

In the Matter Of:

RAJAEE vs DAVIS

01-21-0001-9983

HEARING DAY 2

December 02, 2021



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AMERICAN ARBITRATION ASSOCIATION

SAN DIEGO, CALIFORNIA

ASHKAN RAJAE, an Individual; AAA CASE NO.:
TOPDEVZ, LLC, a California 01-21-0001-9983
Limited Liability Company;
MOBILE MONSTER, INC., a
Canadian Corporation,

Claimants,

vs.

TYLER B. DAVIS, an Individual;
PORTER CONSULTING; LLC, a
California Limited Liability
Company; SIARRA WOOD, an
Individual; SARAH BLANCHETTE,
an Individual; and DOES 1
through 10, inclusive,

Respondents.
~~~~~

TRANSCRIPT OF VIDEOCONFERENCE HEARING

DAY 2

December 2, 2021

11:04 a.m.

Susan L. Cleveland, CSR No. 10502

Job No.: J7697316

APPEARANCES OF COUNSEL

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The Arbitrator:

REBECCA CALLAHAN, ESQ.

Also Present:

TYLER B. DAVIS

ASHKAN RAJAE

ELIZABETH ROBERTSON

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INDEX TO EXHIBITS  
(None.)

THURSDAY, DECEMBER 2, 2021, 11:04 A.M.

THE ARBITRATOR: As I recall correctly, we ended with Mr. Davis yesterday. I believe it is -- have we yielded the floor to Mr. Matthews?

MR. CARPENTER: Yeah, we yielded the floor for cross on Mr. Davis.

THE ARBITRATOR: Okay. I'm sorry. Good.  
Then let's proceed.

And, Mr. Davis, you are still under oath.

THE WITNESS: Okay.

THE ARBITRATOR: Thank you. Oh, and Mr. Matthews, I did receive the PDF of your Exhibit 50A. No problems. I did send an e-mail acknowledgement, but I did want to let you know I did receive it, and I have it -- I have it printed.

MR. MATTHEWS: All right. Thank you very much.

THE ARBITRATOR: Along with your 1A through 49A.

MR. MATTHEWS: All right. Perfect.

THE ARBITRATOR: Thank you.

MR. MATTHEWS: All right.

And I'm sorry, was Mr. Davis sworn in?

THE ARBITRATOR: He is still under oath.

MR. MATTHEWS: Still under oath, okay.

THE ARBITRATOR: And that will probably be my

1 practice, once I swear them, to the extent they take  
2 a seat -- for example, before, Mr. Rajae was  
3 previously sworn. When he re-sits in the chair, then  
4 I would just remind him that he's still under oath.  
5 That would be the case for any witness until I use  
6 the magic words to counsel, is this witness released.  
7 When you say yes, then their responsibilities to  
8 testify here are deemed completed and concluded. But  
9 I won't readminister it every time it's said.

10 MR. MATTHEWS: Of course. Understood.

11  
12 MICHAEL S. HAWES,  
13 having been previously duly sworn, testified  
14 as follows:  
15

16 CROSS-EXAMINATION

17 BY MR. MATTHEWS:

18 Q Good morning, Mr. Davis.

19 A Good morning.

20 Q Thanks -- thanks for joining us. I know  
21 yesterday was a long day, so I appreciate everyone  
22 coming back today.

23 So, Mr. Davis, I want to go through just a  
24 few things from your testimony yesterday and just in  
25 general.

1                   Now, I believe yesterday you testified that  
2                   you made an investment in TopDevz in the amount of  
3                   \$750,000; correct?

4                   A     Correct.

5                   Q     And that was broken down into three separate  
6                   payments; correct?

7                   A     Correct.

8                   Q     And so the three payments, they were equal,  
9                   equal amounts of \$250,000; correct?

10                  A     Correct, to my recollection.

11                  Q     Okay.

12                  MR. CARPENTER: Pardon me. Remember to speak  
13                  clearly.

14                  BY MR. MATTHEWS:

15                  Q     Now, Mr. Davis, those \$250,000 payments each  
16                  came from Porter Consulting; is that correct?

17                  A     That is correct.

18                  Q     All right. And the first payment actually  
19                  was made from Porter Consulting to Mobile Monster;  
20                  correct?

21                  A     Correct.

22                  Q     All right. Now, we'll get back to that in  
23                  just a minute, but you said yesterday that you had  
24                  only entered into one Operating Agreement for  
25                  TopDevz; isn't that right?

1           A    So for TopDevz, the only executed by both  
2 parties' agreement that we have is the one that we've  
3 actually been looking at through the course of this  
4 trial.

5           Q    Okay. So your answer is that you only  
6 signed one Operating Agreement for TopDevz; right?

7           A    No, that's not my answer.

8           Q    So are you saying that you signed another  
9 operating agreement for TopDevz?

10          A    I did.

11          Q    Okay. Did Mr. Rajae execute any other  
12 Operating Agreement for TopDevz?

13          A    Not that I'm aware of.

14          Q    Okay. So the only operating agreement that  
15 both parties signed is the one dated May 9th of 2017;  
16 correct?

17          A    Correct.

18          Q    All right. So we're going go to that  
19 exhibit in a moment. Actually, let's bring up that  
20 exhibit. I've marked it as Exhibit 1A. I'll share  
21 my screen.

22          THE ARBITRATOR: That's fine to bring up 1A.

23          MR. MATTHEWS: Okay. Thank you.

24          Q    So I'm looking at what's been marked as  
25 Exhibit 1A. And going on to the next page, which the

1 front page is a disclaimer. And this goes on to  
2 state this is the Operating Agreement for TopDevz,  
3 LLC. It's dated May 9th of 2017.

4 Does this look like the Operating Agreement  
5 for TopDevz, LLC, dated May 9th of 2017, Mr. Davis?

6 A Yes.

7 Q Okay. And according to this Operating  
8 Agreement, Mr. Rajaei was the manager; correct?

9 A Correct.

10 Q All right. And I want to go down, just to  
11 confirm.

12 Now, this is the signature page, page 31, of  
13 the Operating Agreement. It lists Ashkan Rajaei, and  
14 it also lists Tyler Brandon Davis at the very bottom  
15 at the very bottom.

16 Is Tyler Brandon Davis you?

17 A It is.

18 Q Okay. And this is your signature at the  
19 bottom of page 31; correct?

20 A It is.

21 Q All right. And now we'll go to Exhibit B.  
22 This is the member capital contributions.

23 Do you recall seeing this page?

24 A Yes.

25 Q And you'll note that it's blank; correct?

1 A Correct.

2 Q It doesn't include the ownership of the  
3 members in this; correct?

4 A Correct.

5 Q And it doesn't list your capital  
6 contribution of \$750,000; correct?

7 A Correct.

8 Q So are you saying that you didn't make an  
9 investment of \$750,000 into TopDevz?

10 A No, I'm not saying that.

11 Q But it's not on this page.

12 A No, it's not.

13 Q So you're certain that you made an  
14 investment of 750,000 in TopDevz?

15 A Hundred percent.

16 Q Okay. So let's go back to the fact that  
17 this is your signature on the bottom of page 31.

18 You can confirm that that's your signature;  
19 correct?

20 A Correct.

21 Q And your testimony yesterday was that there  
22 was never an amendment to this Operating Agreement;  
23 isn't that right?

24 A It was executed by both parties.

25 Q That's not my question.

1           My question is, your testimony yesterday was  
2       that there wasn't an amendment to this Operating  
3       Agreement; right?

4           MR. CARPENTER: Objection; argumentative, asked  
5       and answered.

6           THE ARBITRATOR: Well, I think we're still  
7       waiting for the answer. You can answer, Mr. Davis.

8           THE WITNESS: Yeah, there's no executed  
9       amendment to this Operating Agreement.

10       BY MR. MATTHEWS:

11           Q    So it's your testimony that there was never  
12       an amendment to this operating agreement?

13           A    Correct, there was no executed amendment to  
14       this agreement.

15           Q    All right. Let's go to paragraph 3.1.

16                Now, at the bottom of page [sic] 3.1, it  
17       says -- it says, "Each Member" -- let's get out of  
18       here for a second.

19                So it says, "Each Member will contribute to  
20       the capital of the Company as the Member's initial  
21       Capital Contribution the money or property," and then  
22       it says the letters "TBD"; correct?

23           A    It does.

24           Q    And your understanding is that TBD means to  
25       be determined; correct?

1 A Correct.

2 Q And after the letters TBD, in brackets, it  
3 says "or services"; correct?

4 A Correct.

5 Q And it's your testimony that this has never  
6 been amended; correct?

7 A Correct.

8 Q Now, Mr. Davis, when you formed TopDevz, you  
9 knew that Mr. Rajae was a Canadian citizen; right?

10 A I do.

11 Q And you discussed with him the fact that he  
12 had certain visa requirements; correct?

13 A Yes, we did.

14 Q And you understood that in connection with  
15 his visa requirements he had to have a 51-percent  
16 ownership in TopDevz; correct?

17 A I don't know that that's true.

18 Q Is that something you discussed with  
19 Mr. Rajae?

20 A It was discussed, but yeah, whether that's  
21 true or not, I'm not -- I've never received documents  
22 as to whether that's actually a true statement.

23 Q So you had discussed with Mr. Rajae the  
24 fact that he had to have a 51-percent ownership in  
25 TopDevz; correct?

1 A He indicated that he did.

2 Q Okay. And so it was your understanding that  
3 when you entered into this Operating Agreement, he  
4 had to have a 51-percent ownership in the company;  
5 correct?

6 A Can you repeat the question?

7 Q It was your understanding, based on those  
8 conversations, that when entering into the Operating  
9 Agreement, Mr. Rajaei had to have a 51-percent  
10 ownership in the company; correct?

11 MR. CARPENTER: Calls for a legal conclusion.

12 BY MR. MATTHEWS:

13 Q Well, based on your understanding --

14 THE ARBITRATOR: Let me rule.

15 I believe that as he phrased the question,  
16 it simply asked for Mr. Davis's understanding.

17 So with that qualification, if you have an  
18 understanding, Mr. Davis, you may answer the  
19 question.

20 THE WITNESS: No. As far as when those  
21 conversations occurred, when -- the conversations of  
22 his need for that ownership, when that occurred, I  
23 don't know if it was before or after this.

24 BY MR. MATTHEWS:

25 Q So your understanding -- your testimony is

1 that when you entered into this Operating Agreement,  
2 you did not believe that Mr. Rajaei had to be a  
3 51-percent owner of the company?

4 A No. What I'm saying is the conversations  
5 that we had regarding his L-1 visa requirements, I'm  
6 not sure if they came before or after this.

7 Q But you did have conversations about his L-1  
8 visa requirements; correct?

9 A We did.

10 Q And pursuant to those L-1 visa  
11 requirements -- or conversations, he stated that he  
12 had to have a 51-percent ownership in the company;  
13 correct?

14 A Yes.

15 Q And you didn't contest -- that you didn't  
16 contest that fact; correct?

17 A I didn't contest that fact? I didn't, yeah,  
18 contest that fact.

19 Q Okay. And so if he was going to have a  
20 51-percent ownership in the company, that would mean  
21 that you would have a 49-percent ownership in the  
22 company; correct?

23 A That's what it would mean, correct.

24 Q All right. And you received -- your  
25 testimony yesterday was that you received K-1s from

1 TopDevz every year; correct?

2 A Correct.

3 Q And you received a K-1 for the year 2019;  
4 correct?

5 A Correct.

6 Q Let's go to what's been marked as  
7 Exhibit 2A.

8 THE ARBITRATOR: I cannot read what this is.

9 MR. MATTHEWS: I'm going to zoom in, if it  
10 helps.

11 THE ARBITRATOR: Well, don't we have a more  
12 legible copy of it in the full copy of the 2019 tax  
13 returns that we could look at?

14 MR. CARPENTER: Yeah. I'll object to this. I  
15 have not seen it before today. It appears to be a  
16 screenshot, and it varies from the corporate record  
17 production. To the extent it's duplicative, we don't  
18 need it; to the extent it's new, I'll challenge the  
19 foundation of it and say it wasn't produced.

20 THE ARBITRATOR: All right. Well, I'm going to  
21 sustain that because I can't read what I have on my  
22 hard copy. So let's go to the one that was marked,  
23 which I believe was -- which has the entirety, which  
24 I believe is Exhibit 9. No, it's 10. Let's go to  
25 Exhibit 10.

1 MR. MATTHEWS: Just to clarify, are you saying  
2 Exhibit 10 for Mr. Davis?

3 THE ARBITRATOR: I am saying that Exhibit 10 is  
4 the entirety of the tax return, 2019 tax return, for  
5 TopDevz that included -- we reviewed them  
6 yesterday -- both of the K-1s for Mr. Rajae and  
7 Mr. Davis. And since it's legible and has already  
8 been admitted without objection, we should look at it  
9 to get the information that you'd like to elicit from  
10 Mr. Davis.

11 MR. MATTHEWS: Happy to go there. I just don't  
12 have a copy of that. I believe that that was  
13 produced or uploaded -- so we can go back to that in  
14 a moment.

15 THE ARBITRATOR: Well, let me just see if I can  
16 help out a bit here.

17 MR. MATTHEWS: Sure.

18 THE ARBITRATOR: I'm not sure how I give you  
19 screen-share when I pull it up, but let's see what we  
20 can do.

21 MR. MATTHEWS: So I can bring it up now as  
22 Exhibit 44A, if that helps. It's probably easier to  
23 do it this way.

24 THE ARBITRATOR: Hold on. 44A is your -- is  
25 that the entirety of the tax return?

1 MR. MATTHEWS: This is the K-1 for Mr. Davis,  
2 2019.

3 THE ARBITRATOR: All right. Well,  
4 Mr. Carpenter, have you had a chance to look at it?

5 MR. CARPENTER: Yes, I have.

6 THE ARBITRATOR: Okay. And you're fine with  
7 that?

8 MR. CARPENTER: Yes.

9 THE ARBITRATOR: Okay. All right. Then we'll  
10 use 44A. Excellent.

11 MR. MATTHEWS: All right. Great.

12 Q So, Mr. Davis, you said previously that you  
13 received your K-1 for 2019; correct?

14 A Correct.

15 Q All right. And this is the K-1 for TopDevz;  
16 correct?

17 A Correct.

18 Q Now, we're looking at Exhibit 44A. It's  
19 dated 2019. It says "Schedule K-1." And section F  
20 lists Tyler B. Davis. Is that you?

21 A That's me.

22 Q All right. And looking at section J, it  
23 states that the profit at the beginning for you is  
24 49 percent --

25 A Correct.

1 Q -- is that correct?

2 A That's what it says.

3 Q And it states that the ending profit is  
4 49 percent; correct?

5 A Correct.

6 Q Do you -- you received this; correct?

7 A Correct.

8 Q And you didn't contest this; correct?

9 A In an LLC, ownership and profit and loss  
10 distributions can vary. They're not the same.

11 Q The question is you didn't contest this;  
12 correct?

13 A No, I didn't contest it.

14 Q Okay. So you never contacted Jennifer  
15 Glaser and attempted to contest this document?

16 A Why would I have a need to contest?

17 Q Thank you.

18 Let me get out of screen-share for a moment.

19 You know what, actually, I just realized  
20 something. Yeah, there we go. Okay, never mind.

21 So I want to go to Exhibit 65 of  
22 Mr. Rajaei's declaration in support of his  
23 opposition.

24 THE ARBITRATOR: All right. You're going to  
25 screen-share that?

1 MR. MATTHEWS: I will, yes.

2 THE ARBITRATOR: It's a check detail?

3 MR. MATTHEWS: It is -- let's see here.

4 Correct, yes.

5 Q So, Mr. Davis, you mentioned yesterday that  
6 there was a capital call that you participated in  
7 around November of 2020; correct?

8 A Correct.

9 Q And do you recall being contacted by Siarra  
10 Wood regarding the capital call?

11 A I did, correct.

12 Q Okay. And you recall that the capital call  
13 was for \$76,000; correct?

14 A Correct.

15 Q All right. And you wrote a check for your  
16 portion of the capital call; correct?

17 A I did not write that check.

18 Q Did you sign the check?

19 A I didn't sign that check either.

20 Q Did you issue a check from TopDevz for your  
21 capital call?

22 A I did. I authorized the check to be written  
23 to TopDevz.

24 Q Okay. And that check was for the amount of  
25 \$37,240; correct?

1 A Correct.

2 Q And you're aware that \$37,240 is exactly  
3 49 percent of \$76,000?

4 A I'm aware of that.

5 Q I'm sorry. I didn't get your answer.

6 A I'm aware of that, yeah.

7 Q And this check was issued from Mason  
8 Building & Design?

9 A Correct.

10 Q So there was a check that was issued from  
11 your company, Mason Building & Design, for your  
12 personal capital contribution to TopDevz?

13 A Yes. The request came in, I was out of  
14 town, and so my business partner at Mason Building  
15 wrote that check, deposited it into TopDevz, and then  
16 I wrote a check to Mason Building & Design several  
17 days after that.

18 Q Okay. So your testimony is that the check  
19 for your personal capital contribution from TopDevz  
20 was issued from the company Mason Building & Design;  
21 correct?

22 A Correct.

23 Q And you previously testified that all of  
24 your investment payments or your investments into  
25 TopDevz prior to that capital call were from Porter

1 Consulting; correct?

2 A Yes, they were issued out of my Porter  
3 Consulting account.

4 Q Okay. And, again, the first payment went  
5 from Porter Consulting to Mobile Monster; correct?

6 A It went to Mobile Monster because TopDevz  
7 didn't have a bank account at that time.

8 Q Well, that's not my question.

9 My question is, it went from Porter  
10 Consulting to Mobile Monster; correct?

11 A Correct.

12 Q Okay. And that was for \$250,000?

13 A Correct.

14 Q Now, isn't it true that Mason Building &  
15 Design had received a PPP loan in the amount of  
16 \$91,000 that was approved on April 11th of 2020?

17 MR. CARPENTER: I'll object to it being  
18 irrelevant and confidential and not germane to this  
19 proceeding.

20 THE ARBITRATOR: Sustained.

21 MR. MATTHEWS: May I be heard on that issue?

22 THE ARBITRATOR: I'll let you be heard, but  
23 Mason Building isn't here. Its affairs are not an  
24 issue. I have a very limited set of issues that have  
25 been put forth before me. Maybe this has bearing on

1 something for the broader dispute, but I have a very  
2 narrow set of issues, and I do not see it's relevant.  
3 So yes, you may make your argument.

4 MR. MATTHEWS: It may be relevant to the broader  
5 dispute, but I think that the broader dispute is  
6 directly relevant to the decision that's being made  
7 here.

8 THE ARBITRATOR: I will not be deciding the  
9 broader dispute. I am -- please, Counsel, bear in  
10 mind, I will only be deciding the issues that have  
11 been tee'd up by Mr. Davis's petition. I will not go  
12 beyond that.

13 MR. MATTHEWS: No problem.

14 Okay. So just to -- actually, I'll move on.  
15 Strike that.

16 Q Let's talk more about the 51-49 ownership  
17 distribution between the parties.

18 Now, before, we talked about Exhibit A to  
19 the Operating Agreement. Do you recall that?

20 MR. CARPENTER: I'll object to the questioning,  
21 that it contains a statement of fact recording  
22 ownership distribution of the parties of 51-49. It's  
23 not a question.

24 THE ARBITRATOR: I need to hear the question  
25 back.

1 Ms. Court Reporter, could you read it back  
2 so I can hear it?

3 (Record read as follows:

4 "Q Now, before, we talked  
5 about Exhibit A to the Operating  
6 Agreement. Do you recall that?")

7 THE REPORTER: Did you want a prior one to that?

8 THE ARBITRATOR: Well, I think he was just asked  
9 if he recalls Exhibit A.

10 Okay. You can answer that, Mr. Davis.

11 THE WITNESS: We didn't review Exhibit A.

12 THE ARBITRATOR: All right.

13 BY MR. MATTHEWS:

14 Q We reviewed Exhibit B.

15 So do you recall reviewing Exhibit B to the  
16 Operating Agreement for TopDevz?

17 A Yes.

18 Q Okay. And, again, just to be clear, you  
19 said that you made an investment of \$750,000 into  
20 TopDevz; correct?

21 A Correct.

22 Q The investment, however, is not listed on  
23 Exhibit B; correct?

24 A Correct.

25 Q And that fact was omitted from Exhibit B;

1 correct?

2 A Correct.

3 Q So that was a mistake; correct?

4 A A mistake, no. It wasn't a mistake.

5 Q Well, you said that you made an investment  
6 of \$750,000 into the company, but it's not listed on  
7 the capital contribution page. Isn't that a mistake?

8 A No.

9 MR. CARPENTER: Objection; argumentative.

10 THE WITNESS: It's not a mistake.

11 THE ARBITRATOR: Sustained.

12 BY MR. MATTHEWS:

13 Q That's an omission, though; correct?

14 A Correct.

15 Q Let's talk about your correspondence with  
16 Mr. Rajaei and Jennifer Glaser.

17 You're aware of who Jennifer Glaser is;  
18 correct?

19 A Correct.

20 Q And Jennifer Glaser is the accountant for  
21 TopDevz; correct?

22 A Correct.

23 Q And let's go to Exhibit 5A. I'll get out of  
24 screen-share and get the document.

25 THE ARBITRATOR: Those are e-mails, some kind of

1 e-mail chain?

2 MR. MATTHEWS: Correct.

3 THE ARBITRATOR: Okay. Mr. Carpenter, any  
4 objection?

5 MR. CARPENTER: I don't have it here. I'm  
6 trying to find it.

7 THE ARBITRATOR: All right. Well --

8 MR. CARPENTER: Hold on a moment. 5A, is it?

9 MR. MATTHEWS: Correct.

10 THE ARBITRATOR: All right. Well, I'm going to  
11 allow it. It looks like e-mails.

12 Go ahead, Mr. Matthews. You can  
13 screen-share.

14 MR. CARPENTER: Can you tell me what page of the  
15 223-page PDF it is?

16 MR. MATTHEWS: It looks like, I think, it's page  
17 45.

18 MR. CARPENTER: Okay. No objection.

19 BY MR. MATTHEWS:

20 Q So, Mr. Davis, you received this e-mail from  
21 Mr. Rajae on February 24th, 2020; correct?

22 A Correct.

23 Q And this e-mail includes yourself and  
24 Jennifer Glaser; correct?

25 A Correct.

1 Q And, again, Jennifer Glaser is the  
2 accountant for TopDevz; correct?

3 A Correct.

4 Q And your e-mail address that is listed on  
5 here is Tyler@TopDevz.com; correct?

6 A Correct.

7 Q All right. So Mr. Rajaei sent an e-mail --  
8 now, this is actually -- I want to be clear about  
9 this.

10 The e-mail on February 24th, Monday, at  
11 2:54 p.m., is from Ashkan Rajaei to Jennifer Glaser,  
12 and you're copied on this; correct?

13 A Correct.

14 Q All right. And the e-mail states, "My  
15 ownership in TopDevz 51 percent, Tyler 49 percent.  
16 Tyler please confirm."

17 That's what it states; correct?

18 A Correct.

19 Q And you responded on February 24th, 2020, at  
20 2:58 p.m. from your Tyler@TopDevz.com account;  
21 correct?

22 A Correct.

23 Q And your statement is, "This is correct";  
24 right?

25 A Correct.

1 Q And that e-mail includes Jennifer Glaser on  
2 the correspondence; correct?

3 A Correct.

4 Q Okay. I'm going to stop sharing.

5 Let me go back to Exhibit 1A, and that's the  
6 Operating Agreement for TopDevz.

7 THE ARBITRATOR: Do you know what paragraph  
8 we're going to?

9 MR. MATTHEWS: Yes. We're going to go to  
10 paragraph 2.9.

11 All right.

12 MR. CARPENTER: Where are you going, Jordan?

13 MR. MATTHEWS: It's paragraph 2.9.

14 MR. CARPENTER: Okay.

15 MR. MATTHEWS: Sorry, I'll just scroll down  
16 here.

17 Q All right. So paragraph 2.9 talks about  
18 management of TopDevz; correct?

19 A Correct.

20 Q And the manager who's identified in  
21 paragraph 2.9 is Ashkan Rajaei; correct?

22 A Correct.

23 Q You are not identified as the manager of  
24 TopDevz; correct?

25 A Correct.

1 Q And, again, your testimony is that this has  
2 not been amended; correct?

3 A Correct.

4 Q Let's go to Exhibit 28A.  
5

6 THE ARBITRATOR: And could you give  
7 Mr. Carpenter just an approximation of where that is  
8 in the bundle of exhibits.

9 MR. MATTHEWS: Absolutely.

10 THE ARBITRATOR: Mine is not legible, just so.

11 MR. CARPENTER: 28?

12 MR. MATTHEWS: It's at page 102.

13 MR. CARPENTER: 102?

14 MR. MATTHEWS: 103 is the actual document. I  
15 will zoom in here.

16 THE ARBITRATOR: What is it?

17 MR. MATTHEWS: This is text correspondence  
18 between Mr. Davis and Mr. Rajaei.

19 MR. CARPENTER: You know, I'll just -- for  
20 purposes of the texts, I'll try to be -- not read  
21 everything in advance. I'll assume it's okay  
22 until -- if I see a problem, I'll speak up. Go  
23 ahead.

24 BY MR. MATTHEWS:

25 Q So just for purposes of context, this is

1 text correspondence between you and Mr. Rajaei;  
2 correct?

