

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,
Elm Tree Motion Opportunity, LP, and
Etopia, LP,

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

Plaintiff,

v.

JAMES BENVENUTO, *et al.*,

Defendants.

**RECEIVER'S RESPONSE IN OPPOSITION TO DEFENDANT TIMOTHY
HARTMANN'S MOTION FOR RULE 11 SANCTIONS AND REQUEST FOR
ATTORNEY'S FEES AND COSTS PURSUANT TO RULE 11(C)(2)**

Plaintiff, GRISEL ALONSO, solely in her capacity as the Receiver for Elm Tree Investment Advisors, LLC ("ETIA"); Elm Tree Investment Fund, LP; Elm Tree 'e'Conomy Fund, LP; Elm Tree Motion Opportunity, LP; and Etopia, LP; respectfully submits this Response in Opposition to Defendant Timothy Hartmann's ("Hartmann") Motion for Rule 11 Sanctions [D.E. 189] and Request for Attorney's Fees and Costs Pursuant to Rule 11(c)(2).

For the reasons set forth below, Hartmann's Motion for Rule 11 Sanctions (the "Motion") [D.E. 189] should be denied.

INTRODUCTION

The Motion is baseless, not grounded in fact or law, and made in bad faith. The Motion is nothing more than a litigation tactic that has caused the Receivership Estate to incur unnecessary fees. The Receiver respectfully submits that this Court should not tolerate such tactics. Accordingly, the Receiver respectfully requests that attorney's fees and costs be awarded against

Hartmann and his counsel to compensate the Receivership Estate for monies it has been forced to incur in responding to the Motion.

Hartmann fails to comprehend the relatively straightforward Florida law applicable to fraudulent transfers. Hartmann's improper and baseless Motion seeks sanctions against the Receiver and her counsel for their refusal to withdraw the claims against him. In requesting sanctions, Hartmann relies exclusively on an alleged promissory note, dated June 21, 2010, which purportedly reflects that Hartmann made a \$40,000 loan in 2010 to an entity called Cyber Investments International, Inc. ("Cyber"). Hartmann produced a single document in response to the Receiver's discovery requests, which purports to be the promissory note from Cyber to Hartmann (the "Cyber note"). Hartmann did not produce any other documents in discovery. Hartmann's sole argument is that the Cyber note constitutes reasonably equivalent value he allegedly gave in exchange for the Transfers¹ he received from the Receivership Entities, and the Receiver should have withdrawn her claims against him after she received the alleged Cyber note in discovery.²

Hartmann's Motion is meritless.³

First, the Cyber note cannot constitute, as a matter of fact or law, reasonably equivalent

¹ Used as that term is defined in the Statement of Facts below.

² Hartmann says the alleged Cyber note "definitively negates the [Receiver's] causes of action and establishes [Hartmann's] innocence." [D.E. 189 at 5].

³ Hartmann's Motion begins with two *blatant* misrepresentations. The first misrepresentation is that the Hartmann "entered into a legally enforceable contract with Fred Elm." [D.E. 189 at 3]. The alleged Cyber note on its face is given by Cyber, not Fred Elm. Fred Elm signs on behalf of Cyber, as its President. The second misrepresentation is that "[t]he Promissory Note states that Hartmann will loan Elm Forty Thousand Dollars (\$40,000)[.]" *Id.* The alleged Cyber note says no such thing.

value in exchange for the Transfers at issue in this litigation. Even assuming *arguendo* the Cyber note represented a legitimate loan,⁴ Cyber is *not* one of the Receivership Entities that transferred funds to Hartmann. Therefore, when the Receivership Entities transferred monies to Hartmann from December 2013 through August 2014, those payments were not repayment for any loan given to a Receivership Entity, and the Receivership Entities cannot be considered to have received reasonably equivalent value given in exchange for transfer of Receivership assets to Hartmann. Thus, any purported value given Cyber at some earlier time could not constitute a benefit given by Hartmann to a Receivership Entity that justified the Receivership Entities transferring funds to him.

