

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE ETHAN P. SCHULMAN, JUDGE PRESIDING
4 DEPARTMENT NO. 302

5 MASOOD KHAN,

6 Plaintiff,

7 vs.



No. CGC-19-581129

8 THE GREENSPAN COMPANY, a
9 California corporation; GREENSPAN
10 ADJUSTERS INTERNATIONAL, INC., a
11 California corporation; ADJUSTERS
12 INTERNATIONAL/CALIFORNIA, INC., a
13 California corporation; ADJUSTERS
14 INTERNATIONAL PACIFIC
15 NORTHWEST, INC., a Washington
16 corporation; GORDON SCOTT, an
17 individual; CLAY GIBSON, an individual;
18 MARK FRATKIN, an individual; PAUL
19 MIGDAL, an individual; STEVE
20 SEVERAID, an individual; and DOES 1
21 through 10, inclusive,

22 Defendants.

23 _____/

24 REPORTER'S TRANSCRIPT OF PROCEEDINGS

25 TUESDAY, NOVEMBER 3, 2020

26 A P P E A R A N C E S (via Zoom)

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1 November 3, 2020

1:31 p.m.

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

3 THE COURT: This is, again, Khan versus the Greenspan
4 Companies, et al.

5 Ms. Fitzsimmons, I see you and Mr. Garibaldi -- here's
6 Mr. Peretz, he's just joined us, let me add him...

7 MR. PERETZ: Good afternoon, Your Honor.

8 THE COURT: Good afternoon, Mr. Peretz.

9 So we have you, Ms. Fitzsimmons, and it looks like --
10 Messieurs Garibaldi and Nolte. And I think that's everybody;
11 is it not?

12 MS. FITZSIMMONS: Yes, Your Honor.

13 THE COURT: Okay. Thank you.

14 So where do we stand? I think, if I'm correct, there are
15 three remaining witnesses. These are Plaintiff's witnesses for
16 cross-examination by Ms. Fitzsimmons; is that right?

17 MS. FITZSIMMONS: I believe there's Mr. Fratkin, who has
18 not submitted a declaration.

19 THE COURT: *(Nods head.)*

20 MS. FITZSIMMONS: And then the Plaintiff and Ms. Pak, who
21 both submitted declarations.

22 THE COURT: All right. What order do you all want to
23 proceed in?

24 MR. PERETZ: Since it's our case in chief, I would like to
25 start with Mr. Fratkin, unless you would like to do it
26 differently, Your Honor.

27 I don't --

28 THE COURT: I'm agreeable to however counsel want to do

1 it. We found that this is an unusual proceeding, and we've all
2 been accommodating of one another. If that's agreeable to you,
3 Ms. Fitzsimmons, shall we start with Mr. Fratkin; and then move
4 to the other two?

5 MS. FITZSIMMONS: That's fine, Your Honor. I would ask
6 though that -- I would prefer to call Mr. Fratkin as part of
7 our case. Since he hasn't had a declaration, it seems a bit
8 odd to start with... a cross of him.

9 MR. PERETZ: I have no objection to that; that's a good
10 idea.

11 So, Marcy, just so I get you right, do you want to ask him
12 some questions and then I'll follow up?

13 MS. FITZSIMMONS: Yes.

14 MR. PERETZ: I have no objection to that, Your Honor.

15 THE COURT: Okay. Then shall we have Mr. Khan first or
16 Ms. Pak?

17 MS. FITZSIMMONS: I would prefer to call Mr. Khan first.

18 THE COURT: All right... I will admit him as a panelist...

19 Mr. Khan, can you hear us -- there you are, sir. And
20 please unmute yourself.

21 You're still muted -- there you go.

22 MR. KAHN: I got it, I got it. Thank you.

23 THE COURT: All right. Good afternoon, sir.

24 MR. CART: Good afternoon, sir.

25 THE COURT: Let me ask you to raise your right hand and
26 ask the clerk to swear you, sir.

27 MASOOD AMHED KHAN,
28

~~Called as a witness for the Plaintiff, having been duly sworn,~~

1 testified as follows:

2 THE CLERK: Please state and spell your complete name for
3 the record.

4 THE WITNESS: Masood Amhed Kahn. M-a-s-o-o-d, as in
5 David; Ahmed, A-h-m-e-d last name Khan, K-h-a-n.

6 THE COURT: Your witness, counsel.

7 MS. FITZSIMMONS: Thank you.

8 DIRECT EXAMINATION

9 BY MS. FITZSIMMONS:

10 Q. Mr. Khan, I would imagine by now you who I am, but I'm
11 Marcie Fitzsimmons, and I'm representing the Defendants in this
12 matter.

13 Now, you claim that Mark Fratkin impersonated you in
14 e-mails; is that right?

15 A. Yes.

16 Q. And, in fact, you dedicate four paragraphs of your
17 declaration to making that statement; correct?

18 A. I don't have my declaration in front of me, but if that's
19 your representation, I'll take your word for it, unless -- if
20 you want to put the declaration up, so I can confirm that.

21 Q. Does that sound about right to you, though?

22 A. It sounds about right; I'll take your word for it.

23 Q. Okay. And so is it fair to say that you are suggesting
24 that if Mr. Fratkin would impersonate you in e-mails, he or
25 others at Greenspan may have forged your signature or somehow
26 impersonated your signature somehow in connection with the
27 arbitration agreement?

28 A. I did not sign that arbitration agreement. Mr. Fratkin

1 had access to my e-mail, and so... it's possible anybody at
2 Greenspan who had an interest in it could have signed it.

3 Q. And that's the argument that you're making with respect to
4 this idea about Mr. Fratkin impersonating your e-mails; right?

5 MR. PERETZ: Objection; argumentative.

6 THE COURT: Sustained.

7 MS. FITZSIMMONS: That's fine.

8 BY MS. FITZSIMMONS:

9 Q. You attached e-mails to your declaration that you claim
10 are examples of Mr. Fratkin impersonating you; correct?

11 A. I have a recollection of attaching some e-mails to my
12 declaration. I don't have it in front of me, but I'll take
13 your word for it, yes.

14 Q. We'll go through some of those in a moment.

15 It's your position that you never authorized or approved
16 Mr. Fratkin sending those e-mails under your name; correct?

17 A. It was a directive of Greenspan to make sure that all
18 sales e-mails went by Mark; in fact, I was prohibited from
19 sending e-mails from my e-mail address.

20 So Mr. Fratkin would oftentimes prepare e-mails under my
21 name and cover and transmit them to potential employees.

22 I was uncomfortable with that. I was very vocal about it.
23 And I made that clear to several people at Greenspan, including
24 many of the directors.

25 THE COURT: All right. May I just interject, Mr. Khan.

26 You said you sent e-mails to -- or you were prohibited
27 from sending e-mails to employees. Did you mean to customers?

28 THE WITNESS: Your Honor, let me clarify. I meant

1 sales-related employees. Greenspan --

2 THE COURT: I see.

3 THE WITNESS: -- is a public adjusting firm. I was an
4 adjuster there. I was hired as an adjuster there. I worked as
5 an adjuster for many years. And around 2016, I started doing
6 more and more sales because I was getting a lot of referrals.

7 So... I was prohibited from sending, expressly prohibited
8 from sending e-mails from my e-mail address -- any sales
9 e-mails from my e-mail address, *Masood@Greenspan-AI.com* or
10 *Masood@AIPNW.com* to any potential prospective clients.

11 Mr. Fratkin would utilize the e-mail address that he had,
12 a generic e-mail address, *GreenspanAI.com*, I believe;

13 And he had another e-mail, generic e-mail, I believe, for
14 the AIPNW company. And Mr. Fratkin had direct access to my
15 Outlook inbox.

16 Q. Mr. Khan, I want to just redirect you because I'm not
17 sure -- maybe my question wasn't focused or clear enough.

18 So I want to focus on those e-mails that you attached to
19 your exhibit.

20 And in your declaration you state that you never
21 authorized, approved, or consented to those e-mails that you
22 attached to your declaration. Is that still your testimony,
23 sir?

24 A. My testimony is that I had knowledge of some of these
25 e-mails, but I was under a directive from the company to follow
26 their protocol and directive on sales e-mails. And so
27 therefore on those e-mails, I did not have my consent or my
28 authority to give them.

1 I have expressed that vocally to Mr. Migdal, Mr. Gibson,
2 Mr. Severaid, Mr. Larsen and others. I was not comfortable
3 with that.

4 And, on occasion, there may have been e-mails where I may
5 have said to Mark, *yeah, it looks okay to me*, but did not
6 really have my consent or authority to transmit e-mails that
7 impersonate me.

8 That was something I was very uncomfortable with.

9 Q. Okay. Let me break this down just a little bit and maybe
10 then it'll be clear.

11 So you write in the first sentence of paragraph 5 of your
12 declaration, quote:

13 "I never authorized, approved, or consented to the
14 sending of these e-mails by Fratkin; and they were
15 sent without my consent."

16 Yes or no? Is that an accurate statement?

17 A. Could you please pull up my declaration, so I can...

18 Q. Sure.

19 Matt, could you please pull up Mr. Khan's declaration in
20 opposition to Defendant's motion to compel.

21 A. I have a copy of it here too. If you don't mind, I can
22 refer to that.

23 MS. FITZSIMMONS: Okay -- your Honor, do you have a copy,
24 or would you prefer that we pull it up?

25 THE COURT: I have a copy.

26 BY MS. FITZSIMMONS:

27 Q. Okay. Great.

28 So go ahead and look at paragraph 5 there. And, really, I

1 just want to make sure that we're all on the same page here.

2 Is it still your testimony that you never authorized,
3 approved, or consented to the sending of these e-mails, which
4 is referring to Exhibit 1 of your declaration, by Fratkin; and
5 that they were sent without your consent?

6 A. My testimony is that I did not give my authorization
7 because I was following company directives.

8 Q. Okay. Did you approve the sending of those e-mails?

9 A. I was following company directive that I was prohibited
10 from sending e-mails from my -- my sales e-mails from my e-mail
11 address.

12 Q. Did you consent to the sending of those e-mails?

13 A. I was very uncomfortable sending those e-mails and, in my
14 opinion, I did not consent.

15 Q. Okay. In fact, you claim, in that same paragraph of your
16 declaration, that Mr. Fratkin sent e-mails, like those that you
17 attached as Exhibit 1, without your consent; correct?

18 A. Which paragraph are you referring to, ma'am?

19 Q. The same paragraph, paragraph 5?

20 A. I'm sorry. Would you please refer me to the sentence? I
21 am not --

22 Q. Sure. Paragraph 5 and paragraph 6 --

23 A. Okay.

24 Q. -- you emphasize, again, that those e-mails were not
25 authored by you, not consented by you, and not approved by you;
26 is that correct?

27 A. That's what the declaration states; that's correct.

28 Q. Okay. And you attached -- like you had said before, you

1 attached some examples of those e-mails that Mr. Fratkin was
2 impersonating you on that you didn't consent, as Exhibit 1 to
3 your declaration; correct?

4 A. I believe there's some e-mails attached, yes (nods head).

5 Q. Okay. So I want to talk about those e-mails right now.

6 Now, you claimed in your declaration and, again, that was
7 signed by you under penalty of perjury, that you didn't author
8 or consent or approve of those e-mails that are Exhibit 1;
9 correct?

10 A. In my opinion, I did not, because I was --

11 Q. Okay.

12 A. -- operating under the directive of the company (nods
13 head), and that --

14 Q. Okay.

15 A. -- I was prohibited from sending sales-related e-mails
16 from *MasoodKhan@Greenspan-AI* or *Masood@AIPNW.com*. And that's
17 because Mark ran the sales department, was Director of Sales,
18 all e-mails had to be done by him.

19 Q. Right. And, in fact, you go so far in your declaration as
20 to say that without your consent, approval, or authorization,
21 that Mr. Fratkin would actually impersonate you in those
22 e-mails; correct?

23 A. Well, he would put my name at the bottom in a signature
24 block. I consider that impersonation; correct.

25 Q. So -- well, those are the words you used in your
26 declaration, in paragraph 4, you say he illegally impersonated
27 you?

28 A. ... Yes, I did say that, on line 6 of paragraph 4.

1 Q. Okay. Now, let's take a look at the first e-mail that you
2 attached, which for the Court's reference, is Exhibit 2 in the
3 Court's binder.

4 And, Matt, if it could you please pull that up for us so
5 we can all be on the same page, Exhibit 2...

6 Okay. So this is the first e-mail that you attached to
7 Exhibit 1 of your declaration. And that's an e-mail that
8 appears to have been sent on January 19th, 2016, at 1:45 p.m.;
9 correct?

10 A. That's what it appears, yes.

11 Q. And this is an e-mail that you say was signed by you, but
12 was really sent by Mr. Fratkin without your consent or
13 approval; correct?

14 A. Your Honor, may I actually get my glasses, 'cause the --
15 the screen's a little small...

16 Q. Sure.

17 THE COURT: Please do. Anything to make this easier and
18 more accurate.

19 THE WITNESS: Sorry, Your Honor. It was a little small.

20 BY MS. FITZSIMMONS:

21 Q. And we can enlarge it a little bit, if that's easier too.

22 Okay. So this is an e-mail that you say was signed by you
23 but was really sent by Mr. Fratkin from this generic Greenspan
24 e-mail address without your consent or approval; correct?

25 A. That... appears to have been sent from the GreenspanAI
26 e-mail address that Mr. Fratkin controlled, yes.

27 Q. Okay. And, again, this is an example that you attached to
28 your declaration of an e-mail that you say you didn't consent

1 or approve or authorize Mr. Fratkin sending on your behalf?

2 A. I followed the company directive and... that's correct; I
3 did not authorize or consent to this on my own volition.

4 Q. Okay. So now just so that we're all on the same page,
5 we're going to go ahead and take a look at the unredacted
6 version of this e-mail.

7 Matt, if you could please pull that up, it's our 5.

8 Okay. And, Matt, if you could scroll to the e-mail that's
9 at 5, that was sent at 1:45 in that chain.

10 Matt, why don't you find that e-mail. And I think it's
11 number 5, before we all view it.

12 I apologize. Sometimes technology is a little... tricky
13 with these things.

14 THE COURT: So we are all learning.

15 MS. FITZSIMMONS: Yes. Okay, there we go.

16 BY MS. FITZSIMMONS:

17 Q. So just so we're all on the same page, what is on this
18 screen now is the same e-mail that we had seen that was
19 attached to your exhibit but it's just the unredacted version.
20 Do you agree with that?

21 A. It appears to be, yes.

22 MS. FITZSIMMONS: Okay. And, Your Honor --

23 THE COURT: Counsel, would you like to mark this as an
24 exhibit.

25 MS. FITZSIMMONS: Yes, yes, Your Honor, I was just going
26 to say that. I'd like to mark this as whatever our next
27 exhibit is.

28 I think it's... 29, but I might be wrong on that. But I

1 would like to mark this exhibit. And what I would -- I'd like
2 to offer it into evidence. And we'll provide the Court with
3 copies of this in hard copy after this hearing, if that's okay,
4 or electronically, if Your Honor prefers.

5 THE COURT: So the -- according to my notes here, the
6 parties submitted in advance prenumbered Exhibits 1 through 37;

7 And Mr. Peretz marked Exhibits 38 and 39 during his
8 examination. So if we just proceed in numerical order, this
9 would then become exhibit 40 for identification.

10 *(Whereupon, the above-mentioned item was marked as Exhibit*
11 *40 for identification.)*

12 MS. FITZSIMMONS: Thank you, Your Honor.

13 THE COURT: And why don't you describe it for the record,
14 Ms. Fitzsimmons.

15 MS. FITZSIMMONS: Yes.

16 THE COURT: So we have a clear record of what it consists
17 of.

18 MS. FITZSIMMONS: Yes. So Exhibit 40 is an e-mail dated
19 January 19th, 2016, at 1:45 p.m. from *GreenspanAI* to
20 *Yahya.jan@Norr.com*. And it appears to be the unredacted
21 version of the first page of Exhibit 1 to Mr. Khan's
22 declaration.

23 And I'd like to admit this into evidence.

24 THE COURT: Any objection, Mr. Peretz?

25 MR. PERETZ: No objection, Your Honor.

26 THE COURT: All right. Exhibit 40 is admitted. And this
27 is, I take it, just a one-paged document?

28 MS. FITZSIMMONS: Yes, Your Honor.

1 THE COURT: Okay.

2 (Whereupon, Exhibit Number 40, previously marked for
3 identification, was admitted into evidence.)

4 BY MS. FITZSIMMONS:

5 Q. So the e-mail that that you attached to your declaration
6 on January 19th, 2016, that you claim you didn't consent or
7 approve to was sent to someone by the name of Yahya Jan, J-a-n;
8 is that correct?

9 A. That's what it appears, yes.

10 Q. Now, let's take another look -- let's take a look at
11 another e-mail in this e-mail chain. And this is one, again,
12 that you didn't attach to your declaration.

13 And, Matt, if you could pull this up, it's Impeachment 4,
14 please. Okay.

15 Now, these are e-mails, and you can -- we can scroll
16 through them, so you can take a look. But these appear to be
17 e-mails that you sent or received on January 17th, 2016,
18 between you, Mark Fratkin and Steve Severaid; correct?

19 And go ahead, Matt, and scroll through so Mr. Khan can go
20 through and authenticate this document, this e-mail chain.