3 A Correct.

4 Q All right. And I'm looking at the bottom of  
5 the left-hand side, it's time-stamped October 16th of  
6 2019.

7 Do you see that?

8 A No, I do not.

9 Q I'm looking at the bottom here. It says  
10 "2019-6" -- "-10-16."

11 Do you see that?

12 A I do.

13 Q Okay. So that would be October 16th of  
14 2019. Does that sound right?

15 A I would have to go back and look at my  
16 phone.

17 Q Well, does 2019-10-16 sound like October  
18 16th of 2019?

19 A Yes, it does. Whether it's correct or not,  
20 I'd have to look at my phone.

21 Q Let's go up to the top right-hand side of  
22 the page.

23 Now, on the left-hand side, I'm just going  
24 to read what it says. It says, "Sorry, I was in a  
25 meeting. So essentially what has been determined is

1     that without a jet we can't grow the company above 10  
2     mil or is the preferred size 10 mil? Obviously,  
3     there are some benefits to not growing it bigger,  
4     lifestyle, et cetera. Who are you planning on  
5     letting go?"

6             Does that sound like an accurate reading of  
7     that statement?

8             MR. CARPENTER: Are you asking him to read the  
9     document?

10            MR. MATTHEWS: No. I'm asking him if that is an  
11     accurate assessment of what it says.

12            THE ARBITRATOR: What it says by who? See, this  
13     is one of the problems I always encounter in  
14     arbitrations where texts are put up. Who -- I don't  
15     know who's in this exchange. So I don't know what  
16     I'm looking at.

17            MR. MATTHEWS: So this is an exchange between  
18     Mr. Davis and Mr. Rajae.

19            THE ARBITRATOR: Well, you're saying that, but  
20     you're not testifying. So do we have someone who is  
21     going to authenticate this?

22     BY MR. MATTHEWS:

23            Q     Mr. Davis, did you send the message that  
24     starts with, "Sorry, I was in a meeting"? Did you  
25     send that message?

1 A Yes.

2 Q Okay. And this is your message -- or text  
3 correspondence between and you Mr. Rajaei; correct?

4 A Yes, it is a text message between me and  
5 Ashkan Rajaei.

6 Q Okay. And your messages are on the  
7 left-hand side; correct?

8 A Correct.

9 Q And Mr. Rajaei's correspondence is on the  
10 right-hand side; correct?

11 A Correct.

12 Q All right. Now, can you read the top  
13 message where it starts with "Sorry, I was in a  
14 meeting."

15 A "Sorry, I was in a meeting. So essentially  
16 what has been determined is that without a jet we  
17 can't grow the company above 10 million, or is this a  
18 preferred size, 10 million. Obviously there are some  
19 benefits to not growing any bigger, lifestyle, et  
20 cetera. Who are you planning on letting go?"

21 Q Okay. And that is the statement that you  
22 wrote to Mr. Rajaei; correct?

23 A Correct.

24 Q All right. Now, you received a response,  
25 which is right below that; correct?

1 A Correct.

2 Q And it says, "Not at all. You said you want  
3 to build it the way Matt did so that's what I'm  
4 doing."

5 Who is he referring to?

6 A He's referring to Matt McKay.

7 Q And Matt McKay is from Surge, LLC?

8 A Matt McKay is from Surge, LLC.

9 Q And that was a prior venture you were in  
10 with Mr. Rajaei?

11 A Correct.

12 Q Now, I want to go down just below that,  
13 which has been highlighted in blue.

14 And, again, on the left-hand side is your  
15 correspondence; correct.

16 A Correct.

17 Q And the first line that's been highlighted  
18 says, "I'm not trying to tell you how to run your  
19 show"; correct?

20 A Correct.

21 Q And then right below that it says, "If I  
22 could help you with the jet right now I would";  
23 correct?

24 A Correct.

25 Q So you testified yesterday that you were not

1 aware of Mobile Monster; correct?

2 MR. CARPENTER: Objection; misstates testimony.

3 THE ARBITRATOR: I believe that's correct. I  
4 think if you rephrase it, Mr. Matthews.

5 BY MR. MATTHEWS:

6 Q Is it correct that you are aware of Mobile  
7 Monster?

8 A I'm aware of Mobile Monster.

9 Q And you were aware, obviously, that the  
10 first payment from Porter Consulting went to Mobile  
11 Monster; correct?

12 A Correct.

13 Q All right. I want to go to Exhibit 7A.

14 MR. CARPENTER: What page on the PDF is that?

15 MR. MATTHEWS: I'll let you know in just a  
16 minute, Scott. Just bear with me, please.

17 MR. CARPENTER: It's really awkward having all  
18 these windows open. Isn't it?

19 BY MR. MATTHEWS:

20 Q Okay. So, again, you entered into --

21 MR. CARPENTER: What page?

22 MR. MATTHEWS: This is at page 62.

23 THE ARBITRATOR: And this is an e-mail exchange?

24 MR. MATTHEWS: That's correct.

25 MR. CARPENTER: No objection.

1 BY MR. MATTHEWS:

2 Q So, Mr. Davis, you were aware of the  
3 commissions to Mobile Monster; correct?

4 A No, I was not.

5 Q Your testimony is that you were not aware of  
6 the commissions to Mobile Monster?

7 A No. I'm aware of commissions that go to  
8 Ashkan Rajaei.

9 Q Okay. You're aware that Ashkan Rajaei owns  
10 Mobile Monster?

11 A I'm aware he owns Mobile Monster.

12 Q Okay. Now, you executed the Operating  
13 Agreement for TopDevz on May 9th, 2017; correct?

14 A Correct.

15 Q And you previously had testified that there  
16 were discussions with another individual named Alex  
17 Mueller joining the company; correct?

18 A Correct.

19 Q And referring to Exhibit 7A, this is e-mail  
20 correspondence dated May 21st of 2017; correct?

21 A Correct.

22 Q And this is an e-mail from Alex Mueller to  
23 you and Ashkan Rajaei; correct?

24 A Yes, it is.

25 Q Okay. And so it's dated May 21st, 2017;

1 right?

2 A Yes.

3 Q And so this was about 12 days after you  
4 executed the Operating Agreement for TopDevz, LLC;  
5 right?

6 A Correct.

7 Q All right. And so Alex Mueller is sending  
8 this e-mail to both of you. And in section 1A it  
9 says, "Ashkan is okay with either 7 percent year 1  
10 and 3.5 percent year 2."

11 It says that; correct?

12 A It does say that.

13 Q Okay. And you received this e-mail;  
14 correct?

15 A Correct.

16 MR. MATTHEWS: I want to go to Exhibit 8A.

17 I'll zoom in. This is -- again, this text  
18 correspondence between Mr. Davis and Mr. Rajaei.  
19 This is being used for purposes of just a time stamp.

20 Q Mr. Davis, do you see this correspondence?  
21 I'm looking at the bottom right-hand side of the  
22 page. It's a time stamp for 2017-05-19?

23 A Yeah.

24 Q So that would have been May 19th of 2017;  
25 right?

1 A Correct.

2 Q So that would have been about ten days after  
3 you executed the Operating Agreement for TopDevz;  
4 correct?

5 A Correct.

6 Q And, again, this is correspondence -- text  
7 correspondence between and you Mr. Rajaei; correct?

8 A Correct.

9 Q All right. So I want to go on to  
10 Exhibit 9A. This is the next page of the text  
11 correspondence.

12 And, again, on the left-hand side --

13 MR. CARPENTER: Counsel, just to make a comment  
14 to the arbitrator.

15 For purposes of all this text, I'm going to  
16 give my client an admonition.

17 Just -- if you ever see something that it  
18 doesn't look right, speak up.

19 I want to let him get through it quickly.  
20 And so ask whatever foundation-type questions you  
21 think are appropriate.

22 And I'll ask the client to speak up if you  
23 have a problem, so I don't have to respond to each  
24 individual message.

25 THE WITNESS: I guess my problem with the text

1 messages, in general, is they're not holistic. I  
2 mean they -- it's not the whole conversation.

3 MR. CARPENTER: That's fine. Just testify in  
4 response to the question. I'm going to be quiet and  
5 stay in the background. Speak up if there's ever a  
6 problem, please. Thank you.

7 BY MR. MATTHEWS:

8 Q Okay. Mr. Davis, so looking at Exhibit 9A,  
9 this is text correspondence between and you  
10 Mr. Rajaei; correct?

11 A Correct.

12 Q Okay. And you're on the left-hand side of  
13 the text correspondence; right?

14 A Correct.

15 Q And Mr. Rajaei is on the right-hand side;  
16 correct?

17 A Correct.

18 Q All right. And at the top left-hand side,  
19 the first statement that you're saying to Mr. Rajaei  
20 is, "Seriously you are amazing"; correct?

21 A It appears so.

22 Q Okay. Well, does it say anything else other  
23 than "Seriously you are amazing"?

24 A It's what it says. What it's in response  
25 to, I do not know.

1 Q Okay. I'm not asking about the response.  
2 I'm asking what it says. It says --

3 A It says, "Seriously you are amazing."

4 Q Now, right below that, highlighted in blue,  
5 you state, "I want to renegotiate your commissions";  
6 correct?

7 A Correct.

8 Q All right. Now that was a joke; right?

9 A Correct.

10 Q All right.

11 A Excuse the foul language there.

12 Q Now, I want to move on to Exhibit 10A.

13 Now, 10A has a time stamp just to give an  
14 idea of the timing.

15 I'm looking on the right-hand side of the  
16 page, highlighted in blue, it says, "2020-01-21."

17 Does that look right, Mr. Davis?

18 A Yes.

19 Q So that would have been January 21st of  
20 2020; right?

21 A Correct.

22 Q Now let's move on to Exhibit 11A.

23 Scott, just for your reference, this is  
24 page 70 if you need it.

25 MR. CARPENTER: Thanks. I'm trying not to keep

1 up with the texts. It takes too long. So thank you,  
2 though.

3 MR. MATTHEWS: Okay.

4 Q So I'm looking, again, at text  
5 correspondence between yourself, Mr. Davis, and  
6 Mr. Rajaei; correct?

7 A Uh-huh.

8 Q All right. And on the left-hand side,  
9 again, is you; correct?

10 A Correct.

11 Q And on the right-hand side is Mr. Rajaei;  
12 correct?

13 A Correct.

14 Q All right. And I'm looking at the section  
15 highlighted in blue where it states to you, "I can't  
16 give up my commissions yet"; correct?

17 A Correct.

18 Q Now, was this conversation about  
19 Mr. Rajaei's workload?

20 A No. If I recollect correctly, in November  
21 of '19, Ashkan Rajaei contacted me and said he was  
22 going to be leaving the company. This is just after  
23 starting another venture with him. I think at that  
24 time he was working on SpendHub and wanted to  
25 dedicate his time to that. I'm not exactly sure what

1 his reasons for expressing that he was going to  
2 leave, and that's when he also demanded that I fly  
3 down there to sign the Operating Agreement.

4 This here says, "I can't give up my  
5 commissions yet." And I think this is actually very  
6 important. Thanks for bringing this up. This here,  
7 you know, is commissions. So, essentially, they're  
8 commissions on sales. And so if Josh got brought  
9 over, like this text message indicates, Josh would be  
10 getting the commissions, not him, therefore,  
11 commissions, there was never an agreement to send  
12 commissions to Mobile Monster or at 7 percent --

13 Q That's not my -- yeah, that's --

14 MR. MATTHEWS: Objection; calls for a narrative,  
15 not responsive.

16 THE WITNESS: Yes, it says he can't give up his  
17 commissions yet.

18 BY MR. MATTHEWS:

19 Q Okay. And, actually, to that point, below  
20 hand -- below that, on the left-hand side, you state,  
21 "I know. And you have a big play with SpendHub";  
22 correct?

23 A Yes.

24 Q So you were aware of SpendHub; correct?

25 A I'm aware of SpendHub yeah.

1 Q All right. And so the previous  
2 conversations about the commissions were in 2017;  
3 correct?

4 A Correct.

5 Q All right. So you knew about the  
6 commissions in 2017; correct?

7 A Yeah.

8 Q And you knew about the commissions in 2020;  
9 correct?

10 A Correct.

11 Q And you knew about SpendHub; correct?

12 A Correct.

13 Q All right. Now I want to move on to how you  
14 guys first met, how you and Mr. Davis -- or  
15 Mr. Rajaei, rather, first met.

16 So, again, you previously worked together at  
17 a company called Surge, LLC; correct?

18 A We were associated through Surge, LLC. We  
19 didn't work together.

20 Q Okay. But you met when you were involved  
21 with Surge, LLC; correct?

22 A Correct.

23 Q All right. And you were a passive investor  
24 in that company; correct?

25 A Correct.

1 Q You were not involved in management of that  
2 company; correct?

3 A Correct.

4 Q All right. And you knew that Ashkan was  
5 responsible for closing business for Surge; correct?

6 A Ashkan was -- yeah, correct.

7 Q All right. And you actually recall stating  
8 at your deposition that you thought what Ashkan did  
9 was impressive; correct.

10 A Yes. He was able to close deals.

11 Q Now, a part of the strategy with Surge was  
12 using a mechanism called AdWords; correct?

13 A Yes.

14 Q And AdWords is a pay-per-click mechanism;  
15 right?

16 A Correct.

17 Q Are you aware of the cost that it takes to  
18 run an AdWords campaign?

19 A I am.

20 Q And you're aware of the amount of money that  
21 Surge, LLC, was spending per month in order to run an  
22 AdWords campaign?

23 A I am.

24 Q Okay. Now I want to go on to Exhibit 38A.  
25 If you can just give me a moment, please.

1 MR. CARPENTER: Do you happen to know the page  
2 number?

3 MR. MATTHEWS: Yeah. It's 123.

4 MR. CARPENTER: Okay.

5 BY MR. MATTHEWS:

6 Q All right. Mr. Davis, do you see what's  
7 been marked as Exhibit 38A?

8 A Yes.

9 Q And, again, this is text correspondence  
10 between and you Mr. Rajaei?

11 A Correct.

12 Q I'm sorry. Is your answer "Correct"?

13 A Correct.

14 Q All right. And it's dated, it looks like --  
15 I'm looking at the bottom left-hand side of the page.

16 It says "2019-11-16"; right?

17 A Correct.

18 Q So that would be November 16th of 2019;  
19 correct?

20 A Correct.

21 Q And on the left-hand side is you, and on the  
22 right-hand side is Mr. Rajaei; correct?

23 A Correct.

24 Q All right. And so what I've highlighted in  
25 blue is from Mr. Rajaei.

1                   And it states, "What if we did a social  
2 series on a reality show called," quote unquote,  
3 "remote CEO."

4                   It says that; right?

5           A     Correct.

6           Q     And then below that it says, "And we markey  
7 TopDevz through it and my crazy life."

8                   That's what it says; right?

9           A     Correct.

10          Q     I'm assuming that markey probably means  
11 market; right?

12          A     I imagine so, yes.

13          Q     Okay. And your response was, "Laugh out  
14 lout. You would need the jet..."; correct?

15          A     Correct.

16          Q     Now, I'm going to move over to the  
17 right-hand side of the page. And, again, this is  
18 just continued correspondence between you and  
19 Mr. Rajaei on this thread.

20                   Now, on the left-hand side, you're talking  
21 about where it would be distributed. Actually, he  
22 says, on the right-hand side, "It would be  
23 distributed on Instagram and LinkedIn."

24                   That's from Mr. Rajaei to you; correct?

25           MR. CARPENTER: Objection; you're testifying and

1 summarizing the document.

2 THE ARBITRATOR: Sustained. It doesn't say what  
3 you said, Mr. Matthews.

4 BY MR. MATTHEWS:

5 Q Let's see here.

6 You would say, "Where would it air?," on the  
7 left-hand side; correct?

8 A Yes.

9 Q And then below that Mr. Rajaei responds and  
10 says, "Instagram and LinkedIn"; right?

11 A Yes.

12 Q And your response is, "I think it is  
13 genius"; correct?

14 A Correct.

15 Q And I'm looking at the bottom of the page,  
16 right below an emoji from Mr. Rajaei.

17 You state, "We could do an episode about the  
18 retreat"; correct?

19 A Correct.

20 Q And I just want to be clear, going back to  
21 the time stamp, this is from November 16th of 2019;  
22 right?

23 A Correct.

24 Q So this is from about two years ago; right?

25 A Correct. This is right around --

1 THE ARBITRATOR: There's no question pending,  
2 Mr. Davis. Please wait for a question.

3 MR. MATTHEWS: Okay. I want to go to  
4 Exhibit 36A. It's page 120.

5 And, again, this is text correspondence  
6 between Mr. Davis and Mr. Rajaei.

7 Q Mr. Davis, is this text correspondence  
8 between yourself and Mr. Rajaei?

9 A It appears to be.

10 Q Okay. I'm looking at the top left-hand  
11 side. It has a time stamp. It's dated 2020-01-29;  
12 correct?

13 A Correct.

14 Q And you're on the left-hand side of the  
15 page; correct?

16 A Yes.

17 Q And Mr. Rajaei is on the right-hand side of  
18 the page; correct?

19 A Correct.

20 Q All right. And it looks like Mr. Rajaei is  
21 sending something about -- it says, "about the show."

22 Is that in reference to the Kathy Ireland  
23 show?

24 A Yes.

25 Q And your response, on the left-hand side, is

1 "WTF, who are you?"; correct?

2 A Correct.

3 Q Now, right below that, on the right-hand  
4 side, this is on January 30th of 2020, Mr. Rajaei  
5 says to you, "SpendHub is ready," exclamation. "We  
6 get Porter on it? Try it"; correct?

7 A Correct.

8 Q Your response on the left-hand side is,  
9 "Yep"; correct?

10 A Correct.

11 MR. MATTHEWS: I want to go to Exhibit 29A.

12 MR. CARPENTER: Is this a text?

13 MR. MATTHEWS: I will let you know in just a  
14 moment, Scott.

15 THE ARBITRATOR: It appears to be.

16 MR. MATTHEWS: So, Scott, this is page 106.

17 MR. CARPENTER: Thanks.

18 BY MR. MATTHEWS:

19 Q So --

20 MR. CARPENTER: Okay.

21 MR. MATTHEWS: All right. This is 29A.

22 Q So, Mr. Davis, referring to Exhibit --  
23 what's been marked as Exhibit 29A, again, this is  
24 text correspondence between and you Mr. Rajaei;  
25 correct?

1 A Correct.

2 Q You're on the left-hand side of the text  
3 correspondence; correct?

4 A Correct.

5 Q And Mr. Rajaei is on the right-hand side of  
6 the correspondence; correct?

7 A Correct.

8 Q Now, there's a message that's been  
9 highlighted dated 2020-04-03 at 8:07 a.m.

10 Do you see that?

11 A Uh-huh.

12 Q Now, it says, "Hey, just want to let you  
13 know I'm making decisions without consulting you.  
14 It's been difficult to reach you recently,  
15 understandably so"; correct?

16 A Correct.

17 MR. MATTHEWS: Ms. Callahan, if everyone is  
18 amenable, I'd just like to actually take a quick  
19 ten-minute break. Would that be workable?

20 THE ARBITRATOR: Well, I thought we were going  
21 to go the morning and have the lunch be our break  
22 because we're in this abbreviated format.

23 MR. MATTHEWS: Well, the reason I'm asking is I  
24 just want to see if I have any further questions.

25 THE ARBITRATOR: All right. Let's -- so it's

1 about noon. So till 12:10.

2 MR. MATTHEWS: Okay, great. Thanks.

3 MR. CARPENTER: Thank you.

4 (Recess taken from 11:58 a.m.  
5 12:11 a.m.)

6 MR. MATTHEWS: Are we back on the record?

7 THE ARBITRATOR: We are back on the record.

8 MR. MATTHEWS: All right. Great.

9 Q And, Mr. Davis, just reminding you, you are  
10 under oath. I only have a few more questions. I'll  
11 keep it short and sweet.

12 So I want to go to Exhibit -- what's been  
13 marked as Exhibit 13A.

14 Scott, that starts on page 73, and the  
15 actual exhibit's on 74. I'll share my screen.

16 And, again, this is text correspondence  
17 between Mr. Davis and Mr. Rajae.

18 Mr. Davis, do you see what's been marked as  
19 Exhibit 13A?

20 A I do.

21 Q All right. And this is text correspondence  
22 between and you Mr. Rajae; correct?

23 A Correct.

24 Q And at the top right-hand side of the  
25 screen, it's dated, as a time stamp, 2019-11-06.

1 Do you see that?

2 A Correct.

3 Q That would be November 6th of 2019; correct?

4 A Correct.

5 Q All right. And you're on the left-hand  
6 side --

7 A Correct.

8 Q -- and Mr. Rajaei's --

9 Sorry. So you're on the left-hand side?

10 A Correct.

11 Q All right. And Mr. Rajaei's on the  
12 right-hand side; correct?

13 A Correct.

14 Q All right. So at the top of the page,  
15 you're saying to him -- or you say to him, at  
16 15:54 p.m. on November 6th of 2019, you say, "When  
17 you get a chance I need the ability to download the  
18 P&L. My bank is requesting it for my increase";  
19 correct?

20 A Correct.

21 Q And below that you say, "Google Sheets won't  
22 allow it"; right?

23 A Correct.

24 Q Now, on the right-hand side, Mr. Rajaei  
25 responds. He says, "That P&L is internal"; right?

1 A Okay.

2 Q I'm sorry. Is that a yes?

3 A Correct, yeah.

4 Q All right. And then he says, "You need a  
5 Zoho copy which matches the tax filings"; right?

6 A Correct.

7 Q Then he says, "The Google Sheet is so you  
8 can see where the monies are going"; right?

9 A Correct.

10 Q You then respond and say, "A PDF would be  
11 fine. They are requesting the P&L and the balance  
12 sheet"; right?

13 A Right.

14 Q He responds and says, "You have access to  
15 Zoho Books. You can print it if you want. I can do  
16 it later"; right?

17 A Correct.

18 Q You say, "I have never gotten it in" --  
19 "gotten in there. I will give it a shot"; correct?

20 A Correct.

21 Q And he responds, "What period do you need it  
22 for?"; right?

23 A Correct.

24 Q Now, what I want to note is that, again, the  
25 time stamp at the very top is November 6th, 2019, but

1 it starts at 12:54 p.m.; right?

2 A Okay.

3 Q So I didn't read all of the conversation,  
4 there's a little bit more, which we'll go into.

5 But the next time stamp right below it is  
6 November 6th, 2019, at 2:54 p.m.; correct?

7 A Correct.

8 Q So this is over a period of about two hours;  
9 right?

10 A Correct.

11 Q So, again, Mr. Rajaei says, "What periods do  
12 you need it for?"; right?

13 A Correct.

14 Q You say, "To today's date, starting  
15 January 1st"?

16 A Correct.

17 Q He responds, "Okay"; right?

18 A Yeah.

19 Q Then you respond and say, "Also, I had a  
20 convo with Trubek. Have they given us the overall  
21 contract yet? If not, they are"; right?

22 A Yeah.

23 Q Now, Mr. Rajaei actually responds at [sic]  
24 November 6th, 2019, at 2:54 p.m., and he asks, "Is  
25 TopDevz in any way involved in the financials of of

1 this increase?"; right?

2 A Correct.

3 Q You say, "What do you mean?"; right?

4 A Uh-huh.

5 Q He responds and says, "Are they loaning or  
6 approving anything for you based on TopDevz?"; right?

7 A Correct.

8 Q You respond, "TopDevz is not responsible for  
9 anything"; correct?

10 A Correct.

11 Q I'm going to go over to what's a continued  
12 part of this conversation -- actually, I want to  
13 finish this.

14 Right below "TopDevz is not responding to  
15 anything," it's a little cut off --

16 A "Responsible for anything."

17 Q Right.

18 "TopDevz is not responsible for anything."

19 And below that it looks like it says, "They just want  
20 to know my financial position."

21 Does that sound correct?

22 A Correct.

23 Q All right. Now let's go on to Exhibit 14A,  
24 which continues the conversation. This is  
25 paragraph -- or sorry, page 76.

1                   And, again, this is a continuation of your  
2 text correspondence between and you Mr. Rajaei;  
3 correct?

4           A     Correct.

5           Q     And it's a part of the same conversation.  
6 It's a continuation of the same conversation;  
7 correct?

8           A     Correct.

9           Q     Now, you're on the left-hand side; correct?

10          A     Correct.

11          Q     And Mr. Rajaei is on the right-hand side;  
12 correct?

13          A     Correct.

14          Q     So Mr. Rajaei says, at the top, on the  
15 right-hand side -- right-hand side, he says, "I'm  
16 going the report now"; correct?

17          A     Correct.

18          Q     You respond, "Awesome. Thank you"; correct?

19          A     Correct.

20          Q     You then respond, "I have Pulse and Creator  
21 but no access to books in Zoho"; correct?

22          A     Correct.

23          Q     He responds, "That's not true. It says you  
24 have been invited and your account is active";  
25 correct?

1 A Correct.

2 Q Right below that it looks like there's a PDF  
3 of the balance sheet sent; correct?

4 A Correct.

5 Q And then there's a PDF of the profit and  
6 loss statement sent; correct?

7 A Correct.

8 Q You then respond and say, "I got into Zoho";  
9 correct?

10 A Correct.

11 Q You then respond and say, "Through their  
12 website and through my TopDevz account, and those  
13 were all that I had access to"; correct?

