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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/29/2023 at 11:40:00 PM
Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

Attorneys for Razuki Investments, LLC, and Salam Razuki

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO - CENTRAL

10 SAN DIEGO PATIENTS COOPERATIVE)
11 CORPORATION, INC., et. al.)

12 Plaintiffs,)

13 vs.)

14 RAZUKI INVESTMENTS, LLC, et. al.,)

15 Defendants.)
16)
17)
18)

Case No.: 37-2017-00020661-CU-CO-CTL

**DECLARATION OF DOUGLAS JAFFE
IN SUPPORT OF MOTION FOR NEW
TRIAL AND JUDGMENT
NOTWITHSTANDING THE VERDICT**

DATE: January 26, 2024
TIME: 1:30 p.m.
DEPT: C-67
JUDGE: Hon. Eddie Sturgeon

19 DOUGLAS JAFFE declares as follows:

20 1. I am the attorney for Defendants Razuki Investments, LLC, and Salam Razuki in
21 this action. As such, I have personal knowledge of the facts contained in this declaration and if
22 called to testify I could and would competently testify thereto.
23
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EXHIBIT A

Licenses

- The City of San Diego proper restricts dispensary permits to 36 (four locations allowed in each of the nine council districts)
- City population of 1.4m and metro area of 3.3m. Many surrounding municipalities did not permit adult use sales at the time San Diego opened its market.
- Scarcity of permits and size of addressable market has led to sustained, high valuations, since even before adult use sales began.

Sales taxes

- The adult use cannabis sales tax rate for Jan. 1, 2018-June 30, 2019 was 5%
- The adult use cannabis sales tax rate since July 1, 2019 has been 8%
- City collections:
 - 2018: \$2,731,583
 - 2019: \$8,235,864
 - 2020: \$17,288,031
 - 2021: \$23,318,798
 - 2022: \$22,834,680
- So, using data from the first full year of the 8% tax (2020) through last year, we can make these assumptions for citywide sales:
 - 2020: \$216,100,388
 - 2021: \$291,484,975
 - 2022: \$285,433,500
- If we assume that all 36 potential permittees were operational during these years, we can assume the average store's adult use sales were:
 - 2020: \$6,002,789
 - 2021: \$8,096,805
 - 2022: \$7,928,708

Update: We later found out that per-store revenue was actually much higher. As of March 17, 2023 the City had issued 30 permits, but the number of actual operating stores was 23. The chart below shows actual operating stores by year:

2018	2019	2020	2021	2022	2023 (as of 3/17)
14	19	20	23	23	23

- So, we can assume the average store's adult use sales were no less than:
 - 2020: \$10,805,019
 - 2021: \$12,673,260
 - 2022: \$12,410,152

Deals

- In 2017, licenses were going for \$10-\$16m, according to CREC and Strainwise
- The current MedMen location was purchased from Apothecare for \$16m
- Strainwise sold one for \$7m in Q1 2017
 - Sorrento Valley location; secured property and license; sold to what is now Cookies
 - They took a haircut because of the risk
 - They were the fourth licenses, so they had to resign one then apply for another
 - Revenue is approximately \$1m/mo (\$12m/yr)

Value

- According to CREC, deals are still going for roughly 1x revenue or 3-5x EBITDA
- According to CREC, deals in nearby municipalities that haven't opened yet or are just getting started, such as La Mesa and Lemon Grove, are going for \$6-8m, based on no revenue.
- According to HdL, All of the businesses in San Diego County do very well. HdL couldn't share its projections, but suggested that the attorneys subpoena sales records.
- According to CREC, the average San Diego business should bring in at least \$10m in topline revenue and no less than \$2m in EBITDA.

EXHIBIT B

In the Matter Of:

SAN DIEGO PATIENTS COOPERATIVE vs RAZUKI

37-2017-00020661-CU-CO-CTL

TRANSCRIPT OF PROCEEDINGS

November 02, 2023

Volume III



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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SAN DIEGO

3 DEPARTMENT C-67

BEFORE HON. EDDIE C. STURGEON

4 SAN DIEGO PATIENTS COOPERATIVE
5 CORPORATION, INC., a California
cooperative corporation, and
6 BRADFORD HARCOURT, an
individual,

Case No.:
37-2017-00020661-CU-CO-CTL

7 Plaintiffs,

8 vs.

9 RAZUKI INVESTMENTS, LLC., a
10 limited liability company, et
al.,

11 Defendants.

12
13 REPORTER'S TRANSCRIPT

14 VOLUME III, PAGES 349 TO 546

15 THURSDAY, NOVEMBER 2, 2023

16
17 APPEARANCES:

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25
26
27 REPORTED BY: A. DESIREE TIPPER, CSR NO. 13806
PER DIEM COURT REPORTER

INDEX

Witness:	STEVEN LAKE	PAGE
EXAMINATION		
By Mr. Collier		356
By Mr. Jaffe		372
By Mr. Demergian		399
Witness:	CHRISTOPHER STEFAN	PAGE
EXAMINATION		
By Mr. Cavanagh		407
By Mr. Jaffe		475
By Mr. Demergian		508
By Mr. Cavanagh		528
By Mr. Jaffe		535
By Mr. Demergian		538

INDEX TO EXHIBITS

EXHIBITS		MARKED
Exhibit 176	Documents from Allison Company (3 AME Documents)	378
Exhibit 177	Documents from Allison McCloskey Escrow Company (4 AME Documents)	391
Exhibit 180	SDPCC Valuation Data Report prepared by expert for Plaintiffs	479

1
2
3
4
5
6
7
8
9
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11
12
13
14
15
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San Diego, California

Thursday, November 2, 2023

9:00 a.m.

* * *

THE COURT: Counsel, we're going on the record. Counsel we're -- let's recollect. The attorneys are present outside the presence of the jury.

Juror No. 12, how are you doing?

JUROR NO. 12: Not too good this morning.

THE COURT: Okay. Is it -- I don't want to get -- you know, you have your personal rights here about how far you want to talk about what you're experiencing, but is it like food poisoning or something or, Judge, I'm just sick?

JUROR NO. 12: I woke up coughing and throwing up.

THE COURT: Okay. Do you have a fever?

JUROR NO. 12: I don't have a fever.

THE COURT: I assume it's not COVID. That would be the first thing. Or do you know? Have you tested?

JUROR NO. 12: I could be tested.

THE COURT: You could or did?

JUROR NO. 12: I should.

THE COURT: But you just -- you've got something going on in your system that isn't right. Can I assume you could not sit through the trial today?

JUROR NO. 12: Right.

THE COURT: It's okay. I always say health

1 first. Do you think you would get better in a day or,
2 Judge, I may be down for two to three days?

3 JUROR NO. 12: I don't know. I'm starting to
4 ache already.

5 THE COURT: Starting to ache already? Okay. If
6 you could just wait outside away from the other jurors
7 and we'll get this resolved quickly, sir.

8 Thoughts?

9 MR. DEMERGIAN: Glad to dismiss him and
10 substitute Alternative No. 13.

11 THE COURT: That would be a drawing.

12 MR. DEMERGIAN: Substitute. I have no objection
13 to dismissing him.

14 THE COURT: Plaintiff, position?

15 Well, here are your options: Options 1, we can
16 shut it down for a day. Who knows? If they come in
17 today, then I'm going to move forward. Or we can just
18 get it resolved now and move forward. There's your
19 options, one or the other. Let's go. What do you all
20 want to do?

21 MR. CAVANAGH: I think we're okay with moving
22 forward.

23 THE COURT: Which means that you want to
24 excuse --

25 MR. CAVANAGH: We're okay with excusing.

26 THE COURT: Okay. There's two.

27 Mr. Jaffe, what's your opinion?

28 Can I agree, all three attorneys stipulate that

1 we can remove Juror No. 12, correct?

2 MR. CAVANAGH: Correct.

3 MR. JAFFE: Correct.

4 MR. DEMERGIAN: Correct.

5 THE COURT: Excellent. Bring him in.

6 Two things: Number one, I hope you get well, so
7 go home, take care of yourself, that's very important.
8 And number two, we're going to keep the trial going
9 because I'm on a timeline here, so we're going to excuse
10 you, sir. But you stepped up to the plate, you
11 volunteered, you were going to do the whole thing except
12 for whatever it is affecting you. I hope it's nothing
13 serious. So for the record, sir, you will be excused by
14 myself. Court ordered. Get well. All right?

15 JUROR NO. 12: All right.

16 THE COURT: You can go home.

17 MR. CAVANAGH: And I apologize for not
18 remembering the procedures, but do you draw now so we
19 can --

20 THE COURT: No. I do it in front of a jury.

21 Come on. You know me. We need a little suspense.

22 Here get them all -- I'll do it in front of the
23 jury.

24 Want to hear my sick story -- no. I tell way
25 too many stories.

26 Everybody's here. So are we ready? Any
27 housekeeping? Are we going to go? I'm ready.

28 MR. DEMERGIAN: How do we do the drawing thing?

1 THE COURT: You're going to watch it live.

2 MR. DEMERGIAN: Live.

3 MR. JAFFE: You're going to watch it.

4 MR. DEMERGIAN: That's a beautiful thing. Yeah,
5 you get to see it.

6 THE COURT: Everybody's out there.

7 THE BAILIFF: Yeah.

8 THE COURT: Excellent. Excellent.

9 And is Mr. Lake ready to go?

10 MR. COLLIER: I believe so. I saw him this
11 morning in the bathroom.

12 THE COURT: Hopefully, he's not getting sick.

13 MR. COLLIER: I don't think any of us were in
14 there with him.

15 THE COURT: Okay. Here we go. Let's go. Bring
16 them. Let the record reflect the parties' attorneys,
17 full jury panel is also present. Thank you for being on
18 time, ladies and gentlemen of the jury. We're going to
19 put in a full day today.

20 As you noticed, Juror No. 12 is not present. He
21 came in today, which was an admiral thing to do. I'll
22 just say it's a health issue, not COVID. We don't think
23 it's COVID, something else, so don't get nervous about
24 that. But it's just a health issue. And I had a
25 discussion with him and counsel, and I believe it's best
26 to keep the trial going. So he's been excused by the
27 court.

28 With that being said, we now start the lottery.

1 At least I got three smiles. Okay. They all smiled. So
2 this is by law, doesn't matter whether you were the first
3 alternate or second. Your name is put into a little bowl
4 that looks like this, it's being shook up. And the
5 winners that now will become Seat No. 12 is --

6 THE BAILIFF: Matthew Balderston.

7 THE COURT: Welcome to the jury. You are now
8 Seat 12 and will be Seat 12 through the remainder of the
9 trial. Welcome.

10 All right. Let's go.

11 With that being said, we are in the
12 plaintiff's -- hold on a second. One second, Counsel.
13 The plaintiff's case-in-chief. Thank you.

14 And for the record, what alternate is that?

15 THE CLERK: Mr. Balderston.

16 THE COURT: Do you want to sit in the front row
17 right now?

18 JUROR NO. 12: Is that okay?

19 THE COURT: Of course. We just got a -- I'm
20 just going to make a record of it, where everybody is
21 sitting. That's the reason why.

22 THE CLERK: Mr. Balderston.

23 THE COURT: You now will be seated in that chair
24 for the rest of trial. You may, of course.

25 JUROR NO. 12: Thank you.

26 THE COURT: You're welcome. Front row. I like
27 that.

28 Here we go. Plaintiff's case-in-chief.

1 Ready? Plaintiff, call your next witness.

2 MR. COLLIER: Thank you, Your Honor. Plaintiff
3 Steve Lake.

4 THE COURT: Mr. Lake.

5 MR. COLLIER: While Mr. Lake will be brought in,
6 may I clean off the binder?

7 THE COURT: You may, sir.

8 THE CLERK: Do you solemnly state that the
9 evidence you shall give in this matter shall be the
10 truth, the whole truth and nothing but the truth so help
11 you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Please be seated.

14 Please state your name and spell your last name
15 for the record.

16 THE WITNESS: Steven Lake, L-A-K-E.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. COLLIER:

20 Q Good morning, Mr. Lake.

21 A Good morning.

22 Q Could you please help introduce yourself to the
23 jury. Can you describe a little bit about your
24 professional background?

25 A Professional background, I started a skateboard
26 company in my backyard in college and that's pretty much
27 what I've done my entire career, is the skateboard
28 industry.

1 Q What's the name of that company?

2 A Sector 9 skateboards.

3 Q What is High Sierra Equity?

4 A It is an LLC that I set up to take care of --
5 manage a piece of property that I own.

6 Q Thank you. And what property is that?

7 A It's a piece of property in Ramona.

8 Q Does High Sierra -- did High Sierra Equity have
9 a relationship to a property at 8863 Balboa Avenue here
10 in San Diego?

11 A Originally, no; ultimately, yes.

12 Q Explain what you mean by that answer, please.

13 A Around -- maybe June or so of 2015, I got a
14 phone call from my late brother-in-law asking -- he had
15 this piece of property in escrow and it was about to fall
16 out of escrow, and he called and asked if my wife and I
17 would loan him \$289,000-and-change so that this piece of
18 property didn't fall out of escrow, which, you know, was
19 kind of the basis of his whole business idea.

20 There were two pieces of property and one of
21 them was taken care of, and he asked if I would loan
22 him -- we would loan him the money. Ultimately, we did
23 loan him the money. However, I had loaned him money a
24 year and a half earlier and he had defaulted and not paid
25 us back, and it was a rather substantial amount of money.

26 And so I was a little nervous, as was my wife.
27 We ultimately did loan him the money because he's family.
28 We wanted what was best for him and his family. But in

1 doing so, we required a promissory note and a security
2 interest in the company should he default.

3 Q And what ended up happening with that security
4 interest and that promissory note eventually?

5 A So that was, I guess, mid, maybe June of 2015.
6 It was supposed to only be -- he had another business
7 partner that was supposed to buy that piece of property
8 and his money was tied up in his trust. He wasn't able
9 to get it out in time, so can we borrow the money for two
10 weeks, plus or minus? So that's the premise that we went
11 into it with.

12 Fast forward, the partner that was supposed to
13 buy that piece of property resigned and walked away from
14 their business relationship and so did his money. So my
15 wife and I ended up with this piece of property -- well,
16 ultimately, we ended up with the piece of property
17 because on or around September of that year, they haven't
18 defaulted on the promissory note, and so then it was, you
19 know -- we had this security interest in the business --
20 in the property, what do we do with it? Never wanted the
21 piece of property. All we were trying to do was help out
22 a family member.

23 We gave -- we gave them until middle -- end of
24 October/early November to secure financing to buy the
25 property and pay us back. And that never happened, in
26 which case we sat down, myself, Brad, and my late
27 brother-in-law and discussed what -- you know, what a
28 resolution would be. The money that we had was borrowed

1 on a line of credit against a stock portfolio that we
2 have that's, you know, not that substantial, but it was
3 enough to have the money to borrow against it to loan him
4 the money.

5 But in 2016, the stock market was going in the
6 wrong direction and we were really close to the limit of
7 our line of credit. And so I was, you know, getting
8 anxious. You know, we want our money back so that we
9 can -- you know, the last thing we wanted to do was have
10 that called and we had to start selling things and, you
11 know, that just didn't seem right.

12 And so we met. We talked about, you know, what
13 their resolution -- they tried to get a loan to buy the
14 property. For some reason that fell out. And then the
15 resolution was -- well, this is, again, I think
16 October/early November of 2015. We'll just give you a
17 hundred percent capital ownership in the LLC that they
18 had the property held in.

19 And, you know, we contemplated that. I talked
20 to my wife. We thought it through. Ultimately, we
21 didn't need another LLC. All we really wanted was some
22 security because I had, you know, not been paid back a
23 hundred-and-something thousand dollars, you know, a
24 couple years ago from the same person.

25 And so we said, just -- you know, you guys take
26 care of your LLC, just quitclaim the property over to us,
27 which ultimately became -- it was High Sierra with the
28 intention of, you know, being able to sell it and get our

1 money back, or, you know, they would be able to take care
2 of their business and pay us back.

3 Q So let me go back to a couple of things. You
4 referred to your late brother-in-law.

5 Who is that?

6 A His name is Michael Sherlock.

7 Q And you mentioned Mr. Harcourt. Do you know
8 Mr. Harcourt?

9 A I do now. I met Mr. Harcourt through a mutual
10 friend, Renny Bowden, and my late brother-in-law. They
11 were in business. Going into business.

12 Q So if I'm understanding correctly, you -- at
13 this point now, you've got the ownership at 8863 Balboa
14 Avenue.

15 A Yeah. I mean it was --

16 Q Or High Sierra, I guess more specifically.

17 A Yes. That was, I think, in March or April of
18 2016, I think. It ultimately got quitclaim deeded over.
19 Unfortunately, my brother-in-law had committed suicide,
20 which kind of sent the family in a tailspin.

21 Q Sure. I'm sorry to hear that.

22 After that happened, after Mr. Sherlock
23 passed and you now have the property, was there some plan
24 to sell the property?

25 A Well, ultimately, my goal all along was to get
26 our money back that we had loaned for the property. I
27 know that there was a bigger -- there was a bigger goal
28 at play with -- they were trying to pull it all together.

1 There was two pieces of property and -- yeah. That was
2 it.

3 Q What was your understanding of what that bigger
4 goal or plan was that you just referenced?

5 MR. JAFFE: Objection. Hearsay. Lack of
6 foundation.

7 THE COURT: What was your goal?

8 Say the question again.

9 BY MR. COLLIER:

10 Q What was your understanding of what that bigger
11 goal or plan was?

12 THE COURT: Overruled.

13 THE WITNESS: The -- the bigger goal was that
14 they were to sell both pieces of property and the
15 interest in the -- because Brad had spent -- you know, he
16 could tell you how much money he spent, but I know it was
17 a substantial amount of money to try to get the licensing
18 and everything. And the goal was to wrap all three
19 together and then sell them so that everybody could
20 recoup their money.

21 BY MR. COLLIER:

22 Q Are you referencing Mr. Harcourt's interest and
23 the conditional use permit in the MMCC?

24 A Yes.

25 Q With part of that larger plan, the plan to sell
26 all three of those things together, was there someone who
27 was helping to sort of manage or facilitate that process?

28 A Brad was managing that.

1 Q And when you say "Brad," you're referring to
2 Mr. Harcourt?

3 A I'm sorry. Mr. Harcourt.

4 Q You're okay. Natural conversation.

5 Were you involved in the day-to-day aspects of
6 that process of selling all three of those pieces
7 together?

8 A No.

9 Q Mr. Harcourt was managing it primarily?

10 A Yes.

11 MR. JAFFE: Objection. Leading.

12 THE COURT: Objection. What?

13 MR. JAFFE: Leading.

14 THE COURT: Sustained. Leading.

15 THE WITNESS: Okay.

16 BY MR. COLLIER:

17 Q Who was managing that process in your interest?

18 A Mr. Harcourt was managing it.

19 Q All right. You've got hard copies in front of
20 you, but I'm going to put the documents up on the screen
21 here. There's a screen in front of you. There's a
22 screen over here too. Feel free to use whichever one
23 you'd like, but I would like to turn to Exhibit 6, which
24 is -- excuse me --

25 MR. COLLIER: And Mr. Claybon, if you could kind
26 of zoom in to the top part of page 1, Section No. 1.

27 BY MR. COLLIER:

28 Q Do you recognize this document, Mr. Lake?

1 A Yes.

2 Q And what is this?

3 A It is a purchase agreement for the piece of
4 property.

5 Q And this was the piece of property that High
6 Sierra owned as you described earlier?

7 A Yes.

8 MR. COLLIER: Now, Mr. Claybon, could you go to
9 page 10, the last page of the document.

10 BY MR. COLLIER:

11 Q And if we zoom down to the bottom -- is that
12 your signature -- or a DocuSigned signature there on this
13 document?

14 A Yes.

15 Q All right. Now, let's go to -- back to
16 page No. 2 of Exhibit 8, please. I want to focus on
17 Section No. 6, and this includes a section that talks
18 about other terms.

19 Was this the section that describes what your
20 understanding of what was supposed to happen with this
21 transaction?

22 A Yes.

23 Q In what way does that describe what you
24 understood the transaction to be?

25 A Originally, there was a -- like I said, the
26 purchase offer, purchase sale agreement that encompassed
27 all three. So 8863 I think was the piece of property
28 that I owned, 8861 was the piece of property that a guy

1 named Richard owned, and then the -- or the Patients
2 Consumer Cooperative was Brad's piece of it
3 and Mr. Harcourt's piece of it. They made an offer for
4 all three pieces of -- for both pieces of property and
5 that, so that was the -- that was the intention of the
6 agreement.

7 Q Was the intention then to close all three of
8 them together?

9 A Yes.

10 Q Was that your intention when you entered into
11 this agreement back in August of 2016?

12 A Yes.

13 Q Now, during the course of the sales process --
14 and we've heard something about escrow in this case, did
15 you go through a process with the escrow company?

16 A Yes.

17 Q Received a number of documents?

18 A Yes.

19 Q Okay. Again, the books are in front of you.
20 I'm going to direct some documents that have been
21 admitted up on the screen, whatever is easiest for you.
22 You can use whatever you need to.

23 MR. COLLIER: Now, can we go to Exhibit 176,
24 page 68, please.

25 BY MR. COLLIER:

26 Q Do you recognize that document, Mr. Lake?

27 A Yes.

28 Q That's your signature there at the bottom of

1 page 68?

2 A Yes.

3 Q And that's dated -- what is it dated, top
4 left -- top right corner?

5 A August 24, 2016.

6 Q Now, I want to direct your attention down to the
7 bottom part of page 68, the section that's titled,
8 "Contingent Upon Concurrent Closing."

9 Do you see that section there?

10 A Yes.

11 Q And it starts on page 68 and goes over on to
12 page 69, but we'll start here first.

13 A Okay.

14 Q What was your understanding of what this clause,
15 this contingency clause was supposed to do?

16 A To me, it was restating the fact that all three
17 were supposed to close concurrently with each other.

18 Q Okay.

19 MR. COLLIER: And if we go to page 69, please,
20 Mr. Claybon, to the second paragraph.

21 BY MR. COLLIER:

22 Q Did you understand -- because that's coming up.
23 There's a little lag. I apologize.

24 A That's okay.

25 Q Did you understand that in order for the
26 contingency to pass, there needed to be some documents
27 signed with regards to the business deal that
28 Mr. Harcourt was also working on?

1 A Yes.

2 MR. JAFFE: Objection. Leading.

3 THE COURT: Sustained. Leading. Stricken.

4 BY MR. COLLIER:

5 Q What was your understanding of what that -- the
6 contingencies in that second paragraph were for?

7 A That all three parties would close
8 simultaneously.

9 Q Okay.

10 A It says it right there.

11 MR. COLLIER: Go ahead and take that down.

12 Let's go to Exhibit 176, page 56, please.

13 MR. JAFFE: Same exhibit?

14 MR. COLLIER: Same exhibit, yeah. Page 56.

15 THE COURT: 56?

16 MR. COLLIER: Yes.

17 BY MR. COLLIER:

18 Q Okay.

19 MR. COLLIER: Please, Mr. Claybon.

20 BY MR. COLLIER:

21 Q What did you -- are you familiar with this
22 document? Have you seen this document?

23 A Looks familiar.

24 Q Okay. Is that your signature there at the
25 bottom?

26 A It is.

27 Q There's sections titled, "Removal of
28 Contingencies."

1 Do you see that language there?

2 A I do.

3 Q And if we look at that section, it indicates
4 that "the parties are removed" -- "hereby removed all
5 contingencies set forth in that purchase agreement and
6 joint escrow instructions, including the execution by
7 both parties of the operating agreement on the promissory
8 note for and between San Diego Business Services Group
9 and San Diego Patients Cooperative Corporation, which has
10 been handled outside of escrow. An escrow holder shall
11 not be concerned with --"

12 Do you see that section there?

13 A I do.

14 Q What did you interpret that phrase "has been
15 handled outside of escrow" to mean?

16 A I took it in the past tense, that it had been
17 handled, and, really, I never thought twice about it
18 because it came from an escrow company that I've always
19 thought to be a neutral third party.

20 Q What was it about the fact that it came from the
21 escrow company that you're getting this document?

22 A I'm not a hundred percent sure, but I think that
23 the same escrow company handled all sides of the
24 transaction. So I guess I assumed that they were looking
25 out for the best interest of all three parties.

26 Q Did you -- at the time that you looked at this,
27 read this and signed this, what was your understanding
28 then based on the language contained here as to the

1 status of what you thought the deal was with
2 Mr. Harcourt's piece of the business aspect?

3 A I thought that all three had been handled.

4 Q Did you know anything about the status of the
5 operating agreement independently from anything you read
6 in this document?

7 A No. Mr. Harcourt and I -- we didn't really
8 communicate that much. I mean he was taking lead and --
9 had taken lead and was handling most of the process. So
10 I didn't really think twice.

11 Q Did you know anything about the status of the
12 promissory note that's referenced outside of what was
13 contained in this document?

14 A Outside of my piece of property, I really didn't
15 have any understanding of what -- outside the original
16 purchase agreement, which was for that flat amount of
17 money, I didn't have any knowledge of any promissory note
18 or operating agreement.

19 Q Did you ever instruct anyone to remove these --
20 the contingencies that we saw on the previous part of the
21 exhibit?

22 A No.

23 Q Did you ever speak to Mr. Razuki about any
24 removal of these contingencies?

25 A No.

26 Q Did you ever speak to Mr. Malan about any of the
27 removal of these contingencies?

28 A No.

1 Q Did you ever speak to anyone about removing
2 these contingencies?

3 A No.

4 Q Why did you sign it?

5 MR. DEMERGIAN: Asked and answered.

6 THE COURT: One more time.

7 MR. CAVANAGH: And it may have been. I
8 apologize.

9 THE COURT: Go ahead.

10 THE WITNESS: Because it was part of the process
11 to finalize the sale of the property. I mean, typically,
12 in -- I've bought a lot of real estate, but I kind of
13 just follow along with whatever the escrow sends -- sends
14 my way.

15 BY MR. COLLIER:

16 Q Was it your intention at the time that you just
17 wanted your deal to close without Mr. Harcourt's part of
18 the deal closing, without the sale of the other property
19 still closing at the same time?

20 MR. JAFFE: Objection. Leading.

21 THE COURT: Sustained. Leading.

22 THE WITNESS: Well, I can say I --

23 BY MR. COLLIER:

24 Q Hold on. I got to ask you a different question.

25 THE COURT: When I say "sustained."

26 THE WITNESS: Sip it?

27 THE COURT: It's okay.

28

1 BY MR. COLLIER:

2 Q What was your intent, still, at the time that
3 you had signed this agreement with regards to the closing
4 of the three parts of the deal?

5 A My intention all along was to remain a part of
6 all three closings concurrently.

7 Q Did you ever want the deal to close without
8 Mr. Harcourt's aspects of the conditional use permit
9 closing?

10 MR. DEMERGIAN: Objection. Vague.

11 THE COURT: Sustained.

12 BY MR. COLLIER:

13 Q Did you ever want this transaction to complete
14 without the completion of the business transaction that
15 Mr. Harcourt was doing in the three-part transaction
16 process?

17 MR. DEMERGIAN: Objection. Relevance.

18 MR. JAFFE: Vague.

19 THE COURT: Sustained. Relevance. Based on his
20 previous testimony.

21 Question.

22 BY MR. COLLIER:

23 Q Did anyone tell you anything about the handling
24 of this documents outside of escrow?

25 MR. JAFFE: Objection. Hearsay. Lack of
26 foundation.

27 THE COURT: Sustained.

28

1 BY MR. COLLIER:

2 Q Did you understand anything about the handling
3 of these documents outside of escrow?

4 MR. JAFFE: Objection. Lack of foundation.

5 THE COURT: Overruled.

6 THE WITNESS: Sorry. Can you ask the question
7 again. You got me, like six of them in a row.

8 BY MR. COLLIER:

9 Q My apologies. It's me asking poor questions and
10 I apologize.

11 Did you understand anything about the handling
12 of the documents referenced in this contingency release
13 outside of the escrow process?

14 A My only understanding was that they were all
15 three to be handled together, and the overarching goal of
16 all three of them being together was for everybody to
17 make their money back that they had invested in this thus
18 far.

19 Q At some point after the real estate transaction
20 that related to 8863 Balboa closed, did you have an
21 understanding that it had been closed without the
22 execution of the documents that are referenced in this
23 removal of all contingencies?

24 MR. JAFFE: Vague. Leading.

25 MR. DEMERGIAN: Calls for hearsay.

26 THE COURT: Overruled.

27 THE WITNESS: I was made aware when I got a
28 phone call from Mr. Harcourt.

1 BY MR. COLLIER:

2 Q And going back to my question, did you have an
3 understanding that the documents had not been executed,
4 the ones that are referenced in the removal of all
5 contingency?

6 MR. DEMERGIAN: Calls for hearsay.

7 THE COURT: One second. Sustained. Relevance
8 as to him.

9 Question.

10 BY MR. COLLIER:

11 Q What was your reaction -- strike that.

12 MR. COLLIER: Those are all the questions I have
13 for you. Thank you.

14 THE COURT: Mr. Jaffe?

15 MR. JAFFE: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. JAFFE:

18 Q Good morning, Mr. Lake.

19 A Good morning.

20 Q Have we ever met before?

21 A No, sir.

22 Q I represent Mr. Razuki and Razuki Investments.
23 Mr. Demergian represents Mr. Malan. Have you ever met
24 Mr. Malan before?

