In the Matter Of:

RAJAEE vs DAVIS

01-21-0001-9983

HEARING DAY 2

December 02, 2021

AMERICAN ARBITRATION ASSOCIATION

SAN DIEGO, CALIFORNIA

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

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.

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TRANSCRIPT OF VIDEOCONFERENCE HEARING

DAY 2

December 2, 2021

11:04 a.m.

Susan L. Cleveland, CSR No. 10502

Job No.: J7697316
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APPEARANCES OF COUNSEL

For Claimants Ashkan Rajaee, TopDevz, LLC, and Mobile Monster, Inc.:

WEINBERG GONSER LLP
BY: JORDAN MATTHEWS, ESQ.
10866 Wilshire Boulevard
Suite 1650
Los Angeles, California 90024
(424) 239-2867
(424) 238-3060 (Fax)
jordan@weinberg-gonser.com

For Respondent Tyler B. Davis:

CUMMINS & WHITE, LLP
BY: SCOTT R. CARPENTER, ESQ.
2424 S.E. Bristol Street
Suite 300
Newport Beach, California 92660-0764
(949) 852-1800
(949) 852-8510 (Fax)
scarpenter@cwlawyers.com

The Arbitrator:

REBECCA CALLAHAN, ESQ.

Also Present:

TYLER B. DAVIS

ASHKAN RAJAEE

ELIZABETH ROBERTSON

INDEX

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

MR. MATTHEWS: Of course. Understood.

MICHAE S. HAWES,

having been previously duly sworn, testified as follows:

CROSS-EXAMINATION

BY MR. MATTHEWS:

Q   Good morning, Mr. Davis.

A   Good morning.

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

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

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

A Correct.

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

A Correct.

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

A Correct, to my recollection.

Q Okay.

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

BY MR. MATTHEWS:

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

A That is correct.

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

A Correct.

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

A So for TopDevz, the only executed by both parties' agreement that we have is the one that we've actually been looking at through the course of this trial.
Q Okay. So your answer is that you only signed one Operating Agreement for TopDevz; right?
A No, that's not my answer.
Q So are you saying that you signed another operating agreement for TopDevz?
A I did.
Q Okay. Did Mr. Rajaee execute any other Operating Agreement for TopDevz?
A Not that I'm aware of.
Q Okay. So the only operating agreement that both parties signed is the one dated May 9th of 2017; correct?
A Correct.
Q All right. So we're going go to that exhibit in a moment. Actually, let's bring up that exhibit. I've marked it as Exhibit 1A. I'll share my screen.
THE ARBITRATOR: That's fine to bring up 1A.
MR. MATTHEWS: Okay. Thank you.
Q So I'm looking at what's been marked as Exhibit 1A. And going on to the next page, which the

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

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

A Yes.

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

A Correct.

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

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

Is Tyler Brandon Davis you?

A It is.

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

A It is.

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

Do you recall seeing this page?

A Yes.

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

A Correct.
Q It doesn't include the ownership of the members in this; correct?
A Correct.
Q And it doesn't list your capital contribution of $750,000; correct?
A Correct.
Q So are you saying that you didn't make an investment of $750,000 into TopDevz?
A No, I'm not saying that.
Q But it's not on this page.
A No, it's not.
Q So you're certain that you made an investment of 750,000 in TopDevz?
A Hundred percent.
Q Okay. So let's go back to the fact that this is your signature on the bottom of page 31.
You can confirm that that's your signature; correct?
A Correct.
Q And your testimony yesterday was that there was never an amendment to this Operating Agreement; isn't that right?
A It was executed by both parties.
Q That's not my question.

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

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

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

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

BY MR. MATTHEWS:

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

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

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

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

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

A   It does.

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

A Correct.
Q And after the letters TBD, in brackets, it says "or services"; correct?
A Correct.
Q And it's your testimony that this has never been amended; correct?
A Correct.
Q Now, Mr. Davis, when you formed TopDevz, you knew that Mr. Rajaee was a Canadian citizen; right?
A I do.
Q And you discussed with him the fact that he had certain visa requirements; correct?
A Yes, we did.
Q And you understood that in connection with his visa requirements he had to have a 51-percent ownership in TopDevz; correct?
A I don't know that that's true.
Q Is that something you discussed with Mr. Rajaee?
A It was discussed, but yeah, whether that's true or not, I'm not -- I've never received documents as to whether that's actually a true statement.
Q So you had discussed with Mr. Rajaee the fact that he had to have a 51-percent ownership in TopDevz; correct?

A He indicated that he did.
Q Okay. And so it was your understanding that when you entered into this Operating Agreement, he had to have a 51-percent ownership in the company; correct?
A Can you repeat the question?
Q It was your understanding, based on those conversations, that when entering into the Operating Agreement, Mr. Rajaee had to have a 51-percent ownership in the company; correct?
MR. CARPENTER: Calls for a legal conclusion.
BY MR. MATTHEWS:
Q Well, based on your understanding --
THE ARBITRATOR: Let me rule.
I believe that as he phrased the question, it simply asked for Mr. Davis's understanding.
So with that qualification, if you have an understanding, Mr. Davis, you may answer the question.
THE WITNESS: No. As far as when those conversations occurred, when -- the conversations of his need for that ownership, when that occurred, I don't know if it was before or after this.
BY MR. MATTHEWS:
Q So your understanding -- your testimony is

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

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

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

A We did.

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

A Yes.

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

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

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

A That's what it would mean, correct.

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

TopDevz every year; correct?
A Correct.
Q And you received a K-1 for the year 2019; correct?
A Correct.
Q Let's go to what's been marked as Exhibit 2A.
THE ARBITRATOR: I cannot read what this is.
MR. MATTHEWS: I'm going to zoom in, if it helps.
THE ARBITRATOR: Well, don't we have a more legible copy of it in the full copy of the 2019 tax returns that we could look at?
MR. CARPENTER: Yeah. I'll object to this. I have not seen it before today. It appears to be a screenshot, and it varies from the corporate record production. To the extent it's duplicative, we don't need it; to the extent it's new, I'll challenge the foundation of it and say it wasn't produced.
THE ARBITRATOR: All right. Well, I'm going to sustain that because I can't read what I have on my hard copy. So let's go to the one that was marked, which I believe was -- which has the entirety, which I believe is Exhibit 9. No, it's 10. Let's go to Exhibit 10.

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

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

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

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

MR. MATTHEWS: Sure.

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

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

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

MR. MATTHEWS: This is the K-1 for Mr. Davis, 2019.
THE ARBITRATOR: All right. Well, Mr. Carpenter, have you had a chance to look at it?
MR. CARPENTER: Yes, I have.
THE ARBITRATOR: Okay. And you're fine with that?
MR. CARPENTER: Yes.
THE ARBITRATOR: Okay. All right. Then we'll use 44A. Excellent.
MR. MATTHEWS: All right. Great.
Q So, Mr. Davis, you said previously that you received your K-1 for 2019; correct?
A Correct.
Q All right. And this is the K-1 for TopDevz; correct?
A Correct.
Q Now, we're looking at Exhibit 44A. It's dated 2019. It says "Schedule K-1." And section F lists Tyler B. Davis. Is that you?
A That's me.
Q All right. And looking at section J, it states that the profit at the beginning for you is 49 percent --
A Correct.

Q -- is that correct?
A That's what it says.
Q And it states that the ending profit is 49 percent; correct?
A Correct.
Q Do you -- you received this; correct?
A Correct.
Q And you didn't contest this; correct?
A In an LLC, ownership and profit and loss distributions can vary. They're not the same.
Q The question is you didn't contest this; correct?
A No, I didn't contest it.
Q Okay. So you never contacted Jennifer Glaser and attempted to contest this document?
A Why would I have a need to contest?
Q Thank you.
Let me get out of screen-share for a moment.
You know what, actually, I just realized something. Yeah, there we go. Okay, never mind.
So I want to go to Exhibit 65 of Mr. Rajaee's declaration in support of his opposition.
THE ARBITRATOR: All right. You're going to screen-share that?

MR. MATTHEWS: I will, yes.
THE ARBITRATOR: It's a check detail?
MR. MATTHEWS: It is -- let's see here. Correct, yes.
Q   So, Mr. Davis, you mentioned yesterday that there was a capital call that you participated in around November of 2020; correct?
A   Correct.
Q   And do you recall being contacted by Siarra Wood regarding the capital call?
A   I did, correct.
Q   Okay. And you recall that the capital call was for $76,000; correct?
A   Correct.
Q   All right. And you wrote a check for your portion of the capital call; correct?
A   I did not write that check.
Q   Did you sign the check?
A   I didn't sign that check either.
Q   Did you issue a check from TopDevz for your capital call?
A   I did. I authorized the check to be written to TopDevz.
Q   Okay. And that check was for the amount of $37,240; correct?

A Correct.
Q And you're aware that $37,240 is exactly 49 percent of $76,000?
A I'm aware of that.
Q I'm sorry. I didn't get your answer.
A I'm aware of that, yeah.
Q And this check was issued from Mason Building & Design?
A Correct.
Q So there was a check that was issued from your company, Mason Building & Design, for your personal capital contribution to TopDevz?
A Yes. The request came in, I was out of town, and so my business partner at Mason Building wrote that check, deposited it into TopDevz, and then I wrote a check to Mason Building & Design several days after that.
Q Okay. So your testimony is that the check for your personal capital contribution from TopDevz was issued from the company Mason Building & Design; correct?
A Correct.
Q And you previously testified that all of your investment payments or your investments into TopDevz prior to that capital call were from Porter

Consulting; correct?
A Yes, they were issued out of my Porter Consulting account.
Q Okay. And, again, the first payment went from Porter Consulting to Mobile Monster; correct?
A It went to Mobile Monster because TopDevz didn't have a bank account at that time.
Q Well, that's not my question.
My question is, it went from Porter Consulting to Mobile Monster; correct?
A Correct.
Q Okay. And that was for $250,000?
A Correct.
Q Now, isn't it true that Mason Building & Design had received a PPP loan in the amount of $91,000 that was approved on April 11th of 2020?
MR. CARPENTER: I'll object to it being irrelevant and confidential and not germane to this proceeding.
THE ARBITRATOR: Sustained.
MR. MATTHEWS: May I be heard on that issue?
THE ARBITRATOR: I'll let you be heard, but Mason Building isn't here. Its affairs are not an issue. I have a very limited set of issues that have been put forth before me. Maybe this has bearing on

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

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

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

MR. MATTHEWS: No problem.

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

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

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

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

THE ARBITRATOR: I need to hear the question back.

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

(Record read as follows:

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

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

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

Okay. You can answer that, Mr. Davis.

THE WITNESS: We didn't review Exhibit A.

THE ARBITRATOR: All right.

BY MR. MATTHEWS:

Q We reviewed Exhibit B.

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

A Yes.

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

A Correct.

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

A Correct.

Q And that fact was omitted from Exhibit B;

correct?
A Correct.
Q So that was a mistake; correct?
A A mistake, no. It wasn't a mistake.
Q Well, you said that you made an investment of $750,000 into the company, but it's not listed on the capital contribution page. Isn't that a mistake?
A No.
MR. CARPENTER: Objection; argumentative.
THE WITNESS: It's not a mistake.
THE ARBITRATOR: Sustained.
BY MR. MATTHEWS:
Q That's an omission, though; correct?
A Correct.
Q Let's talk about your correspondence with Mr. Rajaee and Jennifer Glaser.
You're aware of who Jennifer Glaser is; correct?
A Correct.
Q And Jennifer Glaser is the accountant for TopDevz; correct?
A Correct.
Q And let's go to Exhibit 5A. I'll get out of screen-share and get the document.
THE ARBITRATOR: Those are e-mails, some kind of

e-mail chain?
MR. MATTHEWS: Correct.
THE ARBITRATOR: Okay. Mr. Carpenter, any objection?
MR. CARPENTER: I don't have it here. I'm trying to find it.
THE ARBITRATOR: All right. Well --
MR. CARPENTER: Hold on a moment. 5A, is it?
MR. MATTHEWS: Correct.
THE ARBITRATOR: All right. Well, I'm going to allow it. It looks like e-mails.
Go ahead, Mr. Matthews. You can screen-share.
MR. CARPENTER: Can you tell me what page of the 223-page PDF it is?
MR. MATTHEWS: It looks like, I think, it's page 45.
MR. CARPENTER: Okay. No objection.
BY MR. MATTHEWS:
Q So, Mr. Davis, you received this e-mail from Mr. Rajaee on February 24th, 2020; correct?
A Correct.
Q And this e-mail includes yourself and Jennifer Glaser; correct?
A Correct.