Second, even if there were any merit to Hartmann's Cyber note argument, Hartmann has not produced any evidence that he made a loan to Cyber. The alleged Cyber note is not proof in and of itself that a loan was made. Indeed, Hartmann was deceptive and dishonest in his discovery responses and in his deposition on this and other issues.⁵ The Receiver has not received complete discovery from Hartmann and would not be fulfilling her Court-appointed duties if she withdrew her claims based solely on his self-serving, uncorroborated testimony, especially in the face of essentially uncontradicted evidence that Hartmann received monies belonging to the Receivership Entities without giving any Receivership Entity value in exchange.

The Receiver's claims against Hartmann are currently the subject of summary judgment

⁴ Hartmann has not produced any evidence that a loan was made in connection with the Cyber note, other than the Cyber note itself and his self-serving, contradictory testimony. Hartmann had an opportunity to produce proof of the loan in discovery and in response to the Receiver's motion for summary judgment, but did not do so.

⁵ As discussed herein, Hartmann testified in his deposition that he was not sure whether he looked for documents that would prove he ever made a loan in connection with Cyber note, and he gave contradictory statements about the existence of additional business interactions with Fred Elm and related entities.

briefing. This reasonably equivalent value issue was fully briefed in connection with the Receiver's motion for summary judgment, which is pending against Hartmann. [D.E. 183; D.E. 185; D.E. 188]. As such, Hartmann and his counsel were on notice of the Receiver's well-supported legal and factual arguments *prior to* filing the Motion. This, among other things, weighs in favor of an award of prevailing party attorneys' fees and costs for the benefit of the Receivership Estate.

STATEMENT OF FACTS

A. The Fraudulent Scheme

On January 15, 2015, the SEC filed its complaint 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, ETEF, and ETMO (collectively, the "Receivership Entities") engaged in a fraudulent securities "Ponzi" scheme through the offer and sale of fraudulent investments (the "Fraudulent Scheme"). [D.E. 1 in the SEC Action⁶; D.E. 183 at 2].

Elm was the founder and managing director of ETIA and the general partner and manager of the Elm Tree Funds. *Id.* 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. *Id.* 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. *Id.* Instead, Elm and ETIA

⁶ This action is ancillary to the SEC Action, which is Case No. 15-CV-60082-Dimitrouleas/Snow.

used the majority of the funds to pay back investors in a Ponzi-like fashion and for Elm's own personal use. *Id.*

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. *Id.* at 3. 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. *Id.* Elm then transferred the money back and forth between the various accounts and commingled money invested in the Elm Tree Funds. *Id.*

B. Transfers to Hartmann and Other 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. *Id.* 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 Hartmann. *Id.*

All of the money that Elm and the Receivership Entities wrongfully caused to be transferred to the Defendants in this action was diverted and misappropriated by Elm in furtherance of the Fraudulent Scheme. *Id.* 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. *Id.* To allow Defendants to keep the funds transferred by Elm and the Receivership Entities would be inequitable and unjust, including to the investors in the Elm Tree Funds. *Id.*

With respect to Hartmann, from December 2013 to August 2014, Elm and ETIA transferred funds to Hartmann (previously defined as the “Transfers”) as follows: (a) on or about December 3, 2013, the Elms transferred \$10,000.00 by check to Hartmann; (b) on or about January 21, 2014, ETIA transferred \$4,000.00 by check to Hartmann; (c) on or about March 6, 2014, ETIA transferred \$5,000.00 by check to Hartmann; (d) on or about May 9, 2014, ETIA transferred \$10,000.00 by check to Hartmann; (e) on or about June 30, 2014, ETIA transferred \$5,000.00 by check to Hartmann; and (f) on or about August 25, 2014, ETIA transferred \$10,000.00 by check to Hartmann. [D.E. 6 at ¶ 67; D.E. 183 at ¶ 8].

C. Discovery

The Receiver propounded a request for documents, request for admissions, and interrogatories to Hartmann’s counsel on October 6, 2017. Hartmann responded in November 2017 by providing incomplete answers that were later contradicted by his own deposition testimony, and by producing a single document, the Cyber note.⁷

The Receiver deposed Hartmann on February 1, 2018. Hartmann misrepresented material facts in his deposition, only to change his testimony after being confronted with substantial evidence, as further discussed below. In addition, during his deposition, Hartmann admitted:

- a. From December 3, 2013 to August 25, 2014, he received the Transfers from the Elms and ETIA (2/1/18 Depo. Tr. at 72:16-80:19; 130:17-131:9).