21 A. It looks like it's January 17, not 16, if you go back.

22 Q. Yes, I misspoke. January 17, 2016...

23 A. Could you please slow down...

24 Keep going, please.

25 Q. That's the bottom, right there.

26 So, Mr. Khan, do these appear to be e-mails that you
27 exchanged with Steve Severaid and Mark Fratkin on January 17th,
28 2016?

1 A. They do appear to be, yes.

2 Q. Okay. I would like to mark this exhibit as Exhibit 41 and
3 offer it into evidence.

4 MR. PERETZ: No objection.

5 THE COURT: 41 is admitted. It consists of an e-mail
6 chain dated January 17th, 2016. And I think it consists of
7 three pages, am I correct?

8 MS. FITZSIMMONS: Is it two.

9 THE COURT: Maybe it's two pages. Hard to tell on the
10 screen.

11 MS. FITZSIMMONS: It is hard to tell.

12 MR. NOLTE: It's two pages.

13 MS. FITZSIMMONS: It is two pages.

14 THE COURT: Thank you.

15 *(Whereupon, the above-mentioned item was marked as Exhibit*
16 *41 for identification and admitted into evidence.)*

17 BY MS. FITZSIMMONS:

18 Q. And so, Matt, if you could scroll back to the bottom, that
19 highlighted section there...

20 So if you take a look at the bottom there, that's an
21 e-mail from you to Mark Fratkin and Steve Severaid asking them
22 to send an e-mail to your cousin; right?

23 A. The document speaks for itself. It says:

24 "Just checking in. Gave Steve details. We need
25 an e-mail to my cousin tailored towards Emaar with a
26 brochure link. Please send at your earliest
27 convenience. TX."

28 Q. Okay. And Steve Severaid, he's an principal at Greenspan;

1 is that right?

2 A. I believe Steve Severaid is one of the directors.

3 Q. Yes. Okay.

4 Now, scroll to the first page of this, please, Matt...

5 A little bit more -- okay. And there we go.

6 And then that's an e-mail, you telling Mark Fratkin that
7 your cousin's name is Yahya Jan?

8 A. Correct.

9 Q. And is your cousin's name Yahya Jan?

10 A. Yes -- yes, correct.

11 Q. Now, let's take a look at another e-mail. This one, Matt,
12 if you could pull it up, is from January 19th, 2016, at
13 9:16 a.m. It's number 7 -- or number 6, excuse me, Matt.

14 Okay. And if you could give Mr. Khan just a moment to
15 take a look at this chain, which is three pages. And the first
16 page has an e-mail from Mr. Fratkin to Mr. Khan dated January
17 19th, 2016, at 9:56 a.m. with the subject of Dubai.

18 So, Mr. Khan, Matt can scroll this for you. And my first
19 question is just going to be are these e-mails that you
20 exchanged with Mark Fratkin and Steve Severaid on... January
21 17th and 19th, 2016?

22 A. They appear to be.

23 Q. Okay. Now, if you look at the e-mail -- go back to the
24 first page of that, please, Matt...

25 That's an e-mail -- and scroll up just a bit, so we can
26 see the second e-mail on that page, please... There we go.

27 That's an e-mail that you sent to Mr. Fratkin at 9:16 a.m.
28 on January 19th, 2016; correct?

1 A. Are you referring to the e-mail that's highlighted in
2 yellow?

3 Q. Yes, I am.

4 A. That appears to be sent.

5 MS. FITZSIMMONS: And, Your Honor, I'd like to mark this
6 exhibit as Exhibit 42. And I've already identified it.

7 And I'd like to offer it into evidence.

8 MR. PERETZ: No objection.

9 THE COURT: 42 is admitted.

10 *(Whereupon, the above-mentioned item was marked as Exhibit*
11 *42 for identification and admitted into evidence.)*

12 BY MS. FITZSIMMONS:

13 Q. Now, in this e-mail, at 9:16 a.m. on January 16th, you ask
14 Mr. Fratkin:

15 "Are we going to be able to send this e-mail out
16 today?

17 Right?

18 A. That's what the e-mail says,

19 "Just checking in. Are we going to be able to
20 send this e-mail out today?"

21 Q. All right. And those are your words; right? You typed
22 that e-mail?

23 A. My recollection is that those are my words.

24 Q. Okay. Now, let's take a look at Mr. Fratkin's response to
25 that. And, Matt, if you could pull up number 7.

26 And while Matt pulls that up, I will identify Exhibit 7 as
27 an e-mail from Mark Fratkin to Steve Severaid and Masood Khan,
28 dated January 19th, 2016, at 10:02 a.m.

1 A. Could you slow down, please -- on the scrolling.

2 Q. That's not the e-mail.

3 A. Oh.

4 Q. Yes, that's the e-mail.

5 Okay. And, Mr. Khan, go ahead and take a look at this
6 exhibit, which I'd like to mark as Exhibit 43. Is this an
7 e-mail that you received from Mr. Fratkin on January 19th,
8 2016, at 10:02 a.m.?

9 A. It appears to be.

10 MS. FITZSIMMONS: Okay. I'd like to mark this exhibit as
11 Exhibit 43.

12 MS. FITZSIMMONS: And offer it into evidence.

13 THE COURT: Any objection?

14 MR. PERETZ: No objections, Your Honor.

15 THE COURT: Exhibit 43 is admitted.

16 *(Whereupon, the above-mentioned item was marked as Exhibit*
17 *43 for identification and admitted into evidence.)*

18 MS. FITZSIMMONS: Thank you.

19 BY MS. FITZSIMMONS:

20 Q. And in this e-mail, Mr. Fratkin is asking you to discuss
21 this e-mail that he drafted and then comment on it; right?

22 A. It says:

23 "Please discuss with each other and then comment.
24 I will send our agreed-upon e-mail from our generic
25 address."

26 And then there's other text below it.

27 Q. Okay. And, you know, why don't you read the third
28 sentence of the e-mail in that big paragraph there, for the

1 record.

2 A. Which -- which third sentence of which paragraph?

3 Q. That says, "this latest part of my career..."

4 A. Yes.

5 Q. Can you read that sentence for us?

6 A.

7 "This latest part of my career *is* been spent in
8 advocating for policyholders with the express intent
9 of maximizing recoveries."

10 Q. Okay. And Mr. Fratkin tells you in this e-mail that he
11 will send whatever is agreed upon from the generic e-mail
12 address; correct?

13 A. He says:

14 "I will send our agreed-upon e-mail from our
15 generic address."

16 Q. Right. And did you understand that generic address to be
17 this GreenspanAI address?

18 A. It likely was the GreenspanAI address.

19 Q. Okay. That's what you understood that to be at the time
20 you received this e-mail; correct?

21 A. Correct.

22 Q. Okay. Now, let's take a look at the next e-mail in this
23 chain. Matt, if you could pull up number 8.

24 And, for the record, this is an e-mail that is from
25 Mr. Khan to Steve Severaid and Mark Fratkin, dated January
26 19th, 2016, at 11:35 a.m.

27 And I would like mark this as Exhibit 44.

28 *(Whereupon, the above-mentioned item was marked as Exhibit*

1 44 for identification.)

2 Mr. Khan, is this an e-mail that you sent to Mr. Severaid
3 and Mr. Fratkin on January 19th, 2016, at 11:35 a.m.?

4 A. It appears to be.

5 MS. FITZSIMMONS: Okay. I'd like to offer this into
6 evidence.

7 MR. PERETZ: No objections.

8 THE COURT: That's exhibit 44. And that is admitted.

9 *(Whereupon, Exhibit Number 44, previously marked for*
10 *identification, was admitted into evidence.)*

11 BY MS. FITZSIMMONS:

12 Q. Okay. In this e-mail on January 19th, 2016, at
13 11:35 a.m., you e-mail Mr. Fratkin and say:

14 "Looks good to me, except I suggest changing
15 'career is been' to 'career has been'."

16 Correct?

17 A. That's what the document says; correct.

18 Q. Okay. And now let's go back to the Court's Exhibit 2.

19 And why don't you read that same sentence that you read
20 last time, in the draft e-mail you approved, the one that
21 starts with, "this latest part..."

22 A.

23 "This latest part of my career has been spent in
24 advocating for policyholders with the express intent
25 of maximizing recoveries."

26 Q. So Mr. Fratkin ends up sending that draft e-mail with the
27 change that you had proposed; correct?

28 A. Yes, it appears to be sent from that generic address under

1 the directive that I was following of Greenspan, that all sales
2 e-mails had to go through and by Mark.

3 Q. Okay. And Mr. Fratkin changed the sentence that you had
4 asked him to change with "career is been" to "career has been";
5 correct?

6 A. It appears to be, yes.

7 Q. Okay. Now let's change gears for a moment. Matt, you can
8 take that down.

9 I want to talk for a moment about your work at Greenspan.

10 You've worked as a public adjust -- or you worked as a
11 public adjuster at Greenspan for what, almost 14 years; is that
12 right?

13 A. Roughly 13-and-a-half, 14 years. I started in April 2005
14 and I left in November of 2018.

15 Q. Okay. And you consider yourself an industry -- insurance
16 industry expert; right?

17 A. I've been in the insurance industry since roughly 21, 22;
18 so about 30 years.

19 Q. In your LinkedIn profile, you refer to yourself as an
20 "insurance industry expert." Is that a fair characterization
21 of how you would characterize yourself?

22 A. I believe that's a fair characterization.

23 Q. Okay. And so is it fair to say that you're able to
24 understand and help navigate complex claims?

25 A. Yes.

26 Q. And with complex claims come complex documents; right?

27 A. Occasionally, yes.

28 Q. At some point during your employment at Greenspan, you

1 became a vice-president; is that right?

2 A. I believe that was very early on. I believe that title
3 was changed probably within the first month.

4 Q. Okay. So you held that title throughout most of your
5 employment at Greenspan; right?

6 A. Yes.

7 Q. And throughout the entire time that you worked at
8 Greenspan, you were also a licensed attorney; correct?

9 A. I maintained my license, that is correct. I --

10 Q. You became licensed to practice in the State of California
11 in 1999; is that right?

12 A. That sounds about right.

13 Q. And prior to joining Greenspan, at some point you worked
14 at a firm named Lillick & Charles.

15 A. Yes, that's correct.

16 Q. And you worked as an attorney there?

17 A. Correct.

18 Q. And you also worked at a litigator at the firm of Barger &
19 Wolen?

20 A. Barger & Wolen; correct.

21 Q. Okay. Now, starting in at least 2016, you started serving
22 as Greenspan's assistant general counsel; correct?

23 A. I was given the title of Assistant General Counsel and, in
24 my opinion, I was not really allowed to act in that capacity.

25 Q. But you held the title of Assistant General Counsel
26 starting in approximately 2016; is that right?

27 A. The fall of 2016, approximately, I was given the title of
28 Assistant General Counsel.

1 Q. Now, according to your LinkedIn profile, as assistant
2 general counsel, you were responsible for various legal matters
3 that pertained to Greenspan; is that accurate?

4 A. That would be accurate.

5 Q. Okay. And as assistant general counsel, you worked hand
6 in hand with Greenspan's general counsel; correct?

7 A. My hand in hand involvement primarily was related to one
8 litigation matter.

9 There were a few other matters that were Greenspan
10 corporate-related. And I did not advise Greenspan on corporate
11 legal matters; they would refer those to outside counsel.

12 My role generally on the legal side was related to
13 analysis of insurance issues, because that was my background,
14 and how those insurance issues affected Greenspan's claims
15 handling.

16 Q. Okay. Now, did you -- did you draft your LinkedIn profile
17 or did you, like, have somebody else do that for you?

18 A. I believe that LinkedIn profile actually was drafted
19 largely by Mr. Fratkin.

20 *(Reporter interruption.)*

21 THE COURT: I think your answer was something to the
22 effect that you believed that it was Mr. Fratkin who drafted
23 your linked in profile. Did I hear that correctly?

24 THE WITNESS: I believe it was Mr. Fratkin, or his team
25 members who drafted that LinkedIn profile; that is correct.

26 THE COURT: Thank you.

27 BY MS. FITZSIMMONS:

28 Q. So did Mr. Fratkin also draft the portion of your linked

1 in profile that speaks to your current job working for one of
2 Greenspan's competitors?

3 A. No. Mr. Fratkin didn't do that.

4 Q. Did you do that part?

5 A. Most likely did, yes.

6 Q. And when you went in to update your LinkedIn profile, did
7 you double-check to make sure that was what was written by
8 Mr. Fratkin on your experience at Greenspan was actually
9 accurate?

10 A. I don't recall, as I sit here today. Generally I believe
11 it is accurate. I did handle some various legal matters for
12 Greenspan. They were in a limited capacity.

13 Q. Right. And in your Greenspan -- in your LinkedIn profile,
14 you wrote:

15 "Masood worked hand in hand with general counsel,
16 representing the interests of the Greenspan Company
17 Adjustors Internationals, and was also responsible
18 for various legal matters as they pertained to the
19 firm and the insurance industry"?

20 Is that an accurate statement?

21 A. I don't have the profile in front of me but if that's what
22 the profile states, I'll take your word for it.

23 Q. Okay. Well, I don't want you to take my word for it; what
24 I want to know is if that's an accurate statement about what
25 you actually did while you were employed at Greenspan?

26 A. If you mind, I can pull up my LinkedIn profile in there...

27 Q. Actually, we're happy to pull that up for you.

28 Matt, why don't you go ahead and pull up Mr. Khan's

1 LinkedIn profile and turn to page 2.

2 Did you find it, Matt?

3 MR. NOLTE: *(Nods head.)*

4 MS. FITZSIMMONS: Nope. The LinkedIn profile, please.

5 I can pull it up, Matt, if you can't find it...

6 MR. NOLTE: It should be up.

7 MS. FITZSIMMONS: Oh, okay.

8 Okay. So can you please turn to the second page of that,
9 Matt, the part where the description of the Greenspan Company
10 on Mr. Khan's LinkedIn profile.

11 And while we're at it, why don't we mark as the next
12 exhibit, which is Exhibit 45, this document which is 7 pages
13 and appears to be Mr. Khan's LinkedIn profile.

14 *(Whereupon, the above-mentioned item was marked as Exhibit*
15 *45 for identification.)*

16 BY MS. FITZSIMMONS:

17 Q. And, Mr. Khan, is this your LinkedIn profile, at least as
18 of March of 2020?

19 A. It looks like it; correct.

20 Q. Okay. And so if you can look at the last paragraph there,
21 under your experience under Greenspan -- first of all, is it
22 your testimony that Mr. Fratkin drafted this portion of your
23 LinkedIn profile?

24 A. I believe Mr. Fratkin -- and then my claim team did draft
25 portions of this profile, because it's similar to the one that
26 I had while I was at Greenspan.

27 Q. Okay. Did you make sure that what you posted on LinkedIn
28 about your experience was accurate before you posted it?

1 A. It's generally accurate, I think.

2 Q. Okay. So now that you've had a chance to look at this, is
3 it accurate of how you describe your work experience in that
4 last paragraph of this section on Greenspan?

5 Matt, perhaps you can enlarge that.

6 A. Could you repeat your question, please?

7 Q. Yeah, let me just -- now that you've had a chance to look
8 at this, let me just ask you in an easier way, as Assistant
9 General Counsel, is it correct that you word hand in hand with
10 Greenspan's general counsel?

11 A. That's a fair statement, yes.

12 Q. And you understood that as in-house counsel, Greenspan was
13 your client; right?

14 A. During the time that I was supposed to be acting as their
15 assistant general counsel, where I was actually prohibited from
16 really doing that, that would be a fair statement; that as
17 in-house counsel, if I was allowed to act in that capacity,
18 Greenspan would be my client.

19 Q. Well, when you were acting as Assistant General Counsel,
20 parts of your responsibilities was that you were responsible
21 for, "various legal matters as they pertained to the firm in
22 the insurance industry"; is that correct?

23 A. That's sounds about fair.

24 Q. And during the time -- you can take that down, Matt.
25 Thank you.

26 During the time that you worked at Greenspan, most of the
27 time when you would sign an e-mail, you would use the *esquire*,
28 E-s-q, after your name; correct?

1 A. That sounds about right.

2 Q. And you've -- so, sir, is it fair to say that by 2018, you
3 were very familiar with the concept of arbitration?

4 A. I'm familiar with the concept of arbitration.

5 Q. Because you would frequently, in your role, as a public
6 adjuster, you would assist Greenspan's clients when matters
7 would move from insurance claims to arbitration and court
8 proceedings; right?

9 A. Occasionally, yes.

10 Q. Okay. Now, in April 2018, Greenspan informed you and
11 others that it was implementing an arbitration agreement;
12 correct?

13 A. Yes, yes.

14 Q. And you received a copy of that arbitration agreement and
15 some other documents at that time; correct?

16 A. Sounds about right; correct.

17 Q. So let's take a look at Exhibit 7. This is the Court's
18 Exhibit 7.

19 And these are e-mails that you received on April 10th and
20 April 17th, 2018, from Rabia Hassanpur about the arbitration
21 agreement; correct?

22 A. Appears be about correct, yes.

23 MS. FITZSIMMONS: And, Your Honor, to the extent these are
24 not already admitted into evidence, I would like Exhibit 7 to
25 be admitted into evidence.

