.m. Do you see that?

21 **A Yeah. Okay. Goes on to the next page. I**
22 **see.**

23 Q And on Exhibit 23 you sent an e-mail that
24 was part of Exhibit 23 on the first page at
25 12:42 p.m. on the same day. It is like third e-mail

1 down.

2 **A Okay. So here is August 5, 2016.**

3 Q Okay. So did you send the e-mail that is
4 reflected in Exhibit 24 in response to or in
5 relation to the e-mail that you sent in Exhibit 23?

6 **A I am not sure I understand the question.**

7 Q Well, you sent out an e-mail on Exhibit 23
8 at 12:42 p.m. about the letter that my client sent,
9 and you just told me that you were probably going to
10 have a meeting, and so Exhibit 24 is an e-mail from
11 you less than an hour -- I'm sorry -- a little bit
12 more than an hour later to some different people
13 saying,

14 "Attached are responses from our
15 borrower to the letters sent by
16 Quandel. Please review them so we
17 can have a conversation about them in
18 advance of the call/meeting next
19 week."

20 I just want to confirm that we're talking
21 about the same issues?

22 **A I can't confirm that.**

23 Q Well, what issue did you think you were
24 referring to in Exhibit 24?

25 **A At this point in time Mr. Schubiner and**

1 **Quandel were engaged in a furious letter-writing**
2 **campaign back and forth with a lot of accusations;**
3 **so I'm not sure what it refers to. I don't have the**
4 **attachments.**

5 Q Well, is it fair to assume that it has
6 something to do with the responses to ten recent
7 letters attached, which is the re line in your
8 e-mail?

9 A **It is fair to assume that it is in response**
10 **to the fighting between Quandel and Mr. Schubiner.**

11 Q Okay. So you scheduled a meeting, it looks
12 like. Who is JP?

13 A **Jean-Paul Lujan.**

14 Q And who is that?

15 A **Canyon's construction consultant lawyer.**

16 Q A construction consultant lawyer?

17 A **He is a lawyer, yes.**

18 Q I see. Did he visit the site?

19 A **I don't know if he visited the site.**

20 Q Okay. It looks like Mr. Scholz took your
21 direction to schedule a call on Monday, August 8, to
22 discuss these issues; is that a fair statement?

23 A **Yes.**

24 Q Do you believe that call occurred?

25 A **I can't recall if it occurred or didn't.**

1 Q Do you recall what the discussion at Canyon
2 was about that -- these issues in that call?

3 A **The discussions always centered around**
4 **hoping that the issues would be resolved and the**
5 **project could continue getting built.**

6 Q What action, if any, did Canyon take
7 following the calls on August 8? Do you know?

8 A **Canyon doesn't take action regarding**
9 **contracts it is not a party to.**

10 Q Well, did you call my client? Did you
11 e-mail my client? Did you e-mail Quandel? Did you
12 call Quandel? Did somebody on your team do any of
13 those things?

14 A **I may have spoken to your client.**

15 Q By telephone you think?

16 A **Probably by telephone and possibly by**
17 **e-mail.**

18 Q Okay. Back to Exhibit 24, the last e-mail
19 that -- no, I'm sorry. It is not the last e-mail.
20 The second page, the same e-mail we were just
21 looking at, it says,

22 "Dan, I am copying you to keep you in
23 the loop, but you do not need to read
24 these as I know you are working on
25 the letter from Canyon to Craig."

1 What letter?

2 **A I don't recall what client.**

3 Q Who is Dan?

4 **A I would assume it is Dan Liffman at Sidley.**

5 Q So what type of letter would he have
6 written to my client?

7 **A I don't remember.**

8 Q Okay. Do you recall an issue on the job
9 site that Quandel had a problem with their drywaller
10 contractor?

11 **A I don't manage the job site.**

12 Q Oh, my God. Sir, that is not my question.
13 My question is do you recall an issue from Quandel
14 or from my client relating to Quandel's difficulty
15 with drywalling because there was a shortage of
16 drywalling laborers?

17 **A No, I don't recall that.**

18 Q You don't recall that? You don't recall
19 Quandel having to hire temporary workers to do the
20 work itself?

21 **A I don't manage the job site.**

22 Q I didn't ask you if you managed the job
23 site.

24 **A So how would I recall it if I don't manage
25 the job site?**

1 Q Because you might have been in the loop of
2 the conversation and you might have a recollection
3 of it.

4 A **And I don't.**

5 Q Oh, that would be an answer to my question,
6 sir.

7 MR. DOLAN: Well, okay. He has given you
8 the answer.

9 MR. MILLER: No, Ben, he has not.

10 MR. DOLAN: You don't yell at him after
11 he's given you the answer.

12 MR. MILLER: I am not yelling. I'm
13 saying --

14 MR. DOLAN: Well, yeah, you kind of are.

15 MR. MILLER: I'm really not. No, I
16 really --

17 MR. DOLAN: He gave you the answer, and
18 then you wanted to tee off on him. Let's just --
19 you got the answer.

20 MR. MILLER: He did give me the answer.

21 MR. DOLAN: Okay.

22 MR. MILLER: But this is -- and I grant you
23 that. But the problem is he hasn't been actually
24 giving me the answers thus far, and so I am
25 appreciative that he gave me this one so that we can

1 move this thing along, and I thought we would get
2 out of here a lot faster today.

3 Q All right. Let's look at this one.

4 Sir, I'm going to show you what has been
5 marked as Exhibit 22. Have a look at that if you
6 would.

7 A Okay.

8 (Exhibit 22 was marked for
9 identification.)

10 BY MR. MILLER:

11 Q Having reviewed the Exhibit 22, are you
12 familiar with this e-mail string?

13 A Yes.

14 Q Do you recall this footing settlement
15 issue?

16 A Yes.

17 Q What do you remember about it? What do you
18 know about it?

19 A What I was told is there was a problem with
20 some footings in a part of the building that report
21 to the incorrect depth.

22 Q Okay. And what happened between my client
23 and Canyon thereafter?

24 A With respect to the footings?

25 Q With respect to the footings or anything

1 with respect to the agreement or the contract or the
2 project or anything.

3 A We were informed of a problem with the site
4 conditions. We received information about it.

5 Q And did nothing in response?

6 A There was nothing for us to do in response.
7 We don't build the project.

8 Q What does the first e-mail say?

9 A "I'm sorry that I didn't get back with
10 you yesterday. We ended up leaving
11 the scheduled meeting at close to
12 7:00 p.m. and I have to find out one
13 more thing on Monday morning. So I
14 will contact you on Monday regarding
15 the milestone."

16 Q No, the first e-mail on the page of Exhibit
17 22 is what I was referring to.

18 A Ah.

19 MR. DOLAN: The top e-mail?

20 BY MR. MILLER:

21 Q Yes.

22 A Okay. Thank you.

23 "Hi, Craig. Please see the" --

24 "please see attached the amendment

25 extending the Milestone to July 15.

1 **Please execute and return. Thanks,**
2 **Tammy Ho."**

3 Q So clearly Canyon did do something, sir,
4 did they not?

5 A **I don't believe that the footing being**
6 **complete had anything to do with the milestone.**

7 Q What did you have the belief that it had to
8 do with?

9 A **I don't believe pouring that footing was a**
10 **milestone.**

11 Q No. Why was the amendment issued?

12 A **I would have to review that amendment and**
13 **see what it changed.**

14 Q You don't think -- so in answer to my
15 question, your belief that this e-mail that Tammy
16 wrote back in response to the e-mail that is "re
17 milestone" -- that is the re line, "re milestone" --
18 has nothing to do with the footing settlement issue?

19 A **Yes.**

20 Q What did you -- so what did you think it
21 had to do with?

22 A **There is a discussion in the e-mail No. 2,**
23 **using your way of counting, that it is about the**
24 **footing milestone. And then Tammy sent an amendment**
25 **extending a milestone to July 15.**

1 Q I'm sorry, sir, are we not -- haven't we
2 been talking about footing the whole time?

3 A My recollection is that the footing being
4 poured to the proper depth was not a milestone under
5 the loan agreement.

6 Q So what was the purpose of the amendment
7 extending the milestone? What was the milestone
8 being extended if not the footing?

9 A I would have to read that amendment.

10 Q You have no independent recollection as we
11 sit here today?

12 A My independent recollection it was not
13 about the pouring of the footing depth.

14 Q Okay. So what -- then I misunderstood you.
15 What was it about?

16 A I told you. I would have to read it to
17 tell you what it was about. But I don't believe it
18 was about having a footing poured to the proper
19 depth.

20 Q Okay.

21 Did Canyon personnel --

22 A Are we done with this?

23 Q Just -- doesn't matter, sir. They're going
24 in a pile.

25 MR. DOLAN: I'll keep it right here.

1 THE WITNESS: Thank you.

2 BY MR. MILLER:

3 Q Did Canyon personnel participate in weekly
4 OAC calls with my client?

5 A **Occasionally.**

6 Q Not on a weekly basis?

7 A **They occasionally participated.**

8 Q And who would be the "they" that would have
9 participated?

10 A **I could have been me and it could have been**
11 **any number of the other team members: Kevin, Tammy**
12 **or Alison.**

13 Q Did you know anything about -- no, strike
14 that.

15 Were you aware of my client's desire to
16 terminate Quandel from the project?

17 A **Yes.**

18 Q When did you first learn about that?

19 A **I can't recall exactly when I first learned**
20 **about it.**

21 Q In the spring of 2016? In the summer of
22 2016? In the fall of 2016?

23 A **Sometime in 2016.**

24 Q Okay. Did you agree with my client's
25 assessment that that was the appropriate thing to

1 do?

2 **A It is not my position to agree or disagree.**

3 Q Whose -- whose position is it?

4 **A I have a approval rights under the decision**
5 **to terminate the contractor.**

6 Q Right. So you would have to agree or
7 disagree.

8 **A If a proper submission was made to replace**
9 **the contractor, we would have reviewed it and we**
10 **would have taken a position.**

11 Q Did you have an opinion --

12 **A No.**

13 Q -- prior to that having happened?

14 **A No, I didn't.**

15 Q Did you tell my client that -- rather than
16 giving Quandel two weeks' notice, that he should,
17 quote, fire them now?

18 **A I don't recall that.**

19 Q Is it possible that you said that?

20 **A I guess anything is possible.**

21 Q Are you familiar with in the loan
22 documents, Exhibit 17, where the requirements are
23 for the submission necessary to replace a
24 contractor?

25 **A I would have to review it.**

1 Q Is that a term you're familiar with in
2 general Canyon contracts? I'm not going to have you
3 read a 160-page document today. Is that a term that
4 you're familiar with?

5 **A Let me have the term again, please.**

6 Q Yeah. Is there a process by which you --
7 of which you are familiar in a general sense that
8 sets forth the requirements for a submission to
9 replace a contractor?

10 **A It is atypical to replace a contractor.**

11 Q That may be, but what -- do you know what
12 the requirements are, in general?

13 **A Generally, yes.**

14 Q What are those?

15 **A A bonded GMP with a contractor of**
16 **sufficient net worth to complete the work and**
17 **sufficient reputation and expertise on the product**
18 **type that is of the subject.**

19 Q Would it be possible for a developer to
20 sign a GMP while there is another contract in place?

21 **A I'm not a construction document lawyer; so**
22 **I don't know if that is possible or not.**

23 Q Well, let's think about this just
24 conceptually. My client has a contract with
25 Quandel. Canyon hasn't approved the termination --

1 just follow through these steps. Assume Canyon
2 hasn't approved the termination. My client could
3 not, then, sign another contract with another
4 construction company because then he would be under
5 contract to two different construction companies;
6 isn't that true?

7 **A I'm not following your scenario at all.**

8 Q Okay. There is a contract between my
9 client and Quandel. That we agree with; right?

10 **A Yes.**

11 Q And in order, you just said, to replace the
12 contractor, there would have to be a new GMP with
13 the replacement contractor; correct?

14 **A Correct.**

15 Q So if my client were to sign a new GMP with
16 a new replacement contractor, first, it would have
17 to have lender approval to do that, No. 1. But
18 No. 2, it would now have two construction contracts
19 pending at the same time, neither of which have yet
20 to receive lender approval. Isn't that also true?

21 MR. DOLAN: Object to the form of the
22 question.

23 Go ahead and answer if you understand it.

24 THE WITNESS: I know what the loan
25 requires.

1 BY MR. MILLER:

2 Q I am just trying to figure out how it would
3 work in a practical sense.

4 A I don't know how it would work in a
5 practical sense. I know what the loan requires the
6 borrower to do if they want to fire the existing
7 contractor.

8 Q Okay. Let's look at Exhibit 7.

9 A Okay.

10 (Exhibit 7 was marked for
11 identification.)

12 MR. MILLER: The noise that we get
13 sometimes.

14 Q Anyway, you've reviewed Exhibit 7, sir?

15 A Yes.

16 Q In the e-mail that is the first one on the
17 page -- right there --

18 A Uh-huh.

19 Q -- my client seems to be trying to work
20 with the new contractor informing you that there has
21 been a single laborer from Quandel and no
22 superintendents and that Quandel has got to be
23 terminated and a new contractor has to come into
24 play.

25 A Yes.

1 Q Is that a fair assessment?

2 A That is a fair assessment of what the
3 e-mail says.

4 Q Do you have any reason to dispute those
5 facts as they were presented at that time?

6 A I had not visited the site that day; so I
7 take it at face value.

8 Q Why -- why, then, in looking at this string
9 of e-mails, especially the one on the third page
10 where we talk about we are not your partner, why is
11 it that you were so unwilling to assist my client in
12 working through this problem?

13 A How do you define "unwilling"?

14 Q Well, I would define it by the e-mail on
15 Friday, October 14, 2016, which told my client to
16 sign a deed in lieu of foreclosure. That's how I
17 would define unwilling.

18 A Would you like to talk about Quandel or
19 would you like to talk about that agreement?

20 Q No. I'd like to -- I would like to talk
21 about my question which was why the unwillingness by
22 Canyon to work with my client to work through
23 terminating Quandel and replacing it with Gleeson?

24 A How do you define "unwillingness"?

25 Q What willingness did Canyon have to do

1 that?

2 **A** Our willingness was to follow what we
3 signed up for to follow in the loan documents. That
4 was our willingness.

5 Q So Canyon's position was basically drop
6 dead?

7 **A** That is not what I said.

8 Q You said you have no willingness. What --

9 **A** The loan documents provide for a mechanism
10 to replace the contractor.

11 Q Will you show me in Exhibit 17 where that
12 exists?

13 There is a table of contents if that would
14 help.

15 **A** The document generally sets forth what is
16 acceptable for the contractor that is building a
17 project.

18 Q I'm just curious about which section talks
19 about the direction to the borrower as to how to
20 replace the contractor.

21 **A** It was detailed within letters and e-mails
22 that were sent to the borrower.

23 Q But you just told me it was in the
24 contract.

25 **A** Maybe we should start with what is the

1 **definition of the contractor.**

2 Q What is the definition of the contractor?

3 A **"Sachse Construction, or another**
4 **general contractor for construction**
5 **of the improvements acceptable to**
6 **Lender," capital Lender, "in its sole**
7 **discretion."**

8 Q Okay. So?

9 A **That is the definition of contractor.**

10 Q Okay. But we all know that the contractor
11 was changed. So that happened --

12 A **How do I know that the contractor was**
13 **changed?**

14 Q Because Canyon approved the Quandel
15 contract.

16 A **My understanding is Quandel was the first**
17 **contractor.**

18 Q No. I think T.H. Marsh was the first
19 contractor, sir.

20 A **I don't recall seeing a T.H. Marsh approved**
21 **Canyon contract.**

22 Q No, they weren't approved.

23 A **Then how were they the contractor if they**
24 **weren't approved?**

25 Q They were the -- okay. I'm not answering

1 your questions.

2 **A Okay.**

3 Q I'm not doing that. I'm not the witness
4 and I'm not testifying and I'm not under oath. My
5 question remains the same. Where in the contract
6 does it set forth how the borrower is required to
7 change the manner by which the borrower is required
8 to change -- no, not required -- the requirements
9 for if the borrower wants to change the contractor,
10 how the contractor is to be replaced?

11 **A I'm not sure where it is in the document.**

12 Q Okay. Would you like to look through it
13 for a couple minutes and see if you can find it for
14 me? Because you told me it was in there somewhere.

15 **A No, I wouldn't like to do that.**

16 Q Okay. So presuming that there is no or
17 you're not aware of what the requirements are when
18 you just testified as to what you thought the
19 requirements were, what did you base that assumption
20 upon, the GMP and all that?

21 **A My recollection of the definition, which I**
22 **just read, is sole discretion. And so we would have**
23 **a requirement similar to the requirement for the**
24 **initial general contractor of a bonded GMP contract**
25 **with a contractor who had the expertise to build the**

1 **project.**

2 Q You talk about sole discretion, and we
3 talked about this yesterday with Ms. Stamolis. If
4 the borrower asks for approval, what obligation is
5 there under the contract for the lender to ever
6 respond to the request?

7 MR. DOLAN: Object to the extent it calls
8 for a legal conclusion. If you're talking about his
9 understanding, that's fine.

10 MR. MILLER: Of course I'm talking about
11 his understanding.

12 MR. DOLAN: Okay. Phrase it that way.

13 BY MR. MILLER:

14 Q What is your understanding of the
15 requirement of the lender to respond to a request
16 for lender approval?

17 **A I'm not sure what my understanding of it**
18 **is.**

19 Q Are you aware of any requirement under the
20 terms of the contract that requires the lender to
21 respond to a request for lender approval?

22 **A I'm aware of our responses to the**
23 **submission to consider Gleeson as a replacement**
24 **contractor.**

25 Q Again, not my question. My question was:

1 What requirement is there under the contract that
2 requires the lender to respond with approval or
3 disapproval of a request?

4 **A I don't know.**

5 Q Let's see.

6 MR. DOLAN: Let me know when it is time to
7 take a short break.

8 MR. MILLER: You want to take a break? You
9 can take a break. But just five minutes because I
10 figure we're going to stop for lunch.

11 MR. DOLAN: Okay.

12 MR. MILLER: And it is already 11:00 so --

13 MR. DOLAN: All right.

14 THE VIDEOGRAPHER: Going off the record at
15 11:01.

16 (Recess.)

17 THE VIDEOGRAPHER: We're back on the record
18 at 11:12.

19 (Whereupon Mr. Azran nor Mr. Neupert
20 returned to the proceeding.)

21 BY MR. MILLER:

22 Q Sir, I'm going to direct your attention to
23 Exhibit 17 again and ask you to turn to page 45,
24 please.

25 At the bottom of page 45 is a section

1 entitled "6.11 Force Majeure." Do you see that?

2 **A Yes.**

3 Q Why don't you take a moment and read
4 section 6.11 to familiarize yourself with it.

5 (Whereupon Mr. Azran and Mr. Neupert
6 reentered.)

7 THE WITNESS: Okay.

8 BY MR. MILLER:

9 Q Didn't my client inform you on more than
10 one occasion of issues in writing relative to force
11 majeure events?

12 **A I don't recall receiving a force majeure
13 notice.**

14 Q Well, where does it say "force majeure
15 notice" in here?

16 MR. DOLAN: You talking in that section or
17 the entire loan document?

18 MR. MILLER: If it is in a different
19 section, then I'd love to -- I'd like to see it.

20 Is that a defined term?

21 MR. DOLAN: It is going to take some time
22 to go through an entire document.

23 MR. MILLER: No, he went back to the
24 definitions. There is no force majeure notice
25 definition in the definition section. So I am just

1 wondering if there is a -- it says what has to be
2 done. I'm just wondering where the term "force
3 majeure notice" came from.

4 THE WITNESS: In my read of this provision
5 is that notice needs to be provided if the borrower
6 believes there is a force majeure event.

7 BY MR. MILLER:

8 Q It says that. "Borrower shall notify
9 Lender in writing within two business days." I see
10 that.

11 A Yes.

12 Q Right. So what -- what makes -- what makes
13 something a notification in writing and what makes
14 something a force majeure notice, as you've
15 described it?

16 A I'm not a lawyer, but I would assume it
17 would be the notice provision of this agreement.

18 Q What page are you on?

19 A 67.

20 Q Notices delivered personally, mailed, sent
21 by overnight courier, faxed, or e-mailed -- those
22 are the types of notices that are provided. Would
23 you agree?

24 A Yes.

25 Q Okay. So did my client never send you a

1 notification via e-mail or by mail of force majeure
2 issues?

3 **A I am not sure I received an e-mail that**
4 **complies with the provision that you are discussing**
5 **on page 45.**

6 Q What was the failure of my client to
7 properly comply in your opinion?

8 **A I would have to see what you're referring**
9 **to to describe that.**

10 Q Well, no, I'm sorry. You just testified
11 that you hadn't received something that complied.
12 What about the receipt of the document that you did
13 receive didn't comply?

14 MR. DOLAN: Objection. He testified "I
15 don't believe we received something that complied
16 with section 11."

17 MR. MILLER: Okay.

18 MR. DOLAN: 6.11 that is.

19 MR. MILLER: Okay. I knew what you meant,
20 6.11.

21 Q So what -- do you recall what part of 6.11
22 the notification failed to comply with?

23 **A I don't recall receiving the notification**
24 **is my testimony.**

25 Q Ever?

1 **A I don't recall receiving a notification**
2 **about force majeure.**

3 Q Okay. I asked you at the beginning of the
4 deposition about Jonathan Roth, and I asked you if
5 you'd spoken -- the last time you'd spoken with him.
6 I probably misspoke when I asked that question.

7 Have you spoken -- I'm sorry. Have you
8 e-mailed with Mr. Roth since he left Canyon?

9 **A I don't even think I have e-mailed with**
10 **him.**

11 Q And similarly with Ms. Page. Have you
12 e-mailed with Ms. Page since she left Canyon?

13 **A I don't believe I've e-mailed with her.**

14 Q Do you know where Ms. Page is?

15 **A No.**

16 Q I'm going to show you what has been marked
17 as Exhibit 3.

18 This is the trouble when you're 3,000 miles
19 away from your office and doing all this on your
20 own.

21 Sir, here is Exhibit 3.

22 Thank you.

23 (Exhibit 3 was marked for
24 identification.)

25 THE WITNESS: Got it.

1 BY MR. MILLER:

2 Q Have you had a chance to review Exhibit 3?

3 A **Yes.**

4 Q Do you recall this e-mail string?

5 A **Yes.**

6 Q What was your reaction when you received
7 this e-mail from my client?

8 A **What do you mean by "reaction"?**

9 Q You were sent an e-mail on September 16,
10 2016, at 10:24 a.m. How did you respond, if you
11 responded?

12 A **I don't recall if I responded to this.**

13 Q It seems through this e-mail my client is
14 informing you that there are issues with Quandel and
15 with manpower. Do you see that?

16 A **Yes.**

17 Q Do you dispute that that was the case?

18 A **Again, I wasn't on site.**

19 Q And there is a default letter sent from my
20 client to Quandel attached as well; correct?

21 A **Yes. There is a default letter attached.**

22 Q So assume for -- assuming for the moment
23 that -- well, let's move to Exhibit 4.

24 (Exhibit 4 was marked for
25 identification.)

1 BY MR. MILLER:

2 Q I'm going to show you what has been marked
3 as Exhibit 4. Tell me if you've seen that before.

4 A Okay.

5 Q Have you ever seen Exhibit 4 before?

6 A I don't recall seeing Exhibit 4 before.

7 Q This was an intention to pursue an
8 agreement with Gleeson to replace Quandel. Attached
9 to it was insurance information, both schedule,
10 conditions, explanations, to try to solve the
11 problem and finish the project as quickly as
12 possible.

13 Were you aware of my client's efforts in
14 this regard?

15 MR. DOLAN: Object to the form of the
16 question. You said this was to replace Quandel,
17 this submission. This is a construction management
18 agreement. It doesn't replace the general
19 contractor, but go ahead and answer if you can.

20 THE WITNESS: What I see is a termination
21 of Quandel, which was not approved by the lender in
22 accordance with the construction agreement. And
23 then I see an e-mail wherein Craig is thinking about
24 hiring, or proposing to hire, one of two potential
25 new contractors.

1 BY MR. MILLER:

2 Q That -- that was -- that is not in
3 Exhibit 4 at all, sir.

4 A Oh, I'm sorry.

5 Q But I appreciate the answer.
6 I'm looking at Exhibit 4.

7 A I'm sorry. What is your question?

8 Q My question was there is a lot of
9 information and proposals and a schedule and terms
10 and insurance information in my client's attempt to
11 solve the problem, which was to terminate Quandel
12 and replace Quandel with Gleeson and finish the
13 project in a timely fashion. Were you not aware of
14 those efforts my client was making?

15 MR. DOLAN: Objection. Same objections I
16 placed on the record before.

17 THE WITNESS: I was aware he was upset with
18 Quandel.

19 (Whereupon Mr. Neupert exited.)

20 BY MR. MILLER:

21 Q No, were you aware that my client was
22 moving forward trying to take efforts to replace
23 them with somebody who could finish the job?

24 A I was aware because I sent both an e-mail
25 and Canyon sent a letter detailing the requirements

1 that needed to be met for us to consider a
2 replacement contractor. So, yes, I was aware.

3 Q Okay. But you don't have any recollection
4 to having seen this particular document before?

5 A No, I don't.

6 Q I see. Tammy Ho we talked about some time
7 ago. Does she still work at Canyon?

8 A Yes.

9 Q And does she have a similar role, just on a
10 different team?

11 A She is on a different team at this point,
12 yes.

13 Q Where is that document? We're going to
14 have to come back to her because I don't know what I
15 did with that document.

16 Let's see. Exhibit 9.

17 Sir, I'm going to show you what has been
18 marked as Exhibit 9. Will you take a look at that,
19 please.

20 (Exhibit 9 was marked for
21 identification.)

22 THE WITNESS: Okay.

23 BY MR. MILLER:

24 Q Are you familiar with that e-mail?

25 A Yes.

1 Q Can you describe what was happening here
2 with Pinnacle?

3 A Yes. I was terminating them on a
4 multifamily project I managed in Chicago, and as a
5 courtesy, we were discussing whether or not we
6 should let Craig know that we had fired them in case
7 he became aware of it.

8 Q Why is Marti Page involved in this
9 discussion?

10 A Because as the origination's person, she
11 frequently talks to our borrowers about a variety of
12 subjects, new business, how projects are going.
13 That's what they do when they do their job.

14 Q But it sounds like from your e-mail dated
15 September 1, 2016, at 5:00 p.m. you did not want to
16 terminate Pinnacle on the Packard Square site.

17 A It is not my decision to terminate Pinnacle
18 on Packard Square. We were talking about whether or
19 not we should let Craig know that we had terminated
20 Pinnacle on a different project he was not involved
21 in.

22 Q Well, obviously I know he's not involved in
23 York Terrace.

24 A Yes.

25 Q Why would you have -- I'm confused.

1 Maybe -- what is York Terrace?

2 **A It is an apartment property in downtown**
3 **Chicago that I managed for a different fund.**

4 Q So why would Canyon have had the -- been in
5 the position to terminate anyone at York Terrace if
6 Canyon wasn't in a position to terminate Pinnacle at
7 Packard Square? I don't understand.

8 **A On the York Terrace asset, we were the**
9 **equity investor. We were the owner of that asset.**

10 **On The George, we're the lender; so we**
11 **don't have the right to hire and fire the property**
12 **manager. We just approve that.**

13 Q I didn't understand the distinction --

14 **A Yes.**

15 Q -- of that there.

16 Okay. What did you mean by "I do not feel
17 with all that is going on, we need to rock the boat
18 here. Thanks"?

19 **A I don't recall what I meant by that.**

20 Q When -- when Canyon is asked to approve
21 draws, those draws are reviewed and approved by a
22 multitude of people, are they not?

23 **A Correct.**

24 Q And the construction consultant might
25 review such a -- such a request; correct?

1 **A Will review such a request.**

2 Q Does the architect ever review a request in
3 a construction project?

4 **A The lender doesn't retain the architect.**

5 Q Okay. Let's talk about a couple of the
6 subs, if we can.

7 I'm going to show you what has been marked
8 as Exhibit 11.

9 Are you familiar with Gaylor Electric?

10 **A I'm aware that they were a sub on the**
11 **project.**

12 Q How -- how aware are you that they were a
13 sub on the project? Didn't you just approve payment
14 to them recently?

15 **A You asked me if I was aware that they were**
16 **on the project, and I answered affirmatively yes.**

17 Q Right. How aware are you?

18 **A I'm aware that they were a sub -- that they**
19 **were a sub on the project.**

20 Q Did you recently approve a payment to them?

21 **A Did I personally recently approve a payment**
22 **to them?**

23 Q Yes.

24 **A I believe Canyon may have funded a draw**
25 **that -- at the request of the receiver to -- to pay**

1 **them.**

2 Q Who would have made that decision?

3 **A To approve a draw?**

4 Q To pay that -- to pay that contractor to
5 approve that draw.

6 **A The request would have come from the
7 receiver, and Canyon would have approved it.**

8 Q I understand. But Canyon is not a person.
9 Who at Canyon would have made that decision?

10 **A The asset management team that administers
11 the receiver loans.**

12 Q That would be you?

13 **A Amongst others, yes.**

14 Q Well, who else would have had input in that
15 decision as the head of the asset management team
16 that oversees the agreement?

17 **A Potentially the director of asset
18 management.**

19 Q Oh, do you recall discussing this with her
20 prior to the approval of the payment?

21 **A I don't recall if that specific payment was
22 discussed.**

23 Q Do you even recall when this payment was
24 approved?

25 **A I don't.**

1 Q It was in the last, like, few weeks, I
2 believe.

3 Does that help you remember?

4 A No. I manage a lot of assets. It doesn't
5 help me remember.

6 Q You manage 12, sir.

7 I'm going to show you Exhibit 11. Tell me
8 if you're familiar with that.

9 (Exhibit 11 was marked for
10 identification.)

11 THE WITNESS: Okay.

12 BY MR. MILLER:

13 Q Can you identify this document?

14 A I cannot.

15 Q Does it purport to be a sworn statement for
16 work performed at the Packard Square project?

17 A It's what it says.

18 Q Signed under oath, penalty of perjury?

19 A Yes.

20 Q Okay. Let's look on the first page at the
21 Gaylor Electric line. Do you see that? The first
22 page.

23 A Yeah. I know. I would like to look at
24 something else before I go there, please.

25 Okay. I am on the first page.

1 Q Have you found the line for Gaylor
2 Electric?

3 A Yes.

4 Q Do you see how it says their total contract
5 price for the electrical was 2,975,000?

6 A Yes, I see that.

7 Q And the amount already paid is
8 approximately 1.5 million, or half the amount of the
9 contract price.

10 Do you see that?

11 A Yes.

12 Q And then they claim that there is another
13 quarter, approximately, \$710,000 currently owing and
14 a balance to complete of 757,000.

15 Do you see that?

16 A I see that.

17 Q So based on the math -- and I'm not asking
18 you to be specific, but you would agree with me that
19 it looks like they'd already been paid approximately
20 half. They claim 25 percent was currently owing,
21 and another 25 percent still to be done; correct?

22 A That's what the sworn statement that the
23 contractor that Mr. Schubiner claimed was grossly
24 negligent says, yes.

25 Q Right. So I'm going to now show you

1 Exhibit 12. This is a two-page document. Even
2 though it has two exhibit markers on it, that's from
3 a different proceeding.

4 (Exhibit 12 was marked for
5 identification.)

6 THE WITNESS: Okay.

7 BY MR. MILLER:

8 Q Now, obviously you're not a party to the
9 e-mail, but do you know who Arden Freeman is?

10 A I do not.

11 Q Okay. Do you know -- are you familiar with
12 the company Built Form?

13 A I was aware that they may have performed
14 some work as a subcontractor on the project.

15 Q Okay. According to this e-mail, and
16 obviously I'm not expecting you to confirm any of
17 this. I'm just taking it for the representation
18 made within it. It says that -- the implication is
19 that Quandel is suggesting that Gaylor was
20 70 percent complete with their work. That's just --
21 that's what it says in the first line. Whether it
22 is true or not is not the issue. That's just what
23 she says Quandel says.

24 Do you see that?

25 A I see that.

1 Q Okay. And Built Form, just so you know,
2 they were the designers of the building. They were
3 the architects.

4 A Thank you.

5 Q On the second page is a document that she
6 created regarding Gaylor Electric, which at the
7 bottom you'll note her position was that they were
8 59.57 percent complete in her opinion. That's
9 all -- just showing you that that was her opinion.
10 I'm not expecting you to confirm it. I am just
11 showing it to you.

12 A I don't see that as her opinion. Where
13 does that say that this is her opinion?

14 Q Well, she created the form. And it says,
15 "Percentage complete: 59.57 percent" at the bottom.

16 A I don't see that these two tie together at
17 all.

18 Q Right. Built Form. Yeah.

19 Built Form's claim, according to this
20 document, is that there is 59.57 percent complete of
21 the work that Gaylor did as different from the
22 70 percent that Quandel said.

23 But it is just for background, sir. I'm
24 not asking you to confirm or deny any of this. I'm
25 just laying it out that these are documents that we

1 have from other people. Whether you agree with it
2 or not is not my question.

3 My question to you is as it pertains to
4 Exhibit 26.

5 (Exhibit 26 was marked for
6 identification.)

7 THE WITNESS: Okay.

8 BY MR. MILLER:

9 Q Are you familiar with this e-mail string?

10 A Yes.

11 Q Can you describe it for me, please.

12 A What do you mean "describe it"?

13 Q What is the purpose or basis of these
14 e-mails?

15 A It looks like they're in response to a
16 request to make some payments.

17 Q Kevin Scholz had made a determination of
18 some kind, it looks like, that the amount of the
19 payment to Gaylor Electric should be 232,308.84 on
20 the third page of Exhibit 26.

21 Would you -- do you agree with that?

22 A No.

23 Q What -- what does it mean?

24 A I don't know where this document came from
25 relative to this e-mail.

1 Q It is -- it was attached to his e-mail, I
2 believe, for pay application 20. See how he makes
3 reference to pay application 20 on the bottom of his
4 e-mail on October 12? He says,

5 "We are still missing the
6 unconditional lien waiver from Gaylor
7 Electric for previous payments."
8 It talks about some other contractors.
9 "We will process the payments for the
10 pay application 20."

11 A **I can't confirm that this document, which**
12 **has no markers or references on it, relates to this**
13 **e-mail.**

14 Q Okay. Well --

15 A **And similarly, I can't -- just so we're**
16 **clear, I can't verify that this document was**
17 **relating to this e-mail.**

18 Q And I never asked you to.

19 What I'm trying to understand is -- that's
20 it.

21 I mean, I could show you the e-mail, sir,
22 if you want, that has the attachment right here
23 of -- I just lost it.

24 Right here. It is highly unusual, but here
25 is -- here is the e-mail showing exhibit -- the

1 third page being attached to the e-mail that
2 Mr. Scholz sent. Unfortunately, what I gave you was
3 a later part of the chain.

4 Do you see that?

5 **A What I was trying to figure out is who sent**
6 **this.**

7 Q Mr. Scholz --

8 **A It wasn't clear.**

9 Q Mr Scholz. It was an attachment to
10 Mr. Scholz' e-mail. Here is the e-mail.

11 **A This is at the bottom of an e-mail**
12 **addressed to Craig and Mike.**

13 Q Yeah. It's -- it's at the bottom of the --

14 **A Who created this is my question?**

15 Q Sir, the e-mail -- you've got the e-mail in
16 your hand.

17 **A Yes.**

18 Q It is Kevin Scholz on October 12, 2016,
19 6:04 p.m.

20 **A Yes.**

21 Q Do you see that in what you're holding in
22 your hand?

23 **A Yes.**

24 Q Is that not the same as the e-mail on the
25 screen?

1 MR. DOLAN: It is forwarding the e-mail on
2 the screen, yeah.

3 MR. MILLER: Yeah.

4 Q Well, it is attached to the e-mail that
5 Mr. Scholz sent to my client that you were copied
6 on.

7 A **Your implication is Kevin Scholz created
8 this.**

9 Q Right.

10 A **That's what I am trying to be clear about.**

11 Q You don't believe he created that?

12 A **The screen is showing me that it could
13 possibly be forwarded.**

14 MR. DOLAN: It says that.

15 BY MR. MILLER:

16 Q It is a Bates-numbered document that we
17 received from your attorney attached to the e-mail
18 that was sent from Mr. Scholz. I don't know why
19 we're -- I don't even know why we're going around in
20 circles about this.

21 A **Okay. What is your question?**

22 Q Okay. Are you aware of the amount of the
23 lien that Gaylor Electric put on this property?

24 A **No.**

25 Q Would you have your memory refreshed if it

1 were \$916,000?

2 **A Yes.**

3 Q Their entire contract, as we saw
4 previously, was -- in Exhibit 11, was for
5 2.97 million; right?

6 **A Yes.**

7 Q They had been paid 1.5 million?

8 **A Yes.**

9 Q They were supposedly owed 700,000, and they
10 had \$757,000 of work to do.

11 Tina Van Curen testified at her deposition
12 that she believed that Gaylor was probably only
13 50 percent complete with their electrical work.

14 So we have Arden Freeman who said
15 60 percent, we have Quandel that said 70 percent, we
16 have Tina that said maybe 50 percent.

17 And then Hopp Electric was paid \$3 million
18 by the receiver to complete the electrical work.
19 Are you aware of that?

20 **A No. I'm not aware of that.**

21 Q Okay. Yeah. They contracted for
22 approximately \$3 million to finish the last portion
23 of the Gaylor contract, which if it was half
24 complete, would have been 1.5 million approximately.
25 But they liened it for 900,000 even though they

1 weren't on the job.

2 Can you explain to me why Canyon approved a
3 payment on Gaylor's unsubstantiated lien for more
4 than \$700,000?

5 **A I cannot.**

6 Q Well, why did you approve the payment?

7 **A In order to clear title.**

8 Q So --

9 **A The receiver wanted to clear title to make**
10 **the project as marketable as possible and proceed**
11 **with the sale.**

12 **Additionally, I have no idea what other**
13 **PCOs or change orders or documents related to**
14 **changing their contract, which you alluded to as**
15 **being customary, might have been a part of this.**
16 **This is not all the documents that govern the**
17 **relationship between the contractor and Gaylor.**

18 Q What did you review when you made the
19 determination to pay off that lien?

20 **A What did Canyon review when it made the**
21 **determination to pay off that lien?**

22 Q Well, I am assuming you looked at it as the
23 head of the team, did you not?

24 **A Yes. I did look at it, yes.**

25 Q Okay. So then -- yeah, I'm asking what you

1 looked at.

2 **A** **I reviewed a lien settlement, a settlement**
3 **agreement, and we approved that settlement**
4 **agreement.**

5 Q So there was no further review other than
6 taking what the receiver told you?

7 **A** **I would assume that the receiver and the**
8 **construction consultant did their diligence and came**
9 **to an appropriate settlement.**

10 Q Okay. Let's talk about another contractor,
11 if we could.

12 I'll just confirm the number before I mess
13 this up.

14 I'm going to show you what has been marked
15 as Exhibit -- Exhibit 28.

16 (Exhibit 28 was marked for
17 identification.)

18 BY MR. MILLER:

19 Q It is a two-page document. Here you go.

20 Okay. I'm most interested in Jermor
21 Plumbing & Heating. On the second page of the
22 two-page document there seems to be an e-mail from
23 Chris Allen at McKinley, who I -- we haven't
24 discussed yet, but I would have you agree with me
25 represents the receiver in this e-mail. Is that

1 correct?

2 **A At that point in time he did, yes.**

3 Q What do you mean "at that point in time"?

4 **A Exactly what I just said. At that point in**
5 **time he represented the receiver.**

6 Q You mean in this particular e-mail?

7 **A Yes.**

8 Q Okay. Great.

9 He sent an e-mail to Tina Van Curen, Kevin
10 Scholz, Matthew Mason, and yourself on March 28,
11 2017, in which Chris is saying: We need to pay
12 Jermor Plumbing & Heating, Inc. \$330,958.06.

13 Do you see that?

14 **A Yes.**

15 Q Then Kevin responds a couple days later,
16 which is at the bottom of the first page of the
17 e-mail, and I'm most interested at the bottom where
18 he says,

19 "Jermor's lien should be
20 approximately \$56,507.90 as opposed
21 to \$330,958" -- I'm sorry,
22 \$330,958.06."

23 Do you see that?

24 (Whereupon Ms. Stamolis exited.)

25 BY MR. MILLER:

1 Q That's a significant difference, would you
2 agree?

3 A **It is a difference.**

4 Q It is like 1/6. It is a significant
5 degree, wouldn't you agree?

6 (Whereupon Ms. Stamolis reentered.)

7 THE WITNESS: I can't do the math in my
8 head.

9 BY MR. MILLER:

10 Q I would now like to show you Exhibit 29.
11 (Exhibit 29 was marked for
12 identification.)

13 BY MR. MILLER:

14 Q Here you go, sir.

15 A **Okay.**

16 Q This e-mail of October of 2016 includes a
17 request from Mr. Scholz to you to approve the
18 payment for Jermor Plumbing & Heating for 56,507.90.

19 Do you see that?

20 A **Yes.**

21 Q So Kevin was completely consistent. In
22 October of 2016 he said Jermor is entitled to
23 \$56,507.90, and then later in -- whatever the date
24 of Exhibit 28 was -- which was in March of 2017, he
25 thinks that is the same amount of money that Jermor

1 Plumbing is entitled to receive.

2 Would you agree with those assessments?

3 **A What do you mean by "entitled to receive"?**

4 Q That that is the amount that they were
5 owed -- were owed.

6 He said in Exhibit 28, "The amount of their
7 lien should be approximately \$56,507.90 as opposed
8 to \$330,958.06," which is exactly what he said they
9 should have been paid in October of 2016, six months
10 earlier; right?

11 **A You used the word "owed," and then you used
12 the word "lien."**

13 Q Wouldn't a lien be a demand for owed
14 payment?

15 **A It could be a demand for owed payment, but
16 what somebody is owed results to the totality of
17 their contract. And the lien that they may have
18 "liened" for may be a different amount.**

19 Q Okay. That wasn't my definition of owed.
20 My definition of "owed" --

21 **A That's why I asked for it.**

22 Q Okay. My definition of "owed" was owed at
23 that time for work that they had performed.

24 **A Are you referring to the lien?**

25 Q No. I'm referring to two different things.

1 **A Okay.**

2 Q In October of 2016, Mr. Scholz wrote an
3 e-mail asking you to approve payment to Jermor
4 Plumbing for \$56,507.90.

5 **A Yes.**

6 Q Okay. Six months later the receiver asked
7 for approval to pay Jermor Plumbing \$330,958.06
8 because that was their lien amount. That is what
9 the receiver told Kevin on March 28, 2017, the
10 second page of Exhibit 28.

11 I'm not casting aspersions against Kevin.
12 Kevin was completely consistent. That's what I'm
13 trying to understand.

14 **A I'm not suggesting you're casting**
15 **aspersions against Kevin.**

16 Q Okay. Thank you.

17 **A I'm trying to understand your question.**

18 Q My question is, very simply, would you
19 agree with me that Kevin in October believed that
20 Jermor Plumbing should be paid \$56,507.90, and he
21 reiterated that in response to the receiver on
22 March 31, 2017?

23 **A I will agree that he reit- -- excuse me. I**
24 **will agree that he reiterated his belief that they**
25 **were owed \$56,507.90.**

1 Q Do you have any independent recollection or
2 information that his analysis of what they were owed
3 at that time, both in October and in March, for work
4 that they had performed was incorrect?

5 A Kevin isn't building the project. The
6 receiver is building the project.

7 Q I don't understand that question -- I don't
8 understand that answer, sir. Kevin was asked to --
9 was asked to approve payments?

10 A Yes.

11 Q By the receiver?

12 A Yes.

13 Q Kevin said, "No," did he not?

14 A Yes.

15 Q So he is remaining consistent that Jermor
16 Plumbing should have only received \$56,507.90, which
17 is exactly what he said six months earlier; correct?

18 A He is referencing the lien amount.

19 Q Right. But he is saying Jermor's lien
20 should be \$56,000 not \$331,000. Kevin -- doesn't --
21 wouldn't Kevin have to do some type of analysis
22 before making such a statement to the receiver?

23 A What I'm suggesting is Kevin works on the
24 team that approves payments. The receiver is in the
25 field building the project. So they are constantly

1 **incurring obligations for work that is performed and**
2 **paying for obligations.**

3 Q Right. Except that if you look --

4 **A It is two different functions.**

5 Q Yeah, but it is not, sir. Because if you
6 look at Exhibit 28 again, the e-mail that the
7 receiver sent was,

8 "Below is a summary of the lien
9 amount we need to confirm in order to
10 get these vendors back on site."

11 So the implication there is that Jermor is
12 not working on the site. This is what they need to
13 be paid to encourage them to return to the site.

14 Do you see that?

15 **A Yes.**

16 Q And Kevin's response is, "No, they're not
17 entitled to \$331,000, they're only entitled to
18 56,000"?

19 **A I agree that that is Kevin's response.**

20 Q You believe there is data somewhere that
21 would suggest that Kevin was wrong?

22 **A I have no knowledge of what Kevin reviewed**
23 **to make his opinion as to what they were owed.**

24 Q Does Kevin generally make mistakes of that
25 magnitude?

1 **A You're characterizing it as a mistake.**

2 Q I'm characterizing it as accurate. You're
3 the one who is questioning --

4 **A I'm not characterizing it at all.**

5 Q Well, I'm suggesting that Kevin correctly
6 noted to the receiver, "Hey, wait a minute. Jermor
7 is not entitled to \$330,000. He is only entitled to
8 56,000." Isn't that what Kevin said?

9 **A That is Kevin's opinions as to what Jermor
10 was owed that day, yes.**

11 Q Is Kevin entitled to make opinions about
12 how to pay subcontractors without approval? I mean,
13 does he just -- is he rogue in that regard?

14 **A Kevin reviews draws and can make payment
15 recommendations to me, which I review and approve.**

16 Q Okay. So let's go back to Exhibit 29.

17 **A Okay.**

18 Q He asked you to approve the payment for the
19 56,000 to Jermor Plumbing & Heating. Why didn't you
20 approve it?

21 **A My recollection of what was going on at
22 that time is Canyon was paying subcontractors
23 direct, and for a certain period of time there was a
24 meeting of the mind between Canyon, the borrower,
25 and the contractor Quandel, and there was a point in**

1 time where Quandel wanted to get paid and said they
2 would not agree to the direct payments to
3 subcontractors unless they were paid.

4 And I e-mailed Mr. Schubiner and asked him
5 if he was in agreement, and I received an e-mail
6 back telling me not to pay Quandel.

7 And it was at that point that we stopped
8 paying the subcontractors direct because that would
9 have resulted in liens on the project.

10 Q Well, not paying Jermor as Kevin asked you
11 to do and asked Sarah to do resulted in a lien on
12 the project, did it not?

13 A It may have.

14 Q But isn't it interesting -- I find it
15 interesting. I don't know if you do -- that the
16 lien that Jermor placed on the project was for
17 330,000, not for 56,000, which is the amount that
18 Kevin believed that they had been entitled to at
19 that time.

20 A Is there a question?

21 Q Yes. Do you find that that might have been
22 fraudulent?

23 A No.

24 Q What would have been the basis of Jermor to
25 place a \$330,000 lien on the property that they were

1 no longer working on if they were only entitled at
2 that time to \$56,000?

3 **A I think you would have to ask Jermor.**

4 Q Okay. So can you tell me why with this
5 information from Kevin, that Canyon approved paying
6 Jermor \$165,218.82 on June 29, 2018?

7 **A No, I can't.**

8 Q Did you review any documentation before
9 approving that payment?

10 **A I'm sure I did.**

11 Q What type of documentation did you review?

12 **A The normal draw packages.**

13 Q Wasn't this to pay off a lien from an
14 entity that didn't work on the property anymore?

15 **A Still get a draw if people want money for
16 Canyon.**

17 Q Well, the draw would have come from the
18 receiver to pay off the lien; correct?

19 **A If the receiver was controlling the
20 property at the time, it would have come from the
21 receiver.**

22 Q Sir, the check was cut in June of 2018 by
23 the receiver.

24 Would you like to see the bank statement?

25 **A Sure.**

1 Q Okay. Here is Exhibit 30.

2 (Exhibit 30 was marked for
3 identification.)

4 THE WITNESS: Okay.

5 BY MR. MILLER:

6 Q So if you look -- I don't know how -- if
7 you're able to read it because it is awfully small,
8 but on the third page of the statement there is a
9 check from McKinley as receiver to Jermor Plumbing &
10 Heating for \$165,218.82.

11 A I see that.

12 Q The purpose of that was to pay off the
13 Jermor lien. It was not a payment for work that was
14 performed. It was to pay off their lien so that
15 they could be dismissed and their lien discharged?