⁷ During Hartmann’s deposition, Hartmann’s counsel showed undersigned counsel the e-mail from Fred Elm to Hartmann transmitting the Cyber note, dated June 22, 2010, which Hartmann’s counsel admitted had not been produced.

- b. Mr. Hartmann did not provide any services to the Elms or ETIA in connection with the transfers (*Id.*);⁸
- c. Mr. Hartmann did not make any loans to, or have any business dealings with, the Receivership Entities (*Id.* at 70:15-71:14; 147:8-11);
- d. Mr. Hartmann did not return any of the funds he received (*Id.* at 130:17-23).

A copy of Mr. Hartmann's deposition transcript is attached as **Exhibit A**.

The undisputed evidence proves that Hartmann never provided any monies or value to the Receivership Entities in exchange for the Transfers. Accordingly, on March 19, 2018, the Receiver filed her motion for summary judgment against Hartmann.

THE RULE 11 STANDARD

"Rule 11 is an extraordinary remedy, one to be exercised with extreme caution." *Menendez v. Signature Consultants, LLC*, Case No. 11-61534-CIV, 2011 WL 6179727, *1 (S.D. Fla. Dec. 13, 2011); *see also Bartronics, Inc. v. Power-One, Inc.*, 245 F.R.D. 532, 538 (S.D. Ala. 2007) ("Rule 11 is a narrowly cabined provision whose sanctions 'are to be imposed sparingly...."). The Eleventh Circuit requires a two-step inquiry as to "(1) whether the party's claims are objectively frivolous; and (2) whether the person who signed the pleading should have been aware they were frivolous." *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998).

Rule 11 Sanctions are appropriate when a party files a pleading that "(1) has no reasonable factual basis; (2) is based on a legal theory that has no reasonable chance of success

⁸ Mr. Hartmann claims the transfers are related to a \$40,000 loan he allegedly made to a Cyber (*Id.* 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 in connection with the Cyber note. Moreover, this does not change the fact that Mr. Hartmann, admittedly, received the Transfers from Mr. Elm and the Receivership Entities. *See (Id.* at 72:16-80:19; 130:17-131:9).

and that cannot be advanced as a reasonable argument to change existing law; and (3) is filed in bad faith for an improper purpose.” *Id.* In applying this objective reasonableness standard, “any doubts as to whether Rule 11 has been violated should be resolved in favor of the party who signed the pleading.” *Miller v. RelationServe, Inc.*, Case No. 05-61944-CIV, 2006 WL 5849318, *9 (S. D. Fla. Dec. 1, 2006). Additionally, sanctions “are not warranted when the claimant’s evidence is merely weak but appears sufficient, after a reasonable inquiry, to support a claim under existing law.” *See Baker*, 158 F.3d at 524.

Here, the Receiver’s claims are based on textbook Florida fraudulent transfer law. These claims are typically asserted by receivers and bankruptcy trustees alike in almost all cases in which they are appointed, where like in this case, transfers are made to individuals and entities without the transferring entity receiving value for same. Indeed, as set forth in the Receiver’s motion for summary judgment and reply brief [D.E. 183; D.E. 188], Hartmann has failed to raise a single issue of material fact that would preclude summary judgment in favor of the Receiver.

ARGUMENT

I. THE CYBER NOTE IS IRRELEVANT AND DOES NOT DEFEAT THE RECEIVER’S CLAIMS AGAINST HARTMANN

A. The Receiver’s Causes of Action

The Receiver asserted four separate grounds for recovery of the Transfers from Hartmann. [D.E. 6 at ¶¶ 276-295]. First, the Receiver asserted a claim for recovery of the Transfers pursuant to Fla. Stat. Section 726.105(1)(a) for actual fraud. [D.E. 6 at ¶¶ 281-82]. Second, the Receiver asserted a claim for recovery of the Transfers pursuant to Fla. Stat. Section 726.105(1)(b) for constructive fraud. [D.E. 6 at ¶ 283]. Third, the Receiver asserted a claim for recovery of the Transfers pursuant to Fla. Stat. Section 726.106 for constructive fraud. [D.E. 6 at

¶¶ 287-95]. Fourth, the Receiver asserted a claim for recovery of the Transfers under an unjust enrichment theory of liability. [D.E. 6 at ¶¶ 296-302].