Q And, again, Jennifer Glaser is the accountant for TopDevz; correct?
A Correct.
Q And your e-mail address that is listed on here is Tyler@TopDevz.com; correct?
A Correct.
Q All right. So Mr. Rajaee sent an e-mail -- now, this is actually -- I want to be clear about this.
The e-mail on February 24th, Monday, at 2:54 p.m., is from Ashkan Rajaee to Jennifer Glaser, and you're copied on this; correct?
A Correct.
Q All right. And the e-mail states, "My ownership in TopDevz 51 percent, Tyler 49 percent. Tyler please confirm."
That's what it states; correct?
A Correct.
Q And you responded on February 24th, 2020, at 2:58 p.m. from your Tyler@TopDevz.com account; correct?
A Correct.
Q And your statement is, "This is correct"; right?
A Correct.

Q And that e-mail includes Jennifer Glaser on the correspondence; correct?
A Correct.
Q Okay. I'm going to stop sharing.
Let me go back to Exhibit 1A, and that's the Operating Agreement for TopDevz.
THE ARBITRATOR: Do you know what paragraph we're going to?
MR. MATTHEWS: Yes. We're going to go to paragraph 2.9.
All right.
MR. CARPENTER: Where are you going, Jordan?
MR. MATTHEWS: It's paragraph 2.9.
MR. CARPENTER: Okay.
MR. MATTHEWS: Sorry, I'll just scroll down here.
Q All right. So paragraph 2.9 talks about management of TopDevz; correct?
A Correct.
Q And the manager who's identified in paragraph 2.9 is Ashkan Rajaee; correct?
A Correct.
Q You are not identified as the manager of TopDevz; correct?
A Correct.

Q And, again, your testimony is that this has not been amended; correct?
A Correct.
Q Let's go to Exhibit 28A.

THE ARBITRATOR: And could you give Mr. Carpenter just an approximation of where that is in the bundle of exhibits.
MR. MATTHEWS: Absolutely.
THE ARBITRATOR: Mine is not legible, just so.
MR. CARPENTER: 28?
MR. MATTHEWS: It's at page 102.
MR. CARPENTER: 102?
MR. MATTHEWS: 103 is the actual document. I will zoom in here.
THE ARBITRATOR: What is it?
MR. MATTHEWS: This is text correspondence between Mr. Davis and Mr. Rajaee.
MR. CARPENTER: You know, I'll just -- for purposes of the texts, I'll try to be -- not read everything in advance. I'll assume it's okay until -- if I see a problem, I'll speak up. Go ahead.
BY MR. MATTHEWS:
Q So just for purposes of context, this is

text correspondence between you and Mr. Rajaee; correct?

A   Correct.

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

Do you see that?

A   No, I do not.

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

Do you see that?

A   I do.

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

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

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

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

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

Now, on the left-hand side, I'm just going to read what it says. It says, "Sorry, I was in a meeting. So essentially what has been determined is that without a jet we can't grow the company above 10 mil or is the preferred size 10 mil? Obviously, there are some benefits to not growing it bigger, lifestyle, et cetera. Who are you planning on letting go?"

Does that sound like an accurate reading of that statement?

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

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

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

MR. MATTHEWS: So this is an exchange between Mr. Davis and Mr. Rajaee.

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

BY MR. MATTHEWS:

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

A   Yes.
Q   Okay. And this is your message -- or text correspondence between and you Mr. Rajaee; correct?
A   Yes, it is a text message between me and Ashkan Rajaee.
Q   Okay. And your messages are on the left-hand side; correct?
A   Correct.
Q   And Mr. Rajaee's correspondence is on the right-hand side; correct?
A   Correct.
Q   All right. Now, can you read the top message where it starts with "Sorry, I was in a meeting."
A   "Sorry, I was in a meeting. So essentially what has been determined is that without a jet we can't grow the company above 10 million, or is this a preferred size, 10 million. Obviously there are some benefits to not growing any bigger, lifestyle, et cetera. Who are you planning on letting go?"
Q   Okay. And that is the statement that you wrote to Mr. Rajaee; correct?
A   Correct.
Q   All right. Now, you received a response, which is right below that; correct?

A   Correct.
Q   And it says, "Not at all. You said you want to build it the way Matt did so that's what I'm doing."
Who is he referring to?
A   He's referring to Matt McKay.
Q   And Matt McKay is from Surge, LLC?
A   Matt McKay is from Surge, LLC.
Q   And that was a prior venture you were in with Mr. Rajaee?
A   Correct.
Q   Now, I want to go down just below that, which has been highlighted in blue.
And, again, on the left-hand side is your correspondence; correct.
A   Correct.
Q   And the first line that's been highlighted says, "I'm not trying to tell you how to run your show"; correct?
A   Correct.
Q   And then right below that it says, "If I could help you with the jet right now I would"; correct?
A   Correct.
Q   So you testified yesterday that you were not

aware of Mobile Monster; correct?
     MR. CARPENTER: Objection; misstates testimony.
     THE ARBITRATOR: I believe that's correct. I think if you rephrase it, Mr. Matthews.
BY MR. MATTHEWS:
     Q   Is it correct that you are aware of Mobile Monster?
     A   I'm aware of Mobile Monster.
     Q   And you were aware, obviously, that the first payment from Porter Consulting went to Mobile Monster; correct?
     A   Correct.
     Q   All right. I want to go to Exhibit 7A.
     MR. CARPENTER: What page on the PDF is that?
     MR. MATTHEWS: I'll let you know in just a minute, Scott. Just bear with me, please.
     MR. CARPENTER: It's really awkward having all these windows open. Isn't it?
BY MR. MATTHEWS:
     Q   Okay. So, again, you entered into --
     MR. CARPENTER: What page?
     MR. MATTHEWS: This is at page 62.
     THE ARBITRATOR: And this is an e-mail exchange?
     MR. MATTHEWS: That's correct.
     MR. CARPENTER: No objection.

BY MR. MATTHEWS:
Q So, Mr. Davis, you were aware of the commissions to Mobile Monster; correct?
A No, I was not.
Q Your testimony is that you were not aware of the commissions to Mobile Monster?
A No. I'm aware of commissions that go to Ashkan Rajaee.
Q Okay. You're aware that Ashkan Rajaee owns Mobile Monster?
A I'm aware he owns Mobile Monster.
Q Okay. Now, you executed the Operating Agreement for TopDevz on May 9th, 2017; correct?
A Correct.
Q And you previously had testified that there were discussions with another individual named Alex Mueller joining the company; correct?
A Correct.
Q And referring to Exhibit 7A, this is e-mail correspondence dated May 21st of 2017; correct?
A Correct.
Q And this is an e-mail from Alex Mueller to you and Ashkan Rajaee; correct?
A Yes, it is.
Q Okay. And so it's dated May 21st, 2017;

right?
A Yes.
Q And so this was about 12 days after you executed the Operating Agreement for TopDevz, LLC; right?
A Correct.
Q All right. And so Alex Mueller is sending this e-mail to both of you. And in section 1A it says, "Ashkan is okay with either 7 percent year 1 and 3.5 percent year 2."
It says that; correct?
A It does say that.
Q Okay. And you received this e-mail; correct?
A Correct.
MR. MATTHEWS: I want to go to Exhibit 8A.
I'll zoom in. This is -- again, this text correspondence between Mr. Davis and Mr. Rajaee. This is being used for purposes of just a time stamp.
Q Mr. Davis, do you see this correspondence? I'm looking at the bottom right-hand side of the page. It's a time stamp for 2017-05-19?
A Yeah.
Q So that would have been May 19th of 2017; right?

A Correct.
Q So that would have been about ten days after you executed the Operating Agreement for TopDevz; correct?
A Correct.
Q And, again, this is correspondence -- text correspondence between and you Mr. Rajaee; correct?
A Correct.
Q All right. So I want to go on to Exhibit 9A. This is the next page of the text correspondence.
And, again, on the left-hand side --
MR. CARPENTER: Counsel, just to make a comment to the arbitrator.
For purposes of all this text, I'm going to give my client an admonition.
Just -- if you ever see something that it doesn't look right, speak up.
I want to let him get through it quickly. And so ask whatever foundation-type questions you think are appropriate.
And I'll ask the client to speak up if you have a problem, so I don't have to respond to each individual message.
THE WITNESS: I guess my problem with the text

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

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

BY MR. MATTHEWS:

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

A Correct.

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

A Correct.

Q And Mr. Rajaee is on the right-hand side; correct?

A Correct.

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

A It appears so.

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

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

Q Okay. I'm not asking about the response. I'm asking what it says. It says --
A It says, "Seriously you are amazing."
Q Now, right below that, highlighted in blue, you state, "I want to renegotiate your commissions"; correct?
A Correct.
Q All right. Now that was a joke; right?
A Correct.
Q All right.
A Excuse the foul language there.
Q Now, I want to move on to Exhibit 10A.
Now, 10A has a time stamp just to give an idea of the timing.
I'm looking on the right-hand side of the page, highlighted in blue, it says, "2020-01-21."
Does that look right, Mr. Davis?
A Yes.
Q So that would have been January 21st of 2020; right?
A Correct.
Q Now let's move on to Exhibit 11A.
Scott, just for your reference, this is page 70 if you need it.
MR. CARPENTER: Thanks. I'm trying not to keep

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

MR. MATTHEWS: Okay.

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

A Uh-huh.

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

A Correct.

Q And on the right-hand side is Mr. Rajaee; correct?

A Correct.

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

A Correct.

Q Now, was this conversation about Mr. Rajaee's workload?

A No. If I recollect correctly, in November of '19, Ashkan Rajaee contacted me and said he was going to be leaving the company. This is just after starting another venture with him. I think at that time he was working on SpendHub and wanted to dedicate his time to that. I'm not exactly sure what his reasons for expressing that he was going to leave, and that's when he also demanded that I fly down there to sign the Operating Agreement.

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

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

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

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

BY MR. MATTHEWS:

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

A Yes.

Q So you were aware of SpendHub; correct?

A I'm aware of SpendHub yeah.

Q All right. And so the previous conversations about the commissions were in 2017; correct?
A Correct.
Q All right. So you knew about the commissions in 2017; correct?
A Yeah.
Q And you knew about the commissions in 2020; correct?
A Correct.
Q And you knew about SpendHub; correct?
A Correct.
Q All right. Now I want to move on to how you guys first met, how you and Mr. Davis -- or Mr. Rajaee, rather, first met.
So, again, you previously worked together at a company called Surge, LLC; correct?
A We were associated through Surge, LLC. We didn't work together.
Q Okay. But you met when you were involved with Surge, LLC; correct?
A Correct.
Q All right. And you were a passive investor in that company; correct?
A Correct.

Q You were not involved in management of that company; correct?
A Correct.
Q All right. And you knew that Ashkan was responsible for closing business for Surge; correct?
A Ashkan was -- yeah, correct.
Q All right. And you actually recall stating at your deposition that you thought what Ashkan did was impressive; correct.
A Yes. He was able to close deals.
Q Now, a part of the strategy with Surge was using a mechanism called AdWords; correct?
A Yes.
Q And AdWords is a pay-per-click mechanism; right?
A Correct.
Q Are you aware of the cost that it takes to run an AdWords campaign?
A I am.
Q And you're aware of the amount of money that Surge, LLC, was spending per month in order to run an AdWords campaign?
A I am.
Q Okay. Now I want to go on to Exhibit 38A. If you can just give me a moment, please.

