

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'conomy Fund, LP, and
Elm Tree Motion Opportunity, LP,

Case No. 16-62603-CIV-DIMITROULEAS
Proceeding Ancillary to
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

JAMES BENVENUTO, an individual,
NGU INVESTORS, LLC, a Florida limited
liability company; JEAN BENVENUTO, an
individual, SURJIT WALIA, an individual,
S.W. EQUITIES CORP., a New York corporation,
TIMOTHY HARTMANN, an individual,
ALEXANDER BUKHSHTABER, an individual,
MVS MEDIA GROUP, LLC, a Florida limited
liability company, HARRY TAWIL, an individual,
EDUARDO DOS SANTOS, an individual,
FILOMENA CALABRIA, an individual,
JOSE ROFFE, an individual, MIREILLE ROFFE,
an individual, SOMESWARI NUKALA, an individual,
Yael TAPIERO, an individual, LAAS W. TURNBULL,
an individual, OMRI TINTPULVER, an individual,
CONSTANTINO DOS SANTOS, an individual,
ARMAND DELMAR, an individual, AHMAD NAQVI,
an individual, MERCEDES ELMALEH, an individual,
ELIA BLUMIN, an individual, TED GREENWALD,
an individual, ALINA TALSKY, an individual,
ELVIS PERVAN, an individual,
ANGELO ISMIRNIOGLOU, an individual, and
JONATHAN VERK, an individual.

Defendants.

**RECEIVER'S MOTION FOR
SUMMARY JUDGMENT AS TO TIMOTHY HARTMANN**

Plaintiff, GRISEL ALONSO, solely in her capacity as the Receiver for Elm Tree
Investment Advisors, LLC ("ETIA"), Elm Tree Investment Fund, LP ("ETIF"), Elm Tree

BROAD and CASSEL LLP

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'e'conomy Fund, LP (“EETF”), Elm Tree Motion Opportunity, LP (“ETMO”), and Etopia, LP (“Etopia”), pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, respectfully moves this Court to enter summary judgment against Defendant Timothy Hartmann (“Hartmann”), and grant the relief requested in the Amended Complaint. [D.E. 6].

I. INTRODUCTION

A. The Fraudulent Scheme

On January 15, 2015, the SEC filed its complaint in the for injunctive and other relief (the “SEC Complaint”) alleging that between no later than November 2013 to January 2015, Defendants Frederic Elm f/k/a Frederic Elmaleh (“Elm”) and ETIA, ETIF, EETF, and ETMO (collectively, the “Receivership Entities”) engaged in a fraudulent securities “Ponzi” scheme through the offer and sale of fraudulent investments that raised more than \$17 million from more than 50 investors (the “Fraudulent Scheme”).

The SEC alleged that Fred Elm, through the sale of securities in ETIF, EETF, and ETMO (collectively, the “Elm Tree Funds”), raised at least \$17 million from more than 50 investors. Elm was the founder and managing director of ETIA and the general partner and manager of the Elm Tree Funds. The offering documents for the Elm Tree Funds provided that Elm and ETIA would charge a 2% annual management fee, but would not receive any additional fees unless and until the Elm Tree Funds made a profit. Elm and ETIA invested only a portion of the investor funds raised. At no point did Elm or the Elm Tree Funds earn a profit that would have entitled them to additional fees under the offering documents. Instead, Elm and ETIA used the majority of the funds to pay back investors in Ponzi-like fashion and for Elm's own personal use.

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Elm misappropriated at least \$2 million in investor funds to pay for personal items and expenses such as a home, high-end furnishings, and other personal items such as automobiles, jewelry, and daily living expenses. Investors sent their investment funds to Elm by wire transfer or by mailing a check. Elm initially deposited investor funds into bank accounts held by ETIA, the Elm Tree Funds, or his own personal bank account. Elm then transferred the money back and forth between the various accounts and commingled money invested in one of the Elm Tree Funds with money invested in the others.

B. Transfers to the Named Defendants

From November 26, 2012 to December 31, 2014, millions of dollars received from investors in the Elm Tree Funds were deposited in the Receivership Entities' accounts in connection with the Fraudulent Scheme. Elm commingled the funds received from investors between and among the accounts for the Receivership Entities and Elm's personal account, and used the investors' funds to pay third parties, including the named Defendants.

All of the money that Elm and the Receivership Entities wrongfully caused to be transferred to Defendants was diverted and misappropriated by Elm in furtherance of the Fraudulent Scheme. Thus, all of the money transferred or paid to Defendants was improperly diverted assets of one or more of the Elm Tree Funds and thus the Receivership Estate. To allow Defendants to keep the funds transferred by Elm and the Receivership Entities would be inequitable and unjust, including to the investors of the Elm Tree Funds.

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II. STATEMENT OF MATERIAL FACTS

1. On January 15, 2015, the SEC filed the SEC Complaint alleging that Elm engaged in a fraudulent securities "Ponzi" scheme through the offer and sale of fraudulent investments (the "Fraudulent Scheme"). [D.E. 1 in the SEC Action].¹

2. On March 25, 2015, the Court entered a Consent Judgment as to Fred Elm. [D.E. 56 in SEC Action].

3. On April 11, 2016, the Court entered Final Judgment Setting Disgorgement and Civil Penalties as to Fred Elm. [D.E. 151 in SEC Action].

4. The Receivership Entities conducted little or no actual business operations as represented to investors. *See Declaration of Dick Haslam*, attached as **Exhibit A**, ¶¶ 3.

5. The purported business operations of the Receivership Entities produced little or no profits or earnings. Ex. A at ¶ 4.

6. The source of payments to investors was from cash infused by new investors. Ex. A at ¶ 5.

7. At all relevant times, the Receivership Entities were insolvent. Ex. A at ¶ 6.

8. During the period from December 3, 2013 to August 25, 2014, the Elms and ETIA transferred funds in the amount of \$44,000.00 to Mr. Hartmann, in connection with the Fraudulent Scheme, as follows (the "Transfers"):

¹ This action is ancillary to the SEC Action, which is Case No. 15-CV-60082-Dimitrouleas/Snow.

- a. On or about December 3, 2013, the Elms transferred funds in the amount of \$10,000.00 via check to Mr. Hartmann;
- b. On or about January 21, 2014, ETIA transferred funds in the amount of \$4,000.00 via check to Mr. Hartmann;
- c. On or about March 6, 2014, ETIA transferred funds in the amount of \$5,000.00 via check to Mr. Hartmann;
- d. On or about May 9, 2014, ETIA transferred funds in the amount of \$10,000.00 via check to Mr. Hartmann;
- e. On or about June 30, 2014, ETIA transferred funds in the amount of \$5,000.00 via check to Mr. Hartmann; and
- f. On or about August 25, 2014, ETIA transferred funds in the amount of \$10,000.00 via check to Mr. Hartmann.

Ex. A at ¶ 8.

9. Elm was conducting the Fraudulent Scheme at the time of the foregoing Transfers. Ex. A at ¶ 9.

10. The Transfers to Mr. Hartmann from the Receivership Entities were derived from the Fraudulent Scheme perpetrated upon investors by Elm through his use of the Receivership Entities, and were made in furtherance of the Fraudulent Scheme. Ex. A at ¶ 10.

11. The Receiver seeks the repayment of \$44,000.00 paid out to Mr. Hartmann. Ex. A at ¶ 11.

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12. Mr. Hartmann did not provide reasonably equivalent value to the Elms or ETIA in exchange for the \$44,000.00 Transfers he received to the detriment of the Receivership Estate. Ex. A at ¶ 12.

13. On or about February 1, 2018, the Receiver deposed Mr. Hartmann in this action. A copy of Mr. Hartmann's deposition transcript is attached as **Exhibit B**.

14. During his deposition, Mr. Hartmann admitted:

- a. From December 3, 2013 to August 25, 2014, he received the Transfers from the Elms and ETIA (Ex. B at 72:16-80:19; 130:17-131:9).
- b. Mr. Hartmann did not provide any services to the Elms or ETIA in connection with the transfers (*Id.*);²
- c. Mr. Hartmann did not make any loans to, or have any business dealings with, the Receivership Entities (Ex. B at 70:15-71:14; 147:8-11);
- d. Mr. Hartmann did not return any of the funds he received (Ex. B at 130:17-23).

See excerpts from the deposition of Mr. Hartmann, a copy of which is attached as composite **Exhibit B**.

III. MEMORANDUM OF LAW

A. Summary Judgment Standard

Summary judgment is appropriate when there is no genuine dispute as to any material

² Mr. Hartmann claims the transfers are related to a \$40,000 loan he allegedly made to a non-Receivership entity called Cyber Investments International, Inc. (Ex. B at 67:13-16). Mr. Hartmann has not produced in discovery any documents that would prove that he ever transferred any money to Mr. Elm or Cyber Investments International, Inc. in connection with the promissory note with Cyber Investments International, Inc. Moreover, this does not change the fact that Mr. Hartmann, admittedly, received the Transfers from Mr. Elm and the Receivership Entities. See (Ex. B at 72:16-80:19; 130:17-131:9).

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fact, and the evidence establishes that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). A factual dispute is “genuine” if a reasonable jury could return a verdict for the non-movant and “material” if it would affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). In deciding a summary judgment motion, the Court must examine the pleadings, depositions, answers to interrogatories, and admissions on file along with the affidavits and other evidence in the record. *Travelers Indem. Co. of Ill. v. Royal Oak Enter., Inc.*, 344 F. Supp. 2d 1358, 1364–65 (M.D. Fla. 2004). Once the movant has met its burden of establishing the nonexistence of a triable issue of fact, the burden shifts to the non-movant to come forward with sufficient evidence of every element that he or she must prove. *Rollins v. TechSouth*, 833 F. 2d 1525, 1528 (11th Cir. 1987). The non-movant may not rely solely upon the pleadings, but must use affidavits, depositions, and other admissible evidence to demonstrate that there exists a material fact issues to be tried. *Travelers*, 344 F .Supp. 2d at 1365.

B. The Receiver’s Causes of Action

Count 16 of the Amended Complaint states a cause of action against Mr. Hartmann for fraudulent transfer pursuant to Fla. Stat. 726.105. Relief may be granted under this section where a transfer is made by a debtor with actual intent to hinder, delay, or defraud any creditor of the debtor. *See* Fla. Stat. 726.105(1)(a).³ Relief may also be granted under this section where a

³ Mr. Hartmann may argue that he has a “good faith” defense to the Receiver’s fraudulent transfer cause of action under 726.105(1)(a), as set forth in Fla. Stat. 726.109(1). The burden to prove a good faith defense lies with the defendant, who must prove: (i) it gave value to the debtor for the transfers; and (ii) received the transfers in good faith. *In re Pearlman*, 440 B.R. 900, 905 (M.D. Fla. 2010). Mr. Hartmann is unable to prove the good faith defense because the only reasonably equivalent value he could allege to exist is an alleged loan made to Cyber

transfer is made by a debtor without receiving reasonably equivalent value in exchange, and where either (a) the debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or (b) the debtor intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due. *See Fla. Stat. 726.105(1)(b)*. In this case, Mr. Hartmann received \$44,000 by way of the Transfers from the Elms and ETIA, a Receivership Entity. The Transfers were made in furtherance of Mr. Elm's Fraudulent Scheme, such that there is a presumption they were made with actual intent to defraud. In addition, Mr. Hartmann admittedly provided no value in exchange for the Transfer to any Receivership Entity. (Ex. B at 72:16-80:19). Accordingly, based on the Statement of Facts listed above, the Declaration of Dick Haslam,⁴ Mr. Hartmann's admissions, and relevant case law,⁵ the requirements of Fla. Stat. 726.105 are met and there are no issues of material fact with

Investments International, Inc. (Ex. B at 67:13-16), which is not a Receivership Entity or one of the debtors with respect to the Transfers at issue. Mr. Hartmann has not, and cannot, articulate or evidence any value given to the Receivership Estate in exchange for the Transfers. Indeed, Mr. Hartmann admitted in his deposition that he provided no value to the Elms or ETIA, which are the sources of the Transfers. (Ex. B at 72:16-80:19).

⁴ It is routine and accepted for declarations of financial analysts to be used in Receivership clawback cases as evidence in support of motions for summary judgment. *See Wiand v. Morgan*, 919 F. Supp. 2d 1342, 1357-58 (M.D. Fla. 2013); *Wiand v. Cloud*, 919 F. Supp. 2d 1319, 1332-33 (M.D. Fla. 2013).

⁵ *See Perkins v. Haines*, 661 F. 3d 623, 626-27 (11th Cir. 2011) (finding that existence of actual intent to defraud and lack of reasonably equivalent value are presumed for transfers related to Ponzi schemes); *In re Pearlman*, 472 B.R. at 123 (“[I]n cases involving a Ponzi scheme, courts typically infer fraudulent intent because, as this Court has previously stated, a Ponzi scheme is by definition fraudulent.”); *Donell v. Kowell*, 533 F. 3d 762, 770-71 (9th Cir. 2008) (finding that transfers made pursuant to a Ponzi scheme generally establish that the scheme operator was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that he would incur, debts

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respect to either of the two grounds for relief that were asserted. The Receiver is entitled to summary judgment on Count 16.

Count 17 of the Amended Complaint states a cause of action against Mr. Hartmann for fraudulent transfer pursuant to Fla. Stat. 726.106. Relief may be granted under this section where a transfer is made without receiving a reasonably equivalent value in exchange, and the debtor was insolvent at that time or the debtor became insolvent because of the transfer or obligation. *See Fla. Stat. 726.106(1)*. In this case, Mr. Hartmann received \$44,000 by way of the Transfers from the Elms and ETIA, a Receivership Entity. The Transfers were made in furtherance of Mr. Elm's Fraudulent Scheme, such that there is a presumption the debtors were by definition insolvent and good faith in accepting repayment is irrelevant. In addition, Mr. Hartmann admittedly provided no value in exchange for the Transfers to any Receivership Entity. (Ex. B at 72:16-80:19). Based on the Statement of Facts listed above, the Declaration of Dick Haslam, Mr. Hartmann's admissions, and relevant case law,⁶ the requirements of Fla. Stat. 726.106(1) are met and there are no issues of material fact remaining. The Receiver is entitled to summary judgment on Count II.

Count 18 of the Amended Complaint states a cause of action against Mr. Hartmann for unjust enrichment. The essential elements of a claim for unjust enrichment are: (i) a benefit conferred upon a defendant by the plaintiff; (ii) the defendant's appreciation of the benefit; and (iii) the defendant's acceptance and retention of the benefit under circumstances that make it beyond his ability to pay as they became due).

⁶ *See In re Pearlman*, 472 B.R. 115, 125 (M.D. Fla. 2012) (finding that because the Ponzi scheme was already underway at the time of certain transfers, the debtors were by definition presumed insolvent and that a defendant's good faith in accepting repayment is irrelevant).

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inequitable for him to retain it without paying the value thereof. *Vega v. T-Mobile USA, Inc*, 564 F. 3d 1256, 1274 (11th Cir. 2009). In this case, Mr. Hartmann received \$44,000 in Transfers to detriment of the Receivership Estate, which Transfers were made in furtherance of Mr. Elm's Fraudulent Scheme and are presumed inequitable. Mr. Hartmann admittedly provided no value to the Receivership Estate in exchange for the Transfers and refused to return the Transfers upon demand. Accordingly, each of these elements is satisfied, with no question of material fact, based on the Statement of Facts listed above, the Declaration of Dick Haslam, Mr. Hartmann's admissions, and relevant case law.⁷

WHEREFORE, Plaintiff, GRISEL ALONSO, respectfully requests this Honorable Court enter an Order: (i) granting summary judgment in favor of the Receiver on liability on all counts of the Amended Complaint against Mr. Hartmann; and (ii) granting such other and further relief as the Court deems just and proper.

⁷ As stated above, Elm was running a Ponzi scheme. There is a presumption that transfers made in connection with a Ponzi scheme are fraudulent, and thus, inequitable. *See Perkins*, 661 F. 3d at 626-27 (11th Cir. 2011).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 19, 2018, a true and correct copy of the foregoing was served via electronic transmission or U.S. Mail on all counsel or parties of record.

Respectfully submitted,

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Miami, FL 33131
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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'conomy Fund, LP, and
Elm Tree Motion Opportunity, LP,

Case No. 16-62603-CIV-DIMITROULEAS
Proceeding Ancillary to
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

JAMES BENVENUTO, an individual,
NGU INVESTORS, LLC, a Florida limited
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individual, SURJIT WALIA, an individual,
S.W. EQUITIES CORP., a New York corporation,
TIMOTHY HARTMANN, an individual,
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ELIA BLUMIN, an individual, TED GREENWALD,
an individual, ALINA TALSKY, an individual,
ELVIS PERVAN, an individual,
ANGELO ISMIRNIOGLOU, an individual, and
JONATHAN VERK, an individual.

Defendants.

**DECLARATION OF DICK HASLAM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT AS TO TIMOTHY HARTMANN**

PURSUANT TO 28 U.S.C. § 1746, I, **DICK HASLAM**, DECLARE:

1. I work as a financial analyst in the Receiver's office in connection with the above-styled matter, and I make this declaration from my own personal knowledge.

2. I have conducted a detailed review of the books and records of the Receivership Entities and other documents obtained in discovery. This declaration is based on my review of those documents.

3. The books and records of the Receiver reflect that the Receivership Entities conducted little or no actual business operations as represented to investors.

4. The books and records of the Receiver reflect that the purported business operations of the Receivership Entities produced little or no profits or earnings.

5. The books and records of the Receiver reflect that the source of payments to investors was from cash infused by new investors.

6. The books and records of the Receiver reflect that, at all relevant times, the Receivership Entities were insolvent.

7. Based on the foregoing, consistent with the SEC action against Fred Elm, Fred Elm was engaged in a fraudulent securities "Ponzi" scheme (the "Fraudulent Scheme").

8. During the period from December 3, 2013 to August 25, 2014, the Elms and ETIA transferred funds in the amount of \$44,000.00 to Timothy Hartmann ("Hartmann"), in connection with the Fraudulent Scheme, as follows:

- a. On or about December 3, 2013, the Elms transferred funds in the amount of \$10,000.00 via check to Mr. Hartmann;
- b. On or about January 21, 2014, Elm Tree Investment Advisors ("ETIA") transferred funds in the amount of \$4,000.00 via check to Mr. Hartmann;

- c. On or about March 6, 2014, ETIA transferred funds in the amount of \$5,000.00 via check to Mr. Hartmann;
- d. On or about May 9, 2014, ETIA transferred funds in the amount of \$10,000.00 via check to Mr. Hartmann;
- e. On or about June 30, 2014, ETIA transferred funds in the amount of \$5,000.00 via check to Mr. Hartmann; and
- f. On or about August 25, 2014, ETIA transferred funds in the amount of \$10,000.00 via check to Mr. Hartmann.

9. Elm was conducting the Fraudulent Scheme at the time of the foregoing transfers.

10. The funds transferred to Mr. Hartmann from the Receivership Entities were derived from the Fraudulent Scheme perpetrated upon investors by Elm through his use of the Receivership Entities, and were made in furtherance of the Fraudulent Scheme.