16 I don't know if you have any --

17 A Yes.

18 Q -- independent recollection of that.

19 Do you?

20 A I'm aware that the receiver was working to
21 clear title and discharge liens.

22 Q Okay. So Jermor had a \$330,000 lien and
23 Canyon approved the payment of \$165,000; so roughly
24 half; correct?

25 A Correct.

1 Q What documentation did you review before
2 approving that payment?

3 A I can't recall what I reviewed before
4 approving that payment.

5 Q Well, with the Gaylor you said you had
6 approved some type of settlement agreement.

7 A Uh-huh.

8 Q Would that have been the same type of thing
9 you would have --

10 A I would have assumed the receiver would
11 have prepared a settlement agreement.

12 Q Okay. Is there any concern to you that the
13 receiver and/or Canyon significantly overpaid Jermor
14 to get them to discharge their lien?

15 A I don't have that concern.

16 Q Why not?

17 A Because the receiver would have done their
18 diligence, would have figured out what their lien
19 was, and in concert with their plan to clear title
20 and ultimately sell the property and repay the
21 receiver's obligation, done what is in the best
22 interest of the asset.

23 Q So even if they were -- even if Jermor was
24 only entitled to \$56,000, it would be appropriate to
25 pay them \$165,000 just for the purpose of clearing

1 the title?

2 **A There is a lot of hypotheticals in your**
3 **question.**

4 Q No. There is really none because we know
5 from Kevin's e-mails that Jermor's work that they
6 were entitled to on their \$330,000 lien was only
7 \$56,000.

8 **A We don't know that.**

9 Q We don't know that?

10 **A No, we don't know that.**

11 Q Okay. Let's assume that that was true.

12 **A Again, you're making an assumption.**

13 Q I just said that.

14 Assuming that was true, wasn't it a gross
15 overpayment to Jermor to pay them \$165,000 on a
16 claim that was really only 56,000?

17 **A Again, it was hypothetical.**

18 Q If that hypothetical were accurate, would
19 that be a true statement? That would be a gross
20 overpayment.

21 **A How do you define "gross"?**

22 Q More than triple what they are entitled to?

23 **A I don't know.**

24 Q What do you mean you don't know?

25 **A Again, it is not the reality. It is a**

1 **hypothetical question. If these things happen, then**
2 **what?**

3 Q Okay. Well, assume -- assume that those
4 are the facts. Assume the facts are that Jermor was
5 entitled to payment of 56,000 and assume that the
6 receiver paid 165,000. How -- how would that be
7 justifiable financially?

8 **A I don't assume the facts.**

9 Q That's the basis of this deposition. We're
10 assuming the facts. Because I'm not going to bring
11 Jermor in to testify at your deposition.

12 **A Okay.**

13 MR. DOLAN: Well, I am just going to object
14 to the form of that statement, which isn't a
15 question. Assumptions are not the basis of any
16 deposition. Go ahead.

17 MR. MILLER: Well, I am basing it on
18 Canyon's own documents that he chooses not to
19 accept.

20 Q Kevin Scholz said twice --

21 MR. DOLAN: I don't believe he said that.

22 BY MR. MILLER:

23 Q Well, let's assume --

24 MR. DOLAN: And if you have a question, go
25 ahead.

1 BY MR. MILLER:

2 Q Here is my question. It's not that hard.
3 Kevin Scholz put a number on what Jermor was
4 entitled to twice. Once when Jermor wanted payment
5 in the fall of 2016 and once when the receiver
6 wanted payment in the spring of 2017. Kevin was
7 completely consistent with the amount that he
8 thought Jermor was entitled to receive at that time,
9 56,000.

10 A Yes.

11 Q Somehow three months later, without having
12 done any additional work, Jermor received a payment
13 of \$165,000, which was --

14 A I don't know what Jermor did or didn't do.

15 Q Assume, please, for the purposes of this
16 conversation that Jermor did not do any more work
17 because they were not the contractor brought back on
18 site. Okay?

19 A Okay.

20 Q Assuming that, having done no more work,
21 can you explain to me the rationale behind paying
22 them \$109,000 more than the amount Kevin said he
23 thought they were entitled to.

24 A I didn't settle the lien; so I can't
25 explain it.

1 Q So what was the basis for Canyon's
2 approving that over -- that overpayment over Kevin's
3 objection?

4 MR. DOLAN: Object to the form. Go ahead.

5 BY MR. MILLER:

6 Q Let me ask it a different way.

7 Was Kevin brought into the conversation on
8 the approval of the Jermor payment?

9 A I don't recall.

10 Q All right. Had he been, he might have been
11 able, for the third time, to raise his objection to
12 the amount that was being paid, but we don't know if
13 he did; so that is not my question.

14 My question is why would -- are you just --
15 are you telling me that Canyon simply accepted what
16 the receiver asked it to do and paid it?

17 A No.

18 Q Okay. Then what was the analysis on
19 Canyon's part to determine that Jermor should
20 receive \$165,000?

21 A I would have to review what was presented
22 to me at the time when the payment was requested.

23 Q Okay. What types of documents were
24 presented to you at the time?

25 A I don't recall.

1 Q Of course not.
2 All right. Let's break for lunch.
3 Be back at 1:00 o'clock, please.
4 THE REPORTER: Off the record.
5 THE VIDEOGRAPHER: Going off the record at
6 12:04.
7 (Lunch recess taken at 12:04 p.m.)
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1 Los Angeles, California; Friday, May 4, 2018;

2 1:03 p.m.

3

4 (Whereupon Mr. Azran, Mr. Neupert, and.
5 Mr. Schubiner did not return after lunch.)

6

7 THE VIDEOGRAPHER: This is the beginning of
8 disk 3 of the deposition of Gerald Goldman. We are
9 back on the record at 1:03.

10

11 EXAMINATION (CONTINUED)

12 BY MR. MILLER:

13 Q Welcome back. Mr. Goldman, I had told you
14 before that I wanted to ask you a couple questions
15 about Tammy Ho but I couldn't find the exhibit so I
16 did. Here is Exhibit 16, if you would take a look
17 at that, please.

18 A Okay.

19 (Exhibit 16 was marked for
20 identification.)

21 BY MR. MILLER:

22 Q Have you seen this e-mail string before?

23 A I can't recall having seen it, but I'm
24 familiar with it now.

25 Q Okay. Looks like you were copied on it --

1 **A Yes.**

2 Q -- at some point.

3 The business plan referenced in the e-mail
4 that Ms. Ho sent -- what is she referring to there?

5 **A This would be some verbiage that would be**
6 **in potentially a report.**

7 Q Is there a document that Canyon maintains
8 called "The Business Plan"?

9 **A No.**

10 Q So she writes, "I revised the business plan
11 section." Section of what?

12 **A Section of a quarterly report.**

13 Q Okay. And is that quarterly report for
14 internal use or for investor use or what?

15 **A Internal and investor use.**

16 Q Okay. And were you here yesterday when I
17 talked to Ms. Stamolis about this e-mail?

18 **A No, I don't recall.**

19 Q Okay. Fine. Doesn't matter.

20 My question to her was about the language
21 in this business plan. So at the bottom it says,
22 "Canyon anticipates that the loan
23 will be fully repaid by the initial
24 maturity date."

25 Do you know how Ms. Ho would have come to

1 that conclusion when preparing such a plan?

2 **A Might have been conversations with the**
3 **borrower. I'm not sure.**

4 Q Does she review independent documents to
5 make that conclusion before writing it up like this?

6 **A If she was writing this, this means she was**
7 **staffed on the loan with myself at the time.**

8 Q Right. I understand. But my question was
9 would she have to review other documentation before
10 creating this to put into the plan section?

11 **A It would be based on all the documentation**
12 **she has reviewed.**

13 Q Okay. And when you got this e-mail that
14 said "approved," what did that mean to you?

15 **A Mean that this language was acceptable to**
16 **be put into this report.**

17 Q Okay. Very good.

18 Ms. Ho, I believe -- I'm not 100 percent
19 sure; so let me ask it a different way.

20 Are you aware of a \$2.65 million allocation
21 as part of the loan for the purchase of an office
22 building next to the Packard Square project?

23 **A I'm aware that original budget that was**
24 **attached to the loan agreement had such a line item.**

25 Q And you would acknowledge that the purchase

1 never occurred; correct?

2 **A Correct.**

3 Q And so was there a reason why my client was
4 not able to utilize that money for other purposes?

5 **A The loan agreement specified that that line**
6 **item was available to purchase the office building,**
7 **which was next door to The George.**

8 **And my recollection of the situation is by**
9 **the time the loan agreement was signed, that his**
10 **purchase and sale agreement for that acquisition had**
11 **lapsed.**

12 Q So was my client, then, entitled to reduce
13 the amount of the loan by 2.6 million so as to not
14 pay interest on money that he wasn't allowed to use?

15 **A I would have to review the loan documents.**

16 Q Are you aware of a situation where a
17 borrower is precluded from using a portion of money
18 for a particular purpose and can't use it for any
19 other purpose even though they're paying interest
20 and costs on it?

21 **A This line item was a specific request that**
22 **the borrower made, and it was customized as a**
23 **feature in this particular loan.**

24 Q Right. But what happened to the money, the
25 2.65 million? It was never spent; correct?

1 **A** **What do you mean by "what happened to it"?**

2 Q What happened to it? It was never
3 disbursed; correct?

4 **A** **He never bought the office building; so it**
5 **was never disbursed, correct.**

6 Q Right. So -- but he was paying interest to
7 be able to borrow that amount of money; correct?

8 **A** **He agreed to do so.**

9 Q You know, that's not responsive to my
10 question. Just answer my question, please. It will
11 go a lot faster. It is a Friday afternoon.

12 Can you answer my question, please.

13 **A** **Restate it, please.**

14 Q Yeah. He was paying interest on that money
15 was he not?

16 **A** **Yes.**

17 Q Okay. But just so we're clear, as far as
18 you're concerned, the loan agreement provided that
19 he could not use it for any other purpose?

20 **A** **That is correct.**

21 Q Okay. Let me show you Exhibit 27, please.

22 (Exhibit 27 was marked for
23 identification.)

24 BY MR. MILLER:

25 Q Okay. Do you recall sending this e-mail on

1 March 14, 2016?

2 **A I do.**

3 Q What were your conclusions after your site
4 visit?

5 **A They're stated in the e-mail.**

6 Q So was this the first time you had been
7 there?

8 **A I believe this was my first visit to the
9 site.**

10 Q All right. You concluded that the work is
11 progressing on schedule and on budget. That was a
12 true statement when you made it?

13 **A In March of 2016, that was my belief.**

14 Q Okay. And it was also a true statement
15 when you said, "Almost all of the windows are in and
16 the framing is nearly complete"; correct?

17 **A I stated that almost all of the windows are
18 in and the framing is nearly complete.**

19 Q I just said that. That was a true
20 statement when you made it?

21 **A That was my belief, yes.**

22 Q Okay. Were you aware of efforts being made
23 to lease out the retail space?

24 **A I was aware.**

25 Q Were you aware prior to the on-site meeting

1 or was it because you came to the site that you were
2 made aware that day?

3 **A No. I had been generally aware of that.**

4 Q Okay. Did you think that it was a good
5 potential tenant to put the Papa Joe's grocery store
6 into -- into the Packard Square retail space?

7 **A I never received a formal request to
8 approve that lease.**

9 Q There was no lease. I'm asking you if the
10 concept of putting in that particular grocery you
11 thought was a good idea at the time.

12 **A I would have to know the details of the
13 economic arrangement.**

14 Q Okay. Are you familiar with the brand?

15 **A No.**

16 Q Did Mr. Schubiner explain to you what
17 Papa Joe's was?

18 **A Yes.**

19 Q Do you recall what he told you?

20 **A He told me it was a regional grocery chain
21 akin to a Trader Joe's.**

22 Q Well, okay. Little bit of a step up, but
23 okay.

24 Pursuant to the terms of the original loan
25 agreement, if this loan had matured and gone to term

1 and everything was done pursuant to the requirements
2 that Canyon contends were not, what was Canyon going
3 to earn on the loan?

4 **A The interest rate that is stated in the**
5 **loan agreement.**

6 Q What is the -- what is the amount?

7 **A In dollars?**

8 Q Yes.

9 **A I would have to sit down and calculate it.**

10 Q It is not set forth in the agreement?

11 **A No.**

12 Q Is there -- when -- when Canyon enters into
13 a business relationship like this or a loan
14 agreement like this, isn't the amount to recover as
15 earnings calculated in the creation of the
16 documents?

17 **A No.**

18 Q So your testimony is that Canyon has no
19 idea when it enters into a loan agreement what its
20 upside will be at the end?

21 **A No. I'm responding to your question do I**
22 **know the dollar amount that it would earn, and when**
23 **Canyon enters into a loan agreement, we don't know**
24 **the dollar amount that we earn.**

25 Q Is that because it is not something you

1 calculate at the time? I don't understand.

2 **A It is impossible to calculate when you sign**
3 **a loan agreement.**

4 Q Why is it impossible?

5 **A Because you don't know the pace at which**
6 **the money will be drawn and repaid; so the interest**
7 **dollar amount is a function of when the loan is**
8 **drawn and repaid.**

9 Q I see. So --

10 **A It is a construction loan.**

11 Q Right. So -- so my hypothetical that you
12 signed the loan on this date and you pay the loan
13 back on whatever the end date was in 2016 is not a
14 static number that can be calculated to figure out
15 what the total amount of earned interest would be?

16 **A That's correct.**

17 Q Because of the various timing of the draws?

18 **A That's -- and potential repayments, that's**
19 **correct.**

20 Q I see. In October of 2016, do you know
21 where the minimum multiple was as far as having been
22 paid at that time?

23 **A I don't recall.**

24 Q Is there a document that would reflect that
25 somewhere?

1 **A** **There may have been an interest statement**
2 **produced for the borrower that would have -- would**
3 **have shown that amount.**

4 Q Do you have any indication as to if it
5 hadn't been paid at that time, when it was due to
6 have been paid?

7 **A** **The minimum multiple doesn't have a due**
8 **date on it in our documents.**

9 Q Maybe that is -- well, maybe that is a bad
10 way of putting it, and probably it's because I don't
11 exactly understand what Mr. Scholz told me about the
12 minimum multiple when he was here so, so very long
13 ago.

14 Can you describe it for me, please, so
15 that -- maybe I'm talking about the same thing you
16 are talking about?

17 **A** **Sure.**

18 Q Thanks.

19 **A** **In simple generic terms, the minimum**
20 **multiple is the minimum amount of interest that the**
21 **borrower will pay to -- pay the lender in**
22 **consideration for providing the loan.**

23 Q Do you know what that amount is for this
24 loan?

25 **A** **I would have to review the document.**

1 Q Is it in the loan agreement?

2 A **The percentage minimum multiple is in the**
3 **loan agreement.**

4 Q Okay. Is it a defined term or is it a
5 heading -- headed term? There is no index. I'm
6 just looking through the table of contents.

7 Do you think you might be able to point me
8 to it?

9 A **The minimum yield fee in this instance says**
10 **it is defined within the note.**

11 Q I see. So -- so minimum multiple is
12 probably not the proper term that we should have
13 been using it. It is called the minimum yield fee?

14 A **Yes.**

15 Q Okay. All right. Well, I can look at the
16 note myself. Thank you for pointing that out to me.

17 What was the interest rate on -- on this
18 loan?

19 A **My recollection is that the rate of the**
20 **loan was 9 percent to be paid current with a**
21 **1 percent accrued interest rate and 6 percent**
22 **default interest rate.**

23 Q So assuming that Canyon were to receive the
24 16 percent -- I don't know what that is.

25 Assuming Canyon were to receive the

1 16 percent interest and the fees that it has charged
2 to my client's loan and the receiver's loan, you
3 would agree with me that Canyon will certainly end
4 up in a better financial situation at the conclusion
5 of this arrangement than it would have if my client
6 had simply paid off the loan through the normal
7 course of business?

8 **A The only time you can calculate a yield is**
9 **after you have been repaid.**

10 Q Right. I understand that. But assuming
11 that were the case, that Canyon would receive all
12 the amounts of money that it claims it is due,
13 including the 6 percent higher interest rate on both
14 my client's loan and the receiver loan and is repaid
15 in full, it will most certainly recover
16 significantly more to the bottom line than it would
17 have if my client had just paid off the loan through
18 the normal course of business?

19 **A I haven't calculated it.**

20 Q Well, what possible -- how could it
21 possibly not at 16 percent?

22 **A There is dollars, there is a yield, there**
23 **is internal rates of return, there's a lot of ways**
24 **things are measured.**

25 Q I'm just talking about dollars, comparing

1 dollars to dollars.

2 At the end of the day if my client had
3 performed the contract and paid it off pursuant to
4 the loan agreement's terms, Canyon would have earned
5 less money than it would if it fulfills the
6 16 percent much higher interest rate for this much
7 longer amount of time and is able to get all of its
8 money out of the sale of the property?

9 **A I can't calculate it. I have no idea when**
10 **the receiver loan is going to be paid, and I have no**
11 **idea when the property is going to sell and the**
12 **original loan is going to be paid. I have no idea**
13 **what those recoveries will be.**

14 Q Well, I understand that, but presuming that
15 there will be a recovery because some day soon,
16 because the receiver is taking active efforts to try
17 to sell the property, which we'll talk about later,
18 there is purporting to be a sale.

19 So presuming that there is a sale and
20 presuming that Canyon is repaid all of the money for
21 which Canyon is asking to be repaid, there is no
22 dispute that Canyon will certainly receive more out
23 of this deal than it ever would have out of my
24 client's original deal; correct?

25 **A I am not sure.**

1 Q What -- how -- how can you not be sure?

2 A **How could I not be sure?**

3 Q Yeah. It's 16 percent versus 10 percent.

4 It is two more years of accrued interest.

5 A **So you want me to calculate the yield on a**
6 **repayment which didn't happen and compare it to a**
7 **sale that hasn't happened?**

8 (Whereupon Mr. Schubiner reentered.)

9 BY MR. MILLER:

10 Q I'm not asking you to calculate anything.
11 I'm merely asking you to agree that when you're
12 getting 16 percent for two more years, that there is
13 certainly going to be more money at the end of the
14 day if you receive full payment than if you had
15 received 10 percent and the additional two years of
16 accrued interest hadn't accrued?

17 (Whereupon Mr. Azran reentered.)

18 THE WITNESS: How do you define "getting"?

19 BY MR. MILLER:

20 Q Receiving out of the proceeds of a sale.

21 A **You said getting interest.**

22 Q You're charging interest at 16 percent to
23 my client.

24 A **You said "getting." That means I'm**
25 **receiving it. Am I getting it?**

1 Q If the sale goes through and you receive
2 all the money that you claim you're entitled to.

3 A **That was my point. If the sale goes**
4 **through.**

5 Q Right. Well, I'm presuming that that is
6 what's possibly going to happen. So with that
7 scenario -- I mean, we can do this all day and maybe
8 even tomorrow. This is not a difficult question. I
9 don't know why it is seeming to be so difficult.
10 Maybe I'm using terms that are not market specific
11 to you. I'm trying to keep this very simple.

12 Canyon will receive if the sale -- there is
13 a sale and the sale goes through and Canyon's entire
14 amount balance is paid -- you with me so far?

15 A **Yep.**

16 Q -- significantly more money out of that
17 sale than it ever would have received if my client
18 had paid off the loan in two years at 10 percent
19 interest; isn't that right?

20 A **Following your hypothetical, yes, that's**
21 **correct.**

22 Q Okay. That's all I'm -- I'm not trying to
23 make that hard.

24 Do you know who reviews your outside
25 counsel's bills before they are sent to the receiver

1 for accuracy?

2 **A I don't.**

3 Q That is not something that your team does?

4 **A No.**

5 Q So who would know whether or not Dickinson
6 Wright, for example, is sending bills to you for
7 items having nothing to do with this project?

8 **A I don't know.**

9 Q So who at Canyon would review those bills?

10 **A Maybe Canyon's general counsel.**

11 Q So general counsel reviews the attorney's
12 bills? How would he know what the attorney did for
13 you? Wouldn't you be the one in part of that
14 conversation?

15 **A I don't review the legal bills.**

16 Q Okay.

17 I'm going to show you what has been marked
18 as Exhibit 6.

19 Here is Exhibit 6. If you would take a
20 look at that, that would be great.

21 (Exhibit 6 was marked for
22 identification.)

23 THE WITNESS: Okay.

24 BY MR. MILLER:

25 Q Are you familiar with Exhibit 6?

1 **A Yeah. This is a draw package.**

2 Q Okay. When you were at the property in
3 March -- early March of 2016, you just testified
4 that things were on schedule and a lot of the work
5 that you had been reviewing that was supposed to
6 have been done had been done.

7 As you look at page 1 of Exhibit 6, after
8 you left in March it looks like a million and a half
9 of construction work was requisitioned, and in
10 April, 3.3 million; in May, 1.6 million; in June
11 over 2 million, construction was proceeding on a
12 healthy pace, was it not?

13 **A What do you mean by healthy?**

14 Q Significant amount of construction was
15 happening during those months that construction was
16 proceeding, was it not?

17 **A The payment of money and the progress of**
18 **work are two different things.**

19 Q Well, isn't the payment of money to pay for
20 work that was performed?

21 **A Sometimes.**

22 Q Well, what else would it be used for?

23 **A It is what it should be used for.**

24 Q What does that mean?

25 **A I don't go into the field and verify that**

1 **all the work that is being requisitioned for was**
2 **done.**

3 Q Isn't that what the construction consultant
4 does?

5 **A Yes.**

6 Q Well, aren't you making the payments based
7 on the construction consultant's confirmations?

8 **A Sometimes.**

9 Q Are you saying that Canyon makes payments
10 without construction consulting?

11 **A No. I'm suggesting we do that in**
12 **conjunction with other reviews.**

13 Q Okay. Well, what -- what do you have that
14 you're aware of at this time to dispute the amounts
15 that were set forth on the first page of Exhibit 6
16 were not accurate or not paid for work that was
17 performed?

18 **A In the e-mail you're reading from I also**
19 **stated that it was reported by Craig that the**
20 **framing would be complete on time, and my**
21 **recollection of it is that it was not.**

22 Q Okay. But that doesn't -- how does that
23 change the fact that after you left, another
24 \$10 million of construction was done? Maybe --
25 maybe perhaps wasn't on the framing, but couldn't it

1 have been on other things?

2 **A It is possible.**

3 Q Okay. Well, was this a healthy pace of
4 construction as far as you know?

5 **A Healthy is an opinion.**

6 Q Okay. Well, are you familiar with
7 different projects that are -- that are of the same
8 ilk as this one?

9 **A Yes.**

10 Q Do you know what their standard, if there
11 is one, standard monthly draws are for construction
12 work?

13 **A There isn't a standard.**

14 Q Okay. So is there something that is common
15 or uncommon?

16 **A No.**

17 Q So everything is completely different?

18 **A Every project is different, yes.**

19 Q All right. And so this -- this
20 \$1.9 million a month of construction you don't have
21 an opinion on?

22 **A It is what it is.**

23 Q Okay. Let's go to Exhibit 15.

24 (Exhibit 15 was marked for
25 identification.)

1 THE WITNESS: Okay.

2 BY MR. MILLER:

3 Q Have you seen this before?

4 A Yes.

5 Q I'd like just to note the date on this,
6 March 27, 2015.

7 A Yes.

8 Q So this is, you know, within a few months,
9 maybe five or six months, of the signing of the loan
10 agreement; correct?

11 A Correct.

12 Q Can you explain to me why Canyon's position
13 is so hard-line?

14 A How do you define hard-line?

15 Q Well, my client sent an e-mail saying: I
16 am signing this without legal advice because, quote,
17 "I view this whole thing as incredibly unfair and
18 unwarranted, and I really wish I was not pressured
19 to sign this."

20 And your attorney wrote back and said:
21 That is not my problem and too bad and that's it.

22 A Sure. So I can explain it.

23 Q Please.

24 A The original transaction was supposed to be
25 closed simultaneous with the signing of the

1 guaranteed maximum price contract for the
2 construction of the project which was supposed to be
3 accompanied by a full payment and performance bond.
4 An accommodation was made to allow for Craig to
5 close the loan absent that construction contract and
6 payment and performance bond, and there was a time
7 frame provided by which to get a contractor under
8 contract, and he missed the deadline. So this
9 reinstatement cures his extremely early default
10 under his loan.

11 Q What was the harm?

12 A Did -- did -- you're just asking me?

13 Q Yes.

14 A What was the harm?

15 Q Yeah.

16 A The harm is if you don't have a contractor,
17 you can't build the project and you can't repay
18 Canyon's loan.

19 Q How much had you lent at that point?

20 A I can't recall that. I would have to look
21 at a balance statement.

22 Q Well, if there is no -- if there is no
23 construction beginning, what was the outlay at that
24 point?

25 A There very well could have been a

1 **significant advance.**

2 Q I see.

3 Why do you dislike my client so much?

4 A **Have I stated that I dislike your client?**

5 Q No, but your manner suggests it.

6 A **In your opinion my manner suggests it.**

7 Q That is my opinion, right.

8 A **Okay. Is there a question?**

9 Q Yeah. Why do you dislike my client so
10 much?

11 A **I never stated that I dislike your client.**

12 Q Do you dislike my client?

13 A **I don't dislike your client.**

14 MR. DOLAN: Object to the question.

15 MR. MILLER: It's an easy question, Ben,
16 and he answered it.

17 MR. DOLAN: It is a wholly inappropriate
18 question, and I get it is the end of a long week,
19 but it so wildly inappropriate.

20 BY MR. MILLER:

21 Q What is your relationship, sir, with Albert
22 Berriz?

23 A **Albert Berriz owns McKinley, which is
24 acting as the receiver for The George.**

25 Q How often do you talk with him?

1 **A** **I would say since I've known Albert, less**
2 **than five times.**

3 **Q** Have you met him face-to-face?

4 **A** **I have.**

5 **Q** Where did you meet him face-to-face?

6 **A** **In the McKinley offices.**

7 **Q** In Ann Arbor?

8 **A** **Yes.**

9 **Q** When was that?

10 **A** **I don't recall.**

11 **Q** Well, was it in conjunction with the filing
12 of the lawsuit in this case when you were in the
13 courtroom?

14 MR. DOLAN: Nobody was in the courtroom
15 when the lawsuit was filed.

16 BY MR. MILLER:

17 **Q** Oh, the hearing. When the hearing was --
18 when the hearing -- after the lawsuit was filed --
19 is that when you met him?

20 **A** **That may be the first time I met him.**

21 **Q** Have you met him since that time?

22 **A** **One other time.**

23 **Q** Also in Ann Arbor?

24 **A** **Yes.**

25 **Q** Why -- what is it that you and Mr. Berriz

1 discussed?

2 **A** **We have had a couple of discussions about**
3 **this project.**

4 Q Does he take an active role in the
5 management of the project?

6 **A** **I don't know what his role is in the**
7 **management of the project.**

8 Q Well, when you discuss it with him, what
9 are you -- what are you discussing? If he is not
10 taking an active role, what would he talk to you
11 about?

12 **A** **There have been high-level conversations**
13 **about how it is going.**

14 Q How is it going?

15 **A** **You would have to ask him how he thinks it**
16 **is going.**

17 Q Well, what did he tell you how he thought
18 it was going?

19 **A** **I can't recall what he told me at the time.**

20 Q I am going to show you Exhibit 21.

21 (Exhibit 21 was marked for
22 identification.)

23 BY MR. MILLER:

24 Q Have you seen Exhibit 21, sir?

25 **A** **Yes.**

1 Q Is -- is this in reference to one of the
2 calls that you've had?

3 A I can't recall.

4 Q Okay. Do you recall the subject of the
5 telephone conversation?

6 A I do not.

7 Q Okay. Have you ever spoken with Ron
8 Weiser?

9 A I have not.

10 Q Do you know who that is?

11 A No, I don't.

12 Q You've never heard that name before?

13 A No.

14 Q He is actually the owner of McKinley.

15 Let's look at 34 -- well, let's look at 33.

16 Sir, I'm going to show you what has been
17 marked as Exhibit 33, please.

18 (Exhibit 33 was marked for
19 identification.)

20 MR. DOLAN: Do you have a magnifying glass?

21 MR. MILLER: That's funny. No.

22 Q I'm not so much concerned about the data on
23 the second page.

24 A Okay.

25 Q This is what -- this is what we got from

1 our document production; so it is what it is.

2 That's not my question.

3 My question is what is the 24 million
4 loan-on-loan assumption?

5 **A My recollection is there was a thought that**
6 **at some point maybe we would hypothecate the**
7 **receiver loan and borrow some of the money to**
8 **complete the project.**

9 Q What does -- what does that mean,
10 hypothecate the receiver loan?

11 **A Borrow against the receiver loan.**

12 Q To what -- why would you do that?

13 **A As a source of funding to meet the**
14 **obligations under the receiver loan.**

15 Q Oh. Canyon -- Canyon wasn't funding the
16 receiver loan itself?

17 **A I didn't say that.**

18 Q Oh, so what were you saying? I don't
19 understand. Can you explain it?

20 **A You were asking me what that was.**

21 Q Okay. But -- okay. But I don't --
22 unfortunately, I don't understand your answer so --

23 **A I'll make it simple. We did not do that.**
24 **We did not borrow against the receiver loan.**

25 Q Okay. So Canyon was the lender of the

1 receiver loan; correct?

2 **A The investors in the loan, yes.**

3 Q The same investors in the loan that -- to
4 my client were the same investors in the receiver
5 loan?

6 **A I'm not sure.**

7 Q Okay. When you met Mr. Berriz the first
8 time, was that the day that you were in court with
9 Mr. Dolan, or was it sometime prior to that?

10 **A It was the day I was in court with**
11 **Mr. Dolan.**

12 Q Okay. And then -- and then do you recall
13 how long after was the next time that the two of you
14 met?

15 **A I made another trip to Ann Arbor to check**
16 **on the progress of the investment, and I believe**
17 **Mr. Berriz and I met.**

18 Q Any idea when that was relative to the
19 appointment of the receiver?

20 **A No. Can't recall.**

21 Q How was the progress moving at the time you
22 were there?

23 **A I can't recall the dates. I'm not sure**
24 **what the progress was.**

25 Q When you were there on site that time, was

1 it teeming with activity?

2 **A I can't recall.**

3 Q Did it seem awfully quiet?

4 **A I can't recall.**

5 Q I see.

6 I'm just going to show you very quickly, I
7 think, Exhibit 35.

8 (Exhibit 35 was marked for
9 identification.)

10 THE WITNESS: Okay.

11 BY MR. MILLER:

12 Q I just want to confirm with you that what
13 Tina is saying in this e-mail is that these items
14 set forth on her e-mail had been purchased by my
15 client prior to the receivership. Is that -- is
16 that a fair understanding of what she is saying?

17 **A Yes. I think that is the number she is
18 trying to figure out.**

19 Q Okay. And so she is acknowledging that
20 millwork, doors, frames, hardwood, flooring and tile
21 had all been purchased prior to the receivership by
22 my client.

23 MR. DOLAN: I'm just going to object to the
24 extent that you're asking him what Ms. Van Curen
25 meant. If you're asking his understanding of the

1 document, that's fine.

2 MR. MILLER: That's what I'm asking him.
3 He received it. I'm asking if that's what he
4 presumed it to mean when he got it.

5 MR. DOLAN: Okay.

6 THE WITNESS: This spreadsheet details
7 dollars; so I can't confirm that the dollars were
8 actually spent.

9 BY MR. MILLER:

10 Q I didn't ask that. I didn't ask about the
11 dollars. I just asked if your impression from
12 Ms. Van Curen's e-mail was that the borrower had
13 purchased millwork, doors, frames, hardware,
14 flooring, and tile prior to the receivership
15 commencing. That's all I'm asking you.

16 MR. DOLAN: And I think he answered that by
17 saying he's not sure the dollars were spent to
18 purchase.

19 Well, I'll let the witness clarify --

20 MR. MILLER: No.

21 MR. DOLAN: -- but I thought that's what he
22 was answering.

23 MR. MILLER: No. I didn't ask him how much
24 was spent. I'm just asking if he reads this as I
25 do, which is that she is saying that these items

1 were paid for. How much was paid I don't care
2 about.

3 MR. DOLAN: I understand now. I got it
4 now.

5 THE WITNESS: And, again, my answer is
6 these were dollars that were drawn for these items.
7 I can't confirm that they were paid for.

8 BY MR. MILLER:

9 Q Was there any indication from this document
10 that the items were not paid for?

11 A **There's no -- well, that doesn't prove that**
12 **they were; so there is no indication that they were**
13 **paid for.**

14 Q Okay. How much does Ronald Water, his
15 family, and his entities have under investment
16 management with Canyon?

17 A **I have no idea.**

18 Q Is it more than \$30,000?

19 A **I have no idea.**

20 Q More than \$100 million?

21 A **I have no idea.**

22 Q Okay. What about Duke University? Do you
23 know how much they have under investment with
24 Canyon?

25 A **I have no idea. I'm not in investor**

1 **relations.**

2 Q Okay. So you wouldn't know how much their
3 Gothic entity has invested in the Packard Square
4 project?

5 **A I would not.**

6 Q Let's go to 32.

7 Sir, I'm going to show you what has been
8 marked as Exhibit 32, please.

9 (Exhibit 32 was marked for
10 identification.)

11 THE WITNESS: Okay.

12 BY MR. MILLER:

13 Q Can you tell me what this e-mail exchange
14 is.

15 **A Appears to be an e-mail exchange related to**
16 **Tina Van Curen's review of a draw.**

17 Q All right. In the first bullet point of
18 her e-mail, she makes reference to general
19 conditions being 38 percent of trade cost and the
20 O/P is 13 percent of the trade plus G.C.'s total.

21 Can you tell me what that means in layman's
22 terms?

23 **A I can't.**

24 Q Do you have any idea what general
25 conditions are normally charged at?

1 **A** **I have no idea what general conditions are**
2 **normally charged at in one specific draw.**

3 **Q** **No. I wasn't asking about normal --**
4 **normally charged at in one specific draw. I was**
5 **wondering if you knew as a general understanding how**
6 **much contractors charge in a construction project**
7 **for general conditions as a percentage of their**
8 **contract.**

9 **A** **I normally don't negotiate general**
10 **contracts.**

11 **Q** **So you wouldn't know what is appropriate**
12 **for the market or what isn't?**

13 **A** **Which market?**

14 **Q** **Any market.**

15 **A** **Any market?**

16 **Q** **Yeah.**

17 **A** **It could be 3 percent, they could be**
18 **10 percent.**

19 **Q** **Would they ever be 38 percent?**

20 **A** **I don't think that is what this says.**

21 **Q** **What do you think it says?**

22 **A** **I don't think this is referring to the**
23 **overall general conditions in a specific contract.**
24 **Again, this is responding -- this is a specific draw**
25 **in a timeline of several draws.**

1 Q Under what circumstances would a contractor
2 be entitled to a draw of 38 percent general
3 condition expense?

4 A **Again, I don't build projects.**

5 Q Okay. But if 3 percent and 10 percent is
6 common, and 38 percent is significantly higher,
7 under what circumstance could that be acceptable?

8 A **If the contractor was doing a dollar's**
9 **worth of work and charged 38 cents in general**
10 **conditions, it may be acceptable.**

11 Q Why wouldn't they just charge a dime if
12 their contract would be for 10 percent?

13 A **I don't know why they wouldn't.**

14 Q Could it be because they're trying to make
15 a lot of money on this deal?

16 A **Again, this is one draw. This is not the**
17 **totality of the general conditions that are being**
18 **charged to this project.**

19 Q Do you know what the totality of the
20 general conditions are that are being charged to
21 this project?

22 A **I don't have a contract in front of me; so**
23 **I do not.**

24 Q Are you -- you're not even remotely aware
25 of the percentage that O'Brien is charging?

1 **A Uh-huh.**

2 Q I thought Canyon required a GMP on all its
3 construction contracts. Why wasn't this a GMP?

4 **A My recollection is it is a GMP.**

5 Q Was it in March of 2017?

6 **A I don't recall.**

7 Q Well, it seems like Ms. Van Curen is saying
8 that it wasn't. Do you know if it was revised
9 following her comments?

10 **A I believe the final agreement is a GMP.**

11 Q Yeah, but that wasn't until July. Wasn't
12 there a preliminary agreement first?

13 **A I don't remember the sequence of the
14 agreements. The final agreement is a GMP.**

15 Q Did you ever review the contract that
16 Ms. Van Curen was referring to in this e-mail?

17 **A The lender has the approval rights on the
18 agreement; so Canyon reviewed it.**

19 Q Was it approved as a cost of work plus a
20 fee without a GMP?

21 **A The final agreement was a GMP.**

22 Q No, but in March or in early April was a
23 preliminary agreement without a GMP approved?

24 **A That is very possible.**

25 Q Okay. The next line she writes is that the

1 contractor's fee is 7.5 percent of the trades plus
2 general conditions, and in bold notes "higher than
3 typical for size of project."

4 Did Canyon object to the higher than
5 typical contractor's fee? Or did it approve it?

6 **A Ultimately the court approved the fees that**
7 **are in the final approved GMP.**

8 Q Did Canyon approve the amount pursuant to
9 the original contract over Ms. Van Curen's concern
10 that it was higher than typical?

11 **A I don't see that it is a concern.**

12 Q You don't think that putting in bold
13 "higher than typical for size of project" isn't a
14 concern that is being pointed out to the recipients
15 of her e-mail that maybe is it being overpaid?

16 **A I can't comment as to the meaning of the**
17 **bold. There is a bunch of bolded things in here.**

18 Q Yeah, they're all -- they're all criticisms
19 of the contract language. That is what she's
20 saying; correct?

21 MR. DOLAN: Object to the form of question.

22 BY MR. MILLER:

23 Q Are they not all criticisms of the contract
24 language?

25 **A How are you defining criticism?**

1 Q She is critiquing the contract. She is
2 pointing out her criticism. This is not -- that is
3 what she is doing, is she not?

4 MR. DOLAN: Object to the form of question.

5 BY MR. MILLER:

6 Q What would you describe what she is doing
7 as?

8 A Looks to me like she is bringing some
9 things to the attention of the people who were
10 negotiating the contract.

11 Q Right. Because she was concerned that
12 those points had to be brought to those people's
13 concern. That's the whole point; correct?

14 A And the contract to take over the project
15 that had been stalled and was defaulted was
16 ultimately agreed upon and the work commenced
17 pursuant to the court's approval.

18 Q Okay. Before the court's approval, because
19 we're not the court and I don't get to ask the court
20 questions.

21 A Okay.

22 Q I asked a very simple one, which was did
23 Canyon approve of the 7.5 percent contractor's fee?

24 A Canyon approved of the GMP prior to the
25 court approving of the GMP.

1 Q So whatever terms were in it, Canyon
2 approved of. That's all I'm asking.

3 A **The best terms available in the marketplace**
4 **were negotiated and agreed upon.**

5 Q Oh, sir, how do you know that?

6 A **I said my statement.**

7 Q How do you know the best terms available in
8 the marketplace were negotiated and agreed upon?

9 A **I've said my statement.**

10 Q No, seriously. You need to answer that
11 question. How do you know that? What are you
12 basing that on?

13 A **The receiver used its best efforts to**
14 **negotiate an agreement with an acceptable contractor**
15 **who could get the stalled, defaulted project**
16 **restarted and completed.**

17 Q How many contractors did the receiver
18 consult with to negotiate the best possible deal it
19 could?

20 A **I don't know.**

21 Q You sure? Are you sure you don't know?
22 There is a question. Are you sure you don't know?

23 A **I understand that there is a question.**

24 Q When are you going to answer it?

25 A **When I'm ready to answer it.**

1 Q Okay.

2 A I don't know.

3 Q I'm going to show you Exhibit 1.
4 (Exhibit 1 was marked for
5 identification.)

6 THE WITNESS: Okay.

7 BY MR. MILLER:

8 Q I would direct your attention to the
9 second-to-last page of Exhibit 1.

10 You sent an e-mail, prior to the receiver
11 being appointed, to the purported receiver saying,
12 "We will need to know proposed contractors." Do you
13 see that?

14 A Yes.

15 Q So you asked the purported receiver --
16 wasn't even the receiver yet -- to consider proposed
17 contractors, plural. Do you see that?

18 A I see that.

19 Q And you made reference to the fact that my
20 client was suggesting Gleeson; correct?

21 A Correct.

22 Q Well, let's look at what the receiver said
23 to you on page 2 of the exhibit, No. 1.

24 A I see it.

25 Q So "Select General Contractor: Completed."

1 So before the receiver was even appointed, McKinley
2 had already selected its contractor; isn't that
3 right?

4 **A You asked me if other contractors were**
5 **considered.**

6 Q Were other contractors considered?

7 **A I didn't select the contractor. The**
8 **receiver selected the contractor.**

9 Q I understand. But is it normal in the
10 construction industry that if you only asked one
11 entity what they're going to charge you, that you're
12 going to get the best price?

13 **A How do you know that they only asked one**
14 **entity?**

15 Q Because, sir, he already -- in his
16 immediate e-mail back to you, which was sent to you
17 the first business day after you sent your e-mail,
18 you asked to hear about proposed contractors plural,
19 and he came back and said "O'Brien Construction will
20 be the G.C."

21 **A Where does it say that he didn't consider**
22 **other people?**

23 Q Over the weekend?

24 **A Again, you're -- you're assuming from --**
25 **I'm expressing contractors plural; so that indicates**

1 to me we considered multiple contractors or the
2 possibility of multiple contractors.

3 Q What contractors did you consider?

4 A I didn't make a proposal.

5 Q Right. You were asking him for a proposal.

6 A Right.

7 Q Of course.

8 A Right.

9 Q And his response was: I'm not looking at
10 multiple contractors. I've already selected one.

11 MR. DOLAN: Object. Mischaracterizes his
12 e-mail.

13 Go ahead.

14 MR. MILLER: How so?

15 MR. DOLAN: It doesn't say that.

16 MR. MILLER: It says -- it says on the very
17 next business morning before the receiver was even
18 appointed.

19 MR. DOLAN: You have no idea what he did
20 over the weekend. None.

21 MR. MILLER: So you're -- okay. Just so --

22 MR. DOLAN: Or before that. Or before
23 that.

24 BY MR. MILLER:

25 Q How long before -- how long before

1 October 21 was McKinley aware that there was a
2 lawsuit to be filed?

3 **A I don't know.**

4 Q Well, the lawsuit wasn't filed until that
5 day. How long had you been discussing this with
6 McKinley prior to the filing of the lawsuit?

7 **A I can't recall how long our discussions**
8 **were.**

9 Q A week?

10 MR. DOLAN: I'm not suggesting that.

11 BY MR. MILLER:

12 Q A month?

13 MR. DOLAN: I'm suggesting that the e-mails
14 don't say anything.

15 BY MR. MILLER:

16 Q A year? How long prior to the filing of
17 the lawsuit had Canyon been talking to McKinley
18 about the receivership?

19 **A I can't recall.**

20 Q You can't recall?

21 **A You're asking me for the specific date I**
22 **first contacted McKinley about the receivership?**

23 Q I'm not asking for the specific date. I'm
24 asking you for the time -- prior to the e-mail that
25 you sent on Friday, October 21, how long prior to

1 that had you been in contact with McKinley?

2 **A And I'm telling you that I don't recall.**

3 Q A day? A week? A month?

4 **A I don't recall.**

5 Q How long was the idea in -- how long was
6 the idea to file this lawsuit in Canyon's mind prior
7 to its being filed?

8 **A Canyon's mind? What do you mean by**
9 **"Canyon's mind"? You told me that a company is not**
10 **people.**

11 Q Well, you've also been referring to it in
12 the third person as Canyon; so how long prior to
13 October 21 --

14 **A I don't recall.**

15 Q -- was Canyon preparing to file this
16 lawsuit?

17 **A I don't recall.**

18 Q Was it a week before?

19 **A I don't recall.**

20 Q Was it a month before?

21 **A I don't recall.**

22 Q Was it a year before?

23 **A It was not a year before.**

24 Q Okay. So it is your position that you
25 believe that McKinley considered multiple

1 contractors?

2 **A I don't have a belief about what McKinley**
3 **did. I don't have knowledge of what McKinley did.**

4 Q But wouldn't it be in the best interest of
5 everyone for McKinley to bid the project before
6 selecting a contractor?

7 **A Not necessarily.**

8 Q Why not?

9 **A For a multitude of reasons.**

10 Q Give me three.

11 **A Relationships with the existing**
12 **subcontractors, pricing power, expertise, ability to**
13 **mobilize quickly, ability to get the project done.**
14 **Just because you talked to ten people doesn't mean**
15 **they're capable.**

16 Q We don't have any indication, sir, that
17 they talked to any people other than Conor Dare and
18 Tim O'Brien at O'Brien Construction. It would seem
19 to me that the appropriate thing to have done,
20 rather than to announce to you in response to your
21 e-mail of proposed contractors plural, rather than
22 say "We've already selected one," I think that the
23 appropriate response should have been "We'll start
24 bidding this so that we can get the best team and
25 best -- at the best price available." Wouldn't you

1 think that that would be the proper thing to do
2 financially?

3 **A Not necessarily.**

4 Q Not even asking what other options are out
5 there?

6 **A Not necessarily.**

7 Q What is the first recollection you heard of
8 the name McKinley?

9 **A I was provided the McKinley name by**
10 **counsel.**

11 Q Do you recall when that was?

12 **A During the thought that there was going to**
13 **be a receiver appointed.**

14 Q And did you consider any other potential
15 receivers?

16 MR. DOLAN: Oh, I'm sorry. Thank you,
17 Mr. Goldman. That has been struck by the judge as a
18 topic for today.

19 MR. MILLER: No, it wasn't.

20 MR. DOLAN: Yeah, actually it was.

21 MR. MILLER: No. For two reasons.

22 MR. DOLAN: Selection of the receiver was
23 stricken by the judge.

24 MR. MILLER: Your motion was as to
25 Mr. Scholz only. I can show you your motion if you

1 would like to see it. Your motion was that
2 Mr. Sholz can't testify to it. You didn't ask about
3 anyone else.

4 MR. DOLAN: No. My motion was that Canyon
5 can't testify to it. And Canyon is the deponent --
6 literally the deponent.

7 MR. MILLER: No. I'm deposing Gerald
8 Goldman today. I'm not deposing Canyon. He is not
9 the personal representative.

10 MR. DOLAN: Well, actually he's been
11 offered as the corporate representative?

12 MR. MILLER: But that is not what you put
13 in your motion. And there is no court order that
14 says that.

15 MR. DOLAN: I'm not going to argue with you
16 about this because you're so dead wrong, I don't
17 even know where to begin. I get to decide who the
18 corporate rep is, on which topics, period, the end.
19 I did that. You don't like it, I don't care. That
20 is what he is here for.

21 We're taking a break, we'll come back. If
22 you would like to conduct the dep properly, that's
23 fine, but this gamesmanship has got to stop.

24 MR. MILLER: There is no gamesmanship. You
25 filed -- you filed a motion.

1 MR. DOLAN: Yeah.

2 MR. MILLER: Your motion didn't include
3 Mr. Goldman. That is not my problem.

4 MR. DOLAN: It is a corporate rep
5 deposition. It's a dep of the company.

6 MR. MILLER: Would you like to see your
7 motion?

8 MR. DOLAN: I know what your deposition
9 notice said. It was for a deposition of the
10 company.

11 MR. MILLER: No. My deposition is for
12 Gerald Goldman individually. I'll show you his
13 notice and the court order when we get back.

14 MR. DOLAN: Both.

15 MR. MILLER: Wrong.

16 MR. DOLAN: Both.

17 MR. MILLER: Wrong.

18 THE REPORTER: Off the record?

19 THE VIDEOGRAPHER: Counsel, can we go off
20 the record?

21 MR. MILLER: Now we can.

22 THE VIDEOGRAPHER: Going off the record at
23 1:59.

24 (Recess.)

25 THE VIDEOGRAPHER: This is disk 4 in the

1 deposition of Gerald Goldman. We're back on the
2 record at 2:10.

3 MR. MILLER: I'm just going to make a
4 record and we can move on.

5 The plaintiff filed a motion for protective
6 order and it starts, "Plaintiff, Can IV Packard
7 Square" --

8 MR. DOLAN: You know what? I'm going to
9 object to this because we're here to take his
10 deposition. We're not here to argue a motion.

11 MR. MILLER: I'm not arguing a motion. I'm
12 simply making a record, and it is my deposition.

13 MR. DOLAN: A record for who? On a motion?

14 MR. MILLER: I'm making a record for the
15 court for the fact that --

16 MR. DOLAN: You can do that in front of the
17 court, not here and waste everybody's time.

18 MR. MILLER: You're the one that ran out
19 for ten minutes. I could do this in 30 seconds if
20 you'd just stop talking.

21 MR. DOLAN: No. You're --

22 MR. MILLER: I'm not reading your --

23 MR. DOLAN: You're going to waste
24 everybody's time by referring to a motion.

25 MR. MILLER: I'm reading this portion, and

1 then we'll move on.