MR. CARPENTER: Do you happen to know the page number?
MR. MATTHEWS: Yeah. It's 123.
MR. CARPENTER: Okay.
BY MR. MATTHEWS:
Q All right. Mr. Davis, do you see what's been marked as Exhibit 38A?
A Yes.
Q And, again, this is text correspondence between and you Mr. Rajaee?
A Correct.
Q I'm sorry. Is your answer "Correct"?
A Correct.
Q All right. And it's dated, it looks like -- I'm looking at the bottom left-hand side of the page.
It says "2019-11-16"; right?
A Correct.
Q So that would be November 16th of 2019; correct?
A Correct.
Q And on the left-hand side is you, and on the right-hand side is Mr. Rajaee; correct?
A Correct.
Q All right. And so what I've highlighted in blue is from Mr. Rajaee.

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

It says that; right?

A Correct.

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

That's what it says; right?

A Correct.

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

A I imagine so, yes.

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

A Correct.

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

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

That's from Mr. Rajaee to you; correct?

MR. CARPENTER: Objection; you're testifying and summarizing the document.

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

BY MR. MATTHEWS:

Q   Let's see here.

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

A   Yes.

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

A   Yes.

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

A   Correct.

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

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

A   Correct.

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

A   Correct.

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

A   Correct. This is right around --

THE ARBITRATOR: There's no question pending, Mr. Davis. Please wait for a question.
MR. MATTHEWS: Okay. I want to go to Exhibit 36A. It's page 120.
And, again, this is text correspondence between Mr. Davis and Mr. Rajaee.
Q Mr. Davis, is this text correspondence between yourself and Mr. Rajaee?
A It appears to be.
Q Okay. I'm looking at the top left-hand side. It has a time stamp. It's dated 2020-01-29; correct?
A Correct.
Q And you're on the left-hand side of the page; correct?
A Yes.
Q And Mr. Rajaee is on the right-hand side of the page; correct?
A Correct.
Q All right. And it looks like Mr. Rajaee is sending something about -- it says, "about the show."
Is that in reference to the Kathy Ireland show?
A Yes.
Q And your response, on the left-hand side, is

"WTF, who are you?"; correct?
A Correct.
Q Now, right below that, on the right-hand side, this is on January 30th of 2020, Mr. Rajaee says to you, "SpendHub is ready," exclamation. "We get Porter on it? Try it"; correct?
A Correct.
Q Your response on the left-hand side is, "Yep"; correct?
A Correct.
MR. MATTHEWS: I want to go to Exhibit 29A.
MR. CARPENTER: Is this a text?
MR. MATTHEWS: I will let you know in just a moment, Scott.
THE ARBITRATOR: It appears to be.
MR. MATTHEWS: So, Scott, this is page 106.
MR. CARPENTER: Thanks.
BY MR. MATTHEWS:
Q So --
MR. CARPENTER: Okay.
MR. MATTHEWS: All right. This is 29A.
Q So, Mr. Davis, referring to Exhibit -- what's been marked as Exhibit 29A, again, this is text correspondence between and you Mr. Rajaee; correct?

A Correct.
Q You're on the left-hand side of the text correspondence; correct?
A Correct.
Q And Mr. Rajaee is on the right-hand side of the correspondence; correct?
A Correct.
Q Now, there's a message that's been highlighted dated 2020-04-03 at 8:07 a.m.
Do you see that?
A Uh-huh.
Q Now, it says, "Hey, just want to let you know I'm making decisions without consulting you. It's been difficult to reach you recently, understandably so"; correct?
A Correct.
MR. MATTHEWS: Ms. Callahan, if everyone is amenable, I'd just like to actually take a quick ten-minute break. Would that be workable?
THE ARBITRATOR: Well, I thought we were going to go the morning and have the lunch be our break because we're in this abbreviated format.
MR. MATTHEWS: Well, the reason I'm asking is I just want to see if I have any further questions.
THE ARBITRATOR: All right. Let's -- so it's

about noon. So till 12:10.

MR. MATTHEWS: Okay, great. Thanks.

MR. CARPENTER: Thank you.

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

MR. MATTHEWS: Are we back on the record?

THE ARBITRATOR: We are back on the record.

MR. MATTHEWS: All right. Great.

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

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

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

And, again, this is text correspondence between Mr. Davis and Mr. Rajaee.

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

A I do.

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

A Correct.

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

Do you see that?
A Correct.
Q That would be November 6th of 2019; correct?
A Correct.
Q All right. And you're on the left-hand side --
A Correct.
Q -- and Mr. Rajaee's --
Sorry. So you're on the left-hand side?
A Correct.
Q All right. And Mr. Rajaee's on the right-hand side; correct?
A Correct.
Q All right. So at the top of the page, you're saying to him -- or you say to him, at 15:54 p.m. on November 6th of 2019, you say, "When you get a chance I need the ability to download the P&L. My bank is requesting it for my increase"; correct?
A Correct.
Q And below that you say, "Google Sheets won't allow it"; right?
A Correct.
Q Now, on the right-hand side, Mr. Rajaee responds. He says, "That P&L is internal"; right?

A Okay.
Q I'm sorry. Is that a yes?
A Correct, yeah.
Q All right. And then he says, "You need a Zoho copy which matches the tax filings"; right?
A Correct.
Q Then he says, "The Google Sheet is so you can see where the monies are going"; right?
A Correct.
Q You then respond and say, "A PDF would be fine. They are requesting the P&L and the balance sheet"; right?
A Right.
Q He responds and says, "You have access to Zoho Books. You can print it if you want. I can do it later"; right?
A Correct.
Q You say, "I have never gotten it in" -- "gotten in there. I will give it a shot"; correct?
A Correct.
Q And he responds, "What period do you need it for?"; right?
A Correct.
Q Now, what I want to note is that, again, the time stamp at the very top is November 6th, 2019, but

it starts at 12:54 p.m.; right?
A Okay.
Q So I didn't read all of the conversation, there's a little bit more, which we'll go into.
But the next time stamp right below it is November 6th, 2019, at 2:54 p.m.; correct?
A Correct.
Q So this is over a period of about two hours; right?
A Correct.
Q So, again, Mr. Rajaee says, "What periods do you need it for?"; right?
A Correct.
Q You say, "To today's date, starting January 1st"?
A Correct.
Q He responds, "Okay"; right?
A Yeah.
Q Then you respond and say, "Also, I had a convo with Trubek. Have they given us the overall contract yet? If not, they are"; right?
A Yeah.
Q Now, Mr. Rajaee actually responds at [sic] November 6th, 2019, at 2:54 p.m., and he asks, "Is TopDevz in any way involved in the financials of of

this increase?"; right?
A Correct.
Q You say, "What do you mean?"; right?
A Uh-huh.
Q He responds and says, "Are they loaning or approving anything for you based on TopDevz?"; right?
A Correct.
Q You respond, "TopDevz is not responsible for anything"; correct?
A Correct.
Q I'm going to go over to what's a continued part of this conversation -- actually, I want to finish this.
Right below "TopDevz is not responding to anything," it's a little cut off --
A "Responsible for anything."
Q Right.
"TopDevz is not responsible for anything." And below that it looks like it says, "They just want to know my financial position."
Does that sound correct?
A Correct.
Q All right. Now let's go on to Exhibit 14A, which continues the conversation. This is paragraph -- or sorry, page 76.

And, again, this is a continuation of your text correspondence between and you Mr. Rajaee; correct?
A Correct.
Q And it's a part of the same conversation. It's a continuation of the same conversation; correct?
A Correct.
Q Now, you're on the left-hand side; correct?
A Correct.
Q And Mr. Rajaee is on the right-hand side; correct?
A Correct.
Q So Mr. Rajaee says, at the top, on the right-hand size -- right-hand side, he says, "I'm going the report now"; correct?
A Correct.
Q You respond, "Awesome. Thank you"; correct?
A Correct.
Q You then respond, "I have Pulse and Creator but no access to books in Zoho"; correct?
A Correct.
Q He responds, "That's not true. It says you have been invited and your account is active"; correct?

A Correct.
Q Right below that it looks like there's a PDF of the balance sheet sent; correct?
A Correct.
Q And then there's a PDF of the profit and loss statement sent; correct?
A Correct.
Q You then respond and say, "I got into Zoho"; correct?
A Correct.
Q You then respond and say, "Through their website and through my TopDevz account, and those were all that I had access to"; correct?
A Correct.
Q He responds and says, "Again, not true"; correct?
A Correct.
Q So just so we have a complete assessment for the record of this conversation, you then said, "I don't know what to tell you. I can show you a screenshot. Maybe I just don't know how to access books. I don't know. Is it separate from the main portal?"
That's what you said; correct?
MR. CARPENTER: Pardon me. Are you reading

from this? It's not on the screen.
     MR. MATTHEWS: It should be on the screen. Can you see this, on the left-hand side?
     MR. CARPENTER: Okay. Thank you.
     MR. MATTHEWS: Sure.
     Q   So, again, just so it's clear, you're on the left-hand side; right, Mr. Davis?
     A   Correct.
     Q   All right. So Mr. Rajaee's on the right-hand side; correct?
     A   Correct.
     Q   And so he says, "Again, not true"; right?
     A   Correct.
     Q   You respond and say, "I don't know what to tell you. I can show you a screenshot. Maybe I just don't know how to access books. I don't know. Is it separate from the main portal?"; right?
     A   Correct.
     Q   Mr. Rajaee responds, he says, "Yes. There is different portals for each"; correct?
     A   Correct.
     Q   You respond and say, "Okay. I will try later. No big deal. Thanks for sending the reports; correct?
     A   Correct.

Q So, Mr. Davis, before -- or yesterday, you testified that you acknowledged getting the P&Ls for TopDevz; right?
A Correct.
Q And in connection with those P&Ls, you acknowledged that you saw a consulting reimbursement expense; correct?
A Correct.
Q And you never raised issue with the consulting reimbursement expense; correct?
A Correct.
Q And you've testified today that you knew that Ashkan Rajaee was getting commissions; correct?
A Correct.
Q Okay. And you testified yesterday that you knew -- and actually today, that you know who Jennifer Glaser is; correct?
A Correct.
Q And Jennifer Glaser is the accountant for TopDevz; correct?
A Correct.
Q And you've previously contacted Siarra Wood via e-mail; correct?
A Correct.
Q And Siarra Wood you knew was actually

employed by Mobile Monster; right?
A Correct.
Q But you knew that through that relationship that she serviced TopDevz; correct?
A Correct.
Q In fact, the signature for Siarra Wood was for TopDevz; correct?
A Correct.
Q And you testified yesterday that you received K-1s from Jennifer Glaser; correct?
A Correct.
Q And you also testified that you received tax returns from Jennifer Glaser for TopDevz; correct?
A Correct.
Q I'm sorry. What is your answer?
A Correct.
MR. MATTHEWS: Okay. I don't have anything further.
THE ARBITRATOR: All right. Mr. Carpenter, do you have anything further?
MR. CARPENTER: No questions.
THE ARBITRATOR: All right. If memory serves me, Mr. Matthews, did you say that you may want to call Mr. Davis in your -- as part of your case in chief on your opposition, or may he be released?

MR. MATTHEWS: I may call him.

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

THE WITNESS: Thank you.

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

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

THE ARBITRATOR: At 1:00?

MR. CARPENTER: Yeah.

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

MR. CARPENTER: Sounds good. Thank you.

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

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

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

MR. MATTHEWS: Thanks so much.

MR. CARPENTER: Thank you.

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

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

THE WITNESS: Yes, I am.