11. The Receiver seeks the repayment of \$44,000.00 in funds paid out to Mr. Hartmann.

12. The books and records of the Receivership reflect that Mr. Hartmann did not provide reasonably equivalent value in exchange for the \$44,000.00 he received to the detriment of the Receivership Estate. Further, the books and records do not show any receipt of services or money from Mr. Hartmann in exchange for the transfer.

13. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on March ^{15th}, 2018.



Dick Haslam

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO.: 16-62603-CIV-DIMITROULEAS

GRISEL ALONSO, as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'conomy Fund, LP, and
Elm Tree Motion Opportunity, LP,

Plaintiff,

Vs.

JAMES BENVENUTO, an individual,
et al.,

Defendants.

_____ /

2 South Biscayne Boulevard
Miami, Florida 33131
Thursday, February 1, 2018
9:35 a.m. - 1:44 p.m.

DEPOSITION OF TIMOTHY HARTMANN

Taken before Rinele Abramson, Notary
Public in and for the State of Florida at
Large, pursuant to Notice of Taking Deposition
filed in the above cause.

- - - - -

1 APPEARANCES:

2

3 On behalf of the Receiver:

4 Broad and Cassel, LLP
5 One Biscayne Boulevard
6 2 South Biscayne Boulevard, 21st Floor
7 Miami, Florida 33131
8 BY: CHRISTOPHER CAVALLO, ESQUIRE

7

On behalf of Timothy Hartmann:

8

9 Daniels, Rodriguez, Berkeley, Daniels
10 & Cruz, PA
11 4000 Ponce de Leon Boulevard, Suite 800
12 Coral Gables, Florida 33146
13 BY: LORNE BERKELEY, ESQUIRE

11

12

ALSO PRESENT:

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14 Grisel Alonso
15 Dick Haslam

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I N D E X

WITNESS: TIMOTHY HARTMANN	PAGE:
DIRECT EXAMINATION BY MR. CAVALLO:	4
CROSS-EXAMINATION BY MR. BERKELEY:	131

- - -

E X H I B I T S

- - -

EXHIBIT NO:	PAGE:
Exhibit Number 1	10
Exhibit Number 2	12
Exhibit Number 3	18
Exhibit Number 4	27
Exhibit Number 5	27
Exhibit Number 6	32
Exhibit Number 7	33
Exhibit Number 8	41
Exhibit Number 9	72
Exhibit Number 10	82
Exhibit Number 11	90
Exhibit Number 12	97
Exhibit Number 13	99
Exhibit Number 14	100
Exhibit Number 15	116
Exhibit Number 16	120
Exhibit Number 17	122
Exhibit Number 18	125

1 Thereupon:

2 TIMOTHY HARTMANN,
3 was called as a witness, and after being first
4 duly sworn, was examined and testified under
5 oath as follows:

6 DIRECT EXAMINATION

7 BY MR. CAVALLO:

8 Q. Good morning. My name is Christopher
9 Cavallo from Broad and Cassel. I represent
10 the receiver.

11 Here with me today are Dick Haslam,
12 from the receiver's office, and receiver,
13 Grisel Alonso.

14 You are here today for your
15 deposition, which is really just going to be
16 me asking a series of questions. You are
17 going to provide answers under oath, to the
18 best of your ability. Your answers need to be
19 truthful and complete.

20 Have you ever been deposed before?

21 A. Yeah, one time.

22 Q. In a civil case?

23 A. Yeah, I had a business partner that
24 went south.

25 Q. How long ago?

1 A. Within the last three years. I don't
2 remember the exact date.

3 Q. Where was the case filed?

4 A. In Ohio.

5 Q. Well, you've been deposed before,
6 but, quickly, just to intervene here. Some
7 rules for depositions, you probably know these
8 already, your answers should be audible. If
9 you shake your head or nod, whatever it may
10 be, the court reporter won't be able to get
11 your answer down. And we are relying on her
12 and the transcript today.

13 A. No problem.

14 Q. And if you don't understand a
15 question, please just let me know. If you
16 answer, I'm going to assume you understood the
17 question. And if you need any clarification,
18 please just let me know.

19 A. Uh-huh.

20 Q. So the suit was three years ago,
21 filed in civil court in Ohio.

22 Was it a state case?

23 A. I don't believe so.

24 Q. It was a federal case?

25 A. No. Oh, State, then, I guess.

1 Whatever the lowest --

2 Q. Okay. What was the dispute about?

3 A. I had a business partner that was
4 stealing money from -- and being dishonest.

5 Q. And what was the business?

6 A. Real estate.

7 Q. What was the name of the company?

8 A. It was -- Ernie Tarle was the name of
9 the gentleman, and his wife, Amy Tarle.

10 Q. And was that a business that was set
11 up in Ohio?

12 A. My business is set up in Florida and
13 Texas, but their business is in Ohio.

14 Q. So just let me get this straight,
15 then. He was your business partner in which
16 company?

17 A. When I say "business partner," he --
18 I was buying houses, and at one point flipping
19 them. And then he became property manager
20 when we weren't flipping the houses.

21 Q. Which company were you acting as in
22 that business relationship?

23 A. My company, THDS Investments, LLC.

24 Q. THDS Investments?

25 A. Investments, LLC.

1 Q. Do you still own that company today?

2 A. Uh-huh.

3 Q. It's an active corporation?

4 A. Yes.

5 Q. Do you have any partners in that
6 corporation?

7 A. Yes, my partner lives in Canada,
8 Derrick Sloboda.

9 Q. Derrick Sloboda?

10 A. Uh-huh.

11 Q. How long have you owned that
12 corporation?

13 A. Mid 2000s.

14 Q. Does that entity have any
15 relationship with Fred Elm?

16 A. No.

17 Q. Has that entity ever conducted any
18 business with Fred Elm?

19 A. No.

20 Q. Have you ever discussed that entity
21 or any of its business with Fred Elm?

22 A. No.

23 Q. Just to go back quickly, some more
24 background information.

25 Could you please state your date of

1 birth?

2 A. , 1976.

3 Q. We have the same birthday.

4 A. No way.

5 Q. But I'm '85.

6 A. Oh, okay. I thought you were '76

7 too.

8 Q. Could you please state your current
9 address?

10 A. 540 West Ave., Apartment 613, Miami
11 Beach, Florida.

12 Q. How long have you lived at that
13 address?

14 A. Four to five years now.

15 Q. Okay. You are a U.S. citizen?

16 A. Yes, sir.

17 Q. Do you now or have you ever gone by
18 any aliases?

19 A. No.

20 Q. For the record, could you please
21 spell your last name for the court reporter?

22 A. H-A-R-T-M-A-N-N.

23 Q. Double N?

24 A. Yes, sir.

25 Q. Are you on any medication today or is

1 there any other reason that you could not
2 provide truthful and accurate testimony today?

3 A. No, sir.

4 Q. One final thing, just for your
5 convenience. If at any time you need a break
6 today, just let me know, let your lawyer know,
7 and he will tell me.

8 The only thing I would say, if there
9 is a question pending, I'll have you answer
10 the question before we take a break, okay?

11 A. Sounds good.

12 Q. Fair enough?

13 A. Thank you.

14 Q. Do you remember receiving discovery
15 in this action? And by the "action," I mean
16 the receiver's case against you and others.

17 A. This lawsuit?

18 Q. Yes.

19 A. Yes, sir.

20 Q. Do you remember receiving a request
21 for production?

22 A. I'm sorry. I'm not really sure what
23 that means.

24 Q. Okay. I'll show you.

25 MR. CAVALLO: We will mark this as

1 Exhibit 1.

2 (Exhibit Number 1 was marked for
3 identification.)

4 BY MR. CAVALLO:

5 Q. Do you remember receiving this
6 document in or about October 2017?

7 A. I remember receiving a large
8 document, but I honestly just gave it to my
9 lawyer and didn't --

10 Q. Okay.

11 A. I mean, I saw my name listed on a
12 lawsuit and forwarded it to him to review for
13 me.

14 Q. Okay. Did you ever yourself sit down
15 and review the requests that are listed in
16 this document?

17 MR. BERKELEY: Just for purpose of
18 clarity, and I don't mean -- it's not an
19 objection. I think he is unclear what a
20 "request for production" is. He's
21 answering as if it's a complaint, I
22 believe.

23 MR. CAVALLO: Okay.

24 MR. BERKELEY: I just want a clean
25 record. I'm not trying to coach or

1 anything. If you want me to stand quiet,
2 I will.

3 BY MR. CAVALLO:

4 Q. You can take a second to just look
5 through this, if you want. I'll represent to
6 you that there are several document requests
7 in here, which required you to review them and
8 then to produce any documents that were
9 responsive to each of the requests.

10 A. Okay.

11 Q. And my question for you is if you
12 ever sat down with this document and reviewed
13 the different requests.

14 A. I spoke with my attorney regarding, I
15 guess, this document.

16 MR. BERKELEY: You can say that you
17 spoke to me, but don't say what we spoke
18 about because that's attorney/client
19 privilege.

20 THE WITNESS: Okay.

21 BY MR. CAVALLO:

22 Q. Did you speak to anyone else
23 concerning this?

24 A. No.

25 Q. Any of the requests?

1 A. No, only my attorney.

2 Q. Did you consider calling anyone else
3 to ask them about these requests?

4 A. No, not at all.

5 Q. And are you aware, sir, that you
6 prepared a response to these requests?

7 A. Yes.

8 MR. CAVALLO: We will make this 2.

9 (Exhibit Number 2 was marked for
10 identification.)

11 BY MR. CAVALLO:

12 Q. Do you recognize this document that's
13 in front of you as Exhibit 2 as your response
14 to plaintiff's request for production?

15 A. Yes.

16 Can I just clarify? When you
17 initially asked me about this, I thought this
18 was the initial document, that was when I got
19 served, I guess.

20 Q. I understand.

21 A. So I thought that's what you were
22 showing me. And then I -- I'm not really
23 reading through right now while you are
24 talking to me, but I guess this is the second
25 part that you guys had sent that we had to go

1 over and discuss.

2 Q. Correct. Those are document
3 requests.

4 A. I thought you meant the original
5 complaint.

6 Q. I understand.

7 A. I'm sorry.

8 Q. Not a problem.

9 A. I thought that's what you were
10 asking.

11 Q. In preparing this response, did you
12 speak to anyone other than your attorney?

13 A. No, sir.

14 Q. And I'll give you as much time as you
15 need, but sitting here today, do these
16 document request responses remain complete and
17 truthful?

18 A. If it's what I discussed with my
19 attorney and he forwarded back to you, then,
20 yes, that would be complete and truthful.

21 Q. So there is nothing that has changed
22 since your original response that would
23 require any amendment to these responses?

24 A. I don't believe so, no.

25 Q. What steps did you take to search for

1 documents responsive to these requests?

2 MR. BERKELEY: Objection.

3 You can answer, if you can.

4 THE WITNESS: A lot of the documents
5 that you guys requested were irrelevant to
6 the loan that I provided to Mr. Elm.

7 BY MR. CAVALLO:

8 Q. Okay. But in the responses, you will
9 see that you represented that if there were
10 any documents responsive to the request, they
11 would be prepared and given to us at a
12 mutually convenient time and place.

13 So my question for you is not about
14 the responsiveness of the documents. It's
15 about the steps you took to search for
16 documents.

17 MR. BERKELEY: Which request?

18 MR. CAVALLO: All of them. I want to
19 know what steps he took with respect to
20 all of the requests.

21 MR. BERKELEY: You can look.

22 Is there any particular request? If
23 you want to go one-by-one --

24 MR. CAVALLO: If that's easier for
25 him, but I just want to know the steps he

1 took to search for documents responsive to
2 all the requests.

3 I think it's an easier question to
4 answer.

5 THE WITNESS: I mean, I went through
6 these questions and discussed with my
7 attorney, and a lot of it was irrelevant
8 to what I believed had to do with this
9 case.

10 BY MR. CAVALLO:

11 Q. Did you --

12 A. There wasn't much documentation.

13 Q. Where did you search for documents?

14 A. As I mentioned, I don't believe that
15 on -- there wasn't really documents in this
16 that required any -- you know, that had
17 anything relevant to this case.

18 Q. So what you are really saying is that
19 you didn't search for any documents?

20 A. Well, I read -- we discussed, me and
21 my attorney, my --

22 Q. Don't tell me what you discussed with
23 him.

24 MR. BERKELEY: Don't --

25

1 BY MR. CAVALLO:

2 Q. I don't want to know that.

3 What I want to know is whether you
4 searched for documents responsive to these
5 requests.

6 A. I don't have any documents.

7 Q. How do you know that without looking
8 for them?

9 A. Can I just have a minute, then?

10 Q. Yes. Take your time.

11 A. Okay. So just reading through the
12 first ten, the only document that's -- I have
13 relevant to the monies is the promissory note.
14 And I'm pretty sure we produced that. So I
15 mean, there is really no other documentation
16 regarding that.

17 Q. Did you take any steps to obtain from
18 your bank the monies that were paid in
19 connection with the loan?

20 A. I don't have any documentation. I
21 mean, it's almost 10 years ago.

22 Q. Okay. Well, your lawyer can advise
23 you on this, but responsive documents are
24 those within your care, custody or control.
25 Documents your bank has, that they maintain

1 for you, are within your control.

2 So my question for you is whether you
3 ever went to your bank and asked for a copy of
4 the check, wire, cash, whatever it was, any
5 kind of receipt to show that you made the loan
6 payment for the note that you gave us.

7 MR. BERKELEY: Objection.

8 Answer, if you can.

9 THE WITNESS: I don't know.

10 BY MR. CAVALLO:

11 Q. Where would you keep documents that
12 would be responsive to these requests?

13 MR. BERKELEY: Objection.

14 Answer, if you can.

15 THE WITNESS: I don't know.

16 BY MR. CAVALLO:

17 Q. Do you keep a file of documents
18 related to your business transactions with
19 Mr. Elm?

20 MR. BERKELEY: Objection.

21 Answer, if you can.

22 THE WITNESS: I mean, I've had one
23 business transaction with Mr. Elm, and it
24 was this promissory note, which --

25

1 BY MR. CAVALLO:

2 Q. Okay. Let's right now just take the
3 note out, so we can -- since we keep referring
4 to it.

5 MR. CAVALLO: This will be 3.

6 (Exhibit Number 3 was marked for
7 identification.)

8 BY MR. CAVALLO:

9 Q. This is the one document you produced
10 in response to our request for production;
11 correct?

12 A. Yes.

13 Q. Where did you find this document?

14 A. It was e-mailed to me on the date, or
15 on or around this date.

16 Q. Okay. So there was an e-mail that
17 accompanied this note?

18 A. Yes.

19 Q. You did not produce that e-mail; did
20 you?

21 MR. BERKELEY: I believe it was part
22 of this production.

23 MR. CAVALLO: Okay. I'll check that,
24 but --

25

1 BY MR. CAVALLO:

2 Q. Were there any other e-mails related
3 to the note?

4 A. No.

5 Q. So how did you get this note and the
6 e-mail to give it to us?

7 A. I went to my e-mail and forwarded it
8 to my attorney.

9 Q. Did you search your e-mail for other
10 responsive documents?

11 A. Yes, but there is --

12 Q. How did you search your e-mail?

13 A. I don't understand the question. How
14 did I search my e-mail?

15 Q. Right. You said you searched your
16 e-mail for other responsive documents;
17 correct?

18 A. Yeah. I went to my e-mail and looked
19 for this document, because I knew that I had
20 this in my e-mail.

21 Q. So you went into your e-mail
22 specifically looking for this one document?

23 A. Of course.

24 Q. Did you look for any other responsive
25 documents in your e-mail?

1 A. But there isn't any other documents
2 relevant to this, other than this, the loan
3 that I made to Mr. Elm.

4 Q. Were you the one making
5 determinations whether or not the documents
6 were relevant?

7 A. I mean, yeah.

8 Q. How often did you e-mail with
9 Mr. Elm?

10 A. Can you be more specific? Like how
11 many times in a week, a month, a year, over
12 the years?

13 Q. Well, did you e-mail him weekly?

14 A. No, of course not.

15 Q. Did you e-mail him monthly?

16 A. No.

17 Q. Did you e-mail him at least once a
18 year?

19 MR. BERKELEY: Objection.

20 Answer, if you can.

21 THE WITNESS: I mean, I don't have a
22 time line on how often I e-mailed him.

23 This was --

24 BY MR. CAVALLO:

25 Q. Was the e-mail --

1 A. -- this is what was relevant to the
2 case.

3 Q. Sorry; I didn't mean to interrupt
4 you.

5 Was the e-mail that accompanied this
6 note the only e-mail that you ever received
7 from Mr. Elm?

8 A. No.

9 Q. What e-mail address does Mr. Elm
10 write you from?

11 A. I don't remember off the top of my
12 head.

13 Q. Okay. What is your e-mail address?

14 A. Timothyhartmann@hotmail.com.

15 Q. Is it all one word,
16 "timothyhartmann" --

17 A. Yes.

18 Q. -- @hotmail?

19 How long has that been your e-mail
20 address?

21 A. Since I had e-mail.

22 Q. Okay. Do you have any other e-mail
23 addresses you use?

24 A. Over the years, different ones, but
25 nothing consistent that I would use, you know.

1 Q. Do you have any e-mail addresses
2 associated with THDS Investments?

3 A. I would use this e-mail address.

4 Q. Would you use this e-mail address for
5 all -- generally, for all business purposes?

6 A. Yeah.

7 Q. Even if you've used them one or two
8 times, what other e-mail addresses have you
9 used in the last five years?

10 A. Inspireddesigners@gmail.com.

11 Q. Why would you use that e-mail
12 address?

13 A. I started a clothing company with my
14 friend, and that was the name of it.

15 Q. Any others?

16 A. I had one for my real estate at one
17 point, but I don't remember the e-mail
18 address.

19 Q. Okay. Was it a gmail or hotmail
20 account?

21 A. No, it was -- I worked for a company,
22 Carefree Properties, so it was like TimH or
23 tim@carefreeproperties.com.

24 Q. You no longer work for that entity?

25 A. No.

1 Q. Are there any other e-mail addresses
2 you can think of?

3 A. No.

4 MR. CAVALLO: Give me one second.

5 (Thereupon, a brief recess was
6 taken.)

7 BY MR. CAVALLO:

8 Q. Okay. So this promissory note that
9 you produced and the accompanying e-mail, they
10 were in your timothyhartmann@hotmail.com
11 account?

12 A. Yes, sir.

13 Q. Would Fred Elm write you at either of
14 the other two e-mail accounts you told me
15 about today?

16 A. Not to my recollection.

17 Q. And I just want to be very clear.
18 Did you, in connection with responding to this
19 discovery we are looking at, go into your
20 timothyhartmann@hotmail.com and look for
21 e-mails from Fred Elm?