Hartmann essentially argues in his Motion that the alleged Cyber note constitutes reasonably equivalent value given in exchange for the Transfers, which he claims defeats all of the Receiver's causes of action.

i. Fraudulent Transfer - Actual Fraud

A defendant may assert as an affirmative defense to an actual fraud claim that (i) he or she gave reasonably equivalent value in exchange for the transfers at issue and (ii) he or she accepted the transfers in good faith. Fla. Stat. § 726.109(1).

Hartmann has not made any argument or submitted any evidence that establishes the Cyber note was reasonably equivalent value given in exchange for the Transfers. As discussed above, Cyber is not a debtor, a transferor, or one of the Receivership Entities. The alleged promissory note from Cyber cannot constitute reasonably equivalent value in exchange for the transfer of Receivership assets by Elm and ETIA because Hartmann gave no monies, value, or benefit to the Receivership Entities. Cases with similar facts have been ruled upon by district courts and are commonly referred to as “wrong payor” cases. *See In re Pearlman*, 515 B.R. 887, 895 (M.D. Fla. 2014) (finding transferor received no reasonably equivalent value in exchange for transfers, where any benefit or value went to different entity); *see also In re Berkman*, 517 B.R. 288, 301 (M.D. Fla. 2014) (analysis of whether “reasonably equivalent value” was given for a transfer by the debtor focuses on the *benefit actually obtained by the debtor* in the transaction; in other words, value is measured from the debtor's point of view).

Here, as discussed below, Hartmann has not produced any documents in discovery that would persuade the Receiver that the Receivership Entities received value in exchange for the

Transfers, despite his opportunity and obligation to do so.⁹ Nor has Hartmann provided sufficient evidence to the Receiver that he accepted the Transfers in good faith. Indeed, Hartmann's evasive testimony, dishonesty, non-existent document production, and continued relationship with Fred Elm, at least as of 2017, all suggest the contrary.

ii. Fraudulent Transfer - Constructive Fraud

With respect to the Receiver's constructive fraud claims under Fla. Stat. Section 726.1095(1)(b) and 726.106, both of those causes of action require lack of reasonably equivalent value as an element.¹⁰

For all the same reasons the Cyber note does not constitute reasonably equivalent value with respect to the Receiver's actual fraud claim, it does not constitute reasonably equivalent value with respect to the Receiver's constructive fraud claims.¹¹

⁹ Even if the Court were to find that the alleged Cyber note constitutes value received by Elm *personally*, Hartmann does not challenge that the Transfers he received were assets of the Receivership, derived from funds invested by innocent victims of Elm's scheme. [D.E. 183 at p. 3 and ¶ 10; D.E. 183-1 at ¶ 10]. Thus, Hartmann falsely argues the Cyber promissory note is value given to the *Receivership Entities*. [D.E. 185 at 3, 10; D.E. 189 at 4, 7].

¹⁰ In addition to lack of reasonably equivalent value, constructive fraud also requires that the debtors to have been insolvent at the time of the transfers. Hartmann does not challenge that element, and does not dispute that the Receivership Entities were part of a Ponzi scheme. Hartmann also does not dispute that the Transfers occurred while the Ponzi scheme was ongoing. As such, Hartmann does not dispute, based on those facts, that Elm and ETIA were insolvent. *See 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 beyond his ability to pay as they became due); *In re Pearlman*, 472 B.R. 115, 125 (M.D. Fla. 2012) (because the Ponzi scheme was already underway at the time of certain transfers, the debtors were by definition presumed insolvent and a defendant's good faith in accepting repayment is irrelevant).