14 A Correct.

15 Q He responds and says, "Again, not true";  
16 correct?

17 A Correct.

18 Q So just so we have a complete assessment for  
19 the record of this conversation, you then said, "I  
20 don't know what to tell you. I can show you a  
21 screenshot. Maybe I just don't know how to access  
22 books. I don't know. Is it separate from the main  
23 portal?"

24 That's what you said; correct?

25 MR. CARPENTER: Pardon me. Are you reading

1 from this? It's not on the screen.

2 MR. MATTHEWS: It should be on the screen. Can  
3 you see this, on the left-hand side?

4 MR. CARPENTER: Okay. Thank you.

5 MR. MATTHEWS: Sure.

6 Q So, again, just so it's clear, you're on the  
7 left-hand side; right, Mr. Davis?

8 A Correct.

9 Q All right. So Mr. Rajaei's on the  
10 right-hand side; correct?

11 A Correct.

12 Q And so he says, "Again, not true"; right?

13 A Correct.

14 Q You respond and say, "I don't know what to  
15 tell you. I can show you a screenshot. Maybe I just  
16 don't know how to access books. I don't know. Is it  
17 separate from the main portal?"; right?

18 A Correct.

19 Q Mr. Rajaei responds, he says, "Yes. There  
20 is different portals for each"; correct?

21 A Correct.

22 Q You respond and say, "Okay. I will try  
23 later. No big deal. Thanks for sending the reports;  
24 correct?

25 A Correct.

1 Q So, Mr. Davis, before -- or yesterday, you  
2 testified that you acknowledged getting the P&Ls for  
3 TopDevz; right?

4 A Correct.

5 Q And in connection with those P&Ls, you  
6 acknowledged that you saw a consulting reimbursement  
7 expense; correct?

8 A Correct.

9 Q And you never raised issue with the  
10 consulting reimbursement expense; correct?

11 A Correct.

12 Q And you've testified today that you knew  
13 that Ashkan Rajaei was getting commissions; correct?

14 A Correct.

15 Q Okay. And you testified yesterday that you  
16 knew -- and actually today, that you know who  
17 Jennifer Glaser is; correct?

18 A Correct.

19 Q And Jennifer Glaser is the accountant for  
20 TopDevz; correct?

21 A Correct.

22 Q And you've previously contacted Siarra Wood  
23 via e-mail; correct?

24 A Correct.

25 Q And Siarra Wood you knew was actually

1 employed by Mobile Monster; right?

2 A Correct.

3 Q But you knew that through that relationship  
4 that she serviced TopDevz; correct?

5 A Correct.

6 Q In fact, the signature for Siarra Wood was  
7 for TopDevz; correct?

8 A Correct.

9 Q And you testified yesterday that you  
10 received K-1s from Jennifer Glaser; correct?

11 A Correct.

12 Q And you also testified that you received tax  
13 returns from Jennifer Glaser for TopDevz; correct?

14 A Correct.

15 Q I'm sorry. What is your answer?

16 A Correct.

17 MR. MATTHEWS: Okay. I don't have anything  
18 further.

19 THE ARBITRATOR: All right. Mr. Carpenter, do  
20 you have anything further?

21 MR. CARPENTER: No questions.

22 THE ARBITRATOR: All right. If memory serves  
23 me, Mr. Matthews, did you say that you may want to  
24 call Mr. Davis in your -- as part of your case in  
25 chief on your opposition, or may he be released?

1 MR. MATTHEWS: I may call him.

2 THE ARBITRATOR: All right. Then, Mr. Davis,  
3 I'm not going to release you. So please -- I think  
4 you're probably going to attend the hearing anyway,  
5 but I won't release you at this point in time. We'll  
6 wait till later.

7 THE WITNESS: Thank you.

8 THE ARBITRATOR: Okay. Mr. Carpenter, do you  
9 have another witness ready to go, or is this a good  
10 time to take the lunch break?

11 MR. CARPENTER: This is a good time for the  
12 lunch break. I've been in touch with my witness. He  
13 said he can be available at 1:00.

14 THE ARBITRATOR: At 1:00?

15 MR. CARPENTER: Yeah.

16 THE ARBITRATOR: Okay. Well it's about 12:20,  
17 12:25. So back at 1:00?

18 MR. CARPENTER: Sounds good. Thank you.

19 THE ARBITRATOR: And does your witness have Zoom  
20 information, or is he coming to your office?

21 MR. CARPENTER: No. He has the Zoom  
22 information. I'll confirm it again.

23 THE ARBITRATOR: Okay. Thank you so much. See  
24 everyone.

25 MR. MATTHEWS: Thanks so much.

1 MR. CARPENTER: Thank you.

2 (Recess taken from 12:22 p.m. to  
3 1:11 p.m.)

4 THE ARBITRATOR: Welcome, Mr. Hawes. My name is  
5 Rebecca Callahan. I'm the arbitrator in the matter  
6 in which you've been asked to give some testimony.  
7 So Mr. Carpenter has called you. I'm going to assume  
8 that you're acquainted with him.

9 THE WITNESS: Yes, I am.

10 THE ARBITRATOR: Okay. And then there's another  
11 attorney involved in these proceedings, Mr. Jordan  
12 Matthews. He will also be asking you some questions.

13 THE WITNESS: Okay.

14 THE ARBITRATOR: All right.

15 THE WITNESS: Sounds good.

16 THE ARBITRATOR: So is everyone ready to  
17 proceed?

18 MR. CARPENTER:

19

20 MICHAEL S. HAWES,  
21 having been first duly sworn, testified as follows:  
22

23 THE ARBITRATOR: Thank you very much.

24 Go ahead, Mr. Carpenter.

25 MR. CARPENTER: Thank you very much.

DIRECT EXAMINATION

BY MR. CARPENTER:

Q Thank you for joining us, Mr. Hawes.

Can you state what your profession is?

A I'm a CPA in California for 45 years now.

Q And have you qualified as an expert witness  
in court before?

A Yes, I have.

Q Approximately how many times have you  
testified in court?

A Probably -- somewhere around probably 15, 20  
times.

Q Okay. How many times have you been deposed?

A Representing clients and everything,  
probably, I don't know, 80 times.

Q Thank you.

Tell me about the investigation you've done  
in this case.

A Well, I've gone through and looked at tax  
returns and I've looked at income statements, not the  
balance sheet, but income statements, and I've looked  
at an operating agreement for the partnership, and  
looked at testimony -- not testimony, but a  
declaration from Nevin Sanji [sic], Sanji. And  
that's pretty much it, as far as documents I reviewed

1 that were supplied to me.

2 Q Just to be clear, was the declaration by  
3 Nevin Sanil --

4 A Sanli, yes.

5 Q Sanli, S-a-n-l-i?

6 A Yes.

7 Q Thank you.

8 And turning, first, to the tax returns. I'm  
9 going to share-screen and show you a document which  
10 I'll represent to you will be the 2017 tax return for  
11 TopDevz.

12 A Okay.

13 Q I'd be happy to show that to you as soon as  
14 I get a share-screen. There we go.

15 A Sure.

16 Q There you go. There you go.

17 All right. I'm showing you a document  
18 that's been marked Davis Exhibit 8.

19 Is this the 2017 tax return you reviewed?

20 A Well, that's -- that's not the tax return,  
21 but it's a cover letter to the amended tax return,  
22 I'm assuming it is. That's just the cover.

23 Q So let's go forward, then. Get it up there  
24 so I can see everything.

25 While we're looking at this, tell me what

1 you found of significance in the tax return.

2 A Well, what I thought was significant is --  
3 and I don't know how relevant it is to this  
4 discussion -- and on page 3, line 21, did the  
5 partnership -- for the tax year, did the partnership  
6 make any payments that would require it to file Form  
7 1042 or 1042-S, and to check the three of sections of  
8 1441, blah, blah, blah. And it was checked no. So  
9 I'm assuming that there were no foreign tax  
10 withholdings done for either -- for any entity or the  
11 individual partners.

12 I also noticed of significance there was a  
13 loan from the partner for \$27,961 sometime during the  
14 year, and that was on the balance sheet of the tax  
15 return. And so --

16 Q What page is that on? Pardon me.

17 A That's on page 5. It's the balance sheet  
18 for the tax return.

19 THE ARBITRATOR: Could you slow down? There are  
20 no numbers here. So I'm not finding what you're  
21 finding on the pages you're saying.

22 THE WITNESS: Sure.

23 MR. CARPENTER: Here, let's -- right now, we're  
24 on page 5 of the tax return, which is the balance  
25 sheet section of the tax return.

1 THE ARBITRATOR: Right, but it's not page 5 of  
2 the document.

3 MR. CARPENTER: No. Of the PDF you were sent,  
4 it's page 22.

5 THE ARBITRATOR: Okay.

6 All right. I'm there. Thank you.

7 BY MR. CARPENTER:

8 Q And Mr. Hawes, please slow down, and let us  
9 catch up with you here, please.

10 So what was important to you here on the  
11 balance sheet section of the tax return?

12 A Well, the fact that the -- at the end of the  
13 year, according to the balance sheet and the tax  
14 return that was agreed -- that was signed by one of  
15 the partners and prepared by a CPA firm, it has  
16 \$595,000 cash in bank, but yet one of the partners  
17 apparently loaned it \$27,000. It's unusual.

18 Normally when partners loan money to a  
19 partnership, they have little or no cash. And the  
20 fact that you've got almost \$600,000 in cash, but yet  
21 one of the partners loaned money to it, it just drew  
22 my attention to it. Let's put it that way.

23 Q And why is that -- why is that unusual?

24 A Well, why would somebody need to loan money  
25 to a partnership if it's got almost \$600,000 of cash

1 in it?

2 Q In your experience, what are the customary  
3 reasons for that?

4 A I think what the CPA firm tried to do was  
5 allocate a portion -- or treat this as some type of a  
6 loan in order to give him recourse basis. Because  
7 the amount of the loan is exactly, to the dollar,  
8 what his loss is. In order to give him the ability  
9 to deduct the loss, I think they just plugged the  
10 number in to give him a -- some basis as a  
11 nonrecourse loan.

12 Q So are you referring to -- his loss, are you  
13 referring to Ashkan Rajaei, the manager?

14 A Yes.

15 Q Okay. So I'm going to take you to his K-1.  
16 Just a moment.

17 And we're now on page 28 of the PDF. And is  
18 that legible for you?

19 A Yes.

20 Q So -- and what portion of this reflects  
21 Mr. Rajaei's share of the loss?

22 A The very top line, line number 1, the  
23 \$27,961.

24 Q Thank you.

25 And is that also reflected in the line L?

1           A    Yes.  It's the same number as they're saying  
2   is the loan to the business.

3           Q    What does line L on the schedule K-1  
4   represent?

5           A    Well, it's actually called Schedule L.  
6                Schedule L is the balance sheet for the  
7   books.

8           Q    And on the -- focusing on the K-1 here, and  
9   I'm going to -- let me make it a little larger here.

10               Do you see the section L in the lower left  
11   where it says "Partner's Capital Account Analysis"?

12           A    Yes.  On the K-1, yes.

13           Q    And what is the purpose of the capital  
14   account analysis?

15           A    Well, the partner's capital account analysis  
16   is required by the IRS, and it helps them understand  
17   exactly how much money people have invested in the  
18   partnership, what their distributions were, what  
19   their share of the allocated loss -- or losses or  
20   profits were, things like that.  And it gives them a  
21   good snapshot of what someone's capital account  
22   balance is.

23           Q    Okay.  Is that required to be maintained, to  
24   your knowledge?

25           A    Yes, that's required.

1 Q Drawing your attention to line J, "Partner's  
2 Share of Profit, Loss and Capital." Do you see that?

3 A Yes.

4 Q And there's a beginning of the year of zero  
5 on profit, end of the year 6.5-and-change.

6 Do you see that?

7 A Yes, I do.

8 Q How does that occur?

9 A Well, I'm not sure how the CPA firm came up  
10 with their percentages, because I can't find it in  
11 the Operating Agreement at all. But, basically, that  
12 is Mr. Rajae's allocated share of the profit and  
13 loss.

14 Q Also on line J there's a capital section  
15 showing beginning and end with him of zero.

16 Do you see that?

17 A Yes, I do.

18 Q What's the significance of that to you?

19 A Well, the capital account is you're tracking  
20 your ownership, who owns the business. And that's  
21 important because usually the capital account is used  
22 to allocate profit and losses, that ratio. So if  
23 someone puts in \$10,000, someone else puts in 90,000,  
24 you have a total capitalization of 100,000. And the  
25 profits and losses are allocated 90-10 in direct

1 proportion to your capital account.

2 So the LLC's profit and losses at the end of  
3 the year are distributed into each owner's capital  
4 account proportionately to their ownership. In some  
5 LLC agreements, profits are distributed based on the  
6 owners's initial capital investments. In other  
7 agreements, they're distributed based on the current  
8 amount of each owner's capital account. But the  
9 capital accounts are extremely important for -- upon  
10 dissolution, who gets how much money, but especially  
11 important for allocating profit and losses of the  
12 business and ownership and voting rights, all those  
13 types of things.

14 Q Focusing in on the profit, loss and capital  
15 section, J.

16 Is there a difference in accounting for an  
17 LLC than other entities, say like a corporation?

18 A Yes, there is. In a partnership -- a  
19 partnership has more flexibility in allocating profit  
20 and losses than a corporation does. A subchapter S  
21 corporation has to allocate profit and losses in  
22 direct proportion to the stock ownership.

23 LLCs, under code Section 704B, are able to  
24 allocate profit and losses differently provided you  
25 can provide -- you can substantiate substantial

1 economic effect. And as long as you can prove that,  
2 you can allocate profit and losses differently than  
3 capital account balances.

4 And what that means is, is that the IRS will  
5 recognize a different profit and loss allocation as  
6 long as for a nontax reason? You can't just do it  
7 because someone's in a lower tax bracket, so I'm  
8 going to allocate them the profits so they pay less  
9 taxes. No, you can't do that.

10 You can do it if you have an economic  
11 reason. For example, if someone were to invest a  
12 hundred thousand in a partnership, and his partner  
13 invested nothing, you may be able to show it because  
14 someone has all the skin in the game, that we're  
15 going to allocate a higher percentage of the losses  
16 to them and let them write that off. That would be a  
17 nontax reason.

18 So that -- in a quick summary, that's how  
19 the profit and losses work in the capital accounts,  
20 how they interplay with each other.

21 Q So is it commonly seen on LLC K-1s that  
22 there might be a difference between the profit and  
23 loss split for a given partner and the capital  
24 percentage for a given partner?

25 A I'm going to say -- oh, I must -- out of

1 maybe 250 LLC agreements that my office works with,  
2 the number of actually different allocations, where  
3 the allocation of profit and losses is different than  
4 their capital account or investment, is probably, oh,  
5 maybe 2 or 3 percent. 97 percent are just based  
6 strictly on standard tax law, which is to allocate  
7 profit and losses based on skin in the game, based on  
8 how much money you put in, either your initial  
9 capital contribution or your capital account balance  
10 at the end of the year.

11 Proving substantial economic effect in many  
12 cases is difficult to reallocate differently. And so  
13 not many people can do that, and not many people  
14 elect to. So most partnerships are -- profit and  
15 losses are strictly allocated, unless it's agreed to  
16 otherwise, and unless you can prove there's  
17 substantial economic effect, that there's a nontax  
18 reason for doing that, for example, one person has a  
19 lot more cash and a lot more equity than someone  
20 else, you can't do it.

21 Q But there's nothing specifically wrong, is  
22 there, with having -- as long as the rules are  
23 followed, of having the difference between the profit  
24 and loss calculation and the capital allocation?

25 A That's completely accurate.

1 Q Okay. Is there any indication in this tax  
2 return about why Mr. Rajaei has a zero percent  
3 capital here?

4 A Well, I'm assuming he didn't -- he didn't  
5 put any money in. He didn't -- remember, you can  
6 contribute either cash or property. So you can put  
7 cash in or you can put a building in or raw land or  
8 something like that. And from what I'm seeing on the  
9 balance sheet on the tax return, Mr. Rajaei did not  
10 contribute either to it as a capital contribution.

11 Q And what does the statement under -- I'm  
12 looking again at line J, the statement of the  
13 partner's share of capital percentage in line J, what  
14 does that tell the IRS about the ownership of the  
15 company?

16 A He has no economic ownership in the company.

17 Q Are you aware that Mr. Rajaei is the tax  
18 matters partner on this?

19 A I think I saw that on the Operating  
20 Agreement. Although, the K-1 is different, so  
21 there's a little bit of a conflict. Because if you  
22 look at line G, as in good, there's a box there that  
23 says, "General partner or LLC managing" -- "member-  
24 manager," right? And if you have a tax -- if you  
25 have a managing member or an LLC is member-managed,

1 that box should be checked. So it's not. It's  
2 actually checked as a limited partner for Mr. Rajae,  
3 not as a managing partner.

4 So although I did see on the partnership  
5 agreement it said -- I think it -- I'm almost sure it  
6 said that he was the managing member.

7 Q Okay. If he's the managing member, is it  
8 improper on the K-1 to identify it as a limited  
9 partner or other LLC member?

10 A No. You want to identify him as a general  
11 partner or LLC member -- member-manager.

12 Q Also on line G, I see a section -- a box  
13 checked for foreign partner. Do you see that?

14 A Yes.

15 Q What's the significance of that to you?

16 A Well, the foreign partner would be anyone  
17 who is not a U.S. citizen or resident. So that would  
18 basically be a nonresident alien, NRA.

19 Q What other portions of the 2017 return are  
20 important to you in reaching your conclusions?

21 A Well, what it is, is how someone came up  
22 with a profit and loss allocation of 6.5 percent.  
23 And, again, I would be looking for something in the  
24 Operating Agreement that would specifically authorize  
25 a disproportionate allocation of profit and losses to

1 him.

2 I also noticed that at the top of that K-1  
3 there's a box checked "Amended K-1."

4 Q Are you referring to the top of the page  
5 above the two columns on the right?

6 A Yes. The very top, you can see the box is  
7 checked "Amended," and so -- and then -- so as I went  
8 through it, I also noticed that there was a provision  
9 somewhere, that it talks about that the -- oh, there  
10 it is, on page 8 -- that the CPA firm wrote a  
11 statement on the return that we are amending this  
12 return to correct the loss allocation based on the  
13 receipt of an amendment partnership agreement.

14 THE ARBITRATOR: Where is that?

15 BY MR. CARPENTER:

16 Q What page are you on there?

17 A I'm on page 8.

18 Q Okay. Let me find it in the PDF for  
19 everybody.

20 A Yeah. Keep going through it. It's just in  
21 front of the K-1 for Mr. Rajaei. Look two pages in  
22 front of Mr. Rajaei's K-1 and it should be there.

23 There you go. Stop right there. There it  
24 is.

25 MR. CARPENTER: That's page 26 of the PDF for

1 everyone's purposes.

2 THE ARBITRATOR: And where were you looking?

3 Oh, I see.

4 THE WITNESS: At the very top.

5 And so all of a sudden I'm questioning,  
6 after I spent a lot of time going through their  
7 Operating Agreement, is this the amended one or is  
8 this the initial one? Because the initial one, I  
9 don't see where they have the right to allocate  
10 different profit and loss ratios or even how they  
11 have substantially found the tax. So I'm not sure,  
12 to be honest with you, whether I've got all the  
13 information to even understand what they're doing.

14 BY MR. CARPENTER:

15 Q Okay. So I'm going to go back to the K-1  
16 here, which is the 28th page of the PDF.

17 If a partner has a 51-percent inter- -- a  
18 capital interest on an operating agreement, would it  
19 be improper to state on the tax return that his  
20 capital share is zero percent?

21 A Well, yes. I mean, the -- the tax return  
22 should follow the agreement, from the Operating  
23 Agreement.

24 Q Do you have any information about whether or  
25 not there's a subsequent agreement which allocated

1 Mr. Rajae a zero-percent interest?

2 A No. I have -- in fact, the partnership  
3 agreement at the last -- at the very end, where it  
4 has the amount of capital contribution and ownership  
5 percentage, is blank.

6 Q Thank you.

7 A So I don't know. I don't know what they're  
8 doing. I mean, it's --

9 Q Is it of significance here in the 2017  
10 return for your opinions?

11 A Well, only -- I guess I might as well bring  
12 out the fact that you've got a huge expense, even  
13 though the revenue -- let me go back to page 1. Even  
14 though the total revenue is only 890,000, the  
15 consultant's expense was 929,000. So --

16 Q Pardon me. Can you tell us where you are in  
17 this return?

18 A I'm on page 8 of the return. The same page  
19 where at the very top we talked about the amended  
20 return, and so the return was amended because of the  
21 amended partnership agreement.

22 Q Thank you. Whenever you go someplace else,  
23 be sure you bring us along here.

24 So what line are you looking at on page 8,  
25 which is page 22 of the PDF?

1 A Yes, yes, page 8. The one we looked at  
2 where it talked to the amended partnership agreement.

3 Q Okay. And what line are you referring to,  
4 the expense item?

5 A Well, if you look -- if you look under other  
6 deductions, in the very middle, the very first, it  
7 says "Tax expense," and below that it says, "Other  
8 deductions."

9 Q Yes.

10 A And in other deductions, you've consultant's  
11 expense of 929,000, which exceeds the actual income.

12 Q I'm sorry. Where are you getting the 929?

13 A The 929 is on the second line down, where it  
14 says -- it's got bank charges and consultants.

15 THE ARBITRATOR: I think you're on the wrong  
16 page.

17 THE WITNESS: Yeah. You're on the wrong page.  
18 BY MR. CARPENTER:

19 Q Are you looking at a profit and loss  
20 statement, or are you looking at the tax return?

21 A No. I'm looking at a statement, page 8,  
22 what I'm looking at, and I'm back to where we  
23 started, where we talked about the amended -- the  
24 loss allocation being different because of the  
25 amended partnership agreement.

1 Q So --

2 THE ARBITRATOR: Two pages in front of the K-1.

3 THE WITNESS: Yes, two pages -- thank you, yes.

4 BY MR. CARPENTER:

5 Q Okay.

6 A Right there. Stop there. Go back. All  
7 right. No, no, go back. Go back. Next one. Stop  
8 right there. You've got to stop going. You keep  
9 going too far.

10 Q So is this the right page?

11 THE ARBITRATOR: No.

12 THE WITNESS: No.

13 BY MR. CARPENTER:

14 Q Okay. Which way am I going?

15 THE ARBITRATOR: I don't know.

16 THE WITNESS: What page -- keep going back. Go  
17 back one page. Stop one page at a time. Stop right  
18 there. Stop right there.

19 BY MR. CARPENTER:

20 Q Okay.

21 A Look at the very middle. Do you see "Other  
22 Deductions"?

23 Q Got it.

24 A Look at the second line down, under  
25 "Consultant."

1 Q Uh-huh.

2 A To the right is 929,000.

3 Having done business valuations and being  
4 familiar with IT companies and software companies,  
5 having consultant's expense which is greater than  
6 your gross revenue is highly unusual. And so  
7 I'm just -- again, you asked me was there anything  
8 that stood out, and that stands out to me.

9 Q Do you have enough information to reach a  
10 conclusion about what the significance of that is?

11 A No, I don't.

12 Q Thank you.

13 Have you had a chance to review all of the  
14 2017, 2018, 2019 and 2020 returns?

15 A Yes, I have.

16 Q And did you note that Mr. Rajae is never  
17 given more than zero percent of the partner shares on  
18 line J?

19 A That's correct. He is -- his ownership  
20 interest is always zero percent in the capital  
21 account.

22 Q What's the significance of that to you?

23 A Well, again, as I mentioned before, the  
24 capital account usually dictates the allocation of  
25 profit and losses, but it also is important, upon

1 dissolution, as far as cash coming out, and in most  
2 cases, your capital account and ownership dictates  
3 voting rights.

4 So the capital account is, in my opinion,  
5 more important than the profit and loss allocations  
6 because it usually dictates that, unless there's  
7 language that is agreed to by the partners where the  
8 allocation of profit and losses is different.

9 Q Thank you.

10 I'm now showing you Davis Exhibit Number 11,  
11 which is the 2020 return.

12 A Okay.

13 Q And I'm at page 19 of the PDF, which is the  
14 K-1 for Mr. Rajaei.

15 A Okay. I've got that in front of me, the  
16 2020 K-1 for Mr. Rajaei.

17 Q Yeah.

18 A Okay.

19 Q So, first of all, I notice that under box  
20 number G, he's now listed as general partner or  
21 managing -- or LLC member-manager. Do you see that?

22 A Now he is, yes. I'm sorry. I don't see --  
23 are we on the same page?

24 Q We're on page -- we're on the K-1 for 2020,  
25 which is PDF page 19.

1           A     Okay. You may want to change your screen  
2     there.

3           THE ARBITRATOR: Change the screen.

4     BY MR. CARPENTER:

5           Q     Am I not there?

6           A     No.

7           Q     Sorry. Yeah, I didn't get it up there.  
8     Hold on a sec. Thank you.

9           My bad there.

10          Now, are you seeing 2020 the K-1 there?

11          A     Yes.

12          Q     Thank you.

13          This is page 19 of the PDF.

14          And do you see that the designation on line  
15     G for who's filing this return -- or who this K-1 --  
16     who's getting this K-1 has changed?

17          A     Yes.

18          Q     What's the significance of that to you?

19          A     Well, the '17 returns indicates to me, based  
20     on the IRS department, that if you've got both  
21     partners and neither one is checked as a general  
22     partner, then it's not manager-managed, it's  
23     member-managed, which means by all the partners.  