26 THE COURT: Any objection?

27 MR. PERETZ: No, Your Honor, but my understanding is that
28 the entire exhibits are admitted.

1 THE COURT: Let's talk about that at the conclusion of the
2 hearing. But Exhibit 7 is admitted.

3 *(Whereupon, Exhibit Number 7, previously marked for*
4 *identification, was admitted into evidence.)*

5 BY MS. FITZSIMMONS:

6 Q. Thank you.

7 So when you were sent the arbitration agreement in April
8 of 2018, you also received directions on how to access the JAMS
9 employment arbitration rules; correct?

10 A. I don't particularly recall that.

11 Q. Okay. Well, do you recall receiving this e-mail that's
12 here, right from front of you?

13 A. I do recall receiving an e-mail.

14 Q. Okay. And so you recall seeing the reference that says:

15 "You can find the 2018 employee handbook and
16 arbitration agreement and JAMS arbitration rules
17 under company documents on your Insperity Premier
18 Portal."

19 Correct?

20 A. I see that statement, yes.

21 Q. And so you were also directed where to find the 2018
22 employee handbook; correct?

23 A. It appears to say that it was on the Insperity Portal,
24 which is the not very easy to utilize, but the e-mail says what
25 it says.

26 Q. Okay. And you received an employee acknowledgement
27 handbook form; correct?

28 A. With this e-mail?

1 Q. No, at some point in early April 2018, you received the
2 employee handbook acknowledgement form; correct?

3 A. I received an employee handbook acknowledgement form;
4 correct.

5 Q. Right. And you also knew, at the time that you received
6 all of these documents in April of 2018, that if you had
7 questions about the documents, you could ask H.R. or your
8 supervisors; correct?

9 A. I did.

10 Q. Okay. Now -- Matt, you can take that down please.

11 A. I did ask.

12 Q. Okay. Well, we'll get to that.

13 Now, on April 30th, 2018, you executed a handbook
14 acknowledgement form; correct?

15 A. I executed -- I have a recollection of executing a
16 handbook acknowledgement with my true and correct signature;
17 correct.

18 Q. Okay. And that form was similar or identical to Exhibit
19 17, which Matt will pull up right now...

20 Is that correct? Minus -- I understand you claim you
21 didn't sign this or consent to this, but the handbook
22 acknowledgement form that you did sign was similar or identical
23 to this exhibit; correct?

24 A. It appears to be. I don't have a specific recollection of
25 all the words, but it appears similar.

26 Q. Okay. And by April 30th, 2018 -- by then you had been
27 licensed to practice law in the State of California for what,
28 like, eighteen years or something like that?

1 A. I'll take your word on that, ma'am.

2 Q. Okay. That sounds more or less right; correct?

3 A. Yeah.

4 Q. Okay. And by the time, in April of 2018, that you signed
5 the employee handbook, you had been serving as the assistant
6 general counsel at Greenspan for approximately a
7 year-and-a-half to two years; correct?

8 A. I'd had the title since about fall of 2016; that's
9 correct.

10 Q. Okay. And when you signed this handbook acknowledgement
11 form in April of 2018, you understood at that time that you
12 were acknowledging that you had received the company's
13 handbook; right?

14 A. I... did not sign this document but I... as I said, I
15 recall signing a handbook acknowledgement document; that is
16 correct.

17 Q. And you knew at the time that you signed the handbook
18 acknowledgement form that you were acknowledging that you had
19 received the company's handbook; right?

20 A. That's correct.

21 Q. You typically read a document before you sign it; right?

22 A. Typically.

23 Q. Okay. You understood that, as stated in this, that you
24 were agreeing and consenting to all of the policies contained
25 in the handbook; right?

26 That's paragraph 3. And, Matt, you could enlarge that, if
27 you'd like.

28 A. That document has that paragraph. I see it.

1 Q. Okay. Now let's take a look at Exhibit 20. And, in
2 particular, let's take a look at page 6 of Exhibit 20.

3 So this is the handbook from April 2018; correct? And
4 we'll turn to page 6...

5 And, Matt, if you could enlarge that last paragraph where
6 it says "arbitration."

7 This is the version of the handbook from April of 2018
8 that you acknowledged receiving; correct?

9 A. Sounds about right, yes.

10 Q. And in page 6, under "arbitration," it says:

11 "As a condition of employment, we require that all
12 applicants and employees enter into a mutual dispute
13 resolution agreement by which applicants and
14 employees of the company agree to submit to binding
15 arbitration, all disputes related to the hiring
16 process, the employment relationship, and the
17 termination of employment."

18 Is that right?

19 A. I see that paragraph, yes.

20 Q. So, after you signed the handbook acknowledgement form in
21 April of 2018, you continued to work at Greenspan until
22 November of 2018; is that right?

23 A. Sounds about right.

24 Q. That was about seven months or so?

25 A. Correct.

26 Q. When you did resign -- Matt, you can take that down.

27 Thank you.

28 When you did resign, you resigned to take an ownership

1 position at one of Greenspan's competitors; correct?

2 A. No, that is not correct.

3 Q. Okay. When you resigned, did you -- where do you work
4 now?

5 A. After I left Greenspan, I ended up taking a position with
6 another company that's also a public adjusting firm. But I did
7 not resign from Greenspan as a result of going to that public
8 adjusting firm. I --

9 Q. Okay. When did you start working at SunPoint?

10 A. I believe the first week of December?

11 Q. Okay. And what was the date, again, that you resigned
12 from Greenspan?

13 A. It was about November 30th.

14 Q. Okay. So shortly after, what, within a week or so of
15 leaving Greenspan, you went to go to have an ownership position
16 at one of Greenspan's competitors; is that right?

17 A. That is correct.

18 Q. And in that position, you frequently compete with
19 Greenspan for the same clients; right?

20 A. I'm not sure I understand your question. Could you...

21 Q. SunPoint is a competitor of Greenspan because you're
22 competing for the same clients; correct?

23 A. Occasionally.

24 Q. Okay. Now, you sent Ms. Hassanpur the signed employee
25 handbook acknowledgement form from the Konica scanner on April
26 30th, 2018; right?

27 A. I recall sending an acknowledgement form, which is
28 different from the exhibit that you have pulled up.

1 Q. Right. It's identical in all ways except that it just
2 didn't have that signature. Is that your testimony?

3 A. I think that's fair to say.

4 Q. Okay. So my question, which is a little bit different,
5 and maybe my emphasize wasn't on the right part there.

6 You sent Ms. Hassanpur a signed employee handbook
7 acknowledgement form from the Konica scanner on April 30th,
8 2018; is that right?

9 A. I have a recollection of sending a handbook
10 acknowledgement form that I signed with my true signature, in
11 connection with this litigation. When I first received that
12 Konica e-mail, that refreshed my recollection that perhaps on
13 or about April 30th, I did send it.

14 Q. Okay.

15 A. It could be earlier or after but that was my recollection
16 at the time when those documents were produced.

17 Q. Right. That's what you say in your declaration on
18 paragraph 12, you say that:

19 "I recall indeed on or around April 30th, I did
20 execute a separate document sent to me by Rabia
21 Hassanpur, which I recall was a handbook
22 acknowledgement form that was similar or identical
23 to the 2018 a handbook action acknowledgment."

24 That's paragraph 12, lines 18 through 21 of your
25 declaration.

26 And is that still your testimony, sir?

27 A. Yes, that's sounds about right.

28 Q. Okay. And so you have a recollection of scanning and

1 sending that handbook acknowledgement form around 3:05 p.m. on
2 April 30th, 2018; correct?

3 A. I have a recollection of sending her something on April
4 30th; correct.

5 Q. And your recollection is is that you send it around
6 3:05 p.m. on April 30th, 2018; correct?

7 A. I believe that's my recollection, yes.

8 Q. The only signed employee handbook acknowledgement form
9 that you have seen since April 2018 that bears your name is
10 Exhibit 17; correct?

11 A. Could you repeat that, please?

12 Q. Yeah, Matt, why don't you pull up Exhibit 17...

13 The only signed employee handbook acknowledgement form
14 that you have seen since April of 2018 that bears your name is
15 this Exhibit 17; correct?

16 A. Yes, I got this as part of the litigation discovery
17 documents.

18 Q. Right. You have not seen since April 30th, 2018, any
19 handbook acknowledgement form that bears your name, other than
20 this exhibit that we're looking at now; is that correct?

21 A. Well, I've seen another one that had my real signature on
22 it. That's unfortunately not been produced, as far as this
23 litigation.

24 Q. So when did you see it, May 1st, 2018? May 2nd, 2018?
25 When is the last time you saw this --

26 A. I have a recollection of seeing that document on or around
27 April 30th.

28 Q. Okay. So let me ask the question in a slightly different

1 way.

2 Since, let's say, May 1st, 2018, is it correct that the
3 only Handbook acknowledgement form that you have seen that
4 bears your name is the one that we're looking at right here at
5 Exhibit 17?

6 A. Sounds about right. Since May 1st, that's the first time
7 I've seen that document; correct.

8 Q. At 3:13 p.m., Ms. Hassanpur e-mailed you, asking that you
9 resend the last page of the arbitration agreement because it
10 was blank; right? Do you remember that e-mail?

11 A. I remember the e-mail. I remember the time.

12 Q. Okay. You received and read that e-mail; correct? That's
13 Exhibit 9.

14 A. If you would show me Exhibit 9.

15 Q. Sure...

16 A. I see -- is this Exhibit 9 you're referring to?

17 Q. Yes, the e-mail that's up is Exhibit 9.

18 A. Yes, I see it.

19 Q. Okay. You received that that e-mail?

20 A. I don't recall seeing that e-mail; I've never seen it,
21 until this litigation.

22 Q. Okay. You state in your declaration:

23 "Hassanpur then e-mailed me at 3:13 p.m. on April
24 30th to say that I needed to resend the last page of
25 an arbitration agreement because it was blank for
26 some reason."

27 That's paragraph 13.

28 Does that refresh your recollection as to whether or not

1 you ever received this e-mail?

2 A. ... That's what Hassanpur claims she sent me. I don't
3 recall seeing that e-mail.

4 Q. Okay. So you may have received it, you may not. Just, as
5 you sit here right now, you're just not sure if you received
6 it; correct?

7 A. ... I'm pretty sure that I've received this e-mail before.

8 Q. Okay. And you never replied to this e-mail; correct? You
9 never wrote something back to Ms. Hassanpur in response to
10 this?

11 A. I don't have a recollection of writing back, but I never
12 saw this e-mail, so... I couldn't tell you. But I can add on
13 by saying Mr. Fratkin had direct access to my Outlook inbox.

14 Q. Okay. I get that. And I think we talked about that
15 particular issue. But now I'm really curious. So is it your
16 testimony now, Mr. Khan, under oath, that you actually never
17 received this e-mail?

18 A. It could be a deleted e-mail. I don't know. I don't have
19 a recollection of receiving this e-mail.

20 Q. Okay. So you just don't recall, one way or the other; is
21 that fair?

22 A. I don't recall receiving this e-mail.

23 Q. Okay. And you don't recall ever replying to this e-mail
24 and saying, for example, telling Ms. Hassanpur that you were
25 not going to sign the agreement; correct?

26 MR. PERETZ: Asked and answered, Your Honor.

27 THE COURT: I'm sorry?

28 MR. PERETZ: Asked and answered.

1 THE COURT: Overruled; you may answer.

2 THE WITNESS: Could you repeat your question?

3 BY MS. FITZSIMMONS:

4 Q. Yes. Do you recall replying to Ms. Hassanpur's e-mail
5 that we're looking at right now, and saying something like,
6 "I'm not going to sign the agreement"?

7 A. I don't recall saying that. I've not seen this e-mail
8 before, so...

9 Q. Okay. After Ms. Hassanpur sent you this e-mail at
10 3:13 p.m., sometime after 3:13 p.m. she called you; correct?

11 A. I have a recollection of talking to Ms. Hassanpur on April
12 30th.

13 Q. And she asked you to sign the arbitration agreement;
14 right?

15 A. She asked me to sign the documents. And I told her that I
16 would sign the acknowledgement form, and that I sent back. But
17 I was not going to sign the arbitration agreement.

18 Q. Okay. Now, so it's your testimony, under oath, that
19 Ms. Hassanpur -- that you told Ms. Hassanpur that you were
20 refusing to sign the arbitration agreement?

21 A. I told Ms. Hassanpur that and others, yes.

22 Q. So, it's your testimony that Ms. Hassanpur called you
23 concerning your refusal to sign the arbitration agreement?

24 A. No, she called me regarding the agreement. And I said I
25 sent her the acknowledgement form, with my true and correct
26 signature. And that if she -- that I was not going to sign the
27 arbitration agreement, and that if she had an issue with it, to
28 pick that up with Mr. Paul Migdal or Clay Gibson.

1 Q. So were you at the hearing on Friday, sir?

2 A. I was.

3 Q. Okay. And so is it your testimony that Ms. Hassanpur was
4 lying when she testified that you had told her you would sign
5 the arbitration agreement during that phone call?

6 MR. PERETZ: Objection; argumentative, Your Honor.

7 THE COURT: Sustained.

8 BY MS. FITZSIMMONS:

9 Q. Okay. Do you recall signing a declaration under penalty
10 of perjury in connection with another matter related to one of
11 your colleagues named Gary Johnson?

12 A. I do recall that.

13 Q. Matt, you can take this down.

14 And you signed that declaration on June 30th, 2020;
15 correct?

16 A. Could you pull the declaration up. I don't have it on me.

17 Q. Sure. Matt, could you please pull up Mr. Khan's
18 declaration from the Johnson matter...

19 It's number 21, Matt.

20 I can actually pull it up, I think... Oh, okay.

21 Okay. This is your declaration from... your colleague,
22 Gary Johnson's case. Do you recall this declaration?

23 A. Could you -- scroll down, please.

24 Q. Yeah, Matt, could you scroll down... to the next page,
25 too...

26 And is this the declaration that you signed under penalty
27 of perjury on June 30th, 2020?

28 A. Sounds about right, yes.

1 Q. Did anybody impersonate your signature on this
2 declaration?

3 A. No, I believe that was done by DocuSign.

4 Q. Okay. And in paragraph 4 of that declaration, you said
5 that:

6 "No one called me concerning my refusal to sign
7 the arbitration agreement."

8 Right?

9 A. I don't have a recollection of anyone calling me about my
10 refusal to sign the arbitration agreement.

11 Q. Okay. So your phone call with Ms. Hassanpur, it's your
12 testimony, even though you told her you were absolutely not
13 gonna sign the arbitration agreement, that that was not her
14 calling you concerning your refusal to sign the arbitration
15 agreement; is that your testimony?

16 MR. PERETZ: Misstates the testimony.

17 THE COURT: Overruled; you may answer.

18 THE WITNESS: Could you please repeat that?

19 BY MR. PHELPS:

20 Q. Sure. You testified earlier that Ms. Hassanpur -- when
21 Ms. Hassanpur called you, you made it clear to her you were not
22 going to sign the arbitration agreement; right?

23 A. She asked me about the acknowledgement form and the
24 arbitration agreement;

25 I told her I had sent her the acknowledgement form with my
26 true and correct signature, and that I was not going to sign
27 the arbitration agreement. And that if she had an issue with
28 it, to talk to Mr. Migdal or to Mr. Gibson.

1 Q. Okay. But it's your testimony though that that
2 conversation you just described is not the same as what you
3 were saying in paragraph 4 of your sworn declaration, where you
4 said that no one called you concerning your refusal to sign the
5 arbitration agreement?

6 MR. PERETZ: Argumentative, Your Honor. It's
7 argumentative.

8 THE COURT: Sustained.

9 BY MS. FITZSIMMONS:

10 Q. Okay. We can move on.

11 Now, in your declaration in opposition to Defendants'
12 motion to compel in this case, you also signed that under
13 person of perjury; correct?

14 MR. PERETZ: Objection; argument.

15 MS. FITZSIMMONS: I'm just laying some foundation.

16 THE COURT: Overruled; go ahead.

17 THE WITNESS: Could you repeat your question?

18 BY MS. FITZSIMMONS:

19 Q. Yes. You recalled the declarations that you submitted in
20 opposition to Defendants' motion to compel arbitration. We
21 went through some of that earlier. Do you recall that? Yes?
22 I didn't catch --

23 A. Yes.

24 Q. I didn't catch -- it's a little hard to hear you, so maybe
25 you could speak up just a bit. Thank you.

26 And you signed that declaration just one month ago, on
27 September 29th, 2020; correct?

28 A. ... Sounds about right, yes.

1 Q. And you indicated in that declaration, in paragraph 13,
2 that you recalled having a telephone call with Ms. Hassanpur on
3 April 30th, 2018; correct?

4 A. I do have a recollection of having a telephone
5 conversation with Ms. Hassanpur.

6 Q. Right.

7 A. From --

8 Q. Now, you didn't state anything in that entire
9 21-paragraph declaration about telling Ms. Hassanpur that you
10 were actually refusing to sign the arbitration agreement;
11 correct?

12 A. She never called me about a refusal.

13 Q. Right. My question, which is slightly different, sir, in
14 your 21-paragraph declaration, anywhere in there, including in
15 the paragraph where you actually talk about the phone call with
16 Ms. Hassanpur, do you say anything about you telling
17 Ms. Hassanpur that you were not going to sign the arbitration
18 agreement?

19 A. I don't -- I state that there, that I don't agree to sign
20 or be bound by the arbitration agreement. And I believe
21 there's a supplemental declaration on that issue too.