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

THE WITNESS: Okay.

THE ARBITRATOR: All right.

THE WITNESS: Sounds good.

THE ARBITRATOR: So is everyone ready to proceed?

MR. CARPENTER:

MICHAEL S. HAWES,

having been first duly sworn, testified as follows:

THE ARBITRATOR: Thank you very much.

Go ahead, Mr. Carpenter.

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

that were supplied to me.
Q Just to be clear, was the declaration by Nevin Sanil --
A Sanli, yes.
Q Sanli, S-a-n-l-i?
A Yes.
Q Thank you.
And turning, first, to the tax returns. I'm going to share-screen and show you a document which I'll represent to you will be the 2017 tax return for TopDevz.
A Okay.
Q I'd be happy to show that to you as soon as I get a share-screen. There we go.
A Sure.
Q There you go. There you go.
All right. I'm showing you a document that's been marked Davis Exhibit 8.
Is this the 2017 tax return you reviewed?
A Well, that's -- that's not the tax return, but it's a cover letter to the amended tax return, I'm assuming it is. That's just the cover.
Q So let's go forward, then. Get it up there so I can see everything.
While we're looking at this, tell me what

you found of significance in the tax return.
A Well, what I thought was significant is -- and I don't know how relevant it is to this discussion -- and on page 3, line 21, did the partnership -- for the tax year, did the partnership make any payments that would require it to file Form 1042 or 1042-S, and to check the three of sections of 1441, blah, blah, blah. And it was checked no. So I'm assuming that there were no foreign tax withholdings done for either -- for any entity or the individual partners.
I also noticed of significance there was a loan from the partner for $27,961 sometime during the year, and that was on the balance sheet of the tax return. And so --
Q What page is that on? Pardon me.
A That's on page 5. It's the balance sheet for the tax return.
THE ARBITRATOR: Could you slow down? There are no numbers here. So I'm not finding what you're finding on the pages you're saying.
THE WITNESS: Sure.
MR. CARPENTER: Here, let's -- right now, we're on page 5 of the tax return, which is the balance sheet section of the tax return.

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

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

THE ARBITRATOR: Okay.

All right. I'm there. Thank you.

BY MR. CARPENTER:

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

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

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

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

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

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

in it?
Q In your experience, what are the customary reasons for that?
A I think what the CPA firm tried to do was allocate a portion -- or treat this as some type of a loan in order to give him recourse basis. Because the amount of the loan is exactly, to the dollar, what his loss is. In order to give him the ability to deduct the loss, I think they just plugged the number in to give him a -- some basis as a nonrecourse loan.
Q So are you referring to -- his loss, are you referring to Ashkan Rajaee, the manager?
A Yes.
Q Okay. So I'm going to take you to his K-1. Just a moment.
And we're now on page 28 of the PDF. And is that legible for you?
A Yes.
Q So -- and what portion of this reflects Mr. Rajaee's share of the loss?
A The very top line, line number 1, the $27,961.
Q Thank you.
And is that also reflected in the line L?

A Yes. It's the same number as they're saying is the loan to the business.
Q What does line L on the schedule K-1 represent?
A Well, it's actually called Schedule L.
Schedule L is the balance sheet for the books.
Q And on the -- focusing on the K-1 here, and I'm going to -- let me make it a little larger here.
Do you see the section L in the lower left where it says "Partner's Capital Account Analysis"?
A Yes. On the K-1, yes.
Q And what is the purpose of the capital account analysis?
A Well, the partner's capital account analysis is required by the IRS, and it helps them understand exactly how much money people have invested in the partnership, what their distributions were, what their share of the allocated loss -- or losses or profits were, things like that. And it gives them a good snapshot of what someone's capital account balance is.
Q Okay. Is that required to be maintained, to your knowledge?
A Yes, that's required.

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

A Yes.

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

Do you see that?

A Yes, I do.

Q How does that occur?

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

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

Do you see that?

A Yes, I do.

Q What's the significance of that to you?

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

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

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

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

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

LLCs, under code Section 704B, are able to allocate profit and losses differently provided you can provide -- you can substantiate substantial economic effect. And as long as you can prove that, you can allocate profit and losses differently than capital account balances.

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

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

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

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

A I'm going to say -- oh, I must -- out of maybe 250 LLC agreements that my office works with, the number of actually different allocations, where the allocation of profit and losses is different than their capital account or investment, is probably, oh, maybe 2 or 3 percent. 97 percent are just based strictly on standard tax law, which is to allocate profit and losses based on skin in the game, based on how much money you put in, either your initial capital contribution or your capital account balance at the end of the year.

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

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

A That's completely accurate.

Q Okay. Is there any indication in this tax return about why Mr. Rajaee has a zero percent capital here?
A Well, I'm assuming he didn't -- he didn't put any money in. He didn't -- remember, you can contribute either cash or property. So you can put cash in or you can put a building in or raw land or something like that. And from what I'm seeing on the balance sheet on the tax return, Mr. Rajaee did not contribute either to it as a capital contribution.
Q And what does the statement under -- I'm looking again at line J, the statement of the partner's share of capital percentage in line J, what does that tell the IRS about the ownership of the company?
A He has no economic ownership in the company.
Q Are you aware that Mr. Rajaee is the tax matters partner on this?
A I think I saw that on the Operating Agreement. Although, the K-1 is different, so there's a little bit of a conflict. Because if you look at line G, as in good, there's a box there that says, "General partner or LLC managing" -- "member-manager," right? And if you have a tax -- if you have a managing member or an LLC is member-managed,

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

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

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

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

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

A Yes.

Q What's the significance of that to you?

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

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

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

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

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

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

THE ARBITRATOR: Where is that?

BY MR. CARPENTER:

Q What page are you on there?

A I'm on page 8.

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

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

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

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

THE ARBITRATOR: And where were you looking? Oh, I see.

THE WITNESS: At the very top.

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

BY MR. CARPENTER:

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

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

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

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

Mr. Rajaee a zero-percent interest?
A No. I have -- in fact, the partnership agreement at the last -- at the very end, where it has the amount of capital contribution and ownership percentage, is blank.
Q Thank you.
A So I don't know. I don't know what they're doing. I mean, it's --
Q Is it of significance here in the 2017 return for your opinions?
A Well, only -- I guess I might as well bring out the fact that you've got a huge expense, even though the revenue -- let me go back to page 1. Even though the total revenue is only 890,000, the consultant's expense was 929,000. So --
Q Pardon me. Can you tell us where you are in this return?
A I'm on page 8 of the return. The same page where at the very top we talked about the amended return, and so the return was amended because of the amended partnership agreement.
Q Thank you. Whenever you go someplace else, be sure you bring us along here.
So what line are you looking at on page 8, which is page 22 of the PDF?

A   Yes, yes, page 8. The one we looked at where it talked to the amended partnership agreement.
Q   Okay. And what line are you referring to, the expense item?
A   Well, if you look -- if you look under other deductions, in the very middle, the very first, it says "Tax expense," and below that it says, "Other deductions."
Q   Yes.
A   And in other deductions, you've consultant's expense of 929,000, which exceeds the actual income.
Q   I'm sorry. Where are you getting the 929?
A   The 929 is on the second line down, where it says -- it's got bank charges and consultants.
THE ARBITRATOR: I think you're on the wrong page.
THE WITNESS: Yeah. You're on the wrong page.
BY MR. CARPENTER:
Q   Are you looking at a profit and loss statement, or are you looking at the tax return?
A   No. I'm looking at a statement, page 8, what I'm looking at, and I'm back to where we started, where we talked about the amended -- the loss allocation being different because of the amended partnership agreement.

Q So --
THE ARBITRATOR: Two pages in front of the K-1.
THE WITNESS: Yes, two pages -- thank you, yes.
BY MR. CARPENTER:
Q Okay.
A Right there. Stop there. Go back. All right. No, no, go back. Go back. Next one. Stop right there. You've got to stop going. You keep going too far.
Q So is this the right page?
THE ARBITRATOR: No.
THE WITNESS: No.
BY MR. CARPENTER:
Q Okay. Which way am I going?
THE ARBITRATOR: I don't know.
THE WITNESS: What page -- keep going back. Go back one page. Stop one page at a time. Stop right there. Stop right there.
BY MR. CARPENTER:
Q Okay.
A Look at the very middle. Do you see "Other Deductions"?
Q Got it.
A Look at the second line down, under "Consultant."

Q   Uh-huh.
A   To the right is 929,000.
Having done business valuations and being familiar with IT companies and software companies, having consultant's expense which is greater than your gross revenue is highly unusual. And so I'm just -- again, you asked me was there anything that stood out, and that stands out to me.
Q   Do you have enough information to reach a conclusion about what the significance of that is?
A   No, I don't.
Q   Thank you.
Have you had a chance to review all of the 2017, 2018, 2019 and 2020 returns?
A   Yes, I have.
Q   And did you note that Mr. Rajaee is never given more than zero percent of the partner shares on line J?
A   That's correct. He is -- his ownership interest is always zero percent in the capital account.
Q   What's the significance of that to you?
A   Well, again, as I mentioned before, the capital account usually dictates the allocation of profit and losses, but it also is important, upon

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

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

Q Thank you.

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

A Okay.

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

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

Q Yeah.

A Okay.

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

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

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

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

THE ARBITRATOR: Change the screen.

BY MR. CARPENTER:

Q Am I not there?

A No.

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

My bad there.

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

A Yes.

Q Thank you.

This is page 19 of the PDF.

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

A Yes.

Q What's the significance of that to you?

A Well, the '17 returns indicates to me, based on the IRS department, that if you've got both partners and neither one is checked as a general partner, then it's not manager-managed, it's member-managed, which means by all the partners. When you change it to Mr. Rajaee as the member-manager, then it appears now that he's in charge. He's the member-manager, and it's not member-managed. It's not both partners, it's only the one.

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

A No.

Q Also on line G, Mr. Rajaee is --

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

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

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

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

A Yes.

Q Any significance to that?

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

Q Okay. Have you been brought anything that

shows you a reason for that change?
A No. Other than -- no, I don't have any idea why that would change.
Q Okay. Going back down to line J. It shows the partner's share of profit being the same for the beginning and the end. Do you see that?
A Yes.
Q And but loss shows it starts with zero percent -- percentage and goes to 51. Do you see that?
A Yes.
Q Were you provided anything that shows a reason why the loss percentage for Mr. Rajaee changed from zero to 51 percent during tax year 2020?
A No.
Q And what kind of thing would there need to be to represent that change?
A Well, again, if you have a zero-percent capital interest, but you're going to take a 51-percent, in this case, a profit and loss interest, there has to be substantial economic effect. What happened to create a situation where he is enabled to take 51 percent of the profit and losses? Because, based on capital account balances, which is normally how we allocate profit and losses, he's never had a

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

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

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

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

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

A Yes.