22 A. I looked for this note.

23 Q. Okay. Do you ever call Fred Elm on
24 your phone?

25 A. More specifically?

1 Q. How many times have you called Fred
2 Elm in the last year?

3 A. In the last year, maybe under 10
4 times.

5 Q. What is your cell phone carrier?

6 A. Verizon.

7 Q. What's your cell number?

8 MR. BERKELEY: Actually, we are not
9 going to put that on the record, so we can
10 give you that off the record.

11 MR. CAVALLO: Okay, I'll make a note.
12 That's fine.

13 BY MR. CAVALLO:

14 Q. Do you ever text Fred Elm?

15 A. Yes.

16 Q. How often have you texted Fred Elm in
17 the last year?

18 A. I can't -- I don't remember. I mean
19 -- or I can't speculate.

20 Q. Did you check your text messages in
21 connection with the discovery request?

22 A. Yes.

23 Q. You reviewed all of your text
24 messages?

25 A. No, because it wasn't -- again, this

1 is from a loan from 2010. It wasn't
2 pertinent.

3 Q. If you could, please look back again
4 at Exhibit 2, which is your response.

5 And if you look at page 10 of the
6 response, document request number 14, at the
7 top of the page: All documents that evidence,
8 refer or relate to communications with Fred
9 Elm, Ahmad Naqvi and/or any receivership
10 entity.

11 Do you see that document request?

12 A. Uh-huh.

13 MR. BERKELEY: What request number is
14 it?

15 MR. CAVALLO: 14, page 10.

16 BY MR. CAVALLO:

17 Q. So you agree with me, Mr. Hartmann,
18 that the receiver has requested all
19 communications with Fred Elm for the relevant
20 period, which I'll represent to you is 2012 to
21 present.

22 A. Yes.

23 Q. And what you've basically told me
24 today is that you text Mr. Elm and you e-mail
25 Mr. Elm; correct?

1 A. Yes.

2 Q. And you did not produce any of those
3 text messages or e-mails; correct?

4 A. I produced the document that was
5 relevant.

6 Q. Relevant in your determination.

7 Because, I mean, do you disagree with
8 me that this request asks for all
9 communications?

10 MR. BERKELEY: Objection. Don't
11 argue with the witness. You can ask him
12 questions, but don't argue with him.

13 BY MR. CAVALLO:

14 Q. Do you agree with me that this
15 request asks for all communications with Fred
16 Elm?

17 MR. BERKELEY: Actually, it asks for
18 all communications with Fred Elm and two
19 other persons/an entity.

20 MR. CAVALLO: Okay. We have read the
21 full request into the record already.

22 BY MR. CAVALLO:

23 Q. Just confirm for me, sir, that you
24 produced one document in response to this
25 request, which is the promissory note;

1 correct?

2 A. Correct.

3 MR. CAVALLO: This will be 4.

4 (Exhibit Number 4 was marked for
5 identification.)

6 BY MR. CAVALLO:

7 Q. You can take a moment to look through
8 this document.

9 MR. CAVALLO: While he is looking,
10 this will be 5.

11 (Exhibit Number 5 was marked for
12 identification.)

13 BY MR. CAVALLO:

14 Q. Do you remember receiving this
15 document, which is plaintiff's first set of
16 interrogatories?

17 A. Yes.

18 Q. Did you review these interrogatories
19 when you received this document?

20 A. Yes.

21 Q. And you prepared a response to these
22 interrogatories; correct?

23 A. Yes.

24 Q. And that's Exhibit 5, which is in
25 front of you now. You can take a second to

1 review the response -- I'm sorry, you have the
2 wrong copy.

3 Take a second to review this
4 document.

5 Do you recall preparing this
6 response?

7 A. Yes.

8 Q. And sitting here today, do the
9 answers to these interrogatories remain
10 truthful and complete?

11 A. Yes.

12 Q. Did anyone assist you in preparing
13 the answers to these interrogatories other
14 than your attorney?

15 A. No.

16 Q. Did you discuss these interrogatories
17 with anyone other than your attorney?

18 A. No.

19 Q. Did you ever call up Fred Elm and
20 tell him that you had received discovery in
21 this case?

22 A. No.

23 Q. Did you ever contact Mr. Elm when the
24 complaint was initially filed?

25 A. I don't remember.

1 Q. You don't remember if you called him
2 about this?

3 A. No.

4 Q. The complaint was filed in 2016. You
5 don't remember if you ever called him and
6 said: What is going on? I'm being sued by
7 someone in Florida.

8 A. Not specifically, no.

9 Q. At any point, did you call him about
10 this case since the complaint was filed?

11 A. I don't remember.

12 Q. But you have spoken to him since this
13 complaint was filed?

14 A. Yes.

15 Q. What did you talk about?

16 A. I don't remember.

17 Q. You don't remember anything you spoke
18 about with Mr. Elm?

19 A. Like, since I received the complaint?

20 Q. Correct. It's only a year and a half
21 or so ago.

22 A. Casual conversation regarding sports
23 and -- nothing.

24 Q. Have you ever been close to Mr. Elm?

25 A. No.

1 Q. Where is Mr. Elm right now?

2 A. I don't know.

3 Q. Is Mr. Elm in Florida?

4 A. I haven't talked to him. I don't
5 know his --

6 Q. But you have spoken to him, you said.
7 When was the last time you spoke to him?

8 A. I don't remember. Last year, but I
9 don't remember exactly how long.

10 Q. 2017?

11 A. Yes.

12 Q. He never mentioned anything to you
13 about this lawsuit or any other case he was
14 involved in?

15 A. I don't remember.

16 Q. Did you ever ask him for documents
17 related to this case?

18 A. No.

19 Q. Did you ever ask him for any
20 documentation related to the promissory note?

21 A. No.

22 Q. If you wanted to right now, looking
23 at your phone, could you tell me the last time
24 you spoke to him?

25 A. No.

1 Q. Why not?

2 A. My phone only logs the last few days
3 of, you know, phone calls I made, and I
4 haven't called him within the last few days,
5 so I wouldn't be able to tell you the last
6 time I spoke with him.

7 Q. Did you contact your cell phone
8 carrier regarding your communications with
9 Mr. Elm?

10 A. No.

11 Q. Verizon you said; right?

12 A. Yeah.

13 Q. Do you know which cell phone carrier
14 Mr. Elm uses?

15 A. No.

16 Q. Could you tell me right now, looking
17 at your phone, what Mr. Elm's phone number is?

18 A. I could tell you the phone number
19 that I have for him.

20 Q. Could you do that?

21 MR. BERKELEY: You can do it.

22 THE WITNESS: (954) 774-1707.

23 BY MR. CAVALLO:

24 Q. Thank you.

25 And you also could, after this depo

1 concludes today, go home and search your
2 e-mails for Mr. Elm's e-mail address; couldn't
3 you?

4 A. Yes.

5 Q. And you could also search your e-mail
6 inbox for e-mails from Mr. Elm?

7 A. Yes.

8 MR. BERKELEY: I need to take a quick
9 break for just a personal phone call.

10 MR. CAVALLO: Okay. We can take a
11 quick break. Five minutes.

12 (Thereupon, a brief recess was
13 taken.)

14 BY MR. CAVALLO:

15 Q. So where we left off, I believe you
16 had just finished reviewing your response to
17 the request for admissions.

18 A. Yes, sir.

19 MR. BERKELEY: Interrogatories.
20 Number 5, right?

21 BY MR. CAVALLO:

22 Q. Okay. Let's look at the request for
23 admissions.

24 (Exhibit Number 6 was marked for
25 identification.)

1 BY MR. CAVALLO:

2 Q. Do you remember receiving this
3 document in connection with this case?

4 A. Yes.

5 Q. Did you review these requests for
6 admissions listed in this document?

7 A. Yes.

8 Q. Did you contact anyone to assist you
9 in completing these requests for admissions
10 other than your attorney?

11 A. No.

12 (Exhibit Number 7 was marked for
13 identification.)

14 BY MR. CAVALLO:

15 Q. The document you've just been handed,
16 which is Exhibit Number 7, is your response to
17 the request for admissions; correct?

18 A. Yes.

19 Q. And sitting here today, do your
20 responses to the request for admissions remain
21 accurate and complete?

22 A. Yes.

23 Q. Could you tell me a little bit about
24 your educational background?

25 A. Yes.

1 Q. Starting with college is fine.

2 A. Went to school for five years,
3 received my master's and my bachelor's in
4 physical therapy.

5 Q. Which college?

6 A. College of Misericordia.

7 Q. Was there any secondary education
8 after that at all?

9 A. If you consider a real estate
10 license, it would be my second --

11 Q. When did you obtain your real estate
12 license?

13 A. Around 2007, I think it was.

14 Q. Which year did you graduate college?

15 A. 1999.

16 Q. If you could, take me through your
17 employment history from the time you graduated
18 college.

19 A. This might be a while.

20 Q. It's a lot?

21 A. Yes.

22 Q. Okay.

23 A. I can do it, if it's necessary.

24 Q. Please, yes.

25 A. After college, I continued to work as

1 a waiter. Then in around 2001, started with
2 the GlaxoSmithKline, a pharmaceutical company,
3 doing pharmaceutical sales.

4 Q. Okay. After that?

5 A. Around -- do you need the years?

6 Q. It would be helpful, if you have
7 them. You can estimate, if you must.

8 A. Around 2004, began working for a
9 roofing company.

10 Q. Do you remember the name?

11 A. It was Action Roofing.

12 Q. Okay.

13 A. It was only for a summer. That was
14 in St. Louis.

15 Then moved to Pensacola, Florida.
16 Worked with another -- worked for FEMA
17 actually, doing hurricane relief.

18 Q. Which year was that?

19 A. Blue Tarp Program.

20 '04, around the time of Katrina.

21 Q. I'm sorry. You said you moved to
22 Florida at that time?

23 A. Pensacola.

24 Q. Is that when you moved to Florida
25 permanently?

1 A. Yes. But I lived in Pensacola for
2 one year. Then I moved to Naples the
3 following year, I think it was around '05.
4 Then in '06, I moved to Miami.

5 Q. Okay. Back to your employment
6 history -- and I apologize, I think you said
7 it already. Which company did you work for in
8 2004 in Pensacola?

9 A. I worked for FEMA.

10 Q. Okay.

11 A. So I worked for -- we set up like a
12 local company. It was through different
13 people, but it was for the hurricane relief.
14 It wasn't --

15 Q. Okay. After that?

16 A. Again, with a company. West Coast
17 Roofing was the name of the company, working
18 with FEMA.

19 Q. Is that when you moved to Naples?

20 A. Yeah. And then eventually I moved
21 over to Miami the following year.

22 Q. 2006?

23 A. '06, yeah.

24 When I came here, then I worked in
25 nightlife.

1 Q. What is nightlife? Is that a company
2 or is that -- you are saying you worked --

3 A. No. I worked Miami Beach nightlife
4 as a promoter, on the door. Different aspects
5 of nightlife.

6 Q. Okay.

7 A. And around that time, I also got my
8 real estate license, and was working for a
9 company called Sunvest.

10 Q. Sunfest?

11 A. Like Sun -- like invest. Sunvest.

12 Q. Sunvest, okay. What did Sunvest do?

13 A. It was a real estate company that
14 sold condo conversions. But I needed my real
15 estate license for it.

16 Q. So you obtained your license to work
17 for Sunvest?

18 A. Yeah. And then Carefree Properties
19 was kind of a partner of that company, or did
20 real estate in Miami. And then I started
21 working full time with them.

22 Q. When did you begin working full time
23 with Carefree?

24 A. Probably about the same -- about '08.
25 Yeah, '08/'09, I guess.

1 Q. What does Carefree do?

2 A. Just a real estate company, Carefree
3 Properties. It's a broker.

4 Q. And how long did you work for
5 Carefree?

6 A. Until just this past year.

7 Q. Until 2017?

8 A. Yes.

9 Q. Which month?

10 A. I think I switched in November, just
11 to another broker.

12 Q. What is the name of your current
13 employer?

14 A. Global Luxury Real Estate -- I'm
15 sorry, Global Luxury Realty.

16 Q. What do they do?

17 A. Just a broker. I provide real estate
18 services for clients.

19 Q. Do you have something to add?

20 A. Well, just -- you know, you have my
21 THDS Investments.

22 Q. Right.

23 A. So I also was buying properties,
24 investment properties, like all throughout
25 this time.

1 Q. Okay. And that was through the THDS
2 entity?

3 A. Yes. THDS Investments, LLC. And
4 also TH Enterprises, LLC.

5 Q. Sorry; I have to go through that
6 again. TH Enterprises, LLC?

7 A. Correct.

8 Q. And THDS?

9 A. Correct.

10 Q. And what does "THDS" stand for?

11 A. Tim Hartmann and Derrick Sloboda.

12 Q. And the purpose of those entities was
13 to buy properties, you said?

14 A. Correct, yeah. In Texas and Ohio.

15 Q. Did TH Enterprises and THDS exist at
16 the same time?

17 A. They still exist, yes. We own
18 properties.

19 Q. Why two different companies?

20 A. Different partners.

21 Q. Who is your partner in -- so Derrick
22 Sloboda is your partner in THDS?

23 A. Yes. And Franklin Roye is my partner
24 in that company.

25 Q. TH Enterprises, your partner is

1 Franklin Roye?

2 A. Correct, Franklin, R-O-Y-E.

3 Q. I believe you previously testified
4 that Fred Elm had no involvement in THDS.

5 A. No, never.

6 Q. Did Fred Elm have any involvement in
7 TH Enterprises?

8 A. No.

9 Q. Have you ever provided any real
10 estate services for Mr. Elm?

11 A. I was his realtor for a rental back
12 in -- probably 10 years ago now, when I first
13 met him.

14 Q. What kind of property was that?

15 A. I think it was two- or three-bedroom
16 condo that he moved into with his girlfriend
17 at the time.

18 Q. Do you know his girlfriend, who it
19 was at the time?

20 A. Yeah, his wife now.

21 Q. What's her name?

22 A. Amanda.

23 Q. Okay. Where was that property?

24 A. In Sunny Isles.

25 Q. You said it was a two- to

1 three-bedroom condo?

2 A. Yeah.

3 Q. Do you know how long he owned that
4 property, or was he renting?

5 A. He was renting.

6 Q. Do you know how long he was renting?

7 A. A year to two. Once I secure the
8 property, then I don't have any interaction.
9 And he didn't use me after to find any
10 properties for him.

11 Q. So that was your only real estate
12 deal involving Mr. Elm?

13 A. Yes.

14 Q. And he was never involved in any
15 other transaction in any way --

16 A. No.

17 Q. -- in real estate?

18 A. No.

19 Q. Let's just to go back to something
20 quickly.

21 MR. CAVALLO: Next document will be
22 Exhibit 8.

23 (Exhibit Number 8 was marked for
24 identification.)

25

1 BY MR. CAVALLO:

2 Q. So looking at this document, you see
3 that this is an e-mail from Trisha Ruiz to
4 Daniel Newman and myself, copying Lauren,
5 among others.

6 A. Okay.

7 Q. Dated November 22, 2017.

8 A. Okay.

9 Q. That is correct?

10 MR. BERKELEY: Objection, the
11 document speaks for itself. It's admitted
12 into evidence -- or into the record.

13 BY MR. CAVALLO:

14 Q. And you agree with me that this is
15 the production that was made on your behalf?

16 A. The end part, yeah.

17 Q. I'm sorry?

18 A. This part?

19 Q. Yes, correct.

20 If you review the document, this is
21 an e-mail transmitting the production, which
22 is the final two pages.

23 A. Sure. Yes.

24 Q. And you also agree with me that there
25 is no accompanying e-mail that was produced

1 for this document; correct?

2 A. Correct.

3 Q. And you previously testified that the
4 promissory note was transmitted to you by
5 e-mail from Mr. Elm?

6 A. Correct.

7 Q. When did you meet Mr. Elm for the
8 first time?

9 A. I don't remember the exact year, but
10 it would be around when I first moved to
11 Miami, within the first probably two years.

12 Q. So you would estimate sometime
13 between '08 and '09?

14 A. '07 probably. I moved in the end of
15 '06, so '07/'08.

16 Q. Okay. Where did you meet him?

17 A. At a nightclub.

18 Q. Do you remember which nightclub?

19 A. No.

20 Q. A nightclub on South Beach?

21 A. Yes, for sure.

22 Q. And you were working at the time?

23 A. Most likely. I don't remember
24 exactly if it was a night I was working or a
25 night I was off, but it was at a nightclub.

1 So most likely, I was probably working.

2 Q. What did you two talk about?

3 A. I don't remember.

4 Q. Did he tell you anything about the
5 business he was involved in?

6 A. No.

7 Q. And did you develop a social
8 relationship with him?

9 A. Yes.

10 Q. And has that social relationship
11 continued to today?

12 A. No.

13 Q. When did the social relationship end?

14 A. When I got served with this court
15 order.

16 Q. Does that refresh your memory as to
17 whether you contacted him about this case?

18 A. No.

19 Q. So you never confronted him?

20 A. I don't remember.

21 Q. Did you ever introduce anyone to Fred
22 Elm for business purposes?

23 A. No.

24 Q. When did he first come to tell you
25 about the business that he was involved in?

1 A. I don't remember.

2 Q. Was it a year into the relationship,
3 five years into the relationship?

4 A. It could be within the first year.

5 Q. And what did you understand that he
6 did?

7 A. Real estate, and from what I knew, he
8 was an options trader.

9 Q. Did he ever solicit you to invest
10 with him?

11 A. No.

12 Q. What businesses did he tell you he
13 owned or was involved with?

14 A. I don't remember.

15 Q. Did he ever introduce you to any of
16 his family members?

17 A. I've never met anybody from his
18 family.

19 Q. You've met his wife?

20 A. Well, at the time -- I think we were
21 talking about 2007/2008. So at the time,
22 yeah, he was not married.

23 Q. He was not married, okay.

24 A. So I never met anybody in his
25 immediate family.

1 Q. Have you ever spoken to any of his
2 family members besides his wife?

3 A. No.

4 Q. Do you know if Mr. Elm is currently
5 in Canada?

6 A. I don't know.

7 Q. Do you know if he travels to the
8 U.S.?

9 A. I don't know Mr. Elm's travel
10 schedule.

11 Q. When is the last time you saw Mr. Elm
12 in person?

13 A. I don't remember.

14 Q. Was it a year ago, two years ago?

15 A. Within the last two years, for sure.

16 Q. Okay. So you think you saw Mr. Elm
17 in person in 2017?

18 A. I don't remember.

19 Q. Where did you see him?

20 A. I don't remember the last time I saw
21 him. I know I've seen him in the last two
22 years, but I don't remember when.

23 Q. Was it in Florida?

24 A. Yes.

25 Q. Was it in Miami?

1 A. I don't remember.

2 Q. Did he tell you why he was here?

3 A. No.

4 Q. Did Mr. Elm ever talk to you about
5 his family in Canada?

6 A. I was aware that he had family. I
7 wasn't sure where they were located. I know
8 he was from Canada, but I don't -- as far as
9 his family, I don't know their whereabouts.