2 MR. DOLAN: Well, no, we won't because I'm
3 going to respond.

4 MR. MILLER: Plaintiff filed this motion.
5 I'm holding it in my hand. It says,

6 "Plaintiff Can IV Packard Square LLC,
7 plaintiff, by and through its
8 attorneys Dickinson Wright PLLC,
9 hereby moves pursuant to MCR 2.302(c)
10 for an order limiting the scope of
11 Packard Square's LLC notice of taking
12 video deposition duces tecum of
13 corporate representative plaintiff
14 and Kevin Scholz individually (the
15 notice) and providing that certain
16 matters may not be inquired into,"
17 and on and on.

18 MR. DOLAN: Yes.

19 MR. MILLER: I'm not done.

20 MR. DOLAN: No. All right. Fine. Finish
21 and then I'll respond.

22 MR. MILLER: The proposed order that you've
23 submitted to the court for entry provides, quote,
24 "It is ordered that the motion is
25 denied as to topics F and S and

1 contained" -- sorry "topics F and S
2 contained in Packard Square LLC'S
3 notice of taking video deposition
4 duces tecum of corporate
5 representative of plaintiff and Kevin
6 Scholz individually. It is further
7 ordered that the motion is granted as
8 to topics G, H, and Q, and defendant
9 shall not inquire regarding the
10 decision to file suit, the selection
11 of the receiver, and how McKinley was
12 appointed chosen."

13 This, in my opinion, is an overbroad order
14 that we will object to because the notice of taking
15 deposition of Gerald Goldman does not make reference
16 at all to any issues related to -- in this case, nor
17 does it provide that we're taking his deposition as
18 the corporate representative.

19 The corporate representative description
20 that was placed in the motion and in the order
21 refers solely to the title of the notice of taking
22 Kevin Scholz's deposition.

23 It is my contention that you didn't ask for
24 a protective order for Mr. Goldman and you didn't
25 get one. That is No. 1.

1 No. 2, Mr. Goldman opened the door to this
2 line of questioning by his answers already. And so
3 as far as I'm concerned, the door has been opened,
4 and I can inquire upon it.

5 Now, what I will tell you right now is
6 that, you know, I don't need to continue further
7 pursuing this line of questioning at this time, but
8 I reserve the right to ask the court to compel the
9 answers to this and all the other questions that the
10 witnesses have refused to answer today. If I have
11 to do that, I will. And the fact of the matter is I
12 didn't draft the motion. You did.

13 MR. DOLAN: Are you finished?

14 MR. MILLER: Yes. And I'm ready to
15 proceed.

16 MR. DOLAN: Okay. So my response is this:
17 The words you read were clear and accurate. You
18 misinterpret, misunderstand, and misconstrue them by
19 saying that the corporate rep deposition is of an
20 individual. The words were clear.

21 The motion for protective order was of the
22 corporate representative deposition and Kevin
23 Scholz. They're two different things. There is a
24 corporate deposition and there is a deposition of an
25 individual.

1 The corporate deposition is a thing. It is
2 a deposition of a corporation. And I get, under the
3 rules, to pick who is going to be the representative
4 of the various topics. So everything you read is
5 accurate and it is exactly as I've said it is.

6 Now we can proceed.

7 MR. MILLER: Except there is a court order
8 that says the opposite.

9 MR. DOLAN: No, it doesn't. It says
10 exactly what I said it says.

11 MR. MILLER: Okay. It doesn't. Let's move
12 on.

13 Q When O'Brien was presented to you by
14 McKinley, did you object to the selection?

15 A **I'm sorry. Repeat your question.**

16 Q Yeah. When you got Exhibit 1 and were told
17 that the general contractor had been selected and it
18 was O'Brien Construction, did you raise any
19 objection to McKinley?

20 A **No.**

21 Q Why not?

22 A **Because the receiver had a job to do. We**
23 **had a project that was supposed to be substantially**
24 **complete in October of 2016 that was -- pick the**
25 **number -- 50 to 60 percent complete. October is not**

1 a construction-friendly time of year in the state of
2 Michigan, and a lot of work needed to get done, and
3 it was determined by McKinley that O'Brien could get
4 that work done.

5 The motion to retain them was ultimately
6 approved by the court.

7 Q My question was a lot simpler than that.
8 First of all, my question was simply did you object
9 to O'Brien. All you had to say was "no," and then
10 when I said why not --

11 A I started with no, and then I gave you the
12 why not.

13 Q Fine. On what basis do you have to
14 conclude that October is not a friendly month for
15 construction in Michigan?

16 A What basis?

17 Q Yeah.

18 A Just the general thought that winter occurs
19 soon thereafter.

20 Q Really? In October? Have you ever been to
21 Michigan in October?

22 A No. I've been there in September.

23 Q Yeah. October is pretty much the nicest
24 month of the year just -- just so you know.

25 A Thank you.

1 Q You should come visit.

2 A **Thank you.**

3 Q Did you ask for O'Brien's financials before
4 agreeing with the receiver's -- not even the
5 receiver -- the purported receiver --

6 A **One second. There is a cord here. Sorry.**
7 **Sorry. Go ahead.**

8 Q That's okay. Did you ask for O'Brien's
9 financials before -- no. Let me ask it a better
10 way. Did you ask the receiver to present you
11 O'Brien's financials before approving the selection?

12 A **I don't recall.**

13 Q You understand, of course, that the
14 receiver wasn't even the receiver yet; correct?

15 A **Yes.**

16 Q Okay. Did you ask to see a schedule before
17 approving O'Brien as the contractor?

18 A **I don't recall.**

19 Q Well, is there -- is there a schedule in
20 this e-mail?

21 MR. DOLAN: There is no approval in that
22 e-mail either.

23 MR. MILLER: No, I know, but is there --
24 was their schedule presented to you?

25 (Whereupon Mr. Neupert reentered.)

1 THE WITNESS: I don't recall if the
2 schedule was presented to me.

3 BY MR. MILLER:

4 Q Don't recall.

5 Was there a GMP contract provided from
6 O'Brien before their selection was approved?

7 A Not at that point.

8 Q Okay. Do you know who Paul Diamond is?

9 A I don't.

10 Q What does winterize mean?

11 A I'm not sure what winterize means.

12 Q You understand, of course, that part of the
13 claim that was made to have the receiver appointed
14 was that the project had to be winterized.

15 Are you aware of that?

16 A Yes.

17 Q But you don't know what the phrase means?

18 A My recollection of it is, again,
19 substantial completion was October 25. The project
20 was 50 percent done. Substantial completion means
21 the project is complete. You have temporary
22 certificates of occupancy for all of the apartments
23 and effectively people can live there.

24 At that date the project was nowhere near
25 that condition, and I remember hearing the phrase

1 winterize in the context of protecting the
2 improvements to make sure that they would survive
3 the impending -- and thank you for the weather
4 report -- upcoming winter to be able to be
5 completed.

6 Q Do you know what the items were that were
7 purportedly needed to be done in order to
8 quote/unquote winterize the property before the
9 winter began as you described it?

10 MR. DOLAN: Object to the form of the
11 question.

12 Go ahead. And foundation.

13 But go ahead.

14 MR. MILLER: I just asked him if he knew
15 what needed to be done?

16 THE WITNESS: No. I'm not a contractor.

17 BY MR. MILLER:

18 Q Did anybody ever tell you what the items
19 were that were necessary before the building would
20 be allegedly damaged?

21 MR. DOLAN: Object to the form of question.

22 Go ahead.

23 THE WITNESS: No.

24 BY MR. MILLER:

25 Q Okay. Did Canyon ever send a list of

1 winterizing issues to my client prior to filing the
2 lawsuit?

3 **A I don't recall.**

4 Q Who would know the answer to that question?

5 **A Canyon is not a contractor.**

6 Q I know Canyon is not a contractor. But did
7 Canyon ever inform my client that there were a list
8 of issues that were necessary to be performed prior
9 to winter in order to winterize the building?

10 **A It is not my job to inform the borrower as
11 to how to complete its project.**

12 Q So who came up with this winterize idea?

13 MR. DOLAN: Object to the form of question.

14 BY MR. MILLER:

15 Q Where did the idea of winterization come
16 from if it didn't come from you?

17 MR. DOLAN: Same objection.

18 BY MR. MILLER:

19 Q I'm asking where did the idea of
20 winterization come from?

21 **A The court appointed the receiver to protect
22 the collateral and ultimately finish the project.**

23 Q I understand, but your company filed a
24 lawsuit. And in that lawsuit it said that the
25 property had to be winterized.

1 **A I understand.**

2 Q I'm simply asking you --

3 MR. DOLAN: If you're going to ask him what
4 the complaint said, you need to show him the
5 complaint. You can't mischaracterize it and
6 paraphrase from it.

7 MR. MILLER: Really, Ben? You're going to
8 challenge me on the winterization claim in the
9 complaint?

10 MR. DOLAN: No. I'm saying if you're going
11 to quote the complaint, you should show it to him.

12 BY MR. MILLER:

13 Q Sir, is today the first day you're hearing
14 about winterizing as a basis for filing a lawsuit?

15 **A I'm not a lawyer.**

16 Q That is not responsive to my question. My
17 question is so much easier than that.

18 Is today the first day you're hearing about
19 the concept of winterization as a basis for the need
20 to file this lawsuit?

21 MR. DOLAN: Object to the form of question.

22 THE WITNESS: I've heard of the concept of
23 winterization previously.

24 BY MR. MILLER:

25 Q As it pertains to Packard Square?

1 **A As it pertains to this project, yes.**

2 Q Okay. So when did you first hear that term
3 as it pertained to Packard Square?

4 **A I can't remember when I first heard the**
5 **term.**

6 Q Okay. So who -- who was it who came up
7 with the concept that the building needed to be
8 winterized? Was it Maria? Was it you? Was it
9 Kevin? Was it somebody else? I mean who -- who
10 came up with that? It is a material part of your
11 lawsuit.

12 MR. DOLAN: Object to foundation.

13 THE WITNESS: The project was 50 percent
14 complete at the date of substantial completion.

15 BY MR. MILLER:

16 Q I understand that, but that doesn't mean
17 that it needed to be winterized, did it, sir?

18 **A It doesn't mean that it needed to be**
19 **winterized? The project was 50 percent complete.**
20 **By my math that means it is 50 percent not complete.**
21 **So the receiver was charged with the task of**
22 **completing the project.**

23 Q Let me make this perfectly clear. You
24 don't know the definition of winterize, and you
25 haven't told me who came up with the concept that

1 the building had to be protected by winterization.

2 Is that -- is that a fair assessment of your
3 testimony?

4 **A Not at all.**

5 Q Okay. So what does it mean to winterize?

6 **A It is a step along the path towards
7 completing the incomplete project.**

8 Q So what things had to be done?

9 **A I'm not a contractor. I can't tell you all
10 those steps.**

11 Q So who at Canyon directed the lawsuit to be
12 filed based on the concept that the property needed
13 to be winterized?

14 **A I'm not a lawyer.**

15 MR. DOLAN: Object to the form of the
16 question.

17 BY MR. MILLER:

18 Q I'm not asking you to be a lawyer. It is a
19 fact-based question.

20 Where did the term come from at Canyon?
21 Did it just come out of thin air?

22 **A I don't know where the term came from at
23 Canyon.**

24 Q Okay. So because of that, then, there
25 is -- Canyon never sent a demand to my client to

1 winterize the property and provide it an opportunity
2 to do so?

3 **A The borrower's obligations to proceed in**
4 **completing the project are in the loan document.**
5 **The project was supposed to be substantially**
6 **complete. The project had a contractor dispute,**
7 **liens, and no construction was progressing. So how**
8 **was he going to winterize it if he couldn't get it**
9 **complete on time?**

10 Q Sir, that -- my question wasn't even close
11 to that so -- we can stay here all night if you
12 want. My question is very simple.

13 (Unreportable cross-talk.)

14 MR. MILLER: There is no rule.

15 Q Canyon did not -- very simply: Did Canyon
16 send a letter or any sort of correspondence to my
17 client prior to October 21, 2016, in which it
18 directed my client to, quote, winterize the project?

19 **A To my knowledge it did not.**

20 Q Okay. That's all I'm asking.

21 **A Thank you.**

22 Q Do you know when this alleged winterization
23 was completed at the project by the receiver?

24 **A I do not.**

25 Q Would it surprise you if Tina Van Curen

1 said it wasn't completed until the end of March
2 2017?

3 **A I don't --**

4 MR. DOLAN: Object to the extent that
5 you're mischaracterizing her testimony. Speaks for
6 itself.

7 MR. MILLER: Right. Much of it was later.
8 That's true.

9 Q Do you know what frost laws are, sir?

10 **A No.**

11 Q Let me show you what has been marked as
12 Exhibit 31. It reflects to Exhibit 30 so you
13 might -- I'm sorry. Exhibit 1. Pardon me. So you
14 might want to keep that near you.

15 (Exhibit 31 was marked for
16 identification.)

17 THE WITNESS: Okay.

18 BY MR. MILLER:

19 Q This is a -- would you agree with me this
20 is a reply to the e-mail at the top of Exhibit 1?

21 **A Yes.**

22 Q All right. In the -- at the bottom of this
23 exhibit, which is also the same as the top of
24 Exhibit 1 -- you may look at either -- you make
25 reference to the amount of cash needs -- needed to

1 winterize the project. That is your e-mail;
2 correct?

3 **A Yes.**

4 Q What did you think that money was going to
5 be used for?

6 **A Furthering -- furthering the completion of
7 the project.**

8 Q Why didn't it say what is the -- how much
9 do you need to further complete the project?

10 **A These were the words I chose.**

11 Q Right. But winterization, according to
12 your attorneys, had nothing to do with completing
13 the project. It was a temporary measure, was it
14 not?

15 **A So we're going to argue semantics about
16 whether or not winterization is furthering the
17 project or not?**

18 Q Yes.

19 **A Okay. So what's your question?**

20 Q My question is why -- you must have known
21 what it meant to winterize if you made reference to
22 how much it would cost to do so.

23 **A It is to perform the next steps along the
24 path of completing the 50 percent incomplete
25 project.**

1 Q Do you recall what those next steps were?

2 A **No, I don't.**

3 Q Okay. We're not done with Exhibit "30."

4 A **Okay.**

5 Q Mr. Mason responded to you and said,
6 "Based on the game plan that I
7 provided a few days" -- I don't know
8 what that means, "we estimate that
9 the funds required during the first
10 90" -- I assume it means days -- "to
11 be in the neighborhood of \$1 million.
12 This amount includes the immediately
13 winterization and stabilization of
14 the project, technical evaluation of
15 the engineering, and prep work so
16 that we can begin construction in
17 earnest once the frost laws are
18 lifted."

19 Do you know what that means, "begin
20 construction in earnest once the frost laws are
21 lifted"?

22 A **It means to me that the receiver had a game
23 plan to complete the project that the borrower was
24 unable to complete. That's what it means to me.**

25 Q When would the frost laws would be lifted?

1 **A I don't know when the frost laws would be**
2 **lifted.**

3 Q Well, you seem to know a lot about winter;
4 so wouldn't it make sense that the frost laws would
5 be lifted when the ground is no longer frozen?

6 **A I don't know anything --**

7 MR. DOLAN: Object.

8 (Unreportable cross-talk.)

9 THE REPORTER: Wait. Wait. Wait.

10 MR. DOLAN: Let me object to the
11 argumentative nature of the question.

12 Go ahead. Sorry I interrupted you.

13 THE WITNESS: I don't know the frost laws.

14 BY MR. MILLER:

15 Q Okay. Well, it sounds like Mr. Mason is
16 saying to you that they're not going to begin
17 construction in earnest until spring. Is that how
18 you read that?

19 **A Those are Mr. Mason's words.**

20 Q Did you have a problem with the concept
21 that it was October 26 and spring wasn't for another
22 five-plus months away for him to start construction
23 in earnest?

24 **A The court appointed McKinley to complete**
25 **the project, and that's what they were doing. I'm**

1 not a general contractor. I don't sequence
2 construction, I don't bid construction, I don't do
3 construction. Canyon, and in my role, I finance
4 construction.

5 Q But you -- just so we're crystal clear. If
6 the not-even-appointed receiver had told you that he
7 is not going to do any real construction for five
8 months, did you raise a concern about that plan?

9 A The schedule and budget for the completion
10 of this project were presented to and approved by
11 the court. They were vetted by Canyon's
12 construction consultants and they were agreed to.

13 Q When -- when did all of those different
14 things happen?

15 A I don't know.

16 Q Well, I don't think they happened before
17 the receiver was appointed, did they?

18 A They must have happened. There is TCO for
19 60 units now.

20 Q Yeah. Two years after they have been
21 working on the project. Do you think that's an
22 appropriate amount of time for that work to have
23 been done?

24 A It took two years to get to not substantial
25 completion and 50 percent done.

1 Q Wouldn't you agree with me that the latter
2 half of construction is a lot faster and easier than
3 the initial half?

4 A No. I wouldn't agree with that at all.

5 Q Really? Finishes, drywall, painting,
6 carpet, design -- the foundation is completed, the
7 rough is. You think that the second half would take
8 more time than the first half?

9 A Well, when you factor in delays for
10 bankruptcy and court hearings and approvals.

11 Q What -- what court hearings and approvals
12 are you referring to?

13 A You don't recall the bankruptcy?

14 Q I recall the bankruptcy. I didn't ask you
15 about that. I asked about the court hearings and
16 approvals.

17 A This is my testimony. You asked me about
18 the delays, and I'm saying there was four-month
19 delay at a minimum for the bankruptcy.

20 Q I see. And you -- and you know that how?
21 Because somebody told you; right? Because you're
22 not on the site. You wouldn't know what was
23 happening or not happening; correct?

24 MR. DOLAN: I'm going to object. First you
25 asked four questions, which really were not even

1 questions. If you want to ask him one question,
2 I'll let him answer. That's fine. But to rattle
3 off four questions in a row and expect him to answer
4 is ridiculous.

5 BY MR. MILLER:

6 Q You have no personal knowledge of that
7 four-month delay, do you?

8 A Of course I have personal knowledge of it.

9 Q Really? Were you there on-site to see it?

10 A I got reports and saw it.

11 Q So that's not personal knowledge. Somebody
12 told you that; correct?

13 A So me seeing the reports is not personal
14 knowledge. I'm not a lawyer. I don't know what
15 personal knowledge means.

16 Q Okay. So somebody at the receiver told you
17 something and you're recounting it to me as though
18 it were fact. Just so we're clear.

19 MR. DOLAN: Object to the form of question.

20 MR. MILLER: Is that true?

21 THE WITNESS: I know that during the
22 pendency of the bankruptcy there was no work done
23 on-site.

24 BY MR. MILLER:

25 Q But you don't know that took four months,

1 do you?

2 **A I would have to go back and review the**
3 **dates of the filing and the dates that the work**
4 **started again.**

5 Q Okay. If in fact my understanding of the
6 frost laws are a little bit better than yours and in
7 fact that what Mr. Mason is telling you is that he
8 wasn't going to do any real construction for five
9 months, how did that fit into Canyon's plan to get
10 the purportedly half-finished building completed
11 quickly?

12 **A I'm not sure I understand your question.**

13 Q You've testified that your goal -- what --
14 wasn't the goal you just said to complete the
15 project?

16 **A The receiver is charged with the obligation**
17 **to complete the project.**

18 Q Right. But remember: Canyon filed the
19 lawsuit; correct?

20 **A Yes.**

21 Q But for Canyon's having filed the lawsuit,
22 there would be no receiver; correct?

23 **A I'm not a lawyer.**

24 Q Well, how else would a receiver get
25 appointed without a lawsuit, sir?

1 **A** **I don't give legal opinions. I don't know.**
2 **Another creditor could have done it.**

3 **Q** By filing a lawsuit?

4 **A** **Okay.**

5 **Q** Okay. So the facts remain that there was
6 one lawsuit filed and it was filed by Canyon;
7 correct?

8 MR. DOLAN: No. Objection. That is not
9 accurate at all.

10 MR. MILLER: There was another lawsuit
11 filed?

12 MR. DOLAN: Well, technically all the
13 counterclaims and cross-claims are lawsuits.

14 BY MR. MILLER:

15 **Q** Well, but none of them were filed prior to
16 Canyon's lawsuit; correct?

17 **A** **No.**

18 MR. DOLAN: No. We were the first. That's
19 true.

20 MR. MILLER: It is irrelevant.

21 MR. DOLAN: Yes, that I agree with.

22 BY MR. MILLER:

23 **Q** The point is: If the point of getting the
24 construction completed was to get the construction
25 completed, how is waiting five months going to

1 accomplish that goal?

2 **A The receiver and its contractor were going**
3 **as fast as they could go.**

4 Q And you know this how?

5 **A I said my statement.**

6 Q Are you familiar with the term -- and
7 strike that.

8 Is the term "winterize" anywhere in the
9 loan agreement?

10 **A No.**

11 Q Sir, just so we're clear, Canyon didn't
12 really care how long it took for the building to be
13 completed, did it?

14 **A Our preference is that projects are**
15 **completed in accordance with the original timeline**
16 **in the loan documents.**

17 Q Right. But once that allegedly passed, the
18 timing of the completion become a nonissue for
19 Canyon, did it not?

20 **A I disagree.**

21 Q Well, what efforts did Canyon make to
22 ensure that the building would be completed quickly?

23 **A Again, Canyon is a lender. Canyon is not a**
24 **contractor.**

25 Q But this was such a great opportunity for

1 Canyon, wasn't it, to have the receiver appointed
2 and to charge 16 percent interest and to have the
3 project go on forever, and to --

4 (Unreportable cross-talk.)

5 THE WITNESS: I don't view that as an
6 opportunity -- I don't view that as an opportunity
7 at all.

8 BY MR. MILLER:

9 Q Well, if Canyon makes more money as a
10 result, it is most certainly an opportunity.

11 **A The amount of money -- the amount of money**
12 **Canyon makes on this loan will be determined when it**
13 **is repaid.**

14 Q I've heard that. But -- okay. If it turns
15 out that Canyon makes millions more on this deal
16 than it would have originally, then Canyon is going
17 to make out just fine, won't it?

18 **A Canyon didn't default on the loan.**

19 Q I didn't ask you who defaulted on the loan.
20 And, frankly, I believe that Canyon did, but that's
21 not the purpose of my question. The question was:
22 Canyon will make millions more if it all goes
23 according to Canyon's plan?

24 MR. DOLAN: Object to the form of the
25 question.

1 THE WITNESS: I haven't calculated that.

2 (Brief microphone issue interruption.)

3 MR. MILLER: Can we mark this as the
4 next -- whatever is next in sequence, please.

5 (Exhibit 37 was marked for
6 identification.)

7 BY MR. MILLER:

8 Q Sir, I'm going to show you what has been
9 marked as Exhibit 37, please.

10 A Am I allowed to have something to write
11 with or no?

12 Q No, you can't write on the exhibit.

13 A Okay. Thank you.

14 Q You can have a piece of paper if you would
15 like to have that to make notes on. I'll give you
16 one of those.

17 A You got a paper right there?

18 MR. DOLAN: Here.

19 THE WITNESS: Thank you.

20 It is okay.

21 Okay.

22 BY MR. MILLER:

23 Q Okay. Have you seen Exhibit 37 before?

24 A Yes.

25 Q Do you recall reviewing it when you

1 received it?

2 **A I recall reading it, yes.**

3 Q Do you recall whether you responded to my
4 client on this -- in response to this e-mail?

5 **A I do recall e-mails and letters about what
6 was required to consider a replacement contractor.**

7 Q Did you respond to this particular e-mail?

8 **A I don't recall the timing of the responses.
9 Again, I know there was an e-mail sent about what
10 was required to review a replacement contractor, and
11 there was a letter sent about that.**

12 Q But you're not sure if it was before or
13 after you received this document?

14 **A I don't recall -- I don't recall the
15 timing.**

16 Q I see. After having reviewed this again
17 with financial data and résumé and a plan attached,
18 wouldn't it have made more sense for Canyon to
19 recommend to the receiver that Gleeson stay on the
20 job as the contractor?

21 MR. DOLAN: Object to the form of the
22 question. Gleeson was not on the job.

23 BY MR. MILLER:

24 Q Wouldn't it makes sense for Gleeson to be
25 the contractor for the receiver based on your

1 knowledge and all the information that you received
2 that you had not received from O'Brien?

3 **A I don't agree with that statement.**

4 Q Why not?

5 **A First and foremost this is not GMP.**

6 Q You didn't have a GMP from O'Brien
7 either --

8 **A That's correct.**

9 Q -- when they were appointed.

10 Okay. What else?

11 **A This e-mail indicates that Gleeson is a
12 possibility.**

13 Q Where does it say that?

14 **A "We are close to terms with both Gleeson
15 and DeMaria" -- I'm assuming DeMaria is not Gleeson.**

16 Q That is true.

17 **A Additionally, the contract with Quandel
18 required lender approval to terminate, and I
19 remember detailing in an e-mail the requirements to
20 properly do that which were not met.**

21 Q But as we've learned earlier, none of those
22 are actually set forth in the loan agreement;
23 correct?

24 **A Again, I have sole discretion to approve a
25 new contractor.**

1 Q So -- just so we're clear, your testimony
2 is that you're not sure if you responded to
3 Exhibit 37?

4 A **I generally responded about what was**
5 **required in order to have Canyon consider a**
6 **replacement contractor.**

7 Q Okay.

8 A **This is not it, by the way.**

9 Q This is not what?

10 A **This is not the requirements that were set**
11 **forth in the e-mail and the letter that I sent.**

12 Q I got that. But back to my original
13 question, which is based on this information,
14 wouldn't it have made sense for the receiver to
15 instead of choosing O'Brien prior to its appointment
16 as receiver, to have been directed by you to say,
17 "Hey, wait minute. I know you said you should think
18 about Gleeson, but based on the fact Gleeson had
19 presented you a schedule a week prior to finish the
20 building by spring of 2017, shouldn't that have been
21 a significant consideration?"

22 A **I don't believe Canyon can direct the**
23 **receiver.**

24 Q Then why in Exhibit 1 is the receiver --
25 the purported receiver discussing with you what its

1 plan is?

2 **A I'm not directing them. They're informing**
3 **me.**

4 Q They weren't even -- they weren't even
5 appointed yet.

6 **A They were informing me what they may do if**
7 **they were appointed.**

8 Q You know you had every right to dismiss the
9 case and keep my client in -- with Gleeson on the
10 job to finish the job by spring of 2017 if you had
11 chosen; correct?

12 **A I think Canyon is aware of what its rights**
13 **are, yes.**

14 Q Okay. Are you -- I'm going to show you
15 what has been marked I think as 19.

16 I'm going to show you what has been marked
17 as Exhibit 19.

18 Here you go.

19 (Exhibit 19 was marked for
20 identification.)

21 THE WITNESS: Got it.

22 BY MR. MILLER:

23 Q Have you ever seen this document before?

24 **A Yes.**

25 Q And in what context did you review it

1 previously?

2 **A** **I can't remember, but I do remember**
3 **receiving it.**

4 **Q** Did you consider any of the concerns raised
5 by the people who wrote and sent this letter?

6 **A** **It appears to me that this letter is more**
7 **people complaining about the contractor that the**
8 **borrower selected.**

9 MR. MILLER: Debbie, would you read back my
10 question, please.

11 (Record read.)

12 BY MR. MILLER:

13 **Q** That was my actual question.

14 MR. DOLAN: Can you read the answer back
15 then, too.

16 (Record read.)

17 BY MR. MILLER:

18 **Q** So did you consider any of the concerns set
19 forth in this letter?

20 **A** **I'm not clear when this letter was relative**
21 **to the date the receiver was appointed.**

22 **Q** About a week after. The receiver order was
23 dated November 1, 2016.

24 **A** **So the receiver would have been in control**
25 **of the project at this point.**

1 Q I understand that, but did you ever
2 consider any of the issues raised in the letter?

3 A **The receiver was already appointed at this**
4 **point.**

5 Q Did you ever consider any of the issues
6 raised in the letter?

7 A **The receiver was appointed and who was in**
8 **control of the project at that point.**

9 Q Did you ever consider any of the issues
10 raised in the letter?

11 A **You have my answer three times now.**

12 Q Your answer is not responsive, sir. It is
13 a yes-or-no question.

14 A **My answer is my answer.**

15 Q You understand, of course, that at any time
16 you could have stipulated to the dismissal of the
17 case and then there would have been no receiver;
18 right?

19 A **Yes, we understand that.**

20 MR. DOLAN: Object to the form of the
21 question.

22 (Unreportable cross-talk.)

23 BY MR. MILLER:

24 Q It is irrelevant whether the receiver was
25 in control of the project. The question is about

1 the letter. Did you ever consider any of the
2 concerns raised in the letter?

3 MR. DOLAN: Object to the form of the
4 question. You've actually misstated the law.

5 BY MR. MILLER:

6 Q I've actually asked the question --

7 MR. DOLAN: Once the receiver is appointed,
8 we can't just dismiss and discharge the receiver
9 without court approval. That's not true.

10 MR. MILLER: Well, there could have been a
11 stipulated order that would have led to court
12 approval. So that is true.

13 But, nevertheless, I'm not here to argue
14 the law. I'm here to ask the question which
15 Mr. Goldman refuses to answer which is: Did you
16 consider any of the issues raised in the letter.

17 MR. DOLAN: I think he did answer. It's
18 obvious -- because the receiver is in charge of the
19 project, there is no point to the letter.

20 MR. MILLER: Then all he has to do is say
21 "no."

22 MR. DOLAN: Well, he's answered the
23 question.

24 MR. MILLER: No.

25 MR. DOLAN: You just don't like the -- the

1 way he's answered it. I mean, that's -- that's your
2 thing.

3 MR. MILLER: It's a yes or no.

4 MR. DOLAN: You don't like the way people
5 answer questions.

6 MR. MILLER: No, Ben, it isn't.

7 THE WITNESS: At this point in time
8 everybody had alternatives. We could have been
9 repaid in full and been completely -- had nothing to
10 do with the project. You're asking me did people
11 consider their alternatives. Everyone is aware of
12 what their alternatives were. The receiver was in
13 control of the project and was going to build the
14 project.

15 BY MR. MILLER:

16 Q Did you forward this letter to the
17 receiver?

18 A I don't recall if I did.

19 Q Did you respond to the letter?

20 A I don't recall if I did.

21 Q Do you believe you probably did not respond
22 to the letter?

23 A I don't recall.

24 Q Well, why would you have responded to the
25 letter if the receiver is in control of the project?

1 **A I don't recall if I responded to the**
2 **letter.**

3 Q And back to Exhibit 37 for that matter, if
4 you did, in fact, respond to Exhibit 37, we should
5 have the e-mail in the production that was presented
6 to us by your attorney; correct?

7 MR. DOLAN: Actually, that is not true.

8 MR. MILLER: Why not?

9 MR. DOLAN: You should have it in your
10 in-box because it would have been sent to Craig
11 Schubiner.

12 MR. MILLER: Well, Craig is not under oath
13 right now.

14 MR. DOLAN: No.

15 MR. MILLER: But he would testify that we
16 never got a response.

17 MR. DOLAN: Then when he testifies, he can
18 say that.

19 BY MR. MILLER:

20 Q Okay. But would there be any reason why we
21 would not have received the response if you actually
22 sent one as part of the thousands of e-mails that we
23 have received from Canyon? You didn't pull that out
24 before sending it off for production, did you?

25 **A I didn't do the production.**

1 Q Okay. So we should have it if there is
2 such an e-mail; correct?

3 A I'll let my counsel answer that.

4 MR. MILLER: So we should have it if there
5 is such an e-mail; correct?

6 MR. DOLAN: If Mr. Schubiner has an in-box,
7 he should have e-mails that he received, of course.

8 MR. MILLER: No. We asked for e-mails
9 produced by Canyon. You have --

10 MR. DOLAN: I'm not going to talk about
11 this right now. If you want to ask the witness
12 questions, go ahead. I'm not going to engage in
13 motion practice here in this deposition.

14 BY MR. MILLER:

15 Q So you don't know if it exists and you
16 don't know if we would have it if it did?

17 A I know that my response exists. I don't
18 know if you have it.

19 Q Okay. Well, we'll double-check the e-mails
20 that we received from -- from your counsel.

21 Let's mark this, please.

22 Sir I'm showing you what has been marked as
23 Exhibit 38. Would you take look at that, please.

24 (Exhibit 38 was marked for
25 identification.)

1 THE WITNESS: Okay.

2 BY MR. MILLER:

3 Q Have you seen Exhibit 38 before?

4 A Yes.

5 Q All right. I'm mostly interested in the
6 very top e-mail on the first page of 38, the one
7 that you wrote most recently in this exhibit.

8 Do you see that?

9 A Yes.

10 Q What did you -- explain to me, if you
11 would, about -- explain to me, if you would, what it
12 meant by "have they sent an official letter or
13 e-mail that they're rescinding the stop work
14 letter?"

15 A The contractor that the borrower selected
16 had issued a stop work letter, meaning they were
17 preparing to stop work and pull off the job.

18 Q Do you know if you ever received a
19 rescission of the stop work letter?

20 A I don't recall if I received a rescission
21 of it.

22 Q How would that have affected anything if
23 you had?

24 A I can't predict what would have happened
25 had we received it.

1 MR. MILLER: Let's mark this, then.

2 (Exhibit 39 was marked for
3 identification.)

4 THE WITNESS: The reality is this is just
5 documentation of the fighting between the contractor
6 and the borrower which continued at this time on the
7 project.

8 BY MR. MILLER:

9 Q Sir, I'm going to show you what has been
10 marked as Exhibit 39. It is paper-clipped together
11 because there are two documents. One is an e-mail
12 and one is an attachment, but they go together.
13 Please take a look at them.

14 A Yes.

15 Q Is this the rescission of the stop work
16 letter that you were seeking?

17 A I don't recall.

18 Q Well, can you read it? Isn't that what it
19 says it is?

20 A It is a conditional stop work rescission,
21 yes.

22 Q Is that fulfilling the request that you had
23 made in the prior exhibit?

24 A It may or may not. I don't know.

25 Q Well, why didn't it?

1 **A It is more evidence that there were huge**
2 **fights and problems on-site between the contractor**
3 **and Schubiner.**

4 Q Well, that is not my question. I wasn't
5 asking about fights. My question was this a
6 rescission of a stop work letter that you had
7 requested in Exhibit 38?

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

9 Q It is right in front of you, sir. You can
10 read it. What does it say?

11 **A I told you it is a conditional stop --**
12 **agreement to not stop work if a bunch of conditions**
13 **are met, evidencing to me the continued disputes**
14 **between the contractor and the borrower.**

15 Q So where does it say in your Exhibit 38
16 that a rescission of the stop work letter has to be
17 drafted in the manner in which you direct?

18 **A It doesn't.**

19 Q Okay. So then why is Exhibit 39 not in
20 compliance with your request?

21 MR. DOLAN: Why is a conditional letter not
22 in compliance with asking for a letter? That is
23 your question, just to be clear?

24 BY MR. MILLER:

25 Q My question is why it doesn't comply with

1 his request.

2 **A Borrowers borrow money to build projects.**
3 **They are in charge of keeping the contractor working**
4 **towards completing the project pursuant to the**
5 **milestones that they agreed upon. It is not my job**
6 **to referee a dispute between your client and its**
7 **former contractor, or possibly former contractor.**

8 **Q All right. Let's try this again. You sent**
9 **a letter -- you sent an e-mail asking for a**
10 **document. A document was sent to you. Was the**
11 **document not what you had asked to receive?**

12 **A I asked for a stop-work rescission.**

13 **Q Yes.**

14 **A I got a conditional stop-work rescission.**
15 **Once I received it, I don't know what I did next**
16 **back then.**

17 **Q So it is your testimony that the rescission**
18 **letter that was attached as Exhibit 39 was not**
19 **sufficient to comply with what you requested for in**
20 **Exhibit 38; is that what you're saying?**

21 **A I don't recall.**

22 **Q Well, I am asking what you're saying today.**

23 **A What I'm saying today is it was a**
24 **conditional stop-work notice, and I don't remember**
25 **what happened after that in the long stream of**

1 **back-and-forth e-mails I was copied on related to**
2 **the dispute between your client and its then**
3 **contractor.**

4 Q How long of a dispute was this when you
5 refer to it as a long dispute?

6 A **Months and months and months.**

7 Q How many is that?

8 A **That was at least three.**

9 Q So three months?

10 A **At least three is what I said.**

11 Q Three months. When you say "months and
12 months and months," it sounds more like six because
13 months is two months at a minimum, months again is
14 two months at a minimum, and months a third time
15 would be two months at a minimum would be six
16 months. Are you saying three months?

17 A **I'll let you do the math.**

18 Q Well, I'm asking you because I'm asking you
19 the question.

20 A **It was a long dispute.**

21 Q Three months? A year?

22 A **It was a long dispute.**

23 Q All right. How long is long, sir?

24 A **I don't recall how long the dispute was.**

25 **We received dozens of letters.**

1 Q Did you ever say anything to Packard Square
2 or my client that wasn't 100 percent true when you
3 said it?

4 MR. DOLAN: Object to the form of the
5 question. Go ahead and answer if you can.

6 (Whereupon Mr. Neupert exited.)

7 THE WITNESS: Rephrase, please.

8 BY MR. MILLER:

9 Q Did you ever say anything to Packard Square
10 that wasn't 100 percent true when you said it?

11 A I don't recall.

12 Q So you might have misled my client on
13 numerous occasions; is that correct?

14 A I doubt I misled your client.

15 Q Well, then why can't you tell me if you
16 have been 100 percent truthful with my client
17 throughout this process?

18 A To my knowledge I have been truthful with
19 your client.

20 Q Completely truthful?

21 A To my knowledge I have been truthful with
22 your client.

23 Q Were you present in the room where my
24 client had been brought to Los Angeles to meet to
25 discuss issues relating to the contract on the

1 construction?

2 **A What do you mean brought to?**

3 Q He was asked to come to Los Angeles.

4 **A I was present in a meeting in Canyon's**
5 **offices with Mr. Schubiner.**

6 Q Okay. Who else was present at that
7 meeting?

8 **A I was there, Maria Stamolis was there, I**
9 **believe Bruce Fraser was there, Marcus Neupert was**
10 **there, and counsel for Mr. Schubiner. I believe his**
11 **name was Scott Kalt.**

12 Q Very good. How do you remember that?
13 Scott Kalt? How do you remember that?

14 **A I remember.**

15 Q Of all the things to remember.

16 Did Ms. Stamolis yell at my client and walk
17 out the door?

18 **A I don't recall her yelling at your client.**

19 Q Did she ever raise her voice at my client?

20 **A I don't recall her raising her voice at**
21 **your client.**

22 Q Did she abruptly leave the room?

23 **A At one point she left the meeting.**

24 Q Do you recall one of the issues being
25 discussed at the meeting had to do with Mr. Kalt's

1 concern, as well as my clients, that allegations
2 were being made by Canyon but were not substantiated
3 by Canyon?

4 **A I don't know what that question means.**

5 Q Well, yeah, I'll try and rephrase it then
6 for you.

7 Do you recall at that meeting a concern
8 being raised by either my client, or my client's
9 counsel, that allegations that were made by Canyon
10 were not supported by any documentation or backup
11 information?

12 **A What allegations?**

13 Q Allegations -- I don't know. I wasn't at
14 the meeting.

15 **A Well, you're asking me to opine upon**
16 **allegations you're not telling me about. What are**
17 **the allegations you would like me to opine about?**

18 Q Well, what allegations were made at the
19 meeting? I wasn't there.

20 **A I don't recall allegations being made at**
21 **the meeting.**

22 Q It was a lovefest between Canyon and my
23 client at the meeting?

24 **A There is a difference between lovefest and**
25 **making allegations.**

1 Q Well, then why don't you just tell me --
2 tell me the chronology of what happened at the
3 meeting.

4 MR. DOLAN: Why don't you just ask him to
5 do it instead of suggesting things that are
6 nonsense.

7 MR. MILLER: Because I'm trying to save
8 time.

9 MR. DOLAN: That doesn't save any time
10 obviously.

11 MR. MILLER: Clearly not. Clearly not.

12 Q What happened at the meeting, sir?

13 A It was a meeting relative towards trying to
14 ascertain if there was going to be additional
15 capital provided by the borrower to solve the issues
16 to potentially reinstate the loan and get the
17 project back on track generally.

18 Q Well, that took about seven seconds. Then
19 what happened?

20 A There was no meeting of the mind and the
21 meeting ended.

22 Q So that's no more helpful than it was when
23 I was trying to elicit an answer. So that actually
24 failed.

25 A You liked the previous short answer but you

1 **didn't like the second short answer.**

2 Q No. I want to know what happened at the
3 meeting. I want to know who said what --

4 THE REPORTER: Wait. Wait. Wait. Slow
5 down.

6 THE WITNESS: I just told you what
7 happened.

8 BY MR. MILLER:

9 Q Who said what to whom?

10 **A I can't recall who said what to whom in a**
11 **meeting well over a year ago.**

12 Q I'm going to show you what has been marked
13 as Exhibit 2. Maybe this will refresh your
14 recollection.

15 (Exhibit 2 was marked for
16 identification.)

17 THE WITNESS: Okay.

18 BY MR. MILLER:

19 Q All right. Having reviewed Exhibit 2, does
20 this refresh your recollection about some of the
21 issues of discussion at the meeting?

22 **A It confirms what I already told you.**

23 Q Well, you didn't mention anything about a
24 request that Canyon provide, quote, all the cards on
25 the table.

1 Do you know what that was referring to?

2 **A My comment was referring to Craig putting**
3 **up fresh equity.**

4 Q Right. I understand. That is part of the
5 discussion. There was more discussed at that
6 meeting as well, wasn't there?

7 **A It is a real big part of it.**

8 Q I understand your position on that, but the
9 question before you is wasn't there a request to see
10 the information based upon which Canyon based its
11 allegation that fresh equity, as you describe it, is
12 necessary.

13 **A I think the request was for the borrower to**
14 **come in with a full business plan to right the ship**
15 **and complete the project. My recollection is that**
16 **didn't happen.**

17 Q Let's try this again.

18 (Whereupon Ms. Stamolis exited.)

19 BY MR. MILLER:

20 Q Did -- did my client ask you or Maria or
21 anybody else from Canyon to provide documentation to
22 support the allegation that fresh equity was
23 allegedly necessary for the project?

24 **A I'm sorry. What is your question?**

25 Q Did anyone at the meeting ask anyone from

1 Canyon whether or not -- no, not whether or not.
2 Did anyone at the meeting ask anyone from Canyon to
3 show documentation to establish the financial issue
4 for which Canyon was demanding so-called fresh
5 equity?

6 **A I don't recall.**

7 Q Well, having -- having read this e-mail
8 where that information was requested, did Canyon
9 ever provide any such documentation?

10 **A I don't recall.**

11 Q Who would -- who would know the answer to
12 that?

13 **A The request didn't go to me. It went to
14 Bruce Fraser. I don't recall.**

15 Q Do you have any recollection of anyone at
16 Canyon providing any information to Mr. Kalt or his
17 client relative to the calculations about the
18 purported overruns?

19 **A I don't recall what was provided to
20 Mr. Kalt.**

21 Q Do you know if anything was provided to
22 Mr. Kalt?

23 **A I don't.**

24 Q Okay. Is there an e-mail or a letter that
25 you sent seeking a business plan for my client that

1 you can refer to?

2 **A I believe there was something sent**
3 **requiring that that information be brought to the**
4 **meeting.**

5 Q But you're not fully aware of it today?

6 **A I don't have it, no, today.**

7 Q The issue of winterization was not
8 discussed at the meeting, was it?

9 **A I don't recall.**

10 **Can we have a couple minutes to go to the**
11 **restroom?**

12 MR. MILLER: Sure. Five. But I'm adding
13 this to the time that has been taken away from me
14 thus far.

15 MR. DOLAN: We're leaving at 5:00.

16 THE VIDEOGRAPHER: Going off the record at
17 3:06.

18 (Recess.)

19 (Whereupon Ms. Stamolis and Mr. Neupert
20 reentered.)

21 THE VIDEOGRAPHER: This is disk 5 in the
22 deposition of Gerald Goldman. We're going back on
23 the record at 3:16.

24 MR. MILLER: Okay. That was ten minutes.

25 Q Mr. Goldman, did you think it was

1 appropriate not to tell my client about the pending
2 lawsuit when he was standing in your offices?

3 **A I don't have an opinion about that.**

4 Q Was it a discussion that was made between
5 you and other Canyon people whether to discuss it or
6 not discuss it with him before he arrived?

7 **A I don't recall being party to such a
8 discussion.**

9 Q Why is Canyon so willing to pay so much
10 more to complete this building than Packard Square
11 was going to spend?

12 **A What was Packard Square going to spend?**

13 Q They had a \$53 million construction
14 contract, and it is blown over that -- \$32 million
15 construction contract, and the cost has way expanded
16 over that.

17 **A So they had a \$32 million construction
18 contract with a contractor that they told me in
19 writing was grossly negligent, that had a PCO log
20 that was very lengthy, was requesting millions of
21 dollars in change orders, and you would like me to
22 comment against that.**

23 Q Why is Canyon willing to pay so much more
24 to finish this building with the receiver?

25 **A Canyon is willing to pay what it takes to**

1 **finish this building.**

2 Q Is there any concern that Canyon and the
3 receiver are overpaying subcontractors?

4 A **We believe the receiver is doing the best
5 it can do to finish the project.**

6 Q You know, I'm trying to move along, and I
7 ask you yes-or-no questions. And when you don't
8 answer them, it makes it harder for me to move
9 along.

10 A **I understand that, but I don't find the
11 questions appropriate.**

12 Q Well, that is really not up to you.

13 A **So that's why I'm answering the way I'm
14 answering them.**

15 Q So do you believe that Canyon's approving
16 overpayments to O'Brien?

17 A **No.**

18 Q Do you think O'Brien is charging exactly
19 what it should cost to do the work that they're
20 doing --

21 A **Yes.**

22 Q -- on the market basis?

23 A **Yes.**

24 Q Do you think that the receiver is receiving
25 exactly what it should be getting to do the work

1 here?

2 **A The court approved the receiver's order and**
3 **fees; so yes.**

4 Q There is an argument to be made for that,
5 but that wasn't for today's purposes. So my
6 question to you is based on the 15,000 and all the
7 other things that they get each month, do you think
8 that's an appropriate amount for them?

9 MR. DOLAN: Objection. He just said "Yes."

10 MR. MILLER: Okay. I just want to make
11 sure he understands, you know, all that it is. It
12 is not really --

13 MR. DOLAN: If you're trying to move this
14 along, when he answers "yes" to the question, I mean
15 the simplest thing to do is go to the next question.

16 MR. MILLER: It would be.

17 Q Have you ever sent e-mails to McKinley
18 complaining about the lack of speed of the
19 construction of the building?

20 **A I don't recall if I have.**

21 Q Are you aware of anybody else on your team
22 who might have done that?

23 **A That's possible.**

24 Q Has anybody on your team communicated
25 directly with O'Brien in this -- during this case?

1 **A I don't know.**

2 Q Have you ever raised any concern with
3 O'Brien about the speed of progress of the
4 construction in this case?

5 **A Canyon would like to see the project**
6 **completed as quickly as possible if that's your**
7 **question.**

8 Q Okay. What efforts, if any, is Canyon
9 making or not making in order to achieve that goal?

10 **A Canyon is not a contractor and Canyon**
11 **doesn't do construction. Canyon funds construction.**

12 Q Okay. And sometimes maybe even overfunds
13 construction, like it might in this case.

14 MR. DOLAN: Objection to the form of the
15 question.

16 BY MR. MILLER:

17 Q Is it possible that Canyon has overfunded
18 construction in this case?

19 **A Is it possible?**

20 Q Yes.

21 **A I guess it is possible.**

22 Q Let me show you Exhibit 25.

23 (Exhibit 25 was marked for
24 identification.)

25 THE WITNESS: Okay.

1 BY MR. MILLER:

2 Q Have you ever seen this document before?

3 A **Never.**

4 Q It was provided to us as Bates No. 64884
5 from your attorney.

6 MR. DOLAN: It doesn't have a Bates number
7 on it.

8 MR. MILLER: I know. Because the one we
9 received was provided in a vertical and we had to
10 flip it to a horizontal.

11 Q Having -- you've not seen this document
12 before? That is your testimony?

13 A **I don't recall seeing this document before.**

14 Q Have you ever seen a document similar to
15 this at Canyon?

16 A **No. This does not look like something
17 Canyon has produced.**

18 Q Okay. Well, I am not sure, then, why not,
19 but it is dated August 24, 2017. Do you see that?

20 A **I see the date.**

21 Q And on the second page it says, "Total of
22 cost overruns, \$17,766,816." Do you see that?

23 A **I see that.**

24 Q Do you have any reason to believe that as
25 of August 24, 2017, that was not an accurate

1 assessment of the cost overruns at that time?

