

1 agreement -- second settlement statement. I'm showing you  
2 a document marked as Deposition Exhibit 16. Deposition  
3 Exhibit 16 is the updated settlement statement that was  
4 issued on March 5; is that correct?

5 A Yeah, that's correct.

6 Q And this number shows that the amount due to  
7 seller is now 13,353?

8 A Yes, that's correct.

9 Q And in doing that, there's a number of things that  
10 are changed here. For example, the seller credit is  
11 reduced from 7623 to 4625.

12 A Uh-huh.

13 Q Correct?

14 A Yep.

15 Q In other words, that's something that Drew and  
16 Janice are agreeing to take less of a credit that was due  
17 to them, right?

18 A That's correct.

19 Q And the Bissonette Plumbing invoice which is on  
20 this is an additional 2800 that was not on the original  
21 settlement statement?

22 A That's correct as well, yep.

23 Q And the taxes, actually that number went up by I  
24 think \$2 and change because there's one more day that's  
25 added on?

1 the recording, that's what -- I didn't even catch it during  
2 the recording. I listened to it after. They actually say  
3 we are going to increase our payout by 3,000 so they have  
4 money for the stumps and whatnot.

5 Q So ultimately, with all these things considered,  
6 once you offset -- there is basically \$17,000 -- \$17,048 in  
7 credits toward you?

8 A I don't get that. So the Bissonette Plumbing is  
9 an increase of 28 something, the payoff is an increase of  
10 3360, and then you have reductions of 14,050 and a  
11 reduction of the rate lock is like almost 3,000.

12 Q 2767?

13 A 27, yeah, so you have got, yeah, 16,750 minus  
14 6200, so it's an increase of 10,550.

15 Q I'm asking what the increase is if you pull out --  
16 like the plumbing invoice that your buyers had no control  
17 over, if you pull out the things that have been changed  
18 here because of various contracts, various construction  
19 obligations, in terms of what is new money here, you have  
20 got at least 2767 in new money in seller credit and at  
21 least 14,050 in new money in the commission?

22 A Yeah, but the increase in loan amount, that's not  
23 something I did that's increased for them. And then also,  
24 the Bissonette was something Drew had directed them to do.  
25 I had no dealings with Bissonette. That was my issue is

PHS provided  
\$2767  
not  
What  
they claim  
in lawsuit

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1 A Yep.

2 Q Then we have got a pretty substantial change in  
3 the real estate commissions, right?

4 A Uh-huh.

5 Q In other words, what used to be -- what used to be  
6 23,000 -- 23,600 -- 24,000, right, has now come down by  
7 more than \$14,000?

8 A Yeah.

9 Q To 9,000?

10 A 23,100.

11 Q Initially, in Exhibit 14, it's 11,550, plus  
12 11,550?

13 A A difference of \$14,050.

14 Q The commission that was initially anticipated was  
15 a combined 23,550?

16 A Uh-huh.

17 Q And that number came down by \$14,050?

18 A Yep, that's right.

19 Q However, there is also a new charge on here as  
20 to -- you know, a charge that Lincoln Capital imposed.  
21 Their number actually went up by \$3,358 between March 3rd  
22 and March 5th?

23 A And that was from -- if you listen to the  
24 recording, that was funds they were attempting to escrow  
25 for Drew and Janice. It's not legal, but if you listen to

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1 that Drew said I've got this, he's the one that brought  
2 them there, directed them to do work, and then they tried  
3 to hit me with the bill, and Matt in the conversation that  
4 day, when we were talking, he kept saying it's off the HUD,  
5 it's off the HUD, but it was actually put onto the HUD on  
6 that day, so --

7 Q How does a prospective buyer have the authority to  
8 direct contract work?

9 A It happened.

10 Q So ultimately, the takeaway from this is you  
11 believe that you were -- based on some conversation that  
12 you had with Matt and Lincoln Capital, that bottom line was  
13 going to be -- instead of 13,000, it was going to be how  
14 much?

15 A So -- so my understanding was I was walking away  
16 with 17,800, so it's off by 4,500 roughly or 4,450 from  
17 what I thought it was supposed to be.

18 Q All right. Now subsequently, did Drew or Janice  
19 ever agree to ensure that your takeaway was over \$17,000?

20 A Well, in the prior day, through group text, they  
21 had -- through group text, they verified they breached it.  
22 So on the 5th, this new agreement was tentative first of  
23 all on me seeing the HUD and agreeing to it, so I still  
24 had -- I still hadn't agreed to it, so even though we came  
25 to this -- this agreement was offered, I still said I want

Proof of Breach



1 to see the HUD first before I move forward and -- because  
2 they were trying to say I can't have the painting and I  
3 didn't understand why, I didn't feel like that was fair.