25 A I've never met any of them.

26 Q Have you ever met Mr. Razuki before?

27 A No, sir.

28 Q Did you have any meetings with the attorneys for

1 Mr. Harcourt in preparation for your testimony today?

2 A I spoke with Mark.

3 Q And when was that?

4 A It was last week. I spoke with him briefly
5 again this morning.

6 Q To go over your testimony?

7 MR. COLLIER: Objection. Hearsay.

8 THE COURT: Overruled.

9 THE WITNESS: I was a little nervous coming here
10 because I had never done this before, and so I think the
11 main intention was to let me know what I was to expect.
12 The first call was he asked, you know, essentially what
13 my side of the story was and I shared it with him because
14 we had never met or spoken before.

15 BY MR. JAFFE:

16 Q So that was the first time you had talked to any
17 attorney for Mr. Harcourt -- was about a week ago?

18 A I mean, give or take -- yeah, I would say so.

19 Q And -- but you had been talking to Mr. Harcourt
20 about his lawsuit in this case, correct?

21 A I haven't spoken to Mr. Harcourt in a year.

22 Q Are you involved in any business dealings with
23 Mr. Harcourt currently?

24 A No.

25 Q Are you involved in any companies in which
26 Mr. Harcourt has an interest currently?

27 A No.

28 Q Have you ever been involved in any businesses in

1 which Mr. Harcourt also had an interest?

2 A When you say "businesses," are you inferring
3 that we were in a business together? because I've never
4 been in a business with him. I have owned a piece of
5 property that he had no part of, that he was in a
6 business to be a part of, but I've never been in a
7 business with him.

8 Q Are you talking about Balboa at the property or
9 a different property?

10 A I'm talking about a different property as well.

11 Q What property are you talking about that you
12 were also involved with and it involved Mr. Harcourt?

13 A It's a piece of property in Ramona.

14 Q And is that a property that has a marijuana
15 dispensary on it?

16 A It is. Again, I own -- just own the real
17 estate. I don't have any part of the business.

18 Q So you knew prior to purchasing this -- or
19 not -- not purchasing, but receiving this Balboa property
20 due to your loan. You knew at that time the value of
21 having a conditional use permit on a piece of property,
22 correct, because of your experience at Ramona?

23 A Define "value." I'm not sure what you mean by
24 value. I mean everything has a value.

25 Q It would have had increased value as a result of
26 having a conditional use permit. Didn't that Ramona
27 property -- did you find that?

28 A I would say it had an increased perceived value.

1 Actual value is much different.

2 Q Did that dispensary in Ramona -- did that
3 property have any business owners association affiliated
4 with that property?

5 A I'm sorry. You're losing me here. Business
6 owners affiliation with Balboa?

7 Q No. With the property in Ramona.

8 A With regard to Mr. Harcourt?

9 Q You owned a piece of property in Ramona.

10 A Correct.

11 Q And I'm asking you, was there any business
12 owners association that passed CC&Rs for that property?

13 A You're stumping me. I'm sorry. I don't --
14 there was no CC&Rs, there was no homeowners association
15 with a piece of property in Ramona. There was a
16 homeowners association with the piece of property in
17 Balboa.

18 Q You're calling it a homeowners association, but
19 these are commercial properties, right, both of them?

20 A What's their -- yeah, they're CC&Rs.

21 Q You understand that there was a homeowners
22 association that you referred to -- or an owners -- how
23 about we just call it an owners association. Okay?

24 A Perfect.

25 Q There was no owners association affiliated with
26 the Ramona property, correct?

27 A Correct.

28 Q But when did you find out that there was an

1 owners association affiliated with the Balboa property?

2 A After I had loaned the money.

3 Q But before you received the quitclaim deed?

4 A Yes.

5 Q And what did you find out about that owners
6 association?

7 MR. COLLIER: Objection. Vague.

8 THE COURT: Overruled.

9 THE WITNESS: That they had amended their CC&Rs
10 to disallow anything marijuana related in the -- within
11 the owners association for the condominium complex of
12 commercial properties where that property existed. And I
13 did not know that when I loaned the money, but had I
14 known that, I would have never loaned the money.

15 BY MR. JAFFE:

16 Q Because that would have substantially impacted
17 the value of the conditional use permit since the owners
18 association was saying they weren't going to allow the
19 marijuana dispensary, correct?

20 MR. COLLIER: Objection. Foundation.

21 THE COURT: Sustained.

22 BY MR. JAFFE:

23 Q What was the date you found out about the owners
24 association not allowing any type of marijuana dispensary
25 on the property that you/High Sierra owned at Balboa?

26 A I think it was like seven years ago, but I'll
27 say it was a couple of weeks after we had loaned the
28 money.

1 Q And so that was about June of 2015, right?

2 A Plus or minus, yes.

3 Q Got it. Isn't it true that you were late on
4 payments to the owners association at Balboa at the time
5 of the closing of the sale from High Sierra to Razuki
6 Investments.

7 A I don't know. I don't recall. Perhaps.

8 Q Go to Exhibit 176 at page 293. It will be in a
9 notebook in front of you.

10 MR. JAFFE: Can I approach to help with the
11 volumes, Your Honor?

12 THE COURT: You may.

13 What page number was that, Counsel?

14 MR. DEMERGIAN: I have 293.

15 MR. JAFFE: 293.

16 THE COURT: Thank you.

17 MR. JAFFE: They're all back here and it will
18 say "exhibits" on here, just so you know for the next
19 time. This one is 177. But there's a couple -- maybe
20 you should keep this one.

21 THE WITNESS: Did you say 293?

22 BY MR. JAFFE:

23 Q 293, please.

24 Are you there?

25 A I'm there.

26 Q Do you see this is an email by you to
27 Mr. Harcourt, Claudia Garcia as well?

28 A Yep.

1 Q And --

2 MR. JAFFE: We move for the admission of this
3 page.

4 MR. DEMERGIAN: No objection.

5 MR. COLLIER: Objection. Relevance. Hearsay as
6 to the bottom part, especially.

7 THE COURT: Okay. We're talking about the first
8 part. Well, that's his email, right?

9 MR. COLLIER: Yeah.

10 THE COURT: Any objection to that?

11 MR. COLLIER: Relevance.

12 THE COURT: Thank you. Overruled.

13 The bottom part, though, that is the email from
14 Claudia, right, that goes to Mr. Bradford. You objected
15 to that?

16 MR. COLLIER: The last one.

17 THE COURT: The last one. So that is from Kim.
18 On that page that's all I got.

19 MR. JAFFE: Right.

20 MR. COLLIER: Sorry. Yes, you're correct.

21 THE COURT: Okay. It's in.

22 Go.

23 (Exhibit 176, page 293 admitted into
24 evidence.)

25 BY MR. JAFFE:

26 Q And Claudia's email to you indicates, "Can you
27 confirm that the HOA demand is for 8861B as the seller
28 Melograno says he has been up to date with all of his HOA

1 payments."

2 Do you see where it says that?

3 A Yes.

4 Q And then you responded, "This may be for 8863E
5 as I was past due on HOA fees."

6 A Okay.

7 MR. COLLIER: Can you read the rest of the email
8 for completeness, please.

9 BY MR. JAFFE:

10 Q "They were paid in full and current as of three
11 weeks ago."

12 Do you see where it says that?

13 A I do.

14 Q So as of the closing, there was a demand by the
15 HOA for your late HOA fees, right?

16 A I don't recall, but I would assume so, yes.

17 Q That was another reason why you wanted to sell
18 this property because -- so you wouldn't incur additional
19 HOA fees, right?

20 A No, actually. I never even thought about the
21 HOA fees. And to be honest, I didn't receive one --
22 there was supposed to be -- with a promissory note, there
23 was supposed to be monthly installment payments relative
24 to the cost of the money that I loaned and I never
25 received one.

26 So whatever the HOA fees -- I mean, can you tell
27 me how much they were? Because I would imagine they are
28 minuscule in comparison to what I was trying accomplish

1 in getting my money back.

2 Q When was the first time you had any discussions
3 with Mr. Harcourt regarding him getting or working on a
4 CUP, a conditional use permit, for a marijuana dispensary
5 involving your property at Balboa?

6 A Well, they were doing that before I loaned them
7 the money.

8 Q And who was it that came to you and said they
9 needed you to be involved with regard to your property at
10 Balboa?

11 MR. COLLIER: Objection. Hearsay. Calls for
12 hearsay.

13 THE COURT: It depends who it is, Counsel. It's
14 a party. Let me hear the end. So substitute a motion to
15 strike, you may answer sir.

16 Who was it.

17 THE WITNESS: Can you say the question again.

18 BY MR. JAFFE:

19 Q Who was it that came to you or approached you
20 about your property being involved in getting a
21 conditional use permit for a marijuana dispensary?

22 A It was my -- it was my late brother-in-law that
23 ultimately said that --

24 MR. COLLIER: Objection at that point.

25 THE COURT: Yeah, yeah.

26 Sustained, Counsel.

27 BY MR. JAFFE:

28 Q In that document that you have there, I believe

1 we were at 176, page -- you went to 68 and 69, correct?

2 So are you on page 69?

3 A Yes.

4 Q This is where it says, "However, parties
5 acknowledge and agree that this escrow is not contingent
6 on the concurrent closing of San Diego Patients Consumer
7 Cooperative MMCC as set out in Section 6 of the
8 agreement.

9 Do you see where it says that?

10 A I do.

11 Q It doesn't say in this or in Section 6 what was
12 supposed to happen with regard to San Diego Patients
13 Consumer Cooperative MMCC, correct?

14 A If you say so. I don't --

15 Q Well, what did you understand it to mean, "is
16 not contingent on the concurrent closing of San Diego
17 Patients Consumer Cooperative MMCC."

18 Closing of what with regard to San Diego
19 Patients Consumer Cooperative MMCC?

20 A I'm not sure how to -- how to answer your
21 question, because throughout the whole process, they're
22 all supposed to close together. And so if you read the
23 next paragraph, it's even more confusing. So maybe you
24 can read that so that everybody can understand how
25 confusing this process was.

26 Q You signed a purchase and sale agreement that
27 had this paragraph 6. And so what was your understanding
28 when you say all three were supposed to close together?

1 What was supposed to happen regarding the closing that
2 had to do with San Diego Patients Consumer Cooperative
3 MMCC?

4 A The agreement between Mr. Harcourt and the
5 buyers had been consummated. It had been completed.

6 Q Was it your understanding that there was some
7 agreement between Mr. Harcourt and the buyer as of the
8 date of the purchase and sale agreement you signed with
9 regard to the Balboa property?

10 A You say "with regard to the Balboa property,"
11 but there was also a purchase sale agreement that was
12 initiated that was for all three. And so in my mind,
13 that sat over the top of these individual escrows, and
14 they were all supposed to close concurrently. So I hear
15 what you're saying, but you're --

16 Q Well, your property was 8863, correct --

17 A Correct.

18 Q -- through High Sierra?

19 A Correct.

20 Q And the other property was 8861?

21 A Correct.

22 Q So with regard to 8863, what was supposed to
23 close as set forth in Section 6 of the purchase agreement
24 regarding San Diego Patients Consumer Cooperative MMCC?

25 A I just answered the question. Whatever
26 agreement that Mr. Harcourt had with the buyers.

27 Q So -- you didn't know whether they had even
28 entered into agreement at that point, at the time that

1 you signed the purchase agreement. You just, at that
2 point, were signing a document that says there should be
3 a closing with regard to San Diego Patients Consumer
4 Cooperative for your property, 8863, to be sold, right?

5 MR. COLLIER: Objection. Compound.

6 THE COURT: Understand the question?

7 THE WITNESS: Barely.

8 THE COURT: Well, if you understand it, answer
9 it.

10 THE WITNESS: Well, can you restate it, then.

11 BY MR. JAFFE:

12 Q When you signed the purchase and sale agreement
13 with that paragraph 6 in it, it was just to have a
14 contingency that the 8863 Balboa property wouldn't close
15 unless an agreement was reached between Mr. Harcourt/San
16 Diego Patients Consumer Cooperative, and Razuki
17 Investments; is that correct?

18 MR. COLLIER: Objection. Compound.

19 THE COURT: Do you understand the question?

20 THE WITNESS: Yes, I understand the question.

21 THE COURT: Overruled.

22 You may answer.

23 THE WITNESS: Yes. They were to have reached
24 and signed an agreement.

25 BY MR. JAFFE:

26 Q Got it. Thank you.

27 Then can you go to page 56.

28 This is the removal of all contingencies, right?

1 I think it's on your screen as well.

2 A I see that, but I -- weren't there pages prior
3 to this also? This looks like just the signature page.

4 THE COURT: He's talking about the two
5 paragraphs above the signatures.

6 BY MR. JAFFE:

7 Q I'm just asking you about this paragraph that
8 say "removal of all contingencies."

9 And you testified on direct about that, that
10 page?

11 A Okay.

12 Q So with regard to that -- "removal of all
13 contingencies" you signed, and it states, "Both parties
14 acknowledge having received copies of all documents
15 regarding the note and operating agreement outside of
16 escrow."

17 Do you see that?

18 A Yes, I see it.

19 Q Did you ever receive copies of all documents
20 regarding the note and operating agreement?

21 A I did not.

22 Q And --

23 A Can I say something?

24 Q Why did you sign that says that you acknowledge
25 receiving copies of all documents regarding the note and
26 operating agreement outside of escrow when you hadn't,
27 you're saying, received such documents?

28 A Because, I believe, in the page or two prior to

1 this, it said that -- in the past tense, that all
2 contingencies have been released. Is that the same
3 document that we were looking at earlier?

4 Q The past tense is in the sentence before, where
5 it says "has been handled outside of escrow."

6 Do you see where it says -- I'll read it for
7 you, the whole thing.

8 "Parties hereby remove all contingencies as set
9 forth in that purchase agreement and joint escrow
10 instructions, including the execution by both parties of
11 the operating agreement and the promissory note for and
12 between San Diego Business Services Group LLC and San
13 Diego Patients Cooperative Corporation, which has been
14 handled outside of escrow and escrow holder should not be
15 concerned with same?"

16 Is that what you were thinking about?

17 A Yes.

18 Q But "has been handled" couldn't have meant a
19 document and/or agreement that was, as you indicated --
20 should be finalized and signed, since there was no such
21 document and you didn't receive it, correct?

22 MR. COLLIER: Object to the form. It's
23 compound.

24 THE COURT: It's also argumentative, Counsel.
25 Argumentative. Compound. Rephrase.

26 MR. JAFFE: Okay.

27 BY MR. JAFFE:

28 Q How would you have known that it had been -- how

1 would you have known that "has been handled out of
2 escrow" meant a finalized and signed promissory note and
3 operating agreement if you hadn't even received the
4 documents?

5 A The fact that this communication came from what
6 I believe to be a neutral third party in an escrow
7 company that was handling all three, I guess, pillars of
8 the overall agreement, which is the original purchase
9 agreement, in my mind, it seemed reasonable, in my
10 opinion, that they had handled the other portion of it.

11 I didn't see the operating agreement. I didn't
12 see any of that because I wasn't -- outside of trying to
13 ensure that everything closed concurrently so that
14 everybody could get their money back, I wasn't party to
15 those, so I didn't -- I wasn't paying attention to it
16 because it wasn't relevant outside of the fact that it
17 was to happen all together. And I trusted that an escrow
18 company was ensuring that was happening.

19 Q Why didn't you just call up Brad Harcourt and
20 ask him --

21 A Brad and I aren't --

22 (Speaking simultaneously.)

23 THE WITNESS: Mr. Harcourt and I are not best
24 buddies. I mean, we met through this. It seemed
25 perfectly logical to me.

26 BY MR. JAFFE:

27 Q If you wanted -- or excuse me. If you were
28 insisting in prior agreements and escrow instructions

1 that these, what you're calling, three transactions
2 closed together, and you did that in more than one place
3 and then now you're removing all those contingencies, why
4 wouldn't you call Mr. Harcourt or email him or have some
5 communication with him about not having that done
6 anymore?

7 A I trusted what was put in front of me, and I
8 believe what I read.

9 Q But you also signed a document, which you now
10 indicate is not accurate because you didn't receive
11 copies of all documents regarding the note and operating
12 agreement outside of escrow, correct?

13 MR. COLLIER: Form. It's argumentative. It's
14 compound.

15 THE COURT: Overruled.

16 You may answer that one. Is the document
17 correct or not?

18 THE WITNESS: It's correct.

19 BY MR. JAFFE:

20 Q Now you're saying you did receive copies?
21 It's -- it's not -- you didn't receive the documents,
22 right?

23 A I did not receive the documents.

24 Q And so "has been handled outside of escrow"
25 could have meant that Mr. Harcourt and Razuki Investments
26 were still working on an agreement, but as you said, now
27 you wouldn't have -- it wouldn't hold up your sale of the
28 property anymore, right?

1 A No, I wouldn't say that's correct. Had I known
2 that --

3 Q You wanted to sell --

4 THE COURT: Stop. Stop. Let him finish.

5 THE WITNESS: Had I known that the other part of
6 the transaction had not been completed, I would not have
7 sold the property.

8 BY MR. JAFFE:

9 Q And the way to know that was get the operating
10 agreement and promissory note that you said in the
11 document that you received, right?

12 A I believe I had confirmation from what I had
13 read. I didn't need to see those things because I wasn't
14 party to them.

15 Q You wanted to sell this property because you
16 didn't want to get involved in any kind of litigation
17 with the owners association, correct?

18 A I didn't want to be a part of this property from
19 the get-go. So I certainly wouldn't want to be a part of
20 any litigation. So I'm not sure what you're asking.

21 Q Can you go to Exhibit -- while we're still on
22 this one, can you go to page 288 through 289 of that
23 document.

24 Does this refresh your recollection that the
25 escrow company sent you amended escrow instructions?

26 MR. COLLIER: Objection of the use of refreshing
27 of recollection.

28 THE COURT: Well, it could be. Overruled.

1 Does it?

2 THE WITNESS: This looks like the same thing we
3 just went over, correct?

4 BY MR. JAFFE:

5 Q Right. But does -- did it come from the escrow
6 company directly to you?

7 A Yes.

8 Q Thank you.

9 Can you go do page 340 -- actually 341.

10 Are you there?

11 A I'm there.

12 Q This is an email by you, correct?

13 A Correct.

14 Q And to Ms. Tran and Claudia Garcia. That's the
15 escrow company representatives, right?

16 A Yes.

17 Q Dated September 20, 2016?

18 A Yes.

19 Q And it says -- sorry.

20 MR. CAVANAGH: Move for the admission of
21 Exhibit 176, page 341.

22 THE COURT: Any objection?

23 MR. DEMERGIAN: No objection.

24 MR. COLLIER: I object to the financial
25 information that's on there, for sure.

26 THE COURT: This is -- see the wiring
27 instructions? Block those out.

28 MR. JAFFE: Got it.

1 THE COURT: That will be sanitized. It's just
2 some booking, that's personal booking numbers, meaning
3 transaction numbers and check numbers. So that will all
4 be blocked out.

5 You may inquire though, Counsel of that. So
6 don't show this. You can ask him about the document, but
7 don't show it.

8 MR. JAFFE: Understood.

9 (Exhibit 176, page 341 admitted into
10 evidence.)

11 BY MR. JAFFE:

12 Q This is dated September 20, 2016, where you say,
13 "Hi Kim. I just returned to my office. Below are my
14 wiring instructions. Can you please confirm when we are
15 scheduled to close? Many thanks."

16 So you wanted -- you were pushing to have this
17 closed as of September 20, 2016, correct?

18 A Pushing?

19 Q Yes.

20 A I think I was inquiring when I said "when we are
21 scheduled to close."

22 Q Can you go to Exhibit 77, pages 324 through 325.

23 MR. COLLIER: That's the different volume --

24 MR. JAFFE: Oh, 177. Thank you.

25 THE WITNESS: I have that in front of me.

26 MR. JAFFE: 324 to 325.

27 BY MR. JAFFE:

28 Q Did you receive that email from Mr. Harcourt,

1 which is dated October 3, 2016? Starts on 324 and goes
2 over to 325.

3 A I don't see my email address on there.

4 Q On the top of 325, it has your name.

5 A Oh, there it is. My bad. Sorry. But I don't
6 see it on the one earlier on 324.

7 Q I'm just asking -- well, 324 is the start of the
8 email and just lists more people on 325 on who it was
9 sent to, correct?

10 A It looks like there was a response and that I
11 was cc'd on it, yes.

12 Q And this may already be in evidence.

13 MR. JAFFE: If not, we move the admission of
14 pages 324 and 325.

15 MR. COLLIER: I have it already as admitted.

16 THE COURT: Huh?

17 MR. COLLIER: I think it's already admitted.

18 THE COURT: Any objection?

19 MR. DEMERGIAN: No.

20 THE COURT: Received.

21 Go.

22 (Exhibit 177, pages 324 and 325
23 admitted into evidence.)

24 BY MR. JAFFE:

25 Q So as of October 3, 2016, Mr. Harcourt was
26 indicating to you and to the escrow company and others,
27 "Claudia, thank you for the update. Buyer stated funds
28 will be available today per our conversation Friday.

1 Please let us know when the remaining balance of funds
2 are deposited. Lastly, we are finalizing documents now
3 and should be ready to execute if both parties are
4 satisfied within the week."

5 Do you see where it says that?

6 A I see it.

7 Q Did you have any understanding at that time as
8 to what the documents that Mr. Harcourt was indicating he
9 was finalizing and should be ready to execute if both
10 parties are satisfied?

11 A Yeah. Whatever documents he was finalizing with
12 them.

13 Q Those were the documents that you understood
14 that there was trying to be an agreement reached between
15 Mr. Harcourt and Razuki Investments; is that it?

16 A That's it.

17 Q And as of October 6th, those were still being
18 finalized and still being determined as to whether both
19 parties would be satisfied with an agreement, correct?

20 A Apparently, yes.

21 MR. COLLIER: Move to strike. Speculative.

22 THE COURT: It is speculative. Sustained.
23 Stricken.

24 BY MR. JAFFE:

25 Q Can you go to pages 371 through 372?

26 THE COURT: What exhibits? Just for the record,
27 what exhibit number is that, Counsel?

28 MR. JAFFE: That is 177.

1 THE COURT: Thank you.

2 BY MR. JAFFE:

3 Q Are you there?

4 A I'm here.

5 MR. JAFFE: I believe there's two pages already
6 in evidence.

7 THE COURT: Madam Clerk, do you know?

8 THE CLERK: No, Your Honor, they are not.

9 THE COURT: They're not in evidence, Counsel.

10 MR. JAFFE: All right.

11 BY MR. JAFFE:

12 Q There's an email that you sent at the bottom of
13 page 371 going on to 372 to Mr. Malan, correct?

14 A Correct.

15 Q And that was responding to an email that he sent
16 you, which is right below that, right?

17 A Correct.

18 MR. JAFFE: Move for the admission of pages 371
19 and 372.

20 MR. COLLIER: No objection.

21 MR. DEMERGIAN: No objection.

22 THE COURT: Received.

23 (Exhibit 177, pages 371 and 372
24 admitted into evidence.)

25 BY MR. JAFFE:

26 Q And so on the email from Mr. Malan to you, it
27 states, "We are set to close by this Friday. We are
28 putting everything in line with our new entity documents

1 and management. It could possibly close earlier, but
2 Friday is the latest. Feel free to contact me with any
3 questions."

4 Do you see where it says that?

5 A I do.

6 Q And you responded, "Please ensure that it closes
7 no later than this Friday," right?

8 A Right.

9 Q Because you wanted this to close as quickly as
10 possible, correct?

11 A Correct.

12 Q And then Mr. Harcourt responded to Mr. Malan's
13 email and to yours by saying, "Ninus, we still have to
14 finalize our agreement as well per escrow instructions.
15 This needs to be done in conjunction with closing and
16 have not been able to do so. We have prepared a
17 memorandum of understanding, MOU, outline our agreement.
18 I have attached the MOU for yours and Sam's review and
19 acceptance. This will be followed by an operating
20 agreement. Please call me to discuss." And it has the
21 initials BTH. I believe that stands for
22 Brad T. Harcourt; is that correct?

23 A Are you asking me?

24 Q Yeah.

25 A I think so, yes. But I wasn't -- I wasn't on
26 that email.

27 Q I understand.

28 MR. COLLIER: Move to strike as speculative and

1 not relevant -- or foundation. Excuse me.

2 THE COURT: Let's see if there's a question on
3 it first.

4 MR. JAFFE: No. There's no question.

5 THE COURT: Then as to -- he didn't even read
6 that, Counsel.

7 Stricken.

8 BY MR. JAFFE:

9 Q Do you know Richard Melograno?

10 A I've met him before, yeah.

11 Q Have you done business with him?

12 A No.

13 Q And you know him through your business
14 relationship with Mr. Harcourt and Mr. Bowden, correct?

15 A I met him because he's a friend of my late
16 brother-in-law's.

17 Q But he was more than a friend of your late
18 brother-in-law. He was a business partner, right?

19 A Correct.

20 Q You testified on direct that there was a bigger
21 goal in play. What was the bigger goal in play with
22 regard to this -- your Balboa property to High Sierra?

23 A Did you say I testified to that effect?

24 Q Yes. Earlier this morning.

25 A Well, the original purchase agreement was for
26 \$1.8 million that was to encompass both pieces of
27 property and to cover the -- the excess cash was to cover
28 the amount of money that Brad had invested into --

1 Mr. Harcourt had invested into the CUP.

2 Q The bigger goal in play -- let me rephrase.

3 You received an offer of 1.8 million that
4 involved your property, but that didn't go through. Do
5 you remember that?

6 A I actually don't remember that. That was the --
7 that was the only purchase sale agreement that I saw,
8 unless you can show me otherwise, regarding the
9 transaction, and then it was separated into individual
10 escrows.

11 Q Do you remember an offer from a person by the
12 name of Dave Gash for 1.8 million, but it was contingent
13 on due diligence?

14 A I don't.

15 Q Do you remember any other offers that were made,
16 that involved the sale of your/High Sierra's property at
17 Balboa?

18 A No formal offers, no.

19 Q What about informal offers?

20 A People informally talk about a lot of things.
21 You know, as far as I know, there was one offer that was
22 submitted in a purchase sale agreement.

23 Q Right. The only thing you know about that is
24 that your property would be purchased -- your/High
25 Sierra's property would be purchased for 375,000, right?

26 A Well, that's not the only thing I knew.

27 Q The only thing you knew with regard to your
28 property was that -- the offer was 375,000.

1 A We just -- we just spoke about this.

2 Q Have you ever seen a document that said Razuki
3 Investments was going to purchase your property?

4 A As it relates to my property, yes.

5 Q That's all you know about, right?

6 A No. I just told you, I know about the original
7 purchase sale agreement that was to encompass both pieces
8 of property and Mr. Harcourt's part of the CUP.

9 Q Is there any written document for that, that you
10 know of?

11 A Yeah. I believe there's a purchase sale
12 agreement.

13 Q So you -- it's your understanding that there's a
14 purchase and sale agreement between Razuki Investments
15 and who for 1.8 million to do what?

16 A I couldn't tell you exactly to who, but it was
17 to, I'll say the three of us, and it was to purchase all
18 three parts of both pieces of real estate and the CUP
19 portion.

20 Q So it would surprise you if there was no such
21 document?

22 A Yeah, I would be surprised.

23 Q So you're -- you're not basing it upon a written
24 document. It's based upon some kind of discussion you
25 had with Mr. Harcourt; is that it?

26 A No, that's not it. I distinctly remember
27 seeing -- I don't have it with me, but I remember seeing
28 a physical purchase sale agreement offered.

1 Q A signed document by Razuki Investments?

2 A I don't recollect if it were signed or not,
3 honestly.

4 Q But, obviously, that wasn't something that was
5 important to you in the sale of your property, just the
6 8863, because you went through without knowing whether
7 there was really any such purchase and sale document for
8 1.8 million, correct?

9 MR. COLLIER: Objection. Argumentative.

10 THE COURT: No. Overruled.

11 THE WITNESS: I hear what you're saying. It's
12 difficult to answer. I mean we've -- we've recited these
13 emails, many of them suggesting that there are other
14 agreements that are in the process, almost finalized. So
15 throughout the process, I believed that all of those
16 things were happening concurrently.

17 BY MR. JAFFE:

18 Q But you never knew whether they were actually
19 finalized other than representing that you got the
20 documents showing, but you didn't really get them, right?

21 A I did not receive the documents.

22 MR. JAFFE: Nothing further, Your Honor. Thank
23 you.

24 THE COURT: We're going to take our morning
25 break. It will be for 15 minutes, ladies and gentlemen.
26 Please step out.

27 For the record, Plaintiff, anything?

28 MR. COLLIER: No.

1 THE COURT: Defense?

2 MR. JAFFE: No.

3 THE COURT: Defense?

4 MR. DEMERGIAN: No.

5 THE COURT: Off the record.

6 (Recess held.)

7 THE COURT: Let the record reflect the parties
8 and attorneys and full jury panel are present. Thank
9 you.

10 We shall now start cross-exam by counsel for
11 Malan.

12 Counsel.

13 MR. DEMERGIAN: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. DEMERGIAN:

16 Q Good morning, Mr. Lake. I represent American
17 Lending and Holdings.

18 Have you ever met Mr. Malan? I think Mr. Jaffe
19 asked you that.

20 A No.

21 Q You're aware, however, that he contributed
22 \$25,000 for the money you received relative to the sale
23 of the property, correct?

24 A I wasn't aware that it came directly from him,
25 but I'm aware that I received the money.

26 Q You received the \$25,000 wire and you don't
27 recall if it was from Mr. Malan?

28 A I don't.

1 Q Okay. Mr. Jaffe spent a lot of time with you on
2 the release of contingencies.

3 Do you remember that document?

4 A Yes.

5 Q I'm not going to bring it up again and force you
6 to look at it again.

7 A Thank you.

8 Q The fact of the matter is, Mr. Lake, you were
9 interested in the transaction clause. You closed escrow.
10 You signed anything they sent to you that would get the
11 transaction closed; fair statement?