2 **A I have no idea who produced the document.**
3 **I have never seen it before.**

4 Q Do you have any reason to believe that as
5 of that date the project was not over -- did not
6 have cost overruns in the amount of \$17,766,816?

7 **A I can't opine on a document I'm not**
8 **familiar with.**

9 Q I'm not asking you to opine on the document
10 any more. I'm asking you to let me know if you have
11 any differing opinion as to the amount that the
12 project was over cost at that time?

13 **A I haven't calculated the cost overruns on**
14 **that date.**

15 Q Have you calculated the cost overruns on
16 any date?

17 **A No.**

18 Q Do you have any idea what the cost overruns
19 are right now?

20 **A I do not.**

21 Q Do you know that shortly after this date,
22 August 24, 2017, the receiver and Canyon filed a
23 joint motion to ask the court to approve another
24 \$19 million?

25 **A I'm aware of that.**

1 Q Well, was that partially to take care of
2 \$17 million in cost overruns?

3 A I don't know that that number ties to what
4 you're holding.

5 Q Does Canyon approve the budgets and
6 payments to and through the receiver?

7 A The loan approval rights that Canyon has
8 are specified in the receiver loan document.

9 Q So that would be a yes, then?

10 A No. That would be what I just said.

11 Q Canyon doesn't approve the --

12 A Canyon performs the approvals that it is
13 required to perform under the receiver documents
14 that are in place.

15 Q And are you familiar what those terms
16 provide?

17 A No. But if you would like to produce it, I
18 would be happy to look at it.

19 Q I'm not going to be spending the time to do
20 that.

21 A Okay.

22 Q I'm just simply asking about the approval
23 process. You're not familiar with the approval
24 process over the last two years?

25 A Generally we approve draws and we approve

1 budgets. Those are the high-level approvals that
2 Canyon provides.

3 Q You don't approve subcontracts?

4 A I'm not sure if we approve subcontracts or
5 not.

6 Q Did Canyon approve the O'Brien contract?

7 A Yes. I believe that is an approval we
8 provided pursuant to the receiver loan.

9 Q Are you aware that the O'Brien contract
10 has -- do you know if the O'Brien contract has any
11 milestones within it?

12 A I'm aware that it has a date of substantial
13 completion, I believe, in October of this year.

14 Q And are there any penalties if that date is
15 not met?

16 A I'm not sure.

17 Q Are there any bond requirements for O'Brien
18 in that contract?

19 A No.

20 Q Can you explain why Canyon would approve a
21 construction contract with perhaps no penalties and
22 with no bond requirement?

23 A There is a difference between the GMP you
24 put in place to rescue a project that is depressed
25 as opposed to the GMP you put in place when a

1 **project has not started construction.**

2 Q How many other examples of that situation
3 at Canyon can you provide for me?

4 **A I can't provide any others.**

5 Q Well, then how do you make a statement as
6 to what is or is not appropriate in a condition that
7 you claim has never otherwise existed?

8 **A Did I say it never otherwise existed?**

9 Q No. In what other occurrences did that --
10 did that exist?

11 **A You said it has never otherwise existed.**

12 Q Well, has it otherwise existed at Canyon
13 that you're aware of?

14 **A I believe it has on other projects.**

15 Q Okay. Can you tell me about some of those?

16 **A No. Because I didn't work on them.**

17 Q How many other projects do you believe it
18 has occurred --

19 **A I'm not --**

20 THE REPORTER: Wait. Please slow down.

21 BY MR. MILLER:

22 Q How many other projects are you aware of
23 that occurring?

24 **A I don't know.**

25 Q You don't -- do you have an estimation as

1 to how many?

2 **A No, I don't.**

3 Q Have any default letters been sent to the
4 receiver?

5 **A No.**

6 Q Have any default letters been sent to
7 O'Brien?

8 **A I don't have a contract with O'Brien; so**
9 **I'm not aware of any default letters that have been**
10 **sent to O'Brien.**

11 Q Okay. Do you have any idea at this time
12 what the lawsuit and the delays have cost the
13 project as far as extra costs, extra loan interest,
14 lost rentals, and lost revenue are to date?

15 **A I haven't added it up -- I haven't**
16 **attempted to calculate it, no.**

17 MR. MILLER: Let's mark this, please.

18 (Exhibit 40 was marked for
19 identification.)

20 BY MR. MILLER:

21 Q Sir, I'm going to show you what has been
22 marked as Exhibit No. 40. Can you take a look at
23 that, please.

24 **A Yes.**

25 Q Have you ever seen this document before?

1 **A I can't recall.**

2 Q This was three days -- or two days, I
3 think, before my client was in your office. It is
4 not something that is particularly memorable?

5 **A No, it is not particularly memorable.**

6 Q Do you recall ever responding to this
7 letter?

8 **A Do I personally recall responding to this**
9 **letter? No.**

10 Q Is this a letter that you would have
11 responded to or is this a letter that Mr. Kaplan
12 would have responded to?

13 **A I would assume, given what was going on at**
14 **the time, counsel would have responded.**

15 Q But you're not sure?

16 **A Not sure.**

17 Q Okay.

18 Is there something funny about the letter?

19 **A Did I say that there was something funny**
20 **about it?**

21 Q I thought -- I thought I heard you chuckle.
22 My -- my head was down.

23 **A No. I was breathing in.**

24 Q Okay. Sorry.

25 Let's find 20.

1 Sir, I'm going to show you what has been
2 marked as Exhibit 20. Take a look at that, please.

3 (Exhibit 20 was marked for
4 identification.)

5 THE WITNESS: Okay.

6 BY MR. MILLER:

7 Q Can you explain this letter for me, please.

8 A **Self-explanatory.**

9 Q Not for me because I don't really
10 understand what the acronyms mean and what their
11 importance is.

12 A **"As discussed Canyon will not be funding
13 draws until we at a minimum have the schedule,
14 revised budget, RFI log" -- maybe you don't
15 understand that acronym, which is request for
16 information log -- "answered and the PCO" --
17 potential change order -- "log cleared."**

18 Q Okay. So in what context was this e-mail
19 sent? Obviously there was an issue of funding of
20 draws. What schedule were you referring to?

21 A **I probably was referring to the schedule
22 for the completion of the project.**

23 Q And the revised budget? What was that
24 referring to?

25 A **Probably referencing the fact that maybe**

1 the budget was changing.

2 Q And the RFI log answered -- how does
3 that -- how does that happen, an answer to a log?

4 A Well, RFIs are request for information
5 typically provided by the contractor to the owner
6 and/or its architect looking for information that it
7 needs to finish the project. And so I'm assuming
8 that there was unanswered questions, and those
9 needed to be answered.

10 And the PCO log, as we discussed earlier,
11 are these ordinary course of business things that go
12 on on a construction project, but they were not
13 cleared.

14 Q What does cleared mean?

15 A Responded to.

16 Q Well, I thought we talked earlier that
17 there were potential change orders all the time.
18 How would we know if they were clearable?

19 A Maybe they had been sitting out there too
20 long. Maybe they hadn't been responded to.

21 Q How long is a potential change order
22 sitting out there for too long?

23 A Depends on what it is for.

24 Q Do you have any recollection as to what was
25 on the PCO log?

1 A I can give you a for instance, in a general
2 sense, and then you can ask me specifically.

3 If the general contractor needed additional
4 funds from the owner because materials had increased
5 in costs, and they weren't the responsibility of the
6 contractor, they may have asked that a change order
7 be executed obligating the owner to increase the
8 funding for the project.

9 Q But wouldn't that be a real change order as
10 opposed to a potential change order?

11 A Yes, but if they're not getting resolved,
12 that indicates issues.

13 Q Well, but there could be a new potential
14 change order presented truly on a daily basis?

15 A That's correct.

16 Q So to clear it at a particular point in
17 time doesn't really have any actual effect, does it?

18 A I disagree.

19 Q Well, what if the potential change order
20 was I would like to plant roses instead of violets?
21 How does that have any impact on anything?

22 A In that instance it may not, but what if
23 the potential change order is I need \$2 million more
24 for drywall because I can't complete the drywall,
25 then you may -- that may impact schedule.

1 Q I know, but that's not what your e-mail
2 says. Your e-mail says the log has to be cleared.
3 It doesn't say it has to be cleared of multimillion
4 dollar requests. It just says it has to be cleared
5 completely. That's how I read it. Isn't that how
6 you read it?

7 MR. DOLAN: Object to the form of question.
8 Totally mischaracterizes the e-mail.

9 BY MR. MILLER:

10 Q PCO log cleared doesn't -- doesn't that
11 mean it has to be completely cleared?

12 A I don't recall exactly what I meant. This
13 was following up on a discussion I had with your
14 borrower; so I don't remember exactly what I was
15 attempting to memorialize. But clearly it indicates
16 a concern that the PCO log was -- was getting out of
17 control.

18 Q Well, or -- or it could mean that you were
19 trying to nitpick something that was completely
20 unreasonable. Isn't that possible?

21 A I doubt it based on the amount of
22 consternation between his contractor and himself. I
23 doubt it was a nitpick.

24 Q But you have no idea of any particular item
25 that was on the log for which you were seeking

1 clearance?

2 **A No. I would have to review it.**

3 Q I see.

4 Who at Canyon communicated directly with
5 Quandel Construction?

6 **A I don't recall direct communications that
7 didn't involve the borrower.**

8 Q Do you know who Mike Hozella is?

9 **A No.**

10 Q Do you know if there are negotiations
11 pending right now with Quandel to settle their
12 claims?

13 **A I believe the receiver is engaged in those
14 negotiations.**

15 Q Are -- can you name for me at all any other
16 projects that Canyon has participated in that have
17 been placed into a receivership?

18 **A I can't, no.**

19 Q Are you anecdotally familiar with any?

20 **A I'm not, no.**

21 Q Are you familiar with any other situations
22 in which -- and maybe I asked this, and if I did, I
23 apologize -- where a project Canyon was working on
24 had its name changed?

25 **A Yes.**

1 Q What other projects did that?

2 A **Several. I can't recall off the top of my**
3 **head.**

4 Q Can you remember why the names were
5 changed?

6 A **For a variety of different reasons.**

7 Q Can you name some of those reasons?

8 A **Occasionally a project may have a poor**
9 **reputation, and they select a new name. Or, you**
10 **know, developers change their mind and would like a**
11 **different name. They think they want to call it**
12 **Arpeggio, and they decide to change it to Melody.**

13 Q Is that something that Canyon is
14 generally -- that Canyon generally requires lender
15 approval for?

16 A **Canyon generally requires lender approval**
17 **for?**

18 **I'm not familiar with all the loan**
19 **documents to know if a loan document would require**
20 **an approval of a name change.**

21 Q I'm just asking if you're familiar with any
22 situations where that was the case. That's all.

23 A **I'm generally familiar with projects that**
24 **have changed names.**

25 Q And provided lender approval in advance, or

1 it is not an issue for the lender?

2 A Some of the projects were not loans. They
3 were equity investments, for instance. A different
4 type of investment.

5 Q Uh-huh. Were there any -- are there any
6 projects you're aware of where Canyon foreclosed on
7 a loan project --

8 A Yes.

9 Q -- construction loan project?
10 Can you tell me about some of those?

11 A Sure. So in the approximate 26-year
12 history of Canyon's real estate group, 130 loans
13 have been made totaling about \$3.8 billion of lent
14 capital. Of the 130 loans, nine were foreclosed
15 upon. Of the nine loans that were foreclosed upon,
16 seven of those nine resulted in the loss of capital.
17 The other two were -- capital was recovered but the
18 original projection was not met. Post -- let's call
19 it the economic downturn of 2008, 58 loans have been
20 made and none of those loans have gone to
21 foreclosure.

22 Q Can you tell me about the nine -- the nine
23 loans that did?

24 A I cannot because I didn't work on any of
25 those loans. I just know the numbers.

1 Q How is it that you're so familiar with
2 these numbers?

3 A I've looked at a report and prepared for my
4 deposition.

5 Q Oh, okay. Do you know the states in which
6 any of these projects were located?

7 A I believe there was a deal in Vegas --
8 sorry, I don't. Again, a lot of those loans were
9 prior to my joining Canyon.

10 Q Of the 130 loans made, or maybe that is
11 going back too far because you haven't been here for
12 26 years.

13 A No.

14 Q But maybe if it's in the report, you might
15 know. Do you know how many of those 130 loans have
16 received default letters?

17 A I don't.

18 Q Do you know about the 58 that have been
19 made since 2007, 2008?

20 A I don't.

21 Q Did any of the nine that were foreclosed
22 upon have their names changed?

23 A I don't know.

24 Q Okay. Was there a business plan provided
25 to Canyon for McKinley to review at any point during

1 this process?

2 **A Canyon reviewed a budget for the completion**
3 **of the project and a -- and a marketing plan for the**
4 **lease-up of the project.**

5 Q There is such a marketing plan in place?

6 **A Yes.**

7 Q Do you know when that was issued?

8 **A Within the last three to five months.**

9 Q Do you know who decided the rental rates?

10 **A The receiver decided the rental rates.**

11 Q Do you know what they are?

12 **A The average of the rental rates is a**
13 **\$2.49-per-square-foot asking rental rate. Again, if**
14 **you average the 249 units for the apartments.**

15 Q You mentioned that some of them have
16 temporary certificates of occupancy. Do you know
17 the condition of the construction of the apartments
18 that do not?

19 **A I was informed that about 60 to 65 units**
20 **have temporary certificates of occupancy and are**
21 **ready for occupants. I'm not sure the condition of**
22 **the balance. I would assume each unit is different.**

23 Q Is that not something that you've been
24 reported to about the percentage of completion of
25 the remainder of the units?

1 **A It may be in the receiver reports.**

2 Q But nothing different than -- strike that.

3 Do you get the same receiver reports that
4 the court and I get?

5 **A I don't know.**

6 Q Okay. So can you describe the relationship
7 that Canyon has with McKinley through this project?

8 **A We're their lender.**

9 Q Well, you would agree with me it is more
10 than that. There are joint motions being filed and
11 there are other communications on a regular basis,
12 are there not?

13 **A As it relates to me, I'm managing the loan**
14 **investment.**

15 Q So what is the nature of your relationship
16 with McKinley?

17 **A That of asset manager who is administering**
18 **a loan.**

19 Q Anything more than that?

20 **A What do you mean by "more"?**

21 Q Well, is there -- are there friendships,
22 are there business relationships, are
23 there partnerships? What else is there?

24 **A This is the only business I have with**
25 **McKinley.**

1 Q Do you meet McKinley personnel on social
2 occasions?

3 A **Not on social occasions, no.**

4 Q Do you buy them gifts?

5 A **No.**

6 Q Do they buy you gifts?

7 A **No.**

8 Q Do you provide them talking points for
9 meetings?

10 A **I believe I provided them talking points**
11 **for a meeting that they were attending with members**
12 **of the community, and my talking points were**
13 **specific to what they should or shouldn't say about**
14 **Canyon as we wanted very specific -- we didn't want**
15 **them to speak on our behalf. And so I believe we**
16 **provided talking points about what they could or**
17 **couldn't say about Canyon in this matter.**

18 Q I'm going to show you what has been marked
19 as Exhibit 8. I think that's what you are referring
20 to.

21 Take a look at that, please.

22 MR. DOLAN: Oh, sorry.

23 THE WITNESS: That's what I'm referring to.

24 (Exhibit 8 was marked for

25 identification.)

1 BY MR. MILLER:

2 Q We actually didn't get the talking points.
3 We just got the e-mail.

4 Do you know what the talking points were?

5 **A I don't recall, but, again, generally we**
6 **don't want people speaking on our behalf.**

7 Q I take it back. We do have the talking
8 points. My mistake.

9 **A Okay.**

10 Q I'm going to show you what has been marked
11 as Exhibit 13.

12 (Exhibit 13 was marked for
13 identification.)

14 BY MR. MILLER:

15 Q Here you go.

16 **A Okay.**

17 Q Do you want to change your answer about the
18 gifts?

19 **A I honestly can't recall if I received this**
20 **bottle of wine.**

21 Q Okay. Have you been -- have you been taken
22 out for dinner by any of the Canyon -- not Canyon --
23 by the McKinley personnel?

24 **A First, let me say I'm not a wine drinker;**
25 **so if I got this, I regifted it. But I have not**

1 **been taken out to dinner by the McKinley personnel.**

2 Q Okay. Can you tell me why McKinley is
3 informing you of my client's tour visits to the
4 property?

5 A **I think it falls under the realm of we like
6 to be informed.**

7 Q Well, why would it be your business at all
8 of this property under receivership who is visiting
9 the property?

10 A **A point of information.**

11 Q How so?

12 A **I would like to know.**

13 Q Why?

14 A **Because I would like to know.**

15 Q Why is it your business to know?

16 A **If they told me, it is my business to know.**

17 Q How come it is not my client's business to
18 know who visits the property?

19 A **I don't know. He would have to look -- I
20 mean, I would have to have Ben ascertain whether or
21 not he's entitled to that information.**

22 Q Do you have any objection to the receiver
23 telling us about everyone who visits the property?

24 MR. DOLAN: I'm just going to object. We
25 don't control what the receiver does. The

1 receivership order does.

2 MR. MILLER: Well, I know --

3 THE REPORTER: Slow down.

4 MR. DOLAN: The receivership order controls
5 what the receiver does, not Canyon.

6 MR. MILLER: That may be, but clearly there
7 is a relationship here with Canyon that is different
8 than the relationship here with my client.

9 MR. DOLAN: Correct. We're the lender. So
10 yes.

11 MR. MILLER: I got -- I got that but --

12 MR. DOLAN: And we have a security interest
13 in -- in the property.

14 MR. MILLER: Yeah, but it is the receiver's
15 job to keep the property secure, not the lender's;
16 isn't that right?

17 MR. DOLAN: Right, but it is our
18 collateral.

19 MR. MILLER: Yeah, but what -- why does
20 that -- that doesn't matter. I'm not getting into
21 an argument.

22 Q My question --

23 MR. DOLAN: It does matter. We don't want
24 the collateral to be diminished or harmed in any way
25 and so we get to know what goes on on the

1 collateral.

2 MR. MILLER: Well, who owns the property,
3 Mr. Dolan?

4 MR. DOLAN: That's fine. We have a
5 security interest in the property.

6 MR. MILLER: But my client has the
7 ownership interest in the property, does it not?

8 MR. DOLAN: Yeah, but you can't dispose of
9 it without -- without satisfying our security
10 interest.

11 MR. MILLER: Why are we having this
12 conversation?

13 MR. DOLAN: I don't know.

14 BY MR. MILLER:

15 Q Here is my question, sir: Do you have any
16 objection if the receiver were to provide us that
17 information as well?

18 A I don't know what the receiver is required
19 to provide you.

20 Q That is not my question. I'm just asking
21 if you have an objection to our getting the same
22 information? That's all I'm asking.

23 MR. DOLAN: Yeah, but here is the point.

24 MR. MILLER: Oh, God.

25 MR. DOLAN: Because then you're going to

1 take that and you are going to argue that he should
2 be doing something. The receiver does what it does
3 pursuant to its order. I mean, why -- why do you
4 have to ask this witness about what the receiver's
5 authority is?

6 MR. MILLER: Wait a second. He is the
7 corporate rep, No. 1, according to you.

8 MR. DOLAN: Not on this issue.

9 MR. MILLER: And, No. 2 --

10 MR. DOLAN: No.

11 MR. MILLER: There is nothing in the
12 receivership order that talks about anything about
13 informing the lender who visits the property. Show
14 me where it says that.

15 MR. DOLAN: No. The -- you're asking him
16 if he has any interest or any objection to the
17 receiver providing you, the owner of the property,
18 with information.

19 MR. MILLER: Right. That is my question.

20 MR. DOLAN: You just said there is nothing
21 in the receivership order that speaks to whether the
22 receiver provides the lender. That is in the loan
23 documents.

24 MR. MILLER: Yes.

25 MR. DOLAN: It is in the loan documents,

1 not in the receivership order. They're two
2 different things.

3 BY MR. MILLER:

4 Q Okay. Just so we're clear, you're telling
5 me that in the receivership loan document, the
6 receivership loan agreement, there is a provision,
7 Mr. Goldman, that the receiver is to provide Canyon
8 with the names of all visitors to the property?

9 MR. DOLAN: No. There are general
10 reporting requirements in the loan documents that
11 give the receiver the obligation to update the
12 lender as to what is going on with his collateral.
13 That is what I'm referring to.

14 MR. MILLER: Okay. That is not even close
15 to what I'm referring to though. I'm just simply
16 asking --

17 MR. DOLAN: No, you're asking him to opine
18 as to what the receiver's obligations are --

19 THE REPORTER: Slow down.

20 MR. DOLAN: -- under a different document,
21 under the order appointing receiver, not the lender
22 documents.

23 MR. MILLER: No, I'm not.

24 MR. DOLAN: Well, it sounded like it to me.

25 MR. MILLER: No. I'm not. This is so

1 easy.

2 MR. DOLAN: All right.

3 BY MR. MILLER:

4 Q Does Canyon have an objection to my client
5 knowing who visits the property? What is the
6 difference?

7 MR. DOLAN: I'm objecting to the extent it
8 calls for a legal conclusion. Otherwise, go ahead
9 and answer.

10 THE WITNESS: I honestly don't know what is
11 required of the receiver in that regard.

12 BY MR. MILLER:

13 Q Forget the receiver requirements. There is
14 nothing in the order that says anything about
15 notifying the lender about who visits the property.
16 It is irrelevant to your analysis.

17 My question is very simple. Does Canyon
18 have an objection to my clients knowing who visits
19 the property? What is the harm?

20 **A I don't have an opinion.**

21 Q I see. Did you ever talk to anybody at the
22 Davis Companies?

23 **A Yes.**

24 Q When did you do that?

25 **A I can't recall.**

1 Q What was it about?

2 A The Davis "Company" is a firm out of Boston
3 that invests in multifamily projects. I run
4 Canyon's Multifamily Impact Fund, which at one point
5 was ten apartment buildings totaling maybe
6 4,000 units. So I may have spoken to them about
7 some potential investments. And I believe at one
8 point they called and mentioned they were
9 potentially interested in investing in this project.

10 Q And when you received that call relative to
11 Packard Square, because I really don't care about
12 the other ones, what did you tell them?

13 A I don't think I told them anything.

14 Q Well, when they called you, what did they
15 ask you?

16 A They didn't ask me anything.

17 Q Well, that sounds like a pretty odd
18 conversation, doesn't it? You didn't tell them
19 anything and they didn't ask you anything. So what
20 was -- what was the conversation about?

21 A I think I just told you. Some of the other
22 things I'm doing with my Multifamily Impact Fund and
23 they told me that they may be interested in
24 investing in Packard Square.

25 Q There was never -- you never received a

1 call from anyone at the Davis fund specifically --
2 sorry -- the Davis Companies specifically about
3 its -- their direct interest in refinancing the
4 project and paying Canyon off?

5 **A I have no idea what they were planning to**
6 **do.**

7 Q That didn't come up in the conversation?

8 **A They told me generically they were**
9 **potentially investing in the project.**

10 Q Did you contact them relative to Packard
11 Square?

12 **A No.**

13 Q Not once?

14 **A I don't believe so.**

15 Q Do you recall the name of the person from
16 the Davis Companies or people from the Davis
17 Companies with whom you spoke?

18 **A Yes.**

19 Q Well, who is that?

20 **A Jerry something or other. It was an Irish**
21 **last name. I can't recall.**

22 Q Okay. Are you aware of any recordings of
23 Craig Schubiner's voice maintained by Canyon?

24 **A I'm not aware of any.**

25 Q Is Canyon pursuing the sale of the property

1 at the current time?

2 **A Canyon can't pursue the sale of the**
3 **property.**

4 Q Is there -- so it is your position that the
5 receiver is pursuing the sale?

6 **A Canyon doesn't own the property; so it**
7 **can't sell that what it doesn't own.**

8 Q Did -- I know, but on behalf of the
9 receiver. Did the receiver -- let me ask it a
10 different way. Did the receiver contact Canyon to
11 discuss with Canyon the prospect of selling the
12 property?

13 **A The receiver informed Canyon that it**
14 **planned to sell the property.**

15 Q And there is no requirement for lender
16 approval in that concept?

17 **A Canyon, pursuant to the receiver loan**
18 **documents, I believe has an approval right over the**
19 **sale.**

20 Q Have there been any discussions about sale
21 prices?

22 **A No.**

23 Q Is there a reason why the property is being
24 marketed for sale at the current time?

25 **A My assumption is the receiver is selling it**

1 **in order to repay its receiver loan to Canyon.**

2 Q Well, is there anything stopping the
3 receiver and Canyon from filing yet another joint
4 motion for additional funds as it has twice before
5 in this case?

6 A I guess in theory it could do that if it
7 wanted to.

8 Q Okay. Has there been -- been any
9 discussion between Canyon and the receiver about
10 that possibility?

11 A There may have been discussions about it.

12 Q Have there been any conclusions about it?

13 A No. I believe the receiver wants to repay
14 its debt when it comes due.

15 Q Did you participate in any interviews of
16 the broker selected for sale?

17 A I may have spoken to some of the brokers.

18 Q Did you participate in the decision to
19 select the broker?

20 A No. The receiver made the decision to
21 select the broker.

22 Q So what was your involvement in the
23 interview process?

24 A Information purposes, understanding their
25 viewpoints of the market, things like that.

1 Q Can you share with us any of the viewpoints
2 that you learned during those calls?

3 A **Generally speaking, people are bullish on
4 the Ann Arbor market.**

5 Q Do you know the names of any of the brokers
6 or broker companies that you were participating with
7 in those calls?

8 A **I may have listened in on a call with the
9 ARA Group.**

10 Q The group that was ultimately selected?

11 A **That's the group the receiver ultimately
12 selected.**

13 Q Did you express your preference for that
14 group?

15 A **I did not.**

16 Q Did anybody at Canyon do that?

17 A **No, they did not.**

18 Q Were you on any call with any other
19 brokers?

20 A **I may have listened to some of the
21 interviews, yes.**

22 Q Well, you said that.

23 A **Yeah.**

24 Q I was wondering if you know any of the
25 names of those brokers.

1 **A** **I believe the receiver also spoke to maybe**
2 **Marcus & Millichap and maybe another. There was a**
3 **couple that declined the invitation.**

4 **Q** **My question wasn't about that. My question**
5 **was about the ones you actually listened into.**

6 **A** **Okay. I may have listened into the Marcus**
7 **& Millichap interview.**

8 **Q** **How many times have you talked to Debbie**
9 **Corson yourself?**

10 **A** **Several times.**

11 **Q** **What have you talked about?**

12 **A** **My Canyon Multifamily Impact Fund.**

13 **Q** **What is that?**

14 **A** **That is a ten asset portfolio of**
15 **multifamily projects that I manager.**

16 **Q** **Isn't she the broker that was hired for**
17 **Packard Square?**

18 **A** **She does other brokerage business that I**
19 **speak to her about.**

20 **Q** **Okay. Well, talking about this particular**
21 **project.**

22 **A** **Okay.**

23 **Q** **How many times have you talked to her about**
24 **this particular project?**

25 **A** **Two, three times.**

1 Q And what was the subject or tenor -- not
2 tenor. What was the subject of those conversations?

3 A One was the broker interview, and there may
4 have been some update calls that I listened in on.

5 Q Did Dickinson Wright prepare a purchase
6 agreement for potential buyers?

7 A I believe they helped draft one, yes.

8 Q Have you reviewed it?

9 A Yes.

10 Q Does Canyon approve of the purchase
11 agreement?

12 A It is a draft.

13 MR. MILLER: All right. Let me mark
14 something else.

15 Okay. Let's mark this, please.

16 (Exhibit 41 was marked for
17 identification.)

18 BY MR. MILLER:

19 Q Sir, I'm going to show you what has been
20 marked as Exhibit 41. Can you tell me if you've
21 seen that before?

22 A I've seen it, yes.

23 Q What is that?

24 A It looks to me to be the Offering
25 Memorandum that the broker is using to market the

1 **project.**

2 Q Did you approve this package before it was
3 released to the industry or the public, or wherever
4 it was sent?

5 **A I may have reviewed it.**

6 Q Did you approve of it?

7 **A It is not my place to approve of it.**

8 Q Did anybody ask for your approval before it
9 was used?

10 **A I don't believe they asked for my approval**
11 **of it.**

12 Q Did they ask for your comments about it?

13 **A I may have commented about it, yes.**

14 Q Do you recall any comments that you made?

15 **A I generally thought it was good.**

16 Q Okay. Do you know what the approximate
17 payoff is today for the two loans on this -- on this
18 project?

19 **A I do. The receiver loan has a balance of**
20 **about 27 million. The original Canyon loan has a**
21 **balance of about \$46 million, and I believe there is**
22 **another 13 million to advance under the receiver**
23 **loan.**

24 Q Well, if the property is sold before
25 construction is completed, then it is likely that

1 that money will not be fully advanced; isn't that
2 true?

3 **A It depends on the terms of the sale.**

4 Q In what circumstances under the terms of
5 the sale would that money be disbursed?

6 **A If somebody wants a contract that requires**
7 **the project be delivered complete, like a forward**
8 **sale.**

9 Q I see. Do you know how much of those
10 amounts is made up of legal fees?

11 **A I do not.**

12 Q Do you know how much of that -- of those
13 amounts is reflected in the additional interest
14 between 10 percent and 16 percent?

15 **A I do not.**

16 Q Do you have any documentation that would
17 show the breakdown of those figures?

18 **A The payoff statement details the principal**
19 **balance and the various interest components.**

20 Q Right. But when we talked to Kevin Scholz
21 about one of them that he had issued -- I don't know
22 if you were here at that time -- he said that there
23 were fees and items that were not reflected
24 specifically in the number that were not shown on
25 the statement.

1 **A** **Was he presented with something to look at?**

2 Q Yeah, he was.

3 **A** **Would you like me to look at it?**

4 Q No. Because he prepared it; so I'm not --
5 I didn't bring it to show you. I'm just asking you
6 about it because it is hard to tell from the
7 statement what the actual specific breakdown is. It
8 just sort of has a number on it.

9 MR. DOLAN: I have it if you want him to
10 look at it.

11 MR. MILLER: No. It's okay. You have
12 what?

13 MR. DOLAN: I have the thing you showed
14 Kevin.

15 MR. MILLER: No, that's okay. I don't want
16 to spend time on it.

17 THE WITNESS: It is my understanding that
18 our payoff statements detail the -- a breakout
19 between the contract rate and the default interest
20 and detail all the other fees and charges.

21 My assumption is that the legal fees are
22 within the principal balance.

23 BY MR. MILLER:

24 Q That is my point.

25 **A** **Yes.**

1 Q So the question becomes how do you know
2 what that number is because it is not broken out of
3 the principal balance?

4 A I don't know.

5 Q Yeah.

6 Do you know if there have been any offers
7 received per the April 30 call for offers?

8 A I don't.

9 Q Is there a date by which a final and best
10 offer has been demanded?

11 A I don't believe that date has been set by
12 the receiver.

13 Q Okay. Have there been any offers made thus
14 far?

15 A Not to my knowledge.

16 Q Wouldn't the potential price be higher if
17 the project were completed, rented, and stabilized
18 than it would be if it were sold under construction?

19 A Not necessarily.

20 Q In what scenario would that not necessarily
21 be true?

22 A Interest rates rise dramatically between
23 when it is stabilized and when it is sold if you
24 sell it earlier.

25 Q Well, is there -- is there an estimation in

1 your mind that in the next -- I don't know -- the
2 project is supposed to be completed by the end of
3 this year. It is March -- no, it's not. It's May,
4 sorry. What is that? Seven months? Do you
5 anticipate a significant interest rate hike in the
6 next seven months?

7 **A Honestly I don't predict interest rates.**

8 Q Okay. Well, assuming that the interest
9 rates aren't going to significantly increase in the
10 next seven months, would it still be the case that
11 it would generally sell for a much higher price if
12 it were completed, rented, and stabilized?

13 **A I can't make that statement.**

14 Q Well, other than for interest rates, what
15 other reason would there be that it not be
16 significantly more --

17 **A Investor appetite for product, the**
18 **availability of financing, changes in capitalization**
19 **rates, changes in the insurance market, changes in**
20 **the cost to operate a property, changes to the**
21 **property tax structure within your state. There is**
22 **tons of things that impact the value of real estate.**

23 Q Are any of those on the horizon as actually
24 potentially happening that you're aware of?

25 **A You're asking me to predict the future. I**

1 **can't do that.**

2 Q No, but have you even gotten wind of any of
3 those things happening? We're talking about the
4 most -- one of the most growing, hottest markets in
5 the country, are we not?

6 A **Ann Arbor is generally good rental market,**
7 **yes.**

8 Q Right. So if it were completed and the
9 retail was completed and there was desirable retail,
10 wouldn't that have an impact on the rental rates
11 that could be charged?

12 A **The receiver has no budget to complete the**
13 **retail.**

14 Q I understand. But the retail would be
15 completed by presumably the tenants who took over
16 the retail. Do you know of any efforts that are
17 being made to lease the retail space?

18 A **The retail at the property now is in what's**
19 **called cold dark shell condition.**

20 Q Right.

21 A **So there is a lot of capital that is**
22 **required to be expended to actually secure retail**
23 **tenants.**

24 Q So --

25 A **Capital the receiver doesn't have.**

1 Q So they're not even attempting to market it
2 at this time?

3 A **The receiver is not marketing the property**
4 **for retail lease at this time.**

5 Q Okay. Wouldn't prospective residents want
6 to know who the retail tenants would be before
7 signing the lease to move into a mixed-use apartment
8 like this?

9 A **Well, the tenants that have signed leases**
10 **so far haven't asked.**

11 Q Well, but that might affect the amount that
12 could be charged, wouldn't it?

13 A **Anything is possible.**

14 Q Well, I understand. But if there was a
15 really great supermarket and a Starbucks and maybe
16 some other retail tenants in the building, might
17 that be a desirable thing that would allow the
18 apartments to be marketed at a higher rental rate?

19 A **249 people are going to sign leases**
20 **potentially. I don't know what all of them are**
21 **thinking.**

22 Q Uh-huh. But isn't that impact as part of
23 the way to set the rental rate?

24 A **The rental rates are based on the Ann Arbor**
25 **apartment market.**

1 Q I understand. But there is very little
2 similar properties in Ann Arbor to this one; so it
3 is pretty hard to compare, you know, Apartment X
4 that doesn't have excellent retail space within its
5 building to this project which would; isn't that
6 true?

7 A I can't speculate as to what all the
8 tenants would like or not like.

9 Q Are there any other loans that Canyon
10 currently has in its portfolio that are set at
11 16 percent interest right now?

12 A There are several loans in Canyon's
13 portfolio that, in the event of default, increase by
14 five to six percent.

15 Q That's not what I meant. I meant are there
16 any that are at that level right now?

17 A There are some "mezzan"-preferred
18 investments that are close to that level.

19 Q But not at 16 percent other than --

20 A We have some --

21 Q -- Packard Square?

22 A We have some preferred equity in mezzanine
23 loans where the sponsors are paying 15 and
24 16 percent.

25 Q Can you describe -- can you tell me about

1 the ones they're paying 16 percent?

2 **A Again, several in my portfolio are**
3 **mezzanine or preferred loans where the contractual**
4 **rate of interest is 15 or 16 percent.**

5 Q Can you just -- you only have 12 projects
6 in your portfolio. Can you tell me --

7 **A Two of the properties in Maryland are**
8 **preferred equity investments, and that's the rate of**
9 **return.**

10 Q Do you remember the name of those two
11 properties?

12 **A Allure and Ascent.**

13 Q Oh, yeah. Okay.

14 And that is the actual rate, not the
15 default rate?

16 **A It is the actual rate.**

17 Q Has the receiver followed all the terms of
18 its loan agreement to the letter?

19 **A I would have to really go through the**
20 **document in its entirety.**

21 Q Well, who is -- who is overseeing the
22 receiver to make sure that it is following its loan
23 agreement at Canyon?

24 **A I administer the receiver loan.**

25 Q So who would know if they're following it

1 to the letter other than yourself?

2 **A I haven't found an occasion to default**
3 **them.**

4 Q Have you been looking for one?

5 **A No.**

6 Q Is it your belief that they have,
7 therefore, complied with all those terms?

8 **A Yes.**

9 Q Do you know who made the decision
10 ultimately not to fund the approved draws during the
11 summer of 2016 to Packard Square?

12 **A I don't understand what you mean by**
13 **"approved draws."**

14 Q Well, there were draws that were approved
15 for June, July, and August of 2016 that were not
16 paid. Do you know who made that decision?

17 **A Approved by whom?**

18 Q Approved by Canyon.

19 **A I don't recall draws that were approved by**
20 **Canyon that met the draw requirements laid out in**
21 **the loan documents that weren't paid.**

22 Q Well, if there were three that weren't, who
23 would have made the decision not to pay them?

24 **A I would have to understand the**
25 **circumstances of the three draws that you're**

1 **alleging fall under those circumstances.**

2 Q Well, it was the June 2016 draw, the July
3 2016 draw, and the August 2016 draw.

4 A **Again, I am not aware of any draws that met**
5 **the requirement for payment that were not paid.**

6 Q The receiver agreement -- does it have any
7 milestone dates?

8 A **The receiver agreement?**

9 Q Yeah. The receiver loan agreement.

10 A **The receiver loan?**

11 Q The receiver construction loan agreement --
12 does it have any milestone dates?

13 A **I don't believe it does.**

14 Q Well, then hard to default if they don't
15 have any requirements, isn't it?

16 A **The loan is coming due in June. If they**
17 **don't pay it back, there could be a default.**

18 Q What would happen in that scenario?

19 A **Not sure.**

20 Q Yeah.

21 A **Are you suggesting we foreclose on your**
22 **client?**

23 Q I'm not suggesting anything. I'm just
24 suggesting that if the receiver doesn't pay by June,
25 nothing is going to happen to the receiver, will it?

1 **A I don't know. We will have to make that**
2 **decision in June.**

3 Q Well, okay. Under what theory of liability
4 would the receiver be liable to pay -- to pay? You
5 think the court is going to order the receiver to
6 pay?

7 **A I can't speculate what the court is going**
8 **to do.**

9 MR. MILLER: Okay. Let's take five minutes
10 please, thanks.

11 THE VIDEOGRAPHER: Going off the record at
12 4:05.

13 (Recess.)

14 (Whereupon Mr. Neupert didn't reenter.)

15 THE VIDEOGRAPHER: Back on the record at
16 4:19.

17 BY MR. MILLER:

18 Q Just a little bit more, Mr. Goldman. The
19 document in front of you, Exhibit 25, you looked up
20 during the break. It was Bates No. 64884, and it
21 was appended to an e-mail at Bates No. 64865. It
22 was an e-mail from Kevin Scholz to a number of
23 people, yourself included, assessing cost overruns.
24 I'm not going to start questioning you about it, but
25 I just want to know if that refreshes your

1 recollection at all.

2 MR. DOLAN: Was the e-mail to this
3 gentleman --

4 MR. MILLER: Yeah.

5 MR. DOLAN: -- to Mr. Goldman?

6 MR. MILLER: Yeah. And actually you were
7 part of it too.

8 MR. DOLAN: I was?

9 MR. MILLER: It was actually directed to
10 you, Ben, at 3:03 p.m. on August 24, 2017, to you,
11 Janine Getler, Gerald Goldman, Matt Mason, Jim Fink,
12 Chris Allen, Jillian Bellow, and Kevin Scholz
13 strangely sent it to himself.

14 MR. DOLAN: I'm sorry. What was the date
15 again, real quick?

16 MR. MILLER: August 24, 2017, at 3:03 p.m.

17 Q Anyway, the e-mail reads -- and we didn't
18 print it, but I'll show it to you if you want to see
19 it.

20 MR. DOLAN: I can find it real quick.

21 MR. MILLER: "Attached is a high-level
22 budget comparison for discussion in Excel."

23 THE WITNESS: Okay.

24 Yeah, and I think maybe what is throwing me
25 off is the way it printed is probably not the way

1 Kevin presented it.

2 BY MR. MILLER:

3 Q That could be, but we got it as a PDF so it
4 is --

5 A **Wow. Okay.**

6 Q Anyway --

7 A **Okay. It is just difficult to read.**

8 Q No, that is fine.

9 So the question before had been about the
10 17,766,816 in cost overruns based on the
11 representations that I've just made to you, and I
12 can show you the e-mail if you want to look at it on
13 my client's computer, do you have reason now to
14 dispute Mr. Scholz's collection of these figures and
15 his mathematics to come up with the total of cost
16 overruns as of August 24, 2017?

17 MR. DOLAN: Do you want to just bear with
18 me for a second? I want to find the e-mail so I can
19 help give some context.

20 MR. MILLER: Sure. I mean you can look at
21 our computer if you want.

22 MR. DOLAN: I should have it though.

23 MR. MILLER: You want to look at my
24 client's computer?

25 MR. DOLAN: No, I've got it.

1 MR. MILLER: Okay.

2 MR. DOLAN: What time -- what was the date,
3 or the time you said?

4 MR. MILLER: It is August 24, 2017, at
5 3:03 p.m. from Kevin Scholz to you with an
6 attachment. "Attached is a high-level budget
7 comparison for discussion in Excel." And it is
8 listed at the top as CANIV064865.txt.

9 (Discussion held off the record.)

10 THE WITNESS: Ah, okay.

11 MR. DOLAN: Got to use two fingers.

12 THE WITNESS: Oh, I'm sorry. I don't know
13 Apple products.

14 Ah, okay. Yeah, it did not print in the
15 same format. Okay.

16 BY MR. MILLER:

17 Q So just to go back in time a little bit, we
18 had talked about this before, and I don't want to
19 belabor it, but I just want to confirm with you that
20 the document that you do have as Exhibit 25 was a
21 document prepared by Mr. Scholz relative to some
22 kind of a call that you all were going to have to
23 discuss, I assume, \$17,766,000 in cost overruns. Is
24 that a fair assessment of what Exhibit 25 is?

25 A Yes.

1 Q Okay. Great.

2 Moving on --

3 MR. DOLAN: That's it?

4 MR. MILLER: I just wanted to confirm he
5 got it because he was unclear as to time.

6 (Unreportable cross-talk.)

7 THE WITNESS: Yeah, this format is -- I see
8 that, yes.

9 MR. MILLER: I just wanted to try and fix
10 the record. I don't know if I succeeded, but that
11 was my hope.

12 MR. DOLAN: That goes with her.

13 MR. MILLER: In that pile right there.

14 MR. DOLAN: She's taking all those with
15 her.

16 MR. MILLER: Very good.

17 MR. DOLAN: Lucky her.

18 BY MR. MILLER:

19 Q Pursuant to the loan agreement with my
20 client, would a property -- would the property have
21 to be kept lienfree if it was, in fact, Canyon that
22 first defaulted in the agreement?

23 A I believe our loan agreement requires that
24 the property be kept lienfree, and I don't believe
25 that a condition of it being kept lienfree is

1 **whether or not Canyon funds its draws.**

2 Q That wasn't my question.

3 If Canyon, in fact, defaulted on the
4 contract, wouldn't that mean my client wouldn't be
5 obligated to adhere to the contract to keep the
6 property lienfree? I'm not asking you whether
7 Canyon defaulted. I'm asking you in the
8 circumstance where that may have happened.

9 **A You're asking me to give a legal opinion as**
10 **to whether or not Canyon defaulted on its loan**
11 **agreement?**

12 Q Nope. Nope. I'll ask it again.

13 If --

14 **A I'm sorry.**

15 Q If Canyon did, in fact, default on its loan
16 agreement, would that negate my client's obligation
17 to keep the property free of liens?

18 MR. DOLAN: That's -- that is a legal
19 conclusion.

20 BY MR. MILLER:

21 Q Well, if you have an understanding, that's
22 fine. If you don't, that is your answer.

23 MR. DOLAN: I think that requires a legal
24 conclusion, but go ahead.

25 I'll place the objection on the record.

1 THE WITNESS: Yeah, I don't have an opinion
2 as to that. Again, you know, the loan agreement
3 requires the borrower to keep the project lienfree.

4 BY MR. MILLER:

5 Q Does the loan agreement require Canyon to
6 perform any obligations that it might have?

7 A **The obligations of the parties are set
8 forth in the loan agreement.**

9 Q Okay. I'm going to show you what has been
10 marked as Exhibit 36. This is the one that I forgot
11 from before.

12 Take a look at that if you would.

13 (Exhibit 36 was marked for
14 identification.)

15 THE WITNESS: Okay.

16 BY MR. MILLER:

17 Q Earlier in your testimony we talked about
18 how you had said that there was a directive from my
19 client not to pay subs directly. Do you recall that
20 testimony?

21 A **That's not what I said.**

22 Q Okay. Will you remind me what you said
23 then?

24 A **What I said is we would not pay the subs
25 directly unless there was an agreement between**

1 Canyon, Quandel, and the borrower to do so. And
2 then what I further said is I recall correspondence
3 where there was a pay app being presented for
4 payment, and the approval was asked of Quandel, and
5 Quandel wanted to be paid as a part of the pay
6 application, and I asked Craig if he wanted me to
7 pay Quandel, and he told me do not pay Quandel.

8 And after that, because there was no
9 meeting of the minds, that draw was not funded.

10 Q But why not pay the subs if your borrower
11 asked you to pay the subs directly?

12 A Because the other requirements for us to
13 fund the draw were not met.

14 Q You mean there was a requirement that the
15 general contractor had to approve the disbursement?

16 A Yes. That was the understanding we were
17 all operating under.

18 Q Because I thought -- I thought that my
19 client, as the borrower, the person -- the entity
20 that had the contract with Canyon was the developer
21 who made those decisions and that the lender was not
22 supposed to be choosing sides or getting involved
23 with Quandel.

24 A The subcontracts were with the general
25 contractor. It is an agreement between the

1 **subcontractors and Quandel to perform the work.**

2 Q So even though my client asked for the subs
3 to be paid directly, Canyon's position was that it
4 would not do that?

5 A **Canyon's position is it would not pay the**
6 **subs directly unless there was an agreement between**
7 **the three parties. That's correct.**

8 Q Okay. So the top of the e-mail, the very
9 top one --

10 A **Yes.**

11 Q "Hold for now. We will be having a broader
12 discussion today" -- what was that referring to?

13 A **I can't recall what that is referring to.**

14 Q Was that a discussion with you and my
15 client or with Quandel, or -- do you have any
16 recollection?

17 A **I don't recall who had that broader**
18 **discussion.**

19 Q If the borrower contends that it has a bad
20 or non-performing contractor, why wouldn't it be in
21 Canyon's best interest to allow the borrower to
22 change contractors?

23 A **I don't think we ever said that he couldn't**
24 **change contractors.**

25 Q Oh, but if you didn't respond to the

1 request --

2 **A** We responded to the request. I have an
3 e-mail and letter from Canyon detailing what was
4 required to be submitted to Canyon to consider that
5 request. So you keep saying that, and I keep
6 telling you what I've told you other times.

7 **Q** Can you describe the e-mail? Because I'm
8 not sure that we've seen that one.

9 **THE WITNESS:** Can I speak to you for a
10 second?

11 **THE REPORTER:** Off the record?

12 **MR. MILLER:** Sure.

13 **THE VIDEOGRAPHER:** Going off the record at
14 4:30.

15 (Recess.)

16 **THE VIDEOGRAPHER:** We're back on the record
17 at 4:32.

18 **BY MR. MILLER:**

19 **Q** All right. We're going to proceed.
20 Mr. Dolan is going to try to find the document that
21 you referred to and hopefully we'll find it, and if
22 we do, we'll talk about it, but in the meantime
23 we'll keep -- keep the process moving.

24 **A** Okay.

25 **Q** But in that context of switching the

1 contractor/not switching the contractor, ultimately
2 you would agree with me it would have been better
3 for the project to continue to move rather than to
4 be put on hold for five months, wouldn't you?

5 **A That statement makes the assumption that**
6 **any new contractor wouldn't take time to mobilize.**

7 Q Well, right. But my assumption is that
8 Gleeson, the potential new contractor, which had
9 already presented you a schedule and had already
10 presented proposals, would not have taken five
11 months to mobilize. They were prepared to finish
12 the project within six.

13 **A The unfortunate reality is that Gleeson did**
14 **not have a bonded GMP acceptable to Canyon.**

15 Q Right. But neither did O'Brien; correct?

16 **A Ultimately O'Brien had a GMP, which is very**
17 **important when you take over a project midstream.**

18 Q Right. But were you aware of the fact that
19 Gleeson had been on the project for weeks prior
20 seeing what was going on and familiarizing itself
21 with what was going on?

22 **A I was aware that there had been -- that**
23 **they had been on-site.**

24 Q Okay. Well, Gleeson was and O'Brien
25 certainly wasn't, and O'Brien didn't have a GMP

1 until July of 2017; so by that time Gleeson could
2 have finished the whole job if Canyon had assisted
3 in that outcome.