4 Q Who is they?

5 A Todd and Matt.

6 Q Not Andy, not Drew, not Janice?

7 A Nope.

8 Q And when you said that they -- I think you  
9 described that through text, they verified they breached  
10 it?

11 A So March 4th, I said -- I talked to Matt on the  
12 phone, I demanded the paving and painting be removed. He  
13 said I'm going to talk to the buyers. He called me back  
14 and said they are not going to do it. And then Matt saying  
15 I'm going to lose the house if I don't close. And I said,  
16 well, if they are going to give me the right to terminate,  
17 I'm going to terminate, and he called me an idiot and we  
18 got off the phone. And then I thought it was kind of weird  
19 that they were letting me off the hook, so that's when I  
20 sent the message, just so we are on the same page, the  
21 buyers are refusing to honor the contract, blah, blah,  
22 blah. Andy was on the text with Matt. Matt responded,  
23 again, the buyers are willing to accept the house as is,  
24 sorry it didn't work out. And then maybe an hour or two  
25 later, I said no, the contract is now null and void, a

1 obligated to remove the painting and paving and then  
2 refusing to and I said to -- I thought it was weird at the  
3 time, you know, why would they let me off the hook. I  
4 said, well, if they're refusing to honor the contract, then  
5 terminate it, and then I just thought it was -- I just  
6 remember thinking to myself that was weird, why would he  
7 just let me walk away legally.

8 Q Who is he?

9 A Matt or they actually.

10 Q Who is they?

11 A The whole group, you know, Matt, Andy and the  
12 buyers. That's what it felt like to me at the time. So  
13 I -- right after this phone conversation, I sent this text  
14 as my way of just like having something to fall back on so  
15 they couldn't, you know, say, oh, that never happened, so  
16 that's why I said just so we are all on the same page, the  
17 buyers are refusing to honor the contract.

18 Q Where does -- where does a text from Matt indicate  
19 that the buyers, Drew and Janice, are refusing to do  
20 something that you believe they had an obligation to do?

21 A He responds to that by saying sorry it didn't work  
22 out. Again, the buyer was willing to accept the house as  
23 is. I mean to me, he's not saying that's not true.  
24 Andy -- Andy usually always chimes in. Andy didn't say  
25 that's false. And the following day --

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1 clear breach of contract, which Andy was on all these  
2 messages.

3 Q Can I refer you to Exhibit 12?

4 A Yep.

5 Q Exhibit 12 is the text you are describing.

6 A Yep.

7 Q Sheet 19. It says -- which you previously  
8 characterized as verifying -- that the buyers had verified  
9 they breached it?

10 A Yes.

11 Q And here, this is you, Mr. Rinaldi, stating,  
12 quote, the buyers are refusing to honor the contract.  
13 What -- at this point on March 4th, what had the buyers  
14 done that was refusing to honor the contract?

15 A Well, negotiations are happening between the two  
16 realtors, both realtors are friends, work for the same  
17 company, so it's fair to say that I'm sure the messages are  
18 getting through. Now I'm discussing this with Matt. The  
19 buyers are reducing their rate lock and doing things to try  
20 to compensate for what I'm asking for, so clearly everybody  
21 was in communication. Matt -- Andy and Matt met with  
22 Lincoln Capital on the 4th, the same day, discussing things  
23 that I'm unaware of without my knowledge or consent, so  
24 when I tell Matt to terminate the contract  
25 because they're -- and he's stating they are aware they are

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1 Q But of course we are going backwards because you  
2 are characterizing events in this text message that's on  
3 page 19 of Exhibit 12, you are saying that the buyers are  
4 refusing, in other words, that failure to honor the  
5 contract has already happened?

6 A Uh-huh.

7 Q Do I read what you are saying correctly there?

8 A Yeah, well, we just got off the phone and they --  
9 we had I think three conversations that day. So the second  
10 one, he's like I will talk to them, but I doubt they are  
11 going to go for it, you know, they are pissed, you know,  
12 we're lucky they are even here, you know, so he talks to  
13 them and --

14 Q Who talks to who?

15 A Matt apparently talked to either the buyers or  
16 Andy and says that I want this removed from escrow. And  
17 then we talk at some point after that and that's when he  
18 says this is not going to happen, are you kidding me, like  
19 I'm ridiculous for asking.