24     When you change it to Mr. Rajaei as the  
25     member-manager, then it appears now that he's in

1 charge. He's the member-manager, and it's not  
2 member-managed. It's not both partners, it's only  
3 the one.

4 Q And did any documents that you reviewed give  
5 any indication as to why that would be the case?

6 A No.

7 Q Also on line G, Mr. Rajae is --

8 A Well, I take it back. When I reviewed the  
9 partnership agreement, again, I don't know if this is  
10 the amended one or not, I believe somewhere in the  
11 Operating Agreement it did mention that he was the  
12 managing member, but I'm not a hundred percent sure  
13 on that. Okay?

14 Q Thank you. I'll represent to you that  
15 that's true. Does that affect your opinion?

16 A No. Yeah -- well, anyway, yeah, okay,  
17 That's good.

18 Q Turning to line H1, Mr. Rajae is listed as  
19 a domestic partner there. Do you see that?

20 A Yes.

21 Q Any significance to that?

22 A Well, yeah. If you're a domestic partner,  
23 it would indicate that you're either a U.S. citizen  
24 or resident, and you'd be filing a U.S. tax return.

25 Q Okay. Have you been brought anything that

1 shows you a reason for that change?

2 A No. Other than -- no, I don't have any idea  
3 why that would change.

4 Q Okay. Going back down to line J. It shows  
5 the partner's share of profit being the same for the  
6 beginning and the end. Do you see that?

7 A Yes.

8 Q And but loss shows it starts with  
9 zero percent -- percentage and goes to 51. Do you  
10 see that?

11 A Yes.

12 Q Were you provided anything that shows a  
13 reason why the loss percentage for Mr. Rajaei changed  
14 from zero to 51 percent during tax year 2020?

15 A No.

16 Q And what kind of thing would there need to  
17 be to represent that change?

18 A Well, again, if you have a zero-percent  
19 capital interest, but you're going to take a  
20 51-percent, in this case, a profit and loss interest,  
21 there has to be substantial economic effect. What  
22 happened to create a situation where he is enabled to  
23 take 51 percent of the profit and losses? Because,  
24 based on capital account balances, which is normally  
25 how we allocate profit and losses, he's never had a

1 positive or even a zero -- he had a zero cap account  
2 balance when they started, but he's always had, that  
3 I've seen on the K-1s, a negative capital account.

4 So I'm at a loss as to how anyone would  
5 allocate 51 percent of the profit and losses, absent  
6 anything in the partnership agreement, and even if it  
7 is in there, you still have a hurdle under 704B to  
8 prove substantial economic effect. What is the  
9 economic reason why you'd give him 51 percent? And  
10 it cannot be based on tax-motivated reasons, it's got  
11 to be based on economic realities.

12 Q And did you see anything here in the  
13 whole -- it's a lengthy return at 403 pages, mind  
14 you, but did you see anything here in the 2020 return  
15 that demonstrated either a substantial economic  
16 reason or an agreement of change to the Operating  
17 Agreement to indicate the change in the loss  
18 allocation?

19 A No. I saw nothing in either the Operating  
20 Agreement or the tax return that would give him that  
21 right.

22 Q Okay. And, again, the line -- or, yeah,  
23 line J, partner's share of capital is zero to start  
24 and zero to end. Do you see that?

25 A Yes.

1 Q And what is the significance of that to you?

2 A Again, he has no economic interest in the  
3 partnership. He has no capital account balance and  
4 no capital account ownership. In fact, his capital  
5 account is a deficit. So, again, capital accounts  
6 are extremely important. More important than the  
7 profit and loss allocations. The cap accounts  
8 dictate ownership, voting rights, allocations of  
9 profit and losses, rights that you have on  
10 dissolution, it's what they call a deficit  
11 restoration obligation, a DRO, which on liquidation  
12 you have to restore or put money in or get allocated  
13 profit and losses to bring your capital account back  
14 to zero.

15 So that capital account and the percentage  
16 ownership is extremely important for a lot of  
17 reasons.

18 Q Okay. Apropos to that, looking down to line  
19 L, the partner's capital account analysis. Do you  
20 see that?

21 A Yes.

22 Q And does this show a positive or a negative  
23 capital account balance?

24 A It's a negative capital account balance.

25 Q Did you ever see anything in your

1 investigation that showed that Mr. Rajaei had a  
2 positive capital account balance?

3 A No.

4 Q I just noticed something here. If you want  
5 to go right-hand column on that same page. Item  
6 number 14, under "Self-Employment Earnings," do you  
7 see that?

8 A Yes.

9 Q There's an item C listed with \$2.2 million.  
10 Do you see that?

11 A Yes.

12 Q Did you look at that at all?

13 A Yes, I saw that.

14 Q And there's a reference -- tell me the  
15 significance of \$2,202,000 self-employment earning  
16 reference there in section 14.

17 A On the 2020 return?

18 Q The 2020 return.

19 A Yeah.

20 Q If that was significant to you.

21 A I believe the 202,000 [sic], I haven't  
22 looked at it in depth, but it's probably 50 -- the  
23 number is probably 51 percent of the gross revenue,  
24 which is \$4.3 million. And there's calculations that  
25 we do on the returns for different allocations. And

1 so that would come into one of those -- one of those  
2 calculations on his personal return.

3 Q Did you -- looking up at item number 18, did  
4 you look at the statement that's referenced there?

5 A Statement C?

6 Q Yes.

7 A No.

8 Q Okay. Anything else of significance about  
9 the 2020 return to you?

10 A No, other than I noticed that the guaranteed  
11 payments seemed to have gone up.

12 Q Take me where that's referenced. Is that  
13 going to be in the balance sheet?

14 A No. It's the same K-1 there, on line 4A.  
15 4A, as in apple.

16 Q Okay.

17 A Okay. And 4A and 4C is the same number.

18 Q And you're referring to 4C up there at the  
19 top of the page?

20 A Yes. And I noticed from 2019, the  
21 guaranteed payments were 125,000, and they increased  
22 to 231,000 in 2020. So I did notice that increase.

23 Q Okay. And what is a guaranteed payment in  
24 an LLC?

25 A In an LLC partners are not paid a W-2 wage

1 like normal employees would be, like if you were an S  
2 corp. In a partnership, in lieu of calling it wages  
3 and having a W-2 with withholding, we called it a  
4 guaranteed payment. And a guaranteed payment is  
5 usually made to one of the partners for services he  
6 provides to the partnership.

7 Q Okay. Thank you.

8 So based upon your review of all of the tax  
9 returns, what did the tax returns state Mr. Rajaei's  
10 ownership of the company is?

11 A Zero percent.

12 Q Did you make any analysis as to whether or  
13 not Mr. Rajaei would be required to do foreign tax  
14 withholding? Just tell me whether or not you made  
15 the analysis.

16 A I have done a preliminary one with the  
17 information given, that was all.

18 Q Have you been given enough information that  
19 would allow you to render a final and complete  
20 opinion?

21 A No, I haven't. I need to do a full,  
22 complete accounting to -- and I have quite a few  
23 questions in these documents to determine that.

24 Q Based upon the information you've been  
25 provided thus far, do you have an opinion about

1 whether it's likely Mr. Rajaei would be required to  
2 do a foreign income tax withholding for his personal  
3 income?

4 A It's possible either he personally or Mobile  
5 Monster, his Canadian company, may have to do  
6 withholding, but, again, I'd need more information.

7 Q So what's -- just in general, why do you  
8 think that Mr. Rajaei might have to do foreign income  
9 tax withholding?

10 A Well, just real general, there's code --  
11 section 1441 to 1446 of the code, and what that does  
12 is it details out all the different types of  
13 withholding rules for foreign investors in U.S.  
14 businesses. So it deals with both foreign partners  
15 that are citizens of a foreign company, and it also  
16 deals with vendor payments to foreign -- to companies  
17 in a foreign country that are outside the United  
18 States.

19 And, though, they're are fairly complex rules  
20 and regulations regarding the requirement of either a  
21 30-percent withholding or something possibly less,  
22 but there's -- you'd need to look at -- I'd need to  
23 look at substantially more information than what I've  
24 got.

25 Q How about just from Mr. Rajaei individually,

1 and not his company? As a foreign taxpayer,  
2 generally are foreign taxpayers required to do  
3 foreign income tax withholding?

4 A Well, if he's a U.S. resident, he's required  
5 to file a 1040NR. Now -- or he's required to file a  
6 1040 return, a U.S. tax return if he's a U.S. citizen  
7 and resident. If he's not a U.S. citizen and  
8 resident, then it's very likely that any payments  
9 made to him would be required to have a 30 percent or  
10 lesser withholding rate. But some type of  
11 withholding rate, and then the filing of a Form 1042  
12 or 1042-S to the IRS remitting the withholding and  
13 describing the withholding.

14 Q Did you see anything in the returns that  
15 show you how the foreign income tax withholding were  
16 treated?

17 A Well, if there was money withheld, it should  
18 have been showed as a liability on the balance sheet,  
19 which there was nothing there. And also the question  
20 on the partnership return, when asked about Form 1042  
21 and 1042-S, the box was checked no, that there was no  
22 withholding. So I'm assuming that there was no  
23 withholding for either him personally as an  
24 individual or to any -- any foreign companies that  
25 payments were made to.

1 Q Well, let's just be candid here, it sounds  
2 like -- have you reached a conclusion about whether  
3 there was proper withholding or not?

4 A In my opinion, there's no withholding, but  
5 there's a good possibility there should have been.  
6 But, again, I can't determine that until I have all  
7 the information.

8 Q All right. Thank you.

9 A Okay.

10 Q Moving on. I'm moving on to a new area.

11 So are you aware that in 2021 the LLC  
12 entered into an aircraft lease agreement with a  
13 company called RemotePreneurs that's owned by  
14 Mr. Rajaei?

15 A You know, I'm slightly familiar with it from  
16 looking at the declaration of Nevin Sanli, but I  
17 don't really have any detailed information, other  
18 than I saw on the financial statement in 2021 that  
19 there was a large expense for aircraft, \$192,000, and  
20 that stood out for me. And the reason it does is  
21 because in all the court cases I look at, which I  
22 look at them every week, every time there's an audit  
23 and it's gone to tax court for someone to  
24 substantiate their travel, most people don't document  
25 business use of the airplane, and so it gets

1 disallowed as an expense.

2 So I have no idea whether proper  
3 documentation and proper business motivation can be  
4 substantiated for the use of this plane. But I'd be  
5 interested to see if the individual has the proper  
6 documentation to support an IRS audit.

7 Q In your opinion, does the existence of an  
8 aircraft increase the likelihood of an audit?

9 A Absolutely, of course.

10 Q And in your experience, what percentage of  
11 small business aircraft audits result in the  
12 deduction being upheld?

13 A I'm going to say probably less than 10  
14 percent.

15 Q Are you aware that Mr. Rajaei purchased a  
16 Bentley automobile in the name of the company?

17 A Only from what I've really read in the  
18 declaration of Sanli.

19 Q What has to be done to justify, from a tax  
20 standpoint, deduction of expenses relating to a  
21 Bentley automobile?

22 A Well, the same similar documen- -- similar  
23 documentation to the airplane. You need to have the  
24 miles -- a detailed record of your business trips and  
25 business use of the miles every day, and business

1 purpose, who you met with, what the purpose of the  
2 meeting was, and what the relationship is, the  
3 business purpose. So it's very fairly detailed  
4 document.

5 Q And does the existence of a luxury  
6 automobile, like a Bentley, in a small business  
7 situation give rise to a greater likelihood of audit?

8 A Well, the IRS wouldn't necessarily track in  
9 that it was a Bentley or something like that, because  
10 the fixed asset schedule of the detail usually  
11 doesn't detail it out that it's a Bentley. It says  
12 vehicle, and you wouldn't know how many vehicles were  
13 in there.

14 But once an agent, if he did audit it, and  
15 saw that there was a car like a Bentley in there, I'm  
16 sure they would ask why would the business need a  
17 vehicle like a Bentley in there. But again, the key  
18 is documentation. Okay. You can put an expensive  
19 vehicle in, provided you can document it. And it's  
20 required; otherwise, it becomes a personal use  
21 vehicle, and it's treated as distribution, not  
22 deductible by the partnership and a distribution to  
23 the partner.

24 Q I'll represent to you that Mr. Rajaei claims  
25 that the Bentley automobile is being reimbursed out

1 of his private funds.

2 Is it appropriate, assuming that's true, is  
3 it appropriate, from an accounting standpoint, to  
4 hold an asset in the name of the LLC, which the  
5 owners of the LLC do not believe there's a beneficial  
6 asset of the LLC?

7 A Could you repeat that?

8 Q Yeah, it was a long question.

9 Is it proper under the accounting rules to  
10 hold a vehicle in the LLC if it doesn't belong to the  
11 LLC?

12 A No. I mean, if -- I mean, in order for the  
13 vehicle or the plane, either one -- let's get clear  
14 on this. In order for depreciation, for example, to  
15 happen for a vehicle or an airplane, the title has to  
16 be in the name of the company. Right? Let's start  
17 with that.

18 If the title is not in the company, it's in  
19 another entity, if -- that entity needs to have a  
20 lease agreement between that company and the  
21 corporation where it's leasing that vehicle to the  
22 corporation. We've still got the issue of proper  
23 documentation, and can you document the business use  
24 of that.

25 Q But is it proper -- if the vehicle doesn't

1 belong to the LLC, is it proper for the LLC to hold  
2 the vehicle title in its name and list it as an  
3 asset?

4 A If the vehicle is actually owned by the LLC,  
5 the title's in the LLC?

6 Q If the vehicle is not owned by the LLC, is  
7 it proper -- strike that.

8 If the vehicle's title is in the name of the  
9 LLC, but the vehicle is not actually owned by the  
10 LLC, is that proper?

11 A If the vehicle's title is in the name of the  
12 LLC, then the LLC would own it.

13 Q Okay.

14 A And you'd reflect it on the books. But if  
15 the vehicle's title is not on the books, then you  
16 would not reflect it.

17 Q Okay. Thank you.

18 Did you review the declaration of Mr. Sanli?

19 A Yes.

20 Q And do you take issue with any of his  
21 opinions?

22 A Well, there's just some issues that I would  
23 want to verify. For example, in his declaration  
24 there's an allegation that Mr. Rajaei diverted assets  
25 to the company for his own financial gain. And he

1 says in there that he had this Rolls-Royce Ghost,  
2 which was purchased outright with his personal funds.  
3 I have been informed by Mr. Rajae's counsel's that  
4 these two vehicles were eventually sold for \$191,028  
5 in 2021, which was reinvested in the company.

6 So I would expect that if he sold the  
7 vehicles and put \$191,000 into the company, he'd have  
8 a capital account increase by 191,000 as a capital  
9 contribution.

10 Now, what was provided to me were not full  
11 financial statements. I have only the income  
12 statements. They never gave me -- no one ever gave  
13 me a balance sheet. And, of course, the tax return  
14 is not done for 2021. So that would be -- that would  
15 be one issue that I would have to look at, because  
16 apparently the down payment was with his own personal  
17 funds.

18 He then talked about he purchased a private  
19 jet with personal funds for 600,000 with monthly fees  
20 being covered by the company, and a private jet is  
21 strictly used for business-related travel. Well,  
22 again, the IRS would want to question the  
23 documentation of who he used -- of when he used it  
24 and who he used it to see and what the business  
25 relationship is.

1           He talks about payments being paid to Mobile  
2   Monster, which is a company 100-percent owned by  
3   Mr. Rajaei. And I guess you'd want to see -- if I  
4   was his partner, I'd want to see what the benefits  
5   were for Mobile Monster and how much actual income  
6   was brought in from Mobile Monster versus what the  
7   cost was.

8           He talks about that these payments, the  
9   money that was spent to generate relationships with  
10   DriveTime, Mode Transportation, Health IQ, that these  
11   clients they anticipated to generate approximately  
12   \$11.5 million in annual revenue. Well, anticipating  
13   revenues and actually getting the revenues are two  
14   different things. So whether or not that ever pays  
15   off is open to speculation.

16           He talks about paying 7 percent of the  
17   gross, I guess. He says, "In my opinion the 7  
18   percent rate that TopDevz pays to Mobile Monster is  
19   reasonable." I really question what his basis was to  
20   say it's reasonable. And when I've looked at the  
21   payments going out to Mobile Monster, it exceeded 7  
22   percent. So I don't know if he's really looked at  
23   the financial statements in detail to make that  
24   assumption. But even if 7 percent was reasonable, in  
25   my opinion, it's very possible that the actual

1 payments exceed 7 percent. Okay?

2 Q Thank you.

3 Switching topics. If the managing member of  
4 an LLC has managed the books and records of the  
5 company such that a forensic accounting cannot  
6 determine which expenses should be allocated to which  
7 services provided, is that going to lead to an  
8 adequate basis for there being an accurate statement  
9 of the books and records by an accountant?

10 A Absolutely not. I mean, the managing member  
11 is responsible for not only keeping a set of books,  
12 but following IRS regulations. If he has any  
13 questions, he needs to call a CPA or a tax attorney.  
14 So not having documentation, not having invoices, not  
15 having supporting evidence for any of the expenses is  
16 not only open to the IRS throwing him out, which  
17 means the partnership has additional income, the  
18 partners have additional income on their personal  
19 returns, which they need to file amended tax returns  
20 for, but you've got -- you've got -- it's treated as  
21 a distribution. And so all of a sudden you've got  
22 one of the partners having a substantial -- a large  
23 distribution to them, which is creating a negative --  
24 which is creating a neg- -- creating a possible  
25 negative capital account even worse than it is

1 already.

2 Q Incidentally, you saw the profit and loss  
3 statements that were produced by the company in this  
4 matter; right?

5 A Yes.

6 Q And did you have any indication there of  
7 whether there was an audit, a review, a compilation  
8 or some other level of analysis by the accountant?

9 A My assumption is these are internally  
10 generated financial statements. They're not really  
11 prepared by an outside third party, like a CPA firm.  
12 And the reason is, when we prepare -- obviously, an  
13 audit and review has to have footnotes. Compilations  
14 can or cannot have footnotes. But, in any case,  
15 there's always a notation at the bottom of the page  
16 that these financial statements have not been audited  
17 or reviewed by us and we do not form an opinion on.  
18 We have to put that language on there so any reader  
19 knows these financial statements may have been  
20 prepared by a CPA, but they're not audited or  
21 reviewed statements. And there's no such language at  
22 the bottom of any these pages. So I'm assuming --  
23 I'm assuming that these are internally generated  
24 financial statements.

25 Q In other words, there's no indication on the

1 financial statements how much work a CPA did or  
2 didn't do on them; right?

3 A That's correct.

4 Q And then if a managing member of an LLC  
5 cannot determine whether or not funds he provides to  
6 the LLC to represent capital contributions or loans  
7 to the LLC, can that managing member make a proper  
8 statement of the books for accounting purposes?

9 A Well, no. I mean, it needs to be agreed to.  
10 Most partnership agreements have language in there  
11 that if you make a loan to the partnership, many  
12 times, all the partners have to agree to the loan.  
13 But you really would go to your partner, you'd say,  
14 look, I'm going to put a hundred thousand in or  
15 50,000 in, and I want to put it in as a loan, and I'd  
16 like you to sign this note, or they would say I'm  
17 just going to make a capital contribution to the  
18 partnership, but it's usually -- it would always be  
19 discussed with your partners, and before you put the  
20 money in, so it's clear whether it's a capital  
21 contribution or loan.

22 Q From an accounting standpoint, would it be  
23 proper for a managing member to put money into an LLC  
24 only to determine at a later time whether or not he  
25 considers it a capital contribution or a loan?

1           A    You should determine at the time you put the  
2 money in.

3           Q    And -- okay. Thank you.

4                   No further questions at this time.

5           THE ARBITRATOR: All right. Mr. Matthews?

6  
7                                   CROSS-EXAMINATION

8 BY MR. MATTHEWS:

9           Q    All right. And I apologize, is it -- it's  
10 Mr. Hawes?

11          A    Yes, correct.

12          Q    Good to meet you, Mr. Hawes.

13          A    Thanks.

14          Q    So I just want to clarify. I don't have  
15 that many questions, but is it correct, you said that  
16 in preparing or in reviewing the information that you  
17 used to form your opinion, so you reviewed the  
18 Operating Agreement for TopDevz, LLC, or what was  
19 represented to you as the Operating Agreement for  
20 TopDevz, LLC; correct?

21          A    Correct.

22          Q    And did you review the tax returns from the  
23 years 2017 through 2020? Correct?

24          A    Correct.

25          Q    And you reviewed the declaration from a

1 Nevin Sanli; correct?

2 A Correct.

3 Q But you did not review a balance sheet;  
4 correct?

5 A I reviewed the balance sheet on the tax  
6 return, the Schedule L balance sheet, but in the  
7 financial statements, I didn't see a balance sheet, I  
8 just saw profit and loss statements.

9 Q Okay. So you haven't received a balance  
10 sheet outside of what you see in the tax returns;  
11 correct?

12 A That's correct.

13 Q Okay. But you reviewed some P&Ls; correct?

14 A Yes.

15 Q And were they for the years 2017 through  
16 2021?

17 A Through October -- I believe through October  
18 of 2021.

19 Q Okay. Now, just so I understand this,  
20 you're not a licensed attorney; correct?

21 A Correct.

22 Q Okay. You didn't draft the Operating  
23 Agreement; correct?

24 A Correct.

25 Q You haven't spoken to the party who drafted

1 the Operating Agreement; correct?

2 A Correct.

3 Q You didn't prepare any of the tax returns;  
4 correct?

5 A Correct.

6 Q You didn't prepare any of the P&Ls; correct?

7 A Correct.

8 Q You haven't prepared any balance sheets for  
9 the company; correct?

10 A Correct.

11 Q And you mentioned that in your review of the  
12 documents, you have questions; correct?

13 A Yes.

14 Q All right. You have not spoken to  
15 Mr. Rajaei; correct?

16 A Correct.

17 Q And do you know who Jennifer Glaser is?

18 A Jennifer Glaser, no, I don't.

19 Q Okay. I'll represent to you that she is the  
20 accountant for TopDevz, LLC.

21 You haven't spoken to a Jennifer Glaser;  
22 correct?

23 A Correct.

24 Q You haven't spoken to Nevin Sanli; correct?

25 A Correct.

1 Q You're not the accountant for TopDevz;  
2 correct?

3 A Correct.

4 Q I believe we were talking about some foreign  
5 partnership tax matters. I apologize, I'm not sure  
6 of the exact term.

7 But you said in connection with any, I  
8 guess, foreign election, that you would need to do a  
9 full and complete accounting to address foreign  
10 income tax withholding; correct?

11 A I'd need to do much more investigation and  
12 receive documents that I don't currently have to make  
13 that determination, to make sure that there is no  
14 underwithholding from the company, correct.

15 Q Okay. Nothing further. Thank you.

16 THE ARBITRATOR: All right.

17 MR. CARPENTER: Nothing further.

18 THE ARBITRATOR: All right. Then may this  
19 witness be released?

20 THE WITNESS: Okay.

21 MR. CARPENTER: Yes.

22 Thank you, Mr. Hawes.

23 THE ARBITRATOR: All right. Thank you  
24 Mr. Hawes. Have a nice rest of the day.

25 THE WITNESS: Thank both you of too.

1 THE ARBITRATOR: Okay. Bye-bye.

2 All right. So is that the conclusion of  
3 your case, Mr. Carpenter?

4 MR. CARPENTER: Let me confer briefly with my  
5 client. Can I just have a brief moment?

6 THE ARBITRATOR: Should we take ten?

7 MR. MATTHEWS: Sure. That's fine.

8 THE ARBITRATOR: All right. It's about 2:05.  
9 Let's come back at 2:15.

10 MR. MATTHEWS: All right.

11 MR. CARPENTER: 2:15, thank you.

12 (Recess taken from 2:06 to 2:16  
13 p.m.)

14 THE ARBITRATOR: All right. What did you  
15 decide, Mr. Carpenter?

16 MR. CARPENTER: The Davis side will rest now.

17 THE ARBITRATOR: Mr. Matthews, are you ready to  
18 start your case?

19 MR. MATTHEWS: We are.

20 THE ARBITRATOR: And who will be your first  
21 witness?

22 MR. MATTHEWS: We will call Mr. Rajae as our  
23 first witness, please.

24 THE ARBITRATOR: All right.  
25 Welcome back, Mr. Rajae.

1 THE WITNESS: Thank you.

2 THE ARBITRATOR: Okay. Sir, you are still under  
3 oath. Although, at this time, your lawyer will start  
4 the questioning of you. Okay?

5 THE WITNESS: Okay.

6 THE ARBITRATOR: All right. Good.

7 Go ahead, Mr. Matthews.

8 MR. MATTHEWS: All right. Thanks so much.

9

10 ASHKAN RAJAEI,  
11 having been previously duly sworn, testified  
12 as follows:

13

14 DIRECT EXAMINATION

15 BY MR. MATTHEWS:

16 Q Mr. Rajaei, thanks for, obviously, joining  
17 everyone today.

18 What I think we'll start with is I'd like to  
19 go into your background, how you met Mr. Davis.

20 Can you tell us about how you were  
21 introduced to the company Surge, LLC?

22 A I had a product that I was using at a  
23 company called Sunwing Travel Group that hired me for  
24 consulting services. They're a travel company out of  
25 Canada. I think they're the largest, about 2 billion

1 in revenue.

2 Anyhow, I was finishing a product, and I  
3 Googled software developers, because I needed more  
4 developers, and Surge came up. And I then contacted  
5 them. At the time, I think his name was Brandon  
6 Neilson that reached back out to me, asked me some  
7 questions about what I'm doing with the project. And  
8 he said, "Yeah, you seem like a really good fit for  
9 us." Surge is a software development company,  
10 obviously.