¹¹ Hartmann repeatedly argues throughout his briefs in this action, including in the instant Motion, that he was not involved with Mr. Elm's Fraudulent Scheme. [D.E. 189 at 6]. While that

iii. *Unjust Enrichment*

Again, Hartmann's only argument is that the alleged Cyber note "directly negates [the] Receiver's unsupported allegation that the Receivership Entities did not receive reasonably equivalent value in exchange for the Hartmann Transfers[.]" [D.E. 189 at 7]. As discussed above, the *Cyber* promissory note cannot be found to be value given to *Elm and ETIA* in exchange for the benefit of the Transfers. Arguments along those lines have been summarily rejected by the courts in deciding "wrong payor" cases. Here, it is undisputed that Hartmann received \$44,000 in the Transfers, accepted the Transfers, and gave no value to *the Receivership Entities* for those Transfers.

For the foregoing reasons, all of the Receiver's claims against Hartmann have a reasonable basis, are based on viable and valid legal theories, and have not been brought for an improper purpose. Thus, Hartmann's Motion should be denied.

B. *Pearlman v. TD Bank* is Inapposite

Hartmann's sole legal argument why the Cyber note should be viewed as reasonably equivalent value is based on his misunderstanding of the holding in *Pearlman v. TD Bank*, 440 B.R. 900 (M.D. Fla. 2010), which he argues should have led the Receiver to withdraw all causes of action against him. Hartmann's reliance on *Pearlman* is misguided, at best.

In *Pearlman*, there were three different fraudulent schemes at issue, including a bank fraud scheme. *Id.* at 903. A bankruptcy trustee sought summary judgment with respect to allegedly fraudulent transfers from debtors (*Pearlman* and TCA) to third parties in connection

may be a factor in considering an affirmative defense to a fraudulent transfer actual fraud claim, it is not dispositive. Moreover, it is entirely irrelevant with respect to fraudulent transfer constructive fraud claims. *See In re Pearlman*, 472 B.R. at 125 (where debtors were by definition presumed insolvent, defendant's good faith in accepting repayment is irrelevant).

with the bank fraud scheme. *Id.* at 902. One transfer the trustee sought to recover was to Mercantile Bank. *Id.* The Court found in all but one instance the transfers were fraudulent and subject to recover by the trustee. Notably, the district court found that the bank fraud scheme was not a Ponzi scheme, which prevented the Receiver from relying on the Ponzi presumption that the debtors made transfers with fraudulent intent. *Id.* at 905. As discussed *supra* at footnote 8, Hartmann has not challenged the fact that Fred Elm was using the Receivership Entities to operate a Ponzi scheme.

In connection with the bank fraud scheme, Pearlman and TCA fraudulently obtained loans from numerous banks, including Mercantile, and subsequently repaid those loans. *Id.* at 903. The trustee sought to recover the loan repayments made by the debtors (Pearlman and TCA) to Mercantile. *Id.* Hartmann latches on to language in *Pearlman* that suggests loan repayments are not typically considered fraudulent transfers if they extinguish antecedent debts. *Id.* at 905. First, unlike in this case, the bank fraud scheme was not deemed to be a Ponzi scheme. *Id.* Second, also unlike this case, in *Pearlman* the debtors (Pearlman and TCA) transferred funds to their *own* creditor, Mercantile Bank. *See Id.* at n.20, citing to *HBE Leasing Corp. v. Frank*, 48 F. 3d 623, 634 (2d Cir. 1995) (acknowledging that preferential repayment of a debtors' creditors does not constitute a fraudulent conveyance).

Here, unlike in *Pearlman*, all of Fred Elm's actions using the Receivership Entities were in operation of a Ponzi scheme. In addition, unlike in *Pearlman*, here the Receivership Entities made transfers to an individual who, at best, was the creditor of an unrelated entity. Hartmann is *not* a creditor of the Receivership Entities, which is the very reason Hartmann's receipt of the Transfers is inequitable. The Transfers at issue were not repayments for a loan that benefitted the Receivership Entities. The Transfers were repayments for a loan allegedly made in connection

with the Cyber note from 2010, before any of the Receivership Entities existed.¹²

As Hartmann's Motion is based on a faulty reading of *Pearlman v. TD Bank*, the *Pearlman* case provides absolutely no support or argument that the Motion was made in good faith.

C. The Receiver Should Prevail on Summary Judgment

As referenced throughout this response, not only are the Receiver's claims against Hartmann meritorious, but the Receiver respectfully submits she is entitled to summary judgment against Hartmann.