20 Q Let me refer you to Exhibit 15, page 12.

21 A Okay.

22 Q This is the message between Matt and you in which  
23 Matt says to you on the 5th --

24 A Yep.

25 Q -- we can't get the escrow off the driveway.



1 A Yep, so on the 4th, if we go back, go back to page  
2 seven is where the 4th starts, he texts me, 3:45, my  
3 Windham office, which he's discussing -- discussing the  
4 time -- the closing is scheduled -- because the closing was  
5 scheduled March 4th and the 5th. And I said, can I call  
6 you around 10:30 or 11:00. He said, Lincoln is meeting at  
7 10:00. This is him and Andy meeting with Lincoln which is,  
8 you know, obviously a conflict of interest, but -- so let's  
9 do a call around 11:00. Can we chat for a few minutes  
10 before the meeting. And then call me now. I want to close  
11 today and still think it's possible. Okay, be right -- I  
12 don't know why that says okay, be right there. I don't  
13 know.

14 Anyways, any chance -- so at this point is our  
15 first conversation -- yeah, our first conversation or  
16 second conversation, I'm not even sure, but this is where I  
17 bring up the painting and paving and they already agreed to  
18 the rate lock and Matt agreed to do 2500 of his fee, which  
19 is between me and Matt, and then they agreed or someone  
20 agreed to pay for the plumbing, so -- and at that point, I  
21 said, well, I finished painting it. We talked about this  
22 previously. We said to paint it so that I could get that  
23 money back. And then also, I read through the contract I'm  
24 not obligated to pay for the painting. And we discussed  
25 it, we read the contract, I explained how I interpreted it.

1 A I understand what you are saying, yeah, but it was  
2 both though on the 4th. So he calls me back and said they  
3 are not removing either of those, it's not going to happen.  
4 Essentially I'm like, well, if that's the case -- he said,  
5 well, you're going to have to deal with Lincoln now and he  
6 calls me an idiot, you know, but I told him, well, if  
7 that's the case, terminate the contract. I found that to  
8 be odd that they were just going to let me legally walk  
9 away, so then I responded to this by sending this message  
10 to Andy and Matt saying just so we are all on the same  
11 page, you know, and then he responds sorry it didn't work  
12 out. If you go one page further, I didn't want them there.  
13 Matt said contract is extended until tomorrow legally. And  
14 I responded still in the group message with Andy, no, it's  
15 now null and void because they're refusing to honor it, a  
16 clear breach of contract. I have had a long couple days,  
17 blah, blah, blah, and that's when I said I'm two seconds  
18 away from calling the sheriff. And that was on March 4th,  
19 not the 5th, so --

20 Q So when you said -- when you said that you were  
21 surprised that they were going to let you walk away, why  
22 did you believe they were letting you walk away?

23 A Because I demanded something to be removed --  
24 forget the paving -- the painting was done, they had to  
25 remove that, and they refused to do so, so -- and they

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1 And we got off the phone -- he says he's going to talk to  
2 the buyers. We got off the phone. He sends me this job  
3 estimate of the paving. This is your quote, correct. That  
4 is for the appraisal per RMS to close. Same with outside  
5 closing. I said yes. And he puts I just e-mailed you the  
6 info from lender and I put I don't want Andy and Drew here.  
7 They need to leave immediately. They are doing a  
8 walk-through, call you in five.

9 Q So --

10 A That's when he calls me back and says I talked to  
11 them, it's not going to happen, blah, blah, blah, and at  
12 some point after this, I sent this group message.

13 Q Did Matt talk to Janice and Drew?

14 A He didn't specify. He just said I will talk -- he  
15 said I will talk to the buyers, not Andy, I will talk to  
16 the buyers. And when he called me back -- he said they are  
17 never going to go for that. And I'm like, well, that's a  
18 breach of contract if they're refusing to honor it, I  
19 finished painting, and paving is not part of it either.

20 Q And that's based on your interpretation about what  
21 basecoat is?

22 A Well, painting is -- I mean I finished painting  
23 the house, the house was done, so that should have  
24 100 percent came out, there's no question on that one.

25 Q My question is about paving.

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1 refused to perform, gave me the right to terminate. I then  
2 terminated, so then it was over.

3 Q But your broker disagreed, your broker thought the  
4 painting wasn't adequate?

5 A No, he didn't say that.

6 Q He didn't say that?

7 A In the March 5th meeting, this is the next day, he  
8 tried pointing out the painting up top or something and it  
9 was like the sheen or something and I'm like -- you know,  
10 and then they started talking about the painting inside.  
11 The painting outside was done, so that was a separate day.  
12 On March 4th, you know, no one ever -- even Matt, Todd,  
13 nobody ever said the painting -- I mean the house was  
14 finished painting outside and that's what it was for, but  
15 the paving, no one ever said, you know, you're wrong or we  
16 don't interpret it that way.