Q And what is the significance of that to you?
A Again, he has no economic interest in the partnership. He has no capital account balance and no capital account ownership. In fact, his capital account is a deficit. So, again, capital accounts are extremely important. More important than the profit and loss allocations. The cap accounts dictate ownership, voting rights, allocations of profit and losses, rights that you have on dissolution, it's what they call a deficit restoration obligation, a DRO, which on liquidation you have to restore or put money in or get allocated profit and losses to bring your capital account back to zero.
So that capital account and the percentage ownership is extremely important for a lot of reasons.
Q Okay. Apropos to that, looking down to line L, the partner's capital account analysis. Do you see that?
A Yes.
Q And does this show a positive or a negative capital account balance?
A It's a negative capital account balance.
Q Did you ever see anything in your

investigation that showed that Mr. Rajaee had a positive capital account balance?
A No.
Q I just noticed something here. If you want to go right-hand column on that same page. Item number 14, under "Self-Employment Earnings," do you see that?
A Yes.
Q There's an item C listed with $2.2 million. Do you see that?
A Yes.
Q Did you look at that at all?
A Yes, I saw that.
Q And there's a reference -- tell me the significance of $2,202,000 self-employment earning reference there in section 14.
A On the 2020 return?
Q The 2020 return.
A Yeah.
Q If that was significant to you.
A I believe the 202,000 [sic], I haven't looked at it in depth, but it's probably 50 -- the number is probably 51 percent of the gross revenue, which is $4.3 million. And there's calculations that we do on the returns for different allocations. And

so that would come into one of those -- one of those calculations on his personal return.
Q Did you -- looking up at item number 18, did you look at the statement that's referenced there?
A Statement C?
Q Yes.
A No.
Q Okay. Anything else of significance about the 2020 return to you?
A No, other than I noticed that the guaranteed payments seemed to have gone up.
Q Take me where that's referenced. Is that going to be in the balance sheet?
A No. It's the same K-1 there, on line 4A. 4A, as in apple.
Q Okay.
A Okay. And 4A and 4C is the same number.
Q And you're referring to 4C up there at the top of the page?
A Yes. And I noticed from 2019, the guaranteed payments were 125,000, and they increased to 231,000 in 2020. So I did notice that increase.
Q Okay. And what is a guaranteed payment in an LLC?
A In an LLC partners are not paid a W-2 wage

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

Q Okay. Thank you.

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

A Zero percent.

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

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

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

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

Q Based upon the information you've been provided thus far, do you have an opinion about whether it's likely Mr. Rajaee would be required to do a foreign income tax withholding for his personal income?

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

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

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

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

Q   How about just from Mr. Rajaee individually, and not his company? As a foreign taxpayer, generally are foreign taxpayers required to do foreign income tax withholding?

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

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

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

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

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

Q All right. Thank you.

A Okay.

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

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

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

disallowed as an expense.
So I have no idea whether proper documentation and proper business motivation can be substantiated for the use of this plane. But I'd be interested to see if the individual has the proper documentation to support an IRS audit.
Q In your opinion, does the existence of an aircraft increase the likelihood of an audit?
A Absolutely, of course.
Q And in your experience, what percentage of small business aircraft audits result in the deduction being upheld?
A I'm going to say probably less than 10 percent.
Q Are you aware that Mr. Rajaee purchased a Bentley automobile in the name of the company?
A Only from what I've really read in the declaration of Sanli.
Q What has to be done to justify, from a tax standpoint, deduction of expenses relating to a Bentley automobile?
A Well, the same similar documen- -- similar documentation to the airplane. You need to have the miles -- a detailed record of your business trips and business use of the miles every day, and business

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

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

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

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

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

of his private funds.
Is it appropriate, assuming that's true, is it appropriate, from an accounting standpoint, to hold an asset in the name of the LLC, which the owners of the LLC do not believe there's a beneficial asset of the LLC?
A Could you repeat that?
Q Yeah, it was a long question.
Is it proper under the accounting rules to hold a vehicle in the LLC if it doesn't belong to the LLC?
A No. I mean, if -- I mean, in order for the vehicle or the plane, either one -- let's get clear on this. In order for depreciation, for example, to happen for a vehicle or an airplane, the title has to be in the name of the company. Right? Let's start with that.
If the title is not in the company, it's in another entity, if -- that entity needs to have a lease agreement between that company and the corporation where it's leasing that vehicle to the corporation. We've still got the issue of proper documentation, and can you document the business use of that.
Q But is it proper -- if the vehicle doesn't

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

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

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

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

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

Q Okay.

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

Q Okay. Thank you.

Did you review the declaration of Mr. Sanli?

A Yes.

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

A Well, there's just some issues that I would want to verify. For example, in his declaration there's an allegation that Mr. Rajaee diverted assets to the company for his own financial gain. And he says in there that he had this Rolls-Royce Ghost, which was purchased outright with his personal funds. I have been informed by Mr. Rajaee's counsel's that these two vehicles were eventually sold for $191,028 in 2021, which was reinvested in the company.

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

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

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

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

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

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

payments exceed 7 percent. Okay?
Q Thank you.
Switching topics. If the managing member of an LLC has managed the books and records of the company such that a forensic accounting cannot determine which expenses should be allocated to which services provided, is that going to lead to an adequate basis for there being an accurate statement of the books and records by an accountant?
A Absolutely not. I mean, the managing member is responsible for not only keeping a set of books, but following IRS regulations. If he has any questions, he needs to call a CPA or a tax attorney. So not having documentation, not having invoices, not having supporting evidence for any of the expenses is not only open to the IRS throwing him out, which means the partnership has additional income, the partners have additional income on their personal returns, which they need to file amended tax returns for, but you've got -- you've got -- it's treated as a distribution. And so all of a sudden you've got one of the partners having a substantial -- a large distribution to them, which is creating a negative -- which is creating a neg- -- creating a possible negative capital account even worse than it is

already.

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

A Yes.

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

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

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

financial statements how much work a CPA did or didn't do on them; right?
A That's correct.
Q And then if a managing member of an LLC cannot determine whether or not funds he provides to the LLC to represent capital contributions or loans to the LLC, can that managing member make a proper statement of the books for accounting purposes?
A Well, no. I mean, it needs to be agreed to. Most partnership agreements have language in there that if you make a loan to the partnership, many times, all the partners have to agree to the loan. But you really would go to your partner, you'd say, look, I'm going to put a hundred thousand in or 50,000 in, and I want to put it in as a loan, and I'd like you to sign this note, or they would say I'm just going to make a capital contribution to the partnership, but it's usually -- it would always be discussed with your partners, and before you put the money in, so it's clear whether it's a capital contribution or loan.
Q From an accounting standpoint, would it be proper for a managing member to put money into an LLC only to determine at a later time whether or not he considers it a capital contribution or a loan?

A You should determine at the time you put the money in.
Q And -- okay. Thank you.
No further questions at this time.
THE ARBITRATOR: All right. Mr. Matthews?

CROSS-EXAMINATION

BY MR. MATTHEWS:
Q All right. And I apologize, is it -- it's Mr. Hawes?
A Yes, correct.
Q Good to meet you, Mr. Hawes.
A Thanks.
Q So I just want to clarify. I don't have that many questions, but is it correct, you said that in preparing or in reviewing the information that you used to form your opinion, so you reviewed the Operating Agreement for TopDevz, LLC, or what was represented to you as the Operating Agreement for TopDevz, LLC; correct?
A Correct.
Q And did you review the tax returns from the years 2017 through 2020? Correct?
A Correct.
Q And you reviewed the declaration from a

Nevin Sanli; correct?
A Correct.
Q But you did not review a balance sheet; correct?
A I reviewed the balance sheet on the tax return, the Schedule L balance sheet, but in the financial statements, I didn't see a balance sheet, I just saw profit and loss statements.
Q Okay. So you haven't received a balance sheet outside of what you see in the tax returns; correct?
A That's correct.
Q Okay. But you reviewed some P&Ls; correct?
A Yes.
Q And were they for the years 2017 through 2021?
A Through October -- I believe through October of 2021.
Q Okay. Now, just so I understand this, you're not a licensed attorney; correct?
A Correct.
Q Okay. You didn't draft the Operating Agreement; correct?
A Correct.
Q You haven't spoken to the party who drafted

the Operating Agreement; correct?

A Correct.

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

A Correct.

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

A Correct.

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

A Correct.

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

A Yes.

Q All right. You have not spoken to Mr. Rajaee; correct?

A Correct.

Q And do you know who Jennifer Glaser is?

A Jennifer Glaser, no, I don't.

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

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

A Correct.

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

A Correct.

Q You're not the accountant for TopDevz; correct?
A Correct.
Q I believe we were talking about some foreign partnership tax matters. I apologize, I'm not sure of the exact term.
But you said in connection with any, I guess, foreign election, that you would need to do a full and complete accounting to address foreign income tax withholding; correct?
A I'd need to do much more investigation and receive documents that I don't currently have to make that determination, to make sure that there is no underwithholding from the company, correct.
Q Okay. Nothing further. Thank you.
THE ARBITRATOR: All right.
MR. CARPENTER: Nothing further.
THE ARBITRATOR: All right. Then may this witness be released?
THE WITNESS: Okay.
MR. CARPENTER: Yes.
Thank you, Mr. Hawes.
THE ARBITRATOR: All right. Thank you Mr. Hawes. Have a nice rest of the day.
THE WITNESS: Thank both you of too.

THE ARBITRATOR: Okay. Bye-bye.

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

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

THE ARBITRATOR: Should we take ten?

MR. MATTHEWS: Sure. That's fine.

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

MR. MATTHEWS: All right.

MR. CARPENTER: 2:15, thank you.

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

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

MR. CARPENTER: The Davis side will rest now.

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

MR. MATTHEWS: We are.

THE ARBITRATOR: And who will be your first witness?

MR. MATTHEWS: We will call Mr. Rajaee as our first witness, please.

THE ARBITRATOR: All right.

Welcome back, Mr. Rajaee.

THE WITNESS: Thank you.
THE ARBITRATOR: Okay. Sir, you are still under oath. Although, at this time, your lawyer will start the questioning of you. Okay?
THE WITNESS: Okay.
THE ARBITRATOR: All right. Good.
Go ahead, Mr. Matthews.
MR. MATTHEWS: All right. Thanks so much.

ASHKAN RAJAEE,
having been previously duly sworn, testified
as follows:

DIRECT EXAMINATION
BY MR. MATTHEWS:
Q Mr. Rajaee, thanks for, obviously, joining everyone today.
What I think we'll start with is I'd like to go into your background, how you met Mr. Davis.
Can you tell us about how you were introduced to the company Surge, LLC?
A I had a product that I was using at a company called Sunwing Travel Group that hired me for consulting services. They're a travel company out of Canada. I think they're the largest, about 2 billion

in revenue.

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

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

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

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

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

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

A   Yes.

Q   -- consumer?

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

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

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

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

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

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

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

A This was 2014.

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

A Yes, I did.

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

A Sunwing Travel Group.

Q Okay. Was that a client of Mobile Monster?

A Yes, it was.

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

A I was paid a consulting fee.

Q And what was the consulting fee?

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

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

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

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

A Yes, we acquired it.

Q So Surge acquired this.

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

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

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

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

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

A Yes.

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

A It was around 6 million a year.

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

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

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

A Just under three years.

Q Just under three years. Okay.

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

A When I left, they were on a run rate to hit about 50 million in revenue.
Q Can you explain what a run rate is?
A Run rate means that they were billing consistently. I wasn't there for the whole year, so I don't know. But the billable hours on a weekly basis, the revenue that was being generated right before I left, that's a run rate. So if that stayed constant, that would hit them around the 50 million mark.
Q So the revenue grew from about 6 million in excess of 50 million in about a three-year period?
A Correct.
Q All right. What was your role in that revenue growth?
A So I was advising on the system to use for them to manage their -- basically their customer base. I was implementing their customer relationship management tool. I created all the work flows and all the processes that would take a prospect down to a closed account. And then I would also be responsible for presentation materials and marketing of the company overall.
One of the specific ones they were spending a ton of money on was AdWords. So I got involved in

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

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

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

Mobile Monster was servicing Surge; is that correct?

A That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

luxury treatment to build that relationship.
And another person he introduced me to, his name is Mike something from Albertsons. He made a comment how he would constantly take him on really expensive fishing trips, because Mike liked fishing. And Tyler would front all the costs because Tyler was getting business from, you know, his network.
So I kind of really resonated with that, and I told him, I said, "Well, this is kind of what I've always wanted to do. And by the way, I put a whole deck together for Surge on how we can build better relationships with customers by taking them to customer experience events, by upgrading our CRM system with work flows and policies to help track these relationships, to hire an entire team to manage all the back office stuff, because there's a lot of logistics going on with this, tracking who we're talking to, who our highest value relationships are, and, you know, Matt shot that down." And so Tyler then approached me.
Q Can you explain what is a CRM?
A Customer relation management tool. So it's like a Salesforce, if you're familiar with Salesforce. It's, you know, HubSpot. It's basically a database of all your contacts for a company.