10 Q. Did you ever visit him in Canada?

11 A. Never.

12 Q. Did you ever visit him anywhere other
13 than in Florida?

14 A. No.

15 Q. When was the last time you spoke to
16 Amanda?

17 A. I don't remember. Probably within
18 the last five years, but I wouldn't remember.

19 Q. So it's safe to say you spoke to
20 Mr. Elm more frequently than Amanda Elm?

21 A. Yes.

22 Q. Have you ever heard of a man named
23 Ahmad Naqvi?

24 A. Never.

25 Q. Have you ever heard of a man named

1 Craig Henderson?

2 A. No.

3 Q. Have you ever heard of a man named
4 Surjit Walia?

5 A. Yes.

6 Q. How do you know Surjit Walia?

7 A. He works the nightlife, and I know
8 him from mutual friends.

9 Q. Who are your mutual friends?

10 A. The industry is -- the nightclub
11 industry is very big, so numerous friends.

12 Q. You said he was involved in the
13 nightlife industry?

14 A. Yeah. I know him since probably
15 early 2000s, because I'm from New York.

16 Q. Okay. Does he live in New York?

17 A. I'm not sure where he lives.

18 Q. When you first met him, was he in New
19 York?

20 A. Yes.

21 Q. You met him in New York?

22 A. Yes.

23 Q. Has Mr. Walia ever lived in Florida?

24 A. I believe for a short period he moved
25 down here, but after that, I haven't really

1 communicated to him.

2 Q. When is the last time you talked to
3 Mr. Walia?

4 A. Probably at least four or five years.

5 Q. Was Mr. Walia social with Mr. Elm?

6 A. I don't know their relationship.

7 Q. Do you know whether Mr. Walia and
8 Mr. Elm were engaged in business together?

9 A. I don't know their relationship.

10 Q. You were aware they knew each other?

11 A. Yes, I've seen them in the nightclub
12 together.

13 Q. Okay. Did you ever introduce anyone
14 to Mr. Elm for business purposes?

15 A. No.

16 Q. Did Mr. Elm ever introduce anyone to
17 you for business purposes?

18 A. Not that I remember.

19 Q. Mr. Elm never referred any clients to
20 you in connection with the real estate
21 business?

22 A. Potentially, but I don't remember for
23 sure if that ever happened.

24 Q. Do you know a man named Alex
25 Bukhshtaber?

1 A. Yes.

2 Q. How do you know Mr. Bukhshtaber?

3 A. Again, through nightlife.

4 Q. He was also -- well, what do you mean
5 by that?

6 A. From being out in nightlife, he
7 also -- I would see him out in nightclubs.

8 Q. Did he work in the nightlife
9 industry, as you and I have come to use that
10 term in this deposition?

11 A. Not that I know of.

12 Q. Okay. And you would see him out in
13 New York or in Miami?

14 A. In Miami.

15 Q. And were you aware that he was -- let
16 me restate that.

17 You are aware that he also knew
18 Mr. Elm?

19 A. Yes.

20 Q. Do you know if Mr. Bukhshtaber and
21 Mr. Elm ever did business together?

22 A. I don't know.

23 Q. Did Mr. Walia or Mr. Bukhshtaber ever
24 attempt to do any business with you?

25 A. No.

1 Q. Did Mr. Walia or Mr. Bukhshtaber ever
2 attempt to get you to invest in any business?

3 A. No.

4 Q. Do you know a man named James
5 Benvenuto?

6 A. Yes.

7 Q. How do you know Mr. Benvenuto?

8 A. Also through nightlife.

9 Q. Miami?

10 A. Yes.

11 Q. And just to be clear, when you say
12 "nightlife," you mean that either as an
13 employee or being at a club, you see these
14 people at the club?

15 A. Correct.

16 Q. How often would you see these people;
17 weekly or monthly basis?

18 A. I mean, I can't say.

19 Q. How often was Mr. Elm at the same
20 club as you?

21 A. I can't put a number on it. I mean,
22 it's so long ago. I don't -- I wouldn't keep
23 track. I mean, like I said, the nightlife
24 industry is so big, so you see a lot of the
25 same people out.

1 Q. Okay. You said you saw Mr. Elm at
2 least, you know, in the last year or so.
3 Where did you see him?

4 A. In South Florida.

5 Q. Were you at a club?

6 A. I don't remember.

7 Q. Was it a planned meeting?

8 A. I don't remember.

9 Q. Did you sit down and speak with him?

10 A. Yes.

11 Q. How long did you speak to him for?

12 A. I don't remember.

13 Q. Was it a lengthy meeting, like over
14 lunch, or was it a brief two-minute thing?

15 A. I don't remember.

16 Q. Were you aware that Mr. Benvenuto and
17 Mr. Elm knew each other?

18 A. Yes.

19 Q. Do you know whether Mr. Benvenuto and
20 Mr. Elm ever did any business together?

21 A. I don't know.

22 Q. Do you know whether any of these
23 people -- and by that I mean, Mr. Walia, Mr.
24 Bukhshtaber and Mr. Benvenuto -- do you know
25 whether they ever invested with Mr. Elm?

1 A. I'm not sure of their personal
2 dealings.

3 Q. Do you know if either of those three
4 men ever loaned any money to Mr. Elm?

5 A. I don't know.

6 Q. Did you ever see any of these three
7 men -- Walia, Bukhshtaber, Benvenuto --
8 outside of the club?

9 A. Yes.

10 Q. Where did you see them?

11 A. Restaurant, but mostly at nightclubs.

12 Q. Did you have planned meetings with
13 any of these three men?

14 A. Socially. I was friends with the
15 three of them.

16 Q. Walia, Bukhshtaber and Benvenuto?

17 A. Yes.

18 Q. So you would arrange to go out with
19 them?

20 A. Yeah, to dinner.

21 Q. Okay.

22 A. Definitely.

23 Q. You never talked about business with
24 any of these three men?

25 A. Can you specify --

1 Q. Did you ever talk about your real
2 estate business with them?

3 A. Yes.

4 Q. Did you ever offer to help them in
5 connection with your real estate business?

6 A. I can provide real estate services.
7 So, yeah, if they needed a rental or were
8 looking to buy a property, sure, I would want
9 to secure somebody's business.

10 Q. Did they ever offer to help you in
11 connection with any business dealings?

12 A. No.

13 Q. Do you know what they did for a
14 living, either of those three men?

15 A. Yeah.

16 Q. What did Mr. Walia do?

17 A. Like I said, my understanding was he
18 worked in nightlife as a promoter.

19 Q. Anything else besides that?

20 A. Not that I would know.

21 Q. What about Mr. Bukhshtaber?

22 A. He, from what I knew, he owned a
23 company that sold advertising on trucks.

24 Q. Okay.

25 A. Digital display truck.

1 Q. You don't know whether Mr. Elm was
2 involved in that business or not?

3 A. No, I don't know.

4 Q. What about Mr. Benvenuto?

5 A. I don't know what he did. From what
6 I understand, he was unemployed when I knew
7 him.

8 Q. Okay. Have you ever heard of an
9 entity called NGU Investors, LLC?

10 A. No.

11 Q. Have you ever heard of a woman named
12 Jean Benvenuto?

13 A. No.

14 Q. Have you ever heard of an entity
15 called S.W. Equities Corp.?

16 A. No.

17 Q. Have you ever heard of a company
18 called MVS Media Group?

19 A. No.

20 Q. Have you ever heard of a man named
21 Harry Tawil?

22 A. No.

23 Q. Have you ever heard of a man named
24 Eduardo dos Santos?

25 A. No.

1 Q. Have you ever heard of a woman named
2 Filomena Calabria?

3 A. No.

4 Q. How about Jose Roffe?

5 A. No.

6 Q. Mireille Roffe?

7 A. No.

8 Q. How about a woman named Someswari
9 Nukala?

10 A. No.

11 Q. Yael Tapiero?

12 A. No.

13 Q. Laas Turnbull?

14 A. No.

15 Q. Omri Tapiero?

16 A. No.

17 Q. Constantino de Santos?

18 A. No.

19 Q. Armand Delmar?

20 A. No.

21 Q. I think I already asked you about
22 Ahmad Naqvi.

23 A. No.

24 Q. Never heard of him?

25 A. No.

1 Q. Never met him?
2 A. No.
3 Q. Elia Blumin?
4 A. No.
5 Q. Ted Greenwald?
6 A. No.
7 Q. Alina Talsky?
8 A. No.
9 Q. Elvis Pervan?
10 A. No.
11 Q. Angelo Ismirnioglou?
12 A. No.
13 Q. And Jonathan Verk?
14 A. No.
15 Q. So the only co-defendants that you
16 had any kind of relationship with in this
17 case, or have even heard of, were Mr. Walia,
18 Mr. Bukhshtaber and Mr. Benvenuto?
19 A. Yes.
20 Q. Did you discuss this case with any of
21 those three men?
22 A. No.
23 Q. Have any of those three men reached
24 out to you about this case?
25 A. No.

1 Q. Have any of the other defendants I
2 just went through ever reached out to you
3 about this case?

4 A. No.

5 Q. I apologize if I asked this already,
6 but did Mr. Elm reach out to you about this
7 case?

8 A. I don't remember.

9 Q. So it's possible that he did?

10 A. No.

11 Q. So he did not reach out to you about
12 this case?

13 A. I don't remember.

14 Q. What means did you use to communicate
15 with Mr. Walia?

16 A. I've never -- if I communicated with
17 him, it was via text.

18 Q. So you had his cell phone number?

19 A. Yeah.

20 Q. Did you have an e-mail address for
21 Mr. Walia?

22 A. No.

23 Q. Same question for Mr. Bukhshtaber:
24 How did you communicate with him?

25 A. Phone and text.

1 Q. Did you have an e-mail for him?

2 A. I don't think so.

3 Q. And how about Mr. Benvenuto?

4 A. Just phone.

5 Q. Texting as well?

6 A. Probably, yeah.

7 Q. When was the last time you spoke
8 to -- I believe I asked you this -- Mr. Walia?

9 A. I don't remember.

10 Q. How about Mr. Bukhshtaber?

11 A. The last -- recently.

12 Q. This year?

13 A. Yes.

14 Q. What did you speak to Mr. Bukhshtaber
15 about?

16 A. He's my friend, so --

17 Q. So you remain -- you maintain a
18 social relationship with Mr. Bukhshtaber to
19 this day?

20 A. Yes.

21 Q. You've never discussed this case with
22 him?

23 A. No.

24 Q. He never said to you: What the hell
25 is going on here? What did Fred Elm do?

1 A. Not that I recall.

2 Q. How about Mr. Benvenuto? When was
3 the last time you spoke to him?

4 A. I don't remember.

5 MR. CAVALLO: Give me a second.

6 (Thereupon, a brief recess was
7 taken.)

8 BY MR. CAVALLO:

9 Q. What did you do to prepare for this
10 deposition?

11 And I don't want to know about any
12 conversations you had with your attorney. I'm
13 talking about outside of that.

14 A. You mean just for today?

15 Q. Yes.

16 A. I don't know.

17 Can you ask a follow-up question?

18 Q. I'm just asking what you did to
19 prepare. Maybe it's nothing. I'm just asking
20 for your answer.

21 A. Okay. Yeah, nothing.

22 Q. Did you speak to anyone about your
23 deposition today?

24 A. No.

25 Q. The civil action you mentioned to me

1 when we first started today, the one in Ohio,
2 is that the only other lawsuit you have ever
3 been involved in?

4 A. I got injured maybe two years ago,
5 got in an accident with a taxi.

6 Q. And there was a suit coming?

7 A. Yeah.

8 Q. That's fine.

9 A. But I mean, nothing civilly.

10 Q. Are those the only two?

11 A. Yeah, that I can remember, or maybe
12 traffic court or something.

13 Q. Have you ever been arrested before?

14 A. Yes, one time.

15 Q. For what?

16 A. Trespassing.

17 Q. When was that?

18 A. 2004.

19 MR. BERKELEY: Chris, just so you
20 know, to try and help you out, I thought
21 that the e-mail was attached. I'm having
22 problems because this is trying to go
23 through my phone, but this is the e-mail
24 that Fred sent to Tim, you know, with the
25 promissory note. So you could see the

1 date and you could see his e-mail address.

2 So when I can get this thing to
3 actually work and send to you, I will, but
4 for purposes of questioning now, I'm
5 giving it to you, so you can obviously
6 look at it.

7 MR. CAVALLO: Okay, I appreciate it.

8 MR. BERKELEY: I'm trying to download
9 the note, and it is working.

10 MR. CAVALLO: Oh, I saw it there.

11 MR. BERKELEY: So there is the note.
12 And I know there is a signature page. See
13 more.

14 I don't know. It's being finicky,
15 but this is the e-mail, though.

16 So anyway --

17 MR. CAVALLO: I see it. Can we blow
18 that up again, the e-mail part?

19 MR. BERKELEY: That's what I'm trying
20 to do. I don't understand. Sometimes
21 these iPads have a mind of their own.

22 BY MR. CAVALLO:

23 Q. So Mr. Hartmann, the note came to you
24 from a fred0912@aol.com e-mail address?

25 A. If that's what it says, yes.

1 Q. Okay.

2 A. Yeah.

3 Q. Is that the e-mail address that
4 Mr. Elm used to speak to you most often?

5 A. That's the e-mail address that he
6 sent the promissory note to.

7 Q. Do you know if he had other e-mail
8 addresses?

9 A. I don't remember.

10 Q. Okay. You said you were arrested for
11 trespassing?

12 A. Uh-huh.

13 Q. Have you ever been convicted of a
14 crime?

15 A. No.

16 Q. Do you ever use WhatsApp to talk to
17 Mr. Elm?

18 A. I don't remember.

19 Q. You know what WhatsApp is?

20 A. Yes, of course.

21 Q. Do you ever Skype with Mr. Elm?

22 A. No.

23 Q. Do you ever use WhatsApp or Skype to
24 talk to Mr. Benvenuto, Mr. Walia or Mr.
25 Bukhshtaber?

1 A. No.

2 Q. Have you recently deleted any
3 e-mails?

4 A. No.

5 Q. Have you recently deleted any text
6 messages?

7 A. No.

8 Q. How long have you had your current
9 cell phone?

10 A. A year.

11 Q. I know you said you spoke to Mr. Elm
12 in the last year, texted Mr. Elm in the last
13 year.

14 Have you been speaking to him all
15 along since the time you knew him?

16 A. I would say for the most part, on and
17 off, yeah.

18 Q. Okay. Has Mr. Elm tried to influence
19 your testimony in this action in any way?

20 A. No, sir.

21 Q. Has Mr. Elm in any way advised you as
22 to any positions you should be taking in this
23 action?

24 A. No.

25 Q. Okay. If we can, again, please look

1 at the promissory note you produced. It's
2 Exhibit 3.

3 The date of this note is June 21,
4 2010, at the top of the page; is that correct?

5 A. Yes.

6 Q. And is it your memory that that is
7 the date this note was entered into?

8 A. Yes.

9 Q. And you see the signature on the last
10 page?

11 A. Yes, sir.

12 Q. To your knowledge, is that Fred Elm's
13 signature?

14 A. I would believe so. I haven't seen
15 his signature other than this promissory note.

16 MR. CAVALLO: I'm sorry to do this to
17 you. Can I see that e-mail again?

18 MR. BERKELEY: Yes, of course.

19 MR. CAVALLO: Thank you.

20 BY MR. CAVALLO:

21 Q. The e-mail is dated June 22, 2010.

22 A. Okay.

23 Q. Correct?

24 A. Yes.

25 Q. So Mr. Elm was sending you an

1 executed copy of the note on that date,
2 June 22nd?

3 A. From my understanding, yes.

4 Q. And according to what you told me
5 today, you were living in Miami at the time?

6 A. Yes.

7 Q. And this was approximately three
8 years after you had met Mr. Elm?

9 A. Yes.

10 Q. Do you know who prepared this note,
11 the document?

12 A. No.

13 Q. Do you know if it was a lawyer that
14 prepared it?

15 A. I don't know.

16 Q. Were you given any opportunity to
17 review the note?

18 A. I don't remember.

19 Q. Do you know if you had any changes
20 that you wanted to make to the note?

21 A. I don't remember.

22 Q. Do you know what Cyber Investments
23 International, Inc. is?

24 A. No.

25 Q. What did Mr. Elm tell you about this

1 entity?

2 A. I assumed it was his company.

3 Q. Did he tell you he owned the company?

4 A. I don't remember.

5 Q. What did he tell you about the
6 company?

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

8 Q. Why did you agree to give Mr. Elm
9 \$40,000?

10 A. It was my understanding he needed a
11 personal loan, and I agreed to loan him the
12 money.

13 Q. You do agree with me, though, that
14 this is a loan to Cyber Investments
15 International, Inc.; correct?

16 A. Correct.

17 Q. Did he tell you why he needed money?

18 A. I think for real estate.

19 Q. What were you offered in connection
20 with the loan?

21 A. He told me he would repay the loan,
22 and I assumed he was going to give me some
23 sort of interest.

24 Q. Did he ever mention, as the note
25 says, a proportionate share in interest in an

1 investment trading account?

2 A. No.

3 Q. Do you know what that refers to?

4 A. No. I didn't seek legal counsel for
5 this agreement. I just was young and not so
6 smart probably at the time.

7 Q. When did he first bring up to you the
8 idea that you could lend him money?

9 A. Probably around that time that we did
10 the loan.

11 Q. And did you ask him what it was for
12 at the time?

13 A. He mentioned it was for real estate.

14 Q. Do you know if he was seeking loans
15 from other people at the time?

16 A. I don't know.

17 Q. Where did the \$40,000 you lent him
18 come from?

19 A. I don't remember.

20 Q. You had \$40,000 yourself, though, to
21 lend him?

22 A. Yes.

23 Q. Did you have substantial savings at
24 that time you were able to access?

25 A. Yes.

1 Q. Did you have any e-mails with Mr. Elm
2 about the note after you had entered into it?

3 A. I don't remember.

4 Q. Did you ever ask him when you were
5 going to get paid back?

6 A. I mean, I don't remember exactly how
7 I asked him, but I would assume, yeah. I
8 asked him how I was going to get paid back.

9 Q. What did he tell you?

10 A. I don't remember.

11 Q. Was it your understanding you were
12 going to get paid back in a lump sum?

13 A. We didn't -- I don't remember, but I
14 don't think we discussed how or when it was
15 going to be paid back. I just know that he
16 needed the money.

17 Q. Was Mr. Elm in Miami --

18 A. Yes.

19 Q. -- at the time you entered into this
20 note?

21 A. Yes.

22 Q. Did you have any meetings with
23 Mr. Elm about the note?

24 A. I don't remember.

25 Q. How long did it take you to give him

1 the loan between the date of the note and the
2 time he asked for the loan?

3 A. I don't remember.

4 Q. Did he have to ask you multiple times
5 for the loan or was it something you were just
6 willing to do?

7 A. I don't remember, but I did it, so I
8 was willing to do it.

9 Q. Did you make any other loans to Fred
10 Elm?

11 A. No.

12 Q. Did you make any other loans to any
13 entities Mr. Elm was involved with?

14 A. No.

15 Q. All right. This is going to be
16 confusing, but did any entities you're
17 involved with make any loans to Mr. Elm or any
18 entities he's involved in?