4 **A I disagree.**

5 Q Has Canyon had the Bank of the Ozarks
6 review Packard Square in any way, shape, or form?

7 **A I believe Bank of the Ozarks was looking at**
8 **the potential loan-on-loan situation that we**
9 **discussed earlier.**

10 Q That never went forward?

11 **A That's correct. It didn't go forward.**

12 Q What relation does Eli Broad have to
13 Canyon?

14 **A I'm not aware of any.**

15 Q Is there a board of directors of Canyon?

16 **A I'm not aware.**

17 Q Oh.

18 **A Yeah.**

19 Q And you're not aware of whether he sits on
20 it?

21 **A No. I'm not, no.**

22 Q Okay. If Jerry Murphy of the Davis
23 Companies said that you called him first to discuss
24 Packard Square would he be lying?

25 MR. DOLAN: Object to the form of question.

1 MR. MILLER: Sorry, repeat your question.

2 Q Sure. If Jerry Murphy of the Davis
3 Companies would state that you contacted him to
4 discuss Packard Square, would he be lying or
5 mistaken?

6 A I believe the sequence of events is he
7 reached out to somebody else at Canyon and suggested
8 they were interested in Packard Square, and Jerry's
9 name was forwarded to me, which is why I reached
10 out.

11 Q So you think you called him back as a
12 return of a message left for somebody else?

13 A Yes. And that person, I believe, was Frank
14 Liu, who was an origination person, who may be
15 talking to Davis about other business.

16 MR. MILLER: Ben, how we doing over there?

17 MR. DOLAN: Forwarded it -- can I just ask
18 the woman upstairs?

19 MR. MILLER: Well, no. Let me just ask one
20 more question, then we can take another stop.

21 MR. DOLAN: All right.

22 BY MR. MILLER:

23 Q Does -- do you -- do you and Mr. Mason, or
24 anyone from the receiver, discuss my client --

25 A I don't --

1 Q -- when you have calls?

2 A I don't recall discussions of your client
3 other than the site visit ones we talked about
4 before.

5 Q No, no, no. I mean with the receiver
6 during weekly calls, is my client discussed?

7 A I can't remember spending a lot of time
8 discussing your client.

9 Q Any amount of time?

10 A Again, you know, people will say things
11 like, "Craig is going to be on-site tomorrow with
12 somebody."

13 Q But only in relation to those types of
14 visits?

15 A Site visits, requests for site visits,
16 things like that.

17 Q Do you approve of site visits?

18 A I don't approve site visits, no.

19 Q You're just informed of them?

20 A I'm informed when they happen.

21 Q Got it. Let's see what it says in that
22 document; so let's go off the record again for
23 brief -- a brief moment?

24 MR. DOLAN: I'll just ask the lady upstairs
25 if she can --

1 THE VIDEOGRAPHER: Going off the record at
2 4:37.

3 (Recess.)

4 (Whereupon Mr. Schubiner didn't reenter.)

5 THE VIDEOGRAPHER: Back on the record at
6 4:52.

7 (Exhibits 42 and 43 were marked for
8 identification.)

9 BY MR. MILLER:

10 Q Sir, I've handed you what have been marked
11 as Exhibits 42 and 43 that you were kind enough to
12 present to me today.

13 Can you tell me what these two items are?
14 Start with 42 and then tell me about 43.

15 A Sure. 42 is an e-mail from myself to the
16 borrower, borrower's counsel, Bruce Measom, who I
17 believe works for the borrower, copying my counsel
18 in response to the borrower's e-mailing to me a
19 proposed termination letter of its contractor. In
20 the e-mail the borrower recites that he believes
21 that his contractor's performance is grossly
22 negligent and wants to terminate them, and I respond
23 and lay out in great detail the things that Canyon
24 would like to receive in order to consider the
25 replacement of his contractor.

1 Q Did you get a response to this e-mail that
2 you recall?

3 A I don't recall a response that fulfilled
4 the requirements that were in the e-mail.

5 Q Did you receive a response of any kind?

6 A I'm sure at some point I received some
7 information related to a contractor or contractors
8 generally.

9 Q What is Exhibit 43?

10 A Exhibit 43 is a letter dated, I guess,
11 about a week later from Canyon talking about a
12 variety of issues, but also again letting the
13 borrower know that we received the draft letter of
14 default to his contractor. And, again, our letter
15 details for the borrower that it is not the lender's
16 decision to make as to whether or not to terminate
17 the contractor.

18 (Whereupon Mr. Neupert reentered.)

19 THE WITNESS: And then we discuss our
20 concern with the approaching winter and, again, our
21 desire to see that the improvements be protected,
22 and then again we detail some of the things that we
23 require to see and approve before the contractor can
24 be replaced.

25 BY MR. MILLER:

1 Q Where does it say winter? I don't see that
2 here.

3 A **"However, winter is approaching within 60
4 to 90 days."**

5 Q Where are you looking, sir?

6 A **I'm looking on page 2 of the letter Canyon
7 sent your client.**

8 Q "However Winter is approaching within 60 to
9 90 days." Uh-huh.

10 At that point on September 20, 2016, what
11 knowledge did Canyon have about whether or not the
12 improvements were or were not protected?

13 A **Inspection reports we had received from our
14 construction consultants.**

15 Q Which construction consultants?

16 A **I can't recall if that was Hourglass or
17 Newbanks at that point in time.**

18 Q Do you have any recollection of the date
19 that Tina Van Curen went to the property for the
20 first time?

21 A **It may have been sometime in September.**

22 Q I see.

23 Do you consider Canyon to be an honest
24 lender?

25 A **Yes.**

1 Q Why does it seem so -- to be acting so
2 secretively about the things that it does as it
3 pertains to my client?

4 A **What do you mean by secretively?**

5 Q Oh, I don't know, not willing to divulge
6 information, not willing to provide e-mails, sending
7 me a log of e-mails, many of which are not
8 privileged, 6,400 of them. Why not just show me
9 everything if you have got nothing to hide?

10 A **I didn't produce the e-mails that you are**
11 **referring to.**

12 Q Well, why not just produce everything if
13 you have nothing to hide?

14 A **I'm not in charge of the production.**

15 Q So if it were up to you, you would produce
16 everything?

17 A **I'm not in charge of the production. I**
18 **don't know what you saw or didn't see.**

19 Q Well, what I did see is that my client got
20 served with a lawsuit a few minutes ago. Are you
21 aware of that?

22 A **I am.**

23 Q It is interesting. My client has been to
24 Canyon twice in the past couple of years and both
25 times ended up getting sued while he was here.

1 Isn't that interesting?

2 **A How do you define "interesting"?**

3 Q I find it -- I would define it as more than
4 coincidental. That is how I would define it. How
5 would you define it?

6 **A I wouldn't define it as interesting or not
7 interesting.**

8 Q Why not share with us the intention of
9 suing us yet again?

10 **A I am not aware as to why that decision was
11 made or not made.**

12 Q Probably because Canyon likes to play these
13 types of games and to flex its muscle, would you
14 agree?

15 **A Those are your words.**

16 Q You disagree with that?

17 **A I disagree with that.**

18 Q Then why do it? Why not serve my client in
19 Detroit where the lawsuit is filed?

20 **A I didn't make the decision to serve him
21 here.**

22 Q Who did?

23 **A I don't know.**

24 Q Yeah.

25 No further questions.

1 Anybody have anything on the phone?

2 I guess not.

3 Oh, you know what? I don't know. Is
4 Pascoe off?

5 MR. DOLAN: Did he even hook back up?

6 MR. MILLER: There is a thing. His name is
7 there.

8 MR. DOLAN: He is still there?

9 Mike?

10 MR. MILLER: Hello?

11 MR. DOLAN: Ari?

12 MS. PELLEGRINO: I'm here.

13 MR. DOLAN: Oh, you are. Okay. So it's
14 still working.

15 MR. MILLER: Well, I don't know what
16 happened to Mr. Pascoe, but I guess he snoozes, he
17 loses; right?

18 All right. We're done. Thanks.

19 MR. DOLAN: Okay.

20 THE REPORTER: Off the record.

21 THE VIDEOGRAPHER: This concludes today's
22 deposition of Gerald Goldman. Going off the record
23 at 4:58 p.m.

24 (Ending time: 4:58 p.m.)

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WITNESS'S CERTIFICATE

I am the witness in the foregoing deposition. I have read the foregoing deposition and having made such changes and corrections as I desire, I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____,
at _____.

GERALD GOLDMAN

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REPORTER'S CERTIFICATE

I, DEBORAH L. LUNDGREN, CSR No. 6727, RPR,
a certified shorthand reporter in and for the State
of California, do hereby certify:

That prior to being examined, the witness
named in the foregoing proceedings declared under
penalty of perjury to testify to the truth, the
whole truth, and nothing but the truth;

That said proceedings were taken by me in
shorthand at the time and place herein named and was
thereafter transcribed into typewriting under my
direction, said transcript being a true and correct
transcription of my shorthand notes.

I further certify that I have no interest
in the outcome of this action.

May 14, 2018

DEBORAH L. LUNDGREN
CSR NO. 6727, RPR

A
a.m 2:19 9:2,9
 98:10
ability 176:12
 176:13
able 30:17 126:7
 131:11 136:4
 137:7 143:7
 145:7 188:4
abruptly 222:22
absent 153:5
accept 129:19
acceptable 89:16
 90:5 135:15
 165:7,10
 170:14 286:14
acceptance 64:5
accepted 131:15
accommodation
 153:4
accompanied
 153:3
accomplish 203:1
account 28:9
accrued 143:21
 146:4,16,16
accuracy 148:1
accurate 38:22
 47:12,16 123:2
 128:18 150:16
 183:17 184:5
 202:9 233:25
accusations 75:2
achieve 232:9
achieved 21:9
 22:5
acknowledge
 135:25
acknowledging
 160:19
acquired 20:10
acquisition
 136:10
acronym 240:15
acronyms 240:10
act 21:19,22
 33:17 58:4
acting 20:19
 154:24 293:1
action 43:3 52:2
 52:21,21 54:5
 54:24 55:9
 61:16 72:4,7
 76:6,8 297:17

active 145:16
 156:4,10
actively 21:17
activity 160:1
acts 32:22
actual 34:25
 35:2 37:20
 210:13 242:17
 267:7 273:14
 273:16
add 51:4 52:3
 62:13
added 238:15
addendums 38:10
 38:18,20
adding 228:12
additional 52:17
 130:12 146:15
 224:14 242:3
 261:4 266:13
Additionally
 115:12 207:17
address 23:11,17
 23:19
addressed 112:12
adequate 42:19
 54:20
adhere 54:13
 281:5
adjective 32:20
administer 36:9
 273:24
administering
 249:17
administers
 105:10
administrator
 22:9
advance 57:11,18
 58:5 61:23
 74:18 154:1
 245:25 265:22
advanced 266:1
advice 152:16
Advisors 17:1,17
 17:22 19:5
 28:8
affect 55:13
 271:11
affirmatively
 104:16
afternoon 137:11
ago 51:24 101:7
 142:13 225:11
 293:20

agree 35:17
 40:22 46:23
 51:21 55:15
 65:12 71:12
 83:24 84:2,6
 86:9 95:23
 107:18 110:1
 110:21 116:24
 118:2,5 119:2
 120:19,23,24
 122:19 124:2
 144:3 146:11
 194:19 199:1,4
 202:21 207:3
 249:9 286:2
 294:14
agreed 137:8
 169:16 170:4,8
 198:12 219:5
agreeing 186:4
agreement 5:16
 8:18 37:8,20
 41:12 42:2
 43:9,12 68:3
 80:1 82:5
 88:19 95:17
 99:8,18,22
 105:16 116:3,4
 124:5 127:6,11
 135:24 136:5,9
 136:10 137:18
 139:25 140:5
 140:10,14,19
 140:23 141:3
 143:1,3 152:10
 167:10,12,14
 167:18,21,23
 170:14 203:9
 207:22 218:12
 256:6 264:6,11
 273:18,23
 275:6,8,9,11
 280:19,22,23
 281:11,16
 282:2,5,8,25
 283:25 284:6
agreement's
 145:4
agreements 41:13
 41:17,18,25
 167:14
Ah 80:18 279:10
 279:14
ahead 33:7 34:8
 48:17 52:10

57:1 86:23
 99:19 129:16
 129:25 131:4
 173:13 186:7
 188:12,13,22
 197:12 215:12
 221:5 257:8
 281:24
air 192:21
akin 139:21
al 1:9 2:9
Albert 6:5
 154:21,23
 155:1
Alison 14:12
 69:19 83:12
allegation
 226:11,22
allegations
 223:1,9,12,13
 223:16,17,18
 223:20,25
alleged 60:25
 193:22
allegedly 188:20
 203:17 226:23
alleging 275:1
Allen 3:21
 116:23 277:12
allocation
 135:20
allow 29:19 56:8
 65:6 153:4
 271:17 284:21
allowed 136:14
 205:10
alluded 115:14
Allure 273:12
alternatives
 213:8,11,12
amendment 80:24
 81:11,12,24
 82:6,9
American 16:25
 17:16,21 19:5
 19:8,9,13,14
 19:18
amount 28:21
 64:13 107:7,8
 110:18 113:22
 118:25 119:4,6
 119:18 120:8
 121:18 122:9
 124:17 130:7
 130:22 131:12

136:13 137:7	215:3 221:5	appointed 166:20	265:7 283:15
140:6,14,22,24	224:23,25	171:11 172:1	289:17,18
141:7,15 142:3	225:1 227:11	173:18 177:13	291:23
142:20,23	230:8 241:3	182:12 187:13	approved 46:3,17
145:7 147:14	251:17 257:9	189:21 197:24	46:22 47:22
149:14 168:8	281:22	198:17 201:25	48:14 49:9
194:25 196:12	answered 49:25	204:1 207:9	56:20 57:5,8,8
198:22 204:11	55:5 104:16	209:5,7 210:21	57:21,22,24
204:11 231:8	154:16 161:16	211:3,7 212:7	58:2 62:20
234:6,11	212:22 213:1	appointing 23:24	63:4,4,25 64:1
243:21 271:11	240:16 241:2,9	256:21	64:22 65:2,7,8
289:9	answering 29:4,6	appointment	85:25 86:2
amounts 6:20	29:8,8,17,17	159:19 208:15	90:14,20,22,24
144:12 150:14	32:17 33:12	appreciate 100:5	99:21 103:21
266:10,13	68:1 90:25	appreciative	105:7,24 115:2
analysis 121:2	161:22 230:13	78:25	116:3 125:5
121:21 131:18	230:14	approaching	126:23 127:6
257:16	answers 78:24	291:20 292:3,8	135:14 167:19
and/or 26:2	183:2,9 231:14	appropriate	167:23 168:6,7
127:13 241:6	anticipate 269:5	54:10 83:25	169:24 170:2
anecdotally	anticipates	116:9 127:24	185:6 187:6
244:19	134:22	164:11 176:19	198:10 231:2
Angeles 1:16	anybody 10:8	176:23 198:22	274:10,13,14
2:18,23 9:1,7	188:18 226:21	229:1 230:11	274:17,18,19
16:20 133:1	231:21,24	231:8 237:6	approved/stamped
221:24 222:3	257:21 262:16	approval 57:11	45:9
Angie 67:8	265:8 295:1	84:4 86:17,20	approves 121:24
Ann 61:21 63:24	anymore 125:14	92:4,16,21	approving 125:9
155:7,23	Anyway 87:14	93:2 105:20	127:2,4 131:2
159:15 262:4	277:17 278:6	120:7 123:12	169:25 186:11
270:6 271:24	apartment 20:11	131:8 167:17	186:17 230:15
272:2	62:5 103:2	169:17,18	approximate
announce 176:20	258:5 271:7,25	186:21 207:18	246:11 265:16
answer 8:21	272:3	212:9,12 235:7	approximately
11:15,16 23:9	apartments 17:11	235:22,23	19:22 60:16
29:20 30:20,22	187:22 248:14	236:7 245:15	107:8,13,19
31:2,3,10,11	248:17 271:18	245:16,20,25	114:22,24
31:24 33:15	apologize 33:4	260:16,18	117:20 119:7
41:21 52:10	244:23	265:8,10 283:4	April 66:10
54:17 55:13,19	app 283:3	approvals 199:10	149:10 167:22
55:21 62:12,16	appear 40:4,15	199:11,16	268:7
62:17 63:12,19	APPEARANCES 3:1	235:12 236:1	ARA 262:9
70:15 78:5,8	appears 41:8	approve 57:18,21	Arbor 61:21
78:11,17,19,20	71:24 163:15	65:6 103:12,20	63:24 155:7,23
81:14 86:23	210:6	104:13,20,21	159:15 262:4
99:19 100:5	appended 276:21	105:3,5 115:6	270:6 271:24
121:8 137:10	appetite 269:17	118:17 120:3	272:2
137:12 158:22	Apple 279:13	121:9 123:15	architect 104:2
162:5 170:10	application 6:16	123:18,20	104:4 241:6
170:24,25	7:17 111:2,3	139:8 168:5,8	architects 109:3
183:10 189:4	111:10 283:6	169:23 207:24	Arcon 17:23,25
200:2,3 210:14	applies 29:10,13	234:23 235:5	19:3,8,9,15
211:11,12,14	29:16	235:11,25,25	Arden 108:9
211:14 212:15	apply 39:24	236:3,4,6,20	114:14
212:17 213:5	40:13	264:10 265:2,6	argue 178:15

180:10 195:15	160:24,25	129:3,3,4,5,8	audibly 11:16
212:13 255:1	161:2,3,15,24	129:23 130:15	August 6:9 7:21
arguing 180:11	164:3 170:2	196:10 239:13	71:23 73:19
argument 231:4	173:5 174:21	248:22 279:23	74:2 75:21
253:21	174:23,24	assumed 127:10	76:7 233:19,25
argumentative	177:4 189:19	assumes 56:16	234:22 274:15
33:20 197:11	190:2 192:18	assuming 57:22	275:3 277:10
Ari 295:11	193:20 213:10	57:23 67:13	277:16 278:16
Ariana 3:4 10:11	218:5,22 219:9	70:3 98:22	279:4
arm 22:13	219:22 220:18	115:22 128:14	Austin 2:17
Arpeggio 245:12	220:18 223:15	129:10 130:20	authority 255:5
arrangement	234:9,10	143:23,25	availability
139:13 144:5	235:22 245:21	144:10 172:24	269:18
arrived 229:6	248:13 254:20	207:15 241:7	available 136:6
arriving 62:7	254:22 255:15	269:8	170:3,7 176:25
arrogant 33:20	256:16,17	assumption 45:10	Avenue 2:17 9:6
Ascent 273:12	267:5 269:25	56:25 57:1,2	average 248:12
ascertain 224:14	281:6,7,9	91:19 128:12	248:14
252:20	asks 92:4	158:4 260:25	aware 25:23
asked 11:22	aspersions	267:21 286:5,7	38:19 50:8
18:14 22:21	120:11,15	Assumptions	51:3 57:4,13
24:13 28:5	assesses 39:22	129:15	57:15,17,17,20
29:16 32:5,7	39:25	attached 8:18	62:4,6 67:19
37:21,21 42:14	assessing 276:23	74:14 75:7	83:15 91:17
51:22 54:21	assessment 46:2	80:24 98:20,21	92:19,22 99:13
62:10,25 66:14	83:25 88:1,2	99:8 111:1	100:13,17,21
68:4,6 70:14	192:2 234:1	112:1 113:4,17	100:24 101:2
71:19,20 97:3	279:24	135:24 206:17	102:7 104:10
97:4,6 103:20	assessments	219:18 277:21	104:12,15,17
104:15 111:18	119:2	279:6	104:18 108:13
119:21 120:6	asset 13:7 18:12	attachment 5:11	113:22 114:19
121:8,9 123:18	19:19 25:20,21	7:9,14 8:5	114:20 126:20
124:4,10,11	27:11,11 69:17	111:22 112:9	135:20,23
131:16 161:11	72:15 103:8,9	217:12 279:6	136:16 138:22
169:22 171:15	105:10,15,17	attachments 75:4	138:24,25
172:4,10,13,18	127:22 249:17	attempt 100:10	139:2,3 150:14
188:14 199:15	263:14	attempted 238:16	165:24 166:1,2
199:17,25	assets 13:4,8,10	attempting	174:1 187:15
212:6 215:8	13:20 14:1	243:15 271:1	209:12 213:11
219:11,12	16:10,19 17:9	attending 250:11	228:5 231:21
222:3 242:6	17:9 18:18,20	attention 11:10	234:25 236:9
244:22 265:10	20:19 106:4	49:2 93:22	236:12 237:13
271:10 283:4,6	assigned 25:20	169:9 171:8	237:22 238:9
283:11 284:2	25:25	attorney 3:10,16	246:6 259:22
asking 29:13	assist 88:11	29:11 113:17	259:24 269:24
31:22 39:11,15	assisted 287:2	148:12 152:20	275:4 286:18
46:11,24 47:3	Association's	214:6 233:5	286:22 287:14
47:5 51:22,25	22:12	attorney's	287:16,19
52:1 55:5 62:8	assume 14:15	148:11	293:21 294:10
62:9 64:25	42:12 53:2,4,5	Attorney-Client	awareness 166:3
107:17 109:24	53:8,10,18	4:9 7:4	awfully 126:7
115:25 120:3	54:2 75:5,9	attorneys 3:5	160:3
139:9 145:21	77:4 86:1	9:10 181:8	Azran 3:21 17:13
146:10,11	95:16 98:22	195:12	93:19 94:5
153:12 158:20	116:7 128:11	atypical 85:10	133:4 146:17

B
B 4:6 5:3 6:3
 7:2 8:2 42:16
Bachelor 21:8
back 19:9 20:7
 39:5 40:6,17
 44:4 53:13
 58:25 62:16
 66:21 75:2
 76:18 80:9
 81:16 93:17
 94:23 101:14
 122:10 123:16
 124:6 130:17
 132:3 133:9,13
 141:13 152:20
 172:16,19
 178:21 179:13
 180:1 201:2
 208:12 210:9
 210:14 214:3
 219:16 224:17
 228:22 247:11
 251:7 275:17
 276:15 279:17
 285:16 288:11
 290:5 295:5
back-and-forth
 220:1
background
 109:23
backup 223:10
bad 35:5 59:22
 59:24 142:9
 152:21 284:19
balance 56:2
 62:11 107:14
 147:14 153:21
 248:22 265:19
 265:21 266:19
 267:22 268:3
bank 6:23 125:24
 287:5,7
bankruptcy
 199:10,13,14
 199:19 200:22
Barbara 60:21
bargaining 50:19
 53:21
base 91:19
based 28:20 59:7
 64:2 66:15
 107:17 135:11
 150:6 192:12

196:6 206:25
 208:13,18
 226:10,10
 231:6 243:21
 271:24 278:10
basically 89:5
basing 129:17
 170:12
basis 43:8 83:6
 110:13 124:24
 129:9,15 131:1
 185:13,16
 190:14,19
 230:22 242:14
 249:11
Bates 4:9,13
 5:14,19,23 6:7
 6:9,16,18,20
 6:21 7:6,9,11
 7:14,17 233:4
 233:6 276:20
 276:21
Bates-numbered
 113:16
bear 278:17
Beaver 3:5
began 26:6 188:9
beginning 57:6,8
 58:23 97:3
 133:7 153:23
behalf 2:15 9:14
 9:16,18 12:17
 250:15 251:6
 260:8
behaved 32:21
behavior 33:11
 33:13,14
belabor 279:19
belief 27:21
 29:21 50:21,24
 81:7,15 120:24
 138:13,21
 176:2 274:6
 296:10
believe 26:11
 29:9,18 37:15
 37:23 38:21
 39:18 40:7
 42:3 47:11
 62:12,18 63:1
 63:22 69:25
 70:3 73:2
 75:24 81:5,9
 82:17 96:15
 97:13 104:24

106:2 111:2
 113:11 122:20
 129:21 135:18
 138:8 159:16
 166:16 167:10
 175:25 204:20
 208:22 213:21
 222:9,10 228:2
 230:4,15
 233:24 234:4
 236:7,13
 237:14,17
 244:13 247:7
 250:10,15
 258:7 259:14
 260:18 261:13
 263:1 264:7
 265:10,21
 268:11 275:13
 280:23,24
 287:7 288:6,13
 290:17 296:11
believed 114:12
 120:19 124:18
believes 54:9
 95:6 290:20
Bellow 277:12
Ben 10:1 78:9
 154:15 190:7
 213:6 252:20
 277:10 288:16
Benjamin 3:4
 9:16
Berriz 154:22,23
 155:25 159:7
 159:17
best 127:21
 170:3,7,13,18
 172:12 176:4
 176:24,25,25
 230:4 268:9
 284:21
better 144:4
 186:9 201:6
 286:2
bid 176:5 198:2
bidding 176:24
big 3:5 226:7
billion 246:13
bills 147:25
 148:6,9,12,15
birth 22:15,16
 22:20,21 23:2
bit 32:18 59:23
 59:25 60:1

74:11 139:22
 201:6 276:18
 279:17
blown 229:14
board 287:15
boat 103:17
bold 166:24
 168:2,12,17
bolded 168:17
BOMA 22:6,11
bond 153:3,6
 236:17,22
bonded 40:12
 85:15 91:24
 286:14
boring 11:10
borrow 137:7
 158:7,11,24
 219:2
borrower 27:20
 39:20 42:21
 51:7 54:21
 68:17 71:16
 72:23 74:15
 87:6 89:19,22
 91:6,7,9 92:4
 95:5,8 123:24
 135:3 136:17
 136:22 142:2
 142:21 161:12
 189:10 196:23
 210:8 216:15
 217:6 218:14
 224:15 226:13
 243:14 244:7
 282:3 283:1,10
 283:19 284:19
 284:21 290:16
 290:17,20
 291:13,15
borrower's 4:17
 40:23 193:3
 290:16,18
borrowers 102:11
 219:2
boss 31:21 32:1
 32:5,6,23
Boston 258:2
bottle 251:20
bottom 46:10
 93:25 109:7,15
 111:3 112:11
 112:13 117:16
 117:17 134:21
 144:16 194:22

bought 137:4
boy 21:3
brand 139:14
break 58:8,11,16
 93:7,8,9 132:2
 178:21 276:20
breakdown 266:17
 267:7
breakout 267:18
breathing 239:23
brief 205:2
 289:23,23
briefly 12:25
bring 129:10
 267:5
bringing 169:8
Broad 287:12
broader 284:11
 284:17
broken 268:2
broker 20:19
 21:20,22,24
 261:16,19,21
 262:6 263:16
 264:3,25
broker's 21:16
 21:17,21
brokerage 20:1,5
 263:18
brokers 261:17
 262:5,19,25
brought 17:16
 49:2 130:17
 131:7 169:12
 221:24 222:2
 228:3
Bruce 3:23 10:13
 10:14 222:9
 227:14 290:16
budget 7:9
 135:23 138:11
 198:9 240:14
 240:23 241:1
 248:2 270:12
 277:22 279:6
budgets 235:5
 236:1
build 45:10 49:4
 54:10 57:5
 80:7 91:25
 153:17 165:4
 213:13 219:2
building 22:12
 47:18 49:9
 79:20 89:16

109:2 121:5,6
 121:25 135:22
 136:6 137:4
 188:19 189:9
 191:7 192:1
 201:10 203:12
 203:22 208:20
 229:10,24
 230:1 231:19
 271:16 272:5
buildings 17:12
 18:7 20:11
 22:14 258:5
built 62:23 76:5
 108:12 109:1
 109:18,19
bullet 163:17
bullish 262:3
bunch 168:17
 218:12
business 5:18
 19:25 20:1,2,6
 21:18 95:9
 102:12 134:3,8
 134:10,21
 140:13 144:7
 144:18 172:17
 173:17 226:14
 227:25 241:11
 247:24 249:22
 249:24 252:7
 252:15,16,17
 263:18 288:15
buy 250:4,6
buyers 264:6

C

C 42:18
C.E 4:15
calculate 140:9
 141:1,2 144:8
 145:9 146:5,10
 238:16
calculated
 140:15 141:14
 144:19 205:1
 234:13,15
calculations
 227:17
California 1:16
 2:18,24 9:1,7
 17:3 18:2
 21:16,21 22:1
 59:16 60:21
 61:6 133:1

296:13 297:6
call 6:5 24:22
 75:21,24 76:2
 76:10,12
 245:11 246:18
 258:10 259:1
 262:8,18 268:7
 279:22
call/meeting
 74:18
called 16:5,25
 17:23 25:4
 59:13 60:22,23
 134:8 143:13
 258:8,14
 270:19 287:23
 288:11
calls 39:9 50:10
 76:7 83:4 92:7
 157:2 257:8
 262:2,7 264:4
 289:1,6
campaign 75:2
CANIV005555 5:14
CANIV051204 6:18
CANIV051307 5:19
CANIV051344 6:7
CANIV051515 6:9
CANIV051621 5:23
CANIV059103 6:22
CANIV059315 7:17
CANIV059757 7:14
CANIV064865.txt
 279:8
CANIV064906 7:9
CANIV066897 7:7
CANIV067903 4:13
CANIV072392 4:9
CANIV074104 6:16
CANIV079041 6:20
CANIV079047 7:11
Canyon 5:15
 12:12,15 13:3
 14:23 15:24
 16:3,19,23
 17:10,17 18:17
 26:11,15 27:5
 27:6 28:1,8
 38:12,14 41:13
 43:14,16,16
 55:8 62:18
 63:1,22 64:2,6
 64:20 65:2,6
 65:18 69:4
 72:2,4 76:1,6

76:8,25 79:23
 81:3 82:21
 83:3 85:2,25
 86:1 88:22,25
 90:14,21 97:8
 97:12 100:25
 101:7 103:4,6
 103:20 104:24
 105:7,8,9
 115:2,20
 123:22,24
 125:5,16
 126:23 127:13
 131:15 134:7
 134:22 140:2,2
 140:12,18,23
 143:23,25
 144:3,11 145:4
 145:20,21,22
 147:12 148:9
 150:9 158:15
 158:15,25
 162:16,24
 167:2,18 168:4
 168:8 169:23
 169:24 170:1
 174:17 175:12
 175:15 178:4,5
 178:8 188:25
 189:5,6,7
 192:11,20,23
 192:25 193:15
 193:15 198:3
 201:18 202:6
 203:11,19,21
 203:23,23
 204:1,9,12,15
 204:16,18,20
 204:22 206:18
 208:5,22
 209:12 214:23
 215:9 223:2,3
 223:9,22
 225:24 226:10
 226:21 227:1,2
 227:4,8,16
 229:5,9,23,25
 230:2 232:5,8
 232:10,10,11
 232:17 233:15
 233:17 234:22
 235:5,7,11,12
 236:2,6,20
 237:3,12
 240:12 244:4

244:16,23	11:9 98:17	115:13 150:23	117:11 277:12
245:13,14,16	102:6 144:11	229:21 240:17	chronology 224:2
246:6 247:9,25	155:12 182:16	241:17,21	chuckle 239:21
248:2 249:7	209:9 211:17	242:6,9,10,14	circles 113:20
250:14,17	231:25 232:4	242:19,23	Circuit 1:2 2:2
251:22,22	232:13,18	245:10,12,20	11:3
253:5,7 256:7	245:22 261:5	251:17 284:22	circumstance
257:4,17 259:4	269:10	284:24	165:7 281:8
259:23,25	cash 194:25	changed 15:1	circumstances
260:2,6,10,11	casting 120:11	17:19 28:14,18	70:8,10,17
260:13,17	120:14	69:23 81:13	165:1 266:4
261:1,3,9	cause 61:3	90:11,13	274:25 275:1
262:16 263:12	caused 53:24	244:24 245:5	city 18:3 48:7
264:10 265:20	61:24	245:24 247:22	48:11 50:9
272:9 273:23	centered 76:3	changes 5:7 45:7	51:4,9 54:3,7
274:18,20	centers 17:12	45:13 54:22	54:9,18 55:22
280:21 281:1,3	18:8	69:25 269:18	56:3,18,23
281:7,10,15	cents 165:9	269:19,19,20	57:5,11,18,20
282:5 283:1,20	Century 18:3	296:7	57:22,23 61:12
285:3,4 286:14	certain 39:20	changing 15:7	61:21 62:12
287:2,5,13,15	123:23 181:15	115:14 241:1	63:25
288:7 290:23	certainly 33:3	chapter 40:7,7	city's 54:13
291:11 292:6	144:3,15	characterization	city-approved...
292:11,23	145:22 146:13	32:13,14 35:20	5:6 45:6
293:24 294:12	204:10 286:25	characterize	claim 40:11,24
Canyon's 12:17	CERTIFICATE	27:15,17	59:8 107:12,20
21:18 41:16	296:1 297:1	characterizing	109:19 128:16
75:15 89:5	certificates	123:1,2,4	147:2 187:13
129:18 131:1	22:3 187:22	charge 164:6	190:8 237:7
131:19 147:13	248:16,20	165:11 172:11	claimed 107:23
148:10 152:12	certification	204:2 212:18	claims 144:12
153:18 175:6,8	22:10	219:3 293:14	244:12
175:9 198:11	certifications	293:17	clarify 46:24
201:9,21	22:4	charged 144:1	161:19
202:16 204:23	certified 2:21	163:25 164:2,4	clarity 46:5
222:4 230:15	22:10 297:5	165:9,18,20	clear 37:5 42:25
246:12 258:4	certify 296:8	191:21 201:16	57:2 68:1
272:12 284:3,5	297:6,16	270:11 271:12	71:16 111:16
284:21	chain 112:3	charges 267:20	112:8 113:10
capable 176:15	139:20	charging 146:22	115:7,9 126:21
capital 28:8	challenge 190:8	165:25 230:18	127:19 137:17
90:6 224:15	chance 42:4	Chaves 6:5	183:17,20
246:14,16,17	44:14 71:7	check 38:9	191:23 198:5
270:21,25	98:2	125:22 126:9	200:18 203:11
capitalization	change 15:3,4,6	159:15	208:1 210:20
269:18	15:16,19 19:10	Chicago 102:4	218:23 242:16
cards 225:24	30:1 34:18,22	103:3	256:4
care 162:1	34:25 35:1,2,3	chip 50:19 53:21	clearable 241:18
178:19 203:12	35:3,6,9,11,13	chooses 129:18	clearance 244:1
235:1 258:11	35:14 36:2,3,4	choosing 208:15	cleared 240:17
career 18:19	36:11,14,16	283:22	241:13,14
20:13 26:19	51:12 55:17,19	chose 195:10	243:2,3,4,10
70:21	55:21 58:3	chosen 182:12	243:11
carpet 199:6	61:16,18 64:23	209:11	clearing 127:25
case 10:21,25	65:14 91:7,8,9	Chris 116:23	clearly 66:25

81:3 224:11,11	close 80:11	communicate 69:3	232:6 265:25
243:15 253:6	153:5 193:10	communicated	268:17 269:2
Cleveland 3:18	207:14 256:14	231:24 244:4	269:12 270:8,9
client 23:16,19	272:18	communication	270:15
37:8 57:14,16	closed 25:21,24	67:1	completely 26:12
61:22 62:19	27:14 152:25	communications	33:24 118:21
63:3 64:14	closing 27:12	244:6 249:11	120:12 130:7
71:19 74:8	code 49:1 56:17	community 250:12	151:17 213:9
76:10,11,14	56:24	companies 18:22	221:20 243:5
77:2,6,14	coincidental	86:5 257:22	243:11,19
79:22 83:4	294:4	259:2,16,17	completing
84:15 85:24	cold 270:19	262:6 287:23	191:22 192:7
86:2,9,15	collateral 54:8	288:3	193:4 195:12
87:19 88:11,15	189:22 253:18	company 1:5,8	195:24 219:4
88:22 94:9	253:24 254:1	2:5,8 3:14	completion
95:25 96:6	256:12	20:8 86:4	187:19,20
98:7,13,20	collection	108:12 175:9	191:14 195:6
100:14,21	278:14	179:5,10	198:9,25
113:5 136:3,12	college 20:9,24	189:23 258:2	203:18 236:13
144:5,17 145:2	20:25	compare 146:6	240:22 248:2
146:23 147:17	come 25:6 26:24	272:3	248:24
152:15 154:3,4	48:21 87:23	comparing 144:25	complex 62:5,6
154:9,11,12,13	101:14 105:6	comparison 46:16	compliance
159:4 160:15	125:17,20	277:22 279:7	218:20,22
160:22 171:20	134:25 178:21	compel 183:8	complied 96:11
189:1,7 192:25	186:1 189:15	compensation	96:15 274:7
193:17,18	189:16,20	28:20,23,25	complies 96:4
206:4 209:9	192:20,21	complained 53:20	comply 52:18
219:6 220:2	222:3 226:14	complaining	96:7,13,22
221:2,12,14,16	252:17 259:7	210:7 231:18	218:25 219:19
221:19,22,24	278:15	complaint 190:4	components
222:16,18,19	comes 261:14	190:5,9,11	266:19
222:21 223:8	coming 12:9 24:9	complete 37:13	comports 37:15
223:23 226:20	24:10,16 54:7	37:16 51:17	computer 278:13
227:17,25	275:16	81:6 85:16	278:21,24
229:1 239:3	commence 65:15	107:14 108:20	concept 139:10
253:8 254:6	commenced 169:16	109:8,15,20	190:19,22
257:4 275:22	commencing 2:19	114:13,18,24	191:7,25
280:20 281:4	161:15	138:16,18	192:12 197:20
282:19 283:19	comment 25:11,12	150:20 158:8	260:16
284:2,15	168:16 226:2	184:24,25	conceptually
288:24 289:2,6	229:22	187:21 189:11	85:24
289:8 292:7	commented 265:13	191:14,19,20	concern 29:23
293:3,19,23	comments 166:23	193:6,9 195:9	66:21 127:12
294:18	167:9 265:12	196:23,24	127:15 168:9
client's 66:9	265:14	197:24 201:14	168:11,14
83:15,24 99:13	commercially	201:17 226:15	169:13 198:8
100:10 144:2	42:21	229:10 242:24	223:1,7 230:2
144:14 145:24	common 32:22	266:7 270:12	232:2 243:16
223:8 252:3,17	35:23 36:13,15	completed 170:16	291:20
278:13,24	36:17 46:19	171:25 188:5	concerned 30:13
281:16	47:19 57:10	193:23 194:1	137:18 157:22
clients 12:18	64:24 151:14	199:6 201:10	169:11 183:3
20:22 38:23	165:6	202:24,25	concerns 210:4
223:1 257:18	commonly 52:15	203:13,15,22	210:18 212:2

concert 127:19	213:11 285:4	construction-...	165:12,22
conclude 185:14	290:24 292:23	185:1	166:17 167:15
concluded 138:10	consideration	Constructors	168:9,19,23
concludes 295:21	142:22 208:21	4:16	169:1,10,14
conclusion 71:13	considered 42:11	consult 170:18	187:5 207:17
92:8 135:1,5	55:9 61:8	consultant 75:15	221:25 229:14
144:4 257:8	172:5,6 173:1	75:16 103:24	229:15,18
281:19,24	175:25	116:8 150:3	236:6,9,10,18
conclusions	consistent 33:13	consultant's	236:21 238:8
39:10 138:3	60:8,11,15	150:7	266:6 267:19
261:12	118:21 120:12	consultants 73:1	281:4,5 283:20
condition 165:3	121:15 130:7	198:12 292:14	contracted
187:25 237:6	constantly	292:15	114:21
248:17,21	121:25	consulting	contractor 7:19
270:19 280:25	consternation	150:10	34:21 39:21,22
conditional	243:22	contact 80:14	39:25 48:18,24
217:20 218:11	construction	175:1 259:10	49:22 50:10,20
218:21 219:14	3:14 8:18	260:10	51:7 52:3
219:24	35:24 36:9	contacted 174:22	53:19,22 56:8
conditions 41:4	37:7 40:8 49:3	288:3	58:4 67:24
80:4 99:10	52:15 57:6,9	contained 182:1	68:22 70:5
163:19,25	57:10,19 60:5	182:2	71:17,20 77:10
164:1,7,23	62:1,19 63:2,3	contends 140:2	84:5,9,24 85:9
165:10,17,20	63:23,24 64:14	284:19	85:10,15 86:12
168:2 218:12	64:16,24 65:7	contention	86:13,16 87:7
condominium	65:10,16 68:3	182:23	87:20,23 89:10
59:18	73:1 75:15,16	contents 89:13	89:16,20 90:1
conduct 178:22	85:21 86:4,5	143:6	90:2,4,9,10,12
Confidential 8:9	86:18 90:3,4	contest 40:2,24	90:17,19,23
confirm 12:2	99:17,22	41:3 43:9,11	91:9,10,24,25
22:17 69:13	103:24 104:3	contesting 40:5	92:24 99:19
74:20,22	116:8 141:10	context 46:25	101:2 105:4
108:16 109:10	149:9,11,14,15	51:23 188:1	107:23 115:17
109:24 111:11	150:3,7,10,24	209:25 240:18	116:10 123:25
116:12 122:9	151:4,11,20	278:19 285:25	130:17 153:7
160:12 161:7	153:2,5,23	continue 27:9,13	153:16 165:1,8
162:7 279:19	164:6 167:3	76:5 183:6	170:14 171:25
280:4	172:10,19	286:3	172:2,7,8
confirmations	176:18 184:18	continued 5:1	176:6 184:17
150:7	185:15 193:7	6:1 7:1 8:1	186:17 188:16
confirms 225:22	196:16,20	133:11 217:6	189:5,6 192:9
confrontational	197:17,22	218:13	193:6 198:1
32:18 33:18,19	198:2,2,3,4,7	continues 46:3	203:2,24 206:6
confuse 11:14	198:12 199:2	contract 34:21	206:10,20,25
confused 102:25	201:8 202:24	38:16,22 59:4	207:25 208:6
conjunction	202:24 222:1	72:8,13 80:1	210:7 216:15
150:12 155:11	229:13,15,17	85:20,24 86:3	217:5 218:2,14
Conor 176:17	231:19 232:4	86:5,8 89:24	219:3,7,7
consider 92:23	232:11,11,13	90:15,21 91:5	220:3 229:18
101:1 171:16	232:18 236:21	91:24 92:5,20	232:10 241:5
172:21 173:3	237:1 241:12	93:1 107:4,9	242:3,6 243:22
177:14 206:6	244:5 246:9	114:3,23	283:15,25
208:5 210:4,18	248:17 265:25	115:14 119:17	284:20 286:1,6
211:2,5,9	268:18 275:11	145:3 153:1,5	286:8 290:19
212:1,16	292:14,15	153:8 164:8,23	290:25 291:7

291:14,17,23
contractor's
 168:1,5 169:23
 290:21
contractor/not
 286:1
contractors
 99:25 111:8
 164:6 170:17
 171:12,17
 172:4,6,18,25
 173:1,2,3,10
 176:1,21
 284:22,24
 291:7
contracts 7:11
 76:9 85:2
 86:18 164:10
 167:3
contractual
 273:3
contrary 72:2
control 210:24
 211:8,25
 213:13,25
 243:17 252:25
controlling
 125:19
controls 253:4
conversation
 26:25 28:3
 30:18,23 34:7
 74:17 78:2
 130:16 131:7
 148:14 157:5
 254:12 258:18
 258:20 259:7
conversations
 27:19 135:2
 156:12 264:2
convicted 24:25
 25:15
copied 45:5
 66:14 113:5
 133:25 220:1
copy 37:13 38:22
copying 76:22
 290:17
cord 186:6
corporate 178:11
 178:18 179:4
 181:13 182:4
 182:18,19
 183:19,22,24
 184:1 255:7

corporation
 184:2
correct 12:3
 13:17 14:6
 35:15 36:10
 37:9 40:3
 42:16 48:7
 69:16 86:13,14
 98:20 103:23
 103:25 107:21
 117:1 121:17
 125:18 126:24
 126:25 136:1,2
 136:25 137:3,5
 137:7,20
 138:16 141:16
 141:19 145:24
 147:21 152:10
 152:11 159:1
 166:20,21
 168:20 169:13
 171:20,21
 186:14 195:2
 199:23 200:12
 201:19,22
 202:7,16 207:8
 207:23 209:11
 214:6 215:2,5
 221:13 242:15
 253:9 284:7
 286:15 287:11
 296:14 297:14
corrections
 296:7
correctly 11:17
 123:5
correspondence
 44:5 193:16
 283:2
Corson 263:9
cost 163:19
 167:19 195:22
 229:15 230:19
 233:22 234:1,6
 234:12,13,15
 234:18 235:2
 238:12 269:20
 276:23 278:10
 278:15 279:23
costs 6:14
 136:20 238:13
 242:5
counsel 148:10
 148:11 177:10
 179:19 215:3

215:20 222:10
 223:9 239:14
 290:16,17
counsel's 147:25
counterclaims
 202:13
counting 81:23
country 270:5
County 1:2 2:2
 2:23 11:3
couple 34:1
 91:13 104:5
 117:15 133:14
 156:2 228:10
 263:3 293:24
courier 95:21
course 41:5
 64:24 65:10
 92:10 132:1
 144:7,18 173:7
 186:13 187:12
 200:8 211:15
 215:7 241:11
court 1:2 2:2
 9:11 11:3,5
 12:1 29:19,24
 159:8,10 168:6
 169:19,19,25
 178:13 179:13
 180:15,17
 181:23 183:8
 184:7 185:6
 189:21 197:24
 198:11 199:10
 199:11,15
 212:9,11 231:2
 234:23 249:4
 276:5,7
court's 169:17
 169:18
courtesy 102:5
courtroom 155:13
 155:14
Covenants 40:8
coverage 4:21
Craig 3:21 10:6
 66:16 76:25
 80:23 99:23
 102:6,19
 112:12 150:19
 153:4 214:10
 214:12 226:2
 259:23 283:6
 289:11
create 52:16

created 109:6,14
 112:14 113:7
 113:11
creating 135:10
creation 140:15
creditor 202:2
criticism 168:25
 169:2
criticisms
 168:18,23
critiquing 169:1
cross-claims
 202:13
cross-talk
 193:13 197:8
 204:4 211:22
 280:6
crystal 198:5
CSR 1:23 2:21
 297:4,23
Curen 7:13
 114:11 117:9
 160:24 167:7
 167:16 193:25
 292:19
Curen's 161:12
 163:16 166:22
 168:9
cures 153:9
curious 89:18
 166:22
current 12:11
 143:20 260:1
 260:24
currently 107:13
 107:20 272:10
customary 115:15
customized
 136:22
cut 125:22

D

d 4:1 52:6
daily 242:14
damaged 188:20
dampener 51:8
 62:8
dampeners 54:4
 56:4,5,6 61:18
 62:13
damper 50:8,14
 55:14
dampers 51:4
 52:4 53:18
 54:4,4,5 55:13