22 Q. I don't recall seeing that.

23 So in paragraph 13, you say:

24 "I do recall having a telephone conversation with
25 Ms. Hassanpur that same day, but I did not agree to
26 sign or be bounded by an arbitration agreement
27 during that telephone call."

28 Is that -- Is it your testimony that that's -- is that it?

1 Is that all you said in that declaration, to the effect of you
2 telling Ms. Hassanpur that you weren't going to sign the
3 arbitration agreement?

4 A. I told Ms. Hassanpur I was not going to sign the
5 arbitration agreement.

6 Q. Okay.

7 A. And she could talk to Mr. Migdal, talk Mr. Gibson. She
8 didn't call me about my refusal to sign the document.

9 Q. None of what you just said though is in your declaration.
10 Do you agree with that?

11 MR. PERETZ: Objection; the document speaks for itself;
12 argumentative.

13 THE COURT: Sustained. I think I have the point here,
14 Ms. Fitzsimmons.

15 BY MS. FITZSIMMONS:

16 Q. Okay. The day after Ms. Hassanpur e-mailed you, asking
17 that you resend the last page of the arbitration agreement, May
18 1st, 2018, you received an e-mail from Ms. Hassanpur that said,
19 "got it. Thank you, Masood"; right?

20 A. Could you please show me the e-mail?

21 Q. Yes. This is Exhibit 9.

22 MR. PERETZ: Exhibit 9?

23 THE COURT: The second page of Exhibit 9.

24 MS. FITZSIMMONS: Yes.

25 BY MS. FITZSIMMONS:

26 Q. So this is May 1st, 2018, at 4:51 p.m., Ms. Hassanpur
27 e-mails you and says, "Got it. Thank you, Masood."

28 You got that e-mail; correct?

1 A. I don't recall seeing that e-mail before. I don't believe
2 I got it.

3 Q. Your e-mail address as of May 1st, 2018, was
4 Masood@Greenspan-AI dash com?

5 A. Would you repeat that e-mail address, please?

6 Q. Yes. Was your e-mail address as of May 1st, 2018,
7 Masood@Greenspan-AI.com?

8 A. Yes, that was one of my e-mail addresses; correct.

9 Q. Okay.

10 A. And one of the e-mail addresses that Mr. Fratkin and
11 Mr. Poulson had direct access to.

12 Q. You never responded to Ms. Hassanpur's e-mail; correct?

13 A. First e-mail or this e-mail?

14 Q. This e-mail that we're looking at where she says, "got it.
15 Thank you, Masood," did you ever reply to this e-mail?

16 A. I don't recall getting this e-mail. I don't believe I
17 replied to this e-mail.

18 Q. So you don't recall ever saying, *I got what? Or, you*
19 *know, I didn't send you anything. What are you talking about,*
20 *or anything like that?*

21 A. No, I had just -- my -- I was in Seattle for work. I
22 believe, actually... I just barely landed around that time
23 frame. So no, I didn't get this e-mail. And I have no
24 recollection of responding to it.

25 If somebody had access to my inbox and manipulated, I
26 can't speak to that.

27 Q. Okay. Do you recall all the e-mails that you, you know,
28 sent or received in this time frame of late April, early May

1 2018?

2 A. All of my e-mails?

3 Q. Yes.

4 A. No, I don't recall all my e-mails, but I have a
5 recollection that -- if this was an issue, I would have
6 remembered it, because I was quite vocal about not signing this
7 arbitration agreement.

8 Q. Okay.

9 A. I didn't get --

10 Q. You can take that down now. Thanks, Matt.

11 So is it fair to say that you knew that Greenspan had an
12 arbitration agreement in 2018; right?

13 A. Yeah, I know Greenspan wanted the employees to sign an
14 arbitration agreement after this prior litigation that they had
15 had with one of their employees.

16 Q. And you knew that signing the arbitration agreement was a
17 condition or a requirement of continued employment; correct?

18 A. Nobody threatened me to be fired if I didn't sign this;
19 they certainly didn't suggest that it was mandatory. I
20 discussed this with Mr. Migdal and others. And they say, *yeah,*
21 *look, everyone's got to sign it.* And I expressed my complete
22 discontent with it.

23 Q. Okay. But you knew -- you were told that the arbitration
24 agreement was mandatory; correct?

25 A. I believe one of the e-mails from Rabia may have said that
26 it's mandatory, so...

27 Q. And that's also something that you stated in your
28 declaration in the Johnson case; correct? You stated:

1 "Although I was told that the arbitration
2 agreement was mandatory..."

3 So you knew it was mandatory, or you were told that at
4 least; correct?

5 A. I believe that I was told that it was mandatory, yes.

6 Q. But it's your testimony that you never, ever intended to
7 be bound by the arbitration agreement; is that right?

8 A. Yes; that's correct.

9 Q. And you didn't say that in response to the April 30th,
10 e-mails that actually was enclosing the arbitration agreement;
11 correct?

12 A. Could you please put the e-mails up, because these e-mails
13 are... at the heart of the issue. And I am of the opinion that
14 some of these e-mails have been manipulated, so...

15 Q. Okay. Well, this is already an e-mail that you
16 authenticated.

17 When the company was sending out the e-mails, let's just
18 take, for example -- let's look at Exhibit 7. Matt, if you can
19 pull that up, please...

20 Okay. So, again, these are e-mails that you've already
21 authenticated that you had received April 17th.

22 And then, Matt, if you can just scroll... I believe
23 there's another one as part of that... and April 10th.

24 A. Yes, it appears that I received these e-mails.

25 Q. Okay. And you didn't reply to those e-mails and say, *I'm*
26 *not going to sign this arbitration agreement*; is that right?

27 A. I did not because Mr. Migdal disliked e-mails with
28 discontent; so I had a discussion with him and with Mr. Gibson

1 about it. But no, I did not reply to this -- the April 10th
2 e-mail, or the other e-mail that's above that via an e-mail
3 response, but I vocally expressed my discontent with it.

4 Q. And you also didn't say, in response to an e-mail to
5 Ms. Hassanpur, at any point, where she thanked you the
6 e-mail -- for sending the signed employment agreement or
7 anything else, you didn't reply in an e-mail to Ms. Hassanpur
8 and say, *hey, you know, I just wanted to -- you know, as we*
9 *talked about, I'm not going to sign the arbitration agreement,*
10 or words to that effect? You never wrote anything like that
11 out; right?

12 A. But she was... a clerical person. I didn't really get
13 into too much discussion with her. And I don't believe I got
14 some of her e-mails. So I have no recollection of responding
15 back to her and say, *hey, did you get it, or did you not get*
16 *it.*

17 Q. Let's just say, you know, after this conversation you had
18 with her where you so clearly told her that you were not going
19 to sign the arbitration agreement, you never, like, followed
20 that up with an e-mail to just say, you know, *just confirming?*

21 A. She was -- she was working on --

22 Q. Never --

23 A. -- of the directors. And no, I did not send her an
24 e-mail, because I told her, "follow-up with Migdal and follow
25 up with Gibson."

26 Those were the two directors that I have had direct
27 conversation with, including with Mr. Severaid, expressing my
28 extreme discontent that I was not going to sign an arbitration

1 agreement.

2 Q. Okay. Now, so it's your theory, then, that you signed an
3 employee handbook acknowledgement receipt that looked just like
4 Exhibit 17 but with a different signature, that you e-mailed it
5 to Ms. Hassanpur on April 30th, but the signature that's on
6 Exhibit 17 is not your signature?

7 A. I was on the way to the airport that day. I recall
8 signing it, an acknowledgement form with my view and correct
9 signature, and scanning it from that Konica scanner that had no
10 I.D., no password. You just kind of put your document in the
11 feeder, and hit the scan button and run out, scan out your
12 document.

13 I do have a recollection of doing that.

14 Q. Okay. But it's your testimony -- Matt, could you pull up
15 Exhibit 17, please...

16 MR. PERETZ: What exhibit?

17 MS. FITZSIMMONS: That's 17.

18 BY MS. FITZSIMMONS:

19 Q. This is the employee -- the signed employee
20 acknowledgement form.

21 So... you have no idea who it is that actually signed this
22 employee handbook acknowledgement form that's an exhibit in
23 this case. Is that your testimony?

24 A. I don't see anything on the screen, ma'am.

25 Q. Right. I know. While Matt's pulling it up, I just
26 thought I would ask that question. We can wait, if you'd
27 prefer.

28 A. I would prefer to see the exhibit that you're talking -- I

1 don't want to misstate something. If it's Exhibit 17 --

2 Q. There we go.

3 Okay. So is it your testimony that you have no idea whose
4 signature this is but it's not your signature?

5 A. That's not my signature. I didn't authorize anybody to
6 sign that. I don't know whose it is.

7 Q. You didn't, for example, ask Ms. Pak to sign this document
8 for you; is that right?

9 A. I've never asked Ms. Pak to sign a document like this or
10 something similar. The only kind of documents that, if she
11 ever signed any, were part of electronic signatures on notice
12 of representation letters that print out to clients of
13 Greenspan. That was --

14 Q. So you were just completely baffled by whose signature --
15 who could possibly have signed this, with your name; is that
16 right?

17 A. I'm not fully baffled; I think it has... I don't know who
18 signed it.

19 Q. Okay. And --

20 A. It's not my signature. I didn't ask anyone to sign it. I
21 didn't ask him to sign. I didn't authorize anyone to sign.
22 That's not my signature.

23 Q. Okay. And, Matt, could you pull up Exhibit 18.

24 Okay. You likewise have no idea whose handwriting is on
25 the arbitration agreement but you know it is not your
26 handwriting; is that correct?

27 A. That's not my signature. That's not my handwriting. I
28 was on the way to the airport. So I don't know who signed that

1 document. That's not mine.

2 It's a document that I -- that I told Rabia that I would
3 be not be signing. That was the problem. She had called me; I
4 said, "look, I'm not going to sign that. Call Paul or Clay.
5 Talk to them."

6 Q. And is it your testimony that the signatures on the
7 employee handbook acknowledgement form, Exhibit 17, and the
8 employee arbitration agreement that we're looking at now, which
9 is Exhibit 18, don't look anything like your actual signature?

10 A. They don't look anything like my actual signature.

11 As I said, I was on my way to the airport, and some of
12 these e-mails came while I was going to the airport. Some of
13 the e-mails came while I had just landed at the airport. So
14 these are not documents that I signed.

15 Q. So you're... sorry. Were you done?

16 A. Yes, I'm done.

17 Q. So it's your theory, then, that someone at Greenspan
18 forged both of those signatures;

19 And that they did so to look nothing like your actual
20 handwriting;

21 Then they made it look like they were sent to
22 Ms. Hassanpur on April 30th, and May 1st;

23 Had her thank you for sending them to you at that time,
24 all to force you into arbitration should you decide to resign
25 from the company and then sue them several months later?

26 A. With the illegal enterprise that Greenspan was running,
27 and having Mr. Fratkin direct the company's sales operations
28 and claims operations, I would not put that past the folks at

1 Greenspan.

2 MS. FITZSIMMONS: Okay. I have no further questions.
3 Thank you.

4 THE COURT: All right.

5 Mr. Peretz, I anticipate that you may have some redirect
6 here.

7 MR. PERETZ: Yes, I do, Your Honor.

8 THE COURT: But I also have to acknowledge that we've been
9 going for an hour and almost 20 minutes.

10 Let me ask the reporter whether you would prefer a break
11 now or between this witness and the next...

12 *(Off-the-record discussion.)*

13 THE COURT: We'll see you ten to twelve minutes.

14 MR. PERETZ: Your Honor, can you repeat that?

15 THE COURT: I said we will resume at 3 o'clock. It's now,
16 according to my computer clock, 2:49, eleven minutes or
17 thereabouts.

18 MR. PERETZ: Thank you, Your Honor.

19 *(Short break taken.)*

20 THE COURT: All right. We'll be back on the record.

21 It's 3:00 p.m. Mr. Peretz, you have some redirect from
22 Mr. Khan?

23 I do want to emphasize, it is now 3 o'clock. Come hell or
24 high water, this hearing is gonna be over by 4:30 and ideally
25 before 4:30. So both counsel are going to have to measure out
26 your time accordingly.

27 Mr. Peretz, do we have you back?

28 I don't see him on the screen. I guess he's not back.

1 There he is.

2 MR. PERETZ: Sorry, Your Honor.

3 THE COURT: Okay. Go ahead. You have -- I've just
4 indicated that this hearing will be concluded, one way or the
5 other, by 4:30. So counsel are going to have to -- act
6 accordingly, in terms of measuring out your time, but how you
7 want to divide it up is up to you, but I understand you have
8 some direct redirect for Mr. Khan.

9 MR. PERETZ: Yes, Your Honor. Thank you.

10 Mr. Khan, good afternoon.

11 You're muted.

12 They're going to make a comedy out of this at some point.

13 MS. FITZSIMMONS: I think they already have.

14 REDIRECT EXAMINATION

15 BY MR. PERETZ:

16 Q. Okay. So, Mr. Khan, this is very disputed issue, a hot
17 topic. Exhibit 17 is the acknowledgement form. You adamantly
18 say that you have never signed it; correct?

19 A. That is correct.

20 Q. Okay. Now, that was an acknowledgement form for the
21 employee handbook; correct?

22 A. Yes, I understood the employee handbook to be a policy,
23 not an arbitration agreement. So I was expecting, as you
24 normally would, a separate agreement. But yes, it was a
25 policy, not an agreement for arbitration.

26 Q. Okay. So you were shown earlier, and let me share it with
27 you, Exhibit 20, which was the employee handbook. Do you see
28 it on the green screen, the arbitration section?

1 A. Yes, I do.

2 Q. Why don't you read it to yourself, and tell me what was
3 your understanding from that?

4 A. Would you like me to read it out loud or just to myself?

5 Q. No, just to yourself. We're short with time. Let's do it
6 quickly. The judge can read it when he needs to read it.

7 A. I understood this to be a policy, not an agreement, and
8 that there would be a separate document that would be an
9 arbitration agreement.

10 Q. And...

11 A. *(Inaudible.)*

12 Q. Can you repeat that? You were muffled for -- for the last
13 section?

14 A. I understood this to be a policy, not an arbitration
15 agreement.

16 Q. Okay. Now, you said that you professed your...
17 displeasure, disagreement to sign the arbitration agreement
18 with various folks at Greenspan; correct?

19 A. That's correct.

20 Q. Okay. With whom did you do that?

21 A. I expressed it to Mr. Gibson;
22 I expressed it to Mr. Migdal;
23 I expressed it to Mr. Severaid;
24 I expressed it to Mr. Tim Larsen.

25 Q. What did you tell Mr. Migdal?

26 A. I told him that I wasn't going to sign an arbitration
27 agreement.

28 Q. And what did he say?

1 A. Mr. Migdal said, *look, everyone has to sign it; it's*
2 *mandatory. I'm gonna sign it.*

3 And I told Paul, I said, "Paul, I'm not signing this
4 document." I told Clay that. I had had problems and issues
5 with Mr. Fratkin, and I was seeing this as a set-up.

6 Q. Okay --

7 THE COURT: I missed the last part of the sentence.

8 *(Record read back.)*

9 THE WITNESS: That is correct.

10 THE COURT: Okay. Thank you.

11 BY MR. PERETZ:

12 Q. What -- Clay is Mr. Gibson; correct?

13 A. Correct.

14 Q. What did you tell Mr. Gibson about the arbitration
15 agreement?

16 A. I told Mr. Gibson I wouldn't sign it. And his response to
17 me essentially was, *well, look, nobody crosses Mark, because*
18 *you got -- you know, you're going to get replaced.*

19 And I -- I know they were upset about the prior litigation
20 that they had had with one of their employees, and I was very
21 clear to them that I was not going to sign an arbitration
22 agreement.

23 Q. Okay. And you -- Exhibit 18 was shown to you. And I
24 apologize. We went through that ad nauseam. That's the signed
25 arbitration agreement. And I'll bear it with you, again...

26 This is the document.

27 Did you -- you are under penalty of perjury. You
28 understand that; correct?

1 A. I do.

2 Q. Okay. Did you ever sign this document, sir?

3 A. I did not sign this document. That's not my signature.
4 And I didn't ask anyone to sign this document on my behalf.

5 Q. Did you ask anyone, your assistant, anyone at Greenspan,
6 anyone to -- to sign it as if it's you, or to just sign it for
7 you?

8 A. Nope.

9 Q. Okay. Now... you said that that was part of a set-up. Do
10 you remember that?

11 A. That's what I felt, yes.

12 Q. Okay. And earlier, you were shown a few e-mail -- you
13 were shown e-mail exchange about an e-mail that apparently was
14 sent from the general GreenspanAI address, and you said you
15 didn't give your consent but it was a directive. Remember
16 that?

17 A. I do recall.

18 Q. What did you mean by that?

19 A. Well, Greenspan knew that Mark was a convicted felon.

20 They would not allow me to send sales e-mails from my
21 e-mail address. They wanted Mark to send those e-mails, even
22 though he was unlicensed and he was a convicted felon.