12 MR. JAFFE: Objection. Compound.

13 THE COURT: Break it down, Counsel.

14 MR. DEMERGIAN: Okay.

15 BY MR. DEMERGIAN:

16 Q You wanted to get the property sold, right?

17 A Correct.

18 Q You were anxious to get it sold, yes?

19 A Yes.

20 Q In fact, it was a 23-day escrow or something,
21 wasn't it?

22 A I don't recall.

23 Q It was a short escrow, wasn't it?

24 A I believe so.

25 Q Okay. You received a number of papers from
26 escrow, yes?

27 A Yes.

28 Q Did you read them all carefully before you

1 signed them?

2 A Probably not careful enough.

3 Q I'm a lawyer. I don't read that stuff either
4 before I sign it.

5 Did the release of contingencies -- did you pay
6 any particular attention to it at all or did you just
7 sign the document as another escrow document that needed
8 to be signed to close the transaction and get it done?

9 A I feel like I paid close enough attention to the
10 final documents that I signed.

11 Q All right.

12 A And I read the language.

13 Q Yet as Mr. Jaffe pointed out, the language or
14 that section indicates that you -- you were party to the
15 escrow, right?

16 A Yes.

17 Q The parties to the escrow, that includes you,
18 had received copies of the note and membership agreement.

19 Do you remember reading that part?

20 A Only as of today.

21 Q Okay.

22 A I don't remember from six years ago.

23 Q And, obviously, that didn't raise any red flags
24 for you; fair statement?

25 A Fair statement because of what was in the prior
26 paragraphs.

27 Q I get it. You said there were three columns
28 relative to the purchase as you understood it, correct?

1 A Correct.

2 Q 8861, that was owned by Mr. Melograno or his --
3 correct?

4 A Correct.

5 Q 8863, that was owned by High Sierra, correct?

6 A Correct.

7 Q And San Diego Patients Consumer Cooperative MMPC
8 was the third column, right?

9 A Correct.

10 Q What was -- what did you understand that
11 SDPCC -- San Diego Patients Consumer Cooperative MMPC,
12 what did you understand was being sold as that third
13 column?

14 A The ability to operate a dispensary on that
15 property.

16 Q Are you familiar with the laws regarding
17 conditional use permits and what you need to operate a
18 dispensary and so forth and so on? So if I told you that
19 we've established that such things, a consumer -- a
20 conditional use permit goes with the land, does that mean
21 anything to you? Is that a phrase you recognize?

22 A After the fact; not beforehand.

23 Q Okay. After the fact, now, you realize there
24 really were only two columns and the real property
25 included the CUP, right?

26 A That wasn't the spirit of the original
27 agreement.

28 Q At the end of the day, though, this property --

1 both properties sold for \$750,000, right?

2 MR. COLLIER: Objection. Lack of foundation.

3 THE COURT: Overruled. He's the buyer.

4 THE WITNESS: I believe so. I can speak to
5 mine; I can't speak to Richard's.

6 BY MR. DEMERGIAN:

7 Q Fair enough. You've got 375, right?

8 A Correct.

9 Q Ten of which -- or excuse me -- 25 of which was
10 wired before close from somebody -- may have been
11 Mr. Malan, may have been somebody else, right?

12 A Yeah, it was a deposit.

13 Q Okay. But it was before the close of escrow,
14 correct?

15 A Yeah, but most deposits are before the close of
16 escrow.

17 Q I understand that. I'm just trying to establish
18 that.

19 In your understanding of the transaction, 8861
20 and 8863 and the third column, whether it's the third
21 column or part of the first two, either way, who was the
22 buyer in that transaction or buyers, as you understand
23 it?

24 A Was it Razuki Investments or something like
25 that?

26 Q Okay. Razuki Investments is what sticks in your
27 mind? Any other names?

28 A As far as the buyers were concerned, I think --

1 is it -- Ninus and Razuki Investments are the only ones
2 that come to mind for me.

3 Q Did you see any documents that required Ninus
4 Malan's signature?

5 A I can't recall. I mean, this was seven years
6 ago. I don't recall.

7 Q Okay. You don't recall seeing any documents
8 with Ninus Malan's signature, correct?

9 A No, I don't recall.

10 Q What caused you to communicate with Ninus Malan
11 in an email thread that Mr. Jaffe went over with you? Do
12 you recall that thread or do I need to --

13 A I do. He communicated with me, not the other
14 way around. And I think it was to -- I don't know --
15 give me a sense of comfort that they were actually going
16 to follow through with the escrow.

17 Q And by that time, you had received the deposit,
18 correct, \$25,000?

19 A Correct.

20 Q Assuming that deposit came from Mr. Malan, that
21 would give him skin in the game, an interest in getting
22 the transaction closed, correct?

23 MR. COLLIER: Objection. Calls for speculation.

24 THE COURT: As phrased, sustained.

25 BY MR. DEMERGIAN:

26 Q And as I understand it, with respect to the
27 removal of contingencies, also included acknowledgement
28 of the receipt of the copies, you did not discuss that

1 with Mr. Harcourt, correct?

2 A Are you --

3 Q Before signing it?

4 A If you're referring to the document that we were
5 looking at earlier --

6 Q Yes.

7 A -- I did not discuss it with him, no.

8 Q At the end of the day, you closed -- you
9 received \$375,000 give or take, correct?

10 A Correct.

11 Q What was your ex-brother-in-law's debt to you
12 that served the basis for that security?

13 A What was his debt to me?

14 Q Yes. Did it wipe out the debt or part of the
15 debt?

16 A It wiped out the debt.

17 Q Okay. Did it give you some excess?

18 A A little.

19 Q What's a little?

20 A Somewhere between 25 and \$30,000.

21 Q Okay. So you came out okay on the deal?

22 A I mean, that's relative.

23 Q That's true. When you say you came out 25,
24 30 ahead, does that -- did that include some interest
25 with respect to your ex-brother-in-law's loan as well?

26 A Yes.

27 Q Okay. As far as you understood, what you were
28 selling to Razuki Investments was -- do you know what I

1 mean when I say "the dirt 8863"? Do you know what I mean
2 when I say that?

3 A I know what you mean.

4 Q Is that what you were selling?

5 A That was my portion of it, yes.

6 Q Okay.

7 MR. DEMERGIAN: Nothing further, Your Honor.

8 Thank you.

9 THE COURT: 15 minutes.

10 MR. COLLIER: Nothing further, Your Honor.

11 THE COURT: That takes care of that, then.

12 Mr. Lake, thank you for your testimony.

13 MR. JAFFE: Your Honor, I have a question.

14 THE COURT: There's no redirect, counsel.

15 MR. JAFFE: Okay. Got it. Thank you.

16 THE COURT: May this witness be excused?

17 MR. COLLIER: He may, Your Honor.

18 THE COURT: Counsel?

19 MR. JAFFE: Yes.

20 MR. DEMERGIAN: Yes, Your Honor.

21 THE COURT: Mr. Lake, you're free to go about
22 your business, sir. You have a nice day.

23 THE WITNESS: Thank you, sir.

24 THE COURT: You're welcome.

25 Still in the Plaintiff's case-in-chief.

26 Plaintiff, call your next witness.

27 MR. CAVANAGH: Plaintiffs call Christopher
28 Stefan.

1 THE COURT: Mr. Stefan. Let him check. Feel
2 free to stand if you want to stand -- or not. Sit,
3 stand.

4 Off the record.

5 (Recess held.)

6 THE COURT: Here we go.

7 THE BAILIFF: Raise your right hand.

8 THE CLERK: Do you solemnly state that the
9 evidence you shall give in this matter shall be the
10 truth, the whole truth and nothing but the truth so help
11 you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Please be seated.

14 Please state your name and spell your last name
15 for the record.

16 THE WITNESS: Christopher Stefan, S-T-E-F-A-N.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. CAVANAGH:

20 Q Good morning, Mr. Stefan. Where do you
21 currently work?

22 A Desarollo Real Estate.

23 Q And what is Desarollo Real Estate?

24 A Desarollo Real Estate is a real estate firm that
25 does brokerage and valuation of commercial real estate
26 properties that are tenanted by cannabis industry
27 tenants.

28 Q And what is your role at Desarollo Real Estate?

1 A I'm the employing broker, and I also provide
2 valuations and brokerage services.

3 Q And does Desarollo Real Estate have any
4 subsidiaries?

5 A Yes. We have the Cannabis Capital Advisors
6 division.

7 Q And what is Cannabis Capital Advisors?

8 A Cannabis Capital Advisors provides brokerage and
9 valuation services to cannabis businesses and licenses.

10 Q What is your role as Cannabis Capital Advisors?

11 A I'm the managing director and I provide
12 valuations as well as transactional services and help
13 raise debt and equity.

14 Q Before we go into that in more detail, let me
15 ask you do you have a college degree?

16 A I do. I graduated from Regis University.

17 Q And when did you obtain that degree?

18 A 2003 and '04. 2003 to '04.

19 Q And do you have any advanced degree?

20 A I have a master's in science in real estate in
21 construction management.

22 Q From which --

23 A Denver University.

24 Q And when did you obtain that degree?

25 A That would be in 2007.

26 Q And after college, but before you got that
27 advanced degree, did you work at all?

28 A Yes. I was a real estate agent.

1 Q And while you were -- what type of real estate
2 did you practice during that period of time?

3 A At that time I provided brokerage and valuation
4 of residential real estate.

5 Q And during that period of time, did you take any
6 steps to learn about real estate appraisals?

7 A Yes, sir. In 2006, I took my first round of
8 coursework to take the appraisal coursework.

9 Q And what coursework are you referring to?

10 A It's about a thousand hours of coursework where
11 you were learning the methodologies and strategies and
12 tools by which real estate is valued.

13 Q And did you complete all one thousand hours of
14 that coursework in 2006?

15 A I did.

16 Q And why did you take those appraisal courses at
17 that time?

18 A I was looking to edify my educational background
19 as the impending real estate crisis was kind of starting
20 to hit at that time.

21 Q While you were pursuing your master's degree,
22 did you take any classes related to business valuation or
23 real estate appraisal?

24 A I did.

25 Q And what coursework did you take at that time?

26 A Again, I took the appraisal coursework. This
27 time I studied under Bill James who was a leading
28 appraiser in my local market where, again, I took a

1 thousand hours of coursework and the requisite exams to
2 get that degree.

3 Q So did you take a second round of a thousand
4 hours of appraisal coursework?

5 A I did.

6 Q Why did you take another thousand hours of
7 appraisal coursework?

8 A That was part of the program that I was in where
9 I was in where I also studied, you know, various
10 investment and analysis tools for analyzing commercial
11 real estate.

12 Q And just very briefly, what -- what types of
13 things are you taught during that thousand hours of
14 appraisal coursework?

15 A Again, you're taught the methodologies for
16 valuating commercial real estate and properties. You're
17 taught the various tools, margins, best practices,
18 applied methodologies.

19 Q Do you have any professional licenses?

20 A I have a commercial -- a real estate license.

21 Q And when did you obtain that real estate
22 license?

23 A I originally was licensed as a real estate agent
24 in 2005. And then in 2013, I became an employed broker
25 so I could manage and have other agents work below me.

26 Q What was involved in obtaining that real estate
27 agent C license in 2005?

28 A Again, it was another round of in-classroom

1 coursework. I think that was probably about a thousand
2 hours. It was a two or three-month month class at that
3 time. Then I had to take an exam, of course, to be -- to
4 be approved as a real estate agent.

5 Q And have you been a real estate agent
6 consistently since 2005?

7 A I have. And then in '13, became an employed
8 broker where, again, I had to do coursework and exam to
9 get approved to be an employee broker.

10 Q And have you been a licensed broker consistently
11 since 2013?

12 A Yes, I have.

13 Q And do you have to do anything to maintain those
14 real estate agent and real estate brokerage licenses?

15 A Yes. There is continuing education coursework,
16 usually about two or three classes a year that include
17 updates to the law for the real estate commission as well
18 as, you know, new practices or topics that are of import
19 to the industry.

20 Q Are you certified as a real estate or business
21 appraiser?

22 A I am not.

23 Q But you took the appraisal coursework two times?

24 A Yes, sir.

25 Q What more was left to begun to become certified
26 as an appraiser?

27 A I would have to work for a licensed appraiser
28 for some time.

1 Q And why did you take all of the appraisal
2 coursework twice but then not finish getting your
3 certification?

4 A I found there were better avenues that were more
5 financially productive to use my competencies in
6 valuation, so I found that being a broker and a merger's
7 and acquisition specialist was a better use of my skill
8 set.

9 Q Do you have any experience with teaching?

10 A Yes, sir. I have lectured at several schools:
11 The University of Denver law school, University of
12 Colorado, graduated undergraduate programs, and I've
13 spoken at industry events on both commercial real estate
14 as well as business valuation in the cannabis industry.

15 Q And let me focus on the lecturing in the
16 schools. What subject matters have you lectured on in
17 the schools that you referenced?

18 A The valuation of cannabis businesses, cannabis
19 as an asset class, how to understand cannabis businesses
20 as an investment.

21 Q And then you also mentioned giving outside
22 lectures.

23 On what subjects have you given outside
24 lectures?

25 A Again, on the valuation of cannabis businesses
26 and real estate on the rental values of cannabis real
27 estate and, you know, general topics within the industry,
28 generally regarding mergers and acquisitions and the

1 trends and financial metrics that are most commonly
2 utilized in the cannabis industry.

3 Q In what settings other than schools have you
4 lectured on those topics?

5 A Other industry conferences, events,
6 associations. I've been on several boards and committees
7 from other boards where, you know, I was an authority on
8 that subject.

9 Q And, currently, are you involved in teaching on
10 cannabis-related subjects in any way?

11 A Yes, sir. I am the chair of the advisory board
12 for the cannabis degree program at Metro State university
13 in Denver.

14 Q What does that mean? What is it -- what's
15 involved in being the chair in that program?

16 A Yes. We are developing curricula and programs
17 and classes for students that will be educated in the
18 program to work in the future in the cannabis industry.

19 Q Will that -- that will be a type of a degree
20 program that's offered at the university?

21 A Yes, sir. It will be a degree program with a
22 bachelor of science requirements as well as humanities
23 and business-type requirements, and I will lead courses
24 there around valuation and the analysis of cannabis as an
25 asset class, cannabis businesses as an asset class.

26 Q What do you mean "cannabis businesses as an
27 asset class"?

28 A You know, understanding cannabis businesses are

1 clearly new in the last several years. So understanding
2 the, you know, the strengths of the businesses, the
3 weaknesses of the business as a model, you know, how it
4 can be financed, how it will be taxed, how they will be
5 valued, you know, how they generally operate and, you
6 know, the risks that any operator or investor in that
7 asset class would face.

8 Q And are you currently actually teaching any
9 classes on campus-related subjects?

10 A We have not finalized the program yet, but soon.

11 Q And so once you obtained your master's degree,
12 where did you work after you got the degree?

13 A I worked at Marcus & Millichap. It's a
14 nationwide commercial real estate firm.

15 Q And what did you do when you worked at Marcus &
16 Millichap?

17 A I provided brokerage and valuation services to
18 commercial real estate owners.

19 Q And what does that mean to provide brokerage and
20 real estate services?

21 A Where I would do due diligence and financial
22 analysis and market analysis on the properties they owned
23 to give them valuations and informed advice on business
24 strategies for the operations, acquisition or disposition
25 and refinance of their properties.

26 Q During what period of time did you work for
27 Marcus and Millichap?

28 A From 2007 until 2011.

1 Q And during that period of time, for what volume
2 of transactions did you perform these types of brokerage
3 terms that you've been describing?

4 A Anywhere from 10 transactions a year until our
5 top years, was about 43 transactions a year and that
6 was -- you know, in the 30, \$40 million of
7 transaction-volume range in a year.

8 Q And then where did you work after -- you left
9 Marcus & Millichap in 2011?

10 A Yes. A senior broker and I who focused and
11 specialized in the valuation and brokerage of government
12 subsidized properties started a firm called Hamilton
13 Realty Advisors where we worked for about two years and
14 had some good success.

15 Q And what type of work did you do while you were
16 with Hamilton Realty Advisors?

17 A Again, we were doing brokerage and valuation of
18 government subsidized properties. Clients would
19 generally hire me to assess the value of their portfolio
20 and give advice on whether to sell properties, refinance
21 properties or other operational strategies.

22 Q And what type of work would be involved in
23 giving that sort of advice or recommendation to your
24 clients?

25 A Yes. I would be applying methodologies of
26 valuation to the real estate that they owned to the
27 markets that they were active in. I would, you know,
28 keep them up to date on trends and risk factors that were

1 impacting the industry.

2 Q And then you said you were with Hamilton Realty
3 Advisors for about two years?

4 A Yes, sir.

5 Q And where did you work after that?

6 A I founded Desarollo Real Estate in 2013.

7 Q And so -- yeah, let's dig a little bit more
8 deeply into that. You said Cannabis Capital Advisors is
9 a subsidiary of Desarollo Real Estate?

10 A Yes, sir.

11 Q Broadly, what does Desarollo real estate do?

12 A Desarollo real estate works with commercial real
13 estate that's tenanted by cannabis tenants. So that
14 would be brokerage and valuation. That would be the
15 buying and selling of the properties as well as the
16 leasing of the properties in determining rental rates
17 and, you know, proper lease terms.

18 Q And then what is it that Cannabis Capital
19 Advisors does?

20 A It provides brokerage and valuation to cannabis
21 businesses and licenses.

22 Q And what has been the extent of your experience
23 in providing those types of valuation and brokerage
24 services for cannabis-related businesses?

25 A In the ten years that I've operated Cannabis
26 Capital Advisors, we provided over 700 business and real
27 estate valuations. We've completed over \$200 million in
28 transaction volume comprised of over 160 transactions.

1 Q And for what purposes do you provide those types
2 of valuation service and brokerage services?

3 A That would be for acquisitions and dispositions.
4 So the buying and selling of businesses, for the raising
5 of debt or equity for partnership disputes, for people
6 who have died -- their estate, for insurance value. You
7 know, for replacement cost value.

8 Q And what -- what is involved in actually
9 furnishing those services to your clients in the cannabis
10 industry?

11 A Again, it would be a focus on due diligence and
12 analysis of the financial performance of various
13 properties or businesses. We'd look into businesses,
14 assess their risk factors, their strengths, weaknesses,
15 opportunities and threats, put together a valuation and
16 underwriting, we call it, you know, kind of a financial
17 analysis of the businesses.

18 Q Do you have any experience providing valuation
19 and brokerage services for cannabis businesses in
20 California?

21 A Yes, sir, I do.

22 Q What has been your experience in California,
23 specifically?

24 A I would estimate I've worked on anywhere from 30
25 to 50 cannabis businesses and licenses in California in
26 that time for acquisition. I've worked in San Diego and
27 San Francisco, Fresno, Calexico, you know, various
28 municipalities around the state.

1 Q Could you give us some examples of the type of
2 brokerage and valuation services you've done in the
3 cannabis industry in California specifically?

4 A Yes. I've provided, you know, brokerage and
5 valuation services on many of those businesses and
6 markets that -- that I just mentioned, provided financial
7 analysis, marketing between negotiations between buyers
8 and sellers of cannabis businesses.

9 Q Do you do anything to keep yourself apprised of
10 developments in the field of cannabis valuation?

11 A Yes, sir. I am, you know, constantly reviewing
12 market reports from trade associations, the marijuana
13 industry group, MJ Business Daily, Viridian Capital
14 Advisors, New Cannabis Ventures.

15 I follow the quarterly earnings of the public
16 companies in the space. I read their filings, their, you
17 know, quarterly reports, look at the businesses that
18 they've acquired, the valuations they've assigned to
19 transactions.

20 I follow public data from cities and states as
21 well as, you know, other, you know, industry, you know,
22 statistics, data wherever I can get it.

23 Q And have you ever testified as an expert witness
24 before?

25 A I have.

26 Q In what subjects?

27 A I've opined on the value of cannabis businesses.
28 I've opined on the real estate value of cannabis-tenanted

1 properties as well as the rental value of cannabis
2 properties. And I've opined on the standard of care
3 utilized by a cannabis operator.

4 Q And how many times have you testified as an
5 expert witness regarding the value of cannabis businesses
6 or cannabis real estate?

7 A Ten times.

8 Q Has any court or arbitration panel ever
9 determined that you were not qualified to give expert
10 opinions regarding the valuation of cannabis businesses
11 or cannabis real estate?

12 A No, sir, they have not.

13 MR. CAVANAGH: Your Honor, at this time the
14 Plaintiff will move to designate Mr. Stefan as an expert
15 witness in the area of valuation of cannabis-related
16 businesses.

17 THE COURT: Any objection?

18 MR. JAFFE: Yes, Your Honor.

19 THE COURT: Counsel, I assume you want to take
20 him on voir dire, then, as to qualifications only,
21 correct?

22 MR. JAFFE: With regard to --

23 THE COURT: Whether he's going to be deemed an
24 expert or not. Not his testimony as to this case, but
25 he's been tendered as an expert counsel. You want to
26 take him on voir dire as to his qualification so that --
27 of whether this court is going to deem him as an expert
28 or not, not as to his testimony about this case. That

1 will depend on the Court's ruling.

2 MR. JAFFE: Then we don't need to do voir dire.

3 THE COURT: Thank you.

4 Mr. Demergian, anything?

5 MR. DEMERGIAN: Not necessary, Your Honor.

6 THE COURT: Thank you.

7 For the record, then, he's an expert.

8 Let's go.

9 MR. CAVANAGH: Thank you, Your Honor.

10 BY MR. CAVANAGH:

11 Q How did you come to be involved with this
12 particular lawsuit?

13 A I was referred to Messner and Reeves by another
14 attorney colleague.

15 Q And Messner and Reeves is my law firm.

16 A Is your law firm, yes, sir.

17 Q And what were you asked to do in connection with
18 this lawsuit?

19 A I was asked to opine on the value of an average
20 dispensary operated by a operator average competency in
21 the San Diego market.

22 Q And in what form were you asked to express those
23 opinions?

24 A To provide a valuation report.

25 Q And did you do those things?

26 A Yes, sir, I did.

27 Q Did you charge the plaintiffs in this case in
28 this lawsuit for formulating those opinions and preparing

1 your report?

2 A Yes, sir, I did.

3 Q And how much did you charge?

4 A \$6,500.

5 Q And are you charging the plaintiffs for the
6 testimony you're providing here at the trial?

7 A Yes, sir.

8 Q And how much are you charging them for that?

9 A There's \$350 an hour.

10 Q Did the fact that the plaintiffs were paying you
11 to formulate your opinions influence your opinions today
12 in any way?

13 A No, sir, they did not.

14 Q There should be notebooks up in front of
15 you that are -- I want you to look at Exhibit 181. It's
16 in Volume 6. I'm not sure if that's in front of you. Is
17 that Volume 6? It should say on the cover.

18 A This is Volume 5. I have 4 and 5.

19 Q Okay. 6 should be on the table behind you. And
20 you can set those other ones aside.

21 So if you could turn to Exhibit tab 181.

22 A Yes, sir.

23 Q What is this document?

24 A This is my report.

25 Q And did you yourself prepare this report?

26 A Yes, sir, I did.

27 MR. CAVANAGH: Your Honor, I move to admit
28 Exhibit 181.

1 MR. JAFFE: Objection.

2 MR. DEMERGIAN: Join.

3 THE COURT: Counsel, I'm going to sustain part
4 of it.

5 There's other stuff in there, but the part where
6 it goes through his analysis, that's received. So if you
7 want to show that, you know what I'm talking about,
8 right? His analysis, his factual analysis. There's
9 stuff about his CV, there's other stuff in there. We'll
10 talk about that outside the presence of the jury. Like
11 at the very end, it has his CV. We don't -- I don't need
12 that, Counsel, Exhibit A.

13 Do you understand what I'm saying?

14 MR. CAVANAGH: Yeah, as long as -- can I show
15 him anything other than Appendix A?

16 THE COURT: Yeah. I'll tell you what pages.
17 Ready?

18 MR. JAFFE: Sure. Your Honor, can we be heard
19 at sidebar? We have a Sanchez.

20 THE COURT: Okay. This is going to take some --
21 give me five minutes. It's important. Stretch it out.
22 Go.

23 (The following proceedings were held in
24 open court outside the presence of the
25 jury:)

26 THE COURT: I want to study this just a
27 little -- give me three minutes. I want to study this
28 more.

1 Counsel, for the record, the Court has had a
2 chance to read the document. Let's talk about Sanchez.
3 Here we go.

4 Mr. Jaffe.

5 MR. JAFFE: Your Honor, he just testified that
6 he was asked to opine about an average dispensary
7 operated by an average operator.

8 So that's why we ask to have this 403
9 examination outside the presence of the jury because you
10 can tell right from there that he was not asked to put a
11 value on this specific dispensary. He already admitted
12 that.

13 And at his deposition, he was -- he admitted
14 that all of these numbers in this document regarding city
15 cannabis sales, all these sales tax numbers, all he did
16 was call the city of San Diego, the marijuana taxing
17 office and the CREC, which he couldn't even remember what
18 that stood for. It's the Cannabis Real Estate
19 Consultants. He and an attorney by the name of Dan
20 Rowland who was assisting him just called and,
21 unbelievably, just -- they -- supposedly, they said these
22 numbers over the phone, here's what tax revenues we've
23 gotten.

24 And so by that, let's give a very simple
25 mathematical number. They said, well, if you get a
26 thousand dollars in tax, that means based upon -- if the
27 tax is only 2 percent, the gross of all of the marijuana
28 dispensaries in San Diego must be that much more. That's

1 2 percent of the higher number. And that's his analysis
2 of, okay, this is what a normal or average dispensary
3 should be doing in San Diego.

4 He admits that he got no financial information
5 whatsoever regarding this dispensary. None. He didn't
6 receive any financial information of any kind or type
7 specific to this dispensary, and he wanted that
8 information, he said, but didn't get it.

9 It's all hearsay based upon his telephone call
10 to the City of San Diego and the taxing authority, which
11 he didn't really know what it was. I believe what he's
12 talking is the county.

13 So this is exactly what Sanchez says, that he
14 cannot form opinions just simply based on this type of
15 hearsay information, especially because he's using it
16 improperly to try and then say that this dispensary is
17 worth \$16 million.

18 And he also says that part of his opinion is he
19 saw some listings for some dispensaries. He just went
20 online and said, Oh, there's a dispensary listed for
21 \$5.9 million at cannabiscapitaladvisor.com. And he said,
22 Well, that's a factor in my opinion because there's one
23 listed, another dispensary for \$5.9 million. And I asked
24 him, Well, do you know whether it sold, and he said, No.

25 Isn't that just an asking price, a listing
26 price? He said, Yes. But it gives you -- according to
27 him, that gives him some idea as to what cannabis
28 dispensaries are worth in San Diego.

1 He then went -- he said he went online with
2 regard to four Urban Leaf dispensaries and those were in
3 San Jose, and he saw -- those were -- asking price was 99
4 million. And he said, Well, that's part of my opinion.
5 I think that's important. They're listing for 99
6 million. I can give you the -- these are page and line
7 numbers of all of this.

8 And he said, Well, that's part of his analysis.
9 He relied upon hearsay in getting four -- it's just an
10 online listing, again, relying upon improper hearsay to
11 form his opinions as stated in Sanchez.

12 He doesn't know anything about the owners
13 association and all of the restrictions and problems that
14 that has caused with this dispensary, nothing in his
15 opinions about that. Again, because he's just saying,
16 well, I can tell what an average dispensary is and that's
17 what this should have done. It should have met that
18 average dispensary by an average operator in San Diego.
19 That's not a proper basis for an opinion.

20 He then even further went on and said he valued
21 some other dispensaries in San Diego and then he wouldn't
22 tell me who they were because he said he's got a
23 nondisclosure agreement. So it's just no proper basis
24 for his opinions.

25 And I can -- if you want to have him come up to
26 the stand, I will point out the exact line and pages of
27 all of the items that I just went through.

28 Thank you.

1 THE COURT: Mr. Demergian, what's your position
2 on this?

3 MR. DEMERGIAN: Thank you, Your Honor. We join
4 with Mr. Jaffe's Sanchez objection. Obviously, the
5 document is replete with hearsay. I also think it's
6 irrelevant because the value of an average dispensary
7 operated by an operator of average competency is
8 irrelevant. It has nothing to do with this dispensary.
9 There's no -- and there's no foundation for it.

10 THE COURT: Let's talk about two things: first
11 one, Sanchez; second, relevance.

12 MR. CAVANAGH: Yes, Your Honor. Well, as far as
13 Sanchez, Mr. Jaffe is blurring two things. He's
14 complaining about what Mr. Stefan did or didn't look at
15 or did or didn't know. And that is not Sanchez. Sanchez
16 is a hearsay case. So that's not Sanchez. That's
17 talking about -- that's trying to attack his methodology
18 or -- liability, which that goes to the weight or the
19 credibility. That has nothing to do with Sanchez.

20 Sanchez is what -- something that he relied upon
21 in admissible hearsay. And everything that Mr. Jaffe and
22 Mr. Demergian just said explains why this case --
23 Mr. Stefan's opinions don't fall within Sanchez. The
24 distinction --

25 THE COURT: So he picks up a telephone, he calls
26 some taxing agency and gets some numbers, and that's not
27 hearsay?