11 And then an hour later he called me back and  
12 said, "The CEO actually wants to meet with you," and  
13 at the time was Matt McKay. And I was like, "Wow,  
14 okay." And so I told him what I was doing and what I  
15 wanted to do, and he basically stopped me halfway  
16 through my presentation and said, you know, "Would  
17 you be interested in selling this?" And I said,  
18 "Yeah, absolutely."

19 Q All right. So when you say interested in  
20 selling this, what, specifically, would you be  
21 selling?

22 A It was a product, a SaaS product that I had  
23 created, that does mobile -- basically the product  
24 would know who's logging in to a particular app and  
25 be able to render and display content relevant to

1 that user.

2 So, for example, if you're a mortgage  
3 company, and, you know, you're using this platform,  
4 you would log in, and it would know I have an X  
5 amount mortgage and my mortgage is coming up for  
6 renewal, so it would show me an ad for mortgage  
7 renewal. Somebody else logging in would have a  
8 different profile, and they would know that they  
9 don't have a mortgage, so they would give them, you  
10 know, incentives on the mortgage. So that's just one  
11 use case of it, But --

12 Q So it would be -- it could be used in a way  
13 to get more -- is it like more direct marketing to  
14 the actual --

15 A Yes.

16 Q -- consumer?

17 A The specific thing about this IP was that  
18 it's contextual marketing. Right? So one of the  
19 reasons why I found out later why Surge wanted it was  
20 they wanted to use this product to get a hook into  
21 their clients or prospective clients, of which I  
22 believe one of them was Verizon, where Verizon -- you  
23 know, everyone knows who Verizon is in the United  
24 States. It would know your phone plan, it would know  
25 a lot about it, and it would make contextual offers

1 to you based on who you were.

2 So they would get a -- they would have a  
3 much higher conversion rate because they were  
4 presenting ads to you, kind of like what Facebook and  
5 Instagram do now, because this was a while back,  
6 where they just show you targeted -- targeted ads.

7 Ultimately, Surge ending up going in  
8 a different direction, but that was the purpose of  
9 the acquisition.

10 Q Okay. But you mentioned an interesting  
11 point about using the software to get a hook into the  
12 client. And then once you did that, or once a  
13 company did that, what was the next step for that  
14 company, or what would be the next step?

15 A So the product was just used to generate the  
16 conversation and generate a relationship, that would  
17 be a little bit sticky, with a decision maker at a  
18 company, a larger company that does software  
19 development. So through the talking and speaking  
20 about, hey, we want to use this product for our  
21 customer, whatever, that would naturally progress to  
22 a conversation with IT. And IT would say, well, we  
23 love this, we want to use it, we want to implement  
24 it, but we want this feature, that feature or this  
25 feature, and guess what, the product didn't have it.

1 Well, guess what, Surge also does software  
2 development, so we will develop that for you.

3 Q Okay. So just so I understand, around this  
4 time that you were -- what year was this?

5 A This was 2014.

6 Q Okay. Did you have a company called Mobile  
7 Monster at that time?

8 A Yes, I did.

9 Q All right. And you mentioned it was Sunwing  
10 or Sunwig?

11 A Sunwing Travel Group.

12 Q Okay. Was that a client of Mobile Monster?

13 A Yes, it was.

14 Q And in connection with that relationship,  
15 how were you compensated, how was Mobile Monster  
16 compensated?

17 A I was paid a consulting fee.

18 Q And what was the consulting fee?

19 A It was -- wow, this is going back a while.  
20 It was just a monthly payment for consulting services  
21 related to their mobile application and reservation  
22 system across, I think it was 16 different brands  
23 that they owned.

24 Q So did it fluctuate based on revenue, or how  
25 did this actually get calculated?

1           A    With Sunwing particularly, I believe they  
2   paid me a flat fee.

3           Q    Okay.  So with Surge, you ended up  
4   selling -- it's correct, you ended up selling this  
5   software or -

6           A    Yes, we acquired it.

7           Q    So Surge acquired this.

8                   What, then, became your role with Surge?  
9   What did you do then?

10          A    So part of the acquisition, almost like part  
11   of the deal, was I had to come with the deal, because  
12   Matt was very impressed with my ability to build such  
13   a sophisticated platform that would be able to be  
14   taken to market.  He also said that, you know, Surge  
15   does software development, and that, you know, my  
16   acumen for what I've demonstrated in my interactions  
17   with him, that he wants me to come on board and help  
18   him grow the sales and grow the company.

19               And then I went to go see him in Utah, I  
20   think it was maybe April of 2014, at which time then  
21   he said, "Well, there's a lot of other stuff that we  
22   need help with.  We need help with, you know,  
23   developing our customer relation management tool.  We  
24   need help on the overall strategy of the company in  
25   terms of getting accounts."

1           So he essentially wanted me to start doing  
2 sales, and originally it started at Surge mobility.  
3 He had created like a department. And then from that  
4 department, he actually moved me, later on, to  
5 holding -- well, Surge, the company Surge, and my  
6 role was much bigger there, and doing a lot of  
7 different things. And closing big accounts was one  
8 of them.

9           Q    Okay. Do you recall, roughly, what the  
10 revenue for Surge was? This was 2014 when you  
11 joined?

12          A    Yes.

13          Q    Do you recall what the revenue was for Surge  
14 around that time?

15          A    It was around 6 million a year.

16          Q    Okay. And when did you end up leaving  
17 Surge, what year?

18          A    I left in, I want to say, February or March  
19 of 2017.

20          Q    So you were with the company for about  
21 three, three and a half years or so?

22          A    Just under three years.

23          Q    Just under three years. Okay.

24               And when you left, do you know what the  
25 revenue for Surge was when you left?

1           A    When I left, they were on a run rate to hit  
2   about 50 million in revenue.

3           Q    Can you explain what a run rate is?

4           A    Run rate means that they were billing  
5   consistently. I wasn't there for the whole year, so  
6   I don't know. But the billable hours on a weekly  
7   basis, the revenue that was being generated right  
8   before I left, that's a run rate. So if that stayed  
9   constant, that would hit them around the 50 million  
10   mark.

11          Q    So the revenue grew from about 6 million in  
12   excess of 50 million in about a three-year period?

13          A    Correct.

14          Q    All right. What was your role in that  
15   revenue growth?

16          A    So I was advising on the system to use for  
17   them to manage their -- basically their customer  
18   base. I was implementing their customer relationship  
19   management tool. I created all the work flows and  
20   all the processes that would take a prospect down to  
21   a closed account. And then I would also be  
22   responsible for presentation materials and marketing  
23   of the company overall.

24                One of the specific ones they were spending  
25   a ton of money on was AdWords. So I got involved in

1 that, and through my recommendations they actually  
2 started closing a lot more accounts from that. Some  
3 of the tweaks that I made, I can get into those  
4 details if you're interested.

5 And then with the development community,  
6 because they recruit a lot of developers, software  
7 developers, I got involved on the management team to  
8 make suggestions on how to foster the network, grow  
9 the network, get more referrals from the business,  
10 just streamline the overall business. And the only  
11 part of Surge I was not involved with, whatever back  
12 channel conversations Matt was having with people I  
13 didn't know.

14 Q All right. Well, to that point, I want to  
15 just kind of touch on or understand your role with  
16 everything.

17 Mobile Monster was servicing Surge; is that  
18 correct?

19 A That's correct.

20 Q All right. And can you explain was there --  
21 you were compensated -- just so I understand this.  
22 Were you compensated with Surge based on revenues or  
23 commissions or how did that -- how were you  
24 compensated with Surge?

25 A I was compensated on multiple streams. So

1 the first one was a consulting fee, a flat fee for  
2 all the services I was talking about earlier. And  
3 then I was paid a commission of 7 percent for deals  
4 and leads that I generated that came to me that I  
5 actually closed, and then the client -- the revenue  
6 would be paid when Surge would collect that money  
7 from the clients. And then I also was reimbursed for  
8 expenses that I incurred for, you know, traveling to  
9 clients, you know, a bunch of other stuff that I did.  
10 And then, also, I was reimbursed for the salaries of  
11 Mobile Monster. So, at that time, Siarra and  
12 Stephanie both were -- I was getting reimbursed for  
13 their monthly costs as well.

14 Q So you had, I guess, an infrastructure in  
15 place with Mobile Monster that serviced Surge, and  
16 Surge paid for that, Is that what you're saying, or  
17 can you explain that?

18 A Yeah. So Surge paid me a flat consulting  
19 fee. I got 7 percent commission on the revenue that  
20 I generated for the company. And I was reimbursed  
21 for expenses that I incurred servicing Surge. So the  
22 back end administrative stuff that goes on, the back  
23 end marketing stuff that I did, any gifts that I  
24 bought for clients, any travel to clients, that was  
25 all reimbursed through Mobile Monster.

1 Q Okay. Now, when you left in 2017, I guess  
2 shortly around that time, is that around when you met  
3 Tyler Davis, or how did you meet Tyler Davis?

4 A I think I met him in 2016, and it was at a  
5 management event, or maybe I met him once in 2015  
6 briefly, and then again in 2016. But the one I  
7 remember was around 2016 at a management meeting, an  
8 annual management meeting.

9 Q What was your understanding of his role --  
10 he was involved with Surge?

11 A He was presented to me that he was a passive  
12 investor when Surge first started, I think, back in  
13 2007, and is basically behind the scenes doing  
14 nothing other than the showing up to the management  
15 meetings and basically seeing what's up.

16 Q But do you know, from your personal  
17 awareness, what is your understanding of Tyler's  
18 history was -- history with Surge, like the whole  
19 process?

20 A I found that out a little bit later in  
21 talking to Tyler, that Tyler invested in a product of  
22 Surge called Surge Hub, which was a customer  
23 relationship management tool. Eventually, that was  
24 canned by Matt. And because Matt didn't want to pay  
25 Tyler back or didn't have the money to pay him back,

1 he basically gave him a percentage ownership in  
2 Surge.

3 Q Okay. When you ended up leaving in 2017, I  
4 guess, it seems that you and Mr. Davis developed a  
5 good relationship at that time. You guys had become  
6 good friends; right?

7 A Tyler and I kind of hit it off because, you  
8 know, as Matt was presenting his next year's plan to  
9 grow the company and grow the sales, me and Tyler  
10 would laugh because what he was doing was so against  
11 what my belief was and what Tyler, I found out in  
12 talking to him, was, and that was they weren't really  
13 building relationships. It was very transactional,  
14 and it was kind of a machine gun approach in terms of  
15 getting clients. There was no systematic way of like  
16 building relationships.

17 And so I was saying this to Tyler, and this  
18 kind of caught his ear, because he said, "Well, I  
19 believe in relationships a lot because, at Porter  
20 Consulting, that's all I do is build relationships,  
21 you know." And he told me about -- you know, one of  
22 the things we talked about is wining and dining our  
23 clients a little bit more, you know. And he would  
24 tell me how he would fly a group from L.A. to wine  
25 country on a private jet and give them, you know, the

1 luxury treatment to build that relationship.

2 And another person he introduced me to, his  
3 name is Mike something from Albertsons. He made a  
4 comment how he would constantly take him on really  
5 expensive fishing trips, because Mike liked fishing.  
6 And Tyler would front all the costs because Tyler was  
7 getting business from, you know, his network.

8 So I kind of really resonated with that, and  
9 I told him, I said, "Well, this is kind of what I've  
10 always wanted to do. And by the way, I put a whole  
11 deck together for Surge on how we can build better  
12 relationships with customers by taking them to  
13 customer experience events, by upgrading our CRM  
14 system with work flows and policies to help track  
15 these relationships, to hire an entire team to manage  
16 all the back office stuff, because there's a lot of  
17 logistics going on with this, tracking who we're  
18 talking to, who our highest value relationships are,  
19 and, you know, Matt shot that down." And so Tyler  
20 then approached me.

21 Q Can you explain what is a CRM?

22 A Customer relation management tool. So it's  
23 like a Salesforce, if you're familiar with  
24 Salesforce. It's, you know, HubSpot. It's basically  
25 a database of all your contacts for a company.

1           Q    So is it a situation where you're basically  
2   collecting extensive data on people, and then you're  
3   able to use that data as an asset, or can you explain  
4   to me how that works?

5           A    Well, how you use a CRM is very important as  
6   well because a CRM by itself is useless to a company.  
7   It's how it's administered, how the work flows, how  
8   the checks and balances are in there. So all that  
9   stuff needs to be put into the CRM, people managing  
10   that, in order to get the value out of the CRM.  
11   Right?

12          Q    All right. So I want to just clarify a few  
13   things before we go into how you and Tyler formed  
14   your next venture.

15                Can you talk about how much you were paid --  
16   or do you recall how much you were paid from Surge  
17   for your services that you provided from the year  
18   2017?

19          A    My base consulting fee was 200,000 a year,  
20   and my commissions, not including the reimbursements  
21   in 2017, I believe were around 1.2 or 1.3 million.

22          Q    Okay. Do you recall what the reimbursements  
23   were as well?

24          A    Travel, airfare, hotel, salaries at Mobile  
25   Monster, any SaaS tools I use, software as a service,

1 like Google, G Suite and Zoom license. Basically  
2 anything I incurred for incidentals along the way.

3 Q But in terms of your actual compensation of  
4 income, or I'm not sure how it would be qualified,  
5 was, roughly, around 1.4 million?

6 A 1.4 to 1.5 million, yeah.

7 Q Okay. But you're saying that in connection  
8 with those payments, you had apparently a very  
9 significant role in growing the revenue from about 6  
10 million a year to in excess of 50 million a year in a  
11 three-year period; correct?

12 A That's why my commissions were so big.  
13 Because at 6 million, I'd be making whatever 7  
14 percent of 6 million would be.

15 Q Okay. So it was strictly based on the  
16 revenue, it was performance-based?

17 A The largest portion of my income came from  
18 the revenue that was actually generated and  
19 collected.

20 Q Okay. So you didn't -- if the revenue  
21 didn't come in, you didn't get paid?

22 A I didn't paid the commission portion.

23 Q Understood. All right.

24 So when you decide- -- around 2017, I think  
25 there was some litigation that you and Mr. Davis were

1 involved in with Surge. I don't know that we need to  
2 fully get into that right now. But you then decided  
3 that you were going to form a new company together,  
4 and that became TopDevz; right?

5 A That's correct.

6 Q Now, when you decided to form TopDevz, were  
7 you looking for a business partner?

8 A No.

9 Q And why were you not looking for a business  
10 partner?

11 A What I did at Surge, I could do on my own  
12 because I was pretty much doing it on my own. I  
13 mean, other than Matt handling the payroll of the  
14 company and hiring and firing of actual employees of  
15 the company, the majority of the things came from  
16 handling the developers, generating leads and  
17 servicing accounts.

18 So setting up a consulting firm is very easy  
19 to do. And, at that time, you know, I think I earned  
20 maybe about 8 or 9 million with Surge, a  
21 mortgage-free house, I didn't really need the money.  
22 But, basically, Tyler, you know, he basically told me  
23 that, you know, he really wants to contribute, and,  
24 you know -- you want me to go into that or no?

25 Q Sure.

1           A     Okay. So he said that, you know, we can set  
2     up our own company, and, you know, we could probably  
3     grow the company just like Surge, to about 50, maybe  
4     more, to a hundred million, and then sell it. And I  
5     told him that, "Well, it's a big step for me to, you  
6     know, get out of Surge and just have a promise from  
7     you that you want to do this." Because he thought  
8     that it would take 2 to \$3 million to set up a  
9     consulting firm, and I joked and I laughed and I  
10    said, "I don't think so."

11           But how he positioned himself to me at the  
12    time, I didn't know Porter Consulting's revenue, I  
13    didn't know these other ventures he had, you know,  
14    their revenue, but he represented them to me as if,  
15    if I needed a million bucks, I can go to the well,  
16    get it, invest it in the company to help grow the  
17    company.

18           And so ultimately, trying to de-risk myself  
19    from being the sole risk taker, I thought it would be  
20    a good idea to split that risk, with the  
21    understanding that, you know, I could capitalize the  
22    company the way I need to.

23           Q     Okay. And so, at that time, you agreed that  
24    the investment in the company was going to be around  
25    \$750,000; correct?

1           A    Yeah. One of the discussions was Tyler  
2    didn't bring any value to the actual consulting  
3    business, other than capital. So he saw a lot of  
4    value in what I was doing and the knowledge I had to  
5    generate leads and close business. So when we  
6    discussed it, you know, he said, you know, "I'll put  
7    up the money. You just come and do it. And your  
8    half is as good as gold because you're bringing all  
9    the value to the company."

10          Q    Okay. Well, I'm going to get into a few  
11    things, but first thing I want to say is, so in  
12    connection with that, you were going to be paid a  
13    guaranteed payment, which is, effectively, a salary;  
14    correct?

15          A    Correct.

16          Q    And what was the initial arrangement for  
17    what you were going to be paid per year?

18          A    200,000 --

19          Q    Okay.

20          A    -- per year.

21          Q    All right. And then you were going to have  
22    commissions; correct?

23          A    Correct.

24          Q    And it was basic- -- it was essentially the  
25    same setup as Surge where you had met Tyler?

1 A Yes.

2 Q All right. Now, what I do think is actually  
3 important that we do need to just quickly go into is  
4 you had been in litigation with Surge, you and  
5 Mr. Davis, were you represented by the same counsel?

6 A Yes.

7 Q So you and Mr. Davis were represented by the  
8 same counsel in connection with a litigation against  
9 Surge; correct?

10 A That is correct.

11 Q What was your litigation against with Surge?

12 A So Matt started to renege on my commissions  
13 because they were so high. And so he started playing  
14 around with the agreement and started actually -- he  
15 actually stopped paying some of them. And on one  
16 account the commissions were around 400,000 a year.  
17 So that started the fire for me. For Tyler, I  
18 believe at the time he was concerned that Matt was  
19 not making distributions or making distributions or  
20 doing something with his own income and his salary  
21 that was preventing him, as an owner, to benefit in  
22 some way. And then so we started talking about that,  
23 and eventually we joined forces to have a unified  
24 front against Matt.

25 Q And so did you guys sign -- was it like a

1 joint defense agreement or some sort of arrangement  
2 where he was aware of your paperwork?

3 A I don't know what I was called, but it was  
4 definitely something that meant that Cameron, who was  
5 our attorney, can freely share information between us  
6 about each other, and it would be -- it would be okay  
7 with either of us for him to do that. I don't know  
8 what that's called, but --

9 Q From your understanding, Tyler was fully  
10 aware that this was a dispute about your commissions  
11 and was aware of your commissions and what you were  
12 getting paid, generally?

13 A A thousand percent, because he even told me,  
14 "Matt's an idiot for not paying your commissions."

15 Q All right. So I want to touch very quickly,  
16 before we go into this, you're saying that you had a  
17 house in -- I believe it was in Canada, correct, at  
18 the time?

19 A Yes.

20 Q And what was the value of the house at the  
21 time?

22 A 2.4 or 2.5 million.

23 Q Has it been sold?

24 A We sold it in 2021, yeah.

25 Q For how much?

1 A 2.75, I believe.

2 Q Did you have a mortgage on that property?

3 A I did not.

4 Q Okay. So you had a \$2.4 million house at  
5 the time you left Surge in 2017 with no mortgage;  
6 correct?

7 A Correct.

8 Q And you had made, roughly, around  
9 \$1.5 million that year, in 2017, from Surge alone;  
10 correct?

11 A Correct.

12 Q All right. And you were saying you didn't  
13 need the capital from another partner, but you wanted  
14 to de-risk yourself; right?

15 A That is correct.

16 Q All right. You're a Canadian citizen;  
17 right?

18 A Correct.

19 Q Tell us about your discussions with  
20 Mr. Davis about how being a Canadian citizen affected  
21 your role at TopDevz?

22 A So before the whole thing happened with  
23 TopDevz at Surge, sorry, to the tail-end of it, they  
24 were trying to move me to the U.S., but, obviously,  
25 that went sideways. So the first discussion with

1 Tyler was, "I can't do this out of Canada. I need to  
2 be in the United States to execute on this model."  
3 Because even when I was at Surge in Canada, it  
4 created a lot of problems getting in and out of  
5 airports and going to see clients and stuff.

6 So I told Tyler that I need a path to move  
7 to the United States if we're going to grow the  
8 business, and he's like, "Yeah, absolutely." And  
9 when we talked about kind of the company itself, he  
10 said to me multiple times, "Look, I'm not going to  
11 tell you how to run the company. I just want you to  
12 build what you built at Surge, and one day we sell it  
13 and I make a bunch of cash."

14 So we went through all this stuff, and we  
15 were going through the back and forth around what is  
16 the value of the capital contribution and all that  
17 stuff. I told him that one of the requirements is me  
18 personally to have operational control, but a bigger,  
19 probably more technical qualifying reason is the U.S.  
20 immigration and homeland security will not recognize  
21 any visa if I don't have a controlling interest on  
22 the books with this entity in the United States.  
23 Furthermore, the entities need to be related. There  
24 has to be a relationship between the two entities.  
25 It can't be like I come in here and invest a bunch

1 money in real estate and get a visa.

2 So we thought the Mobile Monster kind of  
3 Surge model, since I was on the path to moving to the  
4 United States, we could replicate that. And then we  
5 hired an attorney from Buffalo, I think her name is  
6 Chris Brock (phonetic), who did all the paperwork for  
7 the immigration and eventually L-1A Visa.

8 Q Okay. And are you -- what is your  
9 citizenship status currently with the United States?

10 A Currently, I'm on an L-1A visa from the  
11 homeland security portion. From IRS, I am a  
12 resident. I am taxed as a U.S. resident.

13 Q And you have an accounting firm that you  
14 work with in the context of Mobile Monster that's in  
15 Canada; correct?

16 A That is correct.

17 Q And you have a U.S. law firm that you work  
18 with in the context of TopDevz that's in California,  
19 in La Jolla; correct?

20 A An accounting firm, not a law firm.

21 Q And accounting firm?

22 A Yeah.

23 Q Okay. Understood.

24 A Correct.

25 Q And sometimes they're in communication

1 because of the interplay between the entities?

2 A They're in communication quite often,  
3 actually, between them, because there is a mountain  
4 of reporting in Canada and the U.S., especially for  
5 me, when I'm considered a resident in both countries.  
6 So there's declarations here that have to be made and  
7 declarations there that have to be made, and so I  
8 just put them together and they do what they need to  
9 do.

10 Q All right. So let's talk about the  
11 formation of TopDevz. You ended up putting together  
12 an Operating Agreement for TopDevz; right?

13 A Correct.

14 Q And so is TopDevz, is it a corporation, a  
15 limited liability company? Do you know what the  
16 structure is?

17 A It's an LLC, I believe. And I actually  
18 didn't put the Operating Agreement together. I  
19 believe Cameron gave us that Operating Agreement.

20 Q So that was the operating -- that was your  
21 attorney who worked with you with the Surge matter?

22 A Yes.

23 Q All right. Let's take a moment to bring up  
24 Exhibit 1A, which is the Operating Agreement for  
25 TopDevz. I'll share my screen.

1 All right. So I'm showing you what we've  
2 marked -- has been marked as Exhibit 1A. You've seen  
3 this document, I think, many times in this proceeding  
4 and otherwise.

5 The first page is, I'm representing to you,  
6 a disclaimer. And I'm going to scroll down to the  
7 next page, which looks like the first or the front  
8 page of an Operating Agreement for TopDevz, LLC,  
9 dated May 9th of 2017.

10 Does this look familiar to you?

11 A Yes.

12 Q All right. So I apologize, I know we've  
13 gone through this before, but just so we're diligent,  
14 I'm going to scroll down to the signature page. I  
15 may have gone a little too far.

16 All right. So this looks like it's page 31  
17 of the Operating Agreement. There's a signature  
18 block for yourself, and it looks like Mr. Tyler  
19 Brandon Davis.

20 The signature block for yourself, is that  
21 your signature?

22 A Yes, it is.

23 Q Okay. And, again, this agreement is dated  
24 May 9th of 2017, to your knowledge?

25 A Yes.

1 Q All right. I want to look over a few  
2 provisions.

3 All right. Let's look at paragraph 1.51.  
4 It is the voting interests. I will read it aloud to  
5 you, and then you can tell us a little bit about it.

6 It states that "'Voting Interest' means,  
7 with respect to a Member, the right to Vote or  
8 participate in management of any right to information  
9 concerning the business and affairs of the Company  
10 provided under the Act, except as limited by the  
11 provision this agreement. A Member's Voting  
12 Interest," this is the last sentence, "A Member's  
13 Voting Interest will be directly proportional to that  
14 Member's Percentage Interest."

15 Can you tell us what that provision means to  
16 you?

17 A I'm not a lawyer, but the way I understand  
18 that is --

19 MR. CARPENTER: I'll object that this is an  
20 integrated agreement, and that a legal opinion or  
21 subjectively is not important.

22 THE ARBITRATOR: Well, I understand the  
23 objection. I think I've allowed both sides  
24 previously to talk about their understanding.  
25 Ultimately, I think counsel both understand that to

1 the extent that the agreement needs to be construed,  
2 that's my job. And I -- you know, I appreciate that  
3 there's an integration clause, but I will let both  
4 sides tell me what they understood about the  
5 agreement. I think I've done that previously, so I'm  
6 not going to change course now.

7 So go ahead.

8 MR. MATTHEWS: Thank you so much.

9 Q So, Mr. Rajae, can you just give us your  
10 understanding of what this provision means to you?

11 A Basically that your ownership percentage, it  
12 will equal your voting rights in the company.

13 Q And in entering into this agreement, you had  
14 explicit discussions about your ownership percentage  
15 with Mr. Davis?

16 A Many, many times.

17 Q And that ownership percentage, again, can  
18 you tell us what that conversation was or the details  
19 about what that conversation was about?