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) (the "actual fraud" provision). Relief may also be granted under this section where a 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) (the "constructive fraud" provision). In this case, Mr. Hartmann received \$44,000 by way of the Transfers from the Elms and ETIA, a Receivership Entity.

The Receiver submits she is entitled to summary judgment on Count 16 based on the

¹² The undisputed evidence shows that Receivership Entities did not yet exist in 2010. *See* [D.E. 1 at ¶¶ 8-12] in the primary SEC action, Case No. 15-CV-60082.

“actual fraud” provision because 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. As discussed in the summary judgment filings, Hartmann has not satisfied his burden of establishing that the Ponzi fraud presumption does not apply, or of showing the reasonably equivalent value necessary for an affirmative defense to an actual fraud claim.

The Receiver also submits she is entitled to summary judgment on Count 16 based on the “constructive fraud” provision because Hartmann admittedly provided no value to any Receivership Entity in exchange for the Transfers (2/1/18 Depo. Tr. at 72:16-80:19), and Hartmann does not challenge that he received the Transfers from the Receivership Entities while the Ponzi scheme was ongoing.

Count 17 of the Amended Complaint alleges 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)*. The Receiver submits she is entitled to summary judgment on Count 17 because Hartmann admittedly provided no value to any Receivership Entity in exchange for the Transfers (2/1/18 Depo. Tr. at 72:16-80:19), and Hartmann does not challenge that he received the Transfers from the Receivership Entities while the Ponzi scheme was ongoing.¹³

Count 18 of the Amended Complaint alleges a cause of action against Mr. Hartmann for unjust enrichment. The essential elements of a claim for unjust enrichment are: (i) a benefit

¹³ *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).

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 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 connection with Mr. Elm's Fraudulent Scheme and are presumed inequitable. The Receiver submits she is entitled to summary judgment on Count 18 because Mr. Hartmann admittedly provided no value to the Receivership Estate in exchange for the Transfers and refused to return the Transfers upon demand.

II. HARTMANN'S DISCOVERY VIOLATIONS

Besides his self-serving testimony regarding a document that purports to be the Cyber note from 2010, Hartmann has failed to establish that a legitimate loan ever took place. On October 6, 2017, the Receiver propounded discovery upon Hartmann, including document requests related to all of Hartmann's agreements with, loans to, or payment of monies to or from any entities associated with Fred Elm. On or about November 1, 2017, Hartmann served the Receiver with demonstrably inadequate discovery responses¹⁴ and a *single document*, the alleged Cyber note. Notably, Hartmann did not produce any proof that he ever actually loaned or transferred any money to Elm or Cyber, such as a check, wire advice, or bank statement. While

¹⁴ In his deposition, Hartmann admitted to communicating with Fred Elm and to the existence of e-mails, text messages, and other correspondence that he never produced. 2/1/18 Depo. Tr. at 18:9-27:2 (testifying that, during the relevant period, he e-mailed with Fred Elm, called Fred Elm, and texted with Fred Elm, but only produced the promissory note based on his personal determination that nothing else was "pertinent"); 2/1/18 Depo. Tr. at 25:23-26:5 ("Q: And what you have basically told me today is that you text Mr. Elm and you e-mail Mr. Elm; correct? A: Yes. Q: And you did not produce any of those text messages or e-mails; correct? A: I produced the document [Cyber note] that was relevant.").

Hartmann argues as if the Cyber note itself constituted value given in exchange for the Transfers, the reality is that the Cyber note is not proof that Hartmann made a loan to anyone—and certainly not proof he made a loan to a Receivership Entity.

Further, during his deposition, Hartmann was deliberately evasive with respect to his efforts to prove that he actually loaned money in connection with the Cyber note. *See* 2/1/18 Depo. Tr. at 16:17-17:9 (testifying that he “did not know” whether he attempted to obtain and produce proof that he actually loaned funds in connection with Cyber note); 17:11-15 (testifying that he “did not know” where he would keep documents that might be responsive to the Receiver’s requests). This directly contradicts his current argument to the Court.