28 MR. CAVANAGH: It is hearsay, but it's not --

1 THE COURT: What --

2 MR. CAVANAGH: What it's not, it's not excluded
3 by Sanchez. Sanchez doesn't exclude all hearsay.
4 Sanchez excludes -- let me get the phrase correct --
5 case-specific facts that --

6 THE COURT: Don't do that.

7 MR. DEMERGIAN: I'm sorry. I know better.

8 MR. CAVANAGH: Case-specific facts that are
9 learned -- that have been related through hearsay.

10 THE COURT: And this is a case -- and what he
11 just said there in his word, it's not case-specific?

12 MR. CAVANAGH: No, Your Honor. The fact that he
13 made the call because of this case --

14 THE COURT: What's the relevance?

15 MR. CAVANAGH: Okay. May I finish on that
16 point?

17 THE COURT: Of course.

18 MR. CAVANAGH: The fact that he made the call
19 doesn't make it case-specific. Because what he inquired
20 about, as both gentlemen argued, is what were citywide
21 tax revenue receipts.

22 THE COURT: According to who?

23 MR. CAVANAGH: According to the person that he
24 spoke with at the City of San Diego.

25 THE COURT: Who is that?

26 MR. CAVANAGH: I don't remember the name off the
27 top of my head.

28 THE COURT: Do they get a chance to

1 cross-examine on those numbers?

2 MR. CAVANAGH: They could call that person, yes.

3 THE COURT: A little late now, isn't it,
4 Counsel?

5 MR. CAVANAGH: This is the first time that
6 they've raised this issue to me.

7 THE COURT: We talked about Sanchez at the
8 beginning of the case, didn't we, Counsel?

9 MR. CAVANAGH: They didn't talk about Sanchez at
10 all. They complained about his methodology and they
11 complained that he didn't look at case -- at documents.
12 They complained that he didn't look at case-specific
13 financials.

14 THE COURT: So let's make the --

15 MR. CAVANAGH: Which is --

16 THE COURT: Go ahead.

17 MR. CAVANAGH: Which is exactly what Mr. Jaffe
18 said is that their complaint is that his opinions are not
19 based on case-specific materials. It would be
20 different -- Mr. Stefan didn't call the city and ask for
21 information about his dispensary. He asked for citywide
22 information about tax revenues. That was it. That's
23 only thing that he asked about. And that is not
24 case-specific.

25 He didn't ask a single question about the
26 dispensary involved in this case. He asked about what
27 was going on in the marketplace, which as he testified on
28 direct examination, he regularly looks at information

1 from cities, governments.

2 If I'm allowed to question him, he'll explain
3 that that was the only place that he could find the
4 information because he couldn't find it reliably anywhere
5 that he looked online to try to figure out what the
6 volume of business or the volume of sales were in
7 San Diego. So he called the city and spoke to them.

8 So that -- it is hearsay, but it is not
9 case-specific hearsay. And the --

10 THE COURT: Let me just put one thing on the
11 record. For this case, there has been no Sanchez waiver.
12 Do we agree with that?

13 MR. CAVANAGH: Well, I'm not sure. It hasn't --
14 this is first time it's been raised, so there was not a
15 motion in limine of issue.

16 THE COURT: So there's no Sanchez waiver.

17 MR. CAVANAGH: I'm saying -- waiving the
18 Sanchez?

19 THE COURT: No one has waived it, so Sanchez
20 applies.

21 MR. CAVANAGH: I believe it has been waived by
22 the failure to bring a motion in limine. He was deposed
23 pretrial and he brought a motion in limine about
24 Mr. Stefan but didn't raise this issue.

25 THE COURT: There was no waiver, Counsel,
26 absolutely none. In all my cases, I always ask, usually
27 up first, is there a Sanchez waiver? because that impacts
28 this court tremendously because of the number of

1 witnesses that experts have to call in to give the other
2 party a chance to analyze the facts on which they're
3 basing it. But let's go -- so go ahead and finish your
4 argument on Sanchez.

5 So in his report, you're saying, Judge, none of
6 his analysis -- it's the facts, not the analysis. That's
7 different. Judge, all that is not Sanchez because --

8 MR. CAVANAGH: Because of the only piece of
9 information -- there were two pieces of information that
10 he got from that phone call. One was what was the volume
11 of taxes collected by the city through the cannabis tax?

12 THE COURT: And doesn't he do an analysis of
13 that based on that to get to a number based on how
14 that -- yeah, he does.

15 MR. CAVANAGH: Yes.

16 THE COURT: Okay. And that's not Sanchez?

17 MR. CAVANAGH: That's not Sanchez because he was
18 calling and asking about information that was
19 market-wide. It's the same as in -- which case is
20 this -- in the case of People v. Veamatahau -- if I'm
21 pronouncing that correctly. The expert looked at a
22 data -- an online database of information, and the fact
23 that they accessed the database, it was -- obviously, it
24 was hearsay, but it wasn't case-specific because it was
25 just a generally available piece of information that the
26 expert could look at.

27 So the fact that they made the query during the
28 case didn't make the information that they looked at in

1 the database case-specific. It was generally available,
2 generally known information. And --

3 THE COURT: Well, if it's generally known, why
4 did he have to call the city --

5 MR. CAVANAGH: It's generally available to him.
6 And, obviously, if he made a phone call, he was able to
7 get it.

8 THE COURT: All right.

9 Anything else on Sanchez? Then we'll move to
10 relevance.

11 MR. CAVANAGH: Yes, Your Honor. The People v.
12 Veamatahau case says, "We do not" -- so first of all, it
13 says, "The location of a piece of information cannot
14 change its nature." And in that case, simply because an
15 expert also obtained the information from a database, it
16 does not metamorphose that into information from
17 background into case-specific, the fact that they had to
18 consult a database, that they weren't personally
19 previously familiar with.

20 THE COURT: Okay.

21 MR. CAVANAGH: So the court went on to say, "We
22 do not see how expert witnesses are doing something other
23 than making use of their expertise when they rely on
24 their special knowledge, skill, experience, training and
25 education to one, select a source to consult, two, digest
26 the information from that source, three, form an opinion
27 about the reliability of that source based on their
28 experience in the field, and, four, apply the information

1 garnered from that source to the independently
2 established facts of a particular case."

3 That's exactly what Mr. Stefan is doing here,
4 because he did not think that the very limited
5 information he had about the financial performance of the
6 Balboa dispensary was in any way helpful or reliable. He
7 had to come up with a different methodology to figure out
8 what would have been a fair value if it had been operated
9 reasonably by an average and competent operator.

10 And so the decision-making process he went
11 through was, I'm going to do what's called an income
12 analysis, which he can walk us through, to --

13 THE COURT: I know the analysis, Counsel.

14 MR. CAVANAGH: I'm sorry?

15 THE COURT: I know the analysis.

16 MR. CAVANAGH: Yeah. So -- but he needed a
17 starting point to figure out where -- what the income
18 would be. So he couldn't find anything very reliable
19 online, and so he called the city and said, What are the
20 revenues like for cannabis related -- because I know you
21 have a tax in the city on cannabis. And then he was able
22 to use that to kind of backup and do his analysis.

23 And the fact that he made that choice is
24 exercising his own expert opinion. And that was
25 information that his -- even though it wasn't personally
26 known to him previously, it's of the kind that he
27 reasonably relied upon to value a business, and it was
28 available to him, and it would be available to anybody,

1 apparently, who will call and get it. And he used that
2 to create his analysis.

3 So it -- the fact that he made that phone call
4 doesn't make it inadmissible hearsay.

5 THE COURT: That's one opinion.

6 Counsel, what's your response to this? He's
7 basically saying, Judge, these are facts that are known.
8 I don't know if they're published or not. One wonders
9 about that. But someone answered a phone and gave him
10 his numbers, and that is what you are relying on.

11 Counsel, will you say it's public or not? Are there any
12 publications of this, or is it some guy on a phone?

13 MR. CAVANAGH: As far as -- my understanding is
14 that it's somebody on a phone, which is why -- because it
15 wasn't -- it wasn't published in writing somewhere at
16 least that Mr. Stefan could find. And so Mr. --

17 THE COURT: So wait a minute. Hold on.
18 Don't -- so it wasn't publicly known. You have to call
19 somebody, and depending on probably who you get in this
20 city, you may even get a different answer. Is that not a
21 fair statement?

22 MR. CAVANAGH: It's not a fair statement --

23 THE COURT: Fair enough.

24 MR. CAVANAGH: -- because I haven't called
25 anybody. So I don't know.

26 THE COURT: Yeah. There's my point.

27 MR. CAVANAGH: Well, Mr. Jaffe could have tried
28 that out if he thought that -- Mr. Jaffe has been aware

1 of this methodology, and so if he wanted to cross-examine
2 him, he could have under Evidence Code 721(b) -- if a
3 witness testifies as an expert in the form of an opinion,
4 they can be cross-examined about the basis of the content
5 of that --

6 THE COURT: Clearly understood, Counsel, but
7 I'm -- you see where I'm still with Sanchez. If it was
8 published, okay. But here, it's a phone call and I'm
9 struggling with that as you can tell, Counsel.

10 MR. CAVANAGH: I'll give you the quote.

11 THE COURT: On a phone call. Public. Go.

12 MR. CAVANAGH: It doesn't -- it doesn't --

13 THE COURT: It doesn't have to be public?

14 MR. CAVANAGH: It doesn't. It doesn't. The
15 distinction -- hang on one second.

16 THE COURT: Let's put that on the record.

17 Go ahead.

18 MR. CAVANAGH: Sanchez, page 675, "In addition
19 to matters within their own personal knowledge, experts
20 may relay information acquired through their training and
21 experience, even though that information may have been
22 derived from conversations with others, lectures, studied
23 of learned treatises, et cetera."

24 THE COURT: Is this a lecture? Is this a
25 treatise?

26 MR. CAVANAGH: It's a conversation with others.

27 THE COURT: Okay. Do you know the Sanchez case?

28 MR. CAVANAGH: I'm sorry?

1 THE COURT: You know the Sanchez case?

2 MR. CAVANAGH: I'm familiar with it. I don't
3 have any --

4 THE COURT: It's a criminal case. The officer
5 testified. He had talked to a gang thing, and he brought
6 that into testimony. Based on that officer's expertise
7 in gangs, I'm telling you, this guy had a gang tat. And
8 the Court said that is -- so he's -- I'm relying on an
9 expert out there, we had this conversation, and I'm going
10 to tell you what that -- kind of like a phone call,
11 Counsel, that I'm going to have a conversation with this
12 guy and then I'm going to testify in court to show -- to
13 get the gang allegation. That's Sanchez.

14 MR. JAFFE: Exactly.

15 THE COURT: Sounds like a phone call --

16 MR. CAVANAGH: Okay.

17 THE COURT: -- just so you know. Sounds like a
18 phone call to me.

19 MR. CAVANAGH: The location of a piece of
20 information cannot change its nature.

21 THE COURT: Couldn't agree more.

22 MR. CAVANAGH: Case -- from Sanchez,
23 "Case-specific facts are those relating to the particular
24 events and participants alleged to have been involved in
25 the case being tried."

26 THE COURT: So let's go over now to the --

27 MR. CAVANAGH: That's the gang member? That
28 would have been a phone call about the Balboa dispensary.

1 That is not a phone call about the city of San Diego,
2 generally.

3 THE COURT: So then what's the relevance?

4 MR. CAVANAGH: The relevance is Mr. Harcourt, as
5 he said from the stand, is suing, saying that he believes
6 his damages are half the value of what the business would
7 have been if he had been allowed to run it pursuant to
8 the joint venture agreement he had. That didn't happen.
9 So we're in a hypothetical situation --

10 THE COURT: Oh, yeah.

11 MR. CAVANAGH: -- which is exactly why it's not
12 case-specific. We are in a hypothetical situation. So
13 the expert is opining on his opinion of what this
14 business should have been worth if it were average, if it
15 were run by -- did average business run by an average
16 reasonably competent operator?

17 THE COURT: Okay. You've laid your record very
18 well.

19 Does he know what I sold the property for? Did
20 he take that into consideration?

21 MR. JAFFE: No.

22 MR. CAVANAGH: No.

23 MR. DEMERGIAN: Or the receiver's report, Your
24 Honor?

25 THE COURT: I know. Let's --

26 (Speaking simultaneously.)

27 MR. CAVANAGH: He wasn't, again -- and that's
28 exactly why it is not case-specific.

1 THE COURT: And that's why it's not relevant,
2 then, what I sold -- I sold that piece of property. That
3 has no value on it, what I did?

4 MR. CAVANAGH: It could be considered. The fact
5 that he didn't consider it, I don't think makes his
6 opinion so unreliable that it's inadmissible.

7 THE COURT: Okay. So instead of what this
8 Court -- or actually the receiver -- actually, I sold it
9 and had no effect -- it's not what this Court did
10 specifically in this case, and not in this case, in the
11 other case. I sold all that property. This Court did.
12 He had hearings on it, had valuations. I took in --
13 well, the receiver took in probably one -- at least six
14 bids on what that property was worth. Did he consider
15 any of that?

16 MR. CAVANAGH: He had -- he had some of that
17 information. I don't know --

18 MR. JAFFE: It's not in his report.

19 MR. CAVANAGH: It didn't -- it definitely didn't
20 get relied upon for his opinion. He did have some of
21 that information and -- but what he chose to rely upon or
22 not rely upon, again, goes to the weight, not to the
23 admissibility, and it certainly doesn't go to whether or
24 not it's hearsay under Sanchez.

25 THE COURT: It's a -- may be on the relevance
26 issue. I mean.

27 He's just -- did he do -- never mind. Let's lay
28 records. Here we go.

1 MR. DEMERGIAN: Yeah. Your Honor, I'm certainly
2 joining in Sanchez with Mr. Jaffe. I think it's square
3 on with Sanchez. But more importantly, what the value of
4 an average dispensary operated by an operator of average
5 competency has nothing to do with valuation in this case,
6 absolutely irrelevant. The best measure of value might
7 have been what you got for it when you sold it. That
8 would have gone very well. Maybe. You know where I'm
9 at.

10 MR. JAFFE: Your Honor, on this they've referred
11 to this People v. Veamatahau case. On that there was an
12 issue with regard to a pill, and the expert matched the
13 shape and markings of the pill to an image in a database
14 that was open to the public called ident-a-drugs, and
15 they said, That's okay.

16 That's not what's going on here. This is so
17 much different. Mr. Stefan did not know who he talked to
18 at the -- regarding these tax numbers. That's his
19 deposition at page 22, lines 18 through 19. He had no
20 idea who he talked to.

21 And I just want to make sure that -- it says he
22 didn't know who he talked to -- the information he did
23 get is case-specific. It included -- because tax
24 revenues were paid by this dispensary. So he got
25 information that included tax information about this
26 dispensary, but he didn't make the necessary inquiry.
27 They just relied upon hearsay at what were the actual
28 taxes paid by this dispensary.

1 Thank you.

2 MR. CAVANAGH: That confirms that it was not
3 case-specific.

4 And may I ask, Your Honor, a question?

5 THE COURT: Of course.

6 MR. CAVANAGH: What -- what information could he
7 have looked at to show the volume of business being done
8 in San Diego that you would say is not -- it's not
9 hearsay under Sanchez under your analysis?

10 THE COURT: Mr. Demergian?

11 MR. DEMERGIAN: How about the receiver's report
12 filed every quarter in the other case that reported
13 the --

14 THE COURT: That could also --

15 MR. CAVANAGH: You're hanging up on the fact
16 that it's through a phone call, and the case law couldn't
17 be clearer that the source of the information doesn't
18 make -- determine whether or not it's case-specific.

19 THE COURT: Okay. I understand your argument,
20 Counsel.

21 MR. CAVANAGH: And I have one more point to
22 make, Your Honor.

23 People v. Veamatahau. Simply because an expert
24 is relying upon information supplied by someone else does
25 not mean the trustworthiness of that information cannot
26 be explored through examination.

27 That someone else may be called and examined by
28 the defendant if he so chooses. If they want -- if they

1 are attacking whether or not the phone call happened or
2 whether or not the information communicated through the
3 phone call was accurate, they have the right and the time
4 and the ability, and they still do, to call whatever
5 witness or corral whatever evidence they want to attack
6 on that basis.

7 But an expert may be examined, and the expert
8 may be examined regarding their belief about the
9 reliability of the information upon which they base their
10 opinion. But that doesn't make it inadmissible hearsay
11 under Sanchez.

12 MR. DEMERGIAN: Which brings us back around a
13 bit, which is favor to disclose due to nondisclosure
14 agreements, Southern California dispensaries, he had
15 value, so a person could call them and see what they had
16 to say about it.

17 MR. CAVANAGH: There was one dispensary that
18 he -- they asked -- that he explained the circumstance
19 and the situation. He didn't disclose the names because
20 it was under --

21 THE COURT: Here's what we're going to do:
22 Ready? This is a big decision. I'm going to bring the
23 jury in and I'm going to dismiss it. I'm going to look
24 at this -- well, let's make sure -- take a minute. Lay
25 your records, but you're going to get a ruling by 1:30,
26 whether I'm going to allow him to testify or not.

27 Two bases: relevance -- no. Sanchez, number
28 one, and number two is relevance, whether I'll let

1 Mr. Stefan testify.

2 Bring the jury in.

3 MR. CAVANAGH: Does Your Honor want any
4 further --

5 THE COURT: I want to make sure everybody lays
6 their records, so if you need more, of course, you can
7 take more time.

8 Right now. Bring them in.

9 (The following proceedings were held in
10 open court in the presence of the
11 jury:)

12 THE COURT: That was five minutes. All right.
13 It was almost 25 minutes. I apologize. Sometimes things
14 come within trial that require my more immediate
15 attention; this is one of them. We're going to continue
16 working in here, but we'll bring you back at 1:30. We
17 will continue again. I didn't want you to keep waiting
18 out there while I'm discussing an issue.

19 So go have a nice lunch. We will continue at
20 1:30, and sorry for keeping you 20 minutes too long.

21 Let's take a breath right now. Let's perfect
22 our records.

23 (The following proceedings were held in
24 open court outside the presence of the
25 jury:)

26 THE COURT: Counsel for the plaintiff, there are
27 two objections -- well, Plaintiff, let's make it clear.
28 And don't repeat yourself. Is there anything you want --

1 two objections by the defense as to the report by
2 Mr. Stefan.

3 Mr. Jaffe, do you want to add anything, sir?

4 MR. JAFFE: Yes, sir, just to cite to Sargon
5 Enterprises, Inc. v. University of Southern California
6 that the Court must review experts' opinions and act as a
7 gatekeeper to ensure that improper opinions are not
8 offered, particularly speculative ones. And there is
9 really some speculation going on here based upon improper
10 hearsay. Thank you.

11 THE COURT: I know the Sargon case very well.

12 MR. JAFFE: Thank you.

13 THE COURT: It's a similar case, Counsel.

14 Mr. Demergian, anything?

15 MR. DEMERGIAN: We both know Sanchez. You may
16 recall, I also interposed foundation and hearsay, but
17 secondary to the other objections as well.

18 THE COURT: Thank you.

19 Mr. Cavanagh?

20 MR. CAVANAGH: Well, it's certainly not
21 speculation. I mean, he said he got definite numbers,
22 and they want to try to attack those numbers, but there's
23 no speculation involved, because once he got those
24 numbers, he just did math.

25 THE COURT: And those numbers came from?

26 MR. CAVANAGH: They came from the city.

27 THE COURT: From? You said the city? From?

28 MR. CAVANAGH: I don't have it written down. If

1 we call Mr. Stefan in, he could tell us. I don't have
2 the name or the department of the person written down.

3 THE COURT: Okay.

4 MR. JAFFE: He testified in his deposition he
5 doesn't know who he spoke to, page 22, lines 18 through
6 19.

7 MR. CAVANAGH: And I believe if he's questioned
8 now, he would know because Mr. Jaffe gave him a hard time
9 because he couldn't remember who it was, who he spoke,
10 and so he went back on the website and spoke with them --
11 oh, it was a Mr. -- gosh -- now, he did tell me the name
12 last night. It was Mr. Quintana-Roo, and I don't know
13 what his position is, but he's with the city.

14 THE COURT: And where did he get that
15 information from? Mr. Quintana-Roo?

16 MR. CAVANAGH: I don't know the whole chain of
17 events. I mean I'm not the one testifying. I'm sure
18 Mr. Stefan knows and, frankly, you know, if you're
19 inclined to rule in defendant's favor, we'd like the
20 ability to have Mr. Stefan testify about the process he
21 went through.

22 THE COURT: Let's see if I get by Sanchez first.
23 Okay?

24 MR. CAVANAGH: Well, I think that he -- his
25 testimony would be insightful as to whether or not we
26 follow Sanchez.

27 MR. CAVANAGH: It sounds like Your Honor is
28 hanging up on the fact that it was a phone call.

1 THE COURT: Yeah.

2 MR. CAVANAGH: That has nothing to do with it.

3 THE COURT: So it really doesn't matter where it
4 came from, you're saying, Judge, whether it's a phone
5 call, period, not relevant or not under Sanchez, which he
6 has -- so where it came from really doesn't matter under
7 your analysis.

8 MR. CAVANAGH: Where it came from?

9 THE COURT: It's a phone call.

10 MR. CAVANAGH: It's not my analysis, Your Honor.
11 It's the California Supreme Court. People v. Veamatahau
12 on page 30, "To reiterate, the relevant hearsay analysis
13 under Sanchez is whether the expert is relating general
14 or case-specific out-of-court statements. The focus of
15 the -- the focus of the inquiry is on the information
16 conveyed by the expert's testimony, not how the expert
17 came to learn of such information."

18 THE COURT: So the -- okay. I don't want to get
19 into a philosophical discussion. So regardless of
20 whether that information is reliable or not, the expert
21 could read anything under your analysis, anything. Well,
22 Judge, I've read it and it's from some database and,
23 therefore, it gets in. Judge, you don't have to worry
24 about whether it's reliable or not, where it came from,
25 if somebody on a phone picked it up because, Judge, I'm
26 the expert and I could use that to review it.

27 MR. CAVANAGH: Well, reliability isn't Sanchez.

28 THE COURT: I got that.

1 MR. CAVANAGH: Okay.

2 THE COURT: Under Sargon, I'm the gatekeeper.
3 Do I let all that in anyway?

4 MR. CAVANAGH: We're, again, blending things.
5 Okay. So Sanchez -- he's good under Sanchez because it
6 doesn't matter if it came from a phone call. The
7 separate question of reliability is, is this of a kind or
8 is this information of a kind or of a nature that an
9 expert in the field would normally rely upon? And if I'm
10 allowed to question him, I think Mr. Stefan would say
11 that it is, that sometime -- that he -- and he already
12 testified very generally that he tracks all kinds of
13 databases, he tracks all kinds of industry reports. He
14 tracks financial filings by companies in the cannabis
15 space, and that he consults and checks information with
16 cities and states.

17 THE COURT: I understand your analysis.

18 MR. CAVANAGH: So that is the reliability
19 question. And if questioned, Mr. Stefan will say that,
20 yeah, I do contact municipalities or governments,
21 whatever, to try to find out information, if they have
22 helpful information about number of dispensaries
23 operating in the marketplace, which is one of the
24 questions he asked here and -- because he knew that there
25 was a possibility of 36 permits being issued in the city
26 but didn't know how many were actually out. It was not
27 finding that information reliably online anywhere. And
28 then trying to find the volume of business that was being

1 done through the tax receipts.

2 THE COURT: Understood. And none of that is
3 Sanchez, correct, under your analysis?

4 MR. CAVANAGH: That is not Sanchez because --

5 THE COURT: Because it's not case-specific.

6 MR. CAVANAGH: Correct. It's the market -- he's
7 asking about the market as a whole. He didn't ask a
8 single question about the dispensary at issue.

9 THE COURT: And clearly, I understand your
10 argument.

11 Let's go to number two, relevance, as to that
12 piece of property.

13 MR. CAVANAGH: So the relevance is he did -- he
14 did have some financial information, including the
15 receiver's reports, but he didn't rely on it because
16 understanding that this business was run into the ground
17 essentially, and was mismanaged, part of a big fight,
18 very quickly put into a receivership. He considered it
19 to be such an outlier based on his knowledge, not only in
20 California, but nationwide, of how you would expect a
21 dispensary to operate, which is what goes to
22 Mr. Harcourt's expectations when he entered into this
23 agreement with defendants, that he -- to -- in order to
24 arrive at an estimate of the expectation of Mr. Harcourt,
25 he had felt like he had to come up with a different
26 methodology.

27 And so that's why he came up with in figuring
28 out that there were relatively a limited number of

1 dispensaries in the city of San Diego. What does the
2 average look like, and where should this company have
3 fallen if it was kind of on the average of scale? And
4 that's the methodology he chose to do. But it comes out
5 of the nature of the damages being alleged by
6 Mr. Harcourt and trying to arrive at the correct number
7 to get there.

8 THE COURT: And all this Court has to determine
9 is whether I think that's too speculative or not. Do you
10 agree with that analysis as the gatekeeper of the
11 evidence under Sargon? Is that within my jurisdiction,
12 Judge? That isn't even in your jurisdiction.

13 MR. CAVANAGH: I think -- yeah, but it would
14 have to be so unreliable as to have no -- basically no
15 probative value.

16 THE COURT: In the Court's opinion, correct?

17 MR. CAVANAGH: Correct.

18 THE COURT: There you go. You're being very
19 kind.

20 MR. CAVANAGH: This -- this analysis that he did
21 aligns with the plaintiff's theory of damages, and he can
22 explain --

23 (Speaking simultaneously.)

24 THE COURT: I understand that. I'm still the
25 gatekeeper of whether I think it's reliable or not,
26 whether it's speculative or not, right?

27 MR. CAVANAGH: Right. And Your Honor hasn't
28 even heard any testimony from the witness yet about --

1 THE COURT: I've got his report. I know what
2 he's going to say. Don't we?

3 MR. CAVANAGH: Yeah, we have a pretty good idea.

4 THE COURT: We do. You're being kind.

5 Anything else for the record?

6 MR. CAVANAGH: No, your Honor.

7 THE COURT: And I got your issue. And I'm going
8 work on it for an hour, solid. So -- and I don't know
9 what I'm going to do. I understand. But you know where
10 I'm hung up and you nailed it. And let's keep the record
11 rolling.

12 MR. CAVANAGH: I appreciate that. And I just
13 wanted to make sure we're not blurring different tests.

14 THE COURT: No. That would be up to the Court,
15 but let's keep the record rolling, because whenever I
16 would say one thing: Tell us what you're thinking,
17 Judge, not what you're thinking. You all did that very
18 well, but they all want to know what I'm thinking, what
19 I'm making a ruling on, and I'm going to work on it. And
20 I understand your issue and it's very -- and let's
21 pinpoint it for appellate review.

22 You're saying what he relied on when he called
23 the city and spoke to somebody over there, got some
24 numbers, not too sure where they came from, but we got
25 some numbers that indicated that they were the cannabis
26 sales tax, right? I mean that's in his report.

27 MR. CAVANAGH: Yes. And I mean --

28 THE COURT: That's in his --

1 MR. CAVANAGH: -- the report doesn't detail the
2 phone call he had and -- so if we want to explore the
3 details of that, we --

4 THE COURT: It's a phone call, Counsel.

5 MR. CAVANAGH: But I mean --

6 (Speaking simultaneously.)

7 MR. CAVANAGH: -- who it was, where he --

8 THE COURT: That doesn't bother me. It is a
9 phone call to the city, some department. Some guy, some
10 person over there picked up and gave him those numbers.
11 That's the bottom line. The question is whether that's
12 case specifics or not, that's what we're having --

13 MR. CAVANAGH: As far as Sanchez, yes,
14 Your Honor.

15 THE COURT: That's where we're having our
16 disagreement. And I'm going to go -- work now for the
17 next hour, which is my job.

18 You all go have a nice lunch.

19 ALL: Thank you, your Honor.

20 (Lunch recess held.)

21 (The following proceedings were held in
22 open court outside the presence of the
23 jury:)

24 THE COURT: Let the Court reflect that it
25 studied this over.

26 MR. CAVANAGH: Your Honor, before we start, I
27 have an offer of proof. The facts are significantly
28 different than I understood them to be an hour ago.

1 THE COURT: And are these facts in the record or
2 this is just something that no one knows about and I want
3 to put on the record?

4 MR. CAVANAGH: I don't believe it's currently in
5 the record.

6 THE COURT: Wait and see what I'm going to do
7 and then let's see. Well, I'm going to -- let me give
8 you my thoughts real quick and then we'll see.

9 The Court is being very judicious. I'll let you
10 figure out what that means.

11 I'm going to allow the testimony, Counsel.

12 Look over to this side of the table, subject to
13 a motion to strike, but it's coming in right now.
14 Just -- you're going to live with it, and I say that to
15 everybody. Everybody good? Not good? So -- no, let me
16 put it on the record over the objections -- of the strong
17 objections of the defense. And do your cross and we'll
18 see where it goes.

19 So they're your motions, defense motions:
20 relevance and for Sanchez. Denied at this time without
21 prejudiced. I'm doing what I think is best at this stage
22 of the trial. I'll just stop right there because I am
23 the judge.

24 With that being said, let's go.

25 And Counsel, just -- you all have been very
26 polite to the Court, you know, you're doing your jobs.
27 I'll stop there.