20 A 51 percent for Ashkan, 49 percent for Tyler.

21 Q And in connection with that, I think a big  
22 part of it was -- let's put it this way. Initially,  
23 was Mr. Davis going to provide anything other than  
24 capital to the company?

25 A Capital and further capital, yes, but

1     that's-- that was about it.

2           Q     But you were going to provide the services  
3     and run the company?

4           A     That's right.

5           Q     And it was your job to create the revenue;  
6     right?

7           A     And run the company, yes.

8           Q     All right. So I want to scroll down to  
9     paragraph 2.9.

10                  Here it says, "The Manager of the Company  
11     will be," and it looks like it lists your name,  
12     "Ashkan Rajaei," and it lists your address.

13                  So your understanding was -- what's your  
14     understanding of this provision?

15           A     That I'm the manager.

16           Q     All right. And I want to make a note about  
17     paragraph 3.1. This references that "each Member  
18     will contribute to the capital of the Company as the  
19     Member's Initial Capital Contribution," it says, "the  
20     money or property," and it says "TBD."

21                  What does TBD mean to you?

22           A     To be determined, I would assume.

23           Q     And then, in brackets, afterwards it says,  
24     "or services."

25                  What does that mean to you?

1           A    Or services.

2           Q    So can you explain that a little bit?

3           A    So the contribution to the company can be  
4 either money, property or services.

5           Q    All right. So we'll go through just a few  
6 more provisions.

7                   All right. I'm looking at section 5.1.  
8 This talks about the management of the company. And  
9 it says in looking spec- -- well, it says, "The  
10 business of the Company will be managed by the  
11 manager named in Article II, Section 2.9."

12                   The last sentence says, "Except as otherwise  
13 set forth in this Agreement, all decisions concerning  
14 the management of the Company's business will be made  
15 by the Manager."

16                   What does that mean to you?

17           A    That the manager can make all decisions  
18 based on them managing the company, except for  
19 Article V, Section 5.3.

20           Q    All right. Let's see here. I think it may  
21 say something different, but let's look at, I think,  
22 5.4. I think that's kind of a relevant point.

23           A    That's why I'm point to it.

24           Q    Of course.

25                   So it looks like there's some exceptions.

1 It says -- looking at paragraph 5.4 of the operating  
2 agreement, it says, "Notwithstanding the foregoing,  
3 the Manager will not take any of the following  
4 actions on behalf of the Company unless a Majority of  
5 Members has consented to the taking of that action."

6 One of the things it states is, section G,  
7 so 5.4(g), it references "The incurring of any  
8 contractual obligation or the making of any capital  
9 expenditure with a total cost of more than \$20,000."

10 Now, in the context of this, do you have an  
11 understanding of what this means to you?

12 A Yes. Unless we get a majority vote, the  
13 managing member cannot make decisions based on the  
14 following. This actually came up with Alex Mueller,  
15 and ultimately he never moved ahead with it.

16 Q Okay. Now, what is your understanding of  
17 your percentage interest in the company in connection  
18 with this provision?

19 A 51 percent.

20 Q So does this mean that you have a majority  
21 percentage, or what does this mean to you?

22 A Yes, that I have majority interest and  
23 voting rights of 51 percent.

24 Q All right. Now, I want to look at paragraph  
25 5.5. What it says is, "It is acknowledged that the

1 Manager has other business interests to which the  
2 Manager devotes part of the Manager's time. The  
3 Manager will devote as much time to the conduct of  
4 the business of the Company as the Manager, in the  
5 Manager's own good faith and discretion, deems  
6 necessary."

7 So you have several other ventures that you  
8 work with; correct?

9 A Yes.

10 Q What are some of those ventures?

11 A SpendHub, Omni Genie, which is a real estate  
12 portfolio, and we set up a TopDevz hybrid that never  
13 went anywhere, and now RemotePreneurs, which holds  
14 aircraft.

15 Q All right. So before we were talking about  
16 with Surge how there was a -- it seemed like a  
17 strategy that was in place where you would use a  
18 software product in order to initiate the  
19 relationship with the client.

20 Can you talk about how -- do any of these  
21 entities have an affiliation with TopDevz?

22 A Yes, they do.

23 Q And can you explain what -- how that might  
24 work?

25 A So expense management, expense -- credit

1 card expense management is a very big problem for  
2 companies, small and large. And the SpendHub product  
3 was to be used to generate and initiate conversations  
4 with companies that are having expense management  
5 problems. Where that gets interesting for TopDevz is  
6 usually companies that have expense -- credit card  
7 expense management problems are the ones with a lot  
8 of employees, and there's a lot of bookkeepers on  
9 staff or accounting. So this would be of tremendous  
10 value to a financing team within a company.

11 The people who cut the checks for TopDevz  
12 come from the finance teams. So, naturally, if  
13 they're using SpendHub, and they find out that  
14 TopDevz is affiliated with it, either there would be  
15 customizations that they would want with the software  
16 which would go through TopDevz, or they would now  
17 know TopDevz's name, and the trust level would be  
18 higher because they're actually using the product for  
19 their expense management.

20 And all of this was supposed to go to market  
21 in 2020, and, of course, COVID hit, and the entire  
22 strategy changed from that. But that's the initial  
23 strategy, was to use the product as a hook to get  
24 into larger companies, and then all kinds of stuff  
25 would flourish.

1 Q Okay. Now, another provision I want to look  
2 at just real quickly before we go into a few other  
3 things is the paragraph right below it, 5.6.

4 It says, "The Manager will be entitled to  
5 compensation for the Manager's services as determined  
6 by the Members, and to reimbursement for all expenses  
7 reasonably incurred by the Manager in the performance  
8 of the Manager's duties."

9 What is your understanding of that  
10 provision?

11 A That the manager, which is me, would be  
12 entitled to receive a salary of some sort and be  
13 reimbursed for expenses that are incurred on behalf  
14 of TopDevz.

15 Q Okay. Now, one of the things I just want to  
16 jump to really quickly is I think a big part of the  
17 company is this company Mobile Monster that you own.

18 You previously talked about having an  
19 infrastructure in place when it was working with  
20 Surge. Can you explain how that infrastructure  
21 worked in conjunction with TopDevz?

22 A Yeah. So, first of all, it's incredibly  
23 hard, but I'll try to articulate as best as I can.

24 So think of it as a really big puzzle, and  
25 every component is a piece to that puzzle. And the

1 puzzle is broken down into prospects, so these are  
2 people that don't know who the heck you are, and then  
3 there are what we call leads, and leads are people  
4 that may know of you or you've tried to communicate  
5 with them, there might be something there. And then  
6 there are contacts, and these are people that would  
7 know you or know about you or the company or somebody  
8 at the company.

9 And so what Mobile Monster does is takes,  
10 starting at the prospect level, it takes a variety of  
11 metrics. For example, we don't do work in the  
12 government space. Unless they come to us, we don't  
13 target them. If they work for an education company  
14 or like a school, we don't target them. If they work  
15 at any type of nonprofit, we don't target them.

16 So having an infrastructure in place to be  
17 able to detect where someone's employed is in itself  
18 something. I can go into that in detail and how we  
19 do that if you want. But basically, once those  
20 prospects are identified, then attempts to communicate  
21 to them are made under various ways under just the  
22 prospect umbrella. So one method is e-mail, where we  
23 send e-mails. Another avenue is messages and  
24 communications on LinkedIn. And another method is  
25 through social media, LinkedIn being one of them, and

1 YouTube and stuff, on content-driven activities.

2 So at the top of the funnel where you'd have  
3 the prospects, it's basically now trying to fill this  
4 funnel with as many prospects as you can, just so you  
5 know they've looked at your content or they've  
6 responded to a message of yours or they've read an  
7 e-mail of yours. And you're doing this, mind you,  
8 over a database of over 2 million records of about, I  
9 want to say, 56 now, or maybe 60, different  
10 attributes per record. So who you are, the company  
11 you work for, what school you went to, the skill  
12 sets, your previous job, your contact information,  
13 your e-mail, and harvesting all that is a monumental  
14 task.

15 So once you get all that information at the  
16 prospect level, then they become -- when they  
17 communicate back to us, they become leads, and these  
18 leads are now -- remember, because we filtered them  
19 at the prospect level, they now become leads in which  
20 they're communicating with us. So, immediately, the  
21 focus and the work flows that are also -- a lot of  
22 it's AI driven now, changes from the communication  
23 with a prospect type, or it's really just one-way  
24 communication, to now you're handling two-way  
25 communication.

1           So they could ask for don't bother me, leave  
2 me alone, that has to be handled. I'm interested,  
3 tell me more, or they could ask a question, they  
4 could make a statement. So all of these become work  
5 flows that I developed, and these work flows  
6 individually handle each category of communication.  
7 And that communication needs to be documented and  
8 memorialized, and a human person needs to be trained  
9 on that entire work flow of when a prospect turns  
10 into a lead, what do we do with it. What does  
11 TopDevz do with that type of a lead.

12           So Mobile Monster now takes all of those  
13 people that are working on TopDevz, they'll take that  
14 lead, response, and they'll start communicating and  
15 responding. So that means that they're going to need  
16 assets. So there's marketing collateral, landing  
17 pages, websites, social media, just general FAQ  
18 answers in responding to that. And by the way, this  
19 all has to be done in a timely manner. Right? And  
20 you've got hundreds, if not thousands, of responses  
21 that are coming in that are useless. Right? Most  
22 people say I don't want be to solicited, leave me  
23 alone.

24           So once it becomes a lead, at that point is  
25 where we try to drive traffic to what I call assets.

1 Right? And the assets are high production, high  
2 value content that has generally nothing to do with  
3 TopDevz, but it's entertaining for somebody to watch.  
4 This was the whole show idea I pitched to Tyler back  
5 in 2019, where there's so many companies doing what  
6 TopDevz does in America, that it's boring for someone  
7 to hear we've got the best developers, we've got  
8 this, we've got that. It's like a car salesman  
9 telling you, you know, we've got the best cars.  
10 Right? It's just -- it doesn't stick in today's  
11 modern type of marketing.

12 So what that content does is it kind of  
13 creates a hook that even though they may not have a  
14 need for software development, they're engaging and  
15 they're looking at the content and they're getting  
16 familiar with TopDevz. So producing that content in  
17 itself is quite a lot of work, and I can get into  
18 that if you're interested.

19 The second thing is the follow-up patterns  
20 and the intervals on the different communication  
21 channels. Like you've seen even in this proceeding  
22 how many problems we've had with Zoom, people  
23 connecting, not connecting, text messages, whatever  
24 the communication media is. So what we do a really  
25 good job at is figuring out what is the easiest

1 communication medium that end prospect to communicate  
2 back to us.

3 For example, you send them a LinkedIn  
4 message, and you notice they respond on LinkedIn, but  
5 they ignore your e-mail. Immediately, the CRM knows  
6 the preferred method of communication for this  
7 individual is LinkedIn. Right? So how they're  
8 communicated to is also taken into consideration.

9 And this is really where I believe the magic  
10 happens in what we do, is because you're reaching out  
11 to hundreds of thousands of people that are decision  
12 makers or influencers and people that are in our  
13 target market, and then you're starting to build a  
14 relationship with them either through content or drip  
15 campaigns or through just like landing pages and  
16 different assets that you share with them.

17 From there -- and this is where all of our  
18 leads come from, when they have a need, they reach  
19 out, hey, Ashkan, you know, I saw your junk video,  
20 and it's pretty cool. By they way, I have a need for  
21 ten developers. Right? And so at that point in the  
22 CRM -- I talked about prospects, and I talked about  
23 leads. Now we get into what are called contacts. So  
24 these are people now that have reached out, they have  
25 a need, now they go into what I call our sales file.

1 Right? And the sales funnel starts at the top.

2 There's got to be a discovery done, there's  
3 got to be communication, negotiating the contract,  
4 the value proposition, multiple things that happen  
5 over there, and essentially, from there, the deal  
6 closes, or doesn't close, we even track those too.

7 And then those contacts is where we focus  
8 the huge efforts on creating experiences for these  
9 contacts, because they don't know it, but they've  
10 gone through a lot with us already. Right? But when  
11 they get to that level of content -- sorry, to the  
12 contact is where kind of I take over in terms of  
13 making sure that these people are building  
14 relationships with me and the company. Right? And  
15 doing so has proven to be phenomenal because they  
16 remember.

17 And the way we do that is when they come  
18 here, for example, we take them to really nice  
19 dinners, or where I got somewhere, we do like really  
20 nice dinners and stuff. But an interesting thing  
21 happens in the negotiation stage of these contracts.  
22 Right? So when we go from leads to contacts, there's  
23 an interesting thing that happens, and that's called  
24 competition.

25 So people who don't know us, larger

1 companies usually bring in different decision makers  
2 to make a decision on which IT vendor they're going  
3 to go with for this, and sometimes it's one person,  
4 sometimes it's five or six people that need to  
5 decide.

6 That's where the strategy of me and Tyler  
7 comes in. We need to wow these people and show them  
8 a company that is financially stable, that can take  
9 care of its customers, and that can treat them to  
10 great experiences. And that's where, you know, the  
11 Rolls-Royce and the Bentley and them seeing those --

12 THE REPORTER: Wait. Hold on. I'm sorry. I'm  
13 sorry. You cut out there for a second.

14 "That's where, you know, the Rolls-Royce and  
15 Bentley and them seeing those" -- sorry.

16 THE WITNESS: Seeing those creates an indirect  
17 layer of sophistication and trust by these potential  
18 people that are about to sign a contract with us.  
19 And that trust is what is getting us winning over a  
20 lot of these contracts. Google software development  
21 companies right now, there's a million of them out  
22 there. So this is one way we stand out, is nobody's  
23 doing this. Nobody is doing the kinds of -- the  
24 things that we're doing from a marketing perspective  
25 and being able to treat customers like this and

1 giving them access to stuff like this, that I know  
2 of, that is working.

3 And we've had -- we've closed -- we closed  
4 Alchemer in Denver. That's a 2, \$3 million account  
5 with the strategy. We have several in our pipeline I  
6 can't remember off the top of my head.

7 But anyhow, the contract negotiation page is  
8 what really starts to help with these tools. And I  
9 look at all of the things that I'm doing, again, as I  
10 kind of zoom out, as a big puzzle. And in each  
11 component of the marketing, I'm sticking in pieces of  
12 puzzle. So whether it's content, technology, a jet,  
13 a Rolls-Royce, a landing page, an experience, a CRM,  
14 tie it all together with work flows, this is kind  
15 of -- I call it kind of the human relationship  
16 management software process that has made Mobile  
17 Monster successful. And I used it at Sunwing, so  
18 it's kind of where it was kind of born. They were  
19 handling 200,000 -- it was about, yeah, 200,000 every  
20 two weeks. So it was about 1.2 million passengers a  
21 year.

22 THE ARBITRATOR: Mr. Rajaei, I'm going to  
23 interrupt at this point.

24 Mr. Matthews, we're -- I don't know where  
25 we're going, but I think you need to take control

1 with him, directing questions. I don't think we need  
2 to go into all of these other possible customers of  
3 Mobile Monster for these proceedings.

4 MR. MATTHEWS: Well, if I may, the only -- the  
5 reason why -- I'm happy to move on. The only reason  
6 I was going there was I think it's important to  
7 distinguish, there had been a mention before that  
8 TopDevz was the only client of Mobile Monster. So  
9 wanting to distinguish the relationships with other  
10 companies, and then also --

11 THE ARBITRATOR: I would appreciate you ask  
12 direct questions.

13 MR. MATTHEWS: Sure.

14 THE ARBITRATOR: Were there other -- so, for  
15 example, did Mobile Monster have other customers in  
16 2017, in 2018, in 2019? Yes, no, yes. Who were  
17 they? You know, I really think, otherwise, we're  
18 going to be here till midnight. And I can't stay  
19 with you till midnight.

20 MR. MATTHEWS: No problem.

21 THE ARBITRATOR: Okay.

22 MR. MATTHEWS: Appreciate it.

23 Q So thank you, Mr. Rajaei, for kind of giving  
24 us a little bit of background in understanding how  
25 this actually works and how it's put together.

1 I want to move on to just a few things  
2 within the Operating Agreement so we just have some  
3 clarity on the full terms here.

4 It looks like we may have covered everything  
5 we need to for the moment.

6 Well, actually, I want to talk about,  
7 actually, paragraph 11.1 really quickly. This is an  
8 indemnification provision where it states, "The  
9 Company will have the power to indemnify any Person  
10 who was or is a party, or who is threatened to be  
11 made a party, to any Proceeding by reason of the fact  
12 that the Person was or is a Member, Manager, officer,  
13 employee, or other agent of the Company."

14 Do you have any understanding of this  
15 provision? What does it mean to you?

16 A Something about indemnifying. Honestly,  
17 I -- I could take a stab at it, but --

18 Q Do you know what indemnification is or when  
19 a company defends somebody who's in a proceeding?

20 A I think indemnify is -- because we deal with  
21 that at TopDevz, is like you basically release them  
22 of liability or something like that or you release  
23 them of damages. I'm not sure.

24 Q Okay. We can move on.

25 All right. Let's talk a little bit -- let

1 me stop sharing here. I want to move on to  
2 Exhibit 2A.

3 THE ARBITRATOR: This is the one we had problems  
4 with. So I think you need to go to the later one.  
5 I'm not sure what the number is, but we need to go to  
6 the full-sized one that -- I think it was 44A.

7 MR. MATTHEWS: Actually -- yeah, we can actually  
8 move on to I think it's Exhibit 4 -- 4A for now. So  
9 I'll share that.

10 THE ARBITRATOR: 4A, the owners' certification  
11 of beneficial owners?

12 MR. MATTHEWS: Correct.

13 Q So, Mr. Rajaei, TopDevz has bank accounts;  
14 correct?

15 A Yes.

16 Q And can you tell us where it has bank  
17 accounts?

18 A Wells Fargo.

19 Q All right. And in connection with setting  
20 up bank accounts, did you have to provide any  
21 paperwork to the bank or did they prepare any bank --  
22 any paperwork?

23 A They asked for an operating agreement, and  
24 then later they asked me for this, which is a  
25 certification of the owners.

1 Q Okay. I just want to scroll down here. I  
2 think it's section 2, certification of beneficial  
3 owners.

4 So under section 2A, it says, "Name of  
5 person opening accounts or maintaining the business  
6 relationship," and it says "Ashkan Rajaei." That's  
7 you; correct?

8 A Yes.

9 Q And the name for the legal entity for which  
10 the account is being opened or maintained is TopDevz.  
11 It says that; correct?

12 A Yes.

13 Q All right. Now we're moving under section  
14 C. It lists the beneficial owner information. It  
15 looks like it's including the information for Ashkan  
16 and for Tyler Davis.

17 Do you see that?

18 A Yes.

19 Q All right. And do you see -- what does it  
20 say about the ownership?

21 A 51 percent Ashkan, 49 percent Tyler.

22 Q And this is signed by yourself on March 6th  
23 of 2018; correct?

24 A Yes.

25 Q All right. And you -- I assume did you

1 present this in connection with your role as a  
2 manager or how did that come about?

3 A Wells Fargo asked for the beneficial owners  
4 and their percentages on the account. So I had to  
5 provide that and certify that, to the best of my  
6 knowledge, that's what it is.

7 Q Okay. Mr. Davis, does he have access to  
8 this information?

9 A If he contacts Wells Fargo, yes, they'll  
10 give -- this is how I got this.

11 Q All right. Let's move on to section 5A --  
12 or Exhibit 5A, rather.

13 Now I want to scroll down to the bottom of  
14 the conversation. We were talking about this  
15 document previously.

16 MR. CARPENTER: Excuse me, Counsel, can I  
17 interrupt? What was the name -- what was the last  
18 exhibit number? I didn't get it.

19 MR. MATTHEWS: 4A.

20 MR. CARPENTER: Thank you.

21 MR. MATTHEWS: Of course.

22 Q Now, I'm looking at the bottom of what's  
23 been marked as Exhibit 5A. This looks like an e-mail  
24 of Vania Hernandez to a Jennifer Glaser, and you are  
25 copied.

1 Can you tell us who Vania Hernandez is?

2 A She's the lady we hired to help with  
3 bookkeeping and keep track of the expenses.

4 Q Okay. And can you tell us who Jennifer  
5 Glaser is?

6 A She's our accountant.

7 Q When you say our accountant, do you mean  
8 for --

9 A TopDevz.

10 Q Okay. All right. And what is the context  
11 of this conversation?

12 MR. CARPENTER: I'm going to object as this  
13 being hearsay, unless there's further foundation  
14 laid.

15 THE ARBITRATOR: Fortunately or unfortunately, I  
16 think the record is replete with hearsay, starting  
17 with the e-mails and texts we've previously reviewed.  
18 So I'm going to allow it, but I will, you know -- you  
19 know, alert counsel, I appreciate what is hearsay,  
20 and just because it comes in, not all evidence is  
21 equal, you know, so bear that in mind. I have live  
22 witness's testifying here.

23 MR. CARPENTER: Thank you.

24 BY MR. MATTHEWS:

25 Q All right. So did you direct Vania

1 Hernandez to contact Jennifer Glaser about the issues  
2 addressed in this e-mail?

3 A I did.

4 Q And what did you direct Vania Hernandez to  
5 do?

6 A To contact our accountant, Jennifer, and get  
7 me on a letterhead -- basically a proof that I own  
8 51 percent of TopDevz, because I believe I was trying  
9 to buy a house here at the time, and they were  
10 requesting documents of ownership.

11 Q Okay. So the bank was requesting  
12 documentation?

13 A Yes.

14 Q All right. And so Jennifer got back to you,  
15 and was there a problem initially?

16 A No. She just said, "What's the letter going  
17 to be used for?"

18 Q Well, what I'm saying is, is that was there  
19 any issue with regards to the operating agreement or  
20 confirming ownership?

21 A Oh, I'm not aware of any problems, but I  
22 remember that I didn't have it, and I go to Jennifer  
23 for all these matters. And so I just told Vania to  
24 get it.

25 Q Okay. But my question is, basically, did

1 Jennifer come back to you and say she needed any  
2 further information or any confirmations?

3 A No.

4 Q Well, in the conversation here, maybe  
5 you're -- just to clarify what I'm asking, was there  
6 any -- any issues that you needed to clarify in  
7 connection with the ownership in this e-mail  
8 correspondence?

9 A She didn't -- if you see that e-mail, she  
10 didn't respond right away with what we wanted, which  
11 was the letter, and then she said that if we just, me  
12 and Tyler, confirmed in an e-mail, in writing, she  
13 confirmed with one of the partners at the firm, that  
14 that would suffice for her to confirm the ownership.

15 Q Okay. And then so what did you do based on  
16 that information?

17 A I said okay, and I sent this e-mail, mine's  
18 51, Tyler's is 49. And I copied Tyler, and I said,  
19 "Tyler, please confirm." You can see, three minutes  
20 later, he responded.

21 Q Okay. And when he responded, what did you  
22 receive in terms of a response?

23 A From Jennifer?

24 Q No. From Tyler Davis.

25 A "This is correct."

1 Q All right. Was there any -- ever any  
2 dispute from Tyler about you owning 51 percent?

3 A Yes.

4 Q Okay. Can you explain that?

5 A This litigation is --

6 Q Well --

7 A -- the first time I've heard of it.

8 Q All right. Well, prior to this litigation,  
9 during the course of you being in business with  
10 Mr. Davis, was there any dispute about you owning  
11 51 percent?

12 A No.

13 Q Was there any time that he came back and  
14 said that he did not own 49 percent of the company?

15 A No, except this litigation.

16 Q Okay. So I'm going to move on to  
17 Exhibit 6A.

18 Okay. So we talked about this is a  
19 consulting agreement, Exhibit 6A, between Mobile  
20 Monster, Inc., an Ontario corporation, and Surge,  
21 LLC, a Washing limited liability company. It's  
22 dated -- this one is dated September 1st, 2016.

23 Do you recognize this document?

24 A Yes.

25 Q How do you recognize this document?

1           A    This was a contract I signed, Mobile Monster  
2   and Surge, to provide services and lead generation  
3   commissioning and all that.

4           Q    Okay. I'm going to scroll down to the last  
5   page, which is Exhibit B -- well, first, actually, I  
6   think this is important.

7                   I'm looking at the signature page. This is  
8   signed, it looks like, on the right-hand signed --  
9   right-hand side. It's signed by you; is that  
10  correct?

11          A    Yes.

12          Q    And that's under Mobile Monster, Inc.?

13          A    Correct.

14          Q    And it's signed by who on the left-hand  
15  side?

16          A    Matt McKay.

17          Q    And who is Matthew McKay?

18          MR. CARPENTER: I'll object to this line of  
19  question on relevance grounds.

20          THE ARBITRATOR: It's very far afield, I agree,  
21  Mr. Carpenter, but as I understand the opposition  
22  papers, Mr. Rajae, has taken the position that  
23  whatever his deal was with Surge was his deal with  
24  TopDevz.

25                   Did I understand your argument correctly,

1 Mr. Matthews?

2 MR. MATTHEWS: That's a part of it. But it's  
3 also really an issue of knowledge, and that Mr. Davis  
4 was fully aware of the commissions that were being  
5 paid to Mr. Rajae and fully aware of the commissions  
6 that have paid throughout this entire period of time.  
7 He's disputed the --

8 THE ARBITRATOR: Mr. Matthews, in terms of why  
9 you're asking questions about Mobile Monster's  
10 contract with Surge.

11 MR. MATTHEWS: To establish, number one, that  
12 Mobile Monster had other clients that had very  
13 similar or the same exact terms. And also because  
14 Mr. Davis had access to this information when they  
15 were in litigation with Surge. And this was the  
16 foundation for --

17 THE ARBITRATOR: Okay. I think we've  
18 established that. Is there a reason we need to go  
19 further?