23 So the company designed a directive that all sales e-mails
24 need to go through Mark and must be by Mark.

25 So Mark controlled a generic e-mail address, as well as
26 other individuals' e-mail addresses, including my own.

27 And he would manipulate data, manipulate e-mails. And so
28 what I meant by the company directive was I was following

1 instructions from Greenspan to me, *hey, this is your protocol,*
2 *this is Sales. Mark runs that.* Mark's the director of it. He
3 was essentially running the company. *And you have to follow*
4 *him.*

5 Q. Okay. And what was the directive, just so we have a clear
6 testimony for the judge.

7 A. Well, the directive was that any and all e-mails related
8 to sales or certification had to go by Mark. I was not
9 permitted to send them because Mark would control that.

10 So, on occasion, there might even be an e-mail that would
11 go from *Masood@Greenspan-AI.com* to a potential client, but that
12 would be typed by Mark, because he had access to my inbox.

13 So the directive was very clear: *You cannot send sales*
14 *e-mails. We have a well-oiled sales machine. Mark runs it.*
15 *Mark Fratkin's gonna do it.*

16 Q. And Mark would send those e-mail with your name, not his
17 name; correct?

18 A. Mark never sent e-mails to potential clients with his
19 name.

20 Q. Why is that?

21 A. He knew, because he was a convicted felon and he was
22 unlicensed, and he was running essentially the sales and claims
23 operation of Greenspan, they were aware that if word got out
24 that Mark was doing this, it could be problematic for them.

25 Q. Okay. So did you ever confront Mark about this directive
26 or this way of doing business?

27 A. I did. I confronted others first. I told Mr. Migdal
28 about it;

1 Mr. Larsen was aware about it. In fact, he made comments
2 to me to the effect what an illegal operation that was;

3 I spoke to Mr. Gibson about it;

4 I spoke to Mr. Severaid about it.

5 They were all scared of Mark. They wouldn't do anything.
6 And, ultimately, I actually had a meeting with Mark about it.

7 Q. When was that?

8 A. It was sometime in January of 2018. It was after the
9 Tubbs fire had hit. And I was getting a lot of sales
10 referrals. And I was signing a lot of business for Greenspan.

11 And Mark was hot... (*shakes head*) very hot that he
12 couldn't control that. And I had told him, I said, "Mark, I'm
13 not going to let you impersonate me; this is not right. So you
14 and I have tension. Let's meet up."

15 We did. We had a meeting.

16 MS. FITZSIMMONS: Your Honor, this is beyond the scope and
17 it's not relevant.

18 THE COURT: I disagree. Overruled. Proceed, please.

19 BY MR. PERETZ:

20 Q. What came up during that -- what... strike that.

21 Where did the meeting take place?

22 A. My recollection is, I think the meeting was around January
23 7 or 8, 2018. My recollection is it took place at, I think one
24 of Mark's favorite sushi places, I think it was called
25 Blowfish, if I'm not mistaken. It's the Mission District,
26 perhaps on Folsom or Harrison Street, in the 20's.

27 We had a meeting over there;

28 We also had -- we had other meetings prior to that, at a

1 French restaurant on Polk Street.

2 Each and every time I told him I said, "Mark, this is not
3 gonna work." And he tried to entice me by saying, *well, look*
4 *if you want to be part of a team, you have to follow this*
5 *protocol.*

6 After the Tubbs fire, which occurred on October 9th, 2017,
7 and I started signing a lot of business, Mark was really upset
8 about it, that he couldn't control it. In fact, he called me a
9 hiccup.

10 And we had a meeting about it. And he said, *listen, if*
11 *you don't get into line and if you're not going to trust me on*
12 *this, then you're going to be an outsider.*

13 That was meeting that we had in 2018.

14 THE COURT: What, I'm sorry?

15 THE WITNESS: I'm sorry, Your Honor. Could you repeat
16 that?

17 THE COURT: Yeah, I didn't hear the last part of your
18 answer. You said, "if you don't get in line..." what?

19 THE WITNESS: "If you don't get in line, you're not going
20 to be a part of the team."

21 BY MR. PERETZ:

22 Q. And that was in was month? I think that's what...

23 A. January 7 or 8, of 2018.

24 Q. Okay. Now, what was your issue with Mark impersonating
25 you? What was the issue, from your perspective?

26 A. Look, I was originally an adjuster. I came out -- I was a
27 sophisticated adjuster. I would agree to that. I adjusted for
28 Greenspan across the world. I gave up a lot of time and

1 commitment from my family for that.

2 I made them millions dollars. But I was an adjuster. I
3 did great work.

4 Once I started doing great work, I got sales referrals.

5 Mark was unlicensed. I don't know if he still is or not,
6 but he was unlicensed because he was a convicted felon. He
7 could not, in my opinion, solicit clients in the marketplace.

8 Greenspan, through its national convention, made always a
9 big deal about the unauthorized practice of public adjusting.

10 Here they had an unlicensed convicted felon running their
11 sales department and their claims department. And I had an
12 issue with Mark putting my name out there, forcing me into the
13 corner with Severaid, and Migdal, and Scott, and Gibson's
14 blessing.

15 *Hey, you follow up, tow the line. We've been doing this*
16 *for years. Don't step out of line.*

17 I was not comfortable having my name going out to people
18 on e-mails being written by Mark, being forced into providing
19 alleged consent or authority, and him conducting business
20 essentially as me.

21 I thought that was absolutely wrong and inappropriate.
22 And I vocally voiced that to Mr. Migdal, Mr. Gibson,
23 Mr. Severaid, Mr. Larsen, and others. I was not shy about that
24 especially after the Tubbs fire, because I was doing a lot of
25 sales.

26 Before that, it was sporadic. It was sporadic; I'd get an
27 occasional sales call here or there, and I don't want to
28 deviate from the topic, but the Greenspan folks would steal my

1 commissions, they would unjustly get me out of my sales.

2 But, after '17 and 2016, 2017, after the Tubbs fire, my
3 phone was ringing off the hook. And Mark hated the fact that I
4 was making a lot of sales for the company and he had no control
5 over it.

6 And I expressed that to him directly.

7 THE COURT: Okay.

8 BY MR. PERETZ:

9 Q. We want to move forward.

10 After this meeting you had with him at the sushi place,
11 did he follow up with you with an e-mail?

12 A. Yes, he did.

13 Q. Okay. I want to show you an e-mail. And I want it marked
14 next in line. That's going to be Exhibit 46.

15 THE COURT: Well, hang on.

16 Ms. Fitzsimmons, did you intend to mark Mr. Khan's
17 declaration in the Johnson action as an exhibit?

18 MS. FITZSIMMONS: Yes, Your Honor. And I apologize,
19 because I -- I realized I did not mark it, or offer it into
20 evidence.

21 THE COURT: So that was Exhibit 46, then;

22 And then this document that Mr. Peretz is about to mark is
23 Exhibit 47.

24 *(Whereupon, the above-mentioned item was marked as*
25 *Exhibits 46 and 47 for identification.)*

26 MR. PERETZ: Thank you, Your Honor.

27 BY MR. PERETZ:

28 Q. Okay. You see an e-mail on the screen from Mark Fratkin

1 to you. And he copied Gordon Scott, Steve Severaid, and Paul
2 Migdal.

3 A. I see it dated January 10, 2018, at 2:29 p.m.

4 Q. And that's the e-mail he sent to you, Mark sent to you
5 following your meeting?

6 A. That is correct.

7 Q. Okay. He says here that, "Greenspan is a well-oiled
8 machine." Do you see that?

9 A. Greenspan was his well-oiled machine, yes.

10 Q.

11 "And our rules and protocol are not in place to
12 micromanage but to ensure greatest success."

13 Do you see that?

14 A. I do.

15 Q. And then he goes on to memorialize the protocols; correct?

16 A. I see that; correct.

17 Q. And number one reads, can you read number one?

18 A.

19 "All sales e-mails get sent from our generic
20 address, not your e-mail address. They must be
21 approved by me or a member of my staff."

22 That's number one.

23 Q. Okay. So when e-mails were sent from -- you know, from
24 this generic e-mail address, bearing your, you know, signature
25 block, did you consent to that?

26 A. I did not. I was following their protocol -- I was
27 frankly quite upset about it, and that was my main contention
28 with Mark that I brought to the attention of Gordon and Paul

1 and Steve, and they just said, *look, Mark runs Sales. Let him*
2 *do what he's doing. Come in line. Follow the protocol.*

3 Q. Okay. Now, he goes on through other, you know, protocols,
4 four in total. And he ends the e-mail with:

5 "I hope you will consider what I left you with.
6 Quote, 'What do you want our relationship to look
7 like moving forward? Especially about trust?'"
8 Question mark.

9 Do you see that?

10 A. I do.

11 Q. Okay. And what did he mean by that, based on your
12 discussion with him a couple nights earlier?

13 A. It was a veiled threat, *get in line.*

14 Gordon and the other partners had sold the firm and
15 converted it into a ESOP, and they are not employees.

16 Mark was running the show, and he basically said, *what do*
17 *you want this to look like going forward? So you better learn*
18 *to trust me and get in line, otherwise your -- you're gonna be*
19 *outta here.* That's essentially how I took it.

20 Q. Okay. Now, following that, did Mark send another e-mail
21 about the issue of the policies and protocol?

22 A. Mark in that meeting referred to me as the hiccup in
23 Sales, and that he would ensure that that hiccup would never
24 occur.

25 So he then sent a follow-up e-mail ten, twelve, fifteen
26 days after that around, January 25 or 26, and he spelled out
27 the protocols essentially similar to this.

28 MR. PERETZ: Okay. Let me mark Exhibit 48, Your Honor.

1 And that's an e-mail from January 26th, 2018, from Mark
2 Fratkin.

3 *(Whereupon, the above-mentioned item was marked as Exhibit*
4 *48 for identification.)*

5 And is this the e-mail that you refer to, Mr. Khan?

6 A. Would you please slow down...

7 Could you go to the top of the date, please?

8 Yes, January 26th, 2018, from Mark to everybody, where the
9 hiccup, which was me, had been discussed by management.

10 That's the e-mail that I'm referring to; correct.

11 Q. He says:

12 "Management discussed some recent sales hiccups
13 that occurred over the last few months."

14 Do you see that?

15 A. That arises out of the Santa Rosa Tubbs fire, which
16 occurred on October 9th, 2017.

17 From that time frame onwards, my sales had rocketed at
18 Greenspan. And Mark -- I wouldn't let Mark send e-mails out in
19 my name, because I found that very uncomfortable, and a
20 problem.

21 Q. And then he sends the same... the same protocol that he
22 sent you. And he says that, these are underlined and bolded,
23 "required protocols"; correct?

24 A. Yes. The document speaks for itself, but it's generally
25 the same sales protocols, that everything gets approved by Mark
26 and gets run by him.

27 Q. Now, you mentioned that they wanted to hide the fact that
28 a convicted felon that is unlicensed is running the sale

1 organization. Remember that?

2 A. I do.

3 Q. How did they do that?

4 A. Well, they hid behind the e-mails. Liz would not allow
5 Mark to be copied on any e-mails involving solicitation to
6 folks, potential clients, insurance people, insurance industry
7 people, claims adjusters that were outside the organization.

8 And that was a directive from the highest levels at
9 Greenspan, from Mr. Scott, Paul, Mr. Severaid, they were all
10 aware of it. And they made sure that Mark was -- they were
11 copied on outside, external e-mails involving claims people,
12 insurance industry people, potential clients, or existing
13 clients.

14 Q. Did you express your displeasure with that or objection to
15 that?

16 A. I did, with the same cast of characters. And their
17 response always was, *Mark is running Sales. Don't cross Mark.*
18 *If you're gonna pick -- if you're going to force us to pick*
19 *Mark or you, you're gonna be out.*

20 Q. Is it fair to say that there was a growing tension from
21 the end of '17 on to about April of 2018 between you and the
22 Greenspan folks about that?

23 A. I think it would be more from 2016ish, because I was in
24 Guam working on one of the largest losses that I had helped
25 solicit for Greenspan.

26 And I had a conversation with Gordon Scott in the summer
27 of 2016 expressing my discontent, because they were
28 shortchanging me on my commissions, and not recognizing me on

1 my sales because Mark couldn't control it.

2 As a part of that process, Gordon then came back and said,
3 *okay, don't worry. We'll take care of you. We'll make you the*
4 *assistant general counsel.*

5 When I came back in the fall of 2016, to be in that role
6 of assistant general counsel, I was prohibited, by Paul, from
7 playing that role. I rarely got the ability to act in that
8 role as I had envisioned it.

9 So I think the tension started in fall of 2016. And it
10 just really went sour in 2017, all the way till 2018, when I
11 left.

12 Q. Okay. So I want to show you an e-mail from April of 2018
13 now. And let's mark that Exhibit 49...

14 *(Whereupon, the above-mentioned item was marked as Exhibit*
15 *49 for identification.)*

16 Okay. That's from, and I, quote, "Mark Fratkin on behalf
17 of Clay Gibson."

18 Do you see that, from April 2nd, 2018, at 9:03 a.m. Do
19 you see that?

20 A. I do.

21 Q. So first of all --

22 MS. FITZSIMMONS: Your Honor, I think we're getting way
23 beyond the scope here. This hasn't been produced. The
24 exhibits that I used, that I was using for impeachment
25 purposes, this just seems like we're just straying here. It's
26 not relevant.

27 We've already -- we're already way deep into this and I
28 barely had a chance to call my case. This just doesn't seem

1 like we should be allowed to continue down this path.

2 THE COURT: I'm inclined to agree, Mr. Peretz. I think I
3 have the point of the last few exhibits, but let's -- let's try
4 and -- this is gonna be wrapped up this afternoon, and there
5 are still, as I understand it, two more witnesses to be called.
6 So you're gonna have to figure out some way to get through
7 that.

8 This is supposedly redirect. It's well beyond the scope
9 of the original declarations.

10 MR. PERETZ: Your Honor, that would be the last exhibit.
11 I won't present any more.

12 THE COURT: Go ahead.

13 BY MR. PERETZ:

14 Q. So Mark sent this e-mail on behalf of Clay Gibson. Do you
15 see that?

16 A. I do.

17 Q. Was that customary at Greenspan that Mark would send
18 e-mails on behalf of other -- of directors of the company?

19 A. Mark had access to my inbox and other people's inboxes.
20 That was quite common. And this is one of the e-mails that I
21 think I'm referring to.

22 Q. And the second bullet point reads:

23 "Mark never show us a cc or e-mails to end
24 company's clients, et cetera. Only a bcc as
25 needed."

26 Do you see that, second bullet point.

27 A. I do.

28 Q. What was your understanding of this instruction, or

1 directive?

2 A. That was a directive that the highest levels of Greenspan
3 knew that Mark was convicted felon; he couldn't get licensed.
4 He was an unlicensed solicitor for them; and therefore they
5 should not list him on any e-mails going outside the company to
6 insurance company people or clients. That would be considered
7 unauthorized practice of public adjusting.

8 Q. So, to close it out, what was the set-up that you've been
9 set up in -- shortly after April 2nd, at the end of April 2018,
10 what was the set-up you're talking about?

11 A. Mark is taking more and more control of the company. And
12 so when I met with him in January, he had essentially said, *get*
13 *in line or you're gonna be out.*

14 And I believed the set-up really was when I was getting
15 extremely vocal in the year 2018 about how things were going on
16 the impersonation side, and the fact that Mark was exercising
17 more and more control at -- I felt it. They were trying to set
18 me up to get out.

19 Q. And what was the -- what did the arbitration agreement
20 have to do with this set-up?

21 A. Well, they had had a prior lawsuit, and they were quite
22 upset by it. So I believe they were concerned about having
23 some of this dirt come out in the open, that they have somebody
24 who is unlicensed running their company on sales and
25 operations.

26 They didn't want this out there. And I think that was a
27 way to kind of clean house.

28 Q. Were you personally concerned about that, about this

1 impersonation?

2 A. I think it applied to me and other folks, frankly.

3 Q. Why is that? What was your thoughts on that?

4 A. I know there were other employees who were having this
5 dispute with Greenspan. So I think that they saw this as a way
6 to kind of clean the house.

7 I certainly was very vocal about... my approach, with the
8 way things were being done under my name. I did not like it;

9 I told them about it;

10 They wouldn't do anything about it;

11 Ultimately, at the end, in November, November 25th, Sunday
12 after Thanksgiving, I was instructed by Mark to fly on
13 Thanksgiving weekend to Seattle, 2018.

14 And it was for a solicitation on a client that we had sent
15 e-mails on my behalf, impersonating me, and I was really upset
16 about it.

17 I remember that day very distinctly, because I landed in
18 Seattle. My brother in law had gotten into a very bad bicycle
19 accident in Miami.

20 I signed that loss;

21 Mark forced David Droubay to attend that meeting with me;

22 When I came back that Sunday evening, from Seattle,
23 November 25th, 2018, the next day I went up to Chico, Paradise,
24 because the Camp fire had occurred.

25 And when I came back to the office, my recollection is it
26 was around... Tuesday, November 27th, 2018, and I walked into
27 Paul's office.

28 And I sat down. And... I generally expressed my complaint

1 and discontent with what had happened, the fact Mark had
2 impersonated me. I was also upset that my brother-in-law had
3 been in a bicycle accident.

4 And on that day Paul looked me straight in the eye -- and,
5 Your Honor, I apologize for using expletives on-line, but Paul
6 essentially said, "*You complain too much. If you want to*
7 *leave, if you want to go work for someone else, I don't give an*
8 *F.*"

9 And I was shocked. That was on Tuesday, November 27th.
10 And I took a few days to contemplate what was going on.

11 I had looked at the year, the way that I had been treated,
12 and I resigned. I was forced to go out because I couldn't take
13 it anymore, with Mark with his nonsense and his illegal
14 activity, and the executives at Greenspan, the directors there,
15 not following through on what they were supposed to do to run
16 their company.