19 A. No.

20 Q. Did you ever make any loans to
21 Mr. Elm's family?

22 A. No.

23 Q. Did you ever make any loans to Mr.
24 Bukhshtaber, Mr. Benvenuto or Mr. Walia?

25 A. No.

1 Q. Did you have any other business
2 dealings with Mr. Elm other than this
3 promissory note?

4 A. No.

5 Q. Did you have any other business
6 dealings with any entities Mr. Elm is involved
7 with other than this promissory note?

8 A. No.

9 Q. Did any entities you're involved with
10 have any business dealings with Mr. Elm or
11 Mr. Elm's entities --

12 A. No.

13 Q. -- other than this note?

14 A. No.

15 Q. Did you ever perform any services for
16 Cyber Investments International?

17 A. No.

18 Q. Do you know if this is a real entity
19 or not?

20 A. No.

21 Q. Whose idea was it to memorialize this
22 promissory -- your loan as this promissory
23 note?

24 A. Fred.

25 Q. Did he give any reason for that?

1 A. No.

2 Q. Did he ever ask for you to execute
3 the note?

4 A. No.

5 Q. Did he suggest whether or not the
6 note should be executed?

7 A. I don't remember.

8 Q. He just sent you the note and you put
9 it in your folder?

10 A. I just kept it in my e-mail.

11 MR. CAVALLO: Next exhibit will be
12 Composite Exhibit 9.

13 (Exhibit Number 9 was marked for
14 identification.)

15 BY MR. CAVALLO:

16 Q. You understand that the complaint in
17 this action, the receiver seeks repayment of
18 \$44,000 that was transmitted to you by certain
19 entities owned and controlled by Mr. Elm?

20 A. Yes.

21 Q. Taking a look at the first page, it's
22 a check dated December 2, 2013, made out to
23 you; correct?

24 A. Yes.

25 Q. From an account belonging to Frederic

1 Elmaleh and Amanda Elmaleh.

2 A. Okay.

3 Q. Did you know that Frederic Elmaleh
4 and Amanda Elmaleh were the people you knew as
5 Fred Elm and Amanda Elm?

6 A. Yes.

7 Q. And you received this payment;
8 correct?

9 A. Yes.

10 Q. And if you look at the bottom of the
11 two images, which is the back of the check, it
12 was paid to an account at Bank of America?

13 A. Yes.

14 Q. Is that your bank account?

15 A. Yes.

16 Q. And this is a check in the amount of
17 \$10,000; correct?

18 A. Correct.

19 Q. Did you provide any services to Fred
20 or Amanda Elmaleh in connection with this
21 payment?

22 A. No. It was for repayment of the
23 loan.

24 Q. Referring to the bottom image, again,
25 Mr. Hartmann, you can see this was deposited

1 at an East Sunrise Boulevard branch.

2 I know it's hard to read, but it's
3 the bottom line going horizontally here.

4 A. Okay.

5 Q. Do you know if you deposited this
6 check yourself?

7 A. No.

8 Q. Do you believe you deposited it
9 yourself?

10 A. No.

11 Q. Who would you believe deposited it?

12 A. Mr. Elm.

13 Q. And he would have endorsed your name
14 on the back of the check?

15 MR. BERKELEY: Objection. I don't
16 see an endorsement.

17 THE WITNESS: I don't see an
18 endorsement.

19 BY MR. CAVALLO:

20 Q. Okay.

21 The second check is written out from
22 an account in the name of Elm Tree Investment
23 Advisors, LLC; correct?

24 A. Okay.

25 Q. Dated January 21, 2014?

1 A. Uh-huh.

2 Q. In the amount of \$4,000, written out
3 to you, Tim Hartmann.

4 A. Okay.

5 Q. You received this payment; correct?

6 A. Yes, sir.

7 Q. Did you provide any services to Elm
8 Tree Investment Advisors in connection with
9 this payment?

10 A. Just the loan I provided to them.

11 Q. Did you provide any services to Elm
12 Tree Investment Advisors, LLC?

13 A. No. Sorry.

14 Q. Whose signature is that on the
15 endorsement on this check?

16 A. I don't know.

17 Q. Is it your signature?

18 A. No.

19 Q. Do you know who deposited this check?

20 A. I assume Fred.

21 Q. Why would Fred Elm be depositing your
22 checks?

23 A. The only thing I could think is, at
24 the time he lived north, I think, at that
25 time. So instead of driving to give me the

1 check, he deposited the check on my behalf.

2 Q. Did he know your bank account number?

3 A. Yes.

4 Q. So that was something you freely
5 shared with him?

6 A. Yes. I provided him my bank account
7 number, so he could deposit a check if need
8 be.

9 Q. And you did receive these funds;
10 correct?

11 A. Yes, I would assume so. I don't have
12 access to my account information from 2003
13 (sic).

14 Q. You mean 2014?

15 A. I mean 2013 to 2014, but I would
16 assume, yes.

17 Q. I apologize if I asked you this
18 already. Did you ever contact the bank in an
19 attempt to obtain copies of these or any other
20 payments from Mr. Elm?

21 A. No.

22 Q. We can skip the next page. Let's
23 just go to the next check, which appears to be
24 a starter check dated May 9, 2014, written out
25 to Tim Hartmann, \$10,000.

1 And again, is that your signature on
2 the endorsement?

3 A. No.

4 Q. Did you provide any services in
5 exchange for this \$10,000 to Elm Tree
6 Investment Advisors?

7 A. Just the loan I provided to him.

8 Q. The loan you provided to the Cyber
9 Security, the promissory note?

10 A. To Fred Elm.

11 Q. You see the "for" line on the check?

12 A. Yes.

13 Q. Do you know what that number is?

14 A. Yeah, that's my bank account.

15 Q. And you received these funds?

16 A. Yes.

17 Q. The next page, this is another Elm
18 Tree Investment Advisors, LLC check in the
19 amount of \$5,000 dated June 26, 2014, written
20 out to you; correct?

21 A. Yes.

22 Q. Also endorsed. Is that your
23 signature?

24 A. No.

25 Q. Mr. Elm deposited this check for you

1 as well?

2 A. I would assume so, yes.

3 Q. Did Mr. Elm deposit all of the checks
4 that came from him?

5 A. Yes.

6 Q. Let me restate that. Did Mr. Elm
7 deposit all of the checks that he signed?

8 A. Yes.

9 Q. He never gave you any -- he never
10 actually physically delivered to you copies of
11 checks?

12 A. I don't remember, but this is the
13 only monies that he repaid me for the loan
14 that I provided to him. And I'm just looking
15 now and seeing that -- you know, we went
16 through the first four, five checks. The last
17 one is not my signature either, so --

18 Q. Okay.

19 A. -- he deposited all checks for me.

20 Q. Did you provide any services to Elm
21 Tree Investment Advisors in connection with
22 this \$5,000 payment?

23 A. No services.

24 Q. And you received these funds?

25 A. Yes.

1 Q. The final check on this page, again,
2 Elm Tree Investment Advisors, LLC, \$10,000,
3 Tim Hartmann.

4 Again, that's your account number in
5 the "for" line?

6 A. Yes, sir.

7 Q. It is not your signature in the
8 endorsement?

9 A. No.

10 Q. Mr. Elm deposited this check for you?

11 A. Yes.

12 Q. Did you provide any services to Elm
13 Tree Investment Advisors in connection with
14 your receipt of this \$10,000?

15 A. No, just the private loan I made to
16 Mr. Elm.

17 Q. I think you already said this, but
18 did you receive any other payments from
19 Mr. Elm or any entities associated with
20 Mr. Elm?

21 A. No.

22 Q. At any point in time?

23 A. No.

24 Q. Did any entities you own or have an
25 interest in -- sorry, let me restate that.

1 Did any entities you are connected
2 with in any way ever receive any payments from
3 Mr. Elm?

4 A. No, sir.

5 Q. How about payments from any of
6 Mr. Elm's entities?

7 A. No.

8 Q. Did you ever receive any in-kind
9 payments from Mr. Elm or any of his entities?

10 A. I'm not sure what that means. I'm
11 sorry.

12 Q. For example, an example would be, did
13 Mr. Elm ever pay your rent for you?

14 A. No, never.

15 Q. So nothing in lieu of a physical
16 check?

17 A. No.

18 MR. CAVALLO: Why don't we take a
19 five-minute break.

20 MR. BERKELEY: Sure.

21 (Thereupon, a brief recess was
22 taken.)

23 BY MR. CAVALLO:

24 Q. With respect to the Ohio civil
25 action, what city and county was that filed

1 in?

2 A. I own properties in Akron, Ohio, so
3 I'm pretty sure it was in Summit County.

4 Q. Summit?

5 A. Yeah, S-U-M-M-I-T.

6 Q. What is the status of that lawsuit
7 today?

8 A. It's over. It's settled.

9 Q. Settled?

10 A. Yeah.

11 Q. Okay. So there is no pending or
12 outstanding issues in that case?

13 A. No.

14 Q. It's completely over with?

15 Did you actually pay Mr. Elm \$40,000
16 in connection with the note?

17 A. Yes.

18 Q. In what form did you pay him?

19 A. I don't remember.

20 Q. Was it cash?

21 A. It's either cash or check. I don't
22 remember.

23 Q. And where did you deliver the money
24 to Mr. Elm?

25 A. I don't remember.

1 Q. Was it delivered to Mr. Elm
2 personally?

3 A. Yes.

4 Q. When did you give him the money?

5 A. I don't remember. Around the time of
6 the note.

7 Q. Was it before or after the note?

8 A. I don't remember.

9 Q. And you delivered it to him
10 personally in Florida, in Miami, Florida?

11 A. Yes.

12 MR. CAVALLO: This will be Exhibit
13 Number 10.

14 (Exhibit Number 10 was marked for
15 identification.)

16 BY MR. CAVALLO:

17 Q. This is another series of checks made
18 out to you, Mr. Hartmann. You previously
19 testified that you had not received any other
20 payments from Mr. Elm or any entities
21 associated with Mr. Elm.

22 Do you see the check on the first
23 page here from Fiber Force Communications, LLC
24 account?

25 A. Yes.

1 Q. Dated June 1, 2012.

2 A. Okay.

3 Q. Written out to you in the amount of
4 \$1,000.

5 A. Okay.

6 Q. Signed by Mr. Elm.

7 A. Yes.

8 Q. Can you explain to me what this
9 payment is for?

10 A. I have no -- I don't remember.

11 Q. And if you see the endorsement, it
12 appears that this check was deposited at a
13 Bank of America account; correct?

14 A. Yeah, that's my signature.

15 Q. That is your signature on the check?

16 A. Yes.

17 Q. So you endorsed this check?

18 A. Yes.

19 Q. So you received these funds?

20 A. Yes.

21 Q. Do you have any idea what Fiber Force
22 Communications, LLC is?

23 A. No. I know it has to do with Fred,
24 but I don't remember what this was for.

25 Q. So you did receive additional

1 payments from Mr. Elm?

2 A. This, yes. This check for sure, yes.

3 Q. Go to the next check. Fiber Force
4 Communications, LLC, July 6, 2012 to Tim
5 Hartmann, \$1,500?

6 A. Yes.

7 Q. Also with Mr. Elm's signature?

8 A. Yes.

9 Q. Whose signature is that on the
10 endorsement of this check?

11 A. That's not my signature.

12 Q. Does that appear to be Mr. Elm's
13 signature?

14 A. I don't know.

15 Q. Deposited at a Bank of America?

16 A. Yes.

17 Q. So you received these funds?

18 A. I would assume so, yes.

19 Q. And this check is approximately one
20 month after the first check we looked at;
21 correct?

22 A. Does this have the account numbers?
23 Do you know where it was deposited? Like the
24 other series of checks, you had my account
25 number.

1 Q. I don't know if it's the number below
2 the Bank of America --

3 A. Because it's not -- where it says
4 accounts, that's not my account number.

5 Q. No, that would be the account number
6 for Fiber Force.

7 A. Oh, okay. Got it.

8 Q. Flipping to the third check, July 25,
9 2012, \$3,000, Fiber Force Communications, LLC.

10 A. Okay.

11 Q. Made out to Tim Hartmann.

12 A. Yes.

13 Q. Mr. Elm's signature?

14 A. Yes.

15 Q. Same Bank of America endorsement --
16 appears to be endorsement of Mr. Elm?

17 A. Yes.

18 Q. You have no idea what this check is
19 for either?

20 A. I would think it's probably to repay
21 the loan, but I don't remember what this check
22 was for.

23 Q. Next page. September 11, 2012, Tim
24 Hartmann, Fiber Force Communications, LLC,
25 executed by Mr. Elm; correct?

1 A. Yes.

2 Q. The endorsement is, again, for Bank
3 of America; correct?

4 A. Yes.

5 Q. Does that appear to be Mr. Elm's
6 signature on the endorsement?

7 A. Yes. It's not my signature.

8 Q. Again, do you have any idea what this
9 check was for?

10 A. No.

11 Q. Next check. November 8, 2012, Tim
12 Hartmann, \$2,000, Fiber Force Communications,
13 LLC.

14 Now, there is a number in the "for"
15 line. Is that your account number?

16 A. Yes, that's my account number.

17 Q. And this check is executed by
18 Mr. Elm?

19 A. Yes.

20 Q. And the endorsement is by Mr. Elm,
21 Bank of America account; correct?

22 A. Yes.

23 Q. You received these funds as well?

24 A. Yes.

25 Q. Next check. February 20, 2013, Fiber

1 Force Communications, LLC, Tim Hartmann,
2 \$1,500; correct?

3 A. Yes.

4 Q. Signed by -- well, let me ask you.
5 Does that appear to be Mr. Elm's signature?

6 A. Yes.

7 MR. BERKELEY: Objection.

8 Answer if you can.

9 THE WITNESS: I don't know. It's not
10 my signature.

11 BY MR. CAVALLO:

12 Q. Endorsement -- is that your signature
13 on the endorsement?

14 A. No.

15 Q. Did you receive these funds?

16 A. Yes, I would assume so.

17 Q. Next check. Last check, April 23,
18 2013, Tim Hartmann, \$3,000, Fiber Force
19 Communications, LLC.

20 A. Uh-huh.

21 Q. And is that your signature on the
22 endorsement?

23 A. No.

24 Q. And you received these funds?

25 A. I think so, yes.

1 Q. So despite your previous testimony,
2 you did receive funds prior to the funds
3 referenced in the complaint; correct?

4 A. I didn't remember receiving these
5 funds. It's, you know, a number of years ago.
6 But now that you show me, yeah, I guess.

7 Q. Well, taking a look at these checks,
8 the first one is June 1st, the second one is
9 July 6th, the third one is July 25th, the
10 fourth one is September.

11 I mean, these are almost monthly
12 checks, all totaling over \$1,000; correct?

13 A. Yes.

14 Q. But you didn't remember receiving
15 these checks and these large amounts of money
16 during this time?

17 A. No. I mean, this is six years ago.
18 I don't remember, like -- I have many
19 businesses and a lot of stuff going on. I
20 don't remember all my checks that I received
21 over the last 10 years. I'm sure you can
22 understand that.

23 Q. Did Mr. Elm ever tell you what Fiber
24 Force Communications was?

25 A. No.

1 Q. Did Mr. Elm ever tell you whether
2 Fiber Force Communications had anything to do
3 with Cyber Security?

4 A. No.

5 Q. Did Mr. Elm ever tell you whether
6 your loan was going towards opening any
7 business called Fiber Force Communications,
8 LLC?

9 A. No, sir.

10 Q. Did you provide any services to
11 Mr. Elm or to Fiber Force Communications, LLC
12 in connection with these payments?

13 A. No, just the personal loan to
14 Mr. Elm.

15 Q. Are there any records that exist that
16 would help remind you why you were receiving
17 payments from Fiber Force?

18 A. Other than that, the personal loan
19 that I showed you guys, other than that, no.
20 That's the only monies that I gave Fred.

21 Q. Did you file a tax return in 2012?

22 A. Yes.

23 Q. Would your tax return refresh your
24 recollection as to whether you received any
25 loan repayment in 2012?

1 A. I can't say.

2 Q. Have you filed tax returns every year
3 since 2012?

4 A. Yes, sir.

5 Q. Did you ever receive any K-1s from
6 Mr. Elm in connection with any investments?

7 A. I don't remember.

8 Q. You don't remember, period, whether
9 you've ever received a K-1 from Mr. Elm or any
10 of his entities?

11 A. I don't think so, no. I don't
12 remember if I did or not.

13 MR. CAVALLO: This will be 11.

14 (Exhibit Number 11 was marked for
15 identification.)

16 BY MR. CAVALLO:

17 Q. Looking at the composite exhibit
18 marked as 11, do you see a check on the first
19 page written from the Fiber Force
20 Communications, LLC account?

21 A. Yes.

22 Q. Dated June 17, 2013.

23 A. Uh-huh.

24 Q. Paid to the order of TH Capital
25 Group, LLC.

1 A. Yes.

2 Q. And it's in the amount of \$2,000;

3 correct?

4 A. Yes.

5 Q. What is TH Capital Group, LLC?

6 A. That was actually a company of mine.

7 Q. You own that company?

8 A. Yeah, it was an LLC I set up.

9 Q. What was the business that company
10 was involved in?

11 A. I was renting cars.

12 Q. Renting cars?

13 A. Car rental, yeah.

14 Q. When did you open this company?

15 A. I don't remember.

16 Q. Is the company active today?

17 A. No.

18 Q. Did you have any partners in the
19 company?

20 A. No.

21 Q. Was Mr. Elm involved in the company
22 in any way?

23 A. No.

24 Q. Were any of the other individuals
25 we've talked about today, who are named in the

1 complaint?

2 A. No.

3 Q. Did Mr. Elm ever loan you any money
4 for TH Capital Group, LLC?

5 A. No.

6 Q. Why was Fiber Force Communications,
7 LLC paying TH Capital Group \$2,000 in this
8 check?

9 A. I don't remember.

10 Q. Did TH Capital Group perform any
11 services for Fiber Force?

12 A. No.

13 Q. These are also payments you forgot
14 about when I asked you previously if you had
15 received any other payments?

16 A. Yes, sir.

17 Q. And looking at the endorsement, did
18 you sign the endorsement on this first check?

19 A. No, sir.

20 Q. It's a Bank of America account,
21 appears to be ending in 1362.

22 Is that your account?

23 A. Probably. I don't remember, though.

24 Q. Did TH Capital Group have its own
25 Bank of America account?

1 A. Yes.

2 Q. So Mr. Elm had TH Capital Group,
3 LLC's bank account as well? He had that
4 information in order to deposit this check;
5 correct?

6 A. I would assume so, yeah.

7 Q. The second check, July 10, 2013,
8 again, Fiber Force Communications, LLC paid to
9 the order of TH Capital Group, LLC; correct?