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

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

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

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

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

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

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

like Google, G Suite and Zoom license. Basically anything I incurred for incidentals along the way.
Q But in terms of your actual compensation of income, or I'm not sure how it would be qualified, was, roughly, around 1.4 million?
A 1.4 to 1.5 million, yeah.
Q Okay. But you're saying that in connection with those payments, you had apparently a very significant role in growing the revenue from about 6 million a year to in excess of 50 million a year in a three-year period; correct?
A That's why my commissions were so big. Because at 6 million, I'd be making whatever 7 percent of 6 million would be.
Q Okay. So it was strictly based on the revenue, it was performance-based?
A The largest portion of my income came from the revenue that was actually generated and collected.
Q Okay. So you didn't -- if the revenue didn't come in, you didn't get paid?
A I didn't paid the commission portion.
Q Understood. All right.
So when you decide- -- around 2017, I think there was some litigation that you and Mr. Davis were

involved in with Surge. I don't know that we need to fully get into that right now. But you then decided that you were going to form a new company together, and that became TopDevz; right?

A That's correct.

Q Now, when you decided to form TopDevz, were you looking for a business partner?

A No.

Q And why were you not looking for a business partner?

A What I did at Surge, I could do on my own because I was pretty much doing it on my own. I mean, other than Matt handling the payroll of the company and hiring and firing of actual employees of the company, the majority of the things came from handling the developers, generating leads and servicing accounts.

So setting up a consulting firm is very easy to do. And, at that time, you know, I think I earned maybe about 8 or 9 million with Surge, a mortgage-free house, I didn't really need the money. But, basically, Tyler, you know, he basically told me that, you know, he really wants to contribute, and, you know -- you want me to go into that or no?

Q Sure.

A Okay. So he said that, you know, we can set up our own company, and, you know, we could probably grow the company just like Surge, to about 50, maybe more, to a hundred million, and then sell it. And I told him that, "Well, it's a big step for me to, you know, get out of Surge and just have a promise from you that you want to do this." Because he thought that it would take 2 to $3 million to set up a consulting firm, and I joked and I laughed and I said, "I don't think so."

But how he positioned himself to me at the time, I didn't know Porter Consulting's revenue, I didn't know these other ventures he had, you know, their revenue, but he represented them to me as if, if I needed a million bucks, I can go to the well, get it, invest it in the company to help grow the company.

And so ultimately, trying to de-risk myself from being the sole risk taker, I thought it would be a good idea to split that risk, with the understanding that, you know, I could capitalize the company the way I need to.

Q Okay. And so, at that time, you agreed that the investment in the company was going to be around $750,000; correct?

A   Yeah. One of the discussions was Tyler didn't bring any value to the actual consulting business, other than capital. So he saw a lot of value in what I was doing and the knowledge I had to generate leads and close business. So when we discussed it, you know, he said, you know, "I'll put up the money. You just come and do it. And your half is as good as gold because you're bringing all the value to the company."
Q   Okay. Well, I'm going to get into a few things, but first thing I want to say is, so in connection with that, you were going to be paid a guaranteed payment, which is, effectively, a salary; correct?
A   Correct.
Q   And what was the initial arrangement for what you were going to be paid per year?
A   200,000 --
Q   Okay.
A   -- per year.
Q   All right. And then you were going to have commissions; correct?
A   Correct.
Q   And it was basic- -- it was essentially the same setup as Surge where you had met Tyler?

A Yes.
Q All right. Now, what I do think is actually important that we do need to just quickly go into is you had been in litigation with Surge, you and Mr. Davis, were you represented by the same counsel?
A Yes.
Q So you and Mr. Davis were represented by the same counsel in connection with a litigation against Surge; correct?
A That is correct.
Q What was your litigation against with Surge?
A So Matt started to renege on my commissions because they were so high. And so he started playing around with the agreement and started actually -- he actually stopped paying some of them. And on one account the commissions were around 400,000 a year. So that started the fire for me. For Tyler, I believe at the time he was concerned that Matt was not making distributions or making distributions or doing something with his own income and his salary that was preventing him, as an owner, to benefit in some way. And then so we started talking about that, and eventually we joined forces to have a unified front against Matt.
Q And so did you guys sign -- was it like a

joint defense agreement or some sort of arrangement where he was aware of your paperwork?

A I don't know what I was called, but it was definitely something that meant that Cameron, who was our attorney, can freely share information between us about each other, and it would be -- it would be okay with either of us for him to do that. I don't know what that's called, but --

Q From your understanding, Tyler was fully aware that this was a dispute about your commissions and was aware of your commissions and what you were getting paid, generally?

A A thousand percent, because he even told me, "Matt's an idiot for not paying your commissions."

Q All right. So I want to touch very quickly, before we go into this, you're saying that you had a house in -- I believe it was in Canada, correct, at the time?

A Yes.

Q And what was the value of the house at the time?

A 2.4 or 2.5 million.

Q Has it been sold?

A We sold it in 2021, yeah.

Q For how much?

A   2.75, I believe.
Q   Did you have a mortgage on that property?
A   I did not.
Q   Okay. So you had a $2.4 million house at the time you left Surge in 2017 with no mortgage; correct?
A   Correct.
Q   And you had made, roughly, around $1.5 million that year, in 2017, from Surge alone; correct?
A   Correct.
Q   All right. And you were saying you didn't need the capital from another partner, but you wanted to de-risk yourself; right?
A   That is correct.
Q   All right. You're a Canadian citizen; right?
A   Correct.
Q   Tell us about your discussions with Mr. Davis about how being a Canadian citizen affected your role at TopDevz?
A   So before the whole thing happened with TopDevz at Surge, sorry, to the tail-end of it, they were trying to move me to the U.S., but, obviously, that went sideways. So the first discussion with

Tyler was, "I can't do this out of Canada. I need to be in the United States to execute on this model." Because even when I was at Surge in Canada, it created a lot of problems getting in and out of airports and going to see clients and stuff.

So I told Tyler that I need a path to move to the United States if we're going to grow the business, and he's like, "Yeah, absolutely." And when we talked about kind of the company itself, he said to me multiple times, "Look, I'm not going to tell you how to run the company. I just want you to build what you built at Surge, and one day we sell it and I make a bunch of cash."

So we went through all this stuff, and we were going through the back and forth around what is the value of the capital contribution and all that stuff. I told him that one of the requirements is me personally to have operational control, but a bigger, probably more technical qualifying reason is the U.S. immigration and homeland security will not recognize any visa if I don't have a controlling interest on the books with this entity in the United States. Furthermore, the entities need to be related. There has to be a relationship between the two entities. It can't be like I come in here and invest a bunch money in real estate and get a visa.

So we thought the Mobile Monster kind of Surge model, since I was on the path to moving to the United States, we could replicate that. And then we hired an attorney from Buffalo, I think her name is Chris Brock (phonetic), who did all the paperwork for the immigration and eventually L-1A Visa.

Q Okay. And are you -- what is your citizenship status currently with the United States?

A Currently, I'm on an L-1A visa from the homeland security portion. From IRS, I am a resident. I am taxed as a U.S. resident.

Q And you have an accounting firm that you work with in the context of Mobile Monster that's in Canada; correct?

A That is correct.

Q And you have a U.S. law firm that you work with in the context of TopDevz that's in California, in La Jolla; correct?

A An accounting firm, not a law firm.

Q And accounting firm?

A Yeah.

Q Okay. Understood.

A Correct.

Q And sometimes they're in communication

because of the interplay between the entities?
A They're in communication quite often, actually, between them, because there is a mountain of reporting in Canada and the U.S., especially for me, when I'm considered a resident in both countries. So there's declarations here that have to be made and declarations there that have to be made, and so I just put them together and they do what they need to do.
Q All right. So let's talk about the formation of TopDevz. You ended up putting together an Operating Agreement for TopDevz; right?
A Correct.
Q And so is TopDevz, is it a corporation, a limited liability company? Do you know what the structure is?
A It's an LLC, I believe. And I actually didn't put the Operating Agreement together. I believe Cameron gave us that Operating Agreement.
Q So that was the operating -- that was your attorney who worked with you with the Surge matter?
A Yes.
Q All right. Let's take a moment to bring up Exhibit 1A, which is the Operating Agreement for TopDevz. I'll share my screen.

All right. So I'm showing you what we've marked -- has been marked as Exhibit 1A. You've seen this document, I think, many times in this proceeding and otherwise.

The first page is, I'm representing to you, a disclaimer. And I'm going to scroll down to the next page, which looks like the first or the front page of an Operating Agreement for TopDevz, LLC, dated May 9th of 2017.

Does this look familiar to you?

A Yes.

Q All right. So I apologize, I know we've gone through this before, but just so we're diligent, I'm going to scroll down to the signature page. I may have gone a little too far.

All right. So this looks like it's page 31 of the Operating Agreement. There's a signature block for yourself, and it looks like Mr. Tyler Brandon Davis.

The signature block for yourself, is that your signature?

A Yes, it is.

Q Okay. And, again, this agreement is dated May 9th of 2017, to your knowledge?

A Yes.

Q All right. I want to look over a few provisions.

All right. Let's look at paragraph 1.51. It is the voting interests. I will read it aloud to you, and then you can tell us a little bit about it.

It states that "'Voting Interest' means, with respect to a Member, the right to Vote or participate in management of any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provision this agreement. A Member's Voting Interest," this is the last sentence, "A Member's Voting Interest will be directly proportional to that Member's Percentage Interest."

Can you tell us what that provision means to you?

A I'm not a lawyer, but the way I understand that is --

MR. CARPENTER: I'll object that this is an integrated agreement, and that a legal opinion or subjectively is not important.

THE ARBITRATOR: Well, I understand the objection. I think I've allowed both sides previously to talk about their understanding. Ultimately, I think counsel both understand that to

the extent that the agreement needs to be construed, that's my job. And I -- you know, I appreciate that there's an integration clause, but I will let both sides tell me what they understood about the agreement. I think I've done that previously, so I'm not going to change course now.
So go ahead.
MR. MATTHEWS: Thank you so much.
Q So, Mr. Rajaee, can you just give us your understanding of what this provision means to you?
A Basically that your ownership percentage, it will equal your voting rights in the company.
Q And in entering into this agreement, you had explicit discussions about your ownership percentage with Mr. Davis?
A Many, many times.
Q And that ownership percentage, again, can you tell us what that conversation was or the details about what that conversation was about?
A 51 percent for Ashkan, 49 percent for Tyler.
Q And in connection with that, I think a big part of it was -- let's put it this way. Initially, was Mr. Davis going to provide anything other than capital to the company?
A Capital and further capital, yes, but

that's-- that was about it.
Q But you were going to provide the services and run the company?
A That's right.
Q And it was your job to create the revenue; right?
A And run the company, yes.
Q All right. So I want to scroll down to paragraph 2.9.
Here it says, "The Manager of the Company will be," and it looks like it lists your name, "Ashkan Rajaee," and it lists your address.
So your understanding was -- what's your understanding of this provision?
A That I'm the manager.
Q All right. And I want to make a note about paragraph 3.1. This references that "each Member will contribute to the capital of the Company as the Member's Initial Capital Contribution," it says, "the money or property," and it says "TBD."
What does TBD mean to you?
A To be determined, I would assume.
Q And then, in brackets, afterwards it says, "or services."
What does that mean to you?