28 Let's go.

1 MR. COLLIER: I've got Mr. Hayford out in the
2 hall. I'm going to shoot him a text and let him know
3 that --

4 THE COURT: Yeah, let's -- I want this -- we're
5 going to be here.

6 MR. COLLIER: Oh, you want to bring him in?

7 THE COURT: Oh, yeah.

8 MR. COLLIER: No. I want to get -- I don't
9 think we're going to get to Mr. Hayford today, but I'll
10 have --

11 THE COURT: Really?

12 MR. DEMERGIAN: This all started with the motion
13 to admit his report. Will the Court allow that as well?

14 THE COURT: Yeah. It's being admitted, Counsel.

15 MR. DEMERGIAN: The full report?

16 THE COURT: No, no, no, no, not the full report.
17 Hold on. There's some extraneous -- his CV's there, the
18 body of the report, the analysis, the numbers, that's
19 being admitted, Counsel. Got it?

20 Let's go.

21 THE BAILIFF: Court is now in session.

22 (The following proceedings were held in
23 open court in the presence of the
24 jury:)

25 THE COURT: Here we go.

26 Counsel, you may continue.

27 MR. CAVANAGH: And Your Honor, I believe we left
28 off -- you were just about to tell me which pages of

1 Exhibit 181 were admissible.

2 THE COURT: You know, why don't you just do the
3 exam without the report? You can put in some numbers in
4 there, but let's do that. Okay? Understood?

5 MR. CAVANAGH: Yes, Your Honor.

6 THE COURT: I appreciate that.

7 Here we go.

8 MR. DEMERGIAN: May we have a continuing
9 relevance, hearsay, and foundation on the Sanchez
10 objections?

11 THE COURT: Yes. That has not been waived,
12 Counsel. The record is protected. We will show it's
13 continuing through this -- through the testimony of this
14 witness.

15 MR. DEMERGIAN: Thank you, sir.

16 THE COURT: Both sides, right, Mr. Jaffe?

17 MR. JAFFE: We join.

18 THE COURT: Here we go.

19 DIRECT EXAMINATION (continued):

20 BY MR. CAVANAGH:

21 Q Good afternoon, Mr. Stefan.

22 A Good afternoon.

23 Q Before we get to your opinion about the fair
24 market value of the dispensary, did you make any
25 assumptions in performing your analysis?

26 A Yes, sir. I assumed that I would be valuing an
27 average dispensary location operated by operator of
28 average competency under standard industry operating

1 margins.

2 Q And what did you assume about the context of the
3 value -- of the purpose of the value?

4 A That it would be used to resolve dispute of
5 someone who had started this, and if it had been run
6 properly, that this would be the value that they would
7 have realized.

8 Q And so what is your opinion of the fair market
9 valuation of a legal marijuana dispensary operated in
10 San Diego by an operator of average competence?

11 A My opinion is that it be worth --

12 MR. JAFFE: Objection -- lack of foundation.
13 Calls for speculation.

14 THE COURT: Counsel?

15 MR. DEMERGIAN: Join.

16 THE COURT: This is opinion that they give at
17 the beginning, overruled. It can be followed by the
18 analysis, I would assume.

19 So overruled.

20 Go.

21 BY MR. CAVANAGH:

22 Q What's your opinion of the fair market value?

23 A \$13,932,192.

24 Q And what method did you use to come up with that
25 valuation?

26 A That is from an income analysis method.

27 Q And when you're talking about valuing a
28 business, what is the income analysis method?

1 A The income analysis method breaks down business
2 into an income stream over a set period of time and
3 values the income stream over that period of time in a
4 net present value calculation.

5 Q And so I want to walk -- have you walk us
6 through how you did that. Is there a document that
7 details the calculations that you performed in your
8 income analysis?

9 A Yes, sir. That would be in page -- Exhibit 181,
10 it looks like page 6 with the -- entitled, "Discount Cash
11 Flow Analysis."

12 Q Is there -- is there a separate document that
13 you used to perform your actual mathematical calculation?

14 A No. This is from an Excel spreadsheet.

15 Q There is a separate Excel spreadsheet?

16 A Yes, sir. It's part of -- it was uploaded in my
17 file.

18 Q Within that same notebook, would you look at
19 Exhibit No. 179?

20 A Yes, sir.

21 Q What is Exhibit 179?

22 A This is the discounted cash flow analysis that I
23 performed to get the present value of the San Diego
24 Balboa dispensary.

25 Q And did you yourself perform the calculations
26 that are reflected in this document?

27 A Yes, sir.

28 Q And, then, did you rely upon these calculations

1 that you performed to formulate your opinions?

2 A Yes, sir.

3 MR. CAVANAGH: Your Honor, I move to admit
4 Exhibit 179.

5 MR. JAFFE: One second, Your Honor.

6 MR. DEMERGIAN: My objection is hearsay,
7 foundation, and impermissible summary of testimony.

8 THE COURT: Thank you.
9 Counsel?

10 MR. JAFFE: I have this document that was not
11 previously produced, and it appears to be something that
12 was done after his deposition.

13 MR. CAVANAGH: That is not true.

14 THE COURT: Ready -- we'll talk about that. At
15 least at this time, I'm going to show it as
16 demonstrative, Counsel. It's not going to be received.
17 Demonstrative. You understand what that means?

18 MR. CAVANAGH: Yes, Your Honor.

19 THE COURT: You can put it up. Let's go.

20 BY MR. CAVANAGH:

21 Q And if we could start within Exhibit 179, at
22 page 2.

23 THE COURT: Did you say 179?

24 MR. CAVANAGH: 179, page 2.

25 MR. CLAYBON: Your Honor, it's the additional
26 thumb drive from this morning.

27 THE COURT: Hold on. One second.

28 Was this produced -- just to the plaintiff, was

1 this produced, page 2, to the defense?

2 Plaintiff.

3 MR. CAVANAGH: Yes. Yes, Your Honor.

4 THE COURT: How long ago?

5 MR. CAVANAGH: Prior to the deposition.

6 THE COURT: All right. Let's go.

7 Counsel, we'll lay records after that. We'll
8 now go ahead and --

9 Go.

10 BY MR. CAVANAGH:

11 Q Mr. Stefan, in general terms, what is reflected
12 on this page?

13 A This is the data that I used to determine the
14 estimated average store sales for a dispensary in
15 San Diego in the years 2018 to 2022.

16 Q And so I want to focus on the table that's on
17 the top there. Why did you use the years 2018 to 2022?

18 A That was the first year that the -- we had a
19 full operational history for sales tax and cannabis sales
20 tax in San Diego. It was also the year that recreational
21 cannabis was passed here.

22 Q And why did you go through 2022 in this table?

23 A Because that was the last full year that we had
24 data for.

25 Q And then what was the significance of
26 recreational cannabis becoming legal in the city of
27 San Diego in 2018?

28 A It created a significant amount of demand as

1 there were many more patients that would be shopping for
2 cannabis under the medical program.

3 Q And were there any changes to the taxes in the
4 city at that time?

5 A Yes, sir. They raised the tax rate from
6 5 percent to 8 percent.

7 Q On what specifically?

8 A In July of 2019.

9 Q On what?

10 A And that would be on the amount of cannabis that
11 they sold, the revenue tax collections. Each dispensary
12 produced would have to pay a 5 and then an 8 percent tax
13 rate.

14 Q Does the City of San Diego have a special tax
15 just on cannabis income?

16 A Yes, sir.

17 Q So if we look at -- if we look at the second
18 column, then, the one to the right of the years, what
19 information is contained in that column?

20 A Those are the total tax collections on cannabis
21 in the City of San Diego for the given year.

22 Q And then looking one column over to the right,
23 what is the information that is contained in that third
24 column?

25 A That is the tax rate charged on those -- on
26 that -- the tax rate amount charged.

27 Q On what?

28 A On cannabis sales in the City of San Diego.

1 Q And why are the numbers different for different
2 years in that column?

3 A Because that -- that reflects the change in the
4 tax rate in 2019, and it went to 8 percent in July, so we
5 prorated to get a number of 6.5 percent and took it over
6 the course of the year.

7 Q And then going one column over to the right,
8 what's in the fourth column, what information is
9 reflected there?

10 A When you divide the city cannabis sales tax by
11 the tax rate percentage, it will tell you the amount of
12 gross revenues produced by the dispensaries in the City
13 of San Diego.

14 Q So are the numbers there the total gross
15 revenues from cannabis in the City of San Diego for each
16 year?

17 A Yes, sir.

18 Q And then going one column further to the right,
19 what's in that next column, the fifth column?

20 A That is the number of operational dispensary
21 outlets in the City of San Diego on each given year.

22 Q And then finally, what is in the last column to
23 the far right?

24 A That would be the estimated average store sales
25 for each given year, and that is accounted for by
26 dividing the number of operational outlets by the
27 estimated citywide sales.

28 Q So using 2018 as an example, could you just walk

1 us through what calculators you did and use the actual
2 numbers?

3 A Yes. In 2018, the City of San Diego --

4 MR. JAFFE: Lacks foundation. No foundation
5 where these numbers came from.

6 THE COURT: Thank you. He's getting there,
7 Counsel, so hold on. We will show a continuing objection
8 so you don't have to do it every time by both defendants
9 as to all the testimony of this expert.

10 With that being said, you may continue.

11 BY MR. CAVANAGH:

12 Q Where did you obtain the city cannabis sales tax
13 information?

14 A From Mr. Gerardo Quintana-Roo --

15 MR. JAFFE: Your Honor --

16 THE WITNESS: -- of the City of San Diego.

17 MR. JAFFE: This is contrary to his deposition.
18 Sidebar.

19 THE COURT: Down.

20 Counsel, you can use that for impeachment. You
21 can use the deposition for impeachment. If you want to
22 go further, I'll take the jury out, if you really want --
23 pretty well made up in my mind, but if you want to go
24 more, I'll take the jury out right now. What's your
25 pleasure, sir?

26 MR. JAFFE: We'd like to make a record.

27 THE COURT: Okay. Out you go.

28 And this is -- this is normal. Don't get all

1 flustered, whatever.

2 Actually, you're going to have to step because
3 this deals with you -- you're going to have to step
4 outside and stay away from the jury.

5 THE WITNESS: Yes, sir.

6 THE COURT: You're welcome. Thank you, sir.

7 (The following proceedings were held in
8 open court outside the presence of the
9 jury:)

10 THE COURT: All right. Here we go. Outside the
11 presence of the jury, Mr. Jaffe, the floor is yours, sir.

12 MR. JAFFE: Your Honor, on page 22 of his
13 deposition, when I asked him about the telephone call and
14 I asked him: "So this is just based upon you making a
15 telephone call; is that correct?"

16 He said, "Correct.

17 "And who did you speak to allegedly?

18 "I don't have a name here.

19 "What office did you call?

20 "I would have to look up the number. It was
21 quite a while ago."

22 He didn't name anybody, and so what counsel said
23 earlier before we took the break was that he did more
24 work to try and find out who he talked to. That is one
25 of the, truly, things not allowed because I specifically
26 stated at his deposition, if he does any additional work,
27 that we're going to need to be alerted to that and we're
28 going to need to depose him about the additional work

1 that he did, and we never were -- it's right in the
2 transcript.

3 I asked him if those were all of his
4 opinions, of course, and he said, "yes." I asked him on
5 page 76, line 13, starting, did you -- "Do you intend to
6 do any further work regarding this case prior to trial?"
7 I hadn't planned on it, but I think I need to probably
8 still upload my engagement letter, which I thought I had
9 got you. But, you know, as it arises, I guess I will do
10 it."

11 On to page 78, "But I'm telling you,
12 Mr. Stefan, that by law we need to be informed if you
13 have any changes and/or additions to the opinions that
14 you've given here today. Do you understand that?"

15 And then his attorney directed him not to
16 answer. And it was not his attorney who specifically
17 said he was not being represented by Mr. Cavanagh, but
18 then Mr. Cavanagh directed him not to answer, even though
19 he wasn't his attorney.

20 This is just some name that's come out of
21 nowhere and we haven't been able to depose that person,
22 and so he should not be able to just come in and say now
23 that he's looked into it and given some name.

24 Thank you.

25 THE COURT: Thank you, Mr. Jaffe.

26 Response, Mr. Cavanagh.

27 MR. CAVANAGH: He hasn't performed additional
28 work refreshing his memory as to the name. He said that

1 he spoke to somebody. He didn't recall the name at the
2 time, and I'm sure Mr. Jaffe can ask him what he did to
3 refresh his recollection about the name. He testified at
4 the deposition that he called the City of San Diego and
5 explained the name of the department that he called, and
6 so Mr. Jaffe could have investigated that if he wanted
7 to. But just refreshing his memory as to a name -- he
8 can, you know, cross-examine him on it, he can try and
9 impeach him with that, but it doesn't change his
10 opinions.

11 THE COURT: Mr. Demergian, anything, sir?

12 MR. DEMERGIAN: Yes, briefly. I join with
13 Mr. Jaffe. The whole idea of the rule as the Court well
14 knows is so we can obtain information as to whether or
15 not that information that the witness is testifying to is
16 credible or not. Did he really speak to this fellow,
17 whatever his name is? We had no ability to do that. So
18 I join in Mr. Jaffe's impression.

19 THE COURT: So noted for the record.

20 At this time that objection will be overruled.
21 The Court finds that this really doesn't affect his
22 analysis that was involved in the case.

23 Bring the jury in. Let's go. Thank you.

24 (The following proceedings were held in
25 open court in the presence of the
26 jury:)

27 THE COURT: Let the report reflect the parties,
28 attorneys, full jury panel, and alternates are present.

1 Thank you for being on time.

2 That was five minutes for the record.

3 Let's go.

4 BY MR. CAVANAGH:

5 Q So Mr. Stefan, using 2018 as an example, could
6 you walk us across one row of information just to explain
7 specifically what it is that you did on this table, the
8 calculation?

9 MR. DEMERGIAN: Asked and answered. We just did
10 this.

11 THE COURT: He's going to walk him through it,
12 Counsel.

13 Overruled.

14 THE WITNESS: So in 2018, the City of San Diego
15 collected 2.7 -- \$2,731,583 from their cannabis
16 dispensaries. If you divide that by a 5 percent tax
17 rate, that would give you an estimated citywide sales
18 number or 54,631,660. If you divided that number by the
19 number of outlets, 14 in 2018, that would give you an
20 estimated average store sales 3,902,261.

21 BY MR. CAVANAGH:

22 Q So using that example, what does that
23 3.9-million-dollar-number figure represent?

24 A That would be the average revenues of an average
25 store in the city San Diego in the year 2018.

26 Q And what were the average revenues of the
27 average store in the City of San Diego by the end of
28 2022?

1 A 12,410,152.

2 Q I'm done looking at that table, but I want to
3 stay on the same page. Going down the left-hand side,
4 the third table down, there's a figure for 2023.

5 Why does that table include a figure for 2023?

6 A Because we didn't have full-year data and we
7 were using 2023 as the terminal year in our valuation
8 model, and so we needed to estimate the sales revenue of
9 each store in that year, 2023, and so we took a factor --
10 a growth factor of 2.5 percent, which is a very low and
11 reasonable growth factor that we waived and had applied
12 that to the 2022 average sales revenue.

13 Q And when you did that, what figure did you come
14 up with for estimated sales for 2023?

15 A \$12,990,091.

16 Q And then what did you do -- once you had these
17 estimated sales revenue figures for these years, what did
18 you do with that information next?

19 A I put them into a pro forma.

20 Q Staying in that same Exhibit 179, I would like
21 you to look at the fifth page of the document.

22 MR. CAVANAGH: May I use this page as a
23 demonstrative, Your Honor? May I use all the pages of
24 this as demonstrative?

25 THE COURT: You may, as demonstrative.

26 BY MR. CAVANAGH:

27 Q So what is the table that appears at the top of
28 this page?

1 A That would be the pro forma for the year 2023 of
2 the Balboa dispensary.

3 Q What is a pro forma, just in general terms?

4 A Pro forma seeks to forecast the financial
5 performance of a business.

6 Q And so I would like to go through this
7 pro forma. So if we look at the first line, it's gross
8 revenue, where does that figure come from?

9 A That was derived from our equation on the
10 city -- estimated average store sales for the City of
11 San Diego in the year 2023.

12 Q And then if we go down the table, looking at the
13 second line, there's a line that says "total cost of
14 goods sold."

15 What does that refer to?

16 A The cost of goods sold would be the products
17 that are sold within the store, the dispensary, whether
18 that was cannabis flower, concentrates, edibles, soft
19 goods, things like that.

20 Q And how did you determine the total cost of
21 goods sold?

22 A I used industry standard gross margin range
23 between 40 and 50 percent and selected a higher warranted
24 49 percent as the store was not integrated with the
25 cultivation or production facility.

26 Q And where does that range that you refer to come
27 from how? How did you come up with that?

28 A That comes from my ten years of experience

1 underwriting over 700 different cannabis businesses and
2 in my transaction work on over 160 transactions.

3 Q And then looking at the third line, what is
4 "gross profit"? What does that refer to?

5 A Gross profit is your gross margin and that is
6 when your cost of goods sold are subtracted from your
7 gross revenue.

8 Q And where did you get that 51 percent figure
9 that's next to that entry?

10 A That was just subtracted when I subtracted the
11 6,365,145 from the gross revenue number of 12,990,091.
12 So the 51 percent is just a mathematical inverse of the
13 49 percent.

14 Q And then looking at the fourth line down on this
15 pro forma, what does "total operating expenses" refer to?

16 A Those would be the cost that you would incur in
17 selling the product, so your rent, your utilities and
18 payroll, et cetera.

19 Q And how did you determine total operating
20 expenses in this analysis?

21 A Again, I utilized a widely accepted margin and
22 margin range from 20 to 25 percent. I felt this store
23 probably operated within that range, especially because
24 of the amount of fixed costs that are set. As the gross
25 revenue goes up, the cost stays set, and so the
26 23 percent felt like a very reasonable and sober number.

27 Q And then looking at the fifth line, what does
28 "net operating income" refer to?

1 A That is the income remaining when you subtract
2 the total cost of goods sold and the operating expenses
3 from the gross revenue.

4 Q And what does the 28 percent figure that's --

5 A The 28 percent is what's left when the
6 23 percent is subtracted from the 51 percent of the gross
7 profit.

8 Q And then looking at the sixth line in this
9 pro forma, what does "capital expenditures" refer to?

10 A Capital expenditures is the amount that would be
11 needed to be invested in the business to maintain its
12 operating dynamic.

13 Q And what does that mean more specifically?

14 A That's a figure that we selected as well, you
15 know, depending on what industry you were in. That
16 number could range broadly as this was a single retail
17 business. There was limited amounts of capital
18 expenditure that would need to be outlaid in a given year
19 to maintain the cash flow level.

20 Q And you calculated that at 1 percent?

21 A Yes, sir.

22 Q And then, finally, looking at the seventh line,
23 what does "net income" refer to?

24 A That is the profit that the business produced.

25 Q And what percentage of the gross revenue does
26 that end up being in your pro forma?

27 A That's 27 percent.

28 Q So once you've ran a pro forma like this, what

1 was the next step in your income analysis?

2 A To place this pro forma into my discounted cash
3 flow analysis model that we looked at earlier here.

4 Q And so would you go to page 1 of Exhibit 79.
5 And looking at the table on the top half of your page,
6 what does that table show?

7 A So, again, the last one we were looking at was
8 the 2023 pro forma. In 2023 is the terminal year in this
9 calculation, so if you look in the last column, it will
10 reflect what we were looking at in the 2023 pro forma.

11 Q What does the phrase "terminal year" mean in
12 your analysis?

13 A That would be the year that -- it was a
14 contemplated sale, you know. That was the year that you
15 were taking the model, because this model assumed that it
16 would be an average dispensary operated by an average
17 operator and sold in an arm's length transaction. And so
18 that transaction contemplated would occur in the terminal
19 year.

20 Q Which would be this year?

21 A Which would be 2023, yes, sir.

22 Q And so then you said that's the information
23 that's on the far right-hand column?

24 A Yes, sir.

25 Q And what's the information that's in the other
26 columns to the left of that?

27 A The margins.

28 Q But did you run that similar pro forma --

1 A Oh, I'm sorry. Yes. So terminal year is 2023,
2 year five would be year 2022; year four, 2021; year
3 three, 2020; year two, 2019; and year one would be 2018.

4 Q Did you derive the expected net income or profit
5 for each one of those years?

6 A Yes, sir, I did.

7 Q And so in looking at this table in year one,
8 2018, what did you calculate to be the net income or
9 profits for that year?

10 A \$1,055,611.

11 Q And then looking at what's labeled "year two" on
12 this table, what did you calculate to be the net income
13 or profits for 2019?

14 A \$1,800,553.

15 Q And then looking at year three on this table,
16 what did you calculate to be the net income or profits
17 for 2020?

18 A \$2,917,355.

19 Q And then looking at year four, what did you
20 calculate to be the net income or profits for 2021?

21 A \$3,421,780.

22 Q And then looking at year five, what did you
23 calculate to be the net income or profits for 2022?

24 A 3,350,741.

25 Q And tell us again what you calculated to be the
26 net profits for 2023.

27 A 3,507,325.

28 Q And then looking under that net income row,

1 there's a phrase, "terminal value."

2 What does that refer to?

3 A That would have been the value of the cash flows
4 added up in that period of time over the 2018 to 2023
5 period. That would have been the amount of income the
6 business would have accumulated.

7 Q And what do you mean by "the cash flows"?

8 A The profit.

9 Q And so when you calculate all the profit for all
10 those years, what figure do you reach?

11 A The 21,256,513.

12 Q So that would be the total expected profits
13 between January of 2018?

14 A Yes, of the period that the model was looking
15 at, 2018 to 2023.

16 Q And once you had that \$21 million number, what
17 did you do next in your analysis?

18 A I discounted that cash flow over that five-year
19 period to come up with a net present value.

20 Q And once you ran that calculation, what's the
21 figure that you arrived at?

22 A \$13,392,192.

23 Q I think you might have misread the figure on
24 there. Can you state that again?

25 A \$13,932.192.

26 Q So what is that figure, then?

27 A That is the value of the business based on an
28 income analysis of the income stream that it produced

1 over this period of time.

2 Q Did you do anything to check or confirm the
3 validity of the valuation that you came up with using
4 this income analysis?

5 A Yes, sir. I also conducted a market methodology
6 analysis.

7 Q And in terms of valuing a business, what is a
8 market methodology analysis?

9 A Market methodology will look at past sales of
10 comparable businesses and compare those through the use
11 of multiples, generally.

12 Q And how did you perform a market analysis here?

13 A I looked at -- based on my experience and
14 knowledge of other transactions in the marketplace, the
15 standard multiples that are used both for the income a
16 business can produce as well as the revenue the business
17 can produce, and I compared those to my valuation.

18 Q And when you're talking about multiples or
19 standard multiples, what are you referring to?

20 A That would be a number that we multiply times
21 either the sales the business produces or the income the
22 business produces, so the top line of the pro forma where
23 the gross revenue would be or the bottom line of the
24 pro forma where the net income would be.

25 Q And where do find these standard multiples?

26 A They are in transactions that are happening
27 every day, and so we track them both in my own sales
28 experience, my own lending experience and equity raising

1 experience. These are the multiples that are applied,
2 you know, throughout the industry to value businesses.

3 Q Staying within that Exhibit 179, would you go to
4 the fourth page of the spreadsheet.

5 And what is this page?

6 A This is a table that applies the multiples to
7 the terminal year 2023 sales and net income.

8 Q So we'll just focus on the -- they're
9 duplicative, so we'll focus and blow up the one at the
10 top.

11 So where did you get the net income figure
12 that's reflected in this table?

13 A That number came from our 2023 pro forma where
14 we utilized the terminal years 2023 gross revenue and
15 subtracted industry standard expenses from it, to come up
16 with that net income.

17 Q And then once you had put that net income figure
18 into this table, how did you use it?

19 A Yes. I multiplied the 3X times the net income
20 number to get the first number you see highlighted in the
21 gray table, 10,521,974.

22 Q And what does that figure reflect --

23 A That would be the value of the dispensary in the
24 marketplace based off of multiple market -- based off the
25 market methodology.

26 Q And then what did you do in the next line in the
27 gray box?

28 A That would be the higher end of the net income

1 multiple range of 5X and that would be 17,536,623.

2 Q And why did you do the calculation against the
3 net income two different times?

4 A Just want to see how it looks throughout the
5 standard industry range and see if the numbers produced
6 same reasonable and defensible.

7 Q And where did your income analysis figure fall
8 as compared to the two net income calculations that you
9 performed?

10 A Almost exactly in the middle.

11 Q Are you relying on either of those two net
12 income figures as your opinion of the fair market value
13 of the dispensary?

14 A I am not.

15 Q So how are they relevant to your analysis?

16 A They just allow me to compare and contrast the
17 conclusions that the model came up with, with the
18 conclusions that the market methodology would come up
19 with.

20 Q And then where do you get the sales figure
21 that's reflected in this table?

22 A The sales figure comes from the 2023 terminal
23 year that we derived from the City of San Diego, average
24 dispensary sales equation that we walked through earlier.

25 Q And then once you had that figure, how did you
26 use it in connection with this calculation?

27 A I ran it from a 1.5X multiple of their annual
28 sales, and 1.5X falls at the bottom of the range of many

1 California cannabis businesses that have sold between 1.5
2 and 2X sales multiple.

3 Q And why did you use the 1.5 figure?

4 A I wanted to have, again, a reasonable and
5 average number, not something that was on the
6 astronomically high side, and I felt it was the most
7 defensible multiple in this regard.

8 Q And when you used that number and multiplied by
9 sales, what figure did you come up with?

10 A 19,485,137.

11 Q And are you relying on that figure as the fair
12 market value of the dispensary?

13 A I am not.

14 Q So how is it relevant?

15 A It just shows what kind of valuation -- when you
16 put these same derived numbers into a different
17 methodology, what valuation you may come up with.

18 Q So to what extent are the calculations that
19 we've been looking at and your valuation opinions based
20 on the actual performance of the dispensary that was
21 opened on 8863 Balboa Avenue?

22 A They're not based on the actual performance.

23 Q Why is that?

24 A I felt that the performance of the stores that I
25 received and reviewed reflected an unstabilized store and
26 immediately went into receivership. It did not reflect
27 how an average cannabis operator in the City of
28 San Diego -- if you see these average numbers are, you

1 know, over 10 million per store with average profit
2 margins, you've kind of seen the numbers that can come
3 out.

4 So this store, you know, appeared, and the
5 numbers that I received didn't reflect what an average
6 store or, you know, a competent operator would produce in
7 an operating dispensary in San Diego.

8 Q And why did you ultimately decide to base
9 your -- that opinion on the income analysis methodology
10 rather than the market analysis methodology?

11 A Because I, you know, felt that I had good data
12 to begin with. Felt we had a lot of conviction in the
13 industry standing operating margins, and so it gave us
14 the best foundation to determine the value.

15 Q Going back to the first page of the
16 Exhibit 179 -- so it is your -- the figure of your final
17 opinion regarding the value of the Balboa dispensary
18 using this income analysis method that you've just walked
19 us through reflected on this page?

20 A Yes, sir. It is the present value, \$13,932,192.

21 Q Thank you.

22 MR. CAVANAGH: I have nothing further.

23 THE COURT: Thank you, Counsel.

24 Mr. Jaffe, sir.

25 CROSS-EXAMINATION

26 BY MR. JAFFE:

27 Q Good afternoon, Mr. Stefan.

28 A Good afternoon, Mr. Jaffe.

1 Q You were retained on November 29th, 2022, to do
2 work on this case, correct?

3 A Yes, sir.

4 Q That was the first time you had any involvement
5 of any kind or type with regard to this case and/or the
6 dispensary involved in this case, correct?

7 A I believe that's when we engaged to do the
8 report, but we may have had conversations prior to that,
9 even a year prior to that when it was first put on my
10 radar.

11 Q You signed a retainer agreement on
12 November 29, 2022, correct?

13 A Correct.

14 Q And you didn't do any work with regard to this
15 case that you billed for prior to November 29, 2022,
16 correct?

17 A Correct.

18 Q And this is for events that happened in this
19 case in 2016 and 2017, correct?

20 A My model analyzed events from 2018 to 2023.

21 Q Do you know when the dispensary -- I'll rephrase
22 it.

23 Did you know when the Balboa property at 8861
24 Balboa was sold to Razuki Investments?

25 A I do not.

26 Q Do you know when the 8863 Balboa property was
27 sold to Razuki Investments?

28 A I do not.

1 Q Do you know how much it was sold? Do you know
2 how much the 8861 Balboa property was sold for when it
3 was sold to Razuki Investments?

4 A No, sir.

5 Q Do you know how much the 8863 Balboa was sold
6 for when it was sold to Razuki Investments?

7 A No, sir.

8 Q You were paid \$6,500 for your report, correct?

9 A Yes, sir.

10 Q And you've been charging \$350 an hour, correct?

11 A Yes, sir.

12 Q And how much have you been paid to date?

13 A I think it was like 6,500 and maybe 7,800 -- I'm
14 going to say thousand.

15 Q So 6,500 plus another 7,800?

16 A Yes, sir. We did deposition prep. Remember, we
17 had to get you to pay us to do the deposition, so we had
18 that and then another hour of prep for that.

19 The deposition you took as well as an hour of
20 prep before that.

21 Q The one you were paid the same day as of the
22 date of the deposition, correct?

23 A I'm not sure. I would have to look.

24 Q And how much -- how many hours have you put in
25 since the deposition?

26 A Four hours. Four and a half hours.

27 Q And have you been charging anything for your
28 travel here?

1 A Just my expenses.

2 Q What about for your time?

3 A Well, I didn't realize I would be sitting out
4 there all day, but yes, I might have to charge a per
5 diem.

6 Q How much is your per diem?

7 A \$250.

8 Q \$250 for your time for the entire day?

9 A Yes, sir.

10 Q I meant, are you charging still at 350 an hour
11 for your time?

12 A Well, for my testimony, but for sitting in the
13 hall, I'm not really going to charge for it too much.

14 Q Your Exhibit 179 is based on Exhibit 180,
15 correct? Can you go there?

16 A To 179?

17 Q No. To 180.

18 A Yes, sir, I have it open.

19 Q And so your Exhibit 179 that you went through
20 earlier is based on Exhibit 180, correct?

21 A As far as I know. This is taken from the
22 report, I assume?

23 Q It's your document, right?

24 A Sir, there is --

25 Q You can take them up to 200 tabs here with many,
26 many documents, so it's your report. Didn't you take
27 the --

28 A As far as I know, it's my report, yes, sir.

1 Q No. This isn't your report. This is -- has the
2 numbers of the information you obtained to put into your
3 report and into Exhibit 179, correct?