10 A. Yes.

11 Q. Again, for \$3,000. And it appears to
12 be signed by Mr. Elm; correct?

13 A. Correct.

14 MR. BERKELEY: Objection.

15 THE WITNESS: Oh, I'm sorry. I
16 didn't --

17 BY MR. CAVALLO:

18 Q. If you look at the endorsement, TH
19 Capital Group is written there, and an account
20 number ending in 1362; correct?

21 A. Yes.

22 Q. And this is a Bank of America
23 account; correct?

24 A. I don't know.

25 Q. According to the endorsement?

1 A. Yes, okay.

2 Q. Did TH Capital Group, LLC provide any
3 services in exchange to Fiber Force for this
4 payment?

5 A. I don't know.

6 Q. Sitting here today, do you have any
7 idea why Fiber Force Communications would be
8 paying TH Capital Group?

9 A. I don't remember, no.

10 Q. Do you remember if there was any
11 relationship between the two companies in any
12 way?

13 A. No.

14 Q. Did you have any business dealings
15 with Mr. Elm that would have caused him to pay
16 you \$3,000 at this time?

17 A. Unless he rented a car from me, but
18 at this point, I don't remember if he did or
19 not.

20 Q. We will skip the statement page and
21 just go to the next check, which is in the
22 amount of \$5,000. This check is dated
23 October 2, 2013, written from a Fiber Force
24 Communications, LLC account to TH Capital
25 Group; correct?

1 A. Correct.

2 Q. And according to the endorsement,
3 this check was also deposited to Bank of
4 America; correct?

5 A. Yes.

6 Q. Is that your endorsement on the
7 check?

8 A. No.

9 Q. And with respect to this \$5,000
10 payment, did TH Capital Group provide any
11 services in exchange to Fiber Force
12 Communications?

13 A. Not that I know of.

14 Q. Do you have any explanation as you
15 sit here today why Fiber Force would be paying
16 TH Capital Group?

17 A. No.

18 Q. Did you ever discuss TH Capital
19 Group, LLC with Mr. Elm?

20 A. I don't remember.

21 Q. Mr. Elm was aware you owned a company
22 by that name?

23 MR. BERKELEY: Objection.

24 Answer if you can.

25 THE WITNESS: I don't remember.

1 BY MR. CAVALLO:

2 Q. Is there any reason you may have
3 requested Mr. Elm to pay TH Capital Group, LLC
4 instead of you individually?

5 A. I don't remember.

6 Q. Did TH Capital Group ever file any
7 tax returns?

8 A. Yes.

9 Q. What years did it file tax returns?

10 A. I don't remember, early 2010s, early.

11 Q. Did you ever get any 1099s from any
12 of Fred Elm's entities?

13 A. I don't remember.

14 Q. And I apologize if I asked this
15 already: When did TH Capital cease to exist?

16 A. I don't remember.

17 Q. Was it the last year, last five
18 years?

19 A. No, it's been, I would say, around
20 2013/2014 probably. I dissolved it. That's
21 the latest it existed.

22 Q. Okay. What is FT Enterprises, LLC?

23 A. I don't know.

24 Q. Have you ever heard of an entity by
25 that name?

1 A. I don't remember.

2 Q. Do you know an individual named Frank
3 Depinto?

4 A. Yes.

5 Q. Who is Frank Depinto?

6 A. A friend of mine. I lived with him
7 for probably a year.

8 Q. In Naples?

9 A. Yes.

10 (Exhibit Number 12 was marked for
11 identification.)

12 BY MR. CAVALLO:

13 Q. Does this document, Exhibit Number
14 12, refresh your recollection as to what FT
15 Enterprises is?

16 A. Yes.

17 Q. What is FT Enterprises?

18 A. It was a company that Frank and I
19 formed to purchase a tanning salon business.

20 Q. How long was this company operational
21 for?

22 A. Probably only a year. We didn't
23 follow through with the business, so that's
24 why I don't remember.

25 Q. And this company was obviously opened

1 while you were living in Naples?

2 A. Yes.

3 Q. Was there any connection between this
4 entity and Mr. Elm or any of his entities?

5 A. No, not that I recall.

6 Q. Did this entity ever make any loans
7 to Mr. Elm?

8 A. No, I don't think so.

9 Q. Have you ever heard of a company
10 called Champ Investments, LLC?

11 A. Yes.

12 Q. What is Champ Investments, LLC?

13 A. I was involved in it, but I don't
14 remember.

15 Okay, I remember. I sent it up with
16 my friend, Serge Budovsky, but we never did
17 anything with it, from what I recall.

18 Q. What was the purpose of it?

19 A. I think we were going to buy real
20 estate and we never did.

21 Q. Did Mr. Elm have anything to do with
22 this entity?

23 A. Not that I remember, no.

24 Q. You opened this entity while you were
25 living in Miami?

1 A. I don't remember. I don't remember
2 what year it was. If you show me the
3 document, I'll show you.

4 (Exhibit Number 13 was marked for
5 identification.)

6 BY MR. CAVALLO:

7 Q. Let me know if this document marked
8 as Exhibit 13 refreshes your recollection.

9 A. Yes.

10 Q. So you opened this company while you
11 were working in Miami?

12 A. Yes.

13 Q. Who is Mr. Budovsky?

14 A. A friend of mine.

15 Q. Is there any relationship between
16 Mr. Budovsky and Mr. Elm?

17 A. Not that I know of.

18 Q. Is there any relationship between Mr.
19 Budovsky and any of the other defendants named
20 in this action?

21 A. Not that I know of.

22 Q. Did you ever discuss Champ
23 Investments, LLC with Mr. Elm?

24 A. No.

25 Q. Did Champ Investments, LLC ever make

1 any loans to Mr. Elm or any of his entities?

2 A. Not that I know of.

3 Q. What is TH Enterprises?

4 A. A company.

5 (Exhibit Number 14 was marked for
6 identification.)

7 BY MR. CAVALLO:

8 Q. Is that your mailing address listed
9 on Exhibit Number 14?

10 A. Yes.

11 Q. And is that you listed as the
12 registered agent of this entity?

13 A. Yes, sir.

14 Q. And is that you listed as the
15 authorized person for this entity?

16 A. Yes.

17 Q. And who is Mr. Franklin Roye?

18 A. I believe I mentioned him earlier.
19 He is my partner in this company.

20 Q. This is the same TH Enterprises you
21 mentioned earlier --

22 A. Yes, involving real estate.

23 Q. -- which is involving real estate?

24 A. Correct.

25 Q. Okay. And Mr. Elm has nothing to do

1 with that entity?

2 A. No.

3 Q. That entity has never loaned Mr. Elm
4 or any of his entities any funds?

5 A. Not that I know of.

6 Q. Is there any relationship between
7 Mr. Roye and Mr. Elm?

8 A. No.

9 Q. Have they ever met each other?

10 A. I don't remember.

11 Q. Have you ever heard of a company
12 called Epic Luxury, LLC?

13 A. Yes.

14 Q. What is Epic Luxury, LLC?

15 A. That's another business of mine.

16 Q. What was the purpose of Epic Luxury,
17 LLC?

18 A. Rental cars.

19 Q. Which of the two rental car companies
20 came first, Epic Luxury or TH Capital?

21 A. I don't remember.

22 Q. Did Mr. Elm have anything to do with
23 Epic Luxury, LLC?

24 A. No.

25 Q. Did Epic Luxury ever receive any

1 payments from Fiber Force?

2 A. I don't remember.

3 Q. Did you have any partners in Epic
4 Luxury, LLC?

5 A. I don't remember. No, I don't think
6 so.

7 Q. Is Epic Luxury, LLC still an active
8 company?

9 A. No.

10 Q. Is TH Capital, the other rental car
11 company, still an active company?

12 A. No. We discussed that.

13 Q. What is Lifestyle Luxury, MB?

14 A. That was another company that I
15 started.

16 Q. What was the purpose of Lifestyle
17 Luxury, MB?

18 A. Rental car.

19 Q. Okay. Is there a reason you had so
20 many different rental car companies?

21 A. Yeah.

22 Q. Why?

23 A. I was like an independent contractor
24 for rental cars. So every time I purchased a
25 new car, I would, I guess -- I think I

1 registered it in that LLC name for tax
2 purposes.

3 Q. Okay.

4 A. So I purchased a number of cars back
5 around that time.

6 Q. And is Lifestyle Luxury MB still an
7 active company?

8 A. No.

9 Q. Do you have any currently active
10 rental car companies?

11 A. No.

12 Q. Did Mr. Elm have anything to do with
13 Lifestyle Luxury MB?

14 A. No.

15 Q. Did Lifestyle Luxury MB ever loan any
16 money to Mr. Elm or any of his entities?

17 A. No, not that I know of.

18 Q. Have you ever heard of an entity
19 called Goodnight, LLC?

20 A. Yes.

21 Q. What is Goodnight, LLC?

22 A. It's a company I just started with a
23 partner of mine. We do Airbnb.

24 Q. Your partner is Cuong --

25 A. Cuong Huynh.

1 Q. Where does Mr. Huynh live?

2 A. In California.

3 Q. It's a Florida corporation; correct?

4 A. Yeah.

5 Q. And it's an active corporation?

6 A. Yes, sir. I just started it in
7 August.

8 Q. Does Mr. Elm have anything to do with
9 Goodnight, LLC?

10 A. No, sir.

11 Q. Have you ever discussed Goodnight,
12 LLC with Mr. Elm?

13 A. No.

14 Q. Have you ever used Goodnight, LLC to
15 loan any money to Mr. Elm?

16 A. No.

17 Q. Have you ever used this or any of the
18 previous companies we've talked about to make
19 any investments with Mr. Elm?

20 A. No.

21 Q. Have you made any investments with
22 Mr. Elm?

23 A. No.

24 Q. And what is Timothy Hartmann, PA?

25 A. That's also my company.

1 Q. What does that company do?

2 A. Real estate.

3 Q. That's an active company?

4 A. Yes, sir.

5 Q. What is the purpose of the company?

6 A. I was advised by my accountant to set
7 it up for my real estate license, for any real
8 estate deals I do.

9 Q. Who is your accountant?

10 A. Jose Villar.

11 Q. Is there any relationship between
12 Mr. Villar and Mr. Elm?

13 A. No.

14 Q. Did Mr. Elm ever refer you to any
15 lawyers or accountants?

16 A. No.

17 Q. Did Mr. Elm ever refer you to any
18 other professionals of any kind?

19 A. Not that I remember, no.

20 Q. And has Timothy Hartmann, PA ever
21 loaned any money to Fred Elm or any of his
22 entities?

23 A. No.

24 Q. Has Timothy Hartmann, PA ever
25 invested any money with Fred Elm or any of his

1 entities?

2 A. No.

3 Q. Is there any connection between any
4 of these entities that we've just discussed
5 between Mr. Benvenuto, Mr. Bukhshtaber and
6 Mr. Walia?

7 A. No, sir.

8 MR. BERKELEY: Objection.

9 Answer if you can.

10 BY MR. CAVALLO:

11 Q. Is there any connection between any
12 of these entities we have just discussed and
13 any of the other defendants in this action?

14 A. No.

15 MR. BERKELEY: Objection.

16 MR. CAVALLO: All right. Why don't
17 we take a five- to ten-minute break.
18 After that time, I'll be able to tell you
19 whether I think we should break for
20 lunch -- because I have substantially
21 more -- or if we should plow through.

22 (Thereupon, a lunch break was taken
23 from 11:49 a.m. to 12:37 p.m.)

24 BY MR. CAVALLO:

25 Q. I have one or two other companies I

1 wanted to ask you about.

2 A. Sure.

3 Q. Have you ever heard of an entity
4 called Tim Hart Web, LLC?

5 A. Yes.

6 Q. What is that entity?

7 A. It's an LLC. My friends do online
8 marketing campaigns.

9 Q. Okay.

10 A. So they got me involved.

11 Q. Is it an active company?

12 A. I'm not sure if it's active as of
13 right now.

14 Q. Are you an owner of the company?

15 A. I'm an owner of the company, but,
16 technically, they use my company in order to
17 do credit card processing. And then I make a
18 percentage of whatever they sell.

19 Q. Okay. And is Mr. Elm involved in
20 that business in any way?

21 A. No, sir.

22 Q. Did Mr. Elm ever lend any money to
23 that business?

24 A. No, sir.

25 Q. Vice versa?

1 A. No.

2 Q. Who are your partners in that
3 business?

4 A. I'm not sure upon record if there is
5 one or not.

6 Q. Okay, who --

7 A. My friend Omid Lari is the one who
8 got me involved in it.

9 Q. What about Hartmann Web Concepts,
10 LLC?

11 A. It's the same business.

12 Q. Same business?

13 A. Well, I mean, different company name,
14 but same online marketing campaign.

15 Q. Are one of the two inactive?

16 A. Honestly, they have a team that
17 handles that LLC. One of them might be
18 inactive because I know one of the campaigns
19 ended, but I'm not sure which company is
20 which.

21 Q. I should have asked this before.
22 When you say "web campaign," what exactly do
23 you --

24 A. They sell like -- I don't know if you
25 ever go on the Internet and you see a free

1 30-day supply, you know, sign up now, and they
2 ship out a supplement.

3 Q. Okay.

4 A. Supplements.

5 Q. Like vitamins?

6 A. Yeah. One was, I think, Garcinia --
7 My Garcinia was one of the campaigns.

8 Q. Okay.

9 A. It's not -- I'm not really that
10 involved in it, but, yeah, like a vitamin type
11 of thing.

12 Q. Okay. How many rental properties do
13 you currently own?

14 A. Nine.

15 Q. All throughout the country?

16 A. No; focused in the Dallas area and
17 Akron, Ohio.

18 Q. Any particular reason those are the
19 two focuses?

20 A. Yeah. My business partner, Derrick
21 Sloboda, was living in Dallas back in the
22 mid-2000s and we started buying and flipping
23 homes. Then he moved to Akron, and we
24 attempted to do the same thing there.

25 Q. Okay. What types of properties are

1 they?

2 A. Residential.

3 Q. Do your real estate companies file
4 tax returns?

5 A. The TH Enterprises, LLC and THDS.
6 Anything I'm involved in, I file a tax return,
7 yes.

8 Q. Okay. Does your real estate
9 partnership make a profit?

10 A. Which? I mean, I have a few.

11 Q. Well, why don't you list them for me
12 again.

13 A. THDS, Investments, LLC and TH
14 Enterprises, LLC.

15 Q. And then there is the Tim Hartmann,
16 PA?

17 A. Yeah, but that's -- I thought we were
18 just talking about rental properties right
19 now. The PA is for my license, so I'm acting
20 as an agent for either a buyer or seller or
21 renter or a leaser.

22 Q. Got it.

23 A. And the other two companies are
24 personal holdings.

25 Q. Do they make a profit?

1 A. The rental properties, probably not,
2 no. They are probably breaking even or losing
3 money every year after making repairs and
4 fixing up.

5 Q. How much did you make in real estate
6 commissions in 2017?

7 A. I don't remember.

8 Q. Did you introduce Mr. Walia to Fred
9 Elm?

10 A. No.

11 Q. How did Mr. Walia and Mr. Elm meet?

12 MR. BERKELEY: Objection.

13 Answer if you can.

14 THE WITNESS: I don't know.

15 BY MR. CAVALLO:

16 Q. Do you think Fred Elm was successful
17 in the businesses he was running?

18 MR. BERKELEY: Objection.

19 Answer if you can.

20 THE WITNESS: I don't know.

21 BY MR. CAVALLO:

22 Q. When you were out with him or saw him
23 out, was he paying for things in cash?

24 A. I don't remember.

25 Q. Do you think you would remember if

1 you had seen him paying for things in cash?

2 A. I didn't pay attention when we paid
3 the bill.

4 Q. You previously testified that you
5 weren't sure how you had paid Mr. Elm the
6 40,000 for the promissory note, whether it was
7 check or cash.

8 A. Right.

9 Q. That's correct?

10 A. Yeah, I don't remember.

11 Q. Wouldn't you have remembered if you
12 handed Mr. Elm \$40,000 in cash?

13 A. I don't remember.

14 Q. Were cash transactions that large
15 commonplace for you at the time?

16 A. At the time, my business with the
17 rental cars, I did get paid in cash at times,
18 so potentially. And also in nightlife, tips
19 and whatnot.

20 Q. With respect to those rental car
21 companies, I know there were three, and I
22 don't know the exact order.

23 A. That's fine.

24 Q. TH Capital, was it just one car for
25 TH Capital?

1 A. I don't remember.

2 Q. Do you remember what kind of car it
3 was?

4 A. I mean, I can name the cars I had.

5 Q. Okay.

6 A. 2010 Maserati Granturismo, Cadillac
7 Escalade, another Maserati Granturismo, a
8 Bentley and -- that's the main cars I had.

9 Q. Did the companies lease or buy those?

10 A. I didn't lease. Oh, I guess it was
11 different. Financed mostly.

12 Q. And what happened to the vehicles
13 when the company shut down?

14 A. It was more that I sold the vehicles
15 than shut the company down, because like I
16 said, I was using it for business purposes to,
17 you know, pay expenses and whatnot after that.

18 Q. Do you know whether Mr. Elm ever used
19 any of those vehicles?

20 A. Yeah.

21 Q. Did he?

22 A. Yeah.

23 Q. When?

24 A. I don't remember how many times or
25 when, but, you know, I know for sure he --

1 Q. Did you charge him?

2 A. Yeah, I'm sure sometimes I did.

3 Q. When did he -- let me restate that.

4 What's the most recent time you can
5 remember him using one of those cars?

6 A. Well, I mean, the last time I owned
7 those cars was probably in 2012 or 2013, so it
8 was around the times that I owned the cars.
9 After that, I didn't own -- you know, I didn't
10 have cars that I was renting anymore, so there
11 was no need to --

12 Q. Do you own a Bentley now?

13 A. I don't even own a car right now.
14 That car was only -- like, I bought it for
15 business basically.

16 MS. ALONSO: I'm sorry, off the
17 record.

18 (A discussion was held off the
19 record.)

20 BY MR. CAVALLO:

21 Q. So you opened and closed a lot of
22 businesses?

23 A. Yes.

24 Q. How were you able to fund all these
25 businesses?

1 A. I mean, I've -- I was working my
2 whole life, so -- I'm not sure I really
3 understand that question.

4 Q. Did you receive an inheritance or
5 anything of that nature?

6 A. No.

7 Q. You mentioned being out at clubs with
8 Benvenuto, Walia and Bukhshtaber and Mr. Elm.

9 Give me an example of a club or two
10 that you would all be at together.

11 A. Back when I first met him, it was
12 probably Suite and Cameo and Mansion, were the
13 hotspots at the time.

14 Q. What was the first one, sorry?

15 A. Suite, Mansion, Cameo.

16 Q. Okay. If you want to refer to it,
17 you can, but the loan is dated June 21, 2010.

18 A. Okay.

19 Q. And there is a payment from Fiber
20 Force in June 2012.

21 A. Okay.

22 Q. Was there an agreement between you
23 and Mr. Elm that you wouldn't be repaid on
24 this promissory note for at least two years?

25 A. I don't remember any agreement to

1 what the time line was to be repaid. I just,
2 obviously, wanted to get my money back at some
3 point.