17 Q And the landscaping?

18 A That stayed. That didn't get -- that wasn't  
19 contested.

20 Q So why do you believe that their not responding to  
21 you was them letting you walk away or people not responding  
22 to your statement of what the contract says or doesn't say  
23 was an admission that that's the correct interpretation of  
24 the contract, why is that?

25 A A couple things. So I'm just -- my discussions



Attorney  
Montebano  
stating that  
they don't  
need to tell  
me they  
disagree.  
Anticipating  
Repudiation

1 are going to be with Matt, their discussions are going to  
2 be with Andy, and then the two meet in the middle. They  
3 both worked for Landing, so it's hard to say that they are  
4 not communicating because they were. I said to Matt, I  
5 told him I want those removed and it's a breach if they  
6 don't. He asked them --

7 Q Let me stop you. Why is it a breach -- if it's  
8 your interpretation that they don't belong there, their  
9 interpretation is that those escrows do belong there --

10 A They never said that though.

11 Q Why do they have to say that?

12 A Matt agreed with me -- the painting was done, so I  
13 mean I don't know how they could interpret that any  
14 different, it was finished.

15 Q Why do they have to challenge you that they  
16 interpret it differently in order to oppose your take on  
17 it?

18 A Yeah, but then fast forward to the 5th with Andy.  
19 I'm saying I have a legal right to walk. The paving -- he  
20 is never saying -- he had ample opportunity to say the  
21 paving belongs in escrow or the painting belongs in escrow.  
22 He had ample opportunity to say you don't have a legal  
23 right.

24 Q But he's not a lawyer.

25 A I mean he's a realtor. He's working as an agent

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Painting  
Finished

1 of them.

2 Q Well, wouldn't you agree that if he is giving  
3 legal advice about what the interpretation of a contract  
4 is, he's giving legal advice?

5 A Painting?

6 Q Contract interpretation, a contract means this,  
7 not that, you don't think that's legal?

8 A This is normal -- painting in escrow, that's a  
9 normal thing. I finished painting it. When we put it in  
10 escrow, it wasn't finished. I did finish it. I mean that

11 stuff happens all the time where something is in escrow.  
12 The job is completed, it gets removed from escrow, you  
13 know, so there is nothing ambiguous or nothing interpretive  
14 about that. And they could have -- they could have said --  
15 they had ample opportunity to say -- I mean they lead me to  
16 believe I was leaving that contract legally.

17 Q Who is they?

18 A Andy and Matt.

19 Q How so?

20 A I said four times I have a legal right to walk and  
21 he never said no, you don't. I said the paving needs to be  
22 removed from escrow on March 5th. He never said no, it  
23 doesn't.

24 Q And he never said yes, you do, he never agreed  
25 with you?

1 A Yeah, but I mean contract intentions, it is pretty  
2 clear from the totality of the texts from the 4th and the  
3 5th what transpired. I mean it's crystal clear.

4 Q I disagree.

5 A I don't see how you could interpret it another  
6 way. I mean the contract was breached and I even offered  
7 to give them until Monday and we just extended the contract  
8 for three days.

9 Q The contract expired on the 5th, correct?

10 A So they don't have an obligation to tell me that  
11 I'm wrong to mitigate damages?

12 Q Is that your belief, they are required in order to  
13 enforce their contractual rights, to tell you that they  
14 disagree with you?

15 A Well, if I'm terminating based on their  
16 repudiation, then I don't see why they wouldn't.

17 (Exhibit No. 17, Extension Addendum, marked for  
18 identification.)

19 Q I'm handing you a document that I marked as  
20 Exhibit 17.

21 A Yep.

22 Q Do you recognize Exhibit 17 as a true copy of the  
23 extension of the contract through March 5th?

24 A Okay, yeah.

25 Q Correct?

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1 A Yeah, the three-day extension, something like  
2 that.

3 Q Does it extend through March 6th?

4 A Well, yeah, but we went -- I understand what you  
5 are saying, but it was March 3rd to the 5th, correct, or --  
6 it was a three-day extension to the 5th. We just extended  
7 it for three days.

8 Q In other words, that's a written agreement that  
9 the contract has to be closed by the 5th?

10 A Yep.

11 Q So there was no agreement for it to close the  
12 following Monday, the 8th?

13 A Okay.

14 Q Correct?

15 A Yep.

16 Q All right.

17 A But I mean if you can see in the HUD, I mean there  
18 clearly was negotiations going on, there is money being  
19 moved around, including the buyers, so clearly there is  
20 something getting transferred from each party.

21 Q Wouldn't you agree that that's an attempt to  
22 negotiate to induce a closing to try to avoid the  
23 litigation that comes from actually enforcing the legal  
24 right?