55:14,24,24	deals 22:13	90:1,2,9 91:21	183:24 184:1,2
57:24 61:12,13	28:21	94:25,25	215:13 228:22
61:15,22,25,25	dealt 55:8	119:19,20,22	247:4 295:22
Dan 76:22 77:3,4	Debbie 210:9	191:24	296:6,6
Dare 176:17	263:8	definitions	depositions 11:8
dark 270:19	DEBORAH 1:23	41:14 94:24	12:3
data 122:20	2:20 297:4,22	degree 21:6	depressed 236:24
157:22 206:17	debt 261:14	118:5	depth 79:21 82:4
date 10:24 22:15	decide 15:4	degrees 21:10	82:13,19
22:16,20,21	58:12 178:17	Delaware 1:4 2:4	describe 12:25
23:3 50:13	245:12	delay 52:24 53:6	32:21 96:9
118:23 134:24	decided 248:9,10	53:9,11,24	102:1 110:11
141:12,13	decision 15:2,5	59:7 60:13,14	110:12 142:14
142:8 152:5	30:2 84:4	61:7,24 199:19	169:6 226:11
174:21,23	102:17 105:2,9	200:7	249:6 272:25
187:24 191:14	105:15 182:10	delayed 60:4	285:7
210:21 233:20	261:18,20	62:1	described 13:6
234:5,14,16,21	274:9,16,23	delays 5:5 45:5	18:16 27:10
236:12,14	276:2 291:16	199:9,18	55:1 57:25
238:14 268:9	294:10,20	238:12	95:15 188:9
268:11 277:14	decisions 283:21	deliver 61:2	description
279:2 292:18	declare 9:22	delivered 95:20	182:19
dated 5:8 50:12	296:12	266:7	design 199:6
102:14 210:23	declared 297:8	delivery 5:12	designation 22:6
233:19 291:10	decline 29:20	demand 8:4	designed 33:25
dates 73:17	declined 263:3	119:13,15	designers 109:2
159:23 201:3,3	deed 88:16	192:25	desirable 270:9
275:7,12	default 98:19,21	demanded 268:10	271:17
Davis 257:22	143:22 153:9	demanding 227:4	desire 83:15
258:2 259:1,2	204:18 238:3,6	DeMaria 207:15	291:21 296:8
259:16,16	238:9 247:16	207:15	despite 42:20
287:22 288:2	267:19 272:13	demeanor 32:4,10	detail 67:16
288:15	273:15 274:2	denied 181:25	267:18,20
day 15:18 73:25	275:14,17	deny 44:25	290:23 291:22
88:6 123:10	281:15 291:14	109:24	detailed 89:21
139:2 145:2,15	defaulted 169:15	dep 178:22 179:5	detailing 68:9
146:14 147:7	170:15 204:19	department 56:3	100:25 207:19
159:8,10	280:22 281:3,7	depends 241:23	285:3
172:17 174:5	281:10	266:3	details 139:12
175:3 190:13	defendant 1:10	deponent 178:5,6	161:6 266:18
190:18	2:10,15 182:8	deposing 178:7,8	291:15
day-to-day 18:20	defendant/cou...	deposition 1:15	determination
33:14 69:10	3:8 9:15	2:14 8:18 9:5	110:17 115:19
days 11:8 12:3	define 32:11	10:25 11:4	115:21
95:9 117:15	33:19 59:6	22:22,23 32:9	determine 131:19
196:7,10 239:2	88:13,14,17,24	36:20 37:7	determined 54:19
239:2 292:4,9	128:21 146:18	44:9 58:15,24	185:3 204:12
dead 89:6 178:16	152:14 294:2,3	97:4 114:11	Detroit 294:19
deadline 153:8	294:4,5,6	129:9,11,16	develop 48:23
deal 25:19 26:2	defined 41:12	133:8 179:5,8	developer 48:19
36:8 40:4,15	94:20 143:4,10	179:9,11 180:1	49:22 51:17
55:16 145:23	defining 168:25	180:10,12	52:3,17 54:13
145:24 165:15	definition 42:1	181:12 182:3	56:9 58:4
170:18 204:15	42:5,7,11,15	182:15,17,22	68:17 85:19
247:7	43:7,9 52:9,12	183:19,22,24	283:20

developers	277:9	279:7,9 284:12	125:8,11 127:1
245:10	directing 209:2	284:14,18	135:9,11 217:5
development 20:8	direction 75:21	discussions 51:6	223:10 226:21
Diamond 187:8	89:19 297:14	76:3 156:2	227:3,9 266:16
Dickinson 3:3	directive 282:18	174:7 260:20	documents 26:4
148:5 181:8	directly 231:25	261:11 289:2	26:10,13 38:5
264:5	244:4 282:19	disk 58:24 133:8	48:2 51:18
Diego 21:1	282:25 283:11	179:25 228:21	84:22 89:3,9
differ 16:7	284:3,6	dislike 154:3,4	109:25 115:13
difference 13:1	director 12:12	154:9,11,12,13	115:16 129:18
118:1,3 223:24	12:15,16 13:5	dismiss 209:8	131:23 135:4
236:23 257:6	13:7 16:2,6,8	212:8	136:15 140:16
different 12:19	105:17	dismissal 211:16	142:8 203:16
12:22,24 13:1	directors 13:10	dismissed 126:15	217:11 235:13
13:2,18 14:4,7	287:15	dispose 254:8	245:19 255:23
14:8 16:4,17	disagree 58:7	dispute 88:4	255:25 256:10
41:14,23 67:14	84:2,7 203:20	98:17 145:22	256:22 260:18
74:12 86:5	242:18 287:4	150:14 193:6	274:21
94:18 101:10	294:16,17	219:6 220:2,4	doing 14:25
101:11 102:20	disapproval 93:3	220:5,20,22,24	19:12,18 26:5
103:3 108:3	disbursed 137:3	278:14	26:9 72:11
109:21 119:18	137:5 266:5	disputes 39:21	91:3 97:19
119:25 122:4	disbursement	42:10 218:13	165:8 169:3,6
131:6 135:19	283:15	distinction	197:25 230:4
149:18 151:7	discharge 126:21	103:13	230:20 255:2
151:17,18	127:14 212:8	divulge 293:5	258:22 288:16
183:23 198:13	discharged	document 5:8	Dolan 3:4 9:16
245:6,11 246:3	126:15	6:13 37:13,16	9:16 10:4 25:2
248:22 249:2	discretion 90:7	37:17,22 38:3	25:4,6 31:4,6
253:7 256:2,20	91:22 92:2	38:8,15,17,20	31:10,17 32:12
260:10	207:24	45:4 47:1	32:25 33:4,23
differentiate	discuss 30:5,8	73:19 85:3,21	34:6 39:8,12
34:24	72:9 73:3	89:15 91:11	48:15 50:2,5
differentiated	75:22 156:8	94:17,22 96:12	52:7 56:12,15
16:12	221:25 229:5,6	101:4,13,15	56:23 58:12,14
differently	260:11 279:23	106:13 108:1	58:16,18 60:9
19:17	287:23 288:4	109:5,20	63:5,8,15 78:7
differing 234:11	288:24 291:19	110:24 111:11	78:10,14,17,21
difficult 147:8	discussed 60:18	111:16 113:16	80:19 82:25
147:9 278:7	60:20 105:22	116:19,22	86:21 92:7,12
difficulty 77:14	116:24 156:1	134:7 141:24	93:6,11,13
diligence 116:8	222:25 226:5	142:25 158:1	94:16,21 96:14
127:18	228:8 240:12	161:1 162:9	96:18 99:15
dime 165:11	241:10 287:9	193:4 206:13	100:15 113:1
diminished	289:6	209:23 219:10	113:14 129:13
253:24	discussing 50:11	219:10,11	129:21,24
dinner 251:22	96:4 102:5	233:2,11,13,14	131:4 154:14
252:1	105:19 156:9	234:2,7,9	154:17 155:14
direct 7:13	174:5 208:25	235:8 238:25	157:20 159:9
93:22 123:23	289:8	245:19 256:5	159:11 160:23
124:2,8 171:8	discussion 76:1	256:20 273:20	161:5,16,21
208:22 218:17	81:22 102:9	276:19 279:20	162:3 168:21
244:6 259:3	225:21 226:5	279:21 285:20	169:4 173:11
directed 192:11	229:4,8 243:13	289:22	173:15,19,22
193:18 208:16	261:9 277:22	documentation	174:10,13

177:16,20,22
 178:4,10,15
 179:1,4,8,14
 179:16 180:8
 180:13,16,21
 180:23 181:2
 181:18,20
 183:13,16
 184:9 186:21
 188:10,21
 189:13,17
 190:3,10,21
 191:12 192:15
 194:4 197:7,10
 199:24 200:19
 202:8,12,18,21
 204:24 205:18
 206:21 210:14
 211:20 212:3,7
 212:17,22,25
 213:4 214:7,9
 214:14,17
 215:6,10
 218:21 221:4
 224:4,9 228:15
 231:9,13
 232:14 233:6
 243:7 250:22
 252:24 253:4,9
 253:12,17,23
 254:3,4,8,13
 254:23,25
 255:8,10,15,20
 255:25 256:9
 256:17,20,24
 257:2,7 267:9
 267:13 277:2,5
 277:8,14,20
 278:17,22,25
 279:2,11 280:3
 280:12,14,17
 281:18,23
 285:20 287:25
 288:17,21
 289:24 295:5,8
 295:11,13,19
dollar 140:22,24
 141:7 243:4
dollar's 165:8
dollars 140:7
 144:22,25
 145:1,1 161:7
 161:7,11,17
 162:6 229:21
door 136:7 183:1

183:3 222:17
doors 160:20
 161:13
double-check
 215:19
doubt 221:14
 243:21,23
downtown 103:2
downturn 246:19
dozens 220:25
draft 183:12
 264:7,12
 291:13
drafted 218:17
dramatically
 268:22
draw 6:15 7:6,16
 26:6 72:25
 104:24 105:3,5
 125:12,15,17
 149:1 163:16
 164:2,4,24
 165:2,16
 274:20 275:2,3
 275:3 283:9,13
drawn 141:6,8
 162:6
draws 63:11
 64:18 103:21
 103:21 123:14
 141:17 151:11
 164:25 235:25
 240:13,20
 274:10,13,14
 274:19,25
 275:4 281:1
drinker 251:24
drop 89:5
drywall 199:5
 242:24,24
drywaller 77:9
drywalling 77:15
 77:16
duces 181:12
 182:4
due 5:5 44:19,21
 45:6 142:5,7
 144:12 261:14
 275:16
Duke 162:22

E

E 4:1,6 5:3 6:3
 7:2 8:2
e-mail 4:8,11,12

4:19,20,22 5:5
 5:10,12,13,15
 5:18,22 6:4,6
 6:8,11,15,17
 6:19,21 7:4,6
 7:8,10,12,16
 7:18,20 8:3,11
 44:18,23,24
 45:4,19,22
 46:1 48:4
 50:14,17,22,25
 51:2 53:21
 64:15,17 65:24
 66:1,5,8,20
 67:11,13 68:12
 69:8 71:9,21
 72:5 73:15,18
 73:23,25 74:3
 74:5,7,10 75:8
 76:11,11,17,18
 76:19,20 79:12
 80:8,16,19
 81:15,16,22
 87:16 88:3,14
 96:1,3 98:4,7
 98:9,13 99:23
 100:24 101:24
 102:14 108:9
 108:15 110:9
 110:25 111:1,4
 111:13,17,21
 111:25 112:1
 112:10,10,11
 112:15,15,24
 113:1,4,17
 116:22,25
 117:6,9,17
 118:16 120:3
 122:6 124:5
 133:22 134:3
 134:17 135:13
 137:25 138:5
 150:18 152:15
 160:13,14
 161:12 163:13
 163:15,18
 166:13,15
 167:16 168:15
 171:10 172:16
 172:17 173:12
 174:24 176:21
 186:20,22
 194:20 195:1
 206:4,7,9
 207:11,19

208:11 214:5
 215:2,5 216:6
 216:13 217:11
 219:9 227:7,24
 240:18 243:1,2
 243:8 251:3
 276:21,22
 277:2,17
 278:12,18
 284:8 285:3,7
 290:15,20
 291:1,4
e-mailed 95:21
 97:8,9,12,13
 124:4
e-mailing 290:18
e-mails 45:1
 68:9 88:9
 89:21 110:14
 128:5 174:13
 206:5 214:22
 215:7,8,19
 220:1 231:17
 293:6,7,10
earlier 119:10
 121:17 207:21
 241:10,16
 268:24 282:17
 287:9
early 149:3
 153:9 167:22
earn 140:3,22,24
earned 141:15
 145:4
earnest 196:17
 196:20 197:17
 197:23
earnings 140:15
easier 49:24
 190:17 199:2
easy 154:15
 257:1
economic 139:13
 246:19
education 22:13
effect 242:17
effectively
 187:23
efforts 42:21
 99:13 100:14
 100:22 138:22
 145:16 170:13
 203:21 232:8
 270:16
either 23:12

186:22 194:24
 207:7 223:8
Electric 104:9
 106:21 107:2
 109:6 110:19
 111:7 113:23
 114:17
electrical 68:10
 107:5 114:13
 114:18
electrician
 67:21 68:7
electricity
 42:20
Eli 287:12
elicit 224:23
employed 17:21
employees 71:14
 71:22,25
Enclave 59:14
encourage 122:13
endeavor 11:20
ended 80:10
 224:21 293:25
ends 47:9 50:17
enforcement 49:1
enforcer 56:24
engage 215:12
engaged 75:1
 244:13
engineering
 196:15
ensure 54:11,19
 203:22
ensuring 26:7
entered 17:13
enters 140:12,19
 140:23
entire 16:2
 20:13 26:19
 68:25 94:17,22
 114:3 147:13
entirety 273:20
entities 162:15
entitled 94:1
 118:22 119:1,3
 122:17,17
 123:7,7,11
 124:18 125:1
 127:24 128:6
 128:22 129:5
 130:4,8,23
 136:12 147:2
 165:2 252:21
entity 125:14

163:3 172:11
 172:14 283:19
entry 181:23
equity 103:9
 226:3,11,22
 227:5 246:3
 272:22 273:8
equivalent 22:10
escort 25:7
especially 88:9
establish 227:3
estate 12:13,15
 12:17 13:5
 17:25 20:8,14
 20:17 21:17,24
 246:12 269:22
estimate 196:8
estimation 48:7
 237:25 268:25
et 1:9 2:9
evaluation
 196:14
EVANGELISTA 3:25
event 39:21
 51:13,22 52:23
 54:23,25 55:10
 56:8 58:7
 61:17,20 62:14
 70:6,11,18
 95:6 272:13
events 66:16,17
 66:22 67:3,17
 67:19 94:11
 288:6
everybody 213:8
everybody's
 180:17,24
evidence 11:6
 29:19 218:1
evidencing
 218:13
evolve 62:22
 65:9
evolved 62:25
exactly 15:21,22
 83:19 117:4
 119:8 121:17
 142:11 184:5
 184:10 230:18
 230:25 243:12
 243:14
EXAMINATION 4:3
 10:17 133:11
examined 297:7
example 43:6

55:3,7,25
 148:6
examples 237:2
Excel 277:22
 279:7
excellent 272:4
exchange 163:13
 163:15
excluding 43:3
excuse 62:3
 120:23
execute 81:1
executed 35:1
 242:7 296:15
exhibit 4:8,11
 4:12,14,17,19
 4:20,22 5:5,8
 5:10,12,13,15
 5:18,20,22 6:4
 6:6,8,11,13,15
 6:17,19,21,23
 7:4,6,8,10,12
 7:16,18,20 8:3
 8:6,9,11,13,18
 36:20 37:6
 44:9,11,14
 45:18 65:20,22
 66:2 70:23,24
 71:2,7 73:7,8
 73:14,23,24
 74:4,5,7,10,24
 76:18 79:5,8
 79:11 80:16
 84:22 87:8,10
 87:14 89:11
 93:23 97:17,21
 97:23 98:2,23
 98:24 99:3,5,6
 100:3,6 101:16
 101:18,20
 104:8 106:7,9
 108:1,2,4
 110:4,5,20
 111:25 114:4
 116:15,15,16
 118:10,11,24
 119:6 120:10
 122:6 123:16
 126:1,2 133:15
 133:16,19
 137:21,22
 148:18,19,21
 148:25 149:7
 150:15 151:23
 151:24 156:20

156:21,24
 157:17,18
 160:7,8 163:8
 163:9 166:8,9
 171:3,4,9,23
 184:16 194:12
 194:12,13,15
 194:20,23,24
 196:3 205:5,9
 205:12,23
 208:3,24
 209:17,19
 214:3,4 215:23
 215:24 216:3,7
 217:2,10,23
 218:7,15,19
 219:18,20
 225:13,15,19
 232:22,23
 238:18,22
 240:2,3 250:19
 250:24 251:11
 251:12 264:16
 264:20 276:19
 279:20,24
 282:10,13
 291:9,10
Exhibits 8:16
 290:7,11
exist 42:16,17
 237:10
existed 237:7,8
 237:11,12
existence 67:2
existing 15:13
 18:20 87:6
 176:11
exists 41:5,6
 65:13 89:12
 215:15,17
exited 100:19
 117:24 221:6
 226:18
expanded 229:15
expect 200:3
expectation
 56:10,16
expecting 108:16
 109:10
expended 270:22
expense 165:3
experience 47:11
 47:16,17 48:11
expertise 85:17
 91:25 176:12

explain 19:7 115:2 130:21 130:25 139:16 152:12,22 158:19 216:10 216:11 236:20 240:7	fall 83:22 130:5 275:1 falls 252:5 familiar 42:8,9 44:18 55:7,11 66:1 68:19 71:9 73:14 79:12 84:21 85:1,4,7 101:24 104:9 106:8 108:11 110:9 133:24 139:14 148:25 151:6 203:6 234:8 235:15 235:23 244:19 244:21 245:18 245:21,23 247:1	figured 127:18 figures 266:17 278:14 file 175:6,15 182:10 190:20 filed 155:15,18 174:2,4 175:7 178:25,25 180:5 181:4 189:23 192:12 201:18,21 202:6,6,11,15 234:22 249:10 294:19 filing 155:11 174:6,16 189:1 190:14 201:3 202:3 261:3 final 167:10,14 167:21 168:7 268:9 finance 21:8 49:4 198:3 financial 144:4 206:17 227:3 financially 129:7 177:2 financials 186:3 186:9,11 financing 269:18 find 80:12 91:13 124:14,21 133:15 230:10 239:25 277:20 278:18 285:20 285:21 294:3 fine 15:12 20:23 92:9 134:19 161:1 178:23 181:20 185:13 200:2 204:17 254:4 278:8 281:22 fingers 279:11 finish 11:19,22 99:11 100:12 100:23 114:22 181:20 189:22 208:19 209:10 229:24 230:1,5 241:7 286:11 finished 183:13 287:2 Finishes 199:5 Fink 277:11	fire 50:8,14 51:4,7 52:4 55:24 56:3,4,5 56:6 57:24 61:12,18,22,24 61:25 62:8,13 84:17 87:6 103:11 fire-life 54:8 54:19 fired 102:6 fires 61:5 firm 16:25 17:23 20:10 258:2 first 19:6,13,18 19:21 20:9 25:18 40:19 45:17 49:25 50:14 63:13 64:9 73:24 80:8,16 83:18 83:19 86:16 87:16 90:16,18 106:20,21,25 108:21 117:16 138:6,8 150:15 155:20 159:7 163:17 167:12 172:17 174:22 177:7 185:8 190:13,18 191:2,4 196:9 199:8,24 202:18 207:5 216:6 251:24 280:22 287:23 292:20 fit 201:9 fits 12:1 five 18:5 19:22 51:24 55:14 93:9 152:9 155:2 166:19 198:7 201:8 202:25 228:12 248:8 272:14 276:9 286:4,10 five-plus 197:22 fix 280:9 flex 294:13 flip 233:10 Floor 2:18 flooring 160:20 161:14 focus 39:3
F			
F 3:4 181:25 182:1 face 88:7 face-to-face 155:3,5 fact 31:21 37:7 38:13,22 46:19 47:9,19 51:9 53:17 57:18 150:23 171:19 180:15 183:11 200:18 201:5,7 208:18 214:4 240:25 280:21 281:3,15 286:18 fact-based 192:19 factor 199:9 facts 88:5 129:4 129:4,8,10 202:5 failed 96:22 224:24 failure 96:6 fair 75:5,9,22 88:1,2 160:16 192:2 279:24	far 78:24 137:17 141:21 147:14 151:4 183:3 228:14 238:13 247:11 268:14 271:10 Farmington 3:12 fashion 100:13 fast 203:3 faster 79:2 137:11 199:2 faxed 95:21 feature 136:23 fee 143:9,13 167:20 168:1,5 169:23 feel 103:16 fees 144:1 168:6 231:3 266:10 266:23 267:20 267:21 felony 24:25 felt 19:10 field 21:12 48:9 72:25 121:25 149:25 fighting 75:10 217:5 fight 218:2,5 figure 87:2 93:10 112:5 141:14 160:18	figured 127:18 figures 266:17 278:14 file 175:6,15 182:10 190:20 filed 155:15,18 174:2,4 175:7 178:25,25 180:5 181:4 189:23 192:12 201:18,21 202:6,6,11,15 234:22 249:10 294:19 filing 155:11 174:6,16 189:1 190:14 201:3 202:3 261:3 final 167:10,14 167:21 168:7 268:9 finance 21:8 49:4 198:3 financial 144:4 206:17 227:3 financially 129:7 177:2 financials 186:3 186:9,11 financing 269:18 find 80:12 91:13 124:14,21 133:15 230:10 239:25 277:20 278:18 285:20 285:21 294:3 fine 15:12 20:23 92:9 134:19 161:1 178:23 181:20 185:13 200:2 204:17 254:4 278:8 281:22 fingers 279:11 finish 11:19,22 99:11 100:12 100:23 114:22 181:20 189:22 208:19 209:10 229:24 230:1,5 241:7 286:11 finished 183:13 287:2 Finishes 199:5 Fink 277:11	fire 50:8,14 51:4,7 52:4 55:24 56:3,4,5 56:6 57:24 61:12,18,22,24 61:25 62:8,13 84:17 87:6 103:11 fire-life 54:8 54:19 fired 102:6 fires 61:5 firm 16:25 17:23 20:10 258:2 first 19:6,13,18 19:21 20:9 25:18 40:19 45:17 49:25 50:14 63:13 64:9 73:24 80:8,16 83:18 83:19 86:16 87:16 90:16,18 106:20,21,25 108:21 117:16 138:6,8 150:15 155:20 159:7 163:17 167:12 172:17 174:22 177:7 185:8 190:13,18 191:2,4 196:9 199:8,24 202:18 207:5 216:6 251:24 280:22 287:23 292:20 fit 201:9 fits 12:1 five 18:5 19:22 51:24 55:14 93:9 152:9 155:2 166:19 198:7 201:8 202:25 228:12 248:8 272:14 276:9 286:4,10 five-plus 197:22 fix 280:9 flex 294:13 flip 233:10 Floor 2:18 flooring 160:20 161:14 focus 39:3

folks 66:9
follow 19:16
 86:1 89:2,3
followed 273:17
following 47:15
 76:7 86:7
 147:20 167:9
 243:13 273:22
 273:25
fool 11:13
footing 79:14
 81:5,9,18,24
 82:2,3,8,13,18
footings 79:20
 79:24,25
force 41:11,14
 41:20 42:11,22
 43:5,14 46:25
 51:12,19,21,23
 52:6,8,11,20
 54:6,22,25
 55:9,23 56:8
 58:7 59:3,3,8
 59:19 60:25
 61:17,19 62:3
 62:13 66:16,17
 66:22 67:3,17
 67:19 68:2,11
 70:6,11,18
 94:1,10,12,14
 94:24 95:2,6
 95:14 96:1
 97:2
foreclose 275:21
foreclosed 246:6
 246:14,15
 247:21
foreclosure
 88:16 246:21
foregoing 296:5
 296:6,14 297:8
foremost 207:5
forever 204:3
forget 36:18
 257:13
forgot 10:19
 282:10
form 31:20 32:25
 33:6 48:16
 52:7 56:12
 63:5,7,16
 86:21 99:15
 108:12 109:1
 109:14,18
 129:14 131:4

168:21 169:4
 188:10,21
 189:13 190:21
 192:15 200:19
 204:24 206:21
 211:20 212:3
 221:4 232:14
 243:7 287:6,25
Form's 109:19
formal 139:7
format 279:15
 280:7
former 219:7,7
forth 40:24 66:2
 75:2 85:8
 89:15 91:6
 140:10 150:15
 160:14 207:22
 208:11 210:19
 282:8
forward 100:22
 213:16 266:7
 287:10,11
forwarded 68:12
 68:13 113:13
 288:9,17
forwarding 113:1
found 107:1
 274:2
foundation
 188:12 191:12
 199:6
four 199:25
 200:3,25
four-month
 199:18 200:7
frame 153:7
frames 160:20
 161:13
framing 138:16
 138:18 150:20
 150:25
frank 30:17,23
 288:13
frankly 30:16
 31:12,13,17
 204:20
Fraser 222:9
 227:14
fraudulent
 124:22
free 281:17
Freeman 5:10
 108:9 114:14
frequently

102:11
fresh 226:3,11
 226:22 227:4
Friday 1:17 2:19
 9:1 88:15
 133:1 137:11
 174:25
friendly 185:14
friendships
 249:21
front 34:7 37:6
 64:15,18
 165:22 180:16
 218:9 276:19
frost 194:9
 196:17,20,25
 197:1,4,13
 201:6
frozen 197:5
fuel 42:19
fulfilled 26:12
 291:3
fulfilling
 217:22
fulfills 145:5
full 37:12
 144:15 146:14
 153:3 213:9
 226:14
fully 26:11
 38:19 134:23
 228:5 266:1
function 141:7
functions 18:12
 122:4
fund 65:16 103:3
 258:4,22 259:1
 263:12 274:10
 283:13
funded 63:10
 65:16,17
 104:24 283:9
funding 63:2,8
 63:23 64:7
 65:3 158:13,15
 240:12,19
 242:8
funds 43:4 196:9
 232:11 242:4
 261:4 281:1
funny 157:21
 239:18,19
furios 75:1
further 116:5
 182:6 183:6

195:9 283:2
 294:25 297:16
furthering 195:6
 195:6,16
future 34:23
 35:19 36:6
 269:25

G

G 182:8
G.C 172:20
G.C.'s 163:20
game 4:12 196:6
 196:22
games 294:13
gamesmanship
 178:23,24
Gaylor 104:9
 106:21 107:1
 108:19 109:6
 109:21 110:19
 111:6 113:23
 114:12,23
 115:17 127:5
Gaylor's 115:3
general 68:22
 70:5 85:2,7,12
 90:4 91:24
 99:18 148:10
 148:11 163:18
 163:24 164:1,5
 164:7,9,23
 165:2,9,17,20
 168:2 171:25
 184:17 185:18
 198:1 242:1,3
 256:9 283:15
 283:24
generally 14:9
 26:8 85:13
 89:15 122:24
 139:3 208:4
 224:17 235:25
 245:14,14,16
 245:23 251:5
 262:3 265:15
 269:11 270:6
 291:8
generated 34:20
generic 142:19
generically
 259:8
gentleman 277:3
George 8:9 14:17
 14:22,24 15:20

103:10 136:7
 154:24
Gerald 1:15 2:14
 9:6 10:22
 24:10 33:1
 45:25 58:24
 133:8 178:7
 179:12 180:1
 182:15 228:22
 277:11 295:22
 296:21
Getler 277:11
getting 72:18,19
 76:5 146:12,18
 146:21,24,25
 202:23 230:25
 242:11 243:16
 253:20 254:21
 283:22 293:25
gift 5:12
gifts 250:4,6
 251:18
give 11:9 22:21
 23:4,7,10 55:2
 78:20 176:10
 202:1 205:15
 242:1 256:11
 278:19 281:9
given 63:11 78:7
 78:11 239:13
gives 11:25
 39:20
giving 22:22
 23:12 29:7
 78:24 84:16
glass 157:20
Gleeson 4:15
 88:23 92:23
 99:8 100:12
 171:20 206:19
 206:22,24
 207:11,14,15
 208:18,18
 209:9 286:8,13
 286:19,24
 287:1
Glendale 17:3
GMP 85:15,20
 86:12,15 91:20
 91:24 167:2,3
 167:4,10,14,20
 167:21,23
 168:7 169:24
 169:25 187:5
 207:5,6 236:23

236:25 286:14
 286:16,25
go 11:11 19:8,9
 20:25 26:5
 33:7,25 34:8
 40:17 44:4
 48:8,17 52:10
 53:13,13 57:1
 58:19 63:21
 65:21 73:12
 86:23 94:22
 99:19 106:24
 116:19 118:14
 123:16 129:16
 129:24 131:4
 137:11 149:25
 151:23 163:6
 173:13 179:19
 186:7 188:12
 188:13,22
 197:12 201:2
 203:3 204:3
 209:18 215:12
 217:12 221:5
 227:13 228:10
 231:15 241:11
 251:15 257:8
 273:19 279:17
 281:24 287:11
 289:22
goal 201:13,14
 203:1 232:9
God 71:18 77:12
 254:24
goes 46:17 73:21
 147:1,3,13
 204:22 253:25
 280:12
going 11:11,12
 12:9 14:14
 15:19 20:7
 30:5,8,17
 31:22 32:12
 36:19,22 37:18
 37:19 39:8
 44:8 47:8,13
 52:7 53:4,5
 56:5,6,10
 58:20 74:9
 79:4 82:23
 85:2 93:10,14
 93:22 94:21
 97:16 99:2
 101:13,17
 102:12 103:17

104:7 106:7
 107:25 113:19
 116:14 123:21
 129:10,13
 132:5 140:2
 145:10,11,12
 146:13 147:6
 148:17 156:13
 156:14,16,18
 156:20 157:16
 160:6,23 163:7
 166:7 170:24
 171:3 172:11
 172:12 177:12
 178:15 179:22
 180:3,8,23
 181:3 184:3
 190:3,7,10
 193:8 195:4,15
 197:16 198:7
 199:24 201:8
 202:25 203:2
 204:16 205:8
 209:14,16
 213:13 215:10
 215:12 217:9
 224:14 225:12
 228:16,22
 229:11,12
 235:19 238:21
 239:13 240:1
 247:11 250:18
 251:10 252:24
 254:25 255:1
 256:12 264:19
 269:9 271:19
 275:25 276:5,7
 276:11,24
 279:22 282:9
 285:13,19,20
 286:20,21
 289:11 290:1
 295:22
Goldman 1:15
 2:14 5:21,23
 6:4 9:6 10:22
 18:1 45:25
 56:2 57:4
 58:24 59:2
 71:18 133:8,13
 177:17 178:8
 179:3,12 180:1
 182:15,24
 183:1 212:15
 228:22,25

256:7 276:18
 277:5,11
 295:22 296:21
good 9:4,13
 10:23 15:20
 17:18 32:5
 53:15 135:17
 139:4,11
 222:12 265:15
 270:6 280:16
Gothic 163:3
gotten 270:2
govern 115:16
government 54:24
 61:16
governmental
 43:1,3,21
 51:11 52:1,2
 52:20,21 54:5
 55:9
graduate 21:2,10
grant 78:22
granted 60:19
 182:7
great 32:2,6
 117:8 148:20
 203:25 271:15
 280:1 290:23
greater 19:11
 68:11
grocery 139:5,10
 139:20
gross 128:14,19
 128:21
grossly 107:23
 229:19 290:21
ground 62:20
 63:3 197:5
group 17:23,25
 19:3,15 246:12
 262:9,10,11,14
growing 270:4
guaranteed 153:1
guess 84:20
 232:21 261:6
 291:10 295:2
 295:16

H

H 4:6 5:3 6:3
 7:2 8:2 182:8
HAHN 3:15
half 18:5 46:9
 107:8,20
 114:23 126:24

149:8 199:2,3
199:7,8
half-finished
201:10
hand 9:21 112:16
112:22 181:5
handed 290:10
handles 13:10
handling 14:10
happen 35:19
36:6 129:1
146:6 147:6
198:14 226:16
241:3 275:18
275:25 289:20
happened 15:22
39:25 49:14,16
49:17 79:22
84:13 90:11
136:24 137:1,2
146:7 198:16
198:18 216:24
219:25 224:2
224:12,19
225:2,7 281:8
295:16
happening 53:14
72:14 102:1
149:15 199:23
199:23 269:24
270:3
happens 49:19
happy 39:3
235:18
harass 33:25
harassing 34:3
hard 10:15 45:20
130:2 147:23
267:6 272:3
275:14
hard-line 152:13
152:14
harder 230:8
hardware 161:13
hardwood 160:20
harm 153:11,14
153:16 257:19
harmed 253:24
he'll 31:10
head 105:15
115:23 118:8
239:22 245:3
headed 143:5
heading 40:6
143:5

healthy 149:12
149:13 151:3,5
hear 29:11 68:23
172:18 191:2
heard 11:8 28:11
51:6 67:21,24
68:7 69:1
157:12 177:7
190:22 191:4
204:14 239:21
hearing 23:24
155:17,17,18
187:25 190:13
190:18
hearings 199:10
199:11,15
Heating 116:21
117:12 118:18
123:19 126:10
heavy 60:4
held 279:9
Hello 295:10
help 89:14 106:3
106:5 278:19
helped 264:7
helpful 224:22
hereunder 43:5
Hernandez 66:14
67:2,8
Hey 15:18 28:5
58:1 123:6
208:17
Hi 80:23
hide 293:9,13
high-level 6:13
156:12 236:1
277:21 279:6
higher 144:13
145:6 165:6
168:2,4,10,13
268:16 269:11
271:18
highly 111:24
Highway 3:11
hike 269:5
Hills 3:12
hire 72:6 77:19
99:24 103:11
hired 263:16
hiring 99:24
history 246:12
Ho 69:4 81:2
101:6 133:15
134:4,25
135:18

Hogan 5:10
hold 284:11
286:4
holding 112:21
181:5 235:4
home 23:16,19
honest 292:23
honestly 33:15
44:19 62:18
63:1,22 251:19
257:10 269:7
honored 59:3,6
hook 295:5
hope 69:12
280:11
hopefully 285:21
hoping 30:15
76:4
Hopp 114:17
horizon 269:23
horizontal
233:10
hottest 270:4
hour 74:11,12
Hourglass 292:16
hours 46:14 73:5
Hozella 244:8
Hueneme 59:16
huge 218:1
husband 30:3
hypothecate
158:6,10
hypothetical
128:17,18
129:1 141:11
147:20
Hypothetically
36:7
hypotheticals
128:2

I

idea 30:12
115:12 139:11
140:19 145:9
145:11,12
159:18 162:17
162:19,21,25
163:24 164:1
173:19 175:5,6
189:12,15,19
234:2,18
238:11 243:24
259:5
identification

44:12 65:23
70:25 73:9
79:9 87:11
97:24 98:25
101:21 106:10
108:5 110:6
116:17 118:12
126:3 133:20
137:23 148:22
151:25 156:22
157:19 160:9
163:10 166:10
171:5 194:16
205:6 209:20
215:25 217:3
225:16 232:24
238:19 240:4
250:25 251:13
264:17 282:14
290:8
identify 106:13
identity 22:17
22:18
ilk 151:8
imagine 27:25
immediate 172:16
immediately
196:12
impact 242:21,25
258:4,22
263:12 269:22
270:10 271:22
impending 188:3
implication
108:18 113:7
122:11
importance
240:11
important 11:18
286:17
impossible 141:2
141:4
impression
161:11
improvements
90:5 188:2
291:21 292:12
in-box 214:10
215:6
inability 42:18
61:2,4
inappropriate
31:8 154:17,19
include 57:23
179:2

included 56:25 276:23	296:10	147:19 176:4	investors 159:2 159:3,4
includes 118:16 196:12	informed 15:7 49:8 69:22	204:2 238:13	invests 258:3
including 144:13	80:3 248:19	253:12 254:5,7	invitation 263:3
incomplete 192:7 195:24	252:6 260:13	254:10 255:16	involve 244:7
incorporating 5:6 45:7	289:19,20	259:3 266:13	involved 13:19 28:16 102:8,20
incorrect 79:21 121:4	informing 87:20 98:14 209:2,6	266:19 267:19	102:22 283:22
increase 242:7 269:9 272:13	252:3 255:13	268:22 269:5,7	involvement 15:2 15:5 26:2
increased 242:4	informs 29:25	269:8,14	27:17,22 28:13
incredibly 152:17	inhabitable 56:5	272:11 273:4	261:22
incurring 122:1	inhabitants 54:11,21	284:21 297:16	involves 71:21
independent 82:10,12 121:1	initial 64:25 65:1 91:24	interested 116:20 117:17	Irish 259:20
126:18 135:4	initially 67:10	216:5 258:9,23	irrelevant 33:24 63:9 202:20
index 5:1 6:1 7:1 8:1 143:5	input 15:9 105:14	288:8	211:24 257:16
indicates 172:25 207:11 242:12	inquire 182:9 183:4	interesting 14:21 30:20	issue 42:22 46:4 49:1,2 50:8,14
243:15	inquired 181:16	124:14,15	50:18 51:8
indication 71:21 142:4 162:9,12	insinuate 31:7	293:23 294:1,2	55:16 59:19
176:16	inspect 52:16	294:6,7	60:25 67:25
individual 22:24 183:20,25	inspecting 54:8	internal 134:14 134:15 144:23	68:21 69:22
individually 179:12 181:14	Inspection 292:13	interpretations 39:9	70:5 74:23
182:6	inspector 56:24 57:25	interrupt 11:22	77:8,13 79:15
industrial 17:12 18:8	inspectors 46:15 46:20 47:17,20	interrupted 197:12	81:18 108:22
industry 20:13 20:15,17 21:13	48:8,12 49:9	interrupting 33:5	205:2 227:3
22:4 172:10	52:16	interruption 11:25 205:2	228:7 240:19
265:3	install 53:18 54:3 61:25	interview 261:23 263:7 264:3	246:1 255:8
inform 34:21 43:13,17,20	instance 143:9 242:1,22 246:3	interviews 261:15 262:21	issued 22:11 81:11 216:16
94:9 189:7,10	instances 43:3	intimidated 31:21	248:7 266:21
information 11:15 66:15	Institute 22:7	introduce 9:10 10:2	issues 18:10 43:14,18,21
72:18,20 80:4	instructions 11:9	introduced 10:9 10:20	59:3 67:21
99:9 100:9,10	insurance 26:7 99:9 100:10	invested 163:3	68:8,10 74:21
121:2 125:5	269:19	investing 258:9 258:24 259:9	75:22 76:2,4
207:1 208:13	Intent 4:14	investment 18:11 18:12 26:3,8	94:10 96:2
223:11 226:10	intention 99:7 294:8	28:9,21 159:16	98:14 182:16
227:8,16 228:3	interest 127:22 136:14,19	162:15,23	189:1,8 211:2
240:16 241:4,6	137:6,14 140:4	246:4 249:14	211:5,9 212:16
252:10,21	141:6,15 142:1	investor 103:9 134:14,15	221:25 222:24
254:17,22	142:20 143:17	162:25 269:17	224:15 225:21
255:18 261:24	143:21,22		242:12 291:12
291:7 293:6	144:1,13 145:6		item 36:5 135:24 136:6,21
	146:4,16,21,22		243:24
			items 42:16 148:7 160:13
			161:25 162:6
			162:10 188:6
			188:18 266:23
			290:13
			IV 1:4 2:4 8:6 11:1 37:8

180:6 181:6	July 80:25 81:25	knew 96:19 164:5	202:1 203:4
<hr/> J <hr/>	167:11 274:15	188:14	206:9 208:17
J 3:4	275:2 287:1	know 11:7 21:5	209:8 215:15
Jan 7:6	June 6:23 125:6	22:4 26:8,15	215:16,17,18
Janine 277:11	125:22 149:10	27:6 28:10	216:18 217:24
Jean-Paul 75:13	274:15 275:2	29:15 30:13	219:15 223:4
Jermor 116:20	275:16,24	31:12 33:15	223:13 225:2,3
117:12 118:18	276:2	35:21 37:10,11	226:1 227:11
118:22,25	justifiable	37:12 38:7,10	227:21 230:6
120:3,7,20	129:7	44:5 45:7,21	231:11 232:1
121:15 122:11	<hr/> K <hr/>	47:23 49:15	233:8 234:10
123:6,9,19	Kalt 222:11,13	52:25 53:1	234:21 235:3
124:10,16,24	227:16,20,22	61:3 66:17	236:10 237:24
125:3,6 126:9	Kalt's 222:25	67:4 71:2	241:18 243:1
126:13,22	Kaplan 8:7,13	75:19 76:7,24	244:8,10
127:13,23	239:11	79:18 83:13	245:10,19
128:15 129:4	keep 76:22 82:25	85:11,22 86:24	246:25 247:5
129:11 130:3,4	147:11 194:14	87:4,5 90:10	247:15,15,18
130:8,12,14,16	209:9 253:15	90:12 93:4,6	247:23 248:7,9
131:8,19	281:5,17 282:3	97:14 101:14	248:11,16
Jermor's 117:19	285:5,5,23,23	102:6,19,22	249:5 251:4
121:19 128:5	keeping 219:3	106:23 108:9	252:12,14,15
Jerry 259:20	kept 280:21,24	108:11 109:1	252:16,18,19
287:22 288:2	280:25	110:24 113:18	253:2,25
Jerry's 288:8	Kevin 13:9 14:9	113:19 124:15	254:13,18
Jillian 277:12	14:17 69:11,12	126:6,16 128:4	257:10 260:8
Jim 277:11	69:13,20 83:11	128:8,9,10,23	262:5,24
job 1:24 12:11	110:17 112:18	128:24 130:14	265:16 266:9
16:16 18:16	113:7 117:9,15	131:12 134:25	266:12,21
20:9 36:16	118:21 120:9	137:9 139:12	268:1,4,6
49:11 69:24	120:11,12,15	140:22,23	269:1 270:16
71:15,22 72:1	120:19 121:5,8	141:5,20	271:6,20 272:3
77:8,11,21,22	121:13,20,21	142:23 143:24	273:25 274:9
77:25 100:23	121:23 122:21	147:9,24 148:5	274:16 276:1
102:13 115:1	122:22,24	148:8,12 151:4	276:25 279:12
184:22 189:10	123:5,8,11,14	151:10 152:8	280:10 282:2
206:20,22	124:10,18	156:6 157:10	289:10 291:13
209:10,10	125:5 129:20	162:23 163:2	293:5,18
216:17 219:5	130:3,6,22	164:11 165:13	294:23 295:3,3
253:15 287:2	131:7 181:14	165:19 167:8	295:15
jobs 17:19	182:5,22	170:5,7,11,20	knowing 257:5,18
Joe's 139:5,17	183:22 191:9	170:21,22	knowledge 58:5
139:21	266:20 267:14	171:2,12	61:24 122:22
join 56:21,21	276:22 277:12	172:13 174:3	176:3 193:19
joined 16:3	278:1 279:5	178:17 179:8	200:6,8,11,14
joining 16:23	Kevin's 122:16	180:8 183:6	200:15 207:1
247:9	122:19 123:9	185:24 186:23	221:18,21
joint 234:23	128:5 131:2	187:8,17 188:6	268:15 292:11
249:10 261:3	kill 36:21	189:4,6 191:24	296:9
Jonathan 8:7	kind 19:17,25,25	192:22 193:22	known 155:1
26:15 97:4	20:4 21:6	194:9 196:7,19	195:20
JP 75:12	59:21,23 78:14	197:1,3,6,13	<hr/> L <hr/>
judge 34:7	110:18 279:22	198:15 199:20	L 1:23 2:20
177:17,23	290:11 291:5	199:22 200:14	297:4,22
		200:21,25	

labor 42:10,20 43:18 67:24 68:8,11,21 70:4,10,12,18	leaving 26:24 28:1,2,6 80:10 228:15	215:21 217:1 219:8 226:17 238:17 239:25 246:18 264:15 276:9 289:21 289:22	lien 6:20 39:22 39:25 40:5,11 40:25 111:6 113:23 115:3 115:19,21 116:2 117:19 119:7,12,13,17 119:24 120:8 121:18,19 122:8 124:11 124:16,25 125:13,18 126:13,14,15 126:22 127:14 127:18 128:6 130:24
laborer 87:21	left 12:5 19:8,8 20:24 26:15,20 26:22 27:6 97:8,12 149:8 150:23 222:23 288:12	letter 4:11 5:20 8:6,11,13 73:4 74:8 76:25 77:1,5 98:19 98:21 100:25 193:16 206:11 208:11 210:5,6 210:19,20 211:2,6,10 212:1,2,16,19 213:16,19,22 213:25 214:2 216:12,14,16 216:19 217:16 218:6,16,21,22 219:9,18 227:24 239:7,9 239:10,11,18 240:7 273:18 274:1 285:3 290:19 291:10 291:13,14 292:6	liened 114:25 119:18
laborers 77:16	legal 24:19 29:9 39:9,11 92:8 148:15 152:16 202:1 257:8 266:10 267:21 281:9,18,23	216:12,14,16 218:6,16,21,22 219:9,18 227:24 239:7,9 239:10,11,18 240:7 273:18 274:1 285:3 290:19 291:10 291:13,14 292:6	lienfree 280:21 280:24,25 281:6 282:3
lack 5:5 43:4 45:6 231:18	lender 86:17,20 90:6,6 92:5,15 92:16,20,21 93:2 95:9 99:21 103:10 104:4 142:21 158:25 167:17 203:23 207:18 245:14,16,25 246:1 249:8 253:9 255:13 255:22 256:12 256:21 257:15 260:15 283:21 292:24	letter-writing 75:1	liens 40:10,16 41:3 124:9 126:21 193:7 281:17
lady 289:24	lender's 253:15 291:15	letters 4:17 6:12 8:4 74:15 75:7 89:21 206:5 220:25 238:3,6,9 247:16	lifted 196:18,21 196:25 197:2,5
laid 274:20	lengthy 37:17 38:3,4,8,17,19 48:2 73:4 229:20	letting 291:12	liked 224:25
language 37:15 41:15,20 134:20 135:15 168:19,24	lent 153:19 246:13	level 272:16,18	likes 294:12
lapsed 136:11	Lesser 16:11	LEVINE 3:9	Limited 1:4,8 2:4,8
law 3:5,10,16 212:4,14	let's 40:17 42:1 43:13 53:8 58:8,19 65:20 70:22,22 71:2 73:7,17 78:18 79:3 85:23 87:8 93:5 98:23 101:16 104:5 106:20 116:10 123:16 128:11 129:23 132:2 151:23 157:15,15 163:6 166:7 171:22 184:11	Lewis 45:21 46:14 47:24 48:3 50:22 56:20,23 57:25	limiting 181:10
laws 194:9 196:17,20,25 197:1,4,13 201:6 296:13	lay 39:10 290:23	Lewis's 53:20	line 8:22 10:9 30:14 33:24 75:7 81:17 106:21 107:1 108:21 135:24 136:5,21 144:16 167:25 183:2,7
lawsuit 155:12 155:15,18 174:2,4,6,17 175:6,16 189:2 189:24,24 190:14,20 191:11 192:11 201:19,21,25 202:3,6,10,16 229:2 238:12 293:20 294:19	laying 109:25	lexicon 14:23	list 188:25 189:7
lawsuits 202:13	layman's 163:21	liability 1:4,8 2:4,8 276:3	listed 279:8
lawyer 29:15,21 29:25 41:8 54:7 55:2 75:15,16,17 85:21 95:16 190:15 192:14 192:18 200:14 201:23	learn 25:18 83:18	liable 276:4	listened 262:8 262:20 263:5,6 264:4
learned 83:19 207:21 262:2	lease 138:23 139:8,9 270:17 271:4,7	license 21:16,17 21:19,21,24,25 22:1	listening 10:8
lease-up 248:4	leases 271:9,19	licensed 21:12 29:22	literally 178:6
leaves 27:4 222:22		licenses 22:3	little 11:9 15:25 30:13 32:18 59:23 74:11 139:22

201:6 272:1
 276:18 279:17
Liu 288:14
live 30:10,12
 187:23
LLC 1:4,8 2:4,8
 2:16 4:11 9:15
 11:2,2 37:9
 181:6,11
LLC'S 182:2
LLP 3:15
loan 8:18 25:22
 25:23 26:4,10
 26:13 27:7,8
 27:14,14,16
 37:7,20,22
 51:18 64:2,4
 64:11 68:3
 82:5 84:21
 86:24 87:5
 89:3,9 94:17
 134:22 135:7
 135:21,24
 136:5,9,13,15
 136:23 137:18
 139:24,25
 140:3,5,13,19
 140:23 141:3,7
 141:10,12,12
 142:22,24
 143:1,3,18,20
 144:2,2,6,14
 144:14,17
 145:4,10,12
 147:18 152:9
 153:5,10,18
 158:7,10,11,14
 158:16,24
 159:1,2,3,5
 193:4 203:9,16
 204:12,18,19
 207:22 224:16
 235:7,8 236:8
 238:13 245:18
 245:19 246:7,9
 249:13,18
 255:22,25
 256:5,6,10
 260:17 261:1
 265:19,20,23
 273:18,22,24
 274:21 275:9
 275:10,11,16
 280:19,23
 281:10,15

282:2,5,8
loan-on-loan
 158:4 287:8
loans 20:21
 105:11 246:2
 246:12,14,15
 246:19,20,23
 246:25 247:8
 247:10,15
 265:17 272:9
 272:12,23
 273:3
located 16:20
 17:2 18:2
 59:15 247:6
lockouts 42:10
LOESER 3:15
log 34:17,18,20
 229:19 240:14
 240:16,17
 241:2,3,10,25
 243:2,10,16,25
 293:7
logs 36:11
long 15:24 17:6
 17:20 18:4
 19:20 20:2
 60:6,13,14
 142:12 154:18
 159:13 173:25
 173:25 174:5,7
 174:16,25
 175:5,5,12
 203:12 219:25
 220:4,5,20,22
 220:23,23,24
 241:20,21,22
longer 125:1
 145:7 197:5
look 36:24 42:1
 65:20 70:22,22
 71:2 73:7,17
 79:3,5 87:8
 91:12 101:18
 106:20,23
 115:24 122:3,6
 126:6 133:16
 143:15 148:20
 149:7 153:20
 157:15,15
 166:25 171:22
 194:24 215:23
 217:13 233:16
 235:18 238:22
 240:2 250:21

252:19 267:1,3
 267:10 278:12
 278:20,23
 282:12
looked 37:14
 49:9 115:22
 116:1 247:3
 276:19
looking 12:9
 76:21 88:8
 100:6 143:6
 173:9 241:6
 274:4 287:7
 292:5,6
looks 45:5,22
 46:13 66:10
 75:11,20
 107:19 110:15
 110:18 133:25
 149:8 169:8
 264:24
loop 76:23 78:1
Los 1:16 2:18,23
 9:1,7 16:20
 133:1 221:24
 222:3
lose 34:10,12
loses 295:17
loss 246:16
lost 111:23
 238:14,14
lot 38:17,20
 39:24 49:24
 59:25 60:1
 75:2 79:2
 100:8 106:4
 128:2 137:11
 144:23 149:4
 165:15 185:2,7
 197:3 199:2
 247:8 270:21
 289:7
love 94:19
lovefest 223:22
 223:24
Lucky 280:17
Lujan 75:13
lunch 93:10
 132:2,7 133:5
LUNDGREN 1:23
 2:21 297:4,22
lying 287:24
 288:4

machine 53:12
magnifying
 157:20
magnitude 122:25
mail 96:1
mailed 95:20
maintained
 259:23
maintains 134:7
majeure 41:11,14
 41:20 42:11,22
 43:6,14 46:25
 51:12,20,21,23
 52:6,8,12,20
 54:6,23,25
 55:10 56:8
 58:7 59:3,4,8
 59:19 60:25
 61:17,19 62:3
 62:13 66:16,17
 66:22 67:3,17
 67:19 68:2
 70:6,11,18
 94:1,11,12,14
 94:24 95:3,6
 95:14 96:1
 97:2
making 39:12
 54:8 56:25
 100:14 121:22
 128:12 150:6
 180:12,14
 223:25 232:9,9
manage 18:17
 26:3 72:15
 77:11,21,24
 106:4,6
managed 16:18
 18:7,9,21
 20:22 69:19
 77:22 102:4
 103:3
management 13:7
 18:12,15,21
 19:1 27:11
 99:17 105:10
 105:15,18
 156:5,7 162:16
management-type
 18:10
managements
 18:11
manager 17:5,8
 19:19 22:11
 39:6 103:12

249:17 263:15	225:12,15	matured 139:25	216:12 243:12
manages 12:16	232:23 238:18	maturity 134:24	272:15,15
27:11	238:22 240:2,3	maximum 153:1	Measom 3:23
managing 12:12	250:18,24	McKinley 116:23	10:14 290:16
12:15,16 13:5	251:10,12	126:9 154:23	measure 195:13
13:10,20 16:1	264:16,20	155:6 157:14	measured 144:24
16:8,9 17:9,9	282:10,13	172:1 174:1,6	mechanical 51:3
17:11 20:18	290:7,10	174:17,22	mechanism 89:9
22:14 59:5,9	markers 108:2	175:1,25 176:2	media 4:21
249:13	111:12	176:3,5 177:8	meet 72:9 155:5
manner 32:16,21	market 68:11	177:9 182:11	158:13 221:24
33:12,18 91:7	147:10 164:12	184:14,19	250:1
154:5,6 218:17	164:13,14,15	185:3 197:24	meeting 73:3
manpower 98:15	230:22 261:25	231:17 247:25	74:10 75:11
March 8:9 117:10	262:4 264:25	249:7,16,25	80:11 123:24
118:24 120:9	269:19 270:6	250:1 251:23	138:25 222:4,7
120:22 121:3	271:1,25	252:1,2	222:23,25
138:1,13 149:3	marketable	MCR 181:9	223:7,14,19,21
149:3,8 152:6	115:10	mean 22:8 31:14	223:23 224:3
166:18 167:5	marketed 260:24	35:8 41:2,11	224:12,13,20
167:22 194:1	271:18	44:21 52:22	224:21 225:3
269:3	marketing 248:3	55:13,15 98:8	225:11,21
Marcus 3:22 10:4	248:5 271:3	103:16 110:12	226:6,25 227:2
222:9 263:2,6	marketplace	110:23 111:21	228:4,8 250:11
Maria 3:22 8:18	170:3,8	117:3,6 119:3	283:9
10:5 30:24	markets 270:4	123:12 128:24	meetings 250:9
32:1 191:8	Marsh 90:18,20	135:14,15	Melody 245:12
222:8 226:20	Marti 27:4,6	137:1 147:7	members 83:11
Maria's 30:3	28:5 102:8	149:13,24	250:11
mark 205:3	Maryland 273:7	158:9 161:4	memorable 239:4
215:21 217:1	Mason 7:8,13	175:8 176:14	239:5
238:17 264:13	117:10 196:5	187:10 191:9	Memorandum 8:9
264:15	197:15 201:7	191:16,18	264:25
marked 8:16,18	277:11 288:23	192:5 213:1	memorialize
36:20 44:9,11	Mason's 197:19	222:2 231:14	243:15
65:22 70:24	material 191:10	240:10 241:14	memory 43:25
73:8 79:5,8	materials 7:14	243:11,18	44:1 113:25
87:10 97:16,23	42:19 43:2	249:20 252:20	mention 225:23
98:24 99:2	242:4	255:3 274:12	mentioned 11:1
101:18,20	math 107:17	278:20 281:4	12:23,24 68:20
104:7 106:9	118:7 191:20	283:14 289:5	69:20 248:15
108:4 110:5	220:17	293:4	258:8
116:14,16	mathematics	meaning 168:16	merely 146:11
118:11 126:2	278:15	216:16	mess 116:12
133:19 137:22	Matt 277:11	means 31:12	message 288:12
148:17,21	matter 28:23,25	135:6 146:24	met 30:3,7 41:4
151:24 156:21	62:1,15 82:23	163:21 187:11	70:4 73:6
157:17,18	134:19 183:11	187:17,20	101:1 155:3,19
160:8 163:8,9	214:3 250:17	191:20 196:8	155:20,21
166:9 171:4	253:20,23	196:10,19,22	159:7,14,17
194:11,15	matters 30:6,9	196:24 200:15	207:20 218:13
205:5,9 209:15	181:16 296:9	223:4	236:15 246:18
209:16,19	296:11	meant 45:19	274:20 275:4
215:22,24	Matthew 3:10	96:19 103:19	283:13
217:2,10	9:14 117:10	160:25 195:21	mezzan"-prefe...