4 Q. And I think you previously testified
5 that you did inquire of him occasionally as to
6 when you would be repaid?

7 A. Yeah, for sure. I mean, I wanted my
8 money back at some point.

9 Q. I know you previously testified that
10 you couldn't look at your phone to look at
11 calls because you thought that that would --
12 the call history would disappear periodically?

13 A. Not disappear. I mean, I probably
14 can only see back a few days because every
15 time somebody calls, the log disappears.

16 Q. That's what I meant, for the record.

17 A. Sorry.

18 Q. How about text messages? Could you
19 review text messages on your phone?

20 A. Just since I got my new phone.

21 Q. That is for approximately a year, I
22 think you previously testified?

23 A. Yeah, I would say around a year.

24 MR. CAVALLO: Next document, 15.

25 (Exhibit Number 15 was marked for

1 identification.)

2 BY MR. CAVALLO:

3 Q. Mr. Hartmann, this is a check written
4 from your account.

5 A. Uh-huh.

6 Q. And this is written out to Mojilife?

7 A. Right.

8 Q. Dated July 1, 2016?

9 A. Yes.

10 Q. \$15,000; correct?

11 A. Yes.

12 Q. In the memo line, it says "this is a
13 loan."

14 What is Mojilife?

15 A. It was like a Facebook-style company.

16 Q. Who introduced you to Mojilife?

17 A. Through Fred.

18 Q. So when I previously asked you if you
19 had ever loaned any other money to Fred or any
20 entities he was involved in, and you said
21 "no," that was inaccurate; correct?

22 A. Yeah.

23 Q. And what was the purpose of this
24 loan?

25 A. To loan money.

1 Q. What did Mr. Elm tell you he was
2 going to use the money for?

3 A. He asked me if I could lend money
4 again to him, to this company.

5 Q. Did he say it was for the company?

6 A. He was going to give me ownership in
7 the company.

8 Q. Did he give you any other materials
9 related to Mojilife?

10 A. Yeah, an investor doc, or something
11 like that.

12 Q. Did he give you that document?

13 A. I don't remember if he e-mailed it or
14 it was on a hard copy.

15 Q. Did Mr. Elm e-mail you about
16 Mojilife?

17 A. If he sent this investor doc, yeah,
18 but I'm not sure if it was a hard copy or not.

19 Q. In as much detail as you can, please
20 tell me how he described Mojilife to you.

21 A. It was supposed to be like a
22 Facebook, but has online dating and business.

23 Q. Is there any note or other written
24 instrument that relates to this loan check?

25 A. I don't remember.

1 Q. What's your understanding of who runs
2 Mojilife?

3 A. I know Fred is part of it, and I know
4 at the time they had somebody that was
5 supposed to be, you know, good with the
6 Internet or good with setting up this kind of
7 Web site.

8 Q. Did you ever -- well, let me restate
9 that.

10 Who did you discuss this loan with?

11 A. With Fred.

12 Q. Anyone else?

13 A. There was another guy involved with
14 the company that was running it. I don't
15 remember the guy's name.

16 Q. Does the name Craig Henderson ring a
17 bell?

18 A. I don't remember the guy's name.
19 Possibly. I don't remember.

20 Q. Do you know when Mojilife first
21 started?

22 A. No.

23 Q. Do you know how many employees it
24 has?

25 A. No.

1 Q. Have you ever heard of a company
2 called My Echo?

3 A. No.

4 Q. You never loaned any money to My
5 Echo?

6 A. No.

7 Q. Have you received any payments from
8 Mojilife?

9 A. No.

10 (Exhibit Number 16 was marked for
11 identification.)

12 BY MR. CAVALLO:

13 Q. Do you see that this is a check
14 written from a Mojilife account to you for
15 \$900 dated July 11, 2016; correct?

16 A. Yes.

17 Q. And in the memo line, it says
18 "deposit, laptop."

19 A. Yeah.

20 Q. Can you explain to me the
21 circumstances related to your receipt of this
22 check?

23 A. Yeah. I purchased three laptops
24 earlier that year to bring down to Argentina
25 to sell when I went down there on a trip, and

1 I couldn't sell them down there. So then I
2 brought them back and sold them to Fred, to
3 Mojilife.

4 Q. Where had you originally gotten the
5 three laptops from?

6 A. Best Buy.

7 Q. And I'm sorry to restate your
8 testimony, but the plan was for you to sell
9 those three in Argentina, and when you were
10 unable to, Fred purchased them from you?

11 A. Yeah. I asked Fred if he wanted to
12 buy them because I couldn't sell them, and I
13 knew he was --

14 Q. So you approached Fred when you
15 returned and offered to sell them?

16 A. Yes.

17 Q. Do you know why he needed the
18 laptops?

19 A. At the time, I knew about the
20 Mojilife, so I knew they were doing something
21 with computers, and I figured maybe they
22 needed some laptops.

23 Q. Do you know what kind of laptops they
24 were?

25 A. Yeah, MacBook.

1 Q. And this is just a deposit.

2 Is there some other payment that was
3 made to you with respect to the laptops?

4 A. I don't remember. He might have
5 wrote out another check shortly after that,
6 but I don't remember if that was everything.

7 (Exhibit Number 17 was marked for
8 identification.)

9 BY MR. CAVALLO:

10 Q. This is a check dated November 1,
11 2016 in the amount of \$5,000, written from
12 Mojilife to Tim Hartmann; correct?

13 A. Uh-huh.

14 Q. Do you know what this check is
15 payment for?

16 A. Either for the laptops or from this
17 original loan.

18 Q. So you do believe that you have been
19 paid back in connection with that loan?

20 A. No. For this --

21 Q. The 15,000 loan?

22 A. Yeah, I don't remember if this was
23 for the laptops. The laptops were like \$2,000
24 each. They were MacBook Pros, so --

25 Q. Was there an agreement with Mr. Elm

1 that you would be paid back your Mojilife loan
2 within a certain amount of time?

3 A. No, I don't remember.

4 Q. You had said that your Mojilife loan
5 was for an ownership interest in Mojilife;
6 correct?

7 A. Yeah, he provided an ownership
8 interest in it.

9 Q. So did you receive an interest?

10 A. It says that I have shares in this
11 company.

12 Q. Do you know how many shares?

13 A. I don't remember.

14 Q. Is there a document -- well, let me
15 restate that.

16 How do you know you have shares?

17 A. He told me at the time.

18 Q. Is there anything in writing that
19 indicates you have shares?

20 A. I don't remember. It's either, like
21 I mentioned before, either a hard copy -- the
22 investor doc was either in an e-mail or a hard
23 copy.

24 Q. Okay. But you do have documents
25 relating to Mojilife in your possession?

1 A. I have something, but I just don't
2 remember what it says inside the documents.
3 It's not something I looked at recently.

4 Q. Why did you want an ownership
5 interest in this company?

6 A. It sounded like a good idea.

7 Q. Do you know the current status of the
8 company?

9 A. No.

10 Q. Do you know whether Mojilife is an
11 active product, for lack of a better term?

12 A. No, I don't know what's going on with
13 it.

14 Q. Do you know whether Mojilife is
15 available to download on your iPhone?

16 A. It was at the beginning, but I don't
17 know what's going on with it now.

18 Q. Do you know who is running operations
19 at the moment for the company?

20 A. No.

21 Q. Do you know whether there was a
22 falling out between anyone at the company?

23 A. No.

24 Q. Have you contacted Mr. Elm in the
25 last year related to Mojilife?

1 A. I don't remember.

2 Q. Is there any particular reason why
3 you would not be interested in how this
4 company is doing, that you have an ownership
5 interest in?

6 A. Yeah, because once I received the
7 receiver notification, then I just -- I was
8 kind of shocked that this was who, you know,
9 Fred was. I couldn't believe that this had
10 happened. So I didn't really want anything to
11 do with him anymore.

12 Q. Is there any particular reason you
13 didn't tell me about this loan earlier today?

14 A. Honestly, I just didn't think about
15 it.

16 MR. CAVALLO: Okay, next exhibit.

17 (Exhibit Number 18 was marked for
18 identification.)

19 BY MR. CAVALLO:

20 Q. Now, this is a check from Mojilife
21 written to you, Tim Hartmann, \$1,040, August
22 19, 2016, for laptop purchase.

23 Does this refresh your recollection
24 as to how much you received for the laptops?

25 A. Yeah.

1 Q. Is this the remaining amount that was
2 owed to you for the laptops?

3 A. No.

4 Q. Previously, we saw a \$900 check that
5 was a deposit, and now we are seeing a check
6 for \$1,040.

7 A. Yeah.

8 Q. The total amount is a little less
9 than 2,000; correct?

10 A. Correct.

11 Q. How much did you receive for the
12 laptops in total?

13 A. Like I said, this is all I remember,
14 the checks you are showing me.

15 Q. Are there any other checks that you
16 have not seen here today?

17 A. I don't remember.

18 Q. Has Mojilife given you any equipment
19 or hardware to use?

20 A. No.

21 Q. Do you have any kind of office space
22 at Mojilife?

23 A. No.

24 Q. Were you ever invited to the Mojilife
25 office?

1 A. No, never.

2 Q. Were you ever an active member on the
3 Mojilife app?

4 A. No.

5 Q. Did you ever sign up for Mojilife?

6 A. Yes.

7 Q. You did?

8 A. Yes.

9 Q. Why did you sign up?

10 A. To see what was involved with the
11 app.

12 Q. Did you use the app at all?

13 A. No.

14 Q. Did you make any connections on the
15 app?

16 A. No.

17 Q. Do you know whether Mr. Benvenuto was
18 involved with Mojilife?

19 A. I'm not sure.

20 Q. Have you ever discussed Mojilife with
21 Mr. Benvenuto?

22 A. No.

23 Q. What about Mr. Walia?

24 A. No.

25 Q. Never discussed it with him?

1 A. Never.

2 Q. And don't know if he is involved?

3 A. No.

4 Q. What about Mr. Bukhshtaber?

5 A. Never.

6 Q. Never discussed it and don't know if
7 he is involved?

8 A. No.

9 Q. Have you ever heard of an entity
10 called Etopia?

11 A. No.

12 Q. Mr. Elm has never solicited you to
13 invest in any entity called Etopia or anything
14 similar to that?

15 A. No, sir.

16 Q. Did you invest in Mojilife after you
17 were served with the complaint in this action?

18 A. I don't remember.

19 Q. Do you still have the receipts from
20 your purchase of the laptops at Best Buy?

21 A. No.

22 Q. Have you contacted Mr. Elm to ask for
23 your money back for your investment in
24 Mojilife?

25 A. No.

1 Q. Why not?

2 A. I stopped talking to him. I just
3 figured it's a scam.

4 Q. Do you know who Phillip Elmaleh is?

5 A. No.

6 Q. Has Mr. Elm ever mentioned
7 Phillip Elmaleh?

8 A. No.

9 Q. How did you pay for the laptops you
10 purchased at Best Buy?

11 A. I think it was with my credit card.

12 Q. If you needed to, could you get a
13 copy of that credit card statement?

14 A. I imagine so, yeah.

15 Q. And if you needed to, you could go to
16 your bank and get copies of these checks or
17 any other checks related to Mr. Elm; correct?

18 A. I'm not sure how the bank works, but
19 I mean, yeah, I guess I could.

20 MR. CAVALLO: Why don't we take five
21 minutes. I think we are probably pretty
22 close to being finished.

23 MR. BERKELEY: Okay. I'm going to
24 have some follow-up.

25 (Thereupon, a brief recess was

1 taken.)

2 BY MR. CAVALLO:

3 Q. Have you ever heard of a man named
4 Michael Coraggio?

5 A. No.

6 Q. Are you presently married?

7 A. No; single.

8 Q. Have you been married in the past?

9 A. Never.

10 Q. Did you receive demand letters from
11 the receiver's office or our office prior to
12 the filing of the complaint?

13 A. I don't remember.

14 Q. Do you remember receiving a letter
15 demanding the repayment of \$44,000?

16 A. Yeah.

17 Q. Is there any particular reason you
18 didn't repay the \$44,000 prior to the filing
19 of the complaint?

20 A. Yeah, because I know I loaned the
21 money to Fred fair and square, and that was
22 the money I received back, plus interest. I
23 don't remember all the --

24 Q. And isn't it true -- give me one
25 second -- that between the Fiber Force checks

1 we looked at today, which are an exhibit --

2 A. Correct.

3 Q. -- and the checks named in the
4 complaint, you've received a total of \$70,000;
5 correct?

6 A. I mean, I didn't do the math, but
7 I'll trust your word on that.

8 MR. CAVALLO: Okay. That's all I
9 have.

10 CROSS-EXAMINATION

11 BY MR. BERKELEY:

12 Q. I'm just going to ask some follow-up
13 questions. I'll take it one step at a time.
14 The Document Number 1, Exhibit 1, was the
15 request for production of documents to you.

16 You were asked several questions by
17 Mr. Cavallo about those requests and what you
18 produced. And your responses were that you
19 produced what you thought was relevant.

20 Isn't it true, in fact, you produced
21 all the documents in your possession that you
22 believed were responsive to the request for
23 production?

24 A. Yes.

25 Q. Let's start with request number 1,

1 which is all documents that support your
2 affirmative defense in your answer.

3 Let me scroll to that.

4 So the first affirmative defense is
5 that: Plaintiff's claims fail to state a
6 cause of action upon which relief can be
7 granted.

8 Is that an affirmative defense that
9 you created or you believe your attorney
10 created?

11 Did you come up with that affirmative
12 defense?

13 A. No.

14 Q. Do you think your attorney may have?

15 A. Yes.

16 Q. Do you have any documents in support
17 of that affirmative defense?

18 A. No, only the document we produced.

19 Q. Request number 2 is: Any documents
20 in support of your second affirmative defense,
21 which is, to the extent plaintiff has alleged
22 fraud on behalf of Hartmann, Hartmann denies
23 any bad faith or bad intent. As such,
24 plaintiff is unable to establish its bad-faith
25 element necessary for any fraud, and then it

1 lists some case law.

2 Do you have a copy of the complaint?

3 I just have mine electronically, and sort of
4 wanted to -- of the affirmative defenses; I'm
5 sorry.

6 A. It's number 2?

7 MR. BERKELEY: It's not going to be
8 there.

9 THE WITNESS: Here.

10 MR. CAVALLO: A copy of the complaint
11 or a copy of --

12 MR. BERKELEY: No, of my answer and
13 affirmative defenses.

14 MR. CAVALLO: I have it.

15 MR. BERKELEY: Thank you; I
16 appreciate it. I saw how much paper it
17 was and I tried to save a tree.

18 THE WITNESS: I think it's here.

19 MR. BERKELEY: No, that's the request
20 relating to our answer and affirmative
21 defenses -- or your answer and affirmative
22 defenses.

23 BY MR. BERKELEY:

24 Q. It's asking about the second
25 affirmative defense, which is number 2 right

1 there.

2 Can you read that to yourself?

3 A. Read it out loud?

4 Q. No, to yourself.

5 A. Okay.

6 Q. Is that affirmative defense something
7 that you came up with?

8 A. No.

9 Q. Okay. Do you understand that
10 affirmative defense?

11 A. Yes.

12 Q. Did you rely upon your attorney for
13 that affirmative defense?

14 A. Yes.

15 Q. Now, that affirmative defense, in
16 layman terms, is basically stating that the
17 plaintiff has alleged bad faith and fraud
18 against you.

19 So you're basically stating that they
20 can't prove those elements of bad faith or
21 fraud, and please produce documents that you
22 have in support of that affirmative defense.

23 Did you produce a promissory note?

24 A. Yes, sir.

25 Q. So that's the basis of where this

1 money that's changed hands between you and
2 Fred comes from; correct?

3 MR. CAVALLO: Object to form.

4 BY MR. BERKELEY:

5 Q. You can answer.

6 A. Yes, of course.

7 Q. So did you have any bad faith or
8 intent when you loaned the money?

9 A. No. I loaned Fred the money with the
10 assumption he would repay me the money.

11 Q. So Document Exhibit Number 3 for this
12 deposition is what was produced to establish
13 your lack of bad faith; correct?

14 A. Correct.

15 Q. Okay. Let's go next to affirmative
16 defense number 3.

17 Read that to yourself and I'll read
18 it to myself.

19 A. Okay.

20 Q. So affirmative defense number 3 is
21 your denial of any involvement in any
22 investment to Elm Tree and its related
23 entities and that you had no knowledge and did
24 not participate in any of those investments
25 involving those entities; correct?

1 A. Correct. Of course not.

2 Q. And is the promissory note the basis
3 of the exchange of funds between you and Elm?

4 A. Yes, sir.

5 Q. Okay. So is that what you produced
6 in support of affirmative defense number 3?

7 A. Of course.

8 Q. Good. Let's go to number 4.

9 Read it to yourself.

10 Have you read number 4?

11 A. Yes.

12 Q. So number 4 is an affirmative defense
13 that Hartmann denies that it had any knowledge
14 of where the repayment of the loan was coming
15 from.

16 So here, opposing counsel has
17 produced checks. Were those checks deposited
18 by you?

19 A. No.

20 Q. Were those checks deposited by Fred
21 Elm?

22 A. I would assume so, yes.

23 Q. Did you ever see those checks before
24 they were deposited?

25 A. No.

1 Q. So you have no idea where the
2 repayment was coming from; correct?

3 A. Yes.

4 Q. Do you have any documents that prove
5 that in your possession?

6 A. No.

7 Q. Number 5, read the fifth affirmative
8 defense to yourself.

9 A. Okay.

10 Q. Okay. That is that Hartmann received
11 payment from Elm for a benefit conferred upon
12 Elm by Hartmann, and as such, unjust
13 enrichment cannot exist.

14 So the benefit that we're talking
15 about is the money that you loaned Fred Elm;
16 correct?

17 MR. CAVALLO: Object to form.

18 THE WITNESS: Yes.

19 BY MR. BERKELEY:

20 Q. And that's the benefit that Fred Elm
21 received?

22 A. Yes.

23 Q. And, in return, you got this
24 promissory note that you produced?

25 MR. CAVALLO: Object to form.

1 THE WITNESS: Yes.

2 MR. CAVALLO: Just try to give me a
3 second between responding and the question
4 to object.

5 BY MR. BERKELEY:

6 Q. Let's go to number 6. Read that to
7 yourself.

8 A. Okay.

9 Q. So that affirmative defense is that
10 any and all monies received by Hartmann were
11 received in good faith and were monies due and
12 owed to Hartmann by Elm individually.

13 Is that your testimony today?

14 A. Yes.

15 Q. Okay. Now, the document that you
16 produced in support of that is Exhibit 3, the
17 promissory note; correct?

18 A. Correct.

19 Q. Okay. So that is what you produced
20 in support of this affirmative defense;
21 correct?

22 A. Yes.

23 Q. All right, let's move on.

24 Number 7 in the request for
25 production. If you could, go back and look at

1 that.

2 That asks for any and all documents
3 in evidence that relate to any agreements with
4 Fred Elm or any receivership entity.