Hartmann was equally evasive and misleading with respect to the existence of any other “payments” he received from Elm-related entities or “loans” he made to Elm-related entities.¹⁵ During his deposition, Hartman testified that: (i) he does not know what Cyber is; (ii) he does not remember what, if anything, Elm told him about the company; and (iii) after being confronted with evidence, that he received other payments from Elm in addition to the Transfers, which he

¹⁵ *See* 2/1/18 Depo. Tr. at 71:1-8 (claiming that he never had any business dealings with Elm or any Elm-related entities, other than the Cyber note); 79:17-80:17 (claiming that he never received any payments from any entities associated with Elm other than the Transfers at issue); 82:17-88:13 (admitting, after being confronted with evidence, that he also received \$14,000 in payments from Fiberforce, an Elm-related entity, from June 2012 to April 2013, which payments he claimed were also made in connection with the Cyber note); 90:17-95:17 (admitting, after being confronted with evidence, that TH Capital Group, an entity he owned, also received \$12,000 in payments from Fiberforce, an Elm-related entity, from June 2013 to October 2013); 117:3-22 (admitting, after being confronted with evidence, that he made a \$15,000 loan to MojiLife, an Elm-related entity, in July 1, 2016, and that his previous testimony was inaccurate). Indeed, Mr. Hartmann received approximately \$70,000 from Elm-related entities, made up of the \$44,000 in Transfers at issue in this action, and approximately \$26,000 in earlier transfers from non-Receivership entities. 2/1/18 Depo. Tr. at 130:14-131:7. Thus, Mr. Hartmann admitted in his testimony that he received approximately \$30,000 more than the alleged loan amount, which further proves that the Cyber note and alleged related loan are not reasonably equivalent value.

did not previously disclose. 2/1/18 Depo. Tr. at 71:1-8; 82:17-88:13; 90:17-95:17; 117:3-22.

Hartmann essentially argues that the Receiver should be sanctioned for not withdrawing her claims given the single document he produced in discovery and his self-serving testimony. However, given the unrefuted evidence the Receiver has gathered concerning the Receivership Entities' transactions, Hartmann's conduct during his deposition, his contradictory sworn testimony, and his responses to the Receiver's discovery requests, the Receiver is beyond justified in pursuing her claims, refusing to withdraw her claims, and questioning the veracity of Hartmann's statements.

Because Hartmann has not produced any evidence to suggest that a loan was actually made in connection with the alleged Cyber note, and because the Receiver has beyond good cause to question Hartmann's testimony on that issue and other related issues, the Motion must be denied.

III. THE COURT SHOULD AWARD THE RECEIVER THE ATTORNEY'S FEES AND COSTS INCURRED IN HAVING TO RESPOND TO THE MOTION

Hartmann's Motion was made in bad faith, likely in an attempt to create leverage for a settlement offer. In addition, unlike the Receiver, Hartmann has not even filed a dispositive motion, which further shows the baseless nature of his Motion.

"[T]he filing of a motion for [Rule 11] sanctions is itself subject to the requirements of [Rule 11] and can lead to sanctions." Fed. R. Civ. P. 11 advisory committee's note (1993 Amendments). Moreover, "the court may award to the person who prevails on a motion under Rule 11—whether the movant or the target of the motion—reasonable expenses, including attorney's fees, incurred in presenting or opposing the motion." *Id.* As such, where a party's motion for Rule 11 sanctions is not well grounded in fact or law, or is filed for an improper

purpose, a court may impose same on the moving party and/or the party's attorney. *See Safe-Strap Co., Inc. v. Koala Corp.*, 270 F. Supp. 2d 407, 421 (S.D.N.Y. 2003).

Hartmann and his counsel knew their Motion was objectively frivolous at the time of its filing on April 12, 2018 because: (i) all of the claims against Hartmann have a reasonable basis, are based on viable and valid legal theories, and have not been brought for an improper purpose; (ii) the issues raised in the Motion were fully-briefed in connection with the Receiver's motion for summary judgment *prior to the filing of the Motion*, and the unrefuted evidence contradicts Hartmann's argument in the Motion; (iii) Hartmann's argument that sanctions should be imposed is clearly not supported by the authority he cited in the Motion; and (iv) there is abundant case law that disproves the argument Hartmann travels under in the Motion. Thus, the Receiver should be awarded attorneys' fees and costs incurred in responding to this Motion.