4 A Some of it may be; some of it is not. I would
5 have to look at the numbers.

6 Q Do you want to look at your report again?

7 A No. The number that I'd question would be the
8 2022 tax collection number. But, yes, other than that,
9 it looks -- yeah, it looks standard.

10 Yes, that looks like the number in my report.

11 Q Right. So the numbers in your report came from
12 this document and also were the basis for Exhibit 179,
13 correct?

14 A Yes, sir, as far as I can tell.

15 MR. JAFFE: We move for the admission of
16 Exhibit 180.

17 MR. DEMERGIAN: No objection.

18 MR. CAVANAGH: No objection.

19 THE COURT: Received.

20 (Exhibit 180 admitted into evidence.)

21 BY MR. JAFFE:

22 Q Exhibit 180 was written by you with Dan Rowland,
23 an attorney who referred you to plaintiffs' attorneys for
24 this case, correct?

25 A I don't think it was written by him.

26 Q You wrote Exhibit 180 with Dan Rowland, correct?

27 A No, sir. Mr. Rowland -- for clarification,
28 Mr. Rowland helped me determine the City of San Diego

1 sales tax collections through helping me communicate with
2 the department of treasury and department of development
3 services for the City of San Diego through multiple
4 emails and phone calls.

5 MR. JAFFE: Move to strike. Nonresponsive.

6 THE COURT: Sustained. Stricken.

7 BY MR. JAFFE:

8 Q At your deposition, this Exhibit 180 was
9 attached as Exhibit 2, correct?

10 A I assume so.

11 Q And that's the -- what you call the SDPCC
12 valuation data, right?

13 A Yes, sir.

14 Q And you wrote it with Dan Rowland, correct?

15 A Mr. Rowland informed what I wrote in this, but I
16 don't think he physically typed this information into my
17 report.

18 Q Reading from your deposition at page 22,
19 starting on line 2 through 7 --

20 MR. CAVANAGH: I'm sorry. Through which line?

21 MR. JAFFE: 2 through 7.

22 MR. CAVANAGH: No objection.

23 THE COURT: Any objection?

24 MR. DEMERGIAN: No.

25 THE COURT: Read it, Counsel.

26 BY MR. JAFFE:

27 Q "QUESTION: And who wrote this document?

28 "ANSWER: I wrote this document in conjunction

1 with Dan Rowland?

2 "QUESTION: Who is Dan Rowland?

3 "ANSWER: Dan Rowland is an attorney who
4 referred me to Messner Reeves for this case?"

5 A Yes, sir, I would agree that that is true.

6 Q And the information in Exhibit 180 is based upon
7 you making a telephone call with Mr. Rowland, correct?

8 A Several telephone calls and emails as well, sir.

9 Q Reading from your deposition, starting at
10 line 12 --

11 MR. CAVANAGH: So which page?

12 MR. JAFFE: Still on page 22.

13 BY MR. JAFFE:

14 Q -- 12 through 22.

15 MR. CAVANAGH: I would not have an objection if
16 you go through to page 23, line 6.

17 THE COURT: Counsel?

18 MR. JAFFE: I'll keep reading.

19 THE COURT: Thank you. Go.

20 MR. JAFFE: I think we were going to get to it
21 later, but I'll read it now.

22 THE COURT: Now is the time.

23 MR. JAFFE: Start reading?

24 THE COURT: Yes, sir.

25 MR. DEMERGIAN: No objection.

26 THE COURT: Thank you, Counsel.

27 BY MR. JAFFE:

28 Q "QUESTION: So this is just based upon you

1 making a telephone call; is that correct?

2 "ANSWER: Correct?

3 "QUESTION: And you didn't even make the call.

4 It was Mr. Rowland who made the call, right?

5 "ANSWER: No, sir?

6 "QUESTION: Who did you speak to, allegedly?

7 "ANSWER: I don't have a name here?

8 "QUESTION: What office did you call?

9 "ANSWER: I'd have to look up the number. It
10 was quite a while ago?

11 "QUESTION: You called the City of San Diego; is
12 that correct?

13 "ANSWER: And the marijuana taxing office and
14 the CREC?

15 "QUESTION: What are you referring to as the
16 CREC?

17 "ANSWER: I don't remember what CREC stands for?

18 "QUESTION: Could you give the initials that
19 you're stating C as in Christopher, R as in Robert, E as
20 in Edward, C as in Christopher?"

21 I'll keep reading?

22 MR. CAVANAGH: Hang on. Where else do you want
23 to read?

24 MR. JAFFE: 7 through 9.

25 MR. CAVANAGH: No objection.

26 MR. DEMERGIAN: No objection.

27 BY MR. JAFFE:

28 Q "QUESTION: You don't know what that stands for,

1 correct?

2 "ANSWER: I mean not to the exactitude that I
3 would testify to under oath?"

4 Do you believe CREC stands for Cannabis Real
5 Estate Consultants?

6 A No, sir. I think that I was mistaken and that
7 was not the proper acronym, which I didn't know at the
8 time either. It was the department of the treasury for
9 the City of San Diego.

10 MR. JAFFE: Move to strike as nonresponsive.

11 THE COURT: Sustained. Stricken.

12 BY MR. JAFFE:

13 Q When you had determined the value of a cannabis
14 dispensary in the past, you have previously used tax
15 returns for the dispensary, correct?

16 A At times.

17 Q Did you receive any tax returns with regard to
18 this dispensary?

19 A I believe so.

20 Q Reading from your deposition, page 23, lines 23
21 through 25; 24, 1 through 5.

22 MR. DEMERGIAN: No objection.

23 MR. CAVANAGH: No objection.

24 BY MR. JAFFE:

25 Q "QUESTION: And in those cases where you
26 determined the value of a cannabis dispensary, did you
27 receive tax returns?

28 "ANSWER: I'm sure in some of the cases, but

1 generally, yeah?

2 "QUESTION: Did you receive any tax returns with
3 regard to the property in this case?

4 "ANSWER: No, sir?"

5 So you didn't receive any tax returns with
6 regard to this property or this dispensary, correct?

7 A I didn't rely on any. I don't really remember
8 what I received and didn't receive.

9 Q Well, sir, you said at your deposition you
10 didn't receive any tax returns, right?

11 A None stand out in my memory, no, sir.

12 Q You didn't receive any financial information of
13 any kind or type specific to the dispensary in this case;
14 isn't that correct?

15 A No, sir, I did not rely on any of the financial
16 information that I received.

17 Q Reading from your deposition, page 24, lines 6
18 through 9.

19 MR. CAVANAGH: No objection.

20 MR. DEMERGIAN: No objection.

21 BY MR. JAFFE:

22 Q "QUESTION: Did you receive any financial
23 information of any kind or type specific to the
24 dispensary in this case in order to arrive at your
25 opinions in this case?

26 "ANSWER: I would say no?"

27 Did you request that financial information?

28 A Yes, sir.

1 Q And what financial information did you request
2 in order to form your opinions in this case?

3 A Are you reading or are you asking?

4 Q I'm asking. It's a question.

5 A Profit and loss statements, leases, you know,
6 product mix, sales mix. Traffic counts, average basket
7 size.

8 Q Anything else?

9 A Tax returns, leases. I think that's all.

10 Q And did you receive any of that information?

11 A I received some of it, yes, sir.

12 Q Page 24, lines 13 through 23.

13 MR. CAVANAGH: Are you going to read the errata
14 as well that was submitted?

15 MR. JAFFE: I didn't receive any errata.

16 MR. CAVANAGH: You should have. It was
17 submitted to the court reporter.

18 THE COURT: What are you talking about?
19 Was there an errata?

20 MR. CAVANAGH: Yes, Your Honor.

21 THE COURT: When was that?

22 MR. CAVANAGH: It was submitted to the court
23 reporter on October 10th.

24 THE COURT: Where is it?

25 MR. CAVANAGH: I have a copy. Mr. Jaffe should
26 have a copy if he ordered an official copy of the
27 transcript from the court reporter.

28 THE COURT: Does the Court have a copy? that is

1 the question.

2 MR. CAVANAGH: I hope a copy was put in your --
3 you have the original transcript, yeah.

4 THE COURT: Hold on.

5 What line are you reading from, Counsel?

6 MR. JAFFE: Page 24, lines 13 through 23.

7 THE COURT: One second.

8 Can I assume, Counsel, that the errata only
9 refers to three pages? Is that a correct statement?

10 Well, there's three issues, correct?

11 MR. CAVANAGH: Correct, Your Honor.

12 THE COURT: Go to line 24 --

13 I can barely read it. Can you read it, Counsel?
14 It is so small.

15 MR. CAVANAGH: I know what it said, but the
16 problem was the nature of the form.

17 MR. JAFFE: I can't read it. I'm looking at it
18 now.

19 THE COURT: I'm going to just shorten it. It
20 was removed from no to yes, and then he lists some
21 documents, Counsel. Okay?

22 Let's keep going.

23 BY MR. JAFFE:

24 Q At the beginning of your deposition --

25 THE COURT: I want to put this in the record.
26 Counsel, the errata, I want to read it verbatim. The
27 answer is, "Yes, I received the lease dated
28 October 18, 2018, between Razuki Investments and San

1 Diego patients Co."

2 That's for the record.

3 All right. Here we go.

4 BY MR. JAFFE:

5 Q I cautioned you at the beginning of your
6 deposition that if you made any changes to your answers,
7 we could comment upon those and it may make you look bad
8 in front of the judge or the jury.

9 Do you remember that?

10 A No, sir.

11 Q Reading from the deposition, page 11, lines 6
12 through 15.

13 MR. DEMERGIAN: No objection.

14 MR. CAVANAGH: No objection.

15 THE COURT: Counsel.

16 BY MR. JAFFE:

17 Q "QUESTION: Once we are finished, the court
18 reporter will send you a copy of the transcript and you
19 could make changes to your answers, but I caution you
20 that if you make any changes, we can comment upon those
21 and it may make you look bad in front of the judge or the
22 jury. Do you understand that?

23 "ANSWER: Yes, sir?

24 "QUESTION: So we want your best testimony here
25 today. Do you understand that?

26 "ANSWER: Yes, sir?"

27 And you changed your answer from no, that you
28 didn't receive any financial information to yes, you

1 received some type of a lease, correct?

2 A It's unclear. When you asked me if I
3 received --

4 Q Sir, yes or no?

5 A No. When you asked me if I received financial
6 information that I relied upon, it was a two-part
7 question, so it's nuanced. It's not black-and-white.
8 Yes, I received information from you; no, I did not rely
9 on my report.

10 Q That's not what I asked you. I asked you:
11 "QUESTION: And what financial information did
12 you request in order to form your opinions in this case,"
13 reading from your deposition on page 24, line 13?

14 And you said:

15 "ANSWER: Profit and loss statement, lease or
16 description of real estate owned, tax returns, generally
17 information on what SKUs, meaning what product-type mix
18 are sold in the stores, traffic counts, average basket
19 size, average daily volumes?

20 "QUESTION: Anything else?

21 "ANSWER: No, sir?

22 "QUESTION: And did you receive any of that
23 information?

24 "ANSWER: No, sir?"

25 You don't have a California appraisers
26 license, do you?

27 A No, sir.

28 Q You don't have any appraiser license, right?

1 A No, sir.

2 Q Do you have any appraisers licenses?

3 A No, sir.

4 Q You perform your work as MMCS DBA Desarrollo Real
5 Estate, correct?

6 A Yes, sir.

7 Q That is MMCS registered to do business in
8 California?

9 A It is an Alabama LLC.

10 Q And is it registered to do business in
11 California?

12 A I don't know what it requires to do business in
13 California, but it's not a California-based entity.

14 Q That's MMCS LLC, correct?

15 A MMCS LLC is the entity that holds my company
16 yes, sir.

17 Q It's MMCS LLC, DBA Desarrollo Real Estate; that's
18 your business, right?

19 A Yes, sir.

20 Q And you're the only owner of MMCS LLC, right?

21 A Yes, sir.

22 Q And you believe that's an Alabama limited
23 liability company, correct?

24 A Yes, sir.

25 Q And you have not registered MMCS with the
26 California secretary of state, correct?

27 A No, sir. I don't live in California.

28 Q Reading from your deposition, page 30 -- you do

1 business in California. Doing business right now, right?

2 A Sure.

3 Q Reading from your deposition, page 30, lines 2
4 through 4.

5 MR. CAVANAGH: Objection. That's not
6 impeachment.

7 THE COURT: He's answered that, Counsel.

8 MR. JAFFE: Then there was a double negative
9 because I asked him, "Have you registered MMCS LLC with
10 the California secretary of state?"

11 THE WITNESS: No.

12 BY MR. JAFFE:

13 Q Thank you.

14 A I don't believe I'm required to do so.

15 MR. JAFFE: Move to strike.

16 THE COURT: Sustained. No question pending.

17 BY MR. JAFFE:

18 Q In forming your opinions in this case, you
19 relied upon a listing for a San Diego cannabis dispensary
20 for sale at cannabiscapitaladviser.com, correct?

21 A No, sir. That's -- that's my company.

22 Q Reading from deposition page 33, 11 through 15.

23 MR. CAVANAGH: Objection. That's not proper
24 impeachment.

25 THE COURT: It is not. Ask another question,
26 Counsel. Sustained.

27 BY MR. JAFFE:

28 Q You based your opinions in this case on -- this

1 is the market basis for your opinions on a listing of a
2 dispensary that was listed for \$5.9 million on
3 cannabiscapitaladviser.com, correct?

4 A Yes, sir.

5 Q You said that that listing was part of what you
6 used to arrive at your opinions, correct?

7 A For the market methodology, which was not
8 utilized in the final valuation. I utilized the
9 income-based methodology in the final valuation. Also,
10 it wouldn't have been advertised by Cannabis Capital
11 Advisors because that's my company.

12 Q So -- but to do your market analysis, you looked
13 at something -- there was a listing of a dispensary that
14 was listed for sale for \$5.9 million, correct?

15 A Yes, sir.

16 Q And you don't know whether the dispensary sold
17 for \$5.9 million, correct?

18 A No, sir, I do not.

19 Q And in forming your opinions under the market
20 analysis, you relied upon a listing for four Urban Leaf
21 San Jose cannabis dispensaries, correct?

22 A Yes, sir. I took information from those
23 listings and helped inform as to all of the industry
24 reports, state-issued data, investment data, you know,
25 press releases, quarterly reports from public companies.
26 These all provide information to me on transaction, sales
27 multiples, discount rates and other analysis tools that I
28 utilize when I develop my expertise.

1 Q This is a listing -- so it's an asking price for
2 four Urban Leaf San Jose cannabis dispensaries, so San
3 Jose, and it was \$99 million.

4 A Yes, I believe there was some in San Diego and
5 some in San Jose.

6 Q \$99 million was the asking price in the listing
7 and you don't even know if it sold, correct?

8 A Correct. And that's why I didn't refer to it in
9 my report specifically.

10 Q At the time of your deposition, you testified
11 you didn't know that the Balboa dispensary was sold by a
12 court sale, correct?

13 A Yes, sir.

14 Q In forming your opinions in this case, you
15 didn't know that the Balboa dispensary was sold by a
16 court sale, correct?

17 A Correct, I did not know that.

18 Q In forming your opinions in this case, you
19 didn't consider the restrictions on this Balboa
20 dispensary by the owners association, correct?

21 A I did consider them. I just did not consider
22 them a material risk of value. They were a common risk,
23 and that risk would have been included in the discount
24 rate of 20 percent that I used.

25 Q You didn't factor those restrictions into your
26 analysis with regard to the alleged value of this
27 marijuana dispensary, correct?

28 A I factored them through the discount rate.

1 Q Reading from your deposition, page 45, lines 5
2 through 16.

3 MR. CAVANAGH: No objection.

4 MR. DEMERGIAN: No objection.

5 BY MR. JAFFE:

6 Q "QUESTION: And did you receive any information
7 that the business owners association was taking the
8 position at the time this Balboa dispensary/property was
9 sold to Razuki Investments, that the business owners
10 association was taking the position that there could not
11 be any cannabis dispensary in any of the properties in
12 the business owners association?

13 "ANSWER: Again, I don't remember the specific
14 documentation. I remember some discussion did not
15 factor?

16 "QUESTION: Why did that not factor?

17 "ANSWER: I don't know?"

18 A Is there a question?

19 THE COURT: Not when he reads depositions, sir.

20 THE WITNESS: Sorry.

21 THE COURT: It's okay.

22 BY MR. JAFFE:

23 Q You didn't know that there was a lawsuit by the
24 owners association regarding the Balboa dispensary,
25 correct?

26 A I don't really remember. I don't think so.

27 Q Reading from your deposition, page 47, lines 13
28 through 16.

1 MR. CAVANAGH: Objection. That's improper
2 impeachment.

3 THE COURT: Is this what it says? 14-16?

4 MR. JAFFE: 13.

5 THE COURT: 13. No. Overruled. You may read
6 it, Counsel.

7 BY MR. JAFFE:

8 Q "QUESTION: Did you even know that there was a
9 lawsuit with regard to the business owners association
10 for the Balboa property?

11 "ANSWER: No. I don't believe I was aware of
12 that?"

13 There was operation of this Balboa dispensary,
14 so you could have gotten actual numbers as to what the
15 revenue was with regard to the Balboa dispensary, but you
16 did not receive those, correct?

17 A Yes, sir, not to the extent that I would have
18 liked.

19 Q Reading from the deposition, page 50, lines 19
20 through 25 and going on to page 51, 1 through 3.

21 MR. CAVANAGH: No objection.

22 THE COURT: You may read.

23 BY MR. JAFFE:

24 Q "QUESTION: And there was operation of this
25 dispensary, so you could have gotten actual numbers as to
26 what the revenue was with regard to the Balboa
27 dispensary, but you didn't receive those, correct?

28 "ANSWER: Correct. No financials were produced?

1 "QUESTION: To you, correct?

2 "ANSWER: Excuse me?

3 "QUESTION: No financials were produced to you
4 in order for you to form your opinions, correct?

5 "ANSWER: Correct?"

6 You don't know who operated this Balboa
7 dispensary, correct?

8 A A receiver.

9 Q Reading from your deposition, page 60, lines 12
10 through 13.

11 MR. CAVANAGH: No objection.

12 MR. DEMERGIAN: No objection.

13 BY MR. JAFFE:

14 Q "QUESTION: Do you know who operated this
15 dispensary?

16 "ANSWER: I don't?"

17 Your report deals with an average dispensary
18 operated by an average operator, correct?

19 A Yes, sir.

20 Q But this case isn't about an average store.
21 It's about the Balboa dispensary with the restrictions by
22 the owners association, correct?

23 MR. CAVANAGH: Objection. Argumentative.

24 THE COURT: Overruled.

25 You may answer. You're the expert.

26 THE WITNESS: You know, I'm not a lawyer.

27 BY MR. JAFFE:

28 Q You said your market analysis was based on

1 comparable dispensaries and then you wouldn't testify at
2 your deposition regarding all of the alleged comparable
3 dispensaries, correct?

4 A Yes, sir.

5 Q You did mention there's a dispensary, Bubba
6 Likes Tacos, that you might have considered, but it might
7 have been in LA, right?

8 A Yes. I think that one was in LA.

9 Q And you didn't know what the amount was that you
10 valued for Bubba Likes Tacos, right?

11 A Yes, sir.

12 Q And you didn't know what you valued THC or
13 healing center, correct?

14 A I -- I don't really -- we -- I listed off
15 several names in my deposition that weren't specific to
16 anything. They were just various transactions that we
17 had worked on in various regards. So, you know, I think
18 that's what I was referring to in the deposition.

19 Q You listed them as potential comparables, but
20 then you couldn't even say what you valued them for,
21 correct?

22 A I believe if I listed them as comparables, I
23 would have listed them in the report.

24 Q You have no opinion on whether the plaintiffs
25 lost income; isn't that correct?

26 A What do you mean?

27 Q You have no opinion on whether the plaintiffs in
28 this case lost income, correct?

1 A I mean, I believe that -- I think -- I believe
2 they lost income, yes, sir.

3 Q Reading from your deposition on page 70, lines
4 24 through 25; and on page 71, 1 through 2.

5 MR. CAVANAGH: No objection.

6 THE COURT: Read it.

7 BY MR. JAFFE:

8 Q "QUESTION: Do you have any opinion as to
9 whether the plaintiffs lost income from the operations of
10 the Balboa dispensary?

11 "ANSWER: I don't. I didn't ever receive that
12 data?"

13 THE COURT: Counsel, how much longer are you
14 going to be on cross? Is it over five minutes?

15 MR. JAFFE: Yes, sir.

16 THE COURT: Fine. We'll take our mini recess --
17 strike that -- afternoon recess. It will be for
18 15 minutes. Ladies and gentlemen, step it out. Thank
19 you. 15 minutes, please.

20 (Recess held.)

21 THE BAILIFF: Court is now in session.

22 THE COURT: Let the record reflect the
23 plaintiffs' attorneys and the full jury panel are now
24 present.

25 We are on cross-examine.

26 Counsel, anything for the record?

27 MR. CAVANAGH: No, your Honor.

28 MR. DEMERGIAN: Your Honor, before we go any

1 further, I'm going to renew my previous objection to move
2 to strike. If the Court is exercising its gatekeeper
3 function, this is nonsense in terms of expert testimony.
4 It's speculative as speculative could be. Should be
5 obvious and as part of the gatekeeper function, I think
6 it's time to cut it right now.

7 THE COURT: Thank you.

8 Response?

9 MR. CAVANAGH: There's nothing speculative about
10 his testimony. He wasn't, for example, asked to opine
11 whether the plaintiffs lost any income. He was asked a
12 very specific question, which was to figure out the value
13 that a -- you would expect a dispensary to have if it was
14 operating under reasonable management at standard
15 industry margins, and he testified exactly how he arrived
16 at that.

17 The fact that they're picking around and asking
18 him questions about things he was not asked to do doesn't
19 undermine the validity of what he did do. And if they
20 want to argue that he looked at the wrong thing or
21 performed the wrong methodology or the wrong
22 calculations, that goes to the weight, not the
23 admissibility.

24 THE COURT: Counsel, at this time, it will be
25 denied. He will continue.

26 Here we go.

27 Mr. Jaffe, how much longer you going to be --
28 well, first of all, anything on the defense side?

1 MR. JAFFE: Your Honor, we would ask that you
2 deny that without prejudice --

3 THE COURT: Absolutely.

4 MR. JAFFE: -- after you go through all of
5 these. And I thought that's what you said, if you wanted
6 to have a good record as to what the -- allow them
7 redirect and have us do recross and then we will be
8 making the motion.

9 THE COURT: How much longer are you on for
10 redirect?

11 MR. JAFFE: On cross?

12 THE COURT: How much time do you have, sir?

13 MR. JAFFE: I'll make it less than ten minutes,
14 now that I look at it.

15 THE COURT: Mr. Demergian, how much longer are
16 you going to be?

17 MR. DEMERGIAN: I would say 10 or 15 minutes.
18 Mr. Jaffe has done a pretty good job.

19 THE COURT: So that makes it 3:30. How about
20 15 minutes apiece on recross, redirect, et cetera? He's
21 being finished today.

22 All right. Anything else.

23 MR. COLLIER: That puts us at 4:15 if I do my
24 math right, and I'm a lawyer, so I give the -- always --
25 I'm not a mathematician. I've got a witness sitting
26 outside there. We want to go at 4:15, let him go.

27 THE COURT: Let him go.

28 MR. COLLIER: We'll finish today with

1 Mr. Stefan.

2 THE COURT: We will.

3 MR. DEMERGIAN: Is that Mr. Hayford coming up
4 next?

5 THE COURT: He is. It will be Monday.

6 MR. DEMERGIAN: Mr. Hayford will present
7 tomorrow morning?

8 THE COURT: Oh, yeah. We can chat about him
9 this afternoon.

10 MR. DEMERGIAN: It occurs to me that it might be
11 helpful to the Court if I print out the SCC accusation
12 and decision and stipulation.

13 THE COURT: That will be helpful. Get it
14 printed.

15 Okay. You've got ten minutes left.

16 (Recess held.)

17 THE COURT: Let the record reflect the parties
18 and attorneys and the full jury panel are present.

19 We are on cross-exam by the attorney for Razuki
20 and Razuki Investments.

21 Counsel.

22 MR. JAFFE: Thank you, Your Honor.

23 CROSS-EXAMINATION (continued):

24 BY MR. JAFFE:

25 Q You didn't have any information specifically
26 regarding cost of goods sold for the Balboa dispensary,
27 correct?

28 A Correct.

1 Q And that was because your model was based on how
2 an average dispensary operator should be able to perform
3 in the San Diego market, correct?

4 A It was based on the percentage operating margins
5 that I've seen in my career and based on my expertise.

6 Q Reading from your deposition, lines 15 through
7 19 on page 73.

8 MR. CAVANAGH: I believe that's incomplete,
9 unless you start at page 72, line 13.

10 MR. JAFFE: I disagree.

11 THE COURT: Hold on. Overruled. You can try to
12 cover that. This is specific. Overruled.

13 Counsel.

14 MR. DEMERGIAN: No objection. May we assume
15 that I have no objection unless I say otherwise?

16 THE COURT: That could help the Court. Thank
17 you.

18 MR. DEMERGIAN: Thank you.

19 THE COURT: Go, Counsel.

20 BY MR. JAFFE:

21 Q "QUESTION: What information did you have
22 specifically regarding costs of goods sold for the
23 marijuana dispensary?

24 "ANSWER: I did not receive any information.
25 This model was based on how an average dispensary
26 operator should be able to perform in the San Diego
27 market?"

28 And all of this information that you say you

1 received from the San Diego tax authorities, those were
2 numbers you were just told over the phone; is that
3 correct?

4 A No, sir.

5 Q What?

6 A I was -- found an email where they were also
7 emailed to me from the City of San Diego.

8 Q You didn't have that at your deposition,
9 correct?

10 A No, sir. You asked me if I could look up the
11 name and I said that I would, and in the process of
12 looking up the name, I found the name that's Mr. Gerardo
13 Quintana-Roo. He's director of treasury at the City of
14 San Diego.

15 MR. JAFFE: Objection. Move to strike.

16 THE WITNESS: Once I found his name --

17 THE COURT: Stop. Let him finish.

18 THE WITNESS: Once I found his name, I reached
19 out to Mr. Rowland, and Mr. Rowland sent on an email
20 chain that also had an email. So we had a -- we had an
21 email chain from the City of San Diego. And then we also
22 called and spoke to both the city taxing authority as
23 well as the department of developments middle services.
24 But most of your communications we got back from them
25 were in writing.

26 MR. JAFFE: Objection. Move to strike and on
27 the basis that that's worked on after the deposition that
28 we were not told about.

1 THE COURT: Overruled.

2 Ask him about whether that was given to you.

3 BY MR. JAFFE:

4 Q Was any -- were any of these emails given to us
5 since the deposition?

6 A No, sir. I found that email on October 31st, on
7 Tuesday.

8 MR. JAFFE: So move to strike based upon what
9 was done after the deposition that was not available to
10 us.

11 THE COURT: Counsel?

12 MR. CAVANAGH: He didn't say that he didn't work
13 after the deposition. He said that he found it in an
14 email.

15 THE WITNESS: As requested.

16 MR. CAVANAGH: There was no question about when
17 the work was done.

18 THE COURT: He got the email. He did it two
19 days ago to find that information, didn't he, Counsel?
20 That's what he said.

21 Let's get into it.

22 BY MR. JAFFE:

23 Q So up until October 31st --

24 THE COURT: Two days ago.

25 BY MR. JAFFE:

26 Q -- you didn't know who you spoke on the phone
27 with at the City of San Diego marijuana taxing authority,
28 correct?

1 A I did not know the person's name, but I knew the
2 information that they gave me, and it's been in the
3 report since March.

4 Q But you didn't know the name?

5 A I did not know his name.

6 Q And then you did some work, apparently, on
7 October 31st to try and find out the name; is that it?

8 A It was sent to me in an email.

9 Q Did you ask Mr. Rowland to --

10 A I asked him if he had the name.

11 Q So you did some work by asking Mr. Rowland to --
12 if he had the name, correct?

13 A Yes, sir.

14 Q Okay. And then you received some documents from
15 Mr. Rowland on October 31st?

16 A Yes, sir. An email thread.

17 Q And that had information regarding -- allegedly
18 regarding this person's name and some alleged tax
19 information; is that correct?

20 A Correct. It had the city sales tax collections
21 for the City of San Diego from 2018 to 2022, and then he
22 followed up on February 9th with the final numbers for
23 the year of 2022.

24 Q And did you ever send those to me since
25 October 31st?

26 A No, sir. I just sent them to Mr. Cavanagh.

27 Q Did you send it to Mr. Cavanagh on October 31st?

28 A No, sir.

1 Q When did you send it to him?

2 A Just this afternoon.

3 MR. JAFFE: We renew our motion to strike.

4 THE COURT: Counsel, as to these emails and
5 information that he relied upon, what's your response?

6 You got them when?

7 MR. CAVANAGH: About an hour and a half ago.

8 THE COURT: Sure. Okay.

9 Your response? Anything?

10 MR. CAVANAGH: Do you want me to argue or ask
11 questions?

12 THE COURT: I'm going to strike it, that's what
13 I'm going to do. We'll take that outside of the --
14 stricken. We'll lay foundations outside of the jury.