20 MR. MATTHEWS: If we've established it, then  
21 happy to move on.

22 THE ARBITRATOR: Okay. So I'm just asking, is  
23 there anything else about the consulting -- the  
24 specifics of the consulting relationship between  
25 Mobile Monster and Surge which predated, as I

1 understand it, the formation of TopDevz? Is there  
2 any other reason, other than the fact of that  
3 relationship, and the terms upon which Mobile --  
4 Mobile Monster provided -- or was compensated by  
5 Surge?

6 MR. MATTHEWS: It is just establishing a history  
7 and a knowledge by Mr. Davis. To establish that this  
8 is not a situation where Mr. Rajae set up Mobile  
9 Monster in connection with TopDevz and it was some  
10 brand-new operation. This is a historical operation  
11 that we're just trying to establish.

12 THE ARBITRATOR: Okay. I think you've  
13 established that.

14 MR. MATTHEWS: Okay. So, we'll move on.

15 Let's look at Exhibit 7A.

16 Q Now, you signed an Operating Agreement with  
17 Mr. Davis for TopDevz, LLC, and that was dated  
18 May 9th of 2017; correct?

19 A Yes.

20 Q All right. So what I'm showing you -- and  
21 this is Exhibit 7A. There is communication with an  
22 Alex Mueller. Who is Alex Mueller?

23 A He's somebody that we were going to bring on  
24 as a third partner, and we started renegotiating a  
25 whole bunch of different terms, and ultimately Alex

1 backed out and we never went ahead with any of the  
2 negotiations that we were discussing.

3 Q Okay. And here, there's just mention of  
4 commission -- or there's some discussions about  
5 commissions.

6 Can you tell us what your understanding of  
7 this discussion is?

8 A Yeah. We were discussing commissions to me  
9 and also Alex. It's not in this e-mail, but Alex was  
10 also requesting commissions for certain things that  
11 he was doing, and I forget off the top of my head.  
12 But this was discussing kind of the commissions and  
13 also how we would handle distributions.

14 Q So was there going to be a change to your  
15 commissions based on these negotiations? Because it  
16 looks like there's other terms that are in here.

17 A There was a lot of discussion about a lot of  
18 things that we ultimately never agreed on, and that  
19 is why Alex didn't move forward.

20 Q So the other terms you didn't agree on here?

21 A Absolutely not.

22 Q Okay. But Mr. Davis was fully aware of your  
23 commission structure; is that correct?

24 MR. CARPENTER: Objection; calls for  
25 speculation.

1 BY MR. MATTHEWS:

2 Q To your knowledge, was Mr. Davis fully aware  
3 of your commission structure?

4 A Yes, he was.

5 Q Okay. So let's move on to Exhibit 8A.

6 THE ARBITRATOR: And can we just go back. So  
7 this e-mail is --

8 MR. MATTHEWS: Sure.

9 THE ARBITRATOR: Okay. It's May 2017. So  
10 your -- your last question ties to his knowledge at  
11 this point in time?

12 MR. MATTHEWS: Correct.

13 THE ARBITRATOR: Okay. Thank you.

14 MR. MATTHEWS: Of course.

15 Q All right. So let's move on to Exhibit 8A.

16 Now, this -- I'm going to zoom in here so  
17 it's easier for everyone to see. I think this is  
18 establishing a time stamp. Let's see here.

19 So here -- is this some correspondence, is  
20 this text correspondence between you and Mr. Davis?

21 A Yes.

22 Q All right. And in this text correspondence,  
23 is it true that Mr. Davis is on the left-hand side of  
24 the correspondence?

25 A Yes.

1 Q And you're on the right-hand side of the  
2 correspondence?

3 A Yes.

4 Q And so I'm looking at the bottom right-hand  
5 side of the screen. There's a time stamp of May 9th  
6 of 2017; is that correct?

7 A Yes.

8 Q So this is all of -- it looks like about ten  
9 days after you signed the Operating Agreement for  
10 TopDevz?

11 A Yes.

12 Q Okay. I'm going to move on to the next  
13 exhibit, which is Exhibit 9A, which is a continuation  
14 of that conversation where it was time-stamped. And  
15 I'm looking, again, at the top left-hand side of this  
16 page.

17 This is text correspondence, again, between  
18 you and Mr. Davis; correct?

19 A Yes.

20 Q Is there anyone else involved in this text  
21 communication?

22 A No.

23 Q So it's just communication between and you  
24 him from what you understood; correct?

25 A Correct.

1 Q All right. And here you say something, you  
2 say, at the top right-hand side, you say, "When I get  
3 that signature, I will take this compliment, but yeah  
4 they are primed to move over to us."

5 Do you know what this is referring to?

6 A Yes.

7 Q What is it referring to?

8 A Below it is a company called Digital Globe.  
9 They do satellite imagery for the Department of  
10 Defense and a lot of different -- they're a very tech  
11 forward company. And one of the contacts at this  
12 company that I have kept a relationship with I  
13 reached out to, and they did have a development need.  
14 And then me, I believe -- I'm not sure if Tyler was  
15 there or not, I think he was. Me, Tyler, a guy by  
16 the name of Paul, and Alex flew down there to meet  
17 them in person. They loved us. So I'm updating  
18 Tyler here that the visit was great and the  
19 negotiations pursuant to that, you know, getting into  
20 the contract, is going really well, which is why I  
21 referenced that signature. And he jokingly says, "I  
22 want to renegotiate your commissions" because that  
23 was potentially a \$5 million account.

24 Q Okay. And this was all of about ten days  
25 after you signed the operating agreement on this

1 company?

2 A Correct. That's why he's joking about  
3 renegotiating my commissions.

4 Q Because this was going to be a large  
5 account?

6 A Very large account.

7 Q Can you tell us, do you know what happened  
8 to this account?

9 A We ultimately didn't land this account.

10 Q Okay. So it seems like there was a lot of  
11 work that went into it that didn't work out?

12 A Yes.

13 Q And so you didn't get compensated for that,  
14 I'm assuming?

15 A No, I did not.

16 Q Did you have expenses, perhaps, that were  
17 gonna -- that were going into developing that  
18 relationship?

19 A Well, we had all the flights I put on my  
20 personal Amex, I put all the hotels on my Amex, all  
21 the expenses related to this visit I fronted.

22 Q So you advanced a lot of costs, but didn't  
23 end up closing the account?

24 A Correct.

25 Q All right. And as a result of it, you

1 didn't get paid on the revenue because no revenue  
2 existed; correct?

3 A Correct.

4 Q All right. Let's move over to Exhibit 10A.  
5 And this, again, is text correspondence between you  
6 and Mr. Davis. This is more of a time stamp.

7 Mr. Davis's correspondence is on the  
8 left-hand side; is that correct?

9 A Yes.

10 Q And your correspondence is on the right-hand  
11 side; correct?

12 A Yes.

13 Q And I've highlighted -- or it's been  
14 highlighted the date, the time stamp here. This is,  
15 it looks like, January 21st of 2020.

16 Does that look right to you?

17 A Yes, it does.

18 Q All right. So let's move on to the next  
19 exhibit, which is a continuation of this  
20 conversation, Exhibit 11A. All right. And so,  
21 again, this is continued text correspondence.

22 This is Tyler Davis on the left-hand side;  
23 correct?

24 A Yes.

25 Q And you're on the right-hand side; correct?

1 A Yes.

2 Q Now, he says to you, on the left-hand side,  
3 "Think of this, you grab Josh and Jim, you can step  
4 back and relax a little; correct?

5 A Yes.

6 Q You then respond and say, "I can't give up  
7 my commissions yet"; correct?

8 A Yes.

9 Q You say, "It's a big source of my cash  
10 flow"; correct?

11 A Yes.

12 Q He then responds and says, "I know. And you  
13 have a big play with SpendHub"; correct?

14 A Yes.

15 Q All right. Do you -- can you explain what  
16 the context, in your mind, of this conversation was,  
17 what it was about?

18 A So Jim Hyde was the chief operating officer  
19 of Surge. And in the process of us starting TopDevz,  
20 you know, this was in 2020 now, they let Jim Hyde  
21 go. And I found out about it, and I told Tyler about  
22 it, which is why I said, "They fired Jim Hyde."

23 And Josh, who was the very big strategic  
24 hiring aide here at TopDevz, was also at Surge. And  
25 so he's commenting that if we get Josh and we get

1 Jim, that I could relax because I had been  
2 complaining to him that I'm basically working seven  
3 days a week, sometimes 5:00 in the morning to  
4 11 o'clock at night, and I have a family. And so  
5 he's trying to see ways to kind of help me out,  
6 and -- well, that's what I perceived it as.

7 But then he asked me to step back a little,  
8 and I said, "Well, I can't," because my commissions  
9 at that time, I think we did 7.8 million in revenue,  
10 so that would have been a big part of my income for  
11 that year. So that's what I'm referring to here  
12 about not giving up my commissions, and he's talking  
13 about a bigger play with SpendHub and all that. And  
14 that's where the conversation continues.

15 Q Okay. All right. Let's move on to the next  
16 exhibit, Exhibit 12A. This is also a time stamp for  
17 the next exhibit.

18 Again, just for context, this is again more  
19 correspondence between you and Mr. Davis; correct?

20 A Yes.

21 Q And this is a situation where the  
22 correspondence from Mr. Davis is coming in on the  
23 left-hand side; correct?

24 A Yes.

25 Q And the correspondence from you is on the

1 right-hand side; correct?

2 A Yes.

3 Q All right. So at the bottom of the page  
4 there's a time stamp for October 8th of 2019.

5 Does that look right to you?

6 A Yes.

7 Q All right. So moving on to the next  
8 exhibit, which is a continuation of this  
9 conversation, this is Exhibit 13A.

10 Now, again -- well, let's look here. Again,  
11 this is correspondence from you. I'm not sure that  
12 this is actually a continuation. There may have been  
13 a little mixup there, but we can move on to this  
14 exhibit, which is dated November 6th of 2019.

15 This is correspondence between and you  
16 Mr. Davis; correct?

17 A Yes.

18 Q Okay. And it's only text correspondence  
19 between and you Mr. Davis; correct?

20 A Yes.

21 Q All right. And on the left-hand side is  
22 correspondence from Mr. Davis; right?

23 A Yes.

24 Q And on the right-hand side is correspondence  
25 from you; correct?

1 A Yes.

2 Q All right. So here, on the left-hand side  
3 he says to you, "When you get a chance, I need the  
4 ability to download the P&L. My bank is requesting  
5 it for my increase. Google Sheets won't allow it";  
6 right?

7 A Yes.

8 Q And you responded to him and said, "That P&L  
9 is internal. You need a Zoho copy which matches the  
10 tax filings. The Google sheet is so you can see  
11 where the monies are going"; correct?

12 A Yes.

13 Q What is Zoho? What is that referring to?

14 A Zoho Books is the accounting pack- -- cloud  
15 accounting package that we started implementing that  
16 Jennifer Glaser was using to file tax returns.

17 Q Okay. So it's a system that the accounting  
18 firm is using to file tax returns?

19 A They're using it, and we're using it now for  
20 P&Ls for TopDevz.

21 Q Okay. So if you have access to the Zoho  
22 account, what are some of the things that you would  
23 see?

24 A Well, it depends on your permissions, of  
25 what you have access, to. And that is derived from

1 your Goggle accounts that we have at TopDevz. We use  
2 Google Enterprise. So once that Google Enterprise  
3 account is activated, it will give you access to  
4 different things depending on your access level. But  
5 it would also be used to log in to any of the Zoho  
6 products, which is different tools -- Zoho's like a  
7 big, different tool base for companies. One of them  
8 is accounting, like a QuickBooks. It would be  
9 exactly like a QuickBooks.

10 So when I say Zoho copy, I'm referring to  
11 you can go into Zoho or, you know, a competitor of  
12 Zoho, QuickBooks, and download the company because  
13 that matches the tax filings. Because prior to this,  
14 we were using spreadsheets, which is what he was  
15 trying to access, and I was trying to make sure he  
16 was getting accurate information.

17 Q Okay. So you're saying that there was a  
18 spreadsheet that you used before Zoho Books?

19 A When we first started the company, yes, we  
20 did everything by spreadsheet.

21 Q Okay. And who -- what did that spreadsheet  
22 include?

23 A It included all the customers, their payment  
24 terms, their billing cycle, revenue, the expenses  
25 against each consultant per customer. It included

1 all of the lead generation bonus broken down monthly,  
2 my salary, W-2s, any commissions paid to W-2s. We  
3 had one employee, Donovan Stevens, who got some  
4 commissions, and Arash.

5 All of the Mobile Monster expenses were  
6 categorized in there. So airfare, hotel, meals, SaaS  
7 charges, any advertising that was done. Pretty much  
8 any money that was spent on behalf of TopDevz was  
9 captured on that spreadsheet broken down by line  
10 item.

11 Q Okay. So that was the initial -- that was  
12 an initial document that you used to handle the  
13 accounting for the company; correct?

14 A Correct.

15 Q All right. And was Mr. Davis given access  
16 to that document?

17 A From day one.

18 Q And how was he given access to that  
19 document?

20 A Through his Google account.

21 Q And this was a Google account through  
22 TopDevz?

23 A Correct.

24 Q All right. And so with Zoho Books, one  
25 question is, when Mobile Monster was being paid

1 commissions, or if there was expense reimbursement,  
2 were there invoices that were issued from Mobile  
3 Monster?

4 A Yes, there was.

5 Q And there were invoices that were generated  
6 for every bill that was being paid to Mobile Monster;  
7 correct?

8 A There should be, yes.

9 Q Okay. Who suggested that you do that or  
10 was -- did someone suggest doing that?

11 A Nobody really suggested it. The only  
12 modification they started asking to do was to  
13 separate out the commissions and the reimbursements  
14 so that they can have a better accountings for the  
15 details without having to go back to several  
16 different months and try to figure it out.

17 Q When you say they, who are you referring to?

18 A The accounting firm.

19 Q Okay. The invoices, are those accessible  
20 through Zoho Books?

21 A They are.

22 Q So if someone can sign into Zoho Books for  
23 TopDevz, they would access to seeing those invoices?

24 A If their account is granted that level of  
25 access, yes, they would.

1 Q Okay. What about Mr. Davis?

2 A Mr. Davis was given access to Zoho Books to  
3 review reports, download reports, look at P&Ls,  
4 balance sheets. He was given access to our Zoho  
5 Pulse, which is what he was referencing about the  
6 product that generates the forecast of the hours and  
7 the clients. He was given access to Zoho CRM, which  
8 is the customer relation management tool that we use.  
9 And he's been access- -- he's given -- been given  
10 access to other tools that I don't think he's ever  
11 used or doesn't really need to access, but if he  
12 wants to access them, he can.

13 Q Okay. All right. Now, walking through this  
14 exhibit -- and quite frankly, it's something we've  
15 discussed before, but I haven't heard from you about  
16 this.

17 He -- so you say at the very end, "the  
18 Google sheet is so you can see where the monies are  
19 going."

20 A Yes.

21 Q So what are you referring to there?

22 A So that's what I was referring to, you know,  
23 Zoho Books, because we were just transitioning from  
24 the spreadsheet to the books. The accountants were  
25 lumping a bunch of categories like consultant

1 reimbursement in one line time, and I wanted to make  
2 sure he saw the breakdown of what that reimbursement  
3 was. So if he went on to that Google sheet, he would  
4 see the breakdown of the individual categories that I  
5 just mentioned.

6 Q All right. So he responded, he says, "A PDF  
7 would be fine. They are requesting the P&L and the  
8 balance sheet"; is that correct?

9 A Yes.

10 Q And then you mention, "You have access to  
11 Zoho Books. You can print it if you want. I can do  
12 it later."

13 So you're saying that the balance sheet and  
14 all that information is in Zoho Books; correct?

15 A Correct.

16 Q All right. And I think we've previously  
17 established this exhibit.

18 I'm going to move on to Exhibit 14A. And,  
19 again, this is a continuation of the conversation  
20 between you and Mr. Davis when he was requesting P&Ls  
21 and some other financial information.

22 It looks like here on the right-hand side --  
23 this is, again, text correspondence, just to be  
24 clear.

25 On the left-hand side is Mr. Davis; correct?

1 A Yes.

2 Q And on the right-hand side is you; correct?

3 A Yes.

4 Q All right. And here you -- it looks like  
5 you've sent a PDF of the balance sheet to him;  
6 correct?

7 A Yes.

8 Q And also a PDF of the profit and loss  
9 statement; correct?

10 A Yes.

11 Q And he responded and says, "I got into  
12 Zoho"; right?

13 A Yes.

14 Q So it looks like you have a little bit of  
15 back and forth. And you're referencing that -- it  
16 says, "Below here," immaterial looking at the end of  
17 the conversation. "You say there is different  
18 portals for each."

19 What are you referring to here?

20 A So he's saying that -- you know, it seems  
21 like he was confused where to log in to Zoho Books,  
22 and I'm assuring him that you do have access. You're  
23 probably not going to the right portal. And then he  
24 says, "I don't know what to tell you. I'll give you  
25 a screenshot." And I said, you know, "Yes, there's

1 different portals, as I just explained." And he  
2 said, "I will explain later" -- "I will try again  
3 later. No big deal. Thanks for sending the report."

4 And just to be sure, I actually resent him  
5 the invitation to make sure that we had a fresh  
6 e-mail in his inbox to make sure he would be clicking  
7 on the right link to access to Zoho Books. And then  
8 he's inviting me to some Andrea Bocelli concert after  
9 that.

10 Q Okay. All right. So TopDevz, I think we've  
11 established this before, but it's effectively a --  
12 it's in the software space in terms of the company,  
13 it focuses in the software industry; correct?

14 A Software development, yes.

15 Q So, is it fair to say, that in terms of how  
16 you work or how the company works, it looks for  
17 software solutions to run its organization?

18 A Yes.

19 Q So the way that it operates is it will use  
20 different electronic platforms in order to handle  
21 something. Instead of sending out a hard copy of a  
22 P&L, you can access it online in some sort of  
23 application or software tool; is that fair?

24 A This was the death march at Surge, where  
25 they were using spreadsheets to do all this stuff,

1 and, you know, there's a modern way to do this stuff,  
2 which is use cloud platforms like Zoho and different  
3 systems that we use to work remotely and to give  
4 people instantaneous access.

5 The spreadsheet also can create room for  
6 human error, and if you catch it, it would just be  
7 another, you know, line item there. But, you know,  
8 the cloud-based platform, like Zoho accounting, has  
9 all the built-in functionalities for an accounting  
10 software that any more mature company would be using.

11 Q Okay. And so at the very end he's saying --  
12 he says, "Thanks for sending the reports."

13 You sent him the reports he was requesting,  
14 to your knowledge; correct?

15 A Yes. And I sent him the new invite, just in  
16 case he couldn't find the e-mail to get onto Zoho.

17 Q Did he respond back to you and say that he  
18 couldn't get in at that time?

19 A I never heard about this particular instance  
20 back, as you can see, he asked me for who Andrea  
21 Bocelli is.

22 Q Okay. So the answer is that after you  
23 granted him access again to make sure he had it, he  
24 didn't come back to you and say I don't have access,  
25 to your knowledge?

1           A    Not to my knowledge, no.

2           Q    Okay.  At least -- I want to be very clear  
3 about that.

4                   He didn't come back to you immediately and  
5 ask -- and say that he couldn't get access?

6           A    No.

7           Q    Okay.  All right.  Let's move on to the next  
8 exhibit, which is 15A.  And again, this is more text  
9 correspondence between you and Mr. Davis.

10                   The correspondence is -- on the left is  
11 Tyler Davis, to your understanding; is that correct?

12          A    Yes.

13          Q    And on the right-hand side is you; correct?

14          A    Yes.

15          Q    Now, I'll just read this for the record.

16                   On the left-hand side what it says, it says,  
17 "I'm just sending you what I am getting.  I will be  
18 honest it doesn't give me a warm and fuzzy.  I also  
19 don't get a bill from Google for AdWords.  Mobile  
20 Monster does.  And then I get a bill for Mobile  
21 Monster, which just makes everything more complex and  
22 messy.  I honestly don't have time or energy to dwell  
23 on this or do I care, but moving forward all bills  
24 for TopDevz need to go to TopDevz and be paid by  
25 TopDevz.  There is no reason to do it any other way.

1 Employees who work for TopDevz should be paid by  
2 TopDevz. Does that make sense? I need to be able to  
3 look at a report like this and say that's wrong, not  
4 be sitting here going" -- it says "going shit is  
5 wrong," excuse my language. "Doing that makes" --  
6 "Does that make sense? I think we need to simply  
7 unless you can give me a reason why we shouldn't."

8 Does that -- is that correct?

9 A Yes.

10 Q All right. You respond and say, "It is  
11 simple, dude. Everything is broken down in detail on  
12 the P&L. I can add you to the Google account. You  
13 can see the live spend, every dollar is accounted  
14 for"; correct?

15 A Yes.

16 Q He says, "That would be awesome. Like I  
17 said, I don't care and I don't want to question it  
18 ever. You are my partner. I don't want to ever  
19 question or have reason to question"; correct?

20 A Yes.

21 Q You said, "It's totally fine Tyler. I can  
22 see your point"; correct?

23 A Yes.

24 Q All right. Let's move on to the next  
25 exhibit, which is a continuation of this

1 conversation, Exhibit 16A.

2 And, again, this is a continued conversation  
3 via text between and you Mr. Davis; correct?

4 A Yes.

5 Q And on the left-hand side is Mr. Davis;  
6 correct?

7 A Yes.

8 Q And on the right-hand side is you; correct?

9 A Yes.

10 Q Now, it looks like at the top, it says you  
11 said, "One sec"; right?

12 A Yes.

13 Q He says, "I love you Ashkan, everything  
14 about you. I have to trust you a hundred percent.  
15 It doesn't work any other way"; right?

16 A Yes.

17 Q And you immediately responded and said, "I  
18 just gave you admin rights to the Google account,"  
19 and there's a screenshot, it looks like, of the  
20 Google account; is that right?

21 A Yes.

22 Q He responds immediately and says, "Awesome.  
23 Thank you"; correct?

24 A Yes.

25 Q And then you sent him a screenshot, and

1 just -- and it says -- and there's a -- it looks  
2 like the Google account, you say, "I will reset your  
3 password for TopDevz. I just changed your TopDevz  
4 ones" -- "one," and then you listed "to 12345678.  
5 You will need to change it when you login again";  
6 correct?

7 A Yes.

8 Q He says, "Awesome"; right?

9 A Yes.

10 Q You said, "Also, if you look on the P&L,  
11 everything is broken down by category. So you can  
12 see the AdWords spend matching the amount in Google  
13 account"; correct?

14 A Yes.

15 Q He responds, "So now I have a warm and  
16 fuzzy"; right?

17 A Yes. Can I elaborate on that?

18 Q Yes.

19 A This is very important, because this was a  
20 time where I felt that Tyler was not trusting that  
21 the Mobile Monster charges for AdWords were not  
22 actually going to AdWords, which is why he was asking  
23 for access to the AdWords account. So you pay -- so  
24 the reason why there wasn't a debit card for TopDevz  
25 or a credit card, because it didn't have any, is

1 because our spending on AdWords some months would be  
2 \$200,000 on my personal American Express.

3 So what would happen is TopDevz would get an  
4 invoice for Mobile Monster, for like 250 grand, and  
5 I'm like, that's a lot, yeah, it is a lot, but then  
6 when I went into it, I'm like, well, it was \$180,000  
7 of Google charges on my card. So when Tyler saw  
8 this, because he saw the amounts going to Mobile  
9 Monster, this was his way of not confronting me, that  
10 he doesn't trust me, but basically asking me, look, I  
11 know you're charging for whatever you're paying on  
12 your Amex for your Google. Even though it's broken  
13 down, as I say, on that spreadsheet line by line  
14 item, what he wanted to see is was the money actually  
15 going into the Google account to run the ads.

16 So in order for him to have zero doubt that  
17 that is where the money's going, I gave him admin  
18 access to the actual Google ads account, which he can  
19 log in and see the payment history and the charges  
20 from Google. That's why he's saying, "Now I have a  
21 warm and fuzzy," because he can follow the money  
22 from, you know, where everything is going.

23 The reason why we could not do it out of  
24 TopDevz, as he was suggesting earlier, because the  
25 bank account and the cash flows didn't have the

1 money. So I had to support the cash flow, and I have  
2 e-mail correspondence with him, where I'm like, dude,  
3 there's a quarter million dollars on my Amex, like we  
4 need to deal with the situation. But anyhow, this is  
5 where it landed, so I think this was --

6 Q Well, you can talk about that a little bit,  
7 which is why would there be a cash flow issue? What  
8 was the cash flow issue? Explain that.

9 A Well, one, we were a startup, we were  
10 generating revenue. And when we started to generate  
11 revenue, we were growing, and the accounts we were  
12 starting to land were getting larger and larger. So  
13 our payment terms were going from net 15 -- like  
14 Becton, Dickinson, for example, a Fortune 50 company,  
15 is not going to change their payment terms because of  
16 TopDevz.

17 And I get asked this question every day.  
18 Josh will come to me and say, hey, I need you to  
19 accept this or talk to them, and I try, but they're  
20 like, listen, our terms are our terms. You want to  
21 do business with us or you don't. So I'm not going  
22 to turn down a Fortune 50 company. So we say yes,  
23 but it creates a lot of cash flow issues because the  
24 payment terms are getting extended.

25 Compounding that problem is we weren't

1 getting paid on time with the payment terms. So they  
2 would say net 60, and it really became net 90, some  
3 of them were net 120. So it just became, you know,  
4 that compounding issue. And I can't blame the  
5 customers for that, but this is -- this is why it was  
6 structured that way.