17 And I was done with it. So I quit three days a later,
18 after Paul basically told me to go F myself.

19 THE COURT: All right. It is now 3:30.

20 I'm exercising my prerogative at this point to say that we
21 are at the end of redirect of this witness.

22 Do you have any brief recross, Ms. Fitzsimmons?

23 MS. FITZSIMMONS: No, Your Honor.

24 THE COURT: All right. I have one question for you,
25 Mr. Khan. And then I'm going to excuse you as a witness.

26 You worked for Greenspan, I think you told us, from 2005
27 until your resignation in November of 2018; is that right?

28 THE WITNESS: That's correct, Your Honor, April 2005 to

1 November of 2018.

2 THE COURT: Now, what you've referred to as the directive
3 or the protocol that e-mails were to be sent out... over -- by
4 Mr. Fratkin but over your name, or over the name of other sales
5 personnel, how long was that directive or protocol in place
6 during the 13 plus years that you were working for Greenspan?

7 THE WITNESS: Your Honor, I don't know the specifics of
8 how long the sales protocols were in place, because I didn't do
9 a lot of sales activity prior to 2016 -- I did occasionally.

10 THE COURT: When did you first become aware of that
11 so-called directive or protocol?

12 THE WITNESS: Your Honor, it was verbally expressed...
13 through the late 2016 and 2017 but most prominently after the
14 Tubbs fire of 2017, that was the fall of 2017.

15 THE COURT: All right.

16 THE WITNESS: And that was to me. I don't know what was
17 sent to others. But to me, because I did adjusting. I rarely
18 got involved in a sale.

19 If there was a attorney-client potentially, they would ask
20 me to get involved. So there might be an e-mail or two from me
21 on that. But I did not do a lot of sales prior to 2016.

22 THE COURT: All right.

23 THE WITNESS: 2017 would be...

24 THE COURT: Thank you.

25 Any follow-up limited to that question by either counsel?

26 MS. FITZSIMMONS: No, Your Honor.

27 MR. PERETZ: I don't, Your Honor. All I request is to
28 admit 47, 48, 49 into evidence, Your Honor.

1 THE COURT: Any objections?

2 MS. FITZSIMMONS: Oh, I object only that I think that
3 those exhibits are outside the scope. And they were not
4 disclosed as part of the limited discovery we were permitted.
5 And I don't think they should be admitted for that reason. But
6 subject to those objections, I don't have other objection.

7 THE COURT: All right. Those objections are overruled.
8 Those exhibits, I think it's 46 through 49, are admitted.

9 Who's the next witness?

10 MR. PERETZ: Your Honor, I believe it was 47, 48, 49.

11 THE COURT: 47 through 49. Thank you.

12 *(Whereupon, Exhibit Numbers 47, 48 and 49, previously*
13 *marked for identification, were admitted into evidence.)*

14 THE COURT: Who's their next witness?

15 MS. FITZSIMMONS: We'll call Mark Fratkin.

16 THE COURT: All right. Let me admit Mr. Fratkin...

17 And I... so, in all candor, I'm not sure what to do with
18 Mr. Khan and my mouse here.

19 I think... I don't want to remove him, because I think
20 that would remove him from the call altogether, but I don't
21 know how to demote him to become an attendee rather than a
22 panelist.

23 Do one of the clerks or the court reporter know?

24 MR. KHAN: Your Honor, if you want me to stop my video or
25 mute myself, I can do that.

26 THE COURT: Why don't you do both those things, if you
27 don't mind, sir. Okay.

28 MR. KHAN: Am I excused, Your Honor?

1 THE COURT: You are.

2 MR. KHAN: Thank you.

3 THE COURT: Needless to say, you need not remain on the
4 call. I'm was just trying to figure out how to adjust your
5 status here.

6 MR. KHAN: Thank you, Your Honor. Thank you.

7 THE COURT: All right. Mr. Fratkin, I do see you on the
8 screen. Welcome, sir.

9 Please raise your right hand to be sworn by the
10 reporter -- I'm sorry, by the clerk.

11 MARK BRUCE FRATKIN,

12 Called as a witness for the Defense, having been duly sworn,

13 testified as follows.

14 THE CLERK: Please state and spell your complete name for
15 the reported.

16 THE WITNESS: Mark Bruce Fratkin, M-a-r-k, B-r-u-c-e,
17 F-r-a-t-k-i-n.

18 THE CLERK: Your witness, counsel.

19 MS. FITZSIMMONS: Thank you.

20 DIRECT EXAMINATION

21 BY MS. FITZSIMMONS:

22 Q. Good afternoon, Mr. Fratkin. Thanks for your patience.

23 I know we've heard a lot of allegations about you, and I'm
24 going to give you an opportunity to respond to those. But
25 first I want to just get a little bit of background
26 information.

27 Can you tell us what your current job title is at
28 Greenspan?

1 A. I actually don't technically have a job title.

2 Q. What -- how would you describe your position at the
3 company?

4 A. Uh... I am the highest level administrator at the company,
5 involved in anything and almost everything as far as the --
6 primarily sales, marketing, and business development. Anything
7 that does not require licensure.

8 Q. And how long have you worked for Greenspan?

9 A. Approximately 25 years.

10 Q. Are you a public adjuster?

11 A. I am not a licensed public adjuster.

12 Q. So how is it that you're authorized to work at Greenspan?

13 A. Well, as far as being authorized to work at Greenspan, I
14 have a -- I think it's called a 1033C waiver by the California
15 Department of Insurance, which is sort of putting the -- I
16 guess cart before the horse, as -- anyway, I'm not a licensed
17 public adjuster and I have a 1033C waiver.

18 Q. And what -- well, let's talk about that for a moment.

19 We've heard a lot about you being a convicted felon. Are
20 you a convicted felon?

21 A. There's never a simple answer to that question when I'm
22 asked it. Because I was granted a relief under 1203.4 of the
23 Penal Code, I did plead nolo contendere to two felonies in
24 1991.

25 I was subsequently granted relief that allows me to say I
26 was not convicted of a felony for anything other than licensing
27 or public office. So technically yes and technically no.

28 Q. Okay. So is this whole criminal -- we'll just call it

1 your criminal background, if you don't mind. Is this criminal
2 background of yours, is it some super secret thing that, you
3 know, you don't talk about?

4 A. No, no it is not.

5 Q. Why not?

6 A. Um... I made some mistakes.

7 I was for over 20 years addicted to drugs and alcohol. I
8 crashed, I burned, I hit my bottom in 1991.

9 I was a licensed public adjuster; I was licensed from the
10 time I was a teenager in New York.

11 I was pretty good at what I did but I made some mistakes.
12 And I got into recovery in 1991;

13 I surrendered my public adjusters license to the
14 Department of Insurance;

15 I paid my debt to society;

16 I spent almost over a year in work furlough, close to a
17 year;

18 I paid my restitution;

19 I did everything that was required of me;

20 And I don't see it... I don't see it as this horrible,
21 horrific thing; it is something that I've grown out of and
22 grown from.

23 I -- I live in a world of 12-step recovery; I live by
24 certain moral codes that have to do with honesty and integrity
25 and open mindedness, and looking at my part in things. And I
26 take a lot of pride in that.

27 And the company I work for has embraced people -- a
28 diverse population. There are others in the company who've had

1 colorful pasts, for lack of a better description, and they make
2 amazing, amazing employees.

3 So I have no shame around it.

4 In A.A. we would say, "I don't regret the past but nor do
5 I wish to shut the door on it."

6 And I learned from it and I moved forward from it.

7 I'm sorry I took so long.

8 Q. No, that's okay.

9 So you were talking about this 1033 insurance thing when I
10 asked you about how you -- how it is that you're able to work
11 at Greenspan?

12 Can you explain what exactly you meant by that?

13 A. Well, I believe I can work at Greenspan because I don't do
14 any -- I'm no different than a secretary, an administrative
15 assistant, a phone operator, a paralegal, you know, those are
16 the things that I do.

17 I don't deal with clients;

18 I don't deal with anything that has to do -- that requires
19 a license. So I mean with or without a 1033C from the
20 Department of Insurance, again, I'm no different than any other
21 employee that doesn't do public adjusting.

22 Q. I want to switch gears a little bit and talk about
23 Mr. Khan. How long have you known him?

24 A. Since he was hired.

25 Q. Okay. And how closely did you work with him during the
26 time that he was employed at Greenspan?

27 A. Uh... my world was primarily and still is sales, marketing
28 and business development.

1 Masood was brought on as, I use the term professional
2 public adjuster and eventually assistant general counsel.

3 So our paths did not cross on a regular basis.

4 We would get hired to handle a claim;

5 He would be assigned to handle the claim;

6 My involvement with him would be incredibly limited, other
7 than from the perspective is I would want to see him secure a
8 letter of commendation, or a good reference so that we could
9 use it for other things.

10 We had a lot, a lot of sales -- we're a sales-based
11 company. We are a sales-based company, from the top down. And
12 we believe that we know a good process for securing new
13 clients.

14 So I didn't have a lot of involvement with Masood.

15 Q. Okay. Let me just kind of get to the meat and potatoes
16 here.

17 A. Sure.

18 Q. Would you ever send out e-mails on behalf of Mr. Khan?

19 A. Yes, I did.

20 Q. And under what circumstances would you do that?

21 A. I did it for him and -- and I make this clear, it wasn't
22 just I. There were -- there were roughly six or seven people
23 who have access to this GreenspanAI address that do on a
24 regular basis, every day, send out e-mails from it.

25 And there is a reason for it and protocol behind it and a
26 logic behind it.

27 Q. Let's start with -- explain to us the reason and the logic
28 and the protocol behind that.

1 A. We are firm believers that, in sales, when someone picks
2 up the phone and calls you or sends you an e-mail, they are in
3 a buying mode. And when that person is in a buying mode,
4 that's when we want to communicate with them.

5 So our sales staff, and in this particular case, the basis
6 of this hearing, Mr. Khan and the adjusting staff, are involved
7 in meetings; they're involved in day-long hearings and things
8 like that.

9 And if a sales e-mail is sent from *Joe@Greenspan-AI* and he
10 says, "I'd love to handle your claim." And Joe writes back an
11 hour later and says, "what do you charge? I'm ready to hire
12 you." And Joe is busy all day long and doesn't get back to
13 that e-mail till tonight or the next day, then we've missed a
14 sales opportunity.

15 So we set up a generic e-mail address so that if Joe
16 writes back and responds to whoever's signature is on there,
17 because it all comes back to the same address, then one of
18 five, six, seven people who get that response will say, *whoa,*
19 *Joe wrote back.*

20 *Masood, or Joe, is in a meeting. Why don't we have Steve*
21 *call him, Reno, call him, Richard call him. Let's talk to this*
22 *prospect when he's ready to buy.*

23 That's the purpose of it.

24 Q. Did you ever send e-mails directly from someone's e-mail
25 address, so -- not from the AI address but from their actual
26 e-mail address?

27 A. On occasion I did.

28 Q. And so under what circumstances would you do that?

1 A. An example might be a dialogue starts between, I'm gonna
2 use Steve as an example. Someone reaches out to Steve
3 directly, has his business card;

4 They end up in a dialogue about services;

5 And Steve might pick up the phone and say, *hey, Mark, can*
6 *you help me with an e-mail. This is what I want to write...*
7 *because I am a writer. This is what I want to write, this is*
8 *what I'd like to do.*

9 Owing to our library of e-mails that we've used over and
10 over again, copy, paste, put something together.

11 And Steve might say, *you know, because we've had this*
12 *dialogue so far, between him and me, let's not confuse him;*
13 *let's send it from my e-mail address.*

14 And in those cases we might do that. It doesn't happen
15 very often but we've done that.

16 Q. Okay. And do you recall ever doing that with Mr. Khan?

17 A. I can't, as I sit here today, tell you I ever have. I
18 don't believe I ever have but, again, fifteen years and I'm not
19 the youngest guy here and... it's possible I forgot but I don't
20 believe so.

21 Q. Did you ever send an e-mail during your employment with
22 Greenspan from somebody else's e-mail address without that
23 person's consent or authorization?

24 A. It's really scary to say *never*, but as close to *never* as I
25 can say, I can't ever remember doing that. I can't even
26 imagine having a reason to do that.

27 Q. When you would send e-mails from this *GreenspanAI* e-mail
28 account on behalf of, let's say, Mr. Khan, would Mr. Khan

1 receive a copy of that e-mail?

2 A. Yes, he would generally -- and, again, I just want to be
3 clear: It's not just me; there's more than me who send these
4 e-mails. But when an e-mail would be sent from Masood, Masood
5 would be generally bcc'd on every one.

6 We had a protocol where we did not show them a cc so as
7 not to confuse the prospect, but we had a protocol to always
8 bcc the salesperson.

9 Q. And would the person who -- like, so when you would send
10 it from this GreenspanAI account on behalf of somebody else,
11 did the person on behalf of whom you were sending it know that
12 you were sending it in advance? Is that part of the protocol?

13 A. Probably 90 some odd percent of the time, yes.

14 Q. And what about the other percent? Under what
15 circumstances would it be where they wouldn't know about that?

16 A. Well, they would know about it at some level. So for
17 argument's sake, a salesman picks up the phone and, says, *hey,*
18 *Liz, Mark, Chad, I need an e-mail to go out on this. Can you*
19 *get it out?*

20 Now, if they were standard, and there's a lot of them that
21 are just the same thing over and over again every single day,
22 then they wouldn't see it before this went out. It would go
23 out. They would get a copy of it.

24 Then we get into the more complex ones. A perfect example
25 is the one that you used as an exhibit earlier: Masood asks
26 for something to go out;

27 We craft it;

28 We sent it to him;

1 We get his input on it, until its honed and the tone and
2 tenor of it fit the situation;

3 And then it goes out, send.

4 THE COURT: I'm going to ask -- Mr. Peretz, would you mind
5 pulling up Exhibit 47, because I don't have a copy of that.

6 MR. PERETZ: Sure... Is that -- which date is the e-mail?
7 To make sure that I have...

8 THE COURT: My notes reflect it's January 10, 2018. It's
9 an e-mail.

10 MR. PERETZ: January 10th, okay. One second...

11 Okay. I'll share it and let me know.

12 MS. FITZSIMMONS: Thank you.

13 MR. PERETZ: If you want me to scroll... this is the one;
14 correct?

15 MS. FITZSIMMONS: Yes.

16 BY MS. FITZSIMMONS:

17 Q. So this is an e-mail that Mr. Khan just testified about
18 from January 10th, 2018. And I wanted to ask you about this
19 e-mail.

20 Why is it -- why did you send this e-mail to Mr. Khan?

21 A. So, I think... I think -- I think it's important to at
22 least communicate that this is not the Mark Fratkin Show; that
23 protocols and policies at the Greenspan Company are not set by
24 Mark Fratkin; they're set by management committee, which
25 consists of a number of different people, the officers of the
26 company. And I am part of that management committee. I am
27 part of that group.

28 We agree, as a group, to policies. And my job, my role is

1 to execute those policy, as is Clay's, as is Steve's, as is
2 everybody from the president down.

3 We have sales policies in place. And what this is
4 significantly about is money.

5 We have sales policy -- so it's important to understand
6 that for every sale, a salesperson receives a commission of 20
7 percent of our fee, approximately.

8 And that sales commission is shared equally amongst sales
9 people. Sales people are competitive. They would like to have
10 the whole 20 percent; they don't want to share it with others;

11 And our policy has always been that -- on what we call a
12 seated meeting. When there is a meeting, when someone calls up
13 and says, "I have a meeting with Joe and his wife next
14 Tuesday," our policy is that two sales people go to those
15 meetings.

16 Because we believe -- right or wrong, we believe that we
17 secure more business and do a better job when one person is
18 speaking and the other person is listening and watching body
19 language.

20 Where this all comes apart a bit is -- and what this
21 e-mail is about is about... our insisting that two people go to
22 meetings and certain people, or some people, including Masood
23 but not limited to Masood, not wanting to take two people to
24 those meetings.

25 That's what this is all about --

26 Q. So how many people did Mr. Khan want to take to those
27 meetings?

28 A. Mr. Khan didn't want to take any people to those meetings.

1 And that is in fact what caused that friction.

2 Mr. Khan would get called and referred to a claim. It
3 might be many millions of dollars. And I would say, okay, *who*
4 *do you want to take? Or who should you take?* Or tell him who
5 to take. And he would say, *I don't want to take anybody.*

6 And that's -- that's where the... that's where the sand in
7 the gears came.

8 Q. And then if you -- Mr. Peretz, if you don't mind scrolling
9 to the bottom of this...

10 What did you mean at the end when you said:

11 "I hope you'll consider what I left you with.

12 'What do you want our relationship to look like
13 moving forward?' Especially about trust?'"