A Or services.
Q So can you explain that a little bit?
A So the contribution to the company can be either money, property or services.
Q All right. So we'll go through just a few more provisions.
All right. I'm looking at section 5.1. This talks about the management of the company. And it says in looking spec- -- well, it says, "The business of the Company will be managed by the manager named in Article II, Section 2.9."
The last sentence says, "Except as otherwise set forth in this Agreement, all decisions concerning the management of the Company's business will be made by the Manager."
What does that mean to you?
A That the manager can make all decisions based on them managing the company, except for Article V, Section 5.3.
Q All right. Let's see here. I think it may say something different, but let's look at, I think, 5.4. I think that's kind of a relevant point.
A That's why I'm point to it.
Q Of course.
So it looks like there's some exceptions.

It says -- looking at paragraph 5.4 of the operating agreement, it says, "Notwithstanding the foregoing, the Manager will not take any of the following actions on behalf of the Company unless a Majority of Members has consented to the taking of that action."

One of the things it states is, section G, so 5.4(g), it references "The incurring of any contractual obligation or the making of any capital expenditure with a total cost of more than $20,000."

Now, in the context of this, do you have an understanding of what this means to you?

A Yes. Unless we get a majority vote, the managing member cannot make decisions based on the following. This actually came up with Alex Mueller, and ultimately he never moved ahead with it.

Q Okay. Now, what is your understanding of your percentage interest in the company in connection with this provision?

A 51 percent.

Q So does this mean that you have a majority percentage, or what does this mean to you?

A Yes, that I have majority interest and voting rights of 51 percent.

Q All right. Now, I want to look at paragraph 5.5. What it says is, "It is acknowledged that the

Manager has other business interests to which the Manager devotes part of the Manager's time. The Manager will devote as much time to the conduct of the business of the Company as the Manager, in the Manager's own good faith and discretion, deems necessary."

So you have several other ventures that you work with; correct?

A Yes.

Q What are some of those ventures?

A SpendHub, Omni Genie, which is a real estate portfolio, and we set up a TopDevz hybrid that never went anywhere, and now RemotePreneurs, which holds aircraft.

Q All right. So before we were talking about with Surge how there was a -- it seemed like a strategy that was in place where you would use a software product in order to initiate the relationship with the client.

Can you talk about how -- do any of these entities have an affiliation with TopDevz?

A Yes, they do.

Q And can you explain what -- how that might work?

A So expense management, expense -- credit card expense management is a very big problem for companies, small and large. And the SpendHub product was to be used to generate and initiate conversations with companies that are having expense management problems. Where that gets interesting for TopDevz is usually companies that have expense -- credit card expense management problems are the ones with a lot of employees, and there's a lot of bookkeepers on staff or accounting. So this would be of tremendous value to a financing team within a company.

The people who cut the checks for TopDevz come from the finance teams. So, naturally, if they're using SpendHub, and they find out that TopDevz is affiliated with it, either there would be customizations that they would want with the software which would go through TopDevz, or they would now know TopDevz's name, and the trust level would be higher because they're actually using the product for their expense management.

And all of this was supposed to go to market in 2020, and, of course, COVID hit, and the entire strategy changed from that. But that's the initial strategy, was to use the product as a hook to get into larger companies, and then all kinds of stuff would flourish.

Q   Okay. Now, another provision I want to look at just real quickly before we go into a few other things is the paragraph right below it, 5.6.
It says, "The Manager will be entitled to compensation for the Manager's services as determined by the Members, and to reimbursement for all expenses reasonably incurred by the Manager in the performance of the Manager's duties."
What is your understanding of that provision?
A   That the manager, which is me, would be entitled to receive a salary of some sort and be reimbursed for expenses that are incurred on behalf of TopDevz.
Q   Okay. Now, one of the things I just want to jump to really quickly is I think a big part of the company is this company Mobile Monster that you own.
You previously talked about having an infrastructure in place when it was working with Surge. Can you explain how that infrastructure worked in conjunction with TopDevz?
A   Yeah. So, first of all, it's incredibly hard, but I'll try to articulate as best as I can.
So think of it as a really big puzzle, and every component is a piece to that puzzle. And the

puzzle is broken down into prospects, so these are people that don't know who the heck you are, and then there are what we call leads, and leads are people that may know of you or you've tried to communicate with them, there might be something there. And then there are contacts, and these are people that would know you or know about you or the company or somebody at the company.

And so what Mobile Monster does is takes, starting at the prospect level, it takes a variety of metrics. For example, we don't do work in the government space. Unless they come to us, we don't target them. If they work for an education company or like a school, we don't target them. If they work at any type of nonprofit, we don't target them.

So having an infrastructure in place to be able to detect where someone's employed is in itself something. I can go into that in detail and how we do that if you want. But basically, once those prosects are identified, then attempts to communicate to them are made under various ways under just the prospect umbrella. So one method is e-mail, where we send e-mails. Another avenue is messages and communications on LinkedIn. And another method is through social media, LinkedIn being one of them, and

YouTube and stuff, on content-driven activities.

So at the top of the funnel where you'd have the prospects, it's basically now trying to fill this funnel with as many prospects as you can, just so you know they've looked at your content or they've responded to a message of yours or they've read an e-mail of yours. And you're doing this, mind you, over a database of over 2 million records of about, I want to say, 56 now, or maybe 60, different attributes per record. So who you are, the company you work for, what school you went to, the skill sets, your previous job, your contact information, your e-mail, and harvesting all that is a monumental task.

So once you get all that information at the prospect level, then they become -- when they communicate back to us, they become leads, and these leads are now -- remember, because we filtered them at the prospect level, they now become leads in which they're communicating with us. So, immediately, the focus and the work flows that are also -- a lot of it's AI driven now, changes from the communication with a prospect type, or it's really just one-way communication, to now you're handling two-way communication.

So they could ask for don't bother me, leave me alone, that has to be handled. I'm interested, tell me more, or they could ask a question, they could make a statement. So all of these become work flows that I developed, and these work flows individually handle each category of communication. And that communication needs to be documented and memorialized, and a human person needs to be trained on that entire work flow of when a prospect turns into a lead, what do we do with it. What does TopDevz do with that type of a lead.

So Mobile Monster now takes all of those people that are working on TopDevz, they'll take that lead, response, and they'll start communicating and responding. So that means that they're going to need assets. So there's marketing collateral, landing pages, websites, social media, just general FAQ answers in responding to that. And by the way, this all has to be done in a timely manner. Right? And you've got hundreds, if not thousands, of responses that are coming in that are useless. Right? Most people say I don't want be to solicited, leave me alone.

So once it becomes a lead, at that point is where we try to drive traffic to what I call assets.

Right? And the assets are high production, high value content that has generally nothing to do with TopDevz, but it's entertaining for somebody to watch. This was the whole show idea I pitched to Tyler back in 2019, where there's so many companies doing what TopDevz does in America, that it's boring for someone to hear we've got the best developers, we've got this, we've got that. It's like a car salesman telling you, you know, we've got the best cars. Right? It's just -- it doesn't stick in today's modern type of marketing.

So what that content does is it kind of creates a hook that even though they may not have a need for software development, they're engaging and they're looking at the content and they're getting familiar with TopDevz. So producing that content in itself is quite a lot of work, and I can get into that if you're interested.

The second thing is the follow-up patterns and the intervals on the different communication channels. Like you've seen even in this proceeding how many problems we've had with Zoom, people connecting, not connecting, text messages, whatever the communication media is. So what we do a really good job at is figuring out what is the easiest communication medium that end prospect to communicate back to us.

For example, you send them a LinkedIn message, and you notice they respond on LinkedIn, but they ignore your e-mail. Immediately, the CRM knows the preferred method of communication for this individual is LinkedIn. Right? So how they're communicated to is also taken into consideration.

And this is really where I believe the magic happens in what we do, is because you're reaching out to hundreds of thousands of people that are decision makers or influencers and people that are in our target market, and then you're starting to build a relationship with them either through content or drip campaigns or through just like landing pages and different assets that you share with them.

From there -- and this is where all of our leads come from, when they have a need, they reach out, hey, Ashkan, you know, I saw your junk video, and it's pretty cool. By they way, I have a need for ten developers. Right? And so at that point in the CRM -- I talked about prospects, and I talked about leads. Now we get into what are called contacts. So these are people now that have reached out, they have a need, now they go into what I call our sales file.

Right? And the sales funnel starts at the top.

There's got to be a discovery done, there's got to be communication, negotiating the contract, the value proposition, multiple things that happen over there, and essentially, from there, the deal closes, or doesn't close, we even track those too.

And then those contacts is where we focus the huge efforts on creating experiences for these contacts, because they don't know it, but they've gone through a lot with us already. Right? But when they get to that level of content -- sorry, to the contact is where kind of I take over in terms of making sure that these people are building relationships with me and the company. Right? And doing so has proven to be phenomenal because they remember.

And the way we do that is when they come here, for example, we take them to really nice dinners, or where I got somewhere, we do like really nice dinners and stuff. But an interesting thing happens in the negotiation stage of these contracts. Right? So when we go from leads to contacts, there's an interesting thing that happens, and that's called competition.

So people who don't know us, larger

companies usually bring in different decision makers to make a decision on which IT vendor they're going to go with for this, and sometimes it's one person, sometimes it's five or six people that need to decide.

That's where the strategy of me and Tyler comes in. We need to wow these people and show them a company that is financially stable, that can take care of its customers, and that can treat them to great experiences. And that's where, you know, the Rolls-Royce and the Bentley and them seeing those --

THE REPORTER: Wait. Hold on. I'm sorry. I'm sorry. You cut out there for a second.

"That's where, you know, the Rolls-Royce and Bentley and them seeing those" -- sorry.

THE WITNESS: Seeing those creates an indirect layer of sophistication and trust by these potential people that are about to sign a contract with us. And that trust is what is getting us winning over a lot of these contracts. Google software development companies right now, there's a million of them out there. So this is one way we stand out, is nobody's doing this. Nobody is doing the kinds of -- the things that we're doing from a marketing perspective and being able to treat customers like this and giving them access to stuff like this, that I know of, that is working.

And we've had -- we've closed -- we closed Alchemer in Denver. That's a 2, $3 million account with the strategy. We have several in our pipeline I can't remember off the top of my head.

But anyhow, the contract negotiation page is what really starts to help with these tools. And I look at all of the things that I'm doing, again, as I kind of zoom out, as a big puzzle. And in each component of the marketing, I'm sticking in pieces of puzzle. So whether it's content, technology, a jet, a Rolls-Royce, a landing page, an experience, a CRM, tie it all together with work flows, this is kind of of -- I call it kind of the human relationship management software process that has made Mobile Monster successful. And I used it at Sunwing, so it's kind of where it was kind of born. They were handling 200,000 -- it was about, yeah, 200,000 every two weeks. So it was about 1.2 million passengers a year.

THE ARBITRATOR: Mr. Rajaee, I'm going to interrupt at this point.

Mr. Matthews, we're -- I don't know where we're going, but I think you need to take control with him, directing questions. I don't think we need to go into all of these other possible customers of Mobile Monster for these proceedings.

MR. MATTHEWS: Well, if I may, the only -- the reason why -- I'm happy to move on. The only reason I was going there was I think it's important to distinguish, there had been a mention before that TopDevz was the only client of Mobile Monster. So wanting to distinguish the relationships with other companies, and then also --

THE ARBITRATOR: I would appreciate you ask direct questions.

MR. MATTHEWS: Sure.

THE ARBITRATOR: Were there other -- so, for example, did Mobile Monster have other customers in 2017, in 2018, in 2019? Yes, no, yes. Who were they? You know, I really think, otherwise, we're going to be here till midnight. And I can't stay with you till midnight.

MR. MATTHEWS: No problem.

THE ARBITRATOR: Okay.

MR. MATTHEWS: Appreciate it.

Q So thank you, Mr. Rajaee, for kind of giving us a little bit of background in understanding how this actually works and how it's put together.

I want to move on to just a few things within the Operating Agreement so we just have some clarity on the full terms here.

It looks like we may have covered everything we need to for the moment.