15 MR. CAVANAGH: I'm sorry. What's being
16 stricken, Your Honor?

17 THE COURT: The emails. There were some emails
18 that he looked at and sent to you, but, obviously, that
19 has not been turned over to the defense. Is that a fair
20 statement?

21 MR. CAVANAGH: Yes, Your Honor. I became aware
22 of them about --

23 THE COURT: I'm not faulting you, Counsel, but
24 I'm striking it. Understood?

25 Let's go.

26 BY MR. JAFFE:

27 Q So let's be clear, this tax information that you
28 received as of the date of your deposition, it was your

1 understanding that that was based solely on the numbers
2 you were just told over the phone; isn't that correct?

3 A That was my recollection at the time, but it is
4 not correct because I had received them via email as
5 well, and I do not remember at the time.

6 MR. JAFFE: Move to strike, again, regarding
7 emails.

8 THE COURT: Sustained.

9 MR. JAFFE: Thank you.

10 BY MR. JAFFE:

11 Q At the time of your deposition, I asked you,
12 "Did you do any research to determine whether there were
13 any documents as to whether those numbers you got over
14 the phone regarding alleged tax information were
15 accurate?" And you said you didn't have any documents,
16 correct?

17 A That is what I said.

18 Q You said you testified at your deposition to all
19 of your opinions, correct?

20 A Yes, sir.

21 Q That document we were referring to as
22 Exhibit 180, which has all the information that you put
23 into Exhibit 179 and into your report -- that was a
24 document based upon a call that you and Mr. Rowland made
25 to the San Diego marijuana tax authorities, and that's
26 how you got that information. And then Mr. Rowland made
27 a draft document, and then you both made notes on it,
28 just kind of cleaning it up, right?

1 A For the most part, yes, sir, but we also -- the
2 document was informed by the email communications that
3 have been stricken.

4 MR. JAFFE: Objection. Move to strike.

5 THE WITNESS: I'm just trying to answer
6 honestly, sir, that the information that I received from
7 the city is in this document, so it had to come from
8 somewhere. Whether I'm allowed to talk about where it
9 came from or not, I can't help you there, but that's
10 where the information came from.

11 MR. JAFFE: Move to strike.

12 THE COURT: But let's make sure.

13 When you did your analysis on 180, you did not
14 have the email from the City of San Diego, did you?

15 THE WITNESS: I had the information contained --

16 THE COURT: Not the question.

17 Did you have the email, which you say you got
18 two days ago when you did your analysis, sir?

19 THE WITNESS: No, sir, but the email was from
20 Mr. Rowland, and Mr. Rowland would have sent me another
21 email with those numbers or given me the numbers at some
22 other time. I didn't make up the numbers.

23 MR. JAFFE: Move to --

24 THE COURT: Enough. I'm sorry.

25 Counsel, go on.

26 MR. JAFFE: I just want to make sure we got a
27 full record.

28 THE COURT: No, no. Go ahead.

1 BY MR. JAFFE:

2 Q Reading from the deposition on page 22, lines 8
3 through 14.

4 MR. CAVANAGH: I don't think that's proper
5 impeachment. I think he's acknowledged that to the
6 extent he's been allowed to testify.

7 THE COURT: That what?

8 MR. CAVANAGH: I think he has acknowledged that
9 to the extent he's been allowed to.

10 THE COURT: This was done at the deposition.
11 Overruled.

12 Go.

13 BY MR. JAFFE:

14 Q "QUESTION: So did Mr. Rowland write this
15 document?

16 "ANSWER: We made a call to the CREC where we
17 got this information. He made a draft document. We both
18 made notes on it, just kind of cleaning it up here?

19 "QUESTION: So this is just based upon you
20 making a telephone call; is that correct?

21 "ANSWER: Correct?"

22 MR. JAFFE: Nothing further at this time. Thank
23 you.

24 THE COURT: Cross by Malan.

25 MR. DEMERGIAN: Thank you, your Honor.

26 CROSS-EXAMINATION

27 BY MR. DEMERGIAN:

28 Q Good afternoon, sir.

1 A Good afternoon.

2 Q I don't want to beat a dead horse, but I'm very
3 unclear. You made a telephone call to the City of
4 San Diego, one or more, to get this information.

5 A There were two different departments: the City
6 of San Diego treasury as well as they directed us to
7 development services to get the number of dispensaries.

8 Q So you got the tax revenue from the first call
9 and the number of the dispensaries from the second call;
10 is that correct?

11 A I don't think I can answer that because it came
12 from the email and it came from -- confirmed in the
13 second call.

14 Q I'm asking you what you remember.

15 A What I remember is I remember phone calls. I
16 remember Mr. Rowland did most of the research to gather
17 the tax information and communicated it to me for the
18 report, maybe through this document, maybe through
19 another. We did make phone calls to both the City of
20 San Diego development service department as well as the
21 department of the treasury. And we also reviewed a link
22 that they sent us to the tax data for the City of
23 San Diego.

24 Q When you say we called, were you on a conference
25 call together with him?

26 A Yes. Dan and I called the city together --

27 Q Okay.

28 A -- on a merge.

1 Q But the tax number information, I understand
2 came from -- Mr. Rowland got that and then passed it
3 along to you; is that right?

4 A Yes, sir. It came from Mr. Quintana-Roo with
5 the City of San Diego.

6 Q Went to Mr. Rowland who passed it on to you,
7 correct?

8 A Okay.

9 Q Okay. How many appraisals of marijuana
10 dispensaries have you done in the San Diego area?

11 A Four.

12 Q Counting this one?

13 A Five.

14 Q What are the other four?

15 A Well, we determined in the deposition that I was
16 going to answer that based on nondisclosure agreements
17 from my previous clients.

18 Q Well, I'm asking you now.

19 MR. CAVANAGH: Your Honor, I think it's improper
20 to ask him to violate, if he has currently a
21 nondisclosure to identify -- I'm haven't been able to
22 allow him to testify under the circumstances which
23 identify the client.

24 THE COURT: Circumstances, if it is truly a
25 nondisclosure. I don't know whether --

26 MR. DEMERGIAN: I haven't seen a nondisclosure.

27 MR. CAVANAGH: Have you asked to have one
28 produced?

1 MR. DEMERGIAN: No. I mean he's the one hiding
2 behind a nondisclosure agreement.

3 MR. CAVANAGH: Well, he's the only person --

4 THE COURT: Ask him not the name, the
5 circumstances, Counsel.

6 BY MR. DEMERGIAN:

7 Q All right. Tell me the circumstances of those
8 appraisals.

9 A These were businesses that were for sale of
10 active and operating businesses here in San Diego. One
11 was producing nearly \$20 million a year in annual
12 revenue, saw nearly 750 people a day with an average
13 transaction size nearly \$100. It was a very -- very
14 high-level dispensary here.

15 The other one was, I believe, was the Urban deal
16 that sold to Verano several years ago.

17 Another was for -- I can't remember the name. I
18 refer to it in my deposition. It was something that
19 played off the THC, so it was either like the health
20 center.

21 But they all have -- they use that acronym very
22 often on dispensary names, and so it was very confusing
23 whether it was the health center or the, you know,
24 healing center or something like that.

25 And, yeah, the other was a -- a piece of real
26 estate and a paper license that would need to be moved to
27 the piece of real estate, and so they wanted to come up
28 with a purchase price for the real estate.

1 BY MR. DEMERGIAN:

2 Q Have you ever been to the Balboa dispensary?

3 A No, sir.

4 Q Do you know how many square feet it is?

5 A No, sir, not off the top of my head.

6 Q You can get that off of Zillow, right? You're
7 familiar with Zillow, right?

8 A Yes, sir. You may or may not be able to get it
9 off of Zillow. That's a residential real estate app, so
10 it's not as much for commercial.

11 Q Certainly the size of a dispensary would
12 contribute to its income, wouldn't it?

13 A Not really.

14 Q Bigger dispensaries don't generally generate
15 more revenue?

16 A They generate more tax inefficiency because of
17 280E. 280E is a tax law that governs the marijuana
18 industry that doesn't allow you to deduct any expenses
19 utilized in the sale of marijuana. So when we were
20 looking at the pro forma earlier, that would have been
21 the total expenses column. None of that is deductible.

22 So the larger amount of floor space that you
23 have in your dispensary, the larger amount of rent and
24 cost that you can defer into your costs is higher. So
25 generally, it's probably better to have about a 2- or
26 3,000 square foot dispensary. But the one that was doing
27 20 million was below 2,000 square feet.

28 Q So you've been an appraiser for a while.

1 Wouldn't you agree with me that the best measure of value
2 for any business is what a willing buyer will pay a
3 willing seller when neither are under compulsion to
4 either buy or sell?

5 A Yes, sir, and that's what I tried to account for
6 in my model. Arm's length transaction.

7 Q I see. And how much did Razuki Investments pay
8 for these properties?

9 A When they first bought it, it was somewhere
10 around a million dollars, and then they did a sale just
11 after that around \$2 million, if I remember correctly,
12 but I'm not sure that I do.

13 Q Certainly nowhere near 14 million, correct?

14 A No, sir, but I don't believe that it reflected
15 the entitlements. In fact, I believe, you know, that
16 there weren't any entitlements. There was really just a
17 conditional use permit. You would need to, you know,
18 build it out to get a certificate of occupancy to turn on
19 the dispensary, and then you would need several months of
20 ramp-up before you, you know, had value from the
21 dispensary. So I don't believe that the value of the
22 business was accounted for in those sales.

23 Q What's the difference in laws between --
24 relative to the sale of marijuana dispensaries between
25 Colorado and California?

26 MR. CAVANAGH: Objection. Calls for a legal
27 conclusion. Outside the scope of the expert.

28 THE COURT: The difference. He's the expert.

1 Do you know the difference?

2 THE WITNESS: Well, I knew it -- you know, in
3 terms of multiples, California is a one and a half to two
4 times market, where Colorado is 0.8 times revenue to 1.25
5 time revenue market.

6 BY MR. DEMERGIAN:

7 Q Says who?

8 A Says the industry and the history of sales that
9 have been done in California and in Colorado over the
10 past decade.

11 Q You teach, you told us. You teach appraisal
12 issues relative to cannabis, right?

13 A Yes, sir.

14 Q What do you teach your students the need to --
15 they need for in order to grade an accurate appraisal or
16 value?

17 A I'm sorry. What is that?

18 Q What do you tell your students that they need by
19 way of documentation or otherwise in order to perform an
20 accurate appraisal?

21 A Due diligence request of the financial
22 information and pertinent information to the property to
23 be able to assess the risk and potential of the business
24 or property.

25 Q Okay. All the information you asked for in this
26 case but never received, correct?

27 A You know, it's very unclear. I received
28 information. It was limited and it did not reflect a

1 stabilized dispensary. I did not rely on that
2 information in my report.

3 Q What did you receive?

4 A I can't even account for it anymore because it
5 was so long ago and it wasn't used so much in my report.
6 But I got a lease, I got some very spotty financial
7 reporting. I guess it was from the receiver. I really
8 don't remember because it wasn't something that we
9 reviewed, you know, in preparation of the report.

10 It wasn't something that we ended up utilizing
11 before the deposition. These were things that we looked
12 at months ago and said, this isn't enough to put together
13 a good appraisal. We need a better methodology. And so
14 we shifted to what we have today.

15 Q Did you begin looking that the dispensary after
16 the receiver was appointed? Was that kind of your
17 starting point?

18 A I think I began looking at it the day -- it
19 would have been before that when you really just had the
20 conditional use permit, just -- it is a timeline. It's
21 not really when my evaluation began.

22 Q Well, you know there's a dispensary in operation
23 about a week -- about a year before the receiver was
24 appointed? You know that?

25 A But it wasn't -- the first full year of
26 financials was really where we began.

27 Q So you looked at the financials?

28 A In the first year --

1 THE COURT: Slow down.

2 BY MR. DEMERGIAN:

3 Q You looked at the financials for the dispensary
4 before the receiver was appointed?

5 A I -- I really don't remember.

6 Q You can't tell me what documents you looked at
7 and they're not reflected in your report in order to come
8 to your conclusions?

9 A I looked at documents, and when I assessed the
10 amount of information that I could glean from those and
11 said, can I develop an accurate valuation from the
12 documents received, I made the determination that I could
13 not. And then I developed this methodology, backing into
14 it from the tax returns and coming to an average store
15 sales.

16 Q You just used the word "accurate." If you had
17 the financial information, you could do an accurate
18 appraisal. That's what you just said, wasn't it?

19 A That's not what I said. You're inferring what I
20 mean by "accurate."

21 Q Specifically, you teach a class on how to
22 appraise cannabis dispensaries, correct?

23 A Yes, sir.

24 Q All right. Specifically, what do you tell your
25 students they should ask for in order to perform an
26 accurate appraisal?

27 MR. CAVANAGH: Objection. Asked and answered.
28 Argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: I believe I answered it.

3 BY MR. DEMERGIAN:

4 Q The judge said you didn't, so --

5 A I would request due diligence of financial
6 information and leases, et cetera.

7 Q What does "et cetera" mean? "Due diligence,"
8 what does that mean? I want to know what you tell your
9 students they should ask for.

10 THE COURT: Stop. Stop.

11 MR. DEMERGIAN: I'm sorry, Your Honor.

12 THE COURT: Take it down a notch. It's getting
13 late in the day. We'll get this done today. Ask the
14 question. Answer the question. Let's go.

15 THE WITNESS: So a typical due diligence request
16 would be for profit and loss statement, leases,
17 information on the SKUs and the product mix that the
18 store sold. Sometimes tax returns -- tax returns,
19 generally these are owned and pass through entities, so
20 the tax -- the tax liability stays with the particular
21 owners of the company.

22 So a business evaluator who is above the line,
23 meaning valued on that income or revenue and not
24 after-tax cash flow doesn't always require or receive tax
25 returns in this regard.

26 You know, mainly I can do a lot of work on a
27 lease in a profit and loss statement, you know. Further
28 than that, I do want these. I want know the market

1 competition in the area, again, the size of the space,
2 has it been bought and sold, you know, things like that.

3 BY MR. DEMERGIAN:

4 Q Pardon me. I didn't ask you what you would like
5 to see. I asked you what you teach your students they
6 need to perform an accurate appraisal?

7 MR. CAVANAGH: Objection. Asked and answered.

8 THE WITNESS: And I believe that I answered it,
9 sir. I can't think of any other documents that I would
10 require to teach my students how to do an information or
11 due diligence request.

12 BY MR. DEMERGIAN:

13 Q In order to create an accurate appraisal,
14 correct?

15 A Correct.

16 Q That's the goal, right?

17 A Correct.

18 Q You didn't receive any of that in this case that
19 you recall?

20 A It didn't rely on any of the information that I
21 received from the financial operations of the business.

22 Q What did you receive?

23 A I cannot tell you what all I received at this
24 time.

25 Q Can you tell me anything you received? Did you
26 look at the receiver request --

27 A I believe I answered this question, sir.

28 THE COURT: Again, Counsel, slow down. Slow

1 down. Question, answer, Counsel, question.

2 BY MR. DEMERGIAN:

3 Q The receiver was appointed in the case. You
4 know that, right?

5 A Yes.

6 Q The receiver filed regular reports with the
7 Court that are a matter of public record. You know that,
8 right?

9 A Okay.

10 Q How many receivers' reports did you look at that
11 listed the income and expenses of the dispensary?

12 A I cannot testify to that. I don't remember.

13 Q Did you look at any?

14 A I looked at reports and I did not find them
15 sufficient to base evaluation off of.

16 Q How many receiver's reports did you look at?

17 MR. CAVANAGH: Objection. Asked and answered.

18 THE WITNESS: I have no idea.

19 THE COURT: Last time. He doesn't remember,
20 Counsel.

21 Move on.

22 BY MR. DEMERGIAN:

23 Q Can you tell me a single treatise that supports
24 the use of this market analysis approach as opposed to
25 income analysis for the valuation of the dispensary?

26 A I couldn't tell you any treatises, sir.

27 Q Are there any treatises about valuation of
28 cannabis dispensaries?

1 A Only the ones that I produced for my class as
2 far as I know.

3 Q Okay. What are the titles of those?

4 A What is a treatise?

5 Q Well, you just said you produce them for your
6 class, so what do you -- what do you produce for your
7 class?

8 A I was just trying to infer what you meant, sir.

9 Q What is it that you produce for your class?

10 A I produce a -- you know, a program for the class
11 and, you know, this is what we learned about and this
12 is -- you know, these are the methodologies that we
13 utilize to evaluate cannabis businesses.

14 Q Is it a book?

15 A Excuse me?

16 Q Is it a book?

17 A Wook?

18 Q Book, B-O-O-K.

19 A You know, a lot of it is derived from USPAP
20 standards, the United States appraisal. I don't remember
21 the rest of the acronym, but, you know, that there's a
22 long-running history of valuation methodology both for
23 real estate, both for business valuation. You know,
24 NABV, the national association of business valuers,
25 that would be -- you know, they probably have a treatise,
26 but it's not on campus.

27 Q That's all very interesting, but I want to know
28 what your book that you produce for your classes is

1 titled, or what it looks like. Is it a syllabus that's
2 stapled together?

3 A Yes, sir, it's a syllabus, it's a working Word
4 document.

5 Q Okay. How many pages?

6 A Three, maybe.

7 Q Okay. And that covers --

8 A There's a PowerPoint as well that's probably 20
9 slides or so.

10 Q Okay. So your analysis pays no attention to the
11 income or lack thereof from the dispensary from 2018 to
12 2022, 2023; is that true?

13 A My analysis looks at the value of the
14 dispensary. And I don't believe from the information
15 that I received on this business that I could come up
16 with a defensible valuation or complete methodology with
17 the information that I received.

18 So it was considered and it was dismissed.
19 Because it was an outlier from the 700 businesses that
20 I've looked at in ten years. Its operating revenues were
21 very low. Its, you know, margins are off. It wasn't a
22 stabilized business.

23 Q None of them were. Is that what you're telling
24 me?

25 A Generally, a business that's run by a receiver
26 would never be considered a stabilized business.

27 Q Well, after the receiver ran it, somebody else
28 ran it -- while the receiver was operating it, somebody

1 else was running it. Were you aware of that?

2 A I wasn't.

3 Q You ever heard of CBCDA?

4 A No, I have not.

5 Q Did you ever look at any of their financial
6 data?

7 A No, I didn't.

8 Q And then the property was sold by this judge in
9 court. Are you aware of that?

10 A I am now.

11 Q What was the sales price?

12 A No idea.

13 Q Isn't that important?

14 A Court ordered sale wouldn't represent a -- you
15 know, a stabilized business taken to market in an arm's
16 length transaction with a -- you know, with a reasonable
17 marketing period. A receiver sale would be a distress
18 sale. It would be a short sale.

19 Q With multiple bids?

20 A Multiple bids don't make it a stabilized sale.
21 Still at an unstabilized price, it's an unstabilized
22 valuation, unstabilized operations.

23 Q Just because it has a receiver?

24 A Yes, sir. Categorically.

25 Q How much --

26 A You would be hard-pressed to find an outlier to
27 that statement. I'm sure that there's some nuance where
28 a court-ordered sale was of a stabilized business, but,

1 you know, generally, there's nothing I've seen about this
2 business to show that it was stabilized, and I don't
3 think that the fact that it had multiple bids at a
4 court-ordered sale would show that it's a stabilized
5 business. I think it would further implicate that it was
6 an unstabilized business.

7 Q It doesn't affect your decision, then, that the
8 business was first sold for -- the dispensary, if you
9 will, was first sold for -- what's your recollection? Do
10 you remember when it was sold to Razuki Investments?

11 A I thought it was a \$1 million sale and then a \$2
12 million dollar sale.

13 Q And a \$2 million sale, then it was sold --

14 A But those were sales of the property, not of the
15 business.

16 Q Then it was sold by the court, right?

17 A Correct. And I think by the time the court sold
18 it, it may have had business operations, but the first
19 two sales, there was no business operation. That was a
20 real estate sale. And, of course, there was no
21 stabilized operations.

22 Q So your -- if we look at 180, your Exhibit 180,
23 which is just the chart isn't it -- or is that 179?

24 MR. JAFFE: The chart is 179.

25 BY MR. DEMERGIAN:

26 Q 179. Based on the multiple -- strike that.

27 Let me ask you first in terms of cost of goods
28 sold.

1 Where does waste product figure into cost of
2 goods sold?

3 A That's really outside of my expertise.

4 Q Well, maybe it's the same in Colorado, but in
5 California, you know that you have to keep track of --
6 basically from seed to sale marijuana, right?

7 A Of course.

8 Q Okay. And so -- in that vein, oftentimes there
9 is waste product that has to be returned -- strike that.

10 What happens to the waste product in California?

11 A Sir, again, this is pretty far outside of my
12 expertise.

13 Q Well, what if the waste product is 20 percent,
14 for example?

15 A My work is done above the line doing financial
16 analysis of businesses. It's not on the operations of
17 businesses or on the requirements from state by state.

18 Q It's purely theoretical, isn't it?

19 A What's that?

20 Q Your evaluation.

21 A Other than \$200 million in transaction volume
22 and 160 transactions I've completed, the 700 valuations,
23 those were all real.

24 Q I bet they -- I'm sure they were.

25 Now, looking at your valuation, using the
26 different multipliers that you used, those are based on
27 your training and experience?

28 A Yes, sir.

1 Q What's the range of values that it could be
2 under your analysis?

3 A Well, on page 180 here, there's no range. It's
4 just 13,932,192. Also, it doesn't contain any multiples.

5 Q What are the multiple figures? I don't have it
6 in front of me.

7 A I'm going to repeat that back for the court
8 reporter. So yes, on my valuation, it does not refer to
9 any multipliers on page 180. It is by present value in a
10 discounted cash flow valuation of 13,932,192.

11 Q That's for the 179, then -- sorry -- where you
12 have multiples valuation range for the termination --
13 terminal year.

14 Do you see that?

15 A Yes, sir.

16 Q That suggests that your valuation really is
17 somewhere between 10 million and 19 million, right?
18 depending on the multiplier you use.

19 A No, sir. I determine that this market
20 methodology and the results that are produced were used
21 for comparison, but this was not the accurate reflection
22 that was indicative of the value of the dispensary in
23 question.

24 Q Well, you told us that you were impressed
25 because of the multiple times 1.5 was very close to the
26 figure you reached at the market analysis.

27 A No, sir, that's not accurate. I testified that
28 the income multiplier between 3X and 5X of the income was

1 in line with my valuation, which was also based on
2 income. And so that just supports the conclusion that it
3 came to us being more reasonable.

4 Q So the range is 10 to 17, then, right?

5 A No, sir. The value is 13,932,162.

6 Q Any cents on that?

7 A Excuse me?

8 Q There's no cents?

9 A No, sir, no cents accounted for in this model.

10 Q You're a real estate broker and agent, right?

11 A Yes, sir.

12 Q Would you have advised a client to pay
13 \$13 million for this dispensary?

14 A If given the opportunity, yes, sir. At a 1.5
15 multiple of a 2.5 of net income, that would be a very,
16 very attractive steal in the state of California and the
17 market of San Diego, especially. Probably the strongest
18 market in the state of California.

19 Q Before the receiver --

20 A But the last sale here, I believe, was about 30
21 million.

22 Q I'm sorry?

23 A I believe it was about 30 million.

24 Q What sale?

25 A The dispensary sale here.

26 Q Oh. Well, tell me about that dispensary
27 compared to this dispensary.

28 A I can't remember enough about it to opine on it

1 in this regard, but yeah, I mean I remember there's a
2 sale price of a \$30 million dispensary in the City of
3 San Diego.

4 Q Well, how big was it?

5 A \$30 million.

6 Q No. How large was it? Square feet?

7 A I have no idea. Again, square footage doesn't
8 really factor into my analysis. I thought we discussed
9 that.

10 Q Yes, we did, and your position is that a grocery
11 store-sized dispensary is --

12 A Is way too big.

13 Q Can I finish my question?

14 A Sure.

15 Q A grocery store dispensary has the same value as
16 a 1,300 square foot dispensary; is that right?

17 A If the economics support that value, yes, sir.

18 Q Okay. Now, does it -- did it factor into
19 your equation -- into your analysis at all that this
20 business was shut down three times by the homeowners
21 association?

22 A You know, every cannabis business that I look at
23 faces the problem of -- not in my backyard, and whether
24 that is fights with their neighbors, with their HOA,
25 their local neighborhood association, schools, daycares
26 or treatment center in their range, that's just a common
27 risk factor for a cannabis business.

28 Q So the fact that perhaps hundreds of thousands

1 of dollars may have been spent in legal defense against
2 the homeowners association, business owners association
3 in this case does not factor into your valuation at all;
4 is that correct?

5 MR. CAVANAGH: Objection. There's no evidence.

6 THE COURT: No foundation. Sustained, Counsel.
7 Question?

8 MR. DEMERGIAN: No, your Honor.

9 THE COURT: Here we go. You now have ten
10 minutes apiece. Ten minutes. Here we go.

11 Plaintiff, redirect.

12 REDIRECT EXAMINATION

13 BY MR. CAVANAGH:

14 Q Mr. Stefan, who is Daniel Rowland?

15 A Daniel Rowland is an attorney who referred me to
16 the case and helped me collect the tax information --
17 (Speaking simultaneously.)

18 THE COURT: Let's go.

19 BY MR. CAVANAGH:

20 Q I'm sorry. Can you tell us who Mr. Rowland was?

21 A Dan Rowland is an attorney in Denver and a
22 colleague. He first referred me to this case and helped
23 me gather information that I used to build a report.

24 Q And what did he do with respect to obtaining
25 information from the City of San Diego with respect to
26 tax information?

27 MR. DEMERGIAN: Objection. Foundation.
28 Hearsay.

1 MR. JAFFE: Calls for speculation.

2 THE COURT: What did he do -- wouldn't that
3 be -- sustained. Hearsay.

4 Go.

5 No. What did he do? Overruled.

6 You may answer. What did he do?

7 THE WITNESS: He made written and verbal
8 requests to find the number of dispensaries in San Diego
9 in the city tax collections.

10 MR. JAFFE: Move to strike regarding "written."

11 THE COURT: No, no, no. It's -- overruled.
12 Answer stands.

13 BY MR. CAVANAGH:

14 Q And did he pass those written requests on to
15 you?

16 A Yes, he did.

17 Q And then did you do anything to confirm that
18 written information that you obtained from Mr. Rowland?

19 A Yes, sir. We called the city --

20 MR. JAFFE: Objection. This deals with the
21 emails.

22 THE COURT: We're done. You're going to cross
23 on that, Counsel.

24 Here we go.

25 THE WITNESS: Just as I testified in the
26 deposition, we called the City of San Diego to confirm
27 those numbers.

28

1 BY MR. CAVANAGH:

2 Q And were you personally involved in those phone
3 calls?

4 A There were multiple phone calls I was involved
5 in, yes. I was at least involved in two calls to the
6 department of development services and to the tax -- to
7 the city department of treasury. If there were other
8 calls made by him, I'm not sure.

9 Q From whom did Mr. Rowland receive the written
10 information that he received in response to the
11 initial requests at this time?

12 A The director of the department of treasury from
13 the City of San Diego, Mr. Gerardo Quintana-Roo.

14 Q And with whom did you speak to confirm the tax
15 information that Mr. Rowland passed on to you?

16 A It was Mr. Quintana-Roo.

17 MR. JAFFE: Objection.

18 MR. DEMERGIAN: Join.

19 THE COURT: I've got to make sure the evidence
20 is clear in the Court's mind because I might have to rule
21 on some motions.

22 You just said that Mr. Rowland got some emails
23 from the city with this information.

24 When did Mr. Rowland get those emails?

25 THE WITNESS: February 7th.

26 THE COURT: February 7th. Was that turned over
27 to your attorney?

28 THE WITNESS: I didn't have possession of the

1 emails. I had possession of the information that was
2 contained therein.

3 THE COURT: Okay. So did Mr. Rowland turn that
4 information over?

5 THE WITNESS: No, sir, he did not, but it was
6 contained in my report.

7 THE COURT: Not the question. I appreciate
8 that, but were the emails that said that document, was it
9 ever produced to the defense?

10 THE WITNESS: The notes that Mr. Rowland gave me
11 that Mr. -- we just referred to in our last --

12 THE COURT: I'm going to ask a very specific
13 question.

14 Were the emails --

15 THE WITNESS: The emails were not.

16 THE COURT: That's all you had to say.

17 Here we go. Let's go.

18 BY MR. CAVANAGH:

19 Q And then were the numbers that were in the
20 emails and then that you confirmed over the phone -- were
21 those contained in your report?

22 A Yes, sir, they were. And they were contained in
23 the example document we were just looking at that I
24 had --

25 (Speaking simultaneously.)

26 MR. DEMERGIAN: Move to strike as nonresponsive.

27 THE COURT: Hold on. Let him finish.

28

1 BY MR. CAVANAGH:

2 Q Could you look at Exhibit 180.

3 MR. DEMERGIAN: Move to strike as nonresponsive.

4 THE COURT: Sustained. Stricken.

5 Answer the question very specifically, if you
6 can, sir. He's asking very specific questions.

7 BY MR. CAVANAGH:

8 Q Were the numbers that were in the emails that
9 were received by Mr. Rowland and then confirmed by you
10 through the telephone call that you were a party to
11 contained in your report?