5 In response to that, the promissory
6 note was produced; correct?

7 A. Correct.

8 Q. Okay. Is that what you had in your
9 possession at the time you responded?

10 A. Yes.

11 Q. Yes?

12 A. Yes.

13 Q. Let's go to number 8. Read that to
14 yourself.

15 Number 8 is requesting evidence that
16 refers or relates to any investments with the
17 receivership entities, including but not
18 limited to all correspondence, communications,
19 promissory notes, subscription agreements.
20 And you can see the rest.

21 Did you produce what you had in your
22 possession at the time?

23 A. Yes.

24 Q. That was the promissory note;
25 correct?

1 A. Yes.

2 Q. Did you have copies of your bank
3 statements?

4 A. No.

5 Q. Could you access them online?

6 A. No.

7 Q. Number 9, read that to yourself.

8 By the way, why couldn't you access
9 them online; because they were so old, or why?

10 A. Yes, it's a number of years. Usually
11 you can only go back one year online.

12 Q. Okay. Look at number 9.

13 Number 9, for the record, is asking
14 for all documents in evidence that refers or
15 relates to any money sent or transferred to
16 the receivership entity.

17 The receivership entity is Elm Tree
18 Investment Advisors, LLC, Elm Tree Investment
19 Fund, LP and Elm Tree 'e'conomy Fund, LP, and
20 Elm Tree Motion Opportunity.

21 Did you ever give any documents to --
22 did you ever give any funds to those
23 receivership entities?

24 A. No, sir.

25 Q. So you don't have any documents to

1 produce because there are none; correct?

2 A. Correct.

3 Q. Number 10, let's look at that one.

4 So number 10 is asking for any
5 documents or evidence that relate to any
6 investment with Fred Elm, Amanda Elm, and then
7 it says, including correspondence,
8 communications, blah, blah, blah.

9 At the time that you prepared this
10 answer, was the promissory note the documents
11 that you had in your possession that related
12 to your investment with Fred Elm?

13 A. Yes.

14 Q. And that was a personal loan to Fred
15 Elm?

16 A. Correct.

17 Q. And this was delivered in an e-mail
18 that my office must have inadvertently left
19 out, but showed to opposing counsel today;
20 correct?

21 A. Correct.

22 Q. So that's what you have related to
23 this matter; correct?

24 A. Correct.

25 Q. Number 11. Number 11 is pretty

1 similar to number 10. It's asking for any
2 documents that relate to any monies
3 transferred or sent to Fred Elm, and then it
4 lists the various types of documents that it
5 could be.

6 What documents did you have to
7 evidence the money sent to Fred Elm?

8 A. The promissory note.

9 Q. Okay. So that's what you produced;
10 correct?

11 A. Correct.

12 Q. Did you have any bank statements?

13 A. No.

14 Q. Did you have any canceled checks in
15 your possession?

16 A. No.

17 Q. Number 12 is all documents that
18 evidence, relate -- refer or relate to monies
19 received from Fred Elm, Amanda Elm or the
20 receivership entity.

21 We obviously saw several checks here
22 today. Did you ever receive those checks
23 personally?

24 A. No.

25 Q. Those checks were deposited by Fred

1 Elm into your account?

2 A. Yes.

3 Q. And by the way, those are checks that
4 opposing counsel already had in his
5 possession; correct?

6 A. Yes.

7 Q. And brought with him here today;
8 correct?

9 A. Correct.

10 Q. Number 13 is like a catchall, all
11 documents and evidence that refer or relate to
12 your relationship with the parties.

13 What did you produce in response to
14 that?

15 A. The promissory note.

16 Q. Okay. Anything else in your
17 possession?

18 A. No.

19 Q. Number 14, all documents and evidence
20 that relate to any communications with Fred
21 Elm, Ahmad -- I don't know how to pronounce
22 that last name -- or the receivership entity.

23 The promissory note we know was
24 delivered in an e-mail, which I showed to
25 opposing counsel, and of course, will provide

1 to him via supplement.

2 Is there any other evidence that you
3 have that refer or relate to communications
4 with Fred Elm, that individual Ahmad, or the
5 receivership entity?

6 A. No.

7 MR. CAVALLO: I object to the form of
8 the question. It misstates the request.

9 MR. BERKELEY: Well, the request
10 speaks for itself.

11 BY MR. BERKELEY:

12 Q. You read number 14 to yourself;
13 right, Tim?

14 A. Okay.

15 Q. No. Read it to yourself.

16 A. Okay.

17 Q. Other than what's been produced
18 today, do you have any other documents in your
19 possession?

20 A. No.

21 Q. Now, when you went to go look at your
22 e-mails to find this promissory note, were
23 there any other communications between
24 yourself and Fred Elm concerning this
25 investment?

1 A. No, sir.

2 MR. CAVALLO: I object to the form of
3 the question. Misstates the request.

4 MR. BERKELEY: Okay. Good enough.

5 BY MR. BERKELEY:

6 Q. Number 15, all documents that
7 evidence, refer or relate to the transfers and
8 the amended complaint.

9 What documents did you have that
10 refer to the money that transferred between
11 yourself and Fred Elm?

12 A. The promissory note.

13 Q. Is that what you produced?

14 A. Yes, sir.

15 Q. Any other documents?

16 A. No, sir.

17 Q. Okay. 16, all documents that
18 evidence, refer or relate to any
19 communications relating to Fred Elm or the
20 receivership entity, including but not limited
21 to all correspondence.

22 Other than the e-mail and the
23 promissory note, was there anything else that
24 related to the receivership entity or Fred Elm
25 and/or this transaction?

1 A. No.

2 Q. Number 17 is all documents identified
3 in your responses to interrogatories. And, of
4 course, we will look at that.

5 Now, we know that that e-mail for
6 this particular loan was back the day after
7 the date of the promissory note. The date of
8 the promissory note is June 21, 2010, and you
9 received it signed back June 22, 2010 from
10 Fred; correct?

11 MR. CAVALLO: Object to form.

12 THE WITNESS: Yes.

13 BY MR. BERKELEY:

14 Q. Now, in regard to the interrogatory
15 responses, are those responses that you
16 provided accurate at the time you provided
17 them?

18 A. Yes.

19 Q. Okay. Nothing has changed since
20 then?

21 A. No.

22 Q. Are there any documents that support
23 the interrogatory responses other than the
24 promissory note?

25 A. No.

1 Q. In regard to text messages from back
2 in 2010, are you using the same cell phone
3 that you had eight years ago?

4 A. No.

5 Q. Does the new cell phone you have
6 retain text messages going back to 2010?

7 A. No.

8 Q. Is this particular loan and the
9 Mojilife loan the only transactions that
10 you've done with Fred Elm?

11 A. Yes.

12 Q. Now, this particular loan that we are
13 here about today and the promissory note, that
14 was a personal loan to Fred Elm; correct?

15 A. Yes.

16 Q. And what was your belief that the
17 loan was being used for?

18 A. Fred's personal use, to use for real
19 estate.

20 Q. So when you were paid back, you were
21 paid back monies towards that loan; correct?

22 A. Yes.

23 Q. Were these loans paid back in
24 furtherance of this subsequent Ponzi scheme
25 that you learned of, that Fred Elm was

1 involved in?

2 MR. CAVALLO: Object to form.

3 THE WITNESS: I'm sorry; can you ask
4 the question again?

5 BY MR. BERKELEY:

6 Q. Did you have any idea Fred Elm was
7 running a Ponzi scheme?

8 A. No.

9 Q. Did you have any belief or intention
10 to believe that these payments were being made
11 in furtherance of a Ponzi scheme?

12 MR. CAVALLO: Object to form.

13 THE WITNESS: No, of course not.

14 BY MR. BERKELEY:

15 Q. You can answer. Go ahead.

16 A. Of course not.

17 Q. Do you have any knowledge that any of
18 these transfers from Fred were fraudulent?

19 A. No.

20 Q. Did you believe they were fraudulent?

21 A. No.

22 Q. Did you believe you were being paid
23 back your loan?

24 A. Yes, of course.

25 Q. Now, the promissory note makes

1 reference to Cyber Security.

2 Is it your understanding that this
3 was a personal loan to Fred Elm that was
4 secured by Cyber Security?

5 A. Yes.

6 Q. Okay. So your loan was basically
7 secured by this investment that was
8 represented to you by Fred Elm and Cyber
9 Security; correct?

10 MR. CAVALLO: Object to form.

11 BY MR. BERKELEY:

12 Q. You can answer.

13 A. Yes, I wasn't sure. I made a
14 personal loan to Fred. I didn't understand
15 why he put the company name on there, but I
16 didn't ask.

17 Q. At the time you made this loan -- how
18 old were you back in 2010?

19 A. I was born in '76, so --

20 Q. So going back in eight years -- how
21 old are you now?

22 A. -- 34, 33.

23 Q. So you were somewhere around 20
24 whatever at the time, early 20s. We will do
25 the math later.

1 So at the end of the day, the bottom
2 line is, when you received this loan, did you
3 review it with an attorney?

4 A. No.

5 Q. You were you a savvy businessperson
6 at that time?

7 A. Not at all.

8 Q. How old are you right now?

9 A. I'm 41. I was 34.

10 Q. Did you basically trust what Fred Elm
11 was representing to you?

12 A. Yes.

13 Q. Did you investigate what Fred Elm had
14 represented to you?

15 A. No, not at all.

16 Q. You took him at his word?

17 A. Yes.

18 Q. You knew him to be an honest person?

19 A. From what I knew, yes.

20 Q. And you trusted him?

21 A. For sure.

22 Q. Now, in regard to the deposits that
23 were made into your account, was it a
24 requirement for you to sign those checks for
25 those deposits?

1 A. I'm not sure what the -- I'm not sure
2 what the banking laws are.

3 Q. Well, are you aware that you could
4 deposit a check in the name of the payee just
5 by writing "for deposit only" on it with the
6 checking account number or savings account
7 number on the back?

8 MR. CAVALLO: Object to form.

9 BY MR. BERKELEY:

10 Q. Are you aware of that?

11 A. Yes.

12 Q. So you don't necessarily need a
13 signature to deposit a check in someone's
14 account; correct?

15 MR. CAVALLO: Object to form.

16 THE WITNESS: Yes.

17 BY MR. BERKELEY:

18 Q. And the bank account numbers are on
19 the bottom of any check for anyone to see that
20 bank account; correct?

21 A. Yes.

22 Q. So the fact that Fred Elm knew your
23 bank account was not anything that was
24 significant to you; correct?

25 A. No.

1 Q. If you pay your FP&L bill with a
2 check, I guess FP&L knows what your banking
3 account number is; correct?

4 A. Potentially, yes.

5 Q. Now, the checks made out to -- the
6 first series of checks in Exhibit 9, were
7 these checks, believed by you, to be repayment
8 of the loan from Fred Elm?

9 A. Yes.

10 Q. Now, you made that loan with the
11 expectation of making money, not just getting
12 your 40,000; correct?

13 A. Yes, of course.

14 Q. Did you have any particular terms as
15 to what that, I guess, interest would be?

16 A. No. Unfortunately, I wasn't -- we
17 never put it in writing how much I would be
18 repaid.

19 Q. Okay. But you were certainly
20 expecting to be paid more; correct?

21 A. Yes, for sure.

22 Q. And you were paid more; correct?

23 A. Yes.

24 Q. So when we next go to these checks in
25 Exhibit 10, do you have any recollection as to

1 receiving those checks?

2 A. No, I don't have any recollection,
3 but I'm assuming that --

4 Q. That it was repayment back of the
5 loan?

6 A. Yes.

7 Q. And potentially some interest on
8 that?

9 A. Yes, for sure.

10 Q. How long was the loan outstanding
11 for?

12 A. I loaned it in 2010, and I think he
13 paid me back over the years.

14 Q. These checks are dated June 2012. So
15 that would have been two and a half years
16 later; right?

17 A. Yeah.

18 Q. Now, these checks in 2011 that are
19 made out to TH Capital Group, LLC -- what is
20 TH Capital Group, LLC at the time?

21 A. It was for my rental car business.

22 Q. So did Fred Elm ever rent cars from
23 you?

24 A. Yes.

25 Q. So is it logical to conclude that

1 these were payments for car rentals?

2 MR. CAVALLO: Object to form.

3 THE WITNESS: Potentially, yes.

4 BY MR. BERKELEY:

5 Q. So you didn't accept payments to TH
6 Capital Group for selling or leasing
7 apartments did you?

8 A. No.

9 Q. TH Capital Group was in the business
10 of receiving money for car rentals; correct?

11 A. That's correct.

12 Q. And that's what it received money for
13 only; correct?

14 A. Yes.

15 MR. CAVALLO: Object --

16 BY MR. BERKELEY:

17 Q. Now, Exhibit 15, that's a subsequent
18 loan that you made to Mojilife; correct?

19 MR. CAVALLO: Object to form.

20 THE WITNESS: Correct.

21 BY MR. BERKELEY:

22 Q. Did you receive that money back?

23 A. No.

24 Q. Even if we look at the checks related
25 to the laptop, which, of course, that was for

1 repayment of selling laptops; correct?

2 MR. CAVALLO: Object to form.

3 THE WITNESS: Yes.

4 BY MR. BERKELEY:

5 Q. Now, the one check that does not have
6 a reference on it, the other two have -- that
7 you received from Mojilife, two of the three
8 have "laptop purchase" on it; correct?

9 A. Yes.

10 Q. The other one has "\$5,000" on it;
11 correct?

12 A. Yes.

13 Q. So even if we were to assume that was
14 repayment towards the Mojilife loan -- which
15 are you sure about that?

16 MR. CAVALLO: Object to form.

17 BY MR. BERKELEY:

18 Q. Are you sure what that five grand was
19 paid to you for?

20 A. I'm not sure, no.

21 Q. Okay. Could it have been additional
22 payments for the laptops because you said the
23 laptops were around \$6,000; correct?

24 A. Yes.

25 Q. And you received, totaling for the

1 laptops, a \$900 check and a \$1,040 check;
2 correct?

3 A. Yes.

4 Q. That's not 6,000; is it?

5 A. No.

6 Q. So the \$5,000, which potentially
7 could be repayment towards the loan or the
8 laptop, you are still out money; right?

9 A. Yes.

10 Q. You are owed money to this day;
11 right?

12 A. Yes.

13 Q. Were you part of any scheme to
14 defraud anybody in giving money and not
15 receiving it back?

16 MR. CAVALLO: Object to form.

17 THE WITNESS: No, never.

18 BY MR. BERKELEY:

19 Q. Did you have any felonious or
20 fraudulent intent when you loaned money to
21 Fred and never got it back?

22 MR. CAVALLO: Object to form.

23 THE WITNESS: Never.

24 BY MR. BERKELEY:

25 Q. Do you make money by loaning money to

1 somebody and not getting it back?

2 A. No.

3 Q. So when opposing counsel asked you
4 about the \$70,000 total that you received,
5 those checks are part of the laptop repayment;
6 correct, the 900?

7 MR. CAVALLO: Object to form;
8 misstates my question and my calculation.

9 MR. BERKELEY: Good enough.

10 BY MR. BERKELEY:

11 Q. 900, is that check for the laptop
12 repayment?

13 A. Yes.

14 Q. 1,040 for laptop repayment?

15 A. Yes.

16 Q. And even if it relates strictly to
17 the monies that you were paid back in regard
18 to the loan, related to the promissory note,
19 you were not paid in full until when? How
20 many years after was it?

21 A. I think it was the last check I have
22 was for 2013, Exhibit 9 -- oh, actually '14.
23 Four years.

24 Q. So that was a loan that was
25 outstanding for over four years; correct?

1 A. 2014 is the last one.

2 Q. Okay. You were asked how you started
3 these businesses over the years.

4 You worked; right?

5 A. Of course.

6 Q. The different jobs that you laid out
7 for opposing counsel during questioning?

8 A. Yes.

9 Q. Did you save money?

10 A. I always try to save money.

11 Q. Did Fred Elm give you any money to
12 start any of those businesses?

13 A. No, of course not.

14 Q. Was any of this money that you
15 received from Fred Elm related to any of the
16 businesses that you conducted?

17 A. No, it was only due to the personal
18 loan, and then the second loan to Mojilife.

19 Q. Now, you have been sued under the
20 fraudulent transfer statute in the State of
21 Florida, 726.105. That statute, in sum,
22 alleges that you had a fraudulent intent when
23 transferring these monies to Mr. Elm to be
24 part of this alleged Ponzi scheme.

25 What was your intent when you loaned

1 these monies to Fred Elm?

2 MR. CAVALLO: Object to form.

3 BY MR. BERKELEY:

4 Q. You can answer. Go ahead.

5 A. I just was trying to loan money to
6 help who, at the time, was a friend. I wasn't
7 doing it with any malicious intent. I had no
8 idea what he was doing with his personal life
9 and business life.

10 Q. Did you have any involvement with Elm
11 Tree Investments or any of these other
12 receivership entities that are listed as
13 plaintiff?

14 A. No.

15 Q. One of the other counts against you
16 is unjust enrichment, which basically, in
17 layman's terms, I'll summarize, is you
18 basically received gratuitous money without
19 earning it or doing anything for it. It's
20 money that you weren't entitled to. And,
21 again, that's a very broad, layman's
22 description.

23 But at the end of the day, the money
24 that you received from Fred Elm was related to
25 the repayment of a loan?

1 A. Yes, of course.

2 Q. So you actually gave him that money;
3 correct?

4 A. Yes.

5 Q. And the money that you gave him was
6 paid back and those are the checks we looked
7 at today in Exhibit 9; correct?

8 A. Yes, in Exhibit 9.

9 Q. Was the loan an investment in any of
10 the receivership entities?

11 A. No.

12 Q. Did you ever invest in any of these
13 receivership entities?

14 A. No.

15 Q. Did you ever receive anything from
16 these receivership entities --

17 A. No, never.

18 Q. -- in the way of an investment?

19 A. No.

20 Q. Do you have any benefit of any
21 profits or shares from the receivership
22 entities?

23 A. No.

24 Q. Were you a board member or active in
25 any of these receivership entities?

1 A. No.

2 MR. BERKELEY: I have nothing
3 further.

4 MR. CAVALLO: Okay. So because we
5 believe that the discovery is clearly
6 deficient, I'm not going to terminate the
7 deposition; I'm going to keep it open.

8 We can address that however we need
9 to on both sides.

10 MR. BERKELEY: Sure.

11 MR. CAVALLO: But for now, I'm done.

12 MR. BERKELEY: Fair enough.

13 We will read.

14 (Thereupon, the deposition was
15 concluded at 1:44 p.m.)
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CERTIFICATE OF OATH

STATE OF FLORIDA:

COUNTY OF BROWARD:

I, the undersigned authority, certify
that Timothy Hartmann personally appeared
before me and was duly sworn.

WITNESS my hand and official seal on the
9th of February, 2018.

Rinele Abramson
Notary Public, State of Florida

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF BROWARD:

I, Rinele Abramson, Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated on the 9th of February, 2018.

Rinele Abramson
Rinele Abramson