272:17	137:24 146:9	256:14,23,25	mischaracterize
mezzanine 272:22	146:19 148:24	257:3,12	190:5
273:3	152:2 154:15	264:13,18	mischaracterizes
Michael 3:16	154:20 155:16	267:11,15,23	52:8,11 173:11
9:18 30:3	156:23 157:21	276:9,17 277:4	243:8
Michigan 1:1,8	160:11 161:2,9	277:6,9,16,21	mischaracteri...
2:1,8 3:6,12	161:20,23	278:2,20,23	194:5
11:3,5,5 29:18	162:8 163:12	279:1,4,16	misconstrue
29:19,22,24	166:12 168:22	280:4,9,13,16	183:18
63:25 68:11	169:5 171:7	280:18 281:20	misdeemeanor
185:2,15,21	173:14,16,21	282:4,16	25:15
microphone 205:2	173:24 174:11	285:12,18	misinterpret
midstream 286:17	174:15 177:19	288:1,16,19,22	183:18
MIGUEL 3:25	177:21,24	290:9 291:25	misled 221:12,14
Mike 112:12	178:7,12,24	295:6,10,15	missed 153:8
244:8 295:9	179:2,6,11,15	Millichap 263:2	missing 111:5
miles 97:18	179:17,21	263:7	misspoke 97:6
milestone 6:6	180:3,11,14,18	million 62:19	misstated 212:4
80:15,25 81:6	180:22,25	63:2,9,23 64:9	mistake 123:1
81:10,17,17,24	181:4,19,22	64:10,11,19,20	251:8
81:25 82:4,7,7	183:14 184:7	107:8 114:5,7	mistaken 288:5
275:7,12	184:11 186:23	114:17,22,24	mistakes 122:24
milestones 219:5	187:3 188:14	135:20 136:13	misunderstand
236:11	188:17,24	136:25 149:8	183:18
Miller 3:10 4:4	189:14,18	149:10,10,11	misunderstood
9:13,14 10:1,6	190:7,12,24	150:24 151:20	54:17 82:14
10:13,18 17:15	191:15 192:17	158:3 162:20	mix 50:20
25:9 31:5,9,15	193:14 194:7	196:11 229:13	mixed-use 271:7
31:19,25 32:15	194:18 197:14	229:14,17	mobilize 176:13
33:10 34:3,9	200:5,20,24	234:24 235:2	286:6,11
39:11,14 44:13	202:10,14,20	242:23 265:20	moment 36:24
48:20 50:6	202:22 204:8	265:21,22	53:2 54:2 94:3
52:13 56:14,19	205:3,7,22	millions 204:15	98:22 289:23
57:3 58:10,13	206:23 209:22	204:22 229:20	Monday 75:21
58:14,17,19	210:9,12,17	millwork 160:20	80:13,14
59:1 60:12	211:23 212:5	161:13	money 63:10,11
63:6,14,17	212:10,20,24	mind 40:18 73:11	118:25 125:15
65:25 71:1	213:3,6,15	73:18 123:24	136:4,14,17,24
73:10 78:9,12	214:8,12,15,19	175:6,8,9	137:7,14 141:6
78:15,20,22	215:4,8,14	224:20 245:10	144:12 145:5,8
79:10 80:20	216:2 217:1,8	269:1	145:20 146:13
83:2 87:1,12	218:24 221:8	minds 283:9	147:2,16
92:10,13 93:8	224:7,11 225:8	minimum 141:21	149:17,19
93:12,21 94:8	225:18 226:19	142:7,12,19,20	158:7 165:15
94:18,23 95:7	228:12,24	143:2,9,11,13	195:4 204:9,11
96:17,19 98:1	231:10,16	199:19 220:13	204:11 219:2
99:1 100:1,20	232:16 233:1,8	220:14,15	266:1,5
101:23 106:12	237:21 238:17	240:13	monitoring 26:8
108:7 110:8	238:20 240:6	minute 58:1	month 60:16
113:3,15	243:9 251:1,14	123:6 208:17	151:20 174:12
116:18 117:25	253:2,6,11,14	minutes 51:24	175:3,20
118:9,13 126:5	253:19 254:2,6	91:13 93:9	185:14,24
129:17,22	254:11,14,24	180:19 228:10	231:7
130:1 131:5	255:6,9,11,19	228:24 276:9	monthly 151:11
133:12,21	255:24 256:3	293:20	months 119:9

130:11 149:15	Murphy 287:22	170:14,18	nonsense 55:25
152:8,9 166:19	288:2	negotiated 170:4	224:6
197:22 198:8	muscle 294:13	170:8	Nope 281:12,12
200:25 201:9	muted 10:13	negotiating	normal 32:4,10
202:25 220:6,6		166:17 169:10	33:14 125:12
220:6,9,11,11	N	negotiations	144:6,18 164:3
220:12,12,13	N 4:1	244:10,14	172:9
220:13,13,14	name 9:13 10:20	neighborhood	normally 163:25
220:14,15,16	14:22 15:1,3,4	196:11	164:2,4,9
220:16,21	15:6,8,11,13	neither 86:19	Northwestern
248:8 269:4,6	15:16,19 28:11	286:15	3:11
269:10 286:4	157:12 177:8,9	net 85:16	not-even-appo...
286:11	222:11 244:15	Neupert 3:22	198:6
more-than-two...	244:24 245:7,9	10:4 93:19	note 109:7
44:23	245:11,20	94:5 100:19	143:10,16
morning 9:4,13	259:15,21	133:4 186:25	152:5
80:13 173:17	273:10 288:9	221:6 222:9	noted 123:6
mortgage 20:1,5	295:6	228:19 276:14	notes 168:2
20:16,19 21:20	named 297:8,12	291:18	205:15 297:15
21:22,24 28:9	names 245:4,24	never 27:2,3	notice 4:14 8:5
mother 25:12	247:22 256:8	28:2,5,11	12:5 22:22,23
motion 177:24,25	262:5,25	34:14 35:14	22:25 40:12
178:1,4,13,25	nature 197:11	36:4 49:1 62:2	68:2 84:16
179:2,7 180:5	249:15	68:2,25 95:25	94:13,15,24
180:10,11,13	near 60:21	111:18 136:1	95:3,5,14,17
180:24 181:4	187:24 194:14	136:25 137:2,4	179:9,13
181:24 182:7	nearby 73:11	137:5 139:7	181:11,15
182:20 183:12	nearly 138:16,18	154:11 157:12	182:3,14,21
183:21 185:5	necessarily	192:25 214:16	219:24
215:13 234:23	16:14 176:7	233:3 234:3	noticed 41:23,24
261:4	177:3,6 268:19	237:7,8,11	42:13
motions 249:10	268:20	258:25,25	notices 95:20,22
move 45:17 79:1	necessary 84:23	287:10	notification
98:23 180:4	188:19 189:8	nevertheless	95:13 96:1,22
181:1 184:11	226:12,23	212:13	96:23 97:1
230:6,8 231:13	need 22:16 33:1	new 86:12,15,16	notified 15:18
271:7 286:3	76:23 103:17	87:20,23 99:25	notify 95:8
moves 181:9	117:11 122:9	102:12 207:25	notifying 257:15
moving 100:22	122:12 170:10	242:13 245:9	November 210:23
159:21 280:2	171:12 183:6	286:6,8	number 12:22,24
285:23	190:4,19 195:9	Newbanks 43:13	16:11 61:12,15
mud 61:5	242:23	43:17,20 69:3	62:8 83:11
multifamily	needed 33:5	292:17	116:12 130:3
102:4 258:3,4	49:10 101:1	nicest 185:23	141:14 160:17
258:22 263:12	185:2 188:7,15	night 193:11	184:25 233:6
263:15	191:7,17,18	nine 246:14,15	235:3 266:24
multimillion	192:12 194:25	246:16,22,22	267:8 268:2
243:3	241:9 242:3	247:21	276:22
multiple 141:21	needs 95:5	nitpick 243:19	numbers 13:1
142:7,12,20	194:25 241:7	243:23	246:25 247:2
143:2,11 173:1	negate 281:16	nodding 12:8	numerous 221:13
173:2,10	negative 35:5,9	noise 87:12	
175:25	negligent 107:24	non-performing	O
multitude 103:22	229:19 290:22	284:20	O'Brien 165:25
176:9	negotiate 164:9	nonissue 203:18	166:17 172:19

176:18,18	100:15	264:24	91:2,12,16
184:13,18	obligated 281:5	offers 268:6,7	92:12 93:11
185:3,9 186:17	obligating 242:7	268:13	94:7 95:25
187:6 207:2,6	obligation 92:4	office 17:11	96:17,19 97:3
208:15 230:16	127:21 201:16	18:7 22:14	99:4 101:3,22
230:18 231:25	256:11 281:16	32:23 33:14	103:16 104:5
232:3 236:6,9	obligations	34:11,13,15	106:11,20,25
236:10,17	26:12 43:5	97:19 135:21	108:6,11,15
238:7,8,10	122:1,2 158:14	136:6 137:4	109:1 110:7
286:15,16,24	193:3 256:18	239:3	111:14 113:21
286:25	282:6,7	offices 155:6	113:22 114:21
O'Brien's 186:3	observe 43:4	222:5 229:2	115:25 116:10
186:8,11	obtain 42:19,22	official 216:12	116:20 117:8
o'clock 132:3	obvious 212:18	officially 14:18	118:15 119:19
O/P 163:20	obviously 55:14	Oh 12:5 21:23	119:22 120:1,6
OAC 83:4	102:22 108:8	23:13 25:4	120:16 123:16
oath 22:18 23:1	108:16 224:10	48:25 69:18	123:17 125:4
31:13,14,18	240:19	71:18 72:18,19	126:1,4,22
91:4 106:18	occasion 94:10	77:12 78:5	127:12 128:11
214:12	274:2	100:4 105:19	129:3,12
object 32:12,25	occasionally	155:17 158:15	130:18,19
33:23 39:8	62:22 83:5,7	158:18 170:5	131:18,23
48:15,15 52:7	245:8	177:16 247:5	133:18,25
56:12 63:5	occasions 221:13	250:22 254:24	134:13,16,19
86:21 92:7	250:2,3	273:13 279:12	135:13,17
99:15 129:13	occupancy 187:22	284:25 287:17	137:17,21,25
131:4 154:14	248:16,20	293:5 295:3,13	138:14,22
160:23 168:4	occupants 248:21	Ohio 3:18	139:4,14,22,23
168:21 169:4	occur 66:16	okay 10:13,14	143:4,15
173:11 180:9	70:20	13:18,23 14:4	147:22 148:16
182:14 184:14	occurred 66:17	14:7,21 18:13	148:23 149:2
185:8 188:10	70:1,2 75:24	18:25 19:3,20	150:13,22
188:21 189:13	75:25 136:1	20:23 22:15	151:3,6,14,23
190:21 191:12	237:18	23:1 24:24	152:1 154:8
192:15 194:4	occurrences	25:10 30:13	157:4,7,24
197:7,10	237:9	35:25 38:13	158:21,21,25
199:24 200:19	occurring 237:23	40:9,14 42:18	159:7,12
204:24 206:21	occurs 185:18	42:25 43:13	160:10,19
211:20 212:3	October 37:9	45:3 47:6	161:5 162:14
221:4 243:7	88:15 111:4	49:13,19 50:1	162:22 163:2
252:24 287:25	112:18 118:16	53:2,8 54:2	163:11 165:5
objecting 29:11	118:22 119:9	55:7 59:11	166:11 167:25
33:6 63:15	120:2,19 121:3	62:7,24 63:18	169:18,21
257:7	141:20 174:1	63:21 64:25	171:1,6 173:21
objection 33:2	174:25 175:13	66:25 67:18	175:24 183:16
56:14,22 96:14	184:24,25	68:5 69:15	184:11 186:8
100:15 131:3	185:14,20,21	71:6 72:24	186:16 187:8
131:11 184:19	185:23 187:19	73:2,7,13,21	188:25 191:2,6
189:17 202:8	193:17 197:21	74:2,3 75:11	192:5,24
231:9 232:14	236:13	75:20 76:18	193:20 194:17
252:22 254:16	odd 258:17	77:8 78:7,21	195:19 196:3,4
254:21 255:16	offending 34:4	79:7,22 80:22	197:15 200:16
257:4,18	offer 268:10	82:14,20 83:24	201:5 202:4,5
281:25	offered 178:11	86:8 87:8,9	204:14 205:13
objections	Offering 8:9	90:8,10,25	205:20,21,23

207:10 208:7
 209:14 214:20
 215:1,19 216:1
 218:19 222:6
 225:17 227:24
 228:24 231:10
 232:8,12,25
 233:18 235:21
 237:15 238:11
 239:17,24
 240:5,18 247:5
 247:24 249:6
 251:9,16,21
 252:2 256:4,14
 259:22 261:8
 263:6,20,22
 264:15 265:16
 267:11,15
 268:13 269:8
 271:5 273:13
 276:3,9 277:23
 278:5,7 279:1
 279:10,14,15
 280:1 282:9,15
 282:22 284:8
 285:24 286:24
 287:22 295:13
 295:19
on-site 138:25
 200:9,23 218:2
 286:23 289:11
once 18:24 27:2
 130:4,5 196:17
 196:20 203:17
 212:7 219:15
 259:13
ones 21:15
 258:12 263:5
 273:1 289:3
opened 183:1,3
operate 269:20
operating 18:20
 18:24 22:13
 283:17
operational
 18:10
operations 18:17
 18:19,21 69:10
opine 223:15,17
 234:7,9 256:17
opinion 15:11,14
 50:18 54:1
 61:16,18 66:15
 71:25 72:2,3
 72:12 84:11

96:7 109:8,9
 109:12,13
 122:23 151:5
 151:21 154:6,7
 182:13 229:3
 234:11 257:20
 281:9 282:1
opinions 123:9
 123:11 202:1
opportunity
 17:18 19:10
 37:2 193:1
 203:25 204:6,6
 204:10
opposed 117:20
 119:7 236:25
 242:10
opposite 54:16
 184:8
option 54:13
options 177:4
order 34:18,25
 35:1,3,6,9,11
 35:14 36:2,4,4
 36:11,16 54:19
 86:11 115:7
 122:9 178:13
 179:13 180:6
 181:10,22
 182:13,20,24
 183:21 184:7
 188:7 189:9
 208:5 210:22
 212:11 231:2
 232:9 240:17
 241:21 242:6,9
 242:10,14,19
 242:23 253:1,4
 255:3,12,21
 256:1,21
 257:14 261:1
 276:5 290:24
ordered 51:9
 181:24 182:7
orders 35:13
 36:14 115:13
 229:21 241:17
ordinary 241:11
original 51:5,11
 135:23 139:24
 145:12,24
 152:24 168:9
 203:15 208:12
 246:18 265:20
originally

204:16
originated 20:21
 27:8
origination
 288:14
origination's
 102:10
outcome 287:3
 297:17
outlay 153:23
outset 65:14
outside 147:24
overall 164:23
overbroad 182:13
overfunded
 232:17
overfunds 232:12
overnight 95:21
overpaid 127:13
 168:15
overpaying 230:3
overpayment
 128:15,20
 131:2
overpayments
 230:16
overruns 6:14
 227:18 233:22
 234:1,6,13,15
 234:18 235:2
 276:23 278:10
 278:16 279:23
overseeing
 273:21
oversees 105:16
owed 114:9 119:5
 119:5,11,13,15
 119:16,19,20
 119:22,22
 120:25 121:2
 122:23 123:10
owing 107:13,20
owner 7:13 50:11
 103:9 157:14
 241:5 242:4,7
 255:17
Owners/Managers
 22:12
ownership 254:7
owns 154:23
 254:2
Ozarks 287:5,7

 P

p.m 45:19,25

66:11 73:20,25
 74:8 80:12
 102:15 112:19
 132:7 133:2
 277:10,16
 279:5 295:23
 295:24
pace 141:5
 149:12 151:3
package 149:1
 265:2
packages 125:12
Packard 1:4,8
 2:4,8,16 3:8
 4:8,11,15,19
 4:20 5:5,10,13
 5:16,18,21,23
 6:8,11,13,15
 6:17,19 7:4,6
 7:8,10,13,16
 7:18,20 8:3,7
 9:15 10:7 11:1
 11:2 14:16
 25:19 28:14,17
 28:17 37:8
 50:9 102:16,18
 103:7 106:16
 135:22 139:6
 163:3 180:6
 181:6,11 182:2
 190:25 191:3
 221:1,9 229:10
 229:12 258:11
 258:24 259:10
 263:17 272:21
 274:11 287:6
 287:24 288:4,8
page 4:3,7,21,23
 5:4,14,19,20
 5:24 6:3,5,18
 7:3,5,7,17 8:2
 8:17,22 27:4,6
 27:13 37:6
 40:8,18 42:2
 45:3,4,17
 46:15 73:4,19
 73:21,24 76:20
 80:16 87:17
 88:9 93:23,25
 95:18 96:5
 97:11,12,14
 102:8 106:20
 106:22,25
 109:5 110:20
 112:1 116:21

117:16 120:10	partially 235:1	272:23 273:1	109:8,15,20,22
126:8 149:7	participate 83:3	payment 8:5	114:13,15,15
150:15 157:23	261:15,18	104:13,20,21	114:16 135:18
166:23 171:9	participated	105:20,21,23	143:20,21,21
171:23 216:6	83:7,9 244:16	110:19 115:3,6	143:24 144:1
233:21 292:6	participating	118:18 119:14	144:13,21
pages 4:10,11,13	262:6	119:15 120:3	145:6 146:3,3
4:16,18,19 5:7	particular 45:12	123:14,18	146:12,15,22
5:9,11,12,17	101:4 117:6	125:9 126:13	147:18 163:19
5:21 6:7,10,12	136:18,23	126:23 127:2,4	163:20 164:17
6:14,16,20,22	139:10 206:7	129:5 130:4,6	164:18,19
6:24 7:9,11,15	242:16 243:24	130:12 131:8	165:2,5,5,6,12
7:19,22 8:5,8	263:20,24	131:22 146:14	166:5,6 168:1
8:10,12,13	particularly	149:17,19	169:23 184:25
38:9 166:8	239:4,5	153:3,6 275:5	187:20 191:13
paid 63:11 107:7	parties 34:21	283:4	191:19,20
107:19 114:7	38:16 282:7	payments 110:16	195:24 198:25
114:17 119:9	284:7	111:7,9 121:9	204:2 221:2,10
120:20 122:13	partner 88:10	121:24 124:2	221:16 266:14
124:1,3 129:6	Partners 12:12	150:6,9 235:6	266:14 272:11
131:12,16	12:15	payoff 265:17	272:14,19,24
141:22 142:5,6	partnerships	266:18 267:18	273:1,4
143:20 144:6	249:23	PCO 34:17 229:19	percentage
144:17 145:3	party 76:9 108:8	240:16 241:10	109:15 143:2
145:10,12	229:7	241:25 243:10	164:7 165:25
147:14,18	Pascoe 3:16 9:18	243:16	248:24
150:16 162:1,1	9:18 56:21	PCOs 115:13	perfectly 191:23
162:7,10,13	295:4,16	PDF 278:3	perform 43:4
274:16,21	passed 203:17	Pellegrino 3:4	195:23 235:13
275:5 283:5	path 192:6	10:11 295:12	282:6 284:1
284:3	195:24	penalties 236:14	performance
painting 199:5	Paul 187:8	236:21	153:3,6 290:21
Palo 30:11	pay 104:25 105:4	penalty 9:22	performed 106:16
Papa 139:5,17	105:4 111:2,3	106:18 296:12	108:13 119:23
paper 205:14,17	111:10 115:19	297:9	121:4 122:1
paper-clipped	115:21 117:11	pendency 200:22	126:14 145:3
217:10	120:7 123:12	pending 86:19	149:20 150:17
paragraph 41:1	124:6 125:13	229:1 244:11	189:8
42:24	125:18 126:12	people 10:2 14:2	performing 19:15
paraphrase 190:6	126:14 127:25	18:14 69:3	performs 235:12
Pardon 194:13	128:15 136:14	74:12 103:22	period 16:21
parks 3:15 17:12	141:12 142:21	110:1 125:15	69:20 123:23
18:8	142:21 149:19	169:9 172:22	178:18
part 11:10 13:19	229:9,23,25	175:10 176:14	perjury 9:22
20:16 27:7	274:23 275:17	176:17 187:23	106:18 296:12
37:19 45:12	275:24 276:4,4	210:5,7 213:4	297:9
51:5,10 71:4	276:6 282:19	213:10 229:5	permit 56:20
71:10 73:24	282:24 283:3,5	251:6 259:16	65:11,13
79:20 96:21	283:7,7,10,11	262:3 271:19	permits 57:13,15
112:3 115:15	284:5	276:23 289:10	62:20,22,25
131:19 135:21	paying 11:10	people's 169:12	63:4 64:1,3,7
148:13 187:12	122:2 123:22	perceive 24:19	64:21,23 65:1
191:10 214:22	124:8,10 125:5	perceived 24:21	65:2,8,9,15
226:4,7 271:22	130:21 136:19	percent 107:20	person 14:9,11
277:7 283:5	137:6,14 259:4	107:21 108:20	66:13 69:11,17

102:10 105:8
 175:12 259:15
 283:19 288:13
 288:14
personal 30:5,8
 178:9 200:6,8
 200:11,13,15
personally 24:10
 24:17 95:20
 104:21 239:8
personnel 69:23
 82:21 83:3
 250:1 251:23
 252:1
pertained 191:3
pertains 47:17
 110:3 190:25
 191:1 293:3
phone 10:9,15
 295:1
phrase 92:12
 187:17,25
physically 24:17
pick 184:3,24
piece 205:14
pile 82:24
 280:13
Pinnacle 4:22
 102:2,16,17,20
 103:6
place 19:11 26:7
 46:16 63:24
 64:3,8 85:20
 124:25 235:14
 236:24,25
 248:5 265:7
 281:25 297:12
placed 100:16
 124:16 166:23
 182:20 244:17
plaintiff 1:6
 2:6 3:2 9:17
 10:12 180:5,6
 181:4,6,7,13
 182:5
plan 4:12 5:19
 46:22 47:22
 127:19 134:3,8
 134:10,21
 135:1,10 196:6
 196:23 198:8
 201:9 204:23
 206:17 209:1
 226:14 227:25
 247:24 248:3,5

planned 260:14
planning 259:5
plans 5:6 45:6,9
 45:10,12 46:3
 46:12,17 48:1
 48:8,9,14
 49:10 51:5,11
 54:22 55:18
 57:4,7,18,20
 57:23,23,24
 58:2,3 61:23
 62:21,22,25
 63:4,25 64:3,7
 64:21,23 65:1
 65:1,7,9,11,13
 65:15
plant 242:20
play 13:3 87:24
 294:12
players 14:4
please 9:10,11
 9:20 10:3
 11:19 32:8
 33:7,9 35:7
 36:23 46:1
 47:6 63:19,20
 70:16 73:7
 74:16 80:23,24
 81:1 85:5
 93:24 101:19
 106:24 110:11
 130:15 132:3
 133:17 137:10
 137:12,13,21
 142:14 152:23
 157:17 163:8
 166:25 205:4,9
 210:10 215:21
 215:23 217:13
 221:7 237:20
 238:17,23
 240:2,7 250:21
 264:15 276:10
PLLC 3:3 181:8
Plumbing 116:21
 117:12 118:18
 119:1 120:4,7
 120:20 121:16
 123:19 126:9
plural 171:17
 172:18,25
 176:21
plus 163:20
 167:19 168:1
point 26:1 56:1

62:10 64:20
 72:11 74:25
 101:11 117:2,3
 117:4 123:25
 124:7 134:2
 143:7 147:3
 153:19,24
 158:6 163:17
 169:13 187:7
 202:23,23
 210:25 211:4,8
 212:19 213:7
 222:23 242:16
 247:25 252:10
 254:23 258:4,8
 267:24 291:6
 292:10,17
pointed 168:14
pointing 143:16
 169:2
points 169:12
 250:8,10,12,16
 251:2,4,8
police 24:22
 25:5
poor 71:17,20
 245:8
Port 59:16
portfolio 12:16
 12:20,23,25
 14:10 16:9,18
 17:5,8 18:7
 263:14 272:10
 272:13 273:2,6
portfolios 13:2
portion 114:22
 136:17 180:25
Portions 12:4
position 40:9
 84:2,3,10 89:5
 103:5,6 109:7
 152:12 175:24
 226:8 260:4
 284:3,5
possibility
 173:2 207:12
 261:10
possible 44:6,7
 84:19,20 85:19
 85:22 99:12
 115:10 144:20
 151:2 167:24
 170:18 231:23
 232:6,17,19,21
 243:20 271:13

possibly 35:19
 76:16 113:13
 144:21 147:6
 219:7
post 27:12
 246:18
potential 34:18
 35:2,6,9,13,16
 36:2,3,5,11,14
 36:16 99:24
 139:5 141:18
 177:14 240:17
 241:17,21
 242:10,13,19
 242:23 258:7
 264:6 268:16
 286:8 287:8
potentially
 68:10 105:17
 134:6 224:16
 258:9 259:9
 269:24 271:20
poured 82:4,18
pouring 81:9
 82:13
power 61:2
 176:12
powerful 31:17
practical 87:3,5
practice 215:13
precluded 136:17
predict 216:24
 269:7,25
prediction 35:18
predominantly
 14:10
prefer 23:16,18
preference
 203:14 262:13
preferred 272:22
 273:3,8
preliminary
 167:12,23
prep 196:15
prepare 73:5
 264:5
prepared 39:1
 127:11 247:3
 267:4 279:21
 286:11
preparing 135:1
 175:15 216:17
present 3:20
 186:10 221:23
 222:4,6 290:12

presented 38:14	29:16	52:16 54:10,18	268:17 269:2
88:5 131:21,24	privileged 293:8	56:4 57:5 59:8	272:5 282:3
184:13 186:24	probably 18:13	59:13,17,18	286:3,12,17,19
187:2 198:10	67:16 74:9	60:21 62:23	projection
208:19 214:5	76:16 97:6	64:24 65:3,10	246:18
242:14 267:1	114:12 142:10	67:14,19,23,25	projects 36:9
278:1 283:3	143:12 213:21	69:5 70:12	41:18 47:18
286:9,10	240:21,25	76:5 80:2,7	48:12 49:4,5
pressured 152:18	277:25 294:12	83:16 89:17	52:16 57:10
presumably	problem 23:2,5	92:1 99:11	59:11 102:12
270:15	71:14 77:9	100:13 102:4	151:7 165:4
presumed 161:4	78:23 79:19	102:20 104:3	203:14 219:2
presuming 91:16	80:3 88:12	104:11,13,16	237:14,17,22
145:14,19,20	99:11 100:11	104:19 106:16	244:16 245:1
147:5	152:21 179:3	108:14 115:10	245:23 246:2,6
presumption 64:6	197:20	121:5,6,25	247:6 258:3
pretty 185:23	problems 68:22	124:9,12,16	263:15 273:5
258:17 272:3	218:2	135:22 148:7	proper 26:7 38:8
previous 40:18	proceed 4:14	151:18 153:2	82:4,18 84:8
67:3 69:17	115:10 183:15	153:17 156:3,5	143:12 177:1
111:7 224:25	184:6 193:3	156:7 158:8	properly 42:12
previously 8:16	285:19	163:4 164:6	96:7 178:22
52:4 114:4	proceeding 93:20	165:18,21	207:20
190:23 210:1	108:3 149:11	168:3,13	properties 48:23
price 107:5,9	149:16	169:14 170:15	49:13 272:2
153:1 172:12	proceedings	176:5,13	273:7,11
176:25 268:16	17:14 297:8,11	184:23 187:14	property 18:21
269:11	proceeds 146:20	187:19,21,24	22:9,11 39:23
prices 260:21	process 68:25	189:11,22	40:1 43:14,18
pricing 176:12	85:6 111:9	191:1,13,19,22	43:22 54:21
principal 266:18	221:17 235:23	192:7 193:4,5	103:2,11
267:22 268:3	235:24 248:1	193:6,18,23	113:23 124:25
print 277:18	261:23 285:23	195:1,7,9,13	125:14,20
279:14	processing 26:6	195:17,25	127:20 145:8
printed 277:25	produce 235:17	196:14,23	145:11,17
prior 16:23	293:10,12,15	197:25 198:10	149:2 188:8
17:21 19:3,23	produced 142:2	198:21 201:15	189:25 192:12
19:24 20:5,9	215:9 233:17	201:17 204:3	193:1 252:4,8
27:25 50:13	234:2	210:25 211:8	252:9,18,23
57:6,8 84:13	product 85:17	211:25 212:19	253:13,15
105:20 138:25	269:17	213:10,13,14	254:2,5,7
159:9 160:15	production 158:1	213:25 217:7	255:13,17
160:21 161:14	214:5,24,25	219:4 224:17	256:8 257:5,15
169:24 171:10	293:14,17	226:15,23	257:19 259:25
174:6,16,24,25	products 279:13	230:5 232:5	260:3,6,12,14
175:6,12 189:1	progress 149:17	234:5,12	260:23 265:24
189:8 193:17	159:16,21,24	236:24 237:1	269:20,21
202:15 208:15	232:3	238:13 240:22	270:18 271:3
208:19 217:23	progressing	241:7,12 242:8	280:20,20,24
247:9 286:19	138:11 193:7	244:23 245:8	281:6,17
297:7	project 4:15	246:7,9 248:3	292:19
private 6:23	34:22 35:10	248:4 249:7	proposal 61:9
28:23,25	39:7 45:11	258:9 259:4,9	173:4,5
privilege 4:9	48:13 49:3,8	263:21,24	proposals 100:9
7:5 29:10,13	50:9 51:17	265:1,18 266:7	286:10

proposed 8:11
 171:12,16
 172:18 176:21
 181:22 290:19
proposing 99:24
prospect 260:11
prospective
 271:5
protect 54:20
 189:21
protected 192:1
 291:21 292:12
protecting 188:1
protective 180:5
 182:24 183:21
prove 162:11
provide 46:1
 89:9 182:17
 193:1 225:24
 226:21 227:9
 235:16 237:3,4
 250:8 254:16
 254:19 256:7
 293:6
provided 37:12
 42:12 57:14,16
 59:7 60:13,14
 62:19 63:2,23
 64:6,20 66:15
 95:5,22 137:18
 153:7 177:9
 187:5 196:7
 224:15 227:19
 227:21 233:4,9
 236:8 241:5
 245:25 247:24
 250:10,16
provides 181:23
 236:2 255:22
providing 142:22
 181:15 227:16
 255:17
provision 59:4
 95:4,17 96:4
 256:6
public 3:17
 265:3
pull 214:23
 216:17
purchase 135:21
 135:25 136:6
 136:10 161:18
 264:5,10
purchased 160:14
 160:21 161:13

purport 106:15
purported 171:11
 171:15 186:5
 208:25 227:18
purportedly
 188:7 201:10
purporting
 145:18
purpose 51:19
 82:6 110:13
 126:12 127:25
 136:18,19
 137:19 204:21
purposes 53:19
 130:15 136:4
 231:5 261:24
pursuant 11:5
 139:24 140:1
 145:3 168:8
 169:17 181:9
 219:4 236:8
 255:3 260:17
 280:19
pursue 99:7
 260:2
pursuing 183:7
 259:25 260:5
put 55:23 56:6
 61:13,22 63:3
 63:24 113:23
 130:3 135:10
 135:16 139:5
 178:12 236:24
 236:25 286:4
putting 139:10
 142:10 168:12
 226:2

Q

Q's 8:4
Quandel 3:14
 8:11 9:19 46:4
 68:22 71:13
 72:6,7,12
 74:16 75:1,10
 76:11,12 77:9
 77:13,19 83:16
 84:16 85:25
 86:9 87:21,22
 88:18,23 90:14
 90:16 98:14,20
 99:8,16,21
 100:11,12,18
 108:19,23
 109:22 114:15

123:25 124:1,6
 207:17 244:5
 244:11 283:1,4
 283:5,7,7,23
 284:1,15
Quandel's 69:23
 71:21,25 77:14
quarter 107:13
quarterly 134:12
 134:13
question 11:21
 11:23,24 19:16
 28:24 29:1,2,3
 29:12 30:20,21
 31:3 32:7,8,24
 32:25 33:6,8
 33:16 35:7
 38:1 41:22
 47:5,6 48:16
 49:6,7,25 52:8
 53:19 55:12,13
 56:13 62:24
 63:5,7,13,16
 63:18 68:4,6
 70:14,15 74:6
 77:12,13 78:5
 81:15 86:22
 88:21 91:5
 92:25,25 97:6
 99:16 100:7,8
 110:2,3 112:14
 113:21 120:17
 120:18 121:7
 124:20 128:3
 129:1,15,24
 130:2 131:13
 131:14 134:20
 135:8 137:10
 137:10,12
 140:21 147:8
 154:8,14,15,18
 158:2,3 168:21
 169:4 170:11
 170:22,23
 184:15 185:7,8
 188:11,21
 189:4,13
 190:16,17,21
 192:16,19
 193:10,12
 195:19,20
 197:11 200:1
 200:19 201:12
 204:21,21,25
 206:22 208:13

210:10,13
 211:13,21,25
 212:4,6,14,23
 218:4,5,23,25
 220:19 221:5
 223:4 226:9,24
 231:6,14,15
 232:7,15 243:7
 253:22 254:15
 254:20 255:19
 257:17 263:4,4
 268:1 278:9
 281:2 287:25
 288:1,20
questioning
 30:14 33:24
 123:3 183:2,7
 276:24
questions 8:21
 11:12,20 31:2
 31:11,22,24
 32:17 33:12
 34:1 91:1
 133:14 169:20
 183:9 199:25
 200:1,3 213:5
 215:12 230:7
 230:11 241:8
 294:25
quick 277:15,20
quickly 99:11
 160:6 176:13
 201:11 203:22
 232:6
quiet 160:3
quite 32:3,10,11
 46:7
quote 46:18
 48:10 84:17
 152:16 181:23
 190:11 193:18
 225:24
quote/unquote
 188:8

R

rain 59:23,25
 60:1,6,8,11,15
rains 60:4
raise 9:20
 131:11 184:18
 198:8 222:19
raised 46:4 50:8
 50:14 210:4
 211:2,6,10

212:2,16 223:8
 232:2
raising 222:20
ran 180:18
Rancho 30:11
rate 140:4
 143:17,19,21
 143:22 144:13
 145:6 248:13
 267:19 269:5
 271:18,23
 273:4,8,14,15
 273:16
rates 144:23
 248:9,10,12
 268:22 269:7,9
 269:14,19
 270:10 271:24
rationale 130:21
rattle 200:2
reached 288:7,9
reaction 98:6,8
read 39:13,15,16
 39:16 40:19,21
 40:22 41:16
 42:4 44:20
 47:7 53:23
 56:16 62:16
 65:24 66:3
 76:23 82:9,16
 85:3 91:22
 94:3 95:4
 126:7 183:17
 184:4 197:18
 210:9,11,14,16
 217:18 218:10
 227:7 243:5,6
 278:7 296:6
reading 150:18
 180:22,25
 206:2
reads 161:24
 277:17
ready 170:25
 183:14 248:21
real 12:13,15,17
 13:5 17:25
 20:8,14,17
 21:16,24 22:9
 198:7 201:8
 226:7 242:9
 246:12 269:22
 277:15,20
reality 128:25
 217:4 286:13

realized 21:23
really 31:7 34:6
 78:15,16 128:4
 128:16 152:18
 185:20 190:7
 199:5,25 200:9
 203:12 230:12
 231:12 240:9
 242:17 258:11
 271:15 273:19
realm 252:5
Realty 16:25
 17:16,22 19:5
 19:8,9,13,14
 19:18 28:8
reason 11:4
 15:15 23:13,18
 23:21 26:24
 28:2 29:5,7,14
 37:23 43:8,24
 88:4 136:3
 214:20 233:24
 234:4 260:23
 269:15 278:13
reasonable 42:21
reasons 176:9
 177:21 245:6,7
recall 43:15,19
 43:23 49:15
 50:13 51:1
 57:7 61:11
 66:24 67:9
 68:13 69:6
 70:1,2 75:25
 76:1 77:2,8,13
 77:17,18,18,24
 79:14 83:19
 84:18 90:20
 94:12 96:21,23
 97:1 98:4,12
 99:6 103:19
 105:19,21,23
 127:3 131:9,25
 133:23 134:18
 137:25 139:19
 141:23 153:20
 155:10 156:19
 157:3,4 159:12
 159:20,23
 160:2,4 166:13
 167:6 174:7,19
 174:20 175:2,4
 175:14,17,19
 175:21 177:11
 186:12,18

187:1,4 189:3
 196:1 199:13
 199:14 205:25
 206:2,3,5,8,14
 206:14 213:18
 213:20,23
 214:1 216:20
 217:17 218:8
 219:21 220:24
 221:11 222:18
 222:20,24
 223:7,20
 225:10 227:6
 227:10,14,19
 228:9 229:7
 231:20 233:13
 239:1,6,8
 243:12 244:6
 245:2 251:5,19
 257:25 259:15
 259:21 265:14
 274:19 282:19
 283:2 284:13
 284:17 289:2
 291:2,3 292:16
receipt 96:12
receive 86:20
 96:13 119:1,3
 130:8 131:20
 143:23,25
 144:11 145:22
 146:14 147:1
 147:12 219:11
 290:24 291:5
received 44:19
 44:22 45:22
 46:13 50:22
 61:9 66:6,20
 67:10,13 68:2
 68:7,9 69:8
 73:3 80:4 96:3
 96:11,15 98:6
 113:17 121:16
 124:5 130:12
 139:7 146:15
 147:17 161:3
 206:1,13 207:1
 207:2 214:21
 214:23 215:7
 215:20 216:18
 216:20,25
 219:15 220:25
 233:9 247:16
 251:19 258:10
 258:25 268:7

291:6,13
 292:13
receiver 4:8
 15:1,3,15
 23:24 104:25
 105:7,11
 114:18 115:9
 116:6,7,25
 117:5 120:6,9
 120:21 121:6
 121:11,22,24
 122:7 123:6
 125:18,19,21
 125:23 126:9
 126:20 127:10
 127:13,17
 129:6 130:5
 131:16 144:14
 145:10,16
 147:25 154:24
 158:7,10,11,14
 158:16,24
 159:1,4,19
 166:17,19
 170:13,17
 171:10,11,15
 171:16,22
 172:1,8 173:17
 177:13,22
 182:11 184:22
 186:5,5,10,14
 186:14 187:13
 189:21 191:21
 193:23 196:22
 198:6,17
 200:16 201:16
 201:22,24
 203:2 204:1
 206:19,25
 208:14,16,23
 208:24,25
 210:21,22,24
 211:3,7,17,24
 212:7,8,18
 213:12,17,25
 229:24 230:3,4
 230:24 234:22
 235:6,8,13
 236:8 238:4
 244:13 248:10
 249:1,3 252:22
 252:25 253:5
 254:16,18
 255:2,17,22
 256:7,11,21