7 Q Okay. So I do want to talk about something  
8 related to this very quickly, which is -- so is  
9 Becton, Dickinson -- is that the correct way to say  
10 it?

11 A BD, yeah.

12 Q Okay. Are they a client of TopDevz?

13 A Yes, they are.

14 Q Okay. And what is -- do you know what the  
15 revenue is for them, generally, per year?

16 A We signed a statement of work with them for  
17 a PO for \$750,000.

18 Q For what year?

19 A It started, I want to say, in 2020, and it's  
20 actually coming to its end now, but they're talking  
21 about renewing.

22 Q Okay. So \$750,000 for that work?

23 A Correct.

24 Q Okay.

25 A The purchase order is that much.

1 Q All right. Let's move on.

2 THE ARBITRATOR: Is this a good time for a  
3 break?

4 MR. MATTHEWS: Sure, we can do that.

5 THE ARBITRATOR: And then we'll go for maybe --  
6 let's take a ten-minute break, and then maybe plan on  
7 going another 30 minutes or so.

8 MR. MATTHEWS: Sure.

9 THE ARBITRATOR: What is your time estimate for  
10 Mr. Rajaei?

11 MR. MATTHEWS: I think what I have left would be  
12 about an hour and a half to two hours.

13 THE ARBITRATOR: Oh, all right. We won't be  
14 finishing tonight, then.

15 MR. MATTHEWS: I think we'll have to continue a  
16 little bit into the next day.

17 THE ARBITRATOR: All right. All right. Then,  
18 let's take a ten-minute break. Come back like at  
19 4:10.

20 MR. MATTHEWS: All right. Perfect. Thanks so  
21 much.

22 (Recess taken from 3:58 p.m. to  
23 4:10 p.m.)

24 THE ARBITRATOR: Okay. I was just looking at my  
25 notes. Did we agree -- since it looks like -- since

1 it looks like we are going to need additional hearing  
2 time, did we agree on December 13th as our additional  
3 day?

4 MR. CARPENTER: Yes.

5 THE ARBITRATOR: Okay. So -- and can we start  
6 at 9:00? Will that work for everyone?

7 MR. CARPENTER: Yes.

8 THE ARBITRATOR: Okay. Mr. Matthews, does that  
9 work for you?

10 MR. MATTHEWS: Does that work for you, 9:00?

11 MR. RAJAE: Yeah, I can do it.

12 THE ARBITRATOR: Okay. So we'll start at  
13 9 o'clock on December 13th.

14 And Mr. Matthews, I know you have a bit more  
15 time with Mr. Rajae. And then do you have other  
16 witnesses after Mr. Rajae?

17 Oh, Mr. Matthews, you're muted.

18 MR. MATTHEWS: I may call Mr. Davis, otherwise,  
19 that would be it.

20 THE ARBITRATOR: Okay. All right. Well, then,  
21 let's see what we can do today. Since we're not  
22 going to finish and it has been a long day, can we go  
23 till about 4:45? Just I have a few things that have  
24 piled up that I could sure use even 15 minutes to  
25 take care of.

1 MR. MATTHEWS: Completely understood. That's  
2 fine with me.

3 THE ARBITRATOR: Okay.

4 MR. CARPENTER: I'm sure Susan will appreciate  
5 it.

6 THE ARBITRATOR: Okay. All right. Well, then,  
7 let's continue working for another half-hour or so.

8 And Mr. Matthews, the floor is yours.

9 MR. MATTHEWS: Okay. Thanks so much.

10 Q So we're back on the record, and we were  
11 looking, just to be clear, at Exhibit 16A; right?

12 You know, I just want to touch real quickly,  
13 before we move on to the next exhibit, can you  
14 quickly, Mr. Rajaei, explain the purpose of your  
15 purchase of the Bentley and Rolls-Royce that have  
16 been mentioned.

17 A So the cars were a tool to fit into one of  
18 the puzzles pieces I was trying to explain but wasn't  
19 given the opportunity to finish. But, essentially,  
20 they were used to create a certain image for the  
21 company and also be used in our content generation  
22 for the social media channel for TopDevz, LinkedIn,  
23 basically all the stuff that we do. So that was  
24 just -- it was a part of that campaign.

25 Q Can you explain, or give a specific example,

1 of how maybe, perhaps, the Rolls-Royce helped to  
2 close any business?

3 A Specifically, I remember the CIO of Procore,  
4 who contacted us, and his name's Mike Hanson, and I  
5 purposely took the call inside the Rolls-Royce  
6 because I wanted to, you know, show a particular  
7 image. And the first comment he made was, you know,  
8 "Dude, are you in a Rolls-Royce?" And I'm like --  
9 you know, I kind of played it off, but I was doing  
10 that intentionally.

11 And then after that call, he introduced me  
12 to the head of somebody else at Procore. I can't --  
13 I think it was Samantha. I can't remember her name.  
14 And ultimately they asked for, within a week of that  
15 conversation, four or five more developers. And then  
16 we couldn't fulfill it because of the whole Tyler  
17 thing, we lost Siarra, so we lost some of that  
18 revenue.

19 But that would be a specific instance where  
20 I could definitely tie the credibility of the comment  
21 that he made. It just kind of put me on a different  
22 level with him. And, ultimately, Procore went public  
23 a few months ago, and we were a part of that, so --

24 Q Okay. So can you explain, do you recall  
25 what Procore, what their revenue is per year, or

1 roughly?

2 A I don't. I don't know. I know that they're  
3 construction management. Tyler knows. His company  
4 uses Procore. But it's basically a construction  
5 management software, and like I said, they went  
6 public a few months ago.

7 Q Okay. All right. Let's move on to  
8 Exhibit 17A. Now, I'm not sure, we'll see if you --  
9 how you can speak to this.

10 But this is -- this is a screenshot of a --  
11 it looks like an e-mail from Tyler Davis at his  
12 Porter Consulting, LLC, to Jennifer Glaser where it  
13 states, "Jennifer, can you send me the 2020 taxes and  
14 my K-1 for TopDevz?"

15 How do you have access to this e-mail?

16 A So TopDevz uses Google Enterprise edition,  
17 and one of the functionalities of the administration  
18 for the domain of TopDevz is the administrator can  
19 view all activity on a user's account, which is how  
20 you found out he's accessing files, you know, making  
21 requests to Jennifer, and copying his TopDevz e-mail.

22 If he would have sent that e-mail from  
23 Porter Consulting, it says there to Jennifer Glaser,  
24 we wouldn't have seen it, but because he copied  
25 TopDevz.com, and I'm a super admin user, we can view

1 all activity relating to what files are accessed,  
2 when they're downloaded, e-mail corres- -- basically  
3 e-mail correspondence.

4 And this was in place way before the  
5 litigation, just so you know, because sometimes our  
6 developers, they use -- they'll swear at a client or  
7 something, or there's some key words that Google, for  
8 like corporate compliance, tries to detect. So I get  
9 alerted when those kinds of things happen. But in  
10 this specific case I used the administrator portal to  
11 go in and view activity on his e-mail account.

12 Q Okay. So this is -- so basically through  
13 your ownership of TopDevz IP or its assets, you can  
14 access this communication?

15 A Correct.

16 Q Okay. Now, it looks like this e-mail was  
17 drafted or sent on October 12th of 2021. So this  
18 year, relatively recently.

19 Do you have any reason to believe it wasn't?

20 A This is directly from the Google admin  
21 portal. So if it's in there, he copied TopDevz.com  
22 at 1:58 p.m. on October the 12th, 2021.

23 Q Okay. All right. And, again, so this is a  
24 request for the 2020 taxes and K-1 for TopDevz;  
25 correct?

1 A Yes.

2 Q All right. So let's move on to the next  
3 exhibit, Exhibit 18A. And this is dated  
4 October 14th, 2021. So it looks like two days later,  
5 and it's an e-mail from Jennifer Glaser to Tyler  
6 Davis at his Porter Consulting, LLC, account, and  
7 also at his TopDevz.com account.

8 How do you have access just to this, just to  
9 clarify for the record?

10 A Same way I have access. Except if you look  
11 at system labels, Google tracks if the user opens the  
12 e-mail or not. The reason why I think this is  
13 important is because it's saying that it hit his  
14 inbox on his TopDevz domain, and he opened this  
15 e-mail on his TopDevz domain. So as of October 14th,  
16 he still had access to everything.

17 Q Okay. Now, Jennifer Glaser, she's the  
18 accountant for TopDevz; right?

19 A Correct.

20 Q And when she gets requests for corporate  
21 documentation, does she generally contact you or does  
22 she advise you?

23 A Generally not, but since the litigation  
24 started, you know, I was asked to go through counsel  
25 on any communication regarding TopDevz. And she

1 reached out and told me that Tyler's requesting  
2 returns, and I told her, "Give him whatever he  
3 wants" --

4 Q Okay.

5 A -- "relating to TopDevz, LLC.

6 Q All right. Thanks for clarifying.

7 Let's move on to Exhibit 19A. So this is an  
8 invoice for Mobile Monster. It's dated June 5th of  
9 2017. It looks like a little bit after the company  
10 was formed, a little less than a month after the  
11 company was formed --

12 A Yes.

13 Q -- correct?

14 A Yes.

15 Q And so this invoice, it states it's for lead  
16 generation fee and expense reimbursement for -- the  
17 amount is \$50,000 -- \$50,718; correct?

18 A Yes.

19 Q And you stated before that you work with  
20 Zoho Books for your accounting; correct?

21 A As of 20- -- or towards the end of 2019,  
22 2020, yes.

23 Q And Mr. Davis has access to the account for  
24 TopDevz through Zoho Books; correct?

25 A Yes.

1 Q All right. And are these -- does he have  
2 access to these invoices?

3 A They should all be in there, yeah.

4 Q Okay. Now, before I move on, I actually  
5 want to touch on one other issue. The -- because we  
6 had talked before about the Bentley and the  
7 Rolls-Royce. I want to talk real quickly about the  
8 private jet.

9 You said that there's a management company,  
10 a company that manages the jet; correct?

11 A Yes.

12 Q And so can you talk a little bit about the  
13 documentation that's in place with regards to the use  
14 of the jet or how that works?

15 A I can't remember the lady's name, but she is  
16 a private aviation attorney, specializes in private  
17 aviation matters. She set everything up. And she --  
18 there's all this dry lease, wet lease, FAA stuff, a  
19 bunch of documentation on that.

20 And then on the use of the aircraft, when  
21 the aircraft is being used or maintained [sic],  
22 every dollar that is spent on the plane is actually  
23 done through Lone Mountain. They're the ones who  
24 front the expenses. And then -- actually, they don't  
25 front, sorry. They ask for a \$50,000 retainer, and

1 then they would deduct from that. And as the  
2 aircraft's being used, we would be replenishing that,  
3 which is why the invoices and amounts you see going  
4 to Lone Mountain. And they send me very detailed,  
5 with all kinds of receipts attached. They're like a  
6 hundred pages long for like two trips. It's  
7 everything from a \$3 Subway sandwich up to \$20,000  
8 maintenance on the aircraft.

9 Q Okay. And when you're using it, can you  
10 give us some examples of when you've been -- or when  
11 you've used this aircraft and what for?

12 A So I use it in various ways. One is when we  
13 first got it, there was an account in Denver that was  
14 very timely. And I went to go see her, she's the  
15 vice president of a company called Alchemer. I don't  
16 know how to spell it, Alchemer. And she -- their  
17 office is very -- like kind of remote. And that  
18 would be one opportunity that I took to go see a  
19 client right away, face to face, because I saw the  
20 opportunity.

21 And she has on her -- they're currently a  
22 client of ours right now, with four or five active  
23 developers, so that's about a hundred thousand in  
24 revenue, but they're activity planning with us right  
25 now for anywhere from 15 to 20 more developers. And

1 that would be an instance of using the plane to go  
2 see a client on demand, right away, and do that.

3 While I was there, there was a joke made,  
4 because she found out what airport I landed at. And  
5 it wasn't Denver International, it was some weird,  
6 you know, in the middle of kind of nowhere airport.  
7 She goes, "Oh, that's a private airport." And then I  
8 was like -- I joked back with her, I'm like, "Oh,  
9 yeah, you know, we got a plane to get around." She's  
10 like, "Oh, you guys must be doing really well." I  
11 said, "Yeah, you know, we're trying." I just kind of  
12 played it off. 20 minutes later, she walked out of  
13 the room and brought the CEO of the company into the  
14 room and introduced me directly. So this would be  
15 another example of how I strategically played it off,  
16 like it was coincidental, but it was staged, like to  
17 get to them. That would be one.

18 And then while I was there, I was able to  
19 see this CFO of Bankers Bank of the West, a bank that  
20 I was developing a relationship with. And he could  
21 only meet at a certain time, where the jet became  
22 flexibility for me to just wait for him. So I did, I  
23 met with him too. And then I used the jet to go to  
24 Florida to meet with some folks, and at that event, I  
25 was introduced to the chief operating officer of

1 Fraser Yachts. So their clientele literally is  
2 billionaires. These are 200-, 300-foot mega yachts.

3 And the joke was, again, you know, the  
4 flexibility of the airplane, and, you know, I bring  
5 it up for marketing purposes so that it established  
6 some sort of almost like a category of people you're  
7 talking to. And so they introduced me to a bunch of  
8 people there, and I'm building relationships with  
9 them and trying to get, you know, TopDevz into there.

10 I was introduced to someone there. I forget  
11 his name right now. And they're doing a very large  
12 project, of which they -- as soon as they found out  
13 we do software development, they're like, "We need to  
14 talk." And he's currently traveling right now, but  
15 they're on the calendar at the top.

16 So there's some specific examples of -- from  
17 just as a tool to get around when I need to, that the  
18 plane is being used. Everything else is for the  
19 marketing side, you know, the image of, you know,  
20 what we put out on social media contact and stuff to  
21 leverage the image of a successful software  
22 consulting company.

23 Q Okay. All right. I want to move on to  
24 Exhibit 20A. And this is -- again, this is another  
25 invoice for Mobile Monster. This is dated

1 November 1st of 2017. This is, it says, consultant  
2 reimbursement expenses for \$14,062.74.

3 Does that look correct to you?

4 A It looks correct, yeah.

5 Q Okay. Is this an invoice that is available  
6 in Zoho Books?

7 A It should be.

8 Q And it would be available to Tyler Davis;  
9 correct?

10 A It should be. And if it isn't, he can ask  
11 for it. Siarra Wood was actually handling all of  
12 this invoicing stuff by the way.

13 Q All right. Did -- from your understanding,  
14 were you aware of correspondence between Tyler Davis  
15 and Siarra Wood regarding accounting or any other  
16 issues?

17 A There was several communications between  
18 Siarra and Tyler. One was for a PPP loan he was  
19 trying to get for Porter. Another was for some sort  
20 of net worth statement. Another was our -- our taxes  
21 that we pay on payroll, the W-2 quarterly reports. I  
22 don't know. I just -- I tell her talk to Jennifer,  
23 she'll tell us where to go get it.

24 And then there was times where he would ask  
25 for the P&L. And right before this litigation he

1 asked for all the transfers that have been made to  
2 Mobile Monster, and the amounts Mobile Monster  
3 actually received. And I -- and Siarra asked me  
4 about, you know, "Tyler's asking for Mobile Monster  
5 stuff," and I said, "Give it to him."

6 And so I pulled my American Express cards  
7 personally and I sent it to him. And Siarra sent him  
8 a whole bunch of information on Mobile Monster.

9 Q All right. So let's move on to Exhibit 21A.  
10 This is back to some correspondence with you and  
11 Mr. Davis. This is text correspondence between and  
12 you Mr. Davis. It's dated November 25th, 2019. I'm  
13 looking here at the time stamp above where it's been  
14 highlighted.

15 Does that look correct to you?

16 A Yes.

17 Q And on the left-hand side is Mr. Davis;  
18 correct?

19 A Yes.

20 Q And on the right-hand side is yourself,  
21 Mr. Rajae; correct?

22 A Yes.

23 Q All right. And it states for Mr. Davis, he  
24 says on November 25th, 2019, at 10:14 a.m., he  
25 states, "When you get a chance send me the meeting

1 invites for the executive meetings. I would like to  
2 start attending. I will also be arriving at about  
3 8:30 to the office next Thursday, leaving Friday  
4 night."

5 Do you recall what this is in reference to?

6 A A hundred percent.

7 Q Can you tell us what that's in reference to?

8 A So that was the year, towards the end as you  
9 can see, I think we did almost 8 million in revenue.  
10 And I had approached Tyler to say, you know, I know  
11 you're running Porter Consulting, but, you know, he  
12 had told me he'd never had more than 5, 6 million in  
13 revenue at Porter Consulting even though it's been  
14 around for 10, 15 years or however long it's been  
15 around. And I said to him, I said, "Look, this  
16 company's really growing. I could use your help.  
17 And it's going to need a chief operating officer,  
18 and, you know, if you want to build it like we did at  
19 Surge, come, you know."

20 And, you know he said that he's not ready  
21 because he doesn't understand the software language  
22 yet. He was supposed to start in January as the  
23 chief operating officer, which he eventually did.  
24 But this text is in reference to he wanted to start  
25 getting onboarded in December, getting himself

1 acquainted with the people at the company, the  
2 process of the company, kind of the stuff that we did  
3 inside the company on a more kind of intimate level.

4 And then we were having an employee get  
5 together in San Diego. And he was -- he came for  
6 that trip and met all the people in person.

7 Q Okay. And after this conversation, was it  
8 custom and practice for -- actually, strike that.

9 Was -- were you involved in management  
10 meetings with Mr. Davis regarding TopDevz?

11 A Prior to this, no. I would consult him  
12 pretty much about everything. And -- yeah, I  
13 consulted him pretty much on everything. But he  
14 wasn't attending meetings until kind of this time  
15 period.

16 Q Okay. But did he start to get involved in  
17 negotiating contracts with clients?

18 A Absolutely, he negotiated. Well, he would  
19 review the terms of the contract, and if he was  
20 comfortable with some of them, he would do client  
21 facing calls. But the majority of it would be he  
22 would help Sarah with the terms of the contract, and  
23 ultimately, I would be brought in to negotiate the  
24 terms. But I would rely on him to review the  
25 contracts, to make sure that we were comfortable as a

1 company with the terms that were on that particular  
2 account.

3 Q Okay. And if he wasn't comfortable with the  
4 terms, did you ever discuss it with him?

5 A Yeah. We went back and forth on e-mail  
6 threads all the time.

7 Q All right. Did -- you said you were --  
8 let's say before you purchased the jet, you were  
9 using a jet, were you leasing it, or how did that  
10 work?

11 A Are you talking about JetSmarter?

12 Q Yes.

13 A So we used JetSmarter to get acquainted with  
14 private aviation and jet guards and, you know, what a  
15 jet can do, and the benefits and the costs, and, you  
16 know, just kind of getting into that. So prior to  
17 that jet, we were on JetSmarter for three years.

18 Q And were you using it as a tool at that time  
19 to visit clients?

20 A Same reasons why I'm using the jet now.  
21 Clients, marketing, content for the social media, and  
22 stuff that we do. And I actually met Hugh Jackman on  
23 one of the flights, which was pretty interesting.

24 Q Well, in connection with these flights, I'm  
25 going to talk about those relationships in a second,

1 but did Tyler come with you on some of these flights  
2 to meet clients?

3 A On some of them, he would, yeah.

4 Q And can you give us an example that you  
5 recall of a client meeting with Tyler?

6 A We went to Texas once and we met with  
7 Steves & Sons, which is based out of Austin, San  
8 Antonio. And then I think we did a Chicago trip.  
9 I've done several with him. I'm not remembering all  
10 of them off the top of my head.

11 Q Well, let me ask you a question. Generally,  
12 how much do you travel?

13 A When we had the JetSmarter membership, I  
14 think I took about 160 flights.

15 Q In a year?

16 A It was over the period of three years.

17 Q Over the period of three years?

18 A Right.

19 Q Okay. So you're traveling, is it like a  
20 couple times a month?

21 A In the beginning, it was, I think, a lot  
22 more than a couple times a month.

23 Q Okay. So I'm going to move on to --  
24 actually, let's talk about the -- you just referenced  
25 something about Hugh Jackman. I'm wondering if

1 there's any significance there. Can you explain if  
2 there's any significance to that interplay or  
3 introduction?

4 A So I have a selfie on a private jet with  
5 Hugh Jackman and myself only, and I've used that I  
6 don't know how many times to gain credibility, taking  
7 wow factors with clients, that'll be like, "Oh, wow,  
8 you know Hugh Jackman?" And they just want -- they  
9 just want -- you know, it's kind of the product hook.  
10 Right? It's like I have a connection to him and his  
11 wife Deborra, and so that is interesting to people.

12 So I've used it on LinkedIn in. I've used  
13 it on YouTube. I've used it on text messages with  
14 folks. Tyler has used it and shared it with people  
15 in his network. So, I mean, it would be those types  
16 of things where we would retool and repurpose for  
17 marketing.

18 Q So what's the significance of using some of  
19 these tools to develop a relationship with a client?  
20 Why is that significant for TopDevz?

21 A Because it's kind of like a real estate  
22 agent, right, if I'm to really simplify it. You  
23 generally work with the real estate agent that is  
24 either top of mind to you or has incredible  
25 credibility to make you go with them over somebody

1 else. Right? Our business is kind of a  
2 when-you-need-us kind of business, and we can't just  
3 keep pushing the same content. So building those  
4 relationships keeps us top of mind, so when there is  
5 a need, they come to us.

6 The second part of relationship building is  
7 when there are problems on accounts, which we  
8 experience at TopDevz, they leave us -- for them to  
9 leave us becomes a little bit harder. They give us  
10 more opportunities, they give us more at-bats to fix  
11 the problem because there's that's personal  
12 connection.

13 Q So you're saying that you are making a  
14 calculated investment into a relationship with people  
15 at a company to build longevity of a relationship; is  
16 that what you're saying?

17 A That entire model I was trying to explain  
18 that I wasn't able to finish hinges on the ability to  
19 keep track of all of these relationships and foster  
20 them and grow them.

21 Q Okay. And then from a sort of connectivity  
22 point of view, what is the general role of the people  
23 that you're dealing with at a company? Are they  
24 generally key level executives, or who are you  
25 generally dealing with?

1           A    So we had the -- when we started the  
2 company, it was more managers and some CIOs. Since  
3 kind of this push in the marketing content side, it  
4 has turned into a lot of board level members, some of  
5 them, you know, incredibly ultra high net worth  
6 individuals that own companies. CEOs of larger  
7 companies, CFOs of larger companies.

8                    So, you know, it's also interesting to note  
9 that when I used to text these people four years ago,  
10 I wouldn't get a reply, where now I will send a  
11 message, and I get a reply. And that tells me right  
12 there that the relationship is at a different level.  
13 Right? And I pride myself on that, because that's  
14 what I've been busting my ass to do, is build this  
15 infrastructure.

16           Q    Understood.

17                   And so from your perspective, do you also  
18 believe or have you -- strike that.

19                   From your perspective, have you experienced  
20 situations where you -- where these individuals have  
21 an expectation of a lifestyle when they're  
22 interacting with you?

23           A    I have received numerous messages, text  
24 messages, phone calls, leads for TopDevz, where they  
25 reference the jet or will reference the show or will

1 reference the Rolls-Royce or the Bentley, and say,  
2 "Hey, I really like your show on this content," blah,  
3 blah, blah, "I need this."

4 And I even have people reaching out to me  
5 for business advice, how can I get a jet, how can I  
6 get a Rolls-Royce, how can I get this, how can I get  
7 that. And my answer's honest, you know, I work hard,  
8 I do it, whatever. But the one thing I'm careful of  
9 is not to fake it. Right? And that's, I think,  
10 important in what I'm doing, is I'm not being  
11 disingenuous by doing it. I'm strategically using it  
12 for the benefit of the company.

13 Q All right. Let's move on to Exhibit 22A.

14 THE ARBITRATOR: Is this maybe a good stopping  
15 point?

16 MR. MATTHEWS: I think so, actually, yeah.

17 THE ARBITRATOR: Okay. Because I think it takes  
18 about 15, 20 minutes per exhibit. So it might be a  
19 good stopping point.

20 MR. MATTHEWS: Okay.

21 THE ARBITRATOR: So till December 13th at  
22 9:00 a.m.

23 MR. CARPENTER: And will we get a new link from  
24 Elizabeth?

25 THE ARBITRATOR: I assume so, now that she knows

1 that we definitely need it.

2 MS. ROBERTSON: Yes, I'll circulate one for the  
3 13th.

4 MR. CARPENTER: Thank you very much.

5 THE ARBITRATOR: All right. Well, everyone,  
6 thank you so much for your hard work, and, you know,  
7 you've stayed alert through all this and worked  
8 really hard. Thank you very much.

9 And you too, Susan, the court reporter,  
10 appreciate all your good efforts.

11 So I'll see you all on December 13th, and  
12 any problems or questions, just touch base with the  
13 case manager Elizabeth, and we will address them.

14 MR. MATTHEWS: Sounds good.

15 Thank you, Susan.

16 Thank you, Elizabeth.

17 And thank you, Ms. Callahan.

18 (Proceedings concluded at 4:39 p.m.)  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATION

I, Susan L. Cleveland, a Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing proceedings were reported by me stenographically and later transcribed into typewriting; that the foregoing is a true record of the proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 14th day of December, 2021.



Susan L. Cleveland, CSR No. 10502

|                    |                  |                    |                 |              |
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|                    | 421:8            | 335:9              | 347:16          | <b>12:54</b> |
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| <b>\$180,000</b>   | 490:17           | 419:6              | <b>11:58</b>    | 504:21       |
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| <b>\$191,000</b>   | <b>\$50,718</b>  | 430:3              | <b>11A</b>      | <b>14</b>    |
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