12 A Yes, sir.

13 MR. JAFFE: Objection. Move to strike regarding
14 emails.

15 THE COURT: Overruled. That's his answer. Hold
16 on.

17 BY MR. CAVANAGH:

18 Q And are those figures also reflected in
19 Exhibit 180?

20 A Yes, sir.

21 Q And when did you first actually receive, then,
22 the emails that Mr. Rowland had received?

23 A Just on the 31st.

24 Q And how did you receive those emails from
25 Mr. Rowland?

26 A He forwarded them to me on the 31st.

27 Q And why?

28 A I was looking for the name of the man we spoke

1 with at the city.

2 Q Why were you looking for the name of the man you
3 spoke with --

4 A I told Mr. Jaffe when he was questioning me on
5 this document in my deposition that I would look it up.
6 And I also testified then that Mr. Rowland and I both
7 worked on this document and both edited this document
8 and --

9 MR. DEMERGIAN: Your Honor, please.

10 THE WITNESS: -- he questioned me extensively.

11 THE COURT: No question is pending. Stricken.
12 Go.

13 BY MR. CAVANAGH:

14 Q In your experience in 2017, was it common for a
15 legal marijuana dispensary to be put into a receivership
16 with the Court?

17 MR. DEMERGIAN: Objection. Vague.

18 THE WITNESS: In any experience, no.

19 THE COURT: Any other objections besides vague?

20 MR. DEMERGIAN: Foundation.

21 THE COURT: Sustained. Foundation.

22 Give me a foundation.

23 BY MR. CAVANAGH:

24 Q What was your -- do you track the status of
25 marijuana dispensaries around the country to check for
26 their financial performance?

27 MR. DEMERGIAN: Objection. Vague.

28 THE WITNESS: I do.

1 THE COURT: Hold on now. Overruled.

2 BY MR. CAVANAGH:

3 Q And in your -- were you also doing that around
4 2017?

5 A Yes, sir, I was.

6 Q So in your experience from observing the market
7 for marijuana dispensaries in 2017, was it common for a
8 legal marijuana dispensary to be put into a receivership
9 with the court?

10 MR. DEMERGIAN: Objection. Vague.

11 THE COURT: Sustained. Rephrase. Proper
12 inquiry. Rephrase.

13 BY MR. CAVANAGH:

14 Q From your observations of the market, how
15 many -- were you aware of any legal marijuana
16 dispensaries in 2017 that were in receiverships with the
17 court?

18 A No, sir. I'm not aware.

19 Q Other than the dispensary that's involved in
20 this case, are you aware of any legal marijuana
21 dispensary anywhere in California that has been put into
22 receivership with the court?

23 A Not specifically.

24 Q And were you asked to -- strike.

25 Were you asked to opine on whether or not the
26 plaintiffs lost income on this case?

27 A I was not.

28 Q What was it that you were asked to opine on?

1 MR. DEMERGIAN: Objection. Asked and answered.

2 THE WITNESS: The value of the Balboa Bay
3 dispensaries.

4 THE COURT: Slow down. You may answer.

5 THE WITNESS: The value of the Balboa Bay
6 dispensary -- Balboa dispensary.

7 BY MR. CAVANAGH:

8 Q And what was your opinion at that time?

9 A The valuation --

10 MR. JAFFE: Objection. Asked and answered.

11 THE COURT: Overruled.

12 You may, one last time.

13 THE WITNESS: 13,932,132.

14 13,932,192.

15 BY MR. CAVANAGH:

16 Q Thank you.

17 THE COURT: On those issues, Counsel, anything?

18 RE CROSS-EXAMINATION

19 BY MR. JAFFE:

20 Q You didn't indicate at your deposition that you
21 were going to look up who you spoke to on the one
22 telephone call that you made to get all of the tax
23 information that you put into your report, correct?

24 A That's incorrect, given that we've corrected the
25 record on how I received the information.

26 Q At your deposition, you only said you might --
27 you would have to look up the number you called. You
28 didn't say anything about looking up the person that you

1 called, correct?

2 A I think I meant those interchangeably, sir. I
3 mean if I just testified to a phone number, I don't think
4 it would help.

5 Q Reading from your deposition, page 22, lines 20
6 through 22 -- page 22, lines 20 through 22. That's a lot
7 of 2s.

8 MR. CAVANAGH: Objection. Improper impeachment.

9 THE COURT: What lines is that again?

10 MR. CAVANAGH: 20 through 22.

11 THE COURT: Overruled.

12 Read it.

13 BY MR. JAFFE:

14 Q "QUESTION: What office did you call?

15 "ANSWER: I would have to look up the number.
16 It was quite a while ago?"

17 You were asked questions by Mr. Demergian
18 regarding whether you factored in any action by the
19 operator?

20 Do you remember that?

21 MR. CAVANAGH: Objection. This is outside the
22 redirect.

23 THE COURT: Overruled. Operator. Be more
24 specific, Counsel.

25 Here we go.

26 BY MR. JAFFE:

27 Q Do you know whether the operator of this
28 dispensary had to pay money to avoid the foreclosure of

1 the property?

2 MR. CAVANAGH: Objection. Outside the scope of
3 redirect.

4 THE COURT: Sustained.

5 BY MR. JAFFE:

6 Q Wouldn't it show that the dispensary was not
7 profitable if the operator had to put its own money in?

8 MR. CAVANAGH: Objection. Outside the scope of
9 the redirect.

10 THE COURT: Now, we're dealing with profits lost
11 that will be allowed. Overruled.

12 You may answer that one, sir.

13 THE WITNESS: Could you rephrase the question.

14 BY MR. JAFFE:

15 Q Wouldn't it show that the dispensary was not
16 profitable if the operator had to put its own funds into
17 avoiding the foreclosure of the property that contained
18 the dispensaries?

19 A I'm not sure I have enough information to answer
20 that. A property owner may have to invest in a property
21 for deferred maintenance. They may have to invest in a
22 business for operating capital, capital expenditures, new
23 hirees [sic], you know, research and development.

24 Q You understand that the operator is not the
25 owner of the property?

26 A I don't understand that.

27 Q You don't even know anything about who operated
28 this marijuana dispensary as to --

1 (Speaking simultaneously.)

2 THE COURT: Everybody, slow down.

3 Full question, full answer. Take a breath.

4 Here we go.

5 BY MR. JAFFE:

6 Q Just please wait until I'm done. You don't know
7 whether the operator at this dispensary was an owner of
8 the real property, correct?

9 A Correct.

10 Q Thank you.

11 MR. JAFFE: I don't have anything further.

12 Thank you.

13 THE COURT: Anything, Counsel?

14 RE CROSS-EXAMINATION

15 BY MR. DEMERGIAN:

16 Q I'm very confused, sir. I may be wrong, but I
17 thought you told me when I questioned you before that
18 Mr. Rowland obtained the information from the city and
19 then passed that on to you.

20 Do you remember that testimony?

21 A Correct.

22 Q And then that was reflected in your report,
23 correct?

24 A Correct. As well as multiple emails to multiple
25 departments in the city and multiple phone calls. Wasn't
26 just one transaction.

27 MR. JAFFE: Objection. Move to strike regarding
28 "emails."

1 THE COURT: No. Overruled. That answer will
2 stand. Overruled. It's in.

3 BY MR. DEMERGIAN:

4 Q How many phone calls did you make?

5 A At least two.

6 Q Okay. So you made two phone calls. Those were
7 after Mr. Rowland's call, I take it?

8 A No. I was on all the calls from Mr. Rowland.
9 Mr. Rowland had emails from both offices, the department
10 of development services as well as the city treasury, and
11 there was actually follow-up emails to the city treasury
12 regarding an update to the 2022 collections.

13 So multiple phone calls and multiple emails by
14 multiple parties.

15 Q By multiple phone calls, you mean two, right?

16 A Yes, sir.

17 Q How many emails from you or to you?

18 A To the city departments?

19 Q Yes.

20 A Zero. Mr. Rowland handled those requests.

21 Q And he passed along the responses to you; is
22 that correct?

23 A Yes, sir.

24 Q And the same is true with respect to the tax
25 numbers, right?

26 A I thought that's what we were discussing, but
27 yes, the numbers of stores and the tax and revenue
28 collections.

1 MR. DEMERGIAN: That's all, Your Honor. Thank
2 you.

3 THE COURT: Thank you. May this witness be
4 excused?

5 MR. JAFFE: Yes, Your Honor.

6 MR. DEMERGIAN: Yes, Your Honor.

7 THE COURT: Sir, thank you. You're free to go
8 about your business. Thank you.

9 And I've got some work to do outside of your
10 presence, so you get to go home. We're almost -- I think
11 we're ahead of schedule. Yeah, you're welcome.

12 Hold on. Tomorrow is Friday. Dark tomorrow.
13 Go do something. Have some fun. 9:00 Monday. Have a
14 good weekend. Leave your notebooks.

15 (The following proceedings were held in
16 open court outside the presence of the
17 jury:)

18 THE COURT: Plaintiff, anything?

19 MR. CAVANAGH: No, Your Honor.

20 THE COURT: Defense, anything?

21 MR. JAFFE: Yes.

22 MR. DEMERGIAN: Yes.

23 MR. JAFFE: I want to move to strike this
24 expert's testimony.

25 THE COURT: Counsel, I'm going to stop you right
26 there. I'm not going to rule on that because you're
27 going to see what I'm going to do. Okay?

28 MR. DEMERGIAN: Because what?

1 THE COURT: I want some stuff before I give a
2 ruling based on the testimony. I assume there was a
3 deposition of Mr. Stefan, right? Mr. Stefan, correct?

4 MR. JAFFE: Yes. Yes.

5 THE COURT: In that, did anyone serve him with a
6 notice to produce documents?

7 MR. JAFFE: Yes.

8 THE COURT: I need to see that. You both all
9 know where I'm going, I'll tell you.

10 MR. JAFFE: It's actually Exhibit 1, I believe.

11 THE COURT: Well, I need to study it because I
12 want to give everybody a head's up.

13 In my interpretation, he said it again, he got
14 emails he got -- he got information from the city and
15 emails. I want to see if that was requested by the
16 defense and whether it was produced at that deposition,
17 or was it produced two days ago in this courtroom. And
18 I'm happy to listen to everybody.

19 MR. CAVANAGH: To be clear, and I thought the
20 record came out pretty clearly. He got the emails for
21 the first time on Halloween.

22 THE COURT: Yeah, I got that.

23 MR. CAVANAGH: Okay. I just want to make sure.

24 THE COURT: But clearly, the plaintiff had them.
25 Mr. Rowland had them who gave them to Mr. Stefan back
26 months ago.

27 MR. CAVANAGH: No. That's -- he gave -- that's
28 the distinction. Mr. Rowland forwarded the emails to

1 Mr. Stefan --

2 THE COURT: Absolutely.

3 MR. CAVANAGH: -- the first time, two days ago.

4 THE COURT: Okay.

5 MR. CAVANAGH: But the information -- the
6 figures he communicated to him -- that was unclear when
7 he communicated, but he communicated it to him in time to
8 get it in the report. Mr. --

9 THE COURT: Understood. Understood. I don't
10 want to hear any argument now. I'm tired and I want to
11 go.

12 Everybody is going to take a break.

13 MR. CAVANAGH: And for the record, I received
14 them at the lunch break.

15 THE COURT: Counsel, it's not you. I really
16 mean that. It's very simple. I'm going to make a
17 decision of whether this was produced timely, the
18 importance of it, whether they had a chance to look at
19 it. You know what I'm going to do. Come on. And I'll
20 make a decision. That's all.

21 MR. DEMERGIAN: Is the Court still thinking
22 about Sanchez as well?

23 THE COURT: A little bit.

24 MR. DEMERGIAN: Remind the Court that he got the
25 information from Rowland by hearsay.

26 THE COURT: That's another level now. I got it.

27 MR. CAVANAGH: It makes what Rowland got much
28 more reliable to Judge, Your Honor, Sanchez is concerned

1 because he has a direct spreadsheet and email from an
2 identifiable person in the department at the City of
3 San Diego.

4 THE COURT: Which wasn't turned over to the
5 defendants.

6 MR. CAVANAGH: That is correct.

7 MR. JAFFE: That they're produced to them? Now,
8 can we see them?

9 THE COURT: What do you think?

10 MR. CAVANAGH: I don't have an objection to
11 doing that, but I guess to what end? I mean if
12 Mr. Stefan has been excused, I'm not sure what the -- but
13 I can give him a copy.

14 THE COURT: I think it would be a good idea.
15 Send it, or you don't have to. I'll leave it up to your
16 hands, but if I were you, I would send it over ASAP so
17 they can always look at it.

18 MR. CAVANAGH: I can give him a hard copy.

19 THE COURT: Let's answer this question: Do you
20 think they had the right to look at those emails or not,
21 Judge, they didn't have to. We'll just take his -- what
22 he says. Is that right?

23 MR. CAVANAGH: I think they had the right to
24 have them -- I think they should have been produced to
25 them had everybody in the chain been timely aware of
26 their existence. I don't think the fact that they were
27 not produced creates a Sanchez problem.

28 THE COURT: Okay. Maybe another problem. We'll

1 see. We'll see.

2 MR. CAVANAGH: It might create failure to timely
3 produce documents.

4 THE COURT: Yeah, that could be. That's why I
5 want to look at the deposition.

6 MR. DEMERGIAN: So the Sanchez and other motions
7 are still on the table?

8 THE COURT: Yeah, but I wouldn't --

9 MR. CAVANAGH: I'll give them each a hard copy
10 right now.

11 MR. DEMERGIAN: If I could just say, if you're
12 going to be the gatekeeper, and you know you have to be,
13 was that not the worst expert testimony you've ever
14 heard?

15 THE COURT: Counsel, don't go there. Don't go
16 there. Stop. Everybody, stop. Okay. With that being
17 said -- let me choose my words carefully. I will make
18 sure there is justice in this courtroom.

19 MR. DEMERGIAN: Thank you, sir.

20 MR. CAVANAGH: I hope that applies all the way
21 around.

22 THE COURT: It applies to everybody. But,
23 obviously, I've got concerns. I'll just say it
24 point-blank.

25 MR. CAVANAGH: I appreciate that.

26 THE COURT: And you're all fine. I mean I make
27 decisions. No one likes it, just shoot it up to the to
28 the 4th and have a nice day. No. But let's do that.

1 And I would like to see what it says, too, Counsel.

2 MR. CAVANAGH: Sure.

3 THE COURT: So hold on. I'm tired. I've got a
4 heavy calendar tomorrow. I've got a real heavy calendar
5 tomorrow and I'll be up late tonight working on that. So
6 let's just do this because I want to be fresh Monday
7 morning. I'll take a good look at everything you've got,
8 so including that, because it's going to have to be
9 marked, it's going to have to be made part of the record.
10 We'll do all that Monday. Okay?

11 You're done.

12 (The proceedings adjourned at
13 4:16 p.m.)

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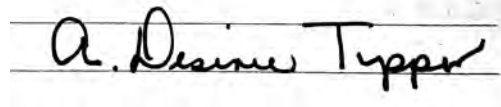
27

28

1 State of California)
2)
3 County of San Diego)
4
5
6

7 I, A. Desiree Tipper, CSR No. 13806, a per-diem court
8 reporter in the Superior Court of the State of
9 California, in and for the County of San Diego, hereby
10 certify that I made a shorthand record of the proceedings
11 had in the within case and that the foregoing transcript
12 consisting of pages numbered from 349 to 546, inclusive,
13 is a full, true, and correct transcription of the
14 proceedings in this case.

15
16 Dated this 10th day December 2023.
17
18
19
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23
24 
25

26 A. Desiree Tipper,
27 CSR No. 13806
28

EXHIBIT C

Deposition of
Christopher Stefan
September 14, 2023

San Diego Patients Cooperative Corp
vs.
Razuki Investment, L.L.C.



www.aptusCR.com | 866.999.8310

1 A. In my 20 years as an operator in the commercial
2 sphere, I have reviewed millions of documents. In
3 regards to this case, I have reviewed hundreds of
4 documents.

5 Q. Did you understand that you were required to
6 produce documents in response to this deposition notice?

7 A. I did, and I produced those documents.

8 MR. CAVANAGH: We have also served written
9 objections to this notice.

10 BY MR. JAFFE:

11 Q. What are the documents that you relied upon in
12 forming your opinions in this case?

13 A. Generally the most important information that we
14 derived was from the taxing authorities in the City of
15 San Diego for the tax receipts and the number of
16 existing dispensaries in the market.

17 Q. Are you saying that is tax information
18 specifically regarding the dispensary in this case?

19 A. Specifically regarding all the dispensaries
20 within San Diego.

21 Q. So it's -- your answer is not specifically about
22 the dispensary in this case, correct?

23 A. Well, the information regarding all dispensaries
24 in the city of San Diego would include the dispensary in
25 this case, so it would be specific and general to all

1 dispensaries in San Diego, which would include the
2 dispensary in this case.

3 Q. So that is why I included the word specific,
4 sir. It's generally regarding all of the dispensaries,
5 not specific to this dispensary involved in this case,
6 correct?

7 A. I don't know what those words mean.

8 Q. The tax documents you say you reviewed were
9 general to all of the dispensaries in San Diego, not
10 specific to this dispensary that's involved in this
11 case, correct?

12 A. Yes. But the tax generation from this
13 dispensary specifically was included in the information
14 that I received.

15 Q. And what document is that? Do you have your
16 file there?

17 A. Yes. It was uploaded yesterday by Rowland to
18 the Messner Reeves site, and Messner Reeves was again
19 responsible for the document production.

20 Q. What document are you referring to that was
21 produced yesterday that has this tax information that
22 you're saying you relied upon?

23 A. I'm not sure what the document was titled.

24 Q. Do you have it in front of you?

25 A. No. The only information I have in front of me

EXHIBIT D

1 Foundation.

2 THE COURT: Sustained. Speculation.

3 Counsel.

4 BY MR. JAFFE:

5 Q Did you respond to that email?

6 A I did.

7 Q And what was your response?

8 A That's not going to work.

9 Q And you saw that -- why did you say that was not
10 going to work.

11 A I had a vested interest. I had wired my own
12 personal funds into the purchase of the real estate, and
13 for a three-quarters-of-a-million-dollar investment,
14 \$3,000 is very, very low.

15 Q And Mr. Razuki also indicated his -- indicated
16 that the \$3,000 was not going to be accepted, correct?

17 A Correct.

18 Q You saw that email that he sent to you and to
19 Mr. Harcourt and Mr. Hayford?

20 A Yes.

21 Q With multiple exclamation points, right?

22 A From what I can remember, yes.

23 Q Ultimately, this dispensary and the two Balboa
24 properties were sold by the Court, correct?

25 A Yes.

26 Q Do you know how much it was sold for?

27 A It was sold as a real estate transaction only.

28 Q Which would include the conditional use permit,

1 correct?

2 A Correct.

3 Q And how much was it sold for?

4 A From what I can remember, 3.3 million.

5 Q Did you receive any of that money?

6 MR. COLLIER: Objection. Relevance.

7 THE COURT: Sustained. We're not going to get
8 into it, Counsel.

9 MR. JAFFE: I'm sorry.

10 BY MR. JAFFE:

11 Q Did Salam Razuki and/or Razuki Investments
12 receive any of that money?

13 MR. COLLIER: Objection. Relevance.
14 Foundation.

15 THE COURT: Sustained again, Counsel.

16 MR. JAFFE: I don't have any further questions
17 at this time.

18 THE COURT: Shall we start cross-exam, Counsel.

19 MR. COLLIER: Sure.

20 CROSS-EXAMINATION

21 BY MR. COLLIER:

22 Q Good morning, Mr. Malan.

23 A Good morning.

24 Q I know it's still morning. We haven't taken our
25 lunch yet.

26 You gave a deposition in this case, right?

27 A Correct.

28 Q And that wasn't your first time giving a

EXHIBIT E

1 different way to trick Mr. Lake and Mr. Melograno into
2 releasing the contingency.

3 I think that pretty much covers everything.
4 Obviously, I'm happy to answer any questions.

5 THE COURT: I'm good.

6 Thank you, Counsel.

7 The Court spent considerable time last night
8 reviewing all its personal notes. The Court specifically
9 reviewed the allegations contained in the operative
10 complaint. The Court also has reviewed a number of
11 exhibits to the court of what -- just the exhibits. The
12 Court is well aware of the standard on a nonsuit. The
13 Court will just make a few facts first; then you'll get
14 rulings specifically to everybody.

15 In looking at this, the Court looked at the
16 exhibits that were presented by both parties and
17 received. We will start with Exhibit 32, which plaintiff
18 just said, this is the agreement.

19 Did I get that right, Counsel? This was the
20 agreement, Plaintiff, that you say is the agreement that
21 was reached because this was done at the cafe, and this
22 was the one that was outlined by Mr. Henderson. You just
23 said that this was the agreement -- or the oral
24 agreement. I want to make sure I understood that. Is
25 that correct? That's what you just said, so I assume
26 that's what you're saying, correct?

27 MR. CAVANAGH: Yes. I mean, it gets refined,
28 but that is -- those terms never change. Those are the

1 key terms of the joint venture.

2 THE COURT: Let's talk about -- thank you,
3 Counsel.

4 Let's talk about the language that is used in
5 this court when it comes to -- first of all, everyone
6 knows, to reach an agreement, you have to have a meeting
7 of the minds. Let's just start with that. Or orally.

8 And, Counsel, I've heard testimony that there
9 were changes made. "Judge, it's evolving." One witness
10 said that. Another witness said, "Judge, these are just
11 details. We're going to work out the details later."

12 And then the Court asked, "Are these material
13 facts or not?"

14 And as we just said, "Well, Judge, that's where
15 it starts, but then it moved."

16 Okay. Well, let's just look at that, all right?

17 Exhibit 32, it says -- we're going to key in on
18 two things. I read the -- what the contents were. It
19 says -- it's a draft agreement -- "Final agreement should
20 be written and all terms to be negotiated."

21 What does that mean? "All terms in the
22 agreement to be negotiated." That sounds like it hasn't
23 been done to me.

24 But most important, let's look at the
25 signatures. Harcourt, and it does have San Diego
26 Patients LLC, and Razuki and Razuki Investments.

27 Then we go to the MOU, which is item 33. Let's
28 look at that document. It's a little more expansive.

1 Adds a lot more, Counsel, but let's look at the
2 signatures on this one. This is after the agreement.
3 Now it's Harcourt alone and it's Razuki Investments. But
4 let's look at that agreement just a little bit more.
5 Let's look at page 30- -- it's the next to last page. I
6 show it as 320.

7 Here's what it says: "This letter" -- keyword
8 letter -- "constitutes the entire agreement between the
9 parties and supercedes any oral or written agreements,
10 understanding, representatives" -- ends with warranties
11 -- "and courses of conduct when dealing with the
12 parties."

13 That's what it says. Pretty clear. So one
14 wonders if that supercedes it?

15 Then we go to another memorandum of
16 understanding. This is Exhibit 34. And, again, in this
17 one, the contract memo is only to be signed by
18 Mr. Harcourt or Mr. Razuki and their assignees.

19 Again, the language is pretty basic in there.
20 It does add, I consider -- it does add terms, whether you
21 want to call it evolving or anyone wants to -- it does
22 add additional terms.

23 Then we go to Exhibit 35, which is another
24 different -- it's not different than 38. I know that.
25 -- different one. And let's look at this one. This is
26 another memorandum of understanding, and, again,
27 paragraph 7 states: "This letter constitutes the entire
28 agreement between the parties and supercedes any oral or

1 written agreements."

2 Let's look at the signature lines on this
3 agreement, which is the understanding now of the
4 contract. Razuki Investments, Equity Capital,
5 Charlie Madison, Renny Bowden. All of those were
6 supposed to sign it. Again, none of these were on
7 execute when we talked about it.

8 Then we go to Exhibit 80. This is another
9 memorandum of understanding between the parties. And
10 let's look at the signature lines on this one. This is
11 the one that Mr. Hayford prepared, and this is to be
12 signed by Razuki Investments and Equity Relief, which is
13 Mr. Harcourt, and then signed by Mr. Madison.

14 Now, this could be construed as who's going to
15 be the operating agreement. But, again, it says the
16 terms "allegedly" of the agreement. It starts off with:
17 "Razuki agreed to purchase" -- "agreed to purchase the
18 property."

19 And, again -- well, that's the next one. And
20 then we have Mr. Bowden's testimony, "Judge, final
21 agreement. I've read it," he testified. I checked my
22 notes, item 38. This is the operating agreement, which
23 is extensive.

24 And, again, if you go to page 33: "This
25 agreement constitutes the entire agreement between the
26 parties and all prior contracts and agreements with
27 respects whether written or oral supercedes them all."

28 That's the testimony. And for the record, none

1 of these were executed. Parties changed according to
2 these documents. Terms changed according to these
3 documents. Now, could that be evolving? Could it be --
4 could that be a jury question? The answer is no. No. I
5 have to be determined and the Court has to be that
6 there's some evidence to show that there is a meeting of
7 the minds.

8 In regard to Malan -- Malan, you're out.

9 Sit. Don't say a word.

10 He's out. I do that based on the evidence that
11 was presented to the Court. So Mr. Malan has two causes
12 of actions -- let me get this right -- and it's also
13 American Lendings, Counsel.

14 MR. DEMERGIAN: Thank you, Your Honor.

15 THE COURT: 9 and 12.

16 You're out, Mr. Malan.

17 Now, that just gets down to Razuki and Razuki
18 Investments. Let's look at those.

19 The first cause of action has pled an oral
20 agreement.

21 When you now then go to and look at the emails
22 from Mr. Razuki -- and on behalf of Razuki Investments, I
23 would say -- there could be some evidence that would be
24 in support of that. That will go to the jury.

25 So the first cause of action -- and, Counsel,
26 that will be as to Harcourt only -- listen carefully --
27 Harcourt only and as to Razuki and Razuki Investments.

28 Let's look at the implied breach of covenant of

1 good faith and fair dealing. Again, that will go only as
2 to Mr. Harcourt against Razuki and Razuki Investments.

3 Let's talk about false promise. In looking
4 at -- again, what has transpired in this case, it is out.
5 The fraud also is out based on the facts in this case.
6 And then, last but not least, is the breach of fiduciary
7 duty. That will remain in, Counsel.

8 So basically, I think I've covered everything.
9 There will be three causes of action left, and that will
10 be as to 1, 4, and 11. And that would be between
11 Mr. Harcourt and -- on one of them. Let's make sure.
12 11 -- yes. And SD -- and the fourth cause of action also
13 includes San Diego Patients Cooperative against Razuki
14 and Razuki Investments. That will be the order of the
15 Court.

16 Thank you.

17 Okay. Let's have another ruling from the Court.

18 MR. DEMERGIAN: Shall we leave, Your Honor, or
19 wait until the jury comes? Or what's your pleasure?

20 THE COURT: Well, I don't know who he's going to
21 call.

22 MR. DEMERGIAN: Oh, that's right.

23 THE COURT: This is the ruling of whether the
24 prior conviction will be allowed. I think we had a big
25 disagreement of what -- about whether I can take judicial
26 notice. I looked at that. There's an analysis, in this
27 Court's humble opinion, that you have to go through of
28 whether you're going to allow a prior conviction to come

EXHIBIT F

1 A That's correct, which reflected everything in
2 the joint venture.

3 Q But there never was any execution of an
4 operating agreement and the promissory note, correct?

5 A No. It never got executed.

6 Q And that's the same for -- because this is the
7 Steve Lake property. It's the same for the Melograno
8 property, correct?

9 A It's the same verbiage in both.

10 Q You talked about the money, the 575,000 that you
11 paid, but it wasn't you. It was Equity Capital that
12 loaned money to San Diego Patients Cooperative, correct?

13 A That's correct.

14 Q So it was not you individually. It was Equity
15 Capital that loaned to San Diego Patients Consumer
16 Cooperative for the obtaining of the conditional use
17 permit, correct?

18 A Yes. Equity Capital is a single member LLC, 100
19 percent owned by myself and funded by myself.

20 Q That doesn't make it your individual loan, does
21 it?

22 MR. CAVANAGH: Objection. Argumentative.

23 THE WITNESS: Hold on. Does it?

24 MR. CAVANAGH: Calls for a legal conclusion.

25 THE WITNESS: That's a business loan.

26 BY MR. JAFFE:

27 Q By Equity Capital, not by you individually,
28 correct?

1 A I lent the business the money that --

2 Q Okay. So then you would have a claim against
3 Equity Capital and Equity Capital would possibly have a
4 claim in this lawsuit, but they're not a party, are they?

5 A No, they are not.

6 Q The only damages that you have that you could
7 recall at your deposition regarding reliance of \$5,000 --

8 MR. CAVANAGH: Objection. Outside the scope.

9 THE COURT: I'm going to let it happen, Counsel,
10 because of the time limit. But you can come back with
11 one question on that area. Let's go. Come on.

12 BY MR. JAFFE:

13 Q You only said that there were \$5,000 in your
14 reliance cost as a result of this transaction with Razuki
15 and Razuki Investments not going through, right?

16 A Yeah. That was what was spent on a retainer
17 with an attorney to draft documents.

18 Q That was it, just 5,000, right?

19 A That's correct.

20 MR. JAFFE: Nothing further. Thank you, Your
21 Honor.

22 THE COURT: Mr. Demergian. Recross.

23 RECROSS-EXAMINATION

24 BY MR. DEMERGIAN:

25 Q So there were two releases of contingencies as
26 there were, right? One of them on August 24, 2016.
27 That's Exhibit 176, page 69. I think it was just up
28 there just a minute ago. That was the one that you