25 A Yeah, but I mean they -- you can't -- everything



1 they do leads me to believe that I'm in the right. It  
2 seems crazy to think that -- you know, let someone believe  
3 they have a legal right to terminate and then not tell them  
4 they don't until way later when it's too late.

5 Q Okay. So is it your testimony that you believe  
6 that Matt never told you that you have a legal obligation  
7 to close?

8 A Matt never told me that. He said it to Ryan, I  
9 think.

10 Q Let's talk for a second about how an agreement  
11 that you had with Lincoln and Matt DiBiase, you concluded  
12 they were going to get you 17,000, 17,000 and change?

13 A 17,800, it was never agreed on, but it was the  
14 offer.

15 Q I understand. So ultimately, they got you  
16 something less than that. Would you agree if they had  
17 gotten you 17,000 and change, you intended to close?

18 A I mean at that point, I wanted the painting money.  
19 I was furious about Derek and the upgrades. Heather was  
20 crying, you know, my ex, because she wanted -- felt so bad  
21 for me and I did not -- I wanted -- those were peanuts, so,  
22 you know, if they had done what they said they would, I may  
23 have closed, but I still wanted the painting funds and  
24 didn't think it was right that I was getting bullied out of  
25 them.

1 Q And in it, you said under oath in paragraph 31  
2 that on March 4, 2021, prior to closing, I was willing to  
3 accept no additional payment for the time and materials  
4 expended on the additional work I performed at the buyer's  
5 request, but I was not willing to pay for the asphalt  
6 topcoat that I never agreed to and was not obligated to  
7 provide under the P&S agreement or spec sheet.

8 A So yeah, there's no if there. He just asked me,  
9 you know, did you demand money for those upgrades and I  
10 said no. We really hadn't talked about that in a little  
11 while and so he just put -- I don't know why he needed to  
12 put that, but he put that I didn't demand money for that on  
13 that date, so it wasn't -- I was willing to not accept  
14 those funds if I got these funds.

15 Q But rather you were -- as of the scheduled closing  
16 date on March 4, 2021 -- that's correct that March 4th was  
17 the originally scheduled closing date?

18 A Yes, it was, yes.

19 Q March 4th was scheduled as a closing date?

20 A Yeah, yeah, yeah.

21 Q And that -- what you have said in your affidavit  
22 is that on March 4, 2021, on that date, you were willing to  
23 accept no additional payment for the time and materials  
24 expended on additional work performed at the buyers'  
25 request?

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1 Q So in other words, you were pissed off and you  
2 wanted something to show for it?

3 A I wanted what was fair and right and what I agreed  
4 to.

5 Q Wouldn't you agree what Drew thought was fair and  
6 right and what he agreed to was what's set forth in the  
7 contract?

8 A No.

9 Q Why not, why is what he agreed to not set forth in  
10 the contract?

11 A They asked me to do additional work and never paid  
12 for it.

13 Q All right.

14 A And there's no question that that happened.

15 THE REPORTER: Can we take another quick break?

16 (A short break was taken.)

17 Q I have in front of me your affidavit that was  
18 signed on May 5, 2021. Do you recall that affidavit?

19 A Yes, my original answer with that, correct?

20 Q It was filed around that time, but fairly early in  
21 the case.

22 A Yep.

23 Q Again, it is dated -- the date it was signed is  
24 May 5th, 2021.

25 A Yep, I do.

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1 A Are you sure it didn't say March 5th? Not that it  
2 matters, but -- yeah, so I don't know why the paint isn't  
3 in there and stuff like that. It also says I told Andy  
4 Lord, which I never directly told Andy Lord until the 5th,  
5 so --

6 Q In other words, as we sit here today, I mean do  
7 you agree with that statement?

8 A I mean I don't think that's perfectly accurate. I  
9 think I did not demand payment for the upgrades on the 4th  
10 or 5th. It's not that I didn't want them. I just --

11 Q But --

12 A But on the 4th -- I don't know why that says the  
13 4th, but on the 4th, you know, my interaction was between  
14 Matt and I and then the group message with Andy, Matt and  
15 I.

16 Q But on -- prior to closing -- in terms of this  
17 statement, prior to closing, I was willing to accept no  
18 additional payment for the time and materials expended on  
19 the additional work I performed at the buyers' request; is  
20 that true?

21 A I mean I don't like how it is stated. I mean,  
22 again, my lawyer just asked me, did you demand that, so  
23 I -- it's not that I didn't want it. I just didn't demand  
24 it, so I mean my position is I didn't demand payment on the  
25 4th or 5th for any of that.