14 What did you mean by that?

15 A. He and I had discussed a number of things that had
16 happened up in the Santa Rosa fire, where there were claims...
17 I met -- and, again, I would have to go back and dig, but there
18 were claims of how Masood met someone;

19 Why he didn't call;

20 Why he took a meeting without a second person and didn't
21 reach out to me, or Gordon, or Steve, why he didn't communicate
22 this;

23 He would pick up the phone and say, *I have a meeting in*
24 *fifteen minutes.*

25 *When did you know about the meeting?*

26 *I was too busy to call you.*

27 A lot of stuff that you would call at the moment hearsay,
28 but these were the dialogues.

1 And I brought those up and said, *in order for us to work*
2 *together, we have to have a trusting relationship.* "If I don't
3 feel or believe that you're communicating honestly with me --
4 when I get a phone call that says I have a meeting in five
5 minutes that I subsequently find out was set the night before,
6 that creates a trust issue.

7 And I did in fact have trust issues with Masood.

8 MS. FITZSIMMONS: Thank you, Mr. Peretz. I'm done with
9 that. If you don't mind taking it down. Thank you.

10 MR. PERETZ: Sure...

11 BY MS. FITZSIMMONS:

12 Q. So did you personally benefit from sending out these
13 e-mails from the *GreenspanAI* account under other People's
14 names?

15 A. Well, to the extent that the company does well, I do well.
16 But I don't do any better by anybody; in fact, the people that
17 benefit from these e-mails that I/we send out are, in this
18 case, Masood, or Steve, or whoever it is we're sending it out
19 over, because we're supporting them; we're supporting their
20 success. So...

21 Q. So who would benefit more when you would send those
22 e-mails out? You or, let's say, Mr. Khan, when you would do it
23 on his behalf?

24 A. Mr. Khan would benefit ten times more than I.

25 Q. And so why is that?

26 A. Well, Masood's commission on any piece of business signed
27 is 20 percent. So if we sent out an e-mail over his signature,
28 and I don't believe I ever, ever sent out an e-mail over

1 Masood's signature, or we did, that didn't have anything to do
2 with sales, if that sale was consummated, Masood Khan would
3 make 20 percent of our fee.

4 And our average fees in Santa Rosa were \$180,000; so that
5 would be \$36,000 if that e-mail landed an account.

6 So if we moved that process forward quickly, he would
7 benefit.

8 Q. I want to just switch gears for a moment and talk about
9 this issue of e-mail retention that we heard a little bit
10 about.

11 Does the company, to your knowledge, have a policy about
12 the retention of e-mails or a practice related to that?

13 A. Yes, we do.

14 Q. How do you know that?

15 A. One of my responsibilities over the years has been the
16 oversight of the I.T. department.

17 Q. And so what is the company's policy or practice with
18 respect to the retention of e-mails?

19 A. Well, first of all, we don't have e-mail servers on our
20 premises anymore; we switched to a thirty-party vendor called
21 Intermedia.

22 And to be rough, I probably -- it was about seven, eight,
23 nine years ago, but we've been with them for quite sometime.

24 In addition to that, as an added layer of security for us
25 and the company, we have another vendor that operates in sync
26 with Intermedia that arc -- that is an archiving company that
27 archives every single e-mail when it -- when it is generated.
28 Nothing can be deleted. Nothing can be changed. It is a

1 read-only archive. There you go.

2 And I don't remember the name of the company, but that's
3 been in place for many, many years.

4 Q. At least since 2017?

5 A. Oh, well before that.

6 Q. Okay. Now, I want to talk now about the 2018 arbitration
7 agreement.

8 We heard some testimony from Ms. Hassanpur about you being
9 the last one to sign the arbitration agreement. Is that
10 correct; that you were the last person to sign the arbitration
11 agreement as far as you're aware?

12 A. Yes.

13 Q. How do you know that?

14 A. Uh... I kind of didn't want to sign it.

15 And... I have a couple of -- a couple things that I've
16 followed my whole life, sort of philosophies, whatever you want
17 to call them.

18 I don't buy insurance, extended warranty contracts on
19 washers, dryers, refrigerators, copiers, you name it. I just
20 don't. And I have reason for that;

21 And I don't like to give up my rights to litigate.

22 It's not that I don't believe in arbitration agreements,
23 but I don't want to give up the option to litigate.

24 And I even walked away from buying a car once when the car
25 agency wouldn't take that out of their agreement, because I --

26 Q. Why did you end up signing the arbitration agreement with
27 Greenspan?

28 MR. PERETZ: Relevancy, 352.

1 MS. FITZSIMMONS: It's relevant, Your Honor, because it's
2 the -- this idea that the company...

3 THE COURT: I'll allow it.

4 MS. FITZSIMMONS: Thank you.

5 THE COURT: I'll allow it. Let's move along here. It's
6 getting towards 4 o'clock.

7 MS. FITZSIMMONS: Yes, Your Honor.

8 THE WITNESS: Because Gordon Scott picked up the phone and
9 called me. Gordon's president of the company. And basically
10 said, *everybody else in the company has signed it*, including
11 all of the principals. *You're the only one left that hasn't.*
12 *And if you don't sign it, please don't put me in this position,*
13 *but I'm going to have to let you go.*

14 MR. PERETZ: Move to strike; hearsay.

15 THE COURT: Well, there's been a lot of hearsay --

16 MS. FITZSIMMONS: It's state of mind.

17 THE COURT: There's been a lot of hearsay in this hearing.
18 And I'm going to allow it and give it the weight to which its
19 entitled.

20 MS. FITZSIMMONS: Thank you.

21 BY MS. FITZSIMMONS:

22 Q. Did Mr. Khan ever express to you that he wasn't going to
23 sign the arbitration agreement?

24 A. No.

25 Q. During the time that you worked with Mr. Khan at
26 Greenspan, did you ever forge his signature on a document?

27 A. I'm going to take *forged* to mean physically or
28 electronically. And within that framework, no, I have not.

1 Q. Did you forge Mr. Khan's signature on the arbitration
2 agreement?

3 A. Absolutely not.

4 MS. FITZSIMMONS: I have no further questions.

5 THE COURT: Cross, Mr. Peretz?

6 MR. PERETZ: Yes, I have some questions.

7 CROSS-EXAMINATION

8 BY MR. PERETZ:

9 Q. So, Mr. Fratkin, you were convicted of three counts of
10 embezzlement of fraud that involved over a million dollars of
11 allegedly embezzled funds; correct?

12 A. That is correct.

13 Q. Okay. And that was in 1991; correct?

14 A. That is correct.

15 Q. And then your license as a public adjuster was revoked;
16 correct?

17 A. I surrendered it, but I'm sure it would have been revoked.

18 Q. Okay. And you never obtained any license since that time;
19 correct?

20 A. No, I have not.

21 Q. And without a license, a public adjuster license, you
22 cannot -- you're prohibited from solicitation of public
23 adjusting work; correct?

24 A. You're asking me to interpret the law here. And I'm
25 not -- but the... I'm not sure I'm qualified.

26 Could you rephrase that question for me, please?

27 Q. Sure. Your understanding, you had -- at some point you
28 had a license; correct?

1 A. Correct.

2 Q. And your understanding is, that without a license, you
3 cannot solicit public adjusting work from clients; correct?

4 A. Correct; I agree with that.

5 Q. And you cannot -- you cannot serve in a sales position
6 because you didn't have a license after you were convicted;
7 correct?

8 A. Correct. And I never have.

9 Q. Okay. You were the director of sales at Greenspan ever
10 since, I would say, the last five or six years; correct?

11 A. As I said, I don't technically have a title but... I
12 effectively performed those functions, yes.

13 Q. You are effectively the director of sales of Greenspan's
14 for many years; correct?

15 A. Those are your words, not mine, but that's the role that I
16 act in, yes.

17 Q. And you don't have effectively a title because Greenspan
18 doesn't want to expose the fact that someone who's not -- does
19 not have a license and his license was revoked, he's serving in
20 a position that he's prohibited by law; correct?

21 MS. FITZSIMMONS: Argumentative; calls for attorney-client
22 communication; it's not relevant.

23 THE COURT: Sustained.

24 BY MR. PERETZ:

25 Q. Sir, you saw the e-mail that you were not to be copied on
26 e-mail, only bcc. Do you remember that?

27 A. Yes, I do.

28 Q. You sent this directive to all Greenspan employees;

1 correct?

2 A. Well, technically it was Clay Gibson. That's a machine
3 that automatically sends out e-mails. But the answer to that
4 question is effectively yes.

5 Q. You sent it on behalf of Clay Gibson; correct?

6 A. That's correct.

7 Q. And the reason why you sent out this directive is because
8 you didn't want to expose the fact that you're doing unlicensed
9 work; correct?

10 A. I think that's a conclusion that you've drawn; that is not
11 correct.

12 Q. So what was the reason you're not to be copied by bcc,
13 carbon copied, blind carbon copied on e-mail? What was the
14 rationale behind this directive to all employees at Greenspan?

15 A. When I was hired, the principals of the company were all
16 well aware of my background:

17 They knew me before;

18 They knew me during my problem;

19 They knew when I got into trouble;

20 They knew when I left the industry. These were people,
21 it's a small industry, and they knew me.

22 When they extended an offer to me to work for them and
23 with them because of the skills that I have and that I bring,
24 everyone made it clear, from day one through today, that I am
25 not to do anything that involves dealing with a client.

26 We have -- we have worked laboriously to make sure that I
27 do not do anything with clients, for clients, directly
28 communicating with clients, in any way, shape or form.

1 And we would have people who would come into the company,
2 a new adjuster, and they understood my position. It was a
3 relatively high position. And he would send a cc of something
4 that he sent to the insurance company because he wanted me to
5 see it, not because I was involved in the adjustment, because
6 he wanted me to see what a great job he did, or she did, or
7 what was going on. And what we didn't want to do -- what we
8 don't want to do was put my name out there because we didn't
9 want an insurance company to ask questions.

10 It wasn't because I was doing anything; it's because --
11 look, we're the little guys; we're the David versus Goliath;
12 the insurance company would like nothing more than to find a
13 reason to come after us.

14 And so it was real simple: Don't cc Mark because he's not
15 doing anything that needs to be cc'd in that vein; we don't
16 need the other side to see this. That's the reason.

17 Q. So there's a directive that you're not copied to e-mails
18 but you're... bcc'd. So you get copies of all communications
19 of sales, effectively; correct?

20 A. Well, sales, yes.

21 That e-mail that you're talking about was an e-mail to the
22 adjusting group; that was not an e-mail to the sales group. So
23 that was to adjusters. That was the professional staff, not
24 the sales staff.

25 Q. And there's another directive that no one can send out
26 sales e-mails but they're going to be sent from a general
27 inbox, or general address that you control; correct?

28 A. You make it sound like I'm the only one in the company and

1 that's it's under my care, custody, and control.

2 There are seven or eight people who have access at all
3 times to send e-mails from those addresses; it's not just me.

4 For example, Masood could pick up the phone and call Liz
5 and say, *Liz, send out an e-mail, over my signature, and this*
6 *is want in it;*

7 Or, *Chad, send out a sales e-mail and include Santa Rosa*
8 *references and blah, blah, and send it over my signature;*

9 Or Michael, or Steve, or Gordon.

10 There's a whole group of people who can do this. This is
11 not a secret; this is not a nefarious... it just is.

12 Q. You control all three employees; they all report to you;
13 correct?

14 A. No. When you say, "all these employees" --

15 Q. No. The one that supposedly used this general inbox are
16 all your direct reports; correct.

17 A. Uh, no. That's not a correct statement.

18 Q. Who is not your direct report? You're under oath. Who is
19 not your -- your direct report, who has access to this general
20 AI address?

21 A. Gordon, Steve, Paul, I... don't know -- Clay probably
22 does. I don't know that they know it. I don't know that
23 they've ever used it, but they all have access to it.

24 Q. The others are employees in the same -- in the sales
25 department that worked -- that work under your directive;
26 correct?

27 A. The other ones, other than the three that I just
28 mentioned; yes.

1 Q. Okay. Thank you.

2 Now, this waiver, 1033C waiver, you only obtained it in
3 2019; correct?

4 A. That is correct.

5 Q. You never had it before 2019, and you only obtained it
6 after this lawsuit was filed and pending; correct?

7 A. After someone -- after Mr. Johnson filed a complaint with
8 the Department of Insurance and the Department of Insurance
9 reached out; that is correct.

10 Q. Okay. And you are the director of operations of
11 Greenspan; correct?

12 A. That is not correct.

13 Q. Weren't you appointed in 2014 as the Director of
14 Operations of Greenspan?

15 A. As I said, I -- I've had -- I've done a lot and I've --
16 and... I don't know that I've ever actually had that title. I
17 certainly never had a business card with that title.

18 Q. I understand, because a business card is something that is
19 distributed externally.

20 But weren't you internally appointed to be the Director of
21 Operations of the company --

22 MS. FITZSIMMONS: Argumentative.

23 MR. PERETZ: -- in 2014?

24 THE COURT: Overruled; you may answer.

25 THE WITNESS: I have been involved in almost every aspect
26 of the Greenspan Company as we, as a group of people who manage
27 the company, with the president counsel, assistant general
28 counsel and so on, get together and come up with policies and

1 what to do.

2 I have a lot of roles and a lot of tasks. And those tasks
3 may involve the management of the company;

4 They may involve the finances of the company;

5 They may involve the I.T. of the company;

6 They may involve the sales of the company.

7 I have more institutional knowledge than most, perhaps
8 anyone at Greenspan. I've been in this industry for fifty
9 years. And they use my knowledge and ability to help to grow
10 and to maintain the company.

11 And if my -- if my talents are organizational, as far as
12 management, then they're used for that benefit.

13 BY MR. PERETZ:

14 Q. You effectively run Greenspan; aren't you?

15 A. I do not.

16 MR. PERETZ: Okay. I have no further questions, Your
17 Honor.

18 THE COURT: All right.

19 Given the time here, I think we're gonna move on to the
20 final witness.

21 Thank you very much, Mr. Fratkin.

22 MS. FITZSIMMONS: Thank you.

23 THE COURT: And that is Ms. Pak; is that correct?

24 MS. FITZSIMMONS: Yes, Your Honor.

25 THE COURT: I'm admitting her...

26 Ms. Pak, good afternoon.

27 MS. PAK: Hi. Good afternoon.

28 THE COURT: Let me ask you to raise your right hand and be

1 sworn by the clerk, please.

2
3 DINH LUONG PAK,

4 Called as a witness for the Defense, having been duly sworn,

5 testified as follows:

6 THE CLERK: Please state and spell your complete name for
7 the record.

8 THE WITNESS: Dinh Luong Pak, D-i-n-h, L-u-o-n-g, P-a-k.
9

10 DIRECT EXAMINATION

11 BY MS. FITZSIMMONS:

12 Q. Good afternoon, Ms. Pak. Thank you for your patience. I
13 know it's -- you've waited around long time to be called to
14 testify as our final witness today.

15 I'm Marcie Fitzsimmons. I represent the Defendants in
16 this action.

17 You were an executive assistant at Greenspan from
18 approximately May 2012 until June 2019; is that right?

19 A. That's correct.

20 Q. And now you work for SunPoint; is that right?

21 A. That's correct.

22 Q. And that's the same place where Mr. Khan works now; right?

23 A. Yes.

24 Q. So you left Greenspan to start at SunPoint, just a few
25 months after Mr. Khan left Greenspan; is that right?

26 A. ... I don't remember exactly when he left Greenspan.

27 Q. Mr. Khan actually helped you get the job that you have now
28 at SunPoint; right?

- 1 A. I don't understand the question.
- 2 Q. Did Mr. Khan help recruit you over to SunPoint?
- 3 A. No.
- 4 Q. So was the fact that Mr. Khan was at SunPoint, did that
5 have anything at all to do with your reason for going to work
6 there?
- 7 A. I did not go to work at SunPoint because of Mr. Khan.
- 8 Q. Did Mr. Khan's presence there have anything to do at all
9 with your reason for going over to SunPoint?
- 10 A. Can you rephrase that?
- 11 Q. Sure. Was the fact that Mr. Khan was at SunPoint, did
12 that have anything at all to do with why you decided to go to
13 SunPoint?
- 14 A. No, I didn't leave Greenspan to go to work at SunPoint
15 because of Mr. Khan, or for Mr. Khan.
- 16 Q. Mr. -- is Mr. Khan one of your bosses now?
- 17 A. I work for several public adjusters and I do have five
18 bosses.
- 19 Q. And is he one of them?
- 20 A. Yes.
- 21 Q. And was he one of your bosses at Greenspan, as well?
- 22 A. No.
- 23 Q. During the time that you were at Greenspan, you worked as
24 sort of the right hand to public adjusters; right?
- 25 A. Yes.
- 26 Q. And that -- did that include Mr. Khan?
- 27 A. No.
- 28 Q. So you were never -- you never considered yourself

1 Mr. Khan's right hand?

2 A. Correct.

3 Q. Okay. When you worked at Greenspan, you would sometimes
4 scan documents using the Konica scanner; is that right?

5 A. Yes, I did that often.

6 Q. Okay. And you would sometimes scan documents on behalf of
7 the public adjusters that you did work with?

8 A. I did -- I scanned documents on behalf of the clients and
9 the claims I worked on.

10 Q. Okay. And sometimes you did that at the request of the
11 public adjusters?

12 A. ... Correct.

13 Q. And you would use the Konica scanner to do that?

14 A. Yes.

15 Q. And did you also observe the public adjusters themselves
16 scanning documents from the Konica scanner?

17 A. Not really... no. The adjusters were hardly in the
18 office.

19 When they did come in, they would -- for example,
20 Mr. Larsen was our adjuster and I assisted him. He would come
21 in and give me documents. And I would be the one that would be
22 scanning them. So he didn't know how to the work the copier.