It would be inequitable for the Receivership Estate, and by extension the innocent victims who invested in Mr. Elm's Ponzi scheme, to pay the fees and costs incurred in preparing this response to Hartmann's frivolous Motion. The fees and costs incurred by the Receivership Estate in preparing this response should be borne by Hartmann and his counsel.

CONCLUSION

For the foregoing reasons, the Motion should be denied and the Receiver should be awarded the attorney's fees and costs incurred in having to respond to it.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2018, a true and correct copy of the foregoing document was furnished via electronic transmission or U.S. Mail on all counsel or parties of record.

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EXHIBIT A

Page 1

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.

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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

9

10 On behalf of Timothy Hartmann:

11 Daniels, Rodriguez, Berkeley, Daniels

12 & Cruz, PA

13 4000 Ponce de Leon Boulevard, Suite 800

14 Coral Gables, Florida 33146

15 BY: LORNE BERKELEY, ESQUIRE

16

17 ALSO PRESENT:

18 Grisel Alonso

19 Dick Haslam

20 -----

21

22

23

24

25

Page 4

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?

Page 5

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.

Page 6

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.

Page 7

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

Page 8

1 birth?
 2 A. November 15, 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

Page 9

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

Page 10

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

Page 11

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?

Page 12

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

Page 13

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

Page 14

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

Page 15

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

Page 16

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

Page 17

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

Page 18

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

Page 19

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?

Page 20

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 --

Page 21

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.

Page 22

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. Inspiredesigners@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.

Page 23

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?

Page 24

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

Page 25

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?

Page 26

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;

Page 27

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

Page 28

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.

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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.

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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.

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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

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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.)

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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.

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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

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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?

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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.

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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.

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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.

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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

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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

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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

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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

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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.

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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?

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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.

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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?

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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

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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

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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?

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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.

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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.

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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?

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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 --

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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.

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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.

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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.

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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.

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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.

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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?

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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

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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

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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.

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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?

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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

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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

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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

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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

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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.

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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

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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.

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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?

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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

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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

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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?

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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

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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.

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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

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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.

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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.

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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

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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.

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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.

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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

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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.

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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?

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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

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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.

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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.

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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?

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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.

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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

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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?

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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?

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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?

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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.

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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?

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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

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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?

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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

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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

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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

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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.

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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

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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.

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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

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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

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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?

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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

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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

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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?

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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

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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?

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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 --

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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?

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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

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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

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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.

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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.

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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.

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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

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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.

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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

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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?

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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?

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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.

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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?

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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?

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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.

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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

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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

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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,

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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

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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

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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

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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?

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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.

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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.

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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

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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?

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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

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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

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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

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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

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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?

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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?

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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.

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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

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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

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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.

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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?

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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.

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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

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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

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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

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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

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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

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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?

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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

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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?

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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?

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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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1 CERTIFICATE OF REPORTER
 2
 3 STATE OF FLORIDA:
 4
 5 COUNTY OF BROWARD:
 6
 7 I, Rinele Abramson, Shorthand Reporter,
 8 certify that I was authorized to and did
 9 stenographically report the foregoing
 10 deposition; and that the transcript is a true
 11 record of the testimony given by the witness.
 12
 13 I further certify that I am not a
 14 relative, employee, attorney, or counsel of
 15 any of the parties, nor am I a relative or
 16 employee of any of the parties' attorney or
 17 counsel connected with the action, nor am I
 18 financially interested in the action.
 19
 20 Dated on the 9th of February, 2018.
 21
 22 *Rinele Abramson*
 23 Rinele Abramson
 24
 25



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1 CERTIFICATE OF OATH
 2
 3 STATE OF FLORIDA:
 4
 5 COUNTY OF BROWARD:
 6
 7 I, the undersigned authority, certify
 8 that Timothy Hartmann personally appeared
 9 before me and was duly sworn.
 10
 11 WITNESS my hand and official seal on the
 12 9th of February, 2018.
 13
 14
 15 Rinele Abramson
 16 Notary Public, State of Florida
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