257:11,13	54:9 123:15	45:9 47:25	relates 111:12
260:5,9,9,10	record 9:5 12:7	48:4 50:23	249:13
260:13,17,25	25:2 47:8	66:18 74:24	relating 11:21
261:1,3,9,13	56:22 58:9,19	80:17 96:8	68:21 77:14
261:20 262:11	58:20,25 93:14	119:24,25	111:17 221:25
263:1 265:19	93:17 100:16	134:4 164:22	relation 74:5
265:22 268:12	132:4,5 133:9	167:16 175:11	287:12 289:13
270:12,25	179:18,20,22	180:24 199:12	relations 163:1
271:3 273:17	180:2,4,12,13	226:1,2 240:20	relationship
273:22,24	180:14 210:11	240:21,24	115:17 140:13
275:6,8,9,10	210:16 228:16	250:19,23	154:21 249:6
275:11,24,25	228:23 276:11	256:13,15	249:15 253:7,8
276:4,5 288:24	276:15 279:9	284:12,13	relationships
289:5	280:10 281:25	293:11	176:11 249:22
receiver's	285:11,13,16	refers 75:3	relative 10:25
127:21 144:2	289:22 290:1,5	182:21	94:10 110:25
186:4 231:2	295:20,22	refinancing	159:18 210:20
253:14 255:4	recorded 12:8	259:3	224:13 227:17
256:18	40:25	reflect 141:24	258:10 259:10
receivers 177:15	recordings	reflected 73:18	279:21
receivership	259:22	74:4 266:13,23	released 265:3
160:15,21	recounting	reflects 194:12	remain 202:5
161:14 174:18	200:17	refresh 225:13	remainder 248:25
174:22 244:17	recover 140:14	225:20	remaining 121:15
252:8 253:1,4	144:15	refreshed 113:25	remains 91:5
255:12,21	recovered 246:17	refreshes 276:25	remember 77:7
256:1,5,6	recoveries	Refugio 60:23,24	79:17 106:3,5
receiving 44:25	145:13	refused 8:21	167:13 187:25
94:12 96:23	recovery 145:15	183:10	191:4 201:18
97:1 146:20,25	reduce 136:12	refuses 212:15	207:19 210:2,2
210:3 230:24	reenter 276:14	regard 99:14	219:24 222:12
recess 58:22	290:4	123:13 257:11	222:13,14,15
93:16 132:7	reentered 94:6	regarding 68:10	243:14 245:4
179:24 228:18	118:6 146:8,17	76:8 80:14	273:10 289:7
276:13 285:15	186:25 228:20	109:6 182:9	remind 282:22
290:3	291:18	regardless 48:9	remote 166:3
recipients	refamiliarized	52:19	remotely 165:24
168:14	66:4	gifted 251:25	166:1,2
recites 290:20	refer 13:12	regional 139:20	rental 248:9,10
recollection	14:24 220:5	regular 249:11	248:12,13
45:15 67:10	228:1	regulation 43:1	270:6,10
78:2 82:3,10	referee 219:6	43:21 52:2	271:18,23,24
82:12 91:21	reference 40:10	regulations	rentals 238:14
101:3 121:1	46:15 111:3	56:18	rented 268:17
123:21 126:18	157:1 163:18	regulatory 51:12	269:12
136:8 143:19	171:19 182:15	reinstate 224:16	rep 178:18 179:4
150:21 158:5	194:25 195:21	reinstatement	183:19 255:7
167:4 177:7	referenced 134:3	5:16 153:9	repaid 134:23
187:18 225:14	references	reit- 120:23	141:6,8 144:9
225:20 226:15	111:12	reiterated	144:14 145:20
227:15 241:24	referencing	120:21,24	145:21 204:13
277:1 284:16	121:18 240:25	related 13:2	213:9
292:18	referred 73:4	115:13 163:15	repay 127:20
recommend 206:19	285:21	182:16 220:1	153:17 261:1
recommendations	referring 14:22	291:7	261:13

repayment 146:6	reputation 85:17	245:14,16	66:6 74:14
repayments	245:9	266:6 280:23	75:6 92:22
141:18	request 92:6,15	281:23 282:3	206:8
repeat 32:8	92:21 93:3	requiring 228:3	responsibility
184:15 288:1	103:25 104:1,2	Requisition 4:17	26:2 51:16
rephrase 11:25	104:25 105:6	requisitioned	242:5
33:8 35:7 47:6	110:16 118:17	149:9 150:1	responsive 137:9
47:14 63:20	136:21 139:7	rereading 73:16	190:16 211:12
70:16 221:7	217:22 218:20	rescinding	rest 40:25
223:5	219:1 225:24	216:13	restarted 170:16
replace 84:8,23	226:9,13	rescission	Restate 137:13
85:9,10 86:11	227:13 240:15	216:19,20	restroom 228:11
89:10,20 99:8	241:4 285:1,2	217:15,20	result 35:14
99:16,18	285:5	218:6,16	53:3 60:14
100:12,22	requested 131:22	219:12,14,17	204:10
replaced 91:10	218:7 219:19	rescue 236:24	resulted 52:23
291:24	227:8	research 72:25	53:5,8 124:9
replacement 7:19	requesting	reserve 183:8	124:11 246:16
86:13,16 92:23	229:20	residents 271:5	resulting 53:10
101:2 206:6,10	requests 21:4	resolved 76:4	results 119:16
208:6 290:25	26:6 73:1	242:11	résumé 206:17
replacing 88:23	243:4 289:15	respect 72:7	retail 17:12
reply 194:20	require 52:3	79:24,25 80:1	18:8 138:23
report 79:20	56:6 245:19	respond 50:25	139:6 270:9,9
134:6,12,13	282:5 291:23	63:13 66:21	270:13,14,16
135:16 188:4	required 26:9	92:6,15,21	270:17,18,22
247:3,14	52:5 56:17	93:2 98:10	271:4,6,16
reported 1:22	65:15 91:6,7,8	181:3,21 206:7	272:4
150:19 248:24	167:2 196:9	213:19,21	retain 104:4
reporter 2:22	206:6,10	214:4 284:25	185:5
9:11,20 11:16	207:18 208:5	290:22	return 28:21
12:1,8 58:9	235:13 254:18	responded 51:1	81:1 122:13
132:4 179:18	257:11 270:22	98:11,12 196:5	133:5 144:23
197:9 225:4	285:4	206:3 208:2,4	273:9 288:12
237:20 253:3	requirement	213:24 214:1	returned 93:20
256:19 285:11	53:17 54:14	239:11,12,14	reunion 21:4
295:20 297:5	58:2 62:13	241:15,20	revenue 238:14
REPORTER'S 297:1	91:23,23 92:15	285:2	review 37:2
reporting 256:10	92:19 93:1	responding 32:17	41:21,25 44:4
reports 44:5	236:22 260:15	140:21 164:24	44:14 46:1,22
200:10,13	275:5 283:14	239:6,8	47:9,22 51:23
249:1,3 292:13	requirements	responds 117:15	71:7 74:16
representation	51:3 52:17	response 46:13	81:12 84:25
108:17	70:4 84:22	66:24 67:9,14	98:2 103:25
representations	85:8,12 91:8	72:5 74:4 75:9	104:1,2 115:18
278:11	91:17,19	80:5,6 81:16	115:20 116:5
representative	100:25 140:1	110:15 120:21	123:15 125:8
66:9 178:9,11	207:19 208:10	122:16,19	125:11 127:1
181:13 182:5	236:17 256:10	173:9 176:20	131:21 135:4,9
182:18,19	257:13 274:20	176:23 183:16	136:15 142:25
183:22 184:3	275:15 283:12	206:4 214:16	148:9,15
represented	291:4	214:21 215:17	163:16 167:15
117:5	requires 56:4	290:18 291:1,3	201:2 206:10
represents	86:25 87:5	291:5	209:25 244:2
116:25	92:20 93:2	responses 6:11	247:25 287:6

reviewed 37:4	220:23 225:19	safe 14:14	schedule 75:21
79:11 84:9	226:4,14	safety 54:9,11	99:9 100:9
87:14 103:21	234:19 244:11	54:20	138:11 149:4
116:2 122:22	253:16,17	sale 43:1 115:11	186:16,19,24
127:3 135:12	255:19 257:2	136:10 145:8	187:2 198:9
167:18 206:16	260:18 264:13	145:18,19	208:19 240:13
225:19 248:2	266:20 270:8	146:7,20 147:1	240:20,21
264:8 265:5	270:20 272:11	147:3,12,13,13	242:25 286:9
reviewing 149:5	272:16 280:13	147:17 259:25	scheduled 75:11
205:25	285:19 286:7	260:2,5,19,20	80:11
reviews 123:14	286:15,18	260:24 261:16	Scholz 7:8,12
147:24 148:11	288:21 295:17	266:3,5,8	12:24 13:9,15
150:12	295:18	San 21:1	13:23 14:17
revised 134:10	rights 39:20	Santa 60:21	75:20 110:17
167:8 240:14	84:4 167:17	Sarah 124:11	112:2,7,9,18
240:23	209:12 235:7	sat 11:7	113:5,7,18
revision 5:18	rise 268:22	satisfying 254:9	117:10 118:17
RFI 240:14 241:2	road 3:5 65:14	save 224:7,9	120:2 129:20
RFIs 241:4	rock 103:17	saw 114:3 200:10	130:3 142:11
ridiculous 61:14	rogue 123:13	293:18	177:25 181:14
200:4	role 13:6 16:9	saying 11:17	182:6 183:23
right 9:20 10:19	28:14,17 101:9	48:6 54:12,15	266:20 276:22
14:11 18:3	156:4,6,10	54:15,18 74:13	277:12 279:5
32:1 35:17	198:3	78:13 117:11	279:21
36:14,18 40:2	roles 13:3	121:19 150:9	Scholz' 112:10
40:23 41:2,5,6	Ron 157:7	152:15 158:18	Scholz's 182:22
43:8 57:22	Ronald 162:14	160:13,16	278:14
61:10 66:8,11	room 10:3 12:10	161:17,25	Schubiner 3:21
70:22 73:17	25:7 30:15,18	167:7 168:20	5:22 8:7,13
79:3 82:25	30:25 31:22	171:11 183:19	10:6 25:11,13
84:6 86:9	32:20 221:23	190:10 197:16	68:18 74:25
87:17 93:13	222:22	199:18 219:20	75:10 107:23
95:12 103:11	roses 242:20	219:22,23	124:4 133:5
104:17 107:25	rosters 14:8	220:16 285:5	139:16 146:8
109:18 111:22	Roth 26:15,17	says 40:11,23	214:11 215:6
111:24 113:9	97:4,8	41:9 43:12	218:3 222:5,10
114:5 119:10	rough 199:7	45:23 52:20	290:4
121:19 122:3	roughly 126:23	76:21 88:3	Schubiner's
131:10 132:2	row 200:3	95:1,8 106:17	71:25 259:23
135:8 136:24	RPA 22:6	107:4,24	Schubiners 25:7
137:6 138:10	RPR 1:23 297:4	108:18,21,23	Science 21:8
141:11 143:15	297:23	108:23 109:14	scope 34:22 35:2
144:10 147:5	rule 193:14	111:4 113:14	35:4 181:10
147:19 151:19	rules 11:5,6	117:18 134:21	Scott 222:11,13
154:7 163:17	29:18,19,24	143:9 164:20	scream 34:14
169:11 172:3	30:1 56:18	164:21 173:16	screen 112:25
173:5,6,8	184:3	173:16 178:14	113:2,12
181:20 183:5,8	run 258:3	181:5 184:8,9	seats 30:25
194:7,22		184:10 217:19	second 33:2
195:11 199:21	S	233:21 243:2,2	76:20 109:5
201:18 203:17	S 4:6 5:3 6:3	243:4 255:14	116:21 120:10
205:17 209:8	7:2 8:2 181:25	257:14 289:21	157:23 166:23
211:18 214:13	182:1	scenario 86:7	186:6 199:7
215:11 216:5	Sachs 18:1	147:7 268:20	225:1 233:21
218:9 219:8	Sachse 90:3	275:18	255:6 278:18

285:10	244:3 257:21	sent 45:20,21	81:18 116:2,2
second-to-last	266:9 277:18	66:5,8 71:22	116:3,9 127:6
45:4 171:9	280:7 289:21	73:18,23 74:5	127:11
seconds 180:19	291:21,23	74:7,8,15	seven 20:3
224:18	292:1,22	81:24 89:22	224:18 246:16
secret 22:19	293:18,19	95:20 98:9,19	269:4,6,10
secretively	seeing 90:20	100:24,25	severe 55:17
293:2,4	99:6 200:13	112:2,5 113:5	61:5
section 36:22	233:13 286:20	113:18 117:9	shape 31:20
37:3,14 39:3,7	seeking 217:16	122:7 134:4	287:6
40:4,9,11,12	227:25 243:25	147:25 152:15	share 15:15
40:15,17,24	seen 34:12,14	171:10 172:16	41:20 262:1
42:16,18 51:20	44:10 57:12	172:17 174:25	294:8
52:5,6,20	70:20 99:3,5	192:25 206:9	shell 270:19
89:18 93:25	101:4 133:22	206:11 208:11	sheriffs 25:6
94:4,16,19,25	133:23 152:3	210:5 214:10	ship 226:14
96:16 134:11	156:24 205:23	214:22 216:12	Sholz 178:2
134:11,12	209:23 216:3	219:8,9,10	short 33:20
135:10	233:2,11,14	227:25 228:2	69:19 93:7
sections 39:24	234:3 238:25	231:17 238:3,6	224:25 225:1
41:3	264:21,22	238:10 240:19	short-circuit
secure 253:15	285:8	265:4 277:13	13:13
270:22	select 171:25	292:7	shortage 70:11
security 253:12	172:7 245:9	sentence 40:19	70:18 77:15
254:5,9	261:19,21	46:23 47:7,9	shortages 67:25
see 18:23 19:7	selected 172:2,8	47:15,18 50:17	70:13
24:22 25:14	173:10 176:22	50:24	shorthand 2:22
26:1 42:15,17	184:17 210:8	separate 21:25	297:5,12,15
53:25 64:10	216:15 261:16	separately 47:4	shortly 234:21
73:20,22 75:18	262:10,12	September 5:8	show 36:19 44:8
80:23,24 81:13	selecting 176:6	45:24 50:12	79:4 89:11
91:13 93:5	selection 71:17	98:9 102:15	97:16 99:2
94:1,19 95:9	71:20 177:22	185:22 292:10	101:17 104:7
96:8 98:15	182:10 184:14	292:21	106:7 107:25
99:20,23 101:6	186:11 187:6	sequence 167:13	111:21 116:14
101:16 106:21	self-employed	198:1 205:4	118:10 137:21
107:4,6,10,15	19:24	288:6	148:17 156:20
107:16 108:24	Self-explanatory	seriously 170:10	157:16 160:6
108:25 109:12	240:8	serve 294:18,20	163:7 166:7
109:16 111:2	sell 127:20	served 40:12	171:3 177:25
112:4,21	145:11,17	293:20	179:12 190:4
117:13,23	260:7,14	serving 16:1	190:11 194:11
118:19 122:14	268:24 269:11	set 10:24 38:12	205:8 209:14
125:24 126:11	selling 260:11	38:14 40:24	209:16 217:9
141:9,20	260:25	48:2 65:11,13	225:12 227:3
143:11 154:2	semantics 195:15	66:1 91:6	232:22 238:21
160:5 166:7	send 74:3 95:25	140:10 150:15	240:1 250:18
168:11 171:13	188:25 193:16	160:14 207:22	251:10 255:13
171:17,18,24	sending 44:25	208:10 210:18	264:19 266:17
178:1 179:6	137:25 148:6	268:11 271:23	267:5 277:18
186:16 199:20	214:24 293:6	272:10 282:7	278:12 282:9
200:9 206:16	sense 85:7 87:3	sets 85:8 89:15	293:8
216:8 226:9	87:5 197:4	settle 130:24	showed 267:13
232:5 233:19	206:18,24	244:11	showing 109:9,11
233:20,22,23	208:14 242:2	settlement 79:14	111:25 113:12

215:22	82:1,23 87:14	256:19	27:24 250:15
shown 142:3	90:19 93:22	small 126:7	263:19 285:9
266:24	97:21 100:3	snoozes 295:16	speaking 251:6
shutting 34:1	101:17 106:6	so-called 227:4	262:3
side 12:10	109:23 111:21	social 250:1,3	speaks 194:5
sides 283:22	112:15 118:14	sold 265:24	255:21
Sidley 2:16 77:4	121:8 122:5	268:18,23	specific 35:11
sign 85:20 86:3	125:22 154:21	sole 90:6 91:22	36:1 72:7
86:15 88:16	156:24 157:16	92:2 207:24	105:21 107:18
141:2 152:19	163:7 170:5	solely 46:16	136:21 147:10
271:19	172:15 176:16	182:21	164:2,4,23,24
signed 25:22	190:13 191:17	solve 99:10	174:21,23
26:4 89:3	193:10 194:9	100:11 224:15	250:13,14
106:18 136:9	201:25 203:11	somebody 67:16	267:7
141:12 271:9	205:8 211:12	68:12 76:12	specifically
significant	215:22 217:9	100:23 119:16	36:8 242:2
55:16,17 61:15	218:9 220:23	191:9 199:21	259:1,2 266:24
62:10,11 70:4	224:12 238:21	200:11,16	specified 136:5
118:1,4 149:14	240:1 254:15	266:6 288:7,12	235:8
154:1 208:21	264:19 290:10	289:12	speculate 272:7
269:5	292:5	someplace 63:10	276:7
significantly	sit 12:2 37:18	soon 145:15	speed 231:18
69:23 127:13	45:8 67:18	185:19	232:3
144:16 147:16	82:11 140:9	sorry 11:24	spend 229:11,12
165:6 269:9,16	site 6:9,18 7:21	17:20 28:15	267:16
signing 152:9,16	61:2 71:15	33:1 45:3	spending 235:19
152:25 271:7	75:18,19 77:9	47:13 50:4	289:7
similar 16:9	77:11,21,23,25	54:4 60:10	spent 136:25
17:9 19:13,14	80:3 88:6	69:18 71:3	161:8,17,24
91:23 101:9	98:18 102:16	72:19 74:11	spoke 27:3
233:14 272:2	122:10,12,13	76:19 80:9	259:17 263:1
similarly 97:11	130:18 138:3,9	82:1 96:10	spoken 26:20
111:15	139:1 159:25	97:7 100:4,7	76:14 97:5,5,7
simple 142:19	199:22 289:3	117:21 177:16	157:7 258:6
147:11 158:23	289:15,15,17	182:1 184:15	261:17
169:22 193:12	289:18	186:6,7 194:13	sponsor 68:15,16
257:17	sits 287:19	197:12 226:24	68:19
simpler 185:7	sitting 30:25	239:24 247:8	sponsors 272:23
simplest 231:15	31:21 32:20	250:22 259:2	spreadsheet
simply 33:25	38:24 241:19	269:4 277:14	161:6
46:11 120:18	241:22	279:12 281:14	spring 83:21
131:15 144:6	situation 48:21	288:1	130:6 197:17
180:12 185:8	49:8 70:20	sort 35:18	197:21 208:20
190:2 193:15	136:8,16 144:4	193:16 267:8	209:10
235:22 256:15	237:2 287:8	sounded 256:24	Square 1:4,8 2:4
simultaneous	situations	sounds 15:20	2:8,16 3:8,17
152:25	244:21 245:22	53:23 64:5	4:8,11,15,19
single 87:21	six 119:9 120:6	102:14 197:15	4:21 5:5,10,14
sir 10:19,24	121:17 152:9	220:12 258:17	5:16,18,21,23
12:11 22:15	220:12,15	source 158:13	6:9,11,13,15
24:25 36:19	272:14 286:12	sources 72:21	6:18,20 7:4,6
38:5 44:8,15	size 168:3,13	space 138:23	7:8,11,16,19
63:18 64:11	slightest 29:23	139:6 270:17	7:21 8:4,7
65:20 77:12	slow 225:4	272:4	9:15 10:7 11:1
78:6 79:4 81:3	237:20 253:3	speak 26:17,22	11:2 14:16

25:19 28:14,17
 28:18 37:9
 50:9 102:16,18
 103:7 106:16
 135:22 139:6
 163:3 180:7
 181:6 182:2
 190:25 191:3
 221:1,9 229:10
 229:12 258:11
 258:24 259:11
 263:17 272:21
 274:11 287:6
 287:24 288:4,8
Square's 181:11
stabilization
 196:13
stabilized
 268:17,23
 269:12
staff 46:22
 47:10,22
staffed 135:7
stalled 169:15
 170:15
Stamolis 3:22
 8:18 10:5
 12:23 13:6
 14:18 27:10
 30:4,10,14,24
 34:4 68:20
 92:3 117:24
 118:6 134:17
 222:8,16
 226:18 228:19
Stamolis's 33:11
 36:20 37:6
standard 46:21
 47:21 48:10
 151:10,11,13
standards 48:13
standing 229:2
stands 63:18
 64:10
Starbucks 271:15
Stars 2:17 9:7
start 14:25
 89:25 176:23
 197:22 276:24
 290:14
started 10:1
 65:3 185:11
 201:4 237:1
starts 180:6
state 1:1 2:1,23

11:3 21:1
 185:1 269:21
 288:3 296:13
 297:5
stated 138:5,17
 140:4 150:19
 154:4,11
 296:10
statement 5:8
 6:23 47:12,16
 64:10 65:4,5
 75:22 106:15
 107:22 121:22
 125:24 126:8
 128:19 129:14
 138:12,14,20
 142:1 153:21
 170:6,9 203:5
 207:3 237:5
 266:18,25
 267:7 269:13
 286:5
statements 11:17
 267:18
states 247:5
static 141:14
status 46:2,12
stay 73:11
 193:11 206:19
step 139:22
 192:6
steps 86:1
 192:10 195:23
 196:1
stick 44:1
sticks 43:25
stipulated
 211:16 212:11
stop 8:5 40:12
 93:10 178:23
 180:20 216:13
 216:16,17,19
 217:15,20
 218:6,11,12,16
 288:20
stop-work 219:12
 219:14,24
stopped 124:7
stopping 261:2
store 139:5
storms 61:5
strangely 277:13
stream 219:25
stricken 177:23
strike 17:20

43:16 68:8
 83:13 203:7
 249:2
strikes 42:10
string 4:8,11,12
 4:19,20,22 5:5
 5:12,13,15,18
 6:6,8,11,15,17
 6:19,21 7:4,6
 7:10,16,18,20
 8:3,11 44:18
 66:1 71:9,12
 71:21 72:5
 73:15 79:12
 88:8 98:4
 110:9 133:22
 166:13,15
stringent 46:20
 47:20 48:10,13
 58:2
stronger 49:10
struck 177:17
structure 269:21
studied 21:9
sub 104:10,13,18
 104:19
subcontractor
 108:14
subcontractors
 123:12,22
 124:3,8 176:12
 230:3 284:1
subcontracts
 236:3,4 283:24
subject 40:23
 52:5 85:18
 157:4 264:1,2
subjects 102:12
submission 84:8
 84:23 85:8
 92:23 99:17
submitted 181:23
 285:4
subs 104:6
 282:19,24
 283:10,11
 284:2,6
subset 13:4
subsidiary 18:1
substantial
 187:19,20
 191:14 198:24
 236:12
substantially
 184:23 193:5

substantiated
 223:2
succeeded 280:10
sued 293:25
suffered 61:6
 70:12
sufficient 65:17
 85:16,17
 219:19
suggest 122:21
suggested 53:20
 288:7
suggesting 63:9
 63:12 108:19
 120:14 121:23
 123:5 150:11
 171:20 174:10
 174:13 224:5
 275:21,23,24
suggests 154:5,6
suing 294:9
suit 182:10
Suite 3:6,11,17
summary 4:17
 6:13 122:8
summer 83:21
 274:11
superintendents
 87:22
supermarket
 271:15
supervises 14:20
supplies 42:20
 42:22 43:2
supply 42:19
support 226:22
supported 223:10
supposed 21:5
 39:7 58:4
 149:5 152:24
 153:2 184:23
 193:5 269:2
 283:22
supposedly 114:9
sure 11:8,15
 13:4 19:1,2
 31:15,19 32:9
 37:19 38:15
 39:12 44:7
 46:7 48:1,5
 73:6 74:6 75:3
 91:11 92:17
 96:3 125:10,25
 135:3,19
 142:17 145:25

146:1,2 152:22
 159:6,23
 161:17 170:21
 170:21,22
 187:11 188:2
 201:12 206:12
 208:2 228:12
 231:11 233:18
 236:4,16
 239:15,16
 246:11 248:21
 273:22 275:19
 278:20 285:8
 285:12 288:2
 290:15 291:6
Surety 3:14 9:19
surprise 193:25
survive 188:2
swear 9:11
SWISTAK 3:9
switching 285:25
 286:1
sworn 5:8 106:15
 107:22
syndicated 20:10
systems 54:20

T

T 4:6 5:3 6:3
 7:2 8:2
T.H 90:18,20
table 89:13
 143:6 225:25
take 11:16 36:24
 38:25 58:8,11
 58:16 71:2
 72:3,5,6 76:6
 76:8 88:7 93:7
 93:8,9 94:3,21
 100:22 101:18
 133:16 148:19
 156:4 169:14
 180:9 199:7
 215:23 217:13
 235:1 238:22
 240:2 250:21
 251:7 255:1
 276:9 282:12
 286:6,17
 288:20
taken 2:15 9:6
 73:5 84:10
 132:7 228:13
 251:21 252:1
 286:10 297:11

takes 229:25
talk 11:18 30:15
 53:13,16 88:10
 88:18,19,20
 92:2 104:5
 116:10 145:17
 154:25 156:10
 215:10 257:21
 285:22
talked 60:24
 92:3 101:6
 134:17 176:14
 176:17 241:16
 263:8,11,23
 266:20 279:18
 282:17 289:3
talking 46:8
 59:2 64:13
 66:22 68:16,18
 72:17 74:20
 82:2 92:8,10
 94:16 102:18
 142:15,16
 144:25 174:17
 180:20 250:8
 250:10,12,16
 251:2,4,7
 263:20 270:3
 288:15 291:11
talks 89:18
 102:11 111:8
 255:12
Tammy 69:4,11,13
 69:15 81:2,15
 81:24 83:11
 101:6 133:15
task 191:21
tax 269:21
TCO 198:18
team 5:21 13:9
 13:12,21,21,22
 13:24 14:2,5,8
 14:16,19,20
 25:25 26:6
 27:7,11 41:19
 69:7 72:9
 76:12 83:11
 101:10,11
 105:10,15
 115:23 121:24
 148:3 176:24
 231:21,24
teams 13:15,16
 13:18,23
technical 196:14

technically
 202:12
tecum 181:12
 182:4
tee 78:18
teeming 160:1
Teleconference
 3:4,16,23
telephone 76:15
 76:16 157:5
tell 9:23 10:15
 13:14 37:19
 39:6 44:10
 45:18,20 50:21
 70:19 82:17
 84:15 99:3
 106:7 125:4
 156:17 163:13
 163:21 166:3
 183:5 188:18
 192:9 221:15
 224:1,2 229:1
 237:15 246:10
 246:22 252:2
 258:12,18
 264:20 267:6
 272:25 273:6
 290:13,14
telling 39:2
 52:23 124:6
 131:15 175:2
 201:7 223:16
 252:23 256:4
 285:6
temper 34:10,12
temporary 77:19
 187:21 195:13
 248:16,20
ten 6:11 15:25
 16:19 25:16
 75:6 176:14
 180:19 228:24
 258:5 263:14
tenant 139:5
tenants 270:15
 270:23 271:6,9
 271:16 272:8
tenor 264:1,2
term 19:1 68:19
 85:1,3,5 94:20
 95:2 139:25
 143:4,5,12
 191:2,5 192:20
 192:22 203:6,8
terminate 83:16

84:5 100:11
 102:16,17
 103:5,6 207:18
 290:22 291:16
terminated 87:23
 102:19
terminating
 88:23 102:3
termination 8:11
 85:25 86:2
 99:20 290:19
terms 51:17 68:3
 92:20 100:9
 139:24 142:19
 145:4 147:10
 163:22 170:1,3
 170:7 207:14
 235:15 266:3,4
 273:17 274:7
Terrace 102:23
 103:1,5,8
testified 69:12
 91:18 96:10,14
 114:11 149:3
 201:13
testifies 214:17
testify 129:11
 178:2,5 214:15
 297:9
testifying 91:4
testimony 38:21
 96:24 140:18
 192:3 194:5
 199:17 208:1
 219:17 233:12
 282:17,20
thank 39:5 50:7
 58:18 65:19
 80:22 83:1
 97:22 109:4
 120:16 143:16
 177:16 185:25
 186:2 188:3
 193:21 205:13
 205:19
thanks 46:6 81:1
 103:18 142:18
 276:10 295:18
theory 261:6
 276:3
they'd 107:19
thin 192:21
thing 79:1 80:13
 83:25 127:8
 142:15 152:17

176:19 177:1	139:11 156:17	153:6 155:20	told 22:18 23:1
184:1 213:2	158:5 161:21	155:21,22	24:5,15 74:9
231:15 267:13	167:2 177:12	156:19 159:8	79:19 82:16
271:17 295:6	185:18 239:21	159:13,21,25	88:15 89:23
things 48:25	239:21 241:16	166:16 174:24	91:14 116:6
76:13 119:25	265:15 283:18	180:17,24	120:9 133:13
129:1 144:24	283:18	183:7 185:1	139:19,20
149:4,18 151:1	thousands 214:22	193:9 198:22	142:11 156:19
168:17 169:9	threat 23:25	199:8 211:15	175:9 184:16
183:23 192:8	24:1,2,3,4,5,6	213:7 217:6	191:25 198:6
198:14 222:15	24:7,8,18,20	220:14 224:8,9	199:21 200:12
224:5 231:7	24:21	228:13 234:1	200:16 218:11
241:11 256:2	threaten 23:23	234:12 235:19	225:6,22
258:22 261:25	threatened 23:22	238:11 239:14	229:18 252:16
269:22 270:3	three 30:25	241:17 242:17	258:13,21,23
289:10,16	130:11 166:8	260:1,24	259:8 283:7
290:23 291:22	176:10 211:11	266:22 267:16	285:6
293:2	220:8,9,10,11	271:2,4 279:2	tomorrow 147:8
think 15:10,19	220:16,21	279:3,17 280:5	289:11
31:4,6 46:11	239:2 248:8	286:6 287:1	tons 269:22
50:2 53:23	263:25 274:22	289:7,9 292:17	tool 35:23
69:20 70:12	274:25 284:7	292:20 295:24	top 46:8,14
74:23 76:15	throwing 277:24	297:12	66:13 80:19
81:14,20 85:23	Thursday 66:10	timeline 164:25	194:20,23
90:18 97:9	tie 109:16	203:15	216:6 245:2
125:3 139:4	ties 235:3	timely 100:13	279:8 284:8,9
143:7 160:7,17	tile 160:20	times 20:21	topic 177:18
161:16 164:20	161:14	26:12 155:2	topics 178:18
164:21,22	Tim 176:18	211:11 263:8	181:25 182:1,8
166:4 168:12	time 9:8 10:24	263:10,23,25	184:4
176:22 177:1	12:6 16:2,21	285:6 293:25	tossed 50:19
195:4 198:16	19:6,13,18,21	timing 141:17	total 107:4
198:21 199:7	21:4,5 25:21	203:18 206:8	141:15 163:20
208:17 209:12	28:13,16 33:18	206:15	233:21 278:15
209:15 212:17	33:18 44:19,21	Tina 114:11,16	totaling 246:13
226:13 228:25	49:20,20,25	117:9 160:13	258:5
230:18,24	53:12,13,14,16	163:16 193:25	totality 119:16
231:7 239:3	55:8 56:9 61:7	292:19	165:17,19
245:11 250:19	64:15,17,21	tip 56:2 62:11	Totally 243:8
252:5 258:13	65:17 69:5,20	title 16:4,17	tough 32:3,10,11
258:21 276:5	74:25 82:2	115:7,9 126:21	tour 252:3
277:24 281:23	86:19 88:5	127:19 128:1	track 224:17
284:23 288:11	93:6 94:21	182:21	trade 163:19,20
thinking 65:19	97:5 101:6	titled 5:8 6:13	Trader 139:21
99:23 271:21	117:2,3,5	today 9:8 10:24	trades 168:1
thinks 71:16	119:23 121:3	45:8 67:13,18	transaction
118:25 156:15	123:22,23	79:2 82:11	152:24
third 73:25 88:9	124:1,19 125:2	85:3 177:18	transcribed
110:20 112:1	125:20 130:8	178:8 183:10	297:13
126:8 131:11	131:11,22,24	190:13,18	transcript
175:12 220:14	135:7 136:9	219:22,23	297:14
thought 17:18	138:6 139:11	228:5,6 265:17	transcription
21:25 46:8	141:1,22 142:5	284:12 290:12	297:15
79:1 91:18	144:8 145:7	today's 44:9	transportation
130:8,23	150:14,20	231:5 295:21	43:2

trees 36:21
trick 11:13
trip 159:15
triple 128:22
trouble 97:18
Troy 3:6
true 38:22 47:12
 47:16 86:6,20
 108:22 128:11
 128:14,19
 138:12,14,19
 194:8 200:20
 202:19 207:16
 212:9,12 214:7
 221:2,10 266:2
 268:21 272:6
 296:8,11,14
 297:14
truly 242:14
truth 9:23,23,24
 297:9,10,10
truthful 221:16
 221:18,20,21
try 99:10 145:16
 219:8 223:5
 226:17 280:9
 285:20
trying 11:13,13
 11:14,14 31:7
 35:21 58:6
 87:2,19 100:22
 111:19 112:5
 113:10 120:13
 120:17 147:11
 147:22 160:18
 165:14 224:7
 224:13,23
 230:6 231:13
 243:19
Tuesday 45:24
turn 36:22 37:5
 40:6 93:23
turns 204:14
twice 71:3
 129:20 130:4
 261:4 293:24
two 11:7 17:7
 18:14 25:7
 33:2 41:3
 84:16 86:5,18
 95:9 99:24
 108:2 109:16
 119:25 122:4
 146:4,12,15
 147:18 149:18

159:13 177:21
 183:23 198:20
 198:24 217:11
 220:13,14,15
 235:24 239:2
 246:17 256:1
 263:25 265:17
 273:7,10
 279:11 290:13
two-page 108:1
 116:19,22
type 19:12 20:12
 29:9 59:17
 77:5 85:18
 121:21 125:11
 127:6,8 246:4
types 95:22
 131:23 289:13
 294:13
typewriting
 297:13
typhoon 60:3
typical 168:3,5
 168:10,13
typically 34:20
 69:10 241:5

U

uh-huh 15:23
 42:1 49:6,23
 50:3 64:12
 87:18 127:7
 167:1 246:5
 271:22 292:9
ultimately
 127:20 168:6
 169:16 185:5
 189:22 262:10
 262:11 274:10
 286:1,16
unable 196:24
unanswered 241:8
uncertainty
 35:18
unclear 280:5
uncommon 36:10
 151:15
unconditional
 111:6
understand 11:24
 18:25 20:18
 35:21 39:17,18
 41:10 47:24
 48:3,25 56:7
 56:17 72:14,16

74:6 86:23
 103:7,13 105:8
 111:19 120:13
 120:17 121:7,8
 135:8 141:1
 142:11 144:10
 145:14 158:19
 158:22 162:3
 170:23 172:9
 186:13 187:12
 189:23 190:1
 191:16 201:12
 211:1,15,19
 226:4,8 230:10
 240:10,15
 270:14 271:14
 272:1 274:12
 274:24
understanding
 39:6,19 54:6
 90:16 92:9,11
 92:14,17
 160:16,25
 164:5 201:5
 261:24 267:17
 281:21 283:16
understands
 231:11
understood 19:1
underwritten
 25:24
unfair 152:17
unfortunate
 286:13
unfortunately
 112:2 158:22
unit 248:22
units 198:19
 248:14,19,25
 258:6
University 21:1
 162:22
unreasonable
 243:20
Unreportable
 193:13 197:8
 204:4 211:22
 280:6
unsubstantiated
 115:3
unusual 49:17
 111:24
unwarranted
 152:18
unwilling 88:11

88:13,17
unwillingness
 88:21,24
upcoming 188:4
update 8:4
 256:11 264:4
upset 100:17
upside 140:20
upstairs 288:18
 289:24
use 21:22 41:15
 46:20 47:20
 48:10 53:15
 134:14,14,15
 136:14,18
 137:19 279:11
utilize 136:4

V

value 88:7
 269:22
Van 7:13 114:11
 117:9 160:24
 161:12 163:16
 166:22 167:7
 167:16 168:9
 193:25 292:19
variety 13:14
 72:21 102:11
 245:6 291:12
various 141:17
 184:4 266:19
varying 13:2
Vegas 247:7
vendors 122:10
verbal 24:1,3,5
 24:7
verbiage 134:5
Verdes 30:11
verify 64:16
 111:16 149:25
verifying 38:24
versus 11:2
 31:14 46:17
 146:3
vertical 233:9
vetted 198:11
video 181:12
 182:3
videographer
 3:24 9:4 11:1
 58:20,23 93:14
 93:17 132:5
 133:7 179:19
 179:22,25

228:16,21	267:15 271:5	285:21,22,23	wholly 154:17
276:11,15	276:25 277:18	we're 15:18 20:7	wildly 154:19
285:13,16	278:12,17,18	26:9 37:5	willing 229:9,23
290:1,5 295:21	278:21,23	42:25 58:24	229:25 293:5,6
videotaped 9:5	279:18,19	72:18 74:20	willingness
view 152:17	wanted 15:16	93:10,17	88:25 89:2,4,8
204:5,6	18:25 78:18	101:13 103:10	wind 270:2
viewpoints	115:9 124:1	111:15 113:19	windows 138:15
261:25 262:1	130:4,6 133:14	113:19 129:9	138:17
violating 29:24	250:14 261:7	137:17 169:19	wine 251:20,24
29:25	280:4,9 283:5	178:21 180:1,9	winter 185:18
violets 242:20	283:6	180:10 182:17	188:4,9 189:9
virtually 16:16	wants 91:9	195:15 196:3	197:3 291:20
20:12	261:13 266:6	198:5 200:18	292:1,3,8
visit 6:9,18	290:22	203:11 208:1	winterization
7:21 75:18	Washtenaw 1:2	228:15,22	189:15,20
138:4,8 186:1	2:2 11:2	249:8 253:9	190:8,19,23
289:3	wasn't 12:9	256:4 270:3	192:1 193:22
visited 54:18	22:21 27:7	285:16,19	195:11,16
75:19 88:6	49:7 51:10,25	295:18	196:13 228:7
visiting 252:8	62:9,24 68:4	we've 176:22	winterize 187:10
visitors 256:8	98:18 103:6	207:21 285:8	187:11 188:1,8
visits 252:3,18	112:8 119:19	weather 59:20,21	189:9,12
252:23 255:13	125:13 128:14	59:22,24 188:3	191:24 192:5
257:5,15,18	136:14 150:25	Wednesday 6:9	193:1,8,18
289:14,15,15	158:15 164:3	7:21	195:1,21 203:8
289:17,18	167:3,8,11,11	week 74:19	winterized
voice 222:19,20	171:16 174:4	154:18 174:9	187:14 189:25
259:23	177:19 186:14	175:3,18	191:8,17,19
VS 1:7 2:7	193:10 194:1	208:19 210:22	192:13
	197:21 201:8	291:11	winterizing
	201:14 204:1	weekend 172:23	189:1 190:14
W	218:4 221:2,10	173:20	wish 152:18
wait 54:12,12	223:13,19	weekly 83:3,6	witness 9:12,25
58:1 66:21,21	226:6,9 231:5	289:6	10:11 25:4
123:6 197:9,9	263:4 281:2	weeks 60:7,8,10	31:24 33:3,8
197:9 208:17	286:25	60:15 106:1	33:25 39:10,13
225:4,4,4	waste 180:17,23	286:19	48:18 50:4
237:20 255:6	water 42:20	weeks' 84:16	52:11 60:10
waiting 202:25	162:14	Weinberger 14:12	65:24 83:1
waiver 111:6	way 20:7 31:20	69:19	86:24 91:3
walk 222:16	32:19,22 38:24	Weiser 157:8	94:7 95:4
walked 24:7	53:23 54:10	Welcome 133:13	97:25 99:20
71:22 72:1	81:23 92:12	went 19:11 21:1	100:17 101:22
want 23:4,7,9	131:6 135:19	63:10 94:23	106:11 108:6
31:15,19 36:21	142:10 186:10	227:13 287:10	110:7 118:7
74:20 87:6	208:8 213:1,4	292:19	126:4 146:18
93:8 102:15	229:15 230:13	weren't 11:10	148:23 152:1
111:22 125:15	253:24 260:10	51:4 57:14	160:10 161:6
146:5 160:12	271:23 277:25	90:22,24 115:1	161:19 162:5
193:12 194:14	277:25 287:6	209:4,4 242:5	163:11 166:11
200:1 215:11	ways 144:23	274:21,22	171:6 187:1
225:2,3 231:10	we'll 145:17	West 3:5	188:16,23
245:11 250:14	176:23 178:21	Western 3:14	190:22 191:13
251:6,17	181:1 215:19	9:19	194:17 197:13
253:23 267:9			

200:21 204:5
 205:1,19
 209:21 213:7
 215:11 216:1
 217:4 221:7
 225:6,17
 232:25 240:5
 250:23 255:4
 257:10 267:17
 277:23 279:10
 279:12 280:7
 282:1,15 285:9
 291:19 296:5
 297:7
WITNESS'S 296:1
witnesses 183:10
woman 288:18
wondering 95:1,2
 164:5 262:24
word 35:16 38:25
 68:7 119:11,12
words 183:17,20
 195:10 197:19
 294:15
work 8:5 14:17
 16:24 19:12,13
 19:14,17 20:4
 27:9,13,15
 34:22 35:2,3
 46:16 56:9
 64:14,16 77:20
 85:16 87:3,4
 87:19 88:22,22
 101:7 106:16
 108:14,20
 109:21 114:10
 114:13,18
 119:23 121:3
 122:1 125:14
 126:13 128:5
 130:12,16,20
 138:10 149:4,9
 149:18,20
 150:1,16
 151:12 165:9
 167:19 169:16
 185:2,4 196:15
 198:22 200:22
 201:3 216:13
 216:16,17,19
 217:15,20
 218:6,12,16
 230:19,25
 237:16 246:24
 284:1

worked 20:7
 28:22
workers 77:19
working 15:24
 19:4,23 20:10
 76:24 88:12
 122:12 125:1
 126:20 198:21
 219:3 244:23
 295:14
works 13:9
 121:23 290:17
worth 85:16
 165:9
wouldn't 22:24
 27:15 51:11
 52:1,5 55:17
 56:7 61:18
 65:1 91:15
 118:5 119:13
 121:21 148:13
 163:2 164:11
 165:11,13
 176:4,25 197:4
 199:1,4,22
 206:18,24
 208:14 242:9
 268:16 270:10
 271:5,12 281:4
 281:4 284:20
 286:4,6 294:6
Wow 60:8 278:5
Wright 3:3 148:6
 181:8 264:5
write 205:10,12
writes 134:10
 167:25
writing 94:10
 95:9,13 135:5
 135:6 229:19
written 67:6
 77:6
wrong 13:14
 15:13 35:5,25
 48:7 63:6
 122:21 178:16
 179:15,17
wrote 45:19,25
 46:7 67:8
 81:16 120:2
 152:20 210:5
 216:7

X

X 4:1,6 5:3 6:3

7:2 8:2 272:3

Y

yeah 29:13 31:6
 32:12 35:8
 41:7 47:7
 68:19 70:17
 73:21 78:14
 85:6 106:23
 109:18 112:13
 113:2,3 114:21
 115:25 122:5
 137:14 146:3
 149:1 153:15
 154:9 164:16
 167:11 168:18
 177:20 179:1
 184:16 185:17
 185:23 198:20
 223:5 253:14
 253:19 254:8
 254:23 262:23
 267:2 268:5
 273:13 275:9
 275:20 277:4,6
 277:24 279:14
 280:7 282:1
 287:18 294:24
year 174:16
 175:22,23
 185:1,24
 220:21 225:11
 236:13 269:3
year-and-half...
 44:24
years 15:25
 16:19 17:7
 18:5 19:22
 20:3 25:16
 146:4,12,15
 147:18 198:20
 198:24 235:24
 247:12 293:24
yell 34:14 78:10
 222:16
yelling 78:12
 222:18
Yep 147:15
yes-or-no 28:24
 29:1,2,3
 211:13 230:7
yesterday 13:6
 27:10 32:3,9
 32:18,22 33:13
 68:20 80:10

92:3 134:16
yield 143:9,13
 144:8,22 146:5
York 102:23
 103:1,5,8

Z

0

049 7:11

1

1 4:8,21,23 5:14
 5:19,24 6:5,18
 7:5,7,17 73:19
 86:17 102:15
 143:21 149:7
 171:3,4,9,23
 182:25 184:16
 194:13,20,24
 196:11 208:24
 210:23 255:7
1,000 55:20
1.5 107:8 114:7
 114:24
1.6 149:10
1.9 151:20
1/2 166:4,6
1/6 118:4
1:00 132:3
1:03 133:2,9
1:51 73:20
1:59 179:23
10 4:4 5:5 6:9
 7:21 44:9,11
 44:14 64:19,20
 146:3,15
 147:18 150:24
 164:18 165:5
 165:12 266:14
10-11-16 5:10
10-18-16 8:6
10,000 55:22,23
 61:13
10:06 58:21
10:16 58:25
10:24 98:10
100 135:18
 162:20 221:2
 221:10,16
101 4:22
106 5:8 6:16
108 5:10 6:22
109,000 130:22
115:8 8:23

96:16 104:8
 106:7,9 114:4
11-7-16 5:20
11:00 93:12
11:01 93:15
11:12 93:18
110 6:15
116 6:19
118 6:21
125:10 12:21
 14:1 106:6
 108:1,4 111:4
 112:18 273:5
12:04 132:6,7
12:42 73:25 74:8
12:45 45:19,25
120 3:11
126 6:23
134:13,16 5:12
 163:20 251:11
 251:12 265:22
130 246:12,14
 247:10,15
133 5:18
137 6:17
145:13 65:20,22
 66:2 88:15
 138:1 297:18
148 4:17
155:15 6:10
 8:23 80:25
 81:25 151:23
 151:24 272:23
 273:4
15,000 231:6
151 5:15
156 6:4
157 7:8
165:18 98:9
 133:16,19
 143:24 144:1
 144:21 145:6
 146:3,12,22
 204:2 266:14
 272:11,19,24
 273:1,4
16:000990-CB 1:7
 2:7
160 7:12
160-page 85:3
163 7:6
165,000 126:23
 127:25 128:15
 129:6 130:13
 131:20

165,218.82 125:6
 126:10
166 7:10
177:6 8:18,25
 36:20 37:6
 84:22 89:11
 93:23 235:2
17,766,000
 279:23
17,766,816
 233:22 234:6
 278:10
17/Pay 6:15 7:16
171 4:8
17th 2:18
195:20 21:3
 209:15,17,19
 234:24
194 7:4
1985 21:3
1999 2:17 9:6

2

24:11 5:11,12
 5:17 6:7,14,20
 7:9,15 8:12
 58:24 81:22
 86:18 149:11
 171:23 183:1
 225:13,15,19
 242:23 255:9
 292:6
2-15-17 7:12
2,975,000 107:5
2.302(c) 181:9
2.49-per-squa...
 248:13
2.6 136:13
2.65 135:20
 136:25
2.97 114:5
2:10 180:2
205:22 6:16
 7:17 8:24
 62:19 63:2,9
 63:23 64:9,10
 111:2,3,10
 239:25 240:2,3
 292:10
200 3:17
2007 247:19
2008 246:19
 247:19
2014 37:9
2015 152:6

2016 5:9 45:24
 50:12 66:10
 71:23 73:19
 74:2 83:21,22
 83:22,23 88:15
 98:10 102:15
 112:18 118:16
 118:22 119:9
 120:2 130:5
 138:1,13
 141:13,20
 149:3 184:24
 193:17 210:23
 274:11,15
 275:2,3,3
 292:10
2017 6:23 117:11
 118:24 120:9
 120:22 130:6
 166:18 167:5
 194:2 208:20
 209:10 233:19
 233:25 234:22
 277:10,16
 278:16 279:4
 287:1
2018 1:17 2:20
 8:10 9:1,8
 125:6,22 133:1
 297:18
205 7:18
209 5:20
216:4 37:9
 66:10 156:20
 156:21,24
 174:1,25
 175:13 193:17
215 7:20
216.274.2397
 3:18
217 8:3
226:6 8:23 79:5
 79:8,11 80:17
225 4:11
236:8 8:23
 70:23,24 71:2
 71:7 73:23,24
 74:5,7
232 6:13
232,308.84
 110:19
238 8:6
246:11 73:7,8
 73:14 74:4,10
 74:24 76:18

158:3 233:19
 233:25 234:22
 277:10,16
 278:16 279:4
240 5:22
248.433.7200 3:7
248.851.8000
 3:12
249 248:14
 271:19
249-unit 62:4
256:13 107:20
 107:21 187:19
 232:22,23
 276:19 279:20
 279:24
250 4:20
251 5:12
266:15 110:4,5
 110:20 197:21
 247:12
26-year 246:11
260 3:5
264 8:9
276:17 137:21
 137:22 152:6
 265:20
286:19 7:19
 8:24 116:15,16
 117:10 118:24
 119:6 120:9,10
 122:6
2800 3:17
282 7:16
296:21 118:10
 118:11 123:16
 125:6
290 8:11,13

3

34:11,12 5:9
 6:16 7:11 8:8
 8:13,24 63:21
 97:17,21,23
 98:2 114:17,22
 133:8 164:17
 165:5
3,000 97:18
3.3 149:10
3.8 246:13
3:03 277:10,16
 279:5
3:06 228:17
3:16 228:23
306:23,23 8:24

8:25 126:1,2
 180:19 194:12
 196:3 268:7
30,000 162:18
300 3:6
30833 3:11
31 4:18 6:23 7:4
 120:22 194:12
 194:15
32 7:6 8:10
 163:6,8,9
 229:14,17
33 7:8 157:15,17
 157:18
330,000 123:7
 124:17,25
 126:22 128:6
330,958 117:21
330,958.06
 117:12,22
 119:8 120:7
331,000 121:20
 122:17
34 7:10 157:15
 166:8,9
345 6:7
35 7:12 160:7,8
36 7:16 8:18
 282:10,13
37 7:18 205:5,9
 205:23 208:3
 214:3,4
38 7:20 163:19
 164:19 165:2,6
 165:9 215:23
 215:24 216:3,6
 218:7,15
 219:20
39 8:3 217:2,10
 218:19 219:18
395 4:9

4

4 1:17 2:20 4:10
 4:14 6:24 7:22
 8:5 9:1,8
 98:23,24 99:3
 99:5,6 100:3,6
 133:1 179:25
4,000 258:6
4:05 276:12
4:19 276:16
4:30 285:14
4:32 285:17
4:37 290:2

4:52 290:6
4:58 295:23,24
40 8:6 238:18,22
41 8:9 264:16,20
42 6:20 8:11
 290:7,11,14,15
43 8:13 290:7,11
 290:14 291:9
 291:10
44 5:5
44114 3:18
45 93:23,25 96:5
450 51:4 52:4
 54:3,4 55:16
 57:23 62:9
46 265:21
48084 3:6
48334 3:12

5

5 4:19 5:7 6:12
 71:23 73:19
 74:2 228:21
5,000 61:22 62:7
5:00 102:15
 228:15
50 114:13,16
 184:25 187:20
 191:13,19,20
 195:24 198:25
529 6:10
53 64:11 229:13
56,000 121:20
 122:18 123:8
 123:19 124:17
 125:2 127:24
 128:7,16 129:5
 130:9
56,507.90 117:20
 118:18,23
 119:7 120:4,20
 120:25 121:16
58 246:19 247:18
59.57 109:8,15
 109:20

6

6 4:17 6:22 40:7
 45:24 50:12
 143:21 144:13
 148:18,19,21
 148:25 149:7
 150:15
6,400 293:8
6.11 94:1,4

96:18,20,21
6.13 40:12,17,20
6.15 36:23 37:3
 37:4,14 39:5,7
 40:10,24
6:04 112:19
60 114:15 184:25
 198:19 248:19
 292:3,8
64865 276:21
64884 233:4
 276:20
65 5:13 248:19
67 95:19
6727 1:23 2:21
 297:4,23

7

7 4:19 5:21 42:2
 87:8,10,14
 166:4,6
7.5 168:1 169:23
7/21 8:4
7/27 8:4
7:00 80:12
7:59 66:11
70 6:8 108:20
 109:22 114:15
700,000 114:9
 115:4
710,000 107:13
73 6:11
757,000 107:14
 114:10
758 7:14
79 6:6

8

8 4:20 75:21
 76:7 250:19,24
8-10-17 6:4
8-22-17 7:8
8-29-16 5:22
80-year-old
 25:12
87 4:19

9

9 4:22 101:16,18
 101:20 143:20
9-20-16 8:13
9:13 2:19 9:2,9
90 196:10 292:4
 292:9
900,000 114:25

90067 9:7
907 7:9
915 4:13
916,000 114:1
91613SWI 1:25
97 4:12
98 4:14