23 Q. Okay. Now, attached to your declaration on behalf of
24 this -- of this case were some notary pages. Do you remember
25 that?

26 A. Yes.

27 Q. How long have you been a notary for?

28 A. Since 2013.

1 Q. Okay. So I want to just take a look at those notary pages
2 now.

3 Matt, could you please pull up Exhibit 21...

4 And, if you can, Matt, just slowly go through Exhibit 21
5 just page by page, so Ms. Pak can see it all.

6 And then once you've done that, Matt, if you could please
7 return to page 2 of Exhibit 21.

8 And while Matt proceeds to go through that and -- those
9 pages, my question to you is is any of the handwriting on any
10 of those pages your handwriting?

11 A. Yes.

12 MR. PERETZ: Object; that's... okay. Withdraw.

13 BY MS. FITZSIMMONS:

14 Q. So can you point out an example of what handwriting on
15 those pages is yours? For example, let's -- actually, Matt,
16 why don't you go to page 2 of this document.

17 Is any of the handwriting here, for example, your
18 handwriting?

19 A. Yes. Everything in the book was my handwriting except for
20 the signature and the thumb print, of course.

21 Q. Okay. Now, I also noticed on this same page that it looks
22 like, at the bottom there, if you look at the very bottom, it's
23 kind of cut off, but it looks like it says, "Steve Severaid."
24 Is that what that says there at the bottom?

25 A. Right.

26 Q. And what was his position at Greenspan when you left the
27 company?

28 A. I understood it as a director and principal of the

1 company.

2 Q. Okay. And so you served as a notary during the time that
3 you were at Greenspan for a number of Greenspan employees, not
4 just Mr. Khan?

5 A. Correct.

6 Q. And do you still have your notary records reflecting all
7 of the different times that you notarized documents for
8 Greenspan employees?

9 A. I do. I actually brought the book, just in case you guys
10 need it to be reviewed.

11 Q. Okay. Terrific?

12 Well, kind of hard to do right now, but I appreciate you
13 bringing that.

14 So that book contains other individual signatures and
15 writing -- other than Mr. Khan; correct?

16 A. Yes.

17 Q. But the only notary pages that you provided to Mr. Khan's
18 counsel in this case were those of Mr. Khan; correct?

19 A. Yes. It is my duty to keep the privacy of people who sign
20 the book or that I've done notary for; so I -- I took the... a
21 lot of time to cover up the pages.

22 And because the book is -- goes across, length-wise up
23 both sides, so I had to cut it double side, print it. That's
24 why it looks the way that it does.

25 Q. If you had wanted to get, let's say, somebody else's
26 permission to show the handwriting or the signatures of other
27 people's employees, you could have asked for that -- their
28 permission; correct?

1 A. I'm sorry. Repeat that.

2 Q. If you wanted to, let's say, provide signatures of
3 other -- or handwriting of other employees from the notary book
4 from Greenspan, all you would have had to do was just ask those
5 individuals if you had permission to provide that information;
6 correct?

7 A. Yes.

8 Q. But you didn't do that thought; right?

9 A. For other employees?

10 Q. Correct. Like, for example, you didn't ask Steve Severaid
11 if you could provide his signature and information from the
12 notary book to Mr. Khan's counsel; correct?

13 A. Right.

14 Q. Okay. Did you tell Mr. -- did you have any communications
15 at all with Dr. Mohammed, Mr. Khan's handwriting expert?

16 A. No.

17 Q. Okay. Did you communicate to anybody that the -- the only
18 handwriting on these notary pages that's Mr. Khan's is the
19 signature; and that the printing was actually your printing?

20 A. I advised Mr. Peretz that that is my notary book, and that
21 was all my handwriting; correct.

22 Q. Okay. Now, when you were -- Matt, you can take that off
23 now. Thank you.

24 When you were at Greenspan, the public adjusters did a lot
25 of traveling; correct?

26 A. Yes.

27 Q. And you would assist them sometimes with their travel
28 arrangements as part of your job duties; right?

1 A. Yes.

2 Q. And you would assist them as much as you could while they
3 were traveling; so they would be gone, like you had said, and
4 you would sort of handle things on the ground at the office; is
5 that right?

6 A. Yes.

7 Q. So, for example, you would prepare and submit documents to
8 insurance carriers while the public adjusters were traveling
9 and unable to do that, that type of thing?

10 A. With their approval, yes.

11 Q. And you would follow up on other outstanding items that
12 they would -- you know, action items, or administrative tasks
13 that they would ask you to do for them while they were
14 traveling?

15 A. Yes.

16 Q. And from time to time during the time that you were
17 employed at Greenspan, the public adjusters would ask you to
18 sign something on their behalf; correct?

19 A. Only on letter of rep. That was the protocol in the
20 beginning of my employment with Greenspan.

21 THE COURT: Only on what? I'm sorry?

22 THE WITNESS: Only on letter of representations.

23 THE COURT: Okay.

24 THE WITNESS: Basically just notifying the insurance
25 carrier that we are the representatives of the insured. And it
26 went out under the public adjuster's, I guess, signature.

27 BY MS. FITZSIMMONS:

28 Q. Okay. So it would have, for example, a public adjuster's

1 name. And then you would sign their name for them on those
2 letters?

3 A. Correct. But we would always put a slash and our initial
4 on it, stating that we signed it.

5 Q. Okay. And so you would never sign a document on behalf of
6 anyone without their permission; correct?

7 A. Correct.

8 Q. And did you sign those letter of representation documents
9 on behalf of Mr. Khan from time to time?

10 A. In the beginning, when I was only filling in for his
11 assistants.

12 Q. Okay. And so what time period was that?

13 A. 2012, 2013.

14 Q. Okay. Now, I want to pull up another document. This is
15 document -- Exhibit 10, please. And -- that page is fine.

16 Is this a document that you scanned for Mr. Khan, using
17 the Konica scanner on April 30th, 2018?

18 A. No.

19 Q. Okay. Do you recall all the documents that you scanned on
20 April 30th, 2018?

21 A. No.

22 Q. So is it possible that you scanned this and you just don't
23 recall doing it?

24 A. Mr. Khan did not come into the office often, so I'm fairly
25 certain that he did not have me scan this for him or to him or
26 anything like that.

27 Q. Okay. Well, Mr. Khan testified that he was in the office
28 on April 30th, 2018. So, with that in mind, is it possible

1 that he asked you to scan this document for him?

2 A. No, because he had his own assistant. If there was
3 anything that needed to be scanned, it would go to his
4 assistant.

5 Q. And who was that?

6 A. Maricris Lacap.

7 THE COURT: Can you spell that for the record, please?

8 THE WITNESS: M-a-r-i-c-r-i-s, L-a-c-a-p.

9 BY MS. FITZSIMMONS:

10 Q. And so sometimes -- did you observe Ms.... is it Lacap?

11 A. Yes.

12 Q. Did you observe Ms. Lacap scanning documents on behalf of
13 the public adjusters whom she was their assistant?

14 A. No, I do not follow her into the copier to make sure that
15 she scanned a document; I was doing my own work.

16 Q. Fair enough.

17 Did you and Mr. Khan have any discussions at any time
18 about his signing the arbitration agreement?

19 A. Not that I can recall.

20 Q. How about signing the employment handbook acknowledgement
21 form?

22 A. Not that I know of.

23 Q. Okay. Can you take that down, please...

24 Did you have a pretty close relationship with Mr. Khan
25 during the time that you were both working at Greenspan?

26 A. No, I would not say it would be close, the relationship.

27 Q. Okay. Did you communicate with Mr. Khan often about
28 business-related things during the time that you were both

1 working at Greenspan?

2 A. Only when I was filling in for his assistants.

3 Q. Okay. How often would that be?

4 A. It was only... when there was change of assistants, or
5 when they would be on vacation; as needed.

6 Q. Okay. So May 2018, fair to say maybe a few weeks out of
7 the year you would fill in for Mr. Khan's assistant?

8 A. Yes.

9 MR. PERETZ: Judge, the question is vague. I didn't hear
10 the year or the time.

11 THE COURT: Overruled; I heard the answer.

12 BY MS. FITZSIMMONS:

13 Q. And during the time that you would fill in for Mr. Khan's
14 assistant, what types of tasks would you do?

15 A. It was mostly scheduling for his clients.

16 He did a lot of conference calls; so a lot of it was
17 calendaring and updating his address book -- or contacts in
18 Outlook.

19 Q. Okay. Did Mr. Khan at any point ever express to you that
20 he wasn't going to sign the arbitration agreement?

21 A. We had no -- I had never had a conversation with him
22 regarding any acknowledgement or anything like that.

23 MS. FITZSIMMONS: Okay. I have no other questions for
24 you. Thank you very much.

25 THE COURT: All right. Folks, I think...

26 MR. PERETZ: I have one question, Your Honor.

27 THE COURT: One question? You have one question.

28 MR. PERETZ: One. You know when an attorney says one

1 question... but I'll stick to.

2 THE COURT: I'm gonna hold you do it.

3 MR. PERETZ: I know, I know.

4 THE COURT: What do they say in caucus? "I'm going to use
5 your words against you."
6

7 CROSS-EXAMINATION

8 BY MR. PERETZ:

9 Q. I have one question for you, Ms. Pak.

10 Did the Konica scanner have an I.D. and password that one
11 had to use before operating it?

12 A. No. The Konica copier never had a password from the time
13 I was there for the seven years, from May 2012, to when I left
14 in 2019, June, there was no password.

15 You would go into the -- you would go to copier;

16 You'd put your... your documents onto the feeder;

17 You hit the e-mail that -- of whoever you want to send it
18 to. Usually I send it to myself. Set that.

19 Scan's done.

20 MR. PERETZ: I have no further questions.

21 THE COURT: Okay. Ms. Pak, thank you for your patience
22 and for your testimony today.

23 THE WITNESS: Thank you, Your Honor.

24 MS. FITZSIMMONS: Thank you.

25 THE COURT: All right, folks. This has been a long slog,
26 let's talk about where we talk about where we go from here.

27 By my count there were -- first let's talk about exhibits.

28 There were 37 prenumbered exhibits through consecutive

1 numbering, we're now up to 49.

2 I'm gonna direct -- and some of those have been admitted
3 but, frankly, given the time constraints, I have not been as
4 punctilious about this as I otherwise would have been.

5 So I'm gonna direct counsel to sit down and try and reach
6 an agreement as to whether all of those exhibits should be
7 considered to be in evidence or something less than all of
8 them, and if there are any objections, to let me know that.

9 And, please, when you submit the proposed findings that I
10 have you submitting, and I can't recall at this point what that
11 deadline is but I think it's a week from today, is it not...
12 no, it's not; it's a week from Friday.

13 MR. PERETZ: Right. It's a week from Friday.

14 THE COURT: Submit to me, please, with those proposed
15 competing findings just very briefly a joint submission, if you
16 can, that tells me what your agreement is or is not with
17 respect to the admission of the exhibits, and whether there are
18 any as to which you disagree. Okay?

19 MS. FITZSIMMONS: How would you like us, Your Honor, to
20 get you the additional exhibits that are not in your binder?

21 THE COURT: So, if you can -- and both sides offered and,
22 in some cases, marked such exhibits.

23 If each side that did that can -- you know, the easiest
24 thing might be to simply scan them, and send them to me
25 electronically. But have them, please, clearly marked with the
26 numbers with which they were identified during the course of
27 the hearing; so that I can put them in this binder and have
28 ready access to them by number.

1 That would be Exhibits 38 through 49.

2 MS. FITZSIMMONS: Should that go to the contest e-mail
3 address?

4 THE COURT: That's the easiest way to get it to me.

5 I'll -- we'll talk with the clerk later about how exactly
6 we're gonna document all of this, in terms of what needs to be
7 filed with the Court, but I don't think we need to address that
8 right now.

9 MS. FITZSIMMONS: Okay.

10 MR. PERETZ: Do you also prefer like a hard copy? We can
11 deliver a hard copy of all of it.

12 THE COURT: You know, so much is being done on-line since
13 the pandemic that I'm entirely comfortable, particularly since
14 all we're talking about here is another dozen or so exhibits
15 and they're not lengthy. So I'm happy to get them just
16 electronically.

17 MR. PERETZ: Okay.

18 MS. FITZSIMMONS: And, Your Honor, one final question.

19 Is there a particular format that you would like this
20 evidentiary proposed order findings document prepared in?

21 THE COURT: What I had mind, again, is that each party
22 would separately submit to me, in Word format, so that it can
23 be edited by the Court, proposed findings of fact as to the
24 issue here, which we're all aware of, with -- ideally with
25 citations to key witnesses and key portions of the testimony by
26 the witnesses who have testified during the hearing.

27 As I indicated, it need not be exhaustive, but it should
28 cite to and ideally quote, and if there's a notable quote from

1 a particular witness or witnesses that you think warrants
2 highlighting, that should be included.

3 Basically -- you know, as we all know, the issue before me
4 is was a binding arbitration -- was an arbitration agreement
5 entered into between the parties here?

6 And, in particular, did Mr. Khan execute the arbitration
7 agreement that we're all familiar with here, as I guess it's
8 exhibit -- whatever it is that's included in one of these
9 exhibits. And so... that's all I can really say.

10 Whatever you think will be helpful to me, what I intend on
11 doing is, based on my own review -- my own perception of the
12 testimony, my own review of the declarations and exhibits, is
13 to prepare a proposed order here that would incorporate those
14 factual findings but would go ahead and address some of the
15 legal standards and some of the embedded issues here that have
16 already been addressed in the parties' briefing on the motion
17 to compel arbitration.

18 And I intend to circulate that proposed order to the
19 parties in advance of our scheduled hearing, whenever that is.
20 Is it the 19th, if I remember correctly? Whenever it is. As,
21 in effect, a tentative ruling;

22 And I will then hear oral argument on the regular Law and
23 Motion calendar on the 19th, or whatever the date is, both as
24 to the proposed findings of fact;

25 And as to any additional legal issues and authority that I
26 may address in that draft order.

27 MR. PERETZ: Understood. No question from our end.

28 I would only say, Ms. Fitzsimmons and I work through the

1 exhibits, and maybe we'll come up with some, you know, a more
2 abbreviated way, for you to rule on disputed exhibits.

3 So if there's, like, for example, a couple of exhibits
4 that are being disputed, we're gonna point it out to you, maybe
5 in a table or something, so you can rule on... It just makes
6 more sense. Because I doubt that there will be more than a
7 double of couple of documents that are in dispute.

8 THE COURT: I -- anything you can do to streamline the
9 process and make it easier for me will elicit gratitude on my
10 part, both counsel.

11 MR. PERETZ: Okay.

12 THE COURT: And I -- I mean the only other thing I would
13 note is that, of course, out of the 49 exhibits -- well, let me
14 just limit this to the prenumbered ones of 1 through 37, I
15 believe the witnesses were only shown half a dozen or so of
16 those.

17 It strikes me that -- and this is, of course, typical
18 trial practice too, right? I mean we always overdesignate and
19 over -- and are overly careful in advance. But to the extent
20 that you want to just stipulate that I can consider, for
21 example, Exhibits 1, 2, 7, 9, 11 and 12, and 17, 18 and 20,
22 which I think are the only ones that the witnesses were shown,
23 out of the prenumbered exhibits, and that I need not consider
24 the other ones, again, to the extent that you can streamline
25 this and make it easier for me, that would be to my benefit and
26 to yours.

27 MS. FITZSIMMONS: *(Nods head.)*

28 THE COURT: There are clearly exhibits in there that I

1 don't need to consult, or -- and that have little, if any,
2 direct bearing, at least based on my preliminary review, on any
3 of the issues here.

4 And so, you know, prior deposition transcripts and...
5 *(shakes head)*, you know, a lot of this stuff goes pretty far
6 afield, in my view. If you disagree, obviously you're the
7 advocates here.

8 MS. FITZSIMMONS: I think we can work it out.

9 THE COURT: Any thoughts, Ms. Fitzsimmons?

10 MS. FITZSIMMONS: No, Your Honor. Thank you very much for
11 your time.

12 MR. PERETZ: Your Honor, thank you for your time. And
13 thank you --

14 THE COURT: All right. Let's... all hope for good news
15 tonight, whatever that may be.

16 MR. PERETZ: *Ha ha*. Thank you.

17 THE COURT: Thank you, all.

18 MS. FITZSIMMONS: Thank you.

19 *(4:32 p.m.)*
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28

1 STATE of CALIFORNIA)
)
2 COUNTY of SAN FRANCISCO)


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4
5
6
7 I, MARIA ANTONIA TORREANO, DO HEREBY CERTIFY:

8 That the foregoing is a full, true and correct transcript
9 of the testimony given and proceedings hereinbefore entitled;

10 That it is a full, true and correct transcript of the
11 evidence offered and received, acts and statements of the
12 court, also all objections of counsel and all matters to which
13 the same relate;

14 That I reported the same in stenotype to the best of my
15 ability, being the duly-appointed, qualified and official
16 stenographic reporter of said court, and thereafter had the
17 same transcribed, as herein appears.
18

19 DATE: November 6, 2020
20

21
22 
23 Maria A. Torreano, CSR, CRR, RMR, CCRR
24 Certificate No. 8600

25 Government Code §69954(d): "Any court, party or person who has
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