Well, actually, I want to talk about, actually, paragraph 11.1 really quickly. This is an indemnification provision where it states, "The Company will have the power to indemnify any Person who was or is a party, or who is threatened to be made a party, to any Proceeding by reason of the fact that the Person was or is a Member, Manager, officer, employee, or other agent of the Company."

Do you have any understanding of this provision? What does it mean to you?

A Something about indemnifying. Honestly, I -- I could take a stab at it, but --

Q Do you know what indemnification is or when a company defends somebody who's in a proceeding?

A I think indemnify is -- because we deal with that at TopDevz, is like you basically release them of liability or something like that or you release them of damages. I'm not sure.

Q Okay. We can move on.

All right. Let's talk a little bit -- let me stop sharing here. I want to move on to Exhibit 2A.

THE ARBITRATOR: This is the one we had problems with. So I think you need to go to the later one. I'm not sure what the number is, but we need to go to the full-sized one that -- I think it was 44A.

MR. MATTHEWS: Actually -- yeah, we can actually move on to I think it's Exhibit 4 -- 4A for now. So I'll share that.

THE ARBITRATOR: 4A, the owners' certification of beneficial owners?

MR. MATTHEWS: Correct.

Q So, Mr. Rajaee, TopDevz has bank accounts; correct?

A Yes.

Q And can you tell us where it has bank accounts?

A Wells Fargo.

Q All right. And in connection with setting up bank accounts, did you have to provide any paperwork to the bank or did they prepare any bank -- any paperwork?

A They asked for an operating agreement, and then later they asked me for this, which is a certification of the owners.

Q Okay. I just want to scroll down here. I think it's section 2, certification of beneficial owners.

So under section 2A, it says, "Name of person opening accounts or maintaining the business relationship," and it says "Ashkan Rajaee." That's you; correct?

A Yes.

Q And the name for the legal entity for which the account is being opened or maintained is TopDevz. It says that; correct?

A Yes.

Q All right. Now we're moving under section C. It lists the beneficial owner information. It looks like it's including the information for Ashkan and for Tyler Davis.

Do you see that?

A Yes.

Q All right. And do you see -- what does it say about the ownership?

A 51 percent Ashkan, 49 percent Tyler.

Q And this is signed by yourself on March 6th of 2018; correct?

A Yes.

Q All right. And you -- I assume did you present this in connection with your role as a manager or how did that come about?

A Wells Fargo asked for the beneficial owners and their percentages on the account. So I had to provide that and certify that, to the best of my knowledge, that's what it is.

Q Okay. Mr. Davis, does he have access to this information?

A If he contacts Wells Fargo, yes, they'll give -- this is how I got this.

Q All right. Let's move on to section 5A -- or Exhibit 5A, rather.

Now I want to scroll down to the bottom of the conversation. We were talking about this document previously.

MR. CARPENTER: Excuse me, Counsel, can I interrupt? What was the name -- what was the last exhibit number? I didn't get it.

MR. MATTHEWS: 4A.

MR. CARPENTER: Thank you.

MR. MATTHEWS: Of course.

Q Now, I'm looking at the bottom of what's been marked as Exhibit 5A. This looks like an e-mail of Vania Hernandez to a Jennifer Glaser, and you are copied.

Can you tell us who Vania Hernandez is?
A She's the lady we hired to help with bookkeeping and keep track of the expenses.
Q Okay. And can you tell us who Jennifer Glaser is?
A She's our accountant.
Q When you say our accountant, do you mean for --
A TopDevz.
Q Okay. All right. And what is the context of this conversation?
MR. CARPENTER: I'm going to object as this being hearsay, unless there's further foundation laid.
THE ARBITRATOR: Fortunately or unfortunately, I think the record is replete with hearsay, starting with the e-mails and texts we've previously reviewed. So I'm going to allow it, but I will, you know -- you know, alert counsel, I appreciate what is hearsay, and just because it comes in, not all evidence is equal, you know, so bear that in mind. I have live witness's testifying here.
MR. CARPENTER: Thank you.
BY MR. MATTHEWS:
Q All right. So did you direct Vania

Hernandez to contact Jennifer Glaser about the issues addressed in this e-mail?
A I did.
Q And what did you direct Vania Hernandez to do?
A To contact our accountant, Jennifer, and get me on a letterhead -- basically a proof that I own 51 percent of TopDevz, because I believe I was trying to buy a house here at the time, and they were requesting documents of ownership.
Q Okay. So the bank was requesting documentation?
A Yes.
Q All right. And so Jennifer got back to you, and was there a problem initially?
A No. She just said, "What's the letter going to be used for?"
Q Well, what I'm saying is, is that was there any issue with regards to the operating agreement or confirming ownership?
A Oh, I'm not aware of any problems, but I remember that I didn't have it, and I go to Jennifer for all these matters. And so I just told Vania to get it.
Q Okay. But my question is, basically, did

Jennifer come back to you and say she needed any further information or any confirmations?

A No.

Q Well, in the conversation here, maybe you're -- just to clarify what I'm asking, was there any -- any issues that you needed to clarify in connection with the ownership in this e-mail correspondence?

A She didn't -- if you see that e-mail, she didn't respond right away with what we wanted, which was the letter, and then she said that if we just, me and Tyler, confirmed in an e-mail, in writing, she confirmed with one of the partners at the firm, that that would suffice for her to confirm the ownership.

Q Okay. And then so what did you do based on that information?

A I said okay, and I sent this e-mail, mine's 51, Tyler's is 49. And I copied Tyler, and I said, "Tyler, please confirm." You can see, three minutes later, he responded.

Q Okay. And when he responded, what did you receive in terms of a response?

A From Jennifer?

Q No. From Tyler Davis.

A "This is correct."

Q All right. Was there any -- ever any dispute from Tyler about you owning 51 percent?
A Yes.
Q Okay. Can you explain that?
A This litigation is --
Q Well --
A -- the first time I've heard of it.
Q All right. Well, prior to this litigation, during the course of you being in business with Mr. Davis, was there any dispute about you owning 51 percent?
A No.
Q Was there any time that he came back and said that he did not own 49 percent of the company?
A No, except this litigation.
Q Okay. So I'm going to move on to Exhibit 6A.
Okay. So we talked about this is a consulting agreement, Exhibit 6A, between Mobile Monster, Inc., an Ontario corporation, and Surge, LLC, a Washing limited liability company. It's dated -- this one is dated September 1st, 2016.
Do you recognize this document?
A Yes.
Q How do you recognize this document?

A This was a contract I signed, Mobile Monster and Surge, to provide services and lead generation commissioning and all that.

Q Okay. I'm going to scroll down to the last page, which is Exhibit B -- well, first, actually, I think this is important.

I'm looking at the signature page. This is signed, it looks like, on the right-hand signed -- right-hand side. It's signed by you; is that correct?

A Yes.

Q And that's under Mobile Monster, Inc.?

A Correct.

Q And it's signed by who on the left-hand side?

A Matt McKay.

Q And who is Matthew McKay?

MR. CARPENTER: I'll object to this line of question on relevance grounds.

THE ARBITRATOR: It's very far afield, I agree, Mr. Carpenter, but as I understand the opposition papers, Mr. Rajaee, has taken the position that whatever his deal was with Surge was his deal with TopDevz.

Did I understand your argument correctly, Mr. Matthews?

MR. MATTHEWS: That's a part of it. But it's also really an issue of knowledge, and that Mr. Davis was fully aware of the commissions that were being paid to Mr. Rajaee and fully aware of the commissions that have paid throughout this entire period of time. He's disputed the --

THE ARBITRATOR: Mr. Matthews, in terms of why you're asking questions about Mobile Monster's contract with Surge.

MR. MATTHEWS: To establish, number one, that Mobile Monster had other clients that had very similar or the same exact terms. And also because Mr. Davis had access to this information when they were in litigation with Surge. And this was the foundation for --

THE ARBITRATOR: Okay. I think we've established that. Is there a reason we need to go further?

MR. MATTHEWS: If we've established it, then happy to move on.

THE ARBITRATOR: Okay. So I'm just asking, is there anything else about the consulting -- the specifics of the consulting relationship between Mobile Monster and Surge which predated, as I understand it, the formation of TopDevz? Is there any other reason, other than the fact of that relationship, and the terms upon which Mobile -- Mobile Monster provided -- or was compensated by Surge?

MR. MATTHEWS: It is just establishing a history and a knowledge by Mr. Davis. To establish that this is not a situation where Mr. Rajaee set up Mobile Monster in connection with TopDevz and it was some brand-new operation. This is a historical operation that we're just trying to establish.

THE ARBITRATOR: Okay. I think you've established that.

MR. MATTHEWS: Okay. So, we'll move on.

Let's look at Exhibit 7A.

Q Now, you signed an Operating Agreement with Mr. Davis for TopDevz, LLC, and that was dated May 9th of 2017; correct?

A Yes.

Q All right. So what I'm showing you -- and this is Exhibit 7A. There is communication with an Alex Mueller. Who is Alex Mueller?

A He's somebody that we were going to bring on as a third partner, and we started renegotiating a whole bunch of different terms, and ultimately Alex

backed out and we never went ahead with any of the negotiations that we were discussing.
Q Okay. And here, there's just mention of commission -- or there's some discussions about commissions.
Can you tell us what your understanding of this discussion is?
A Yeah. We were discussing commissions to me and also Alex. It's not in this e-mail, but Alex was also requesting commissions for certain things that he was doing, and I forget off the top of my head. But this was discussing kind of the commissions and also how we would handle distributions.
Q So was there going to be a change to your commissions based on these negotiations? Because it looks like there's other terms that are in here.
A There was a lot of discussion about a lot of things that we ultimately never agreed on, and that is why Alex didn't move forward.
Q So the other terms you didn't agree on here?
A Absolutely not.
Q Okay. But Mr. Davis was fully aware of your commission structure; is that correct?
MR. CARPENTER: Objection; calls for speculation.

BY MR. MATTHEWS:

Q To your knowledge, was Mr. Davis fully aware of your commission structure?

A Yes, he was.

Q Okay. So let's move on to Exhibit 8A.

THE ARBITRATOR: And can we just go back. So this e-mail is --

MR. MATTHEWS: Sure.

THE ARBITRATOR: Okay. It's May 2017. So your -- your last question ties to his knowledge at this point in time?

MR. MATTHEWS: Correct.

THE ARBITRATOR: Okay. Thank you.

MR. MATTHEWS: Of course.

Q All right. So let's move on to Exhibit 8A.

Now, this -- I'm going to zoom in here so it's easier for everyone to see. I think this is establishing a time stamp. Let's see here.

So here -- is this some correspondence, is this text correspondence between you and Mr. Davis?

A Yes.

Q All right. And in this text correspondence, is it true that Mr. Davis is on the left-hand side of the correspondence?

A Yes.

Q And you're on the right-hand side of the correspondence?
A Yes.
Q And so I'm looking at the bottom right-hand side of the screen. There's a time stamp of May 9th of 2017; is that correct?
A Yes.
Q So this is all of -- it looks like about ten days after you signed the Operating Agreement for TopDevz?
A Yes.
Q Okay. I'm going to move on to the next exhibit, which is Exhibit 9A, which is a continuation of that conversation where it was time-stamped. And I'm looking, again, at the top left-hand side of this page.
This is text correspondence, again, between you and Mr. Davis; correct?
A Yes.
Q Is there anyone else involved in this text communication?
A No.
Q So it's just communication between and you him from what you understood; correct?
A Correct.

Q All right. And here you say something, you say, at the top right-hand side, you say, "When I get that signature, I will take this compliment, but yeah they are primed to move over to us."

Do you know what this is referring to?

A Yes.

Q What is it referring to?

A Below it is a company called Digital Globe. They do satellite imagery for the Department of Defense and a lot of different -- they're a very tech forward company. And one of the contacts at this company that I have kept a relationship with I reached out to, and they did have a development need. And then me, I believe -- I'm not sure if Tyler was there or not, I think he was. Me, Tyler, a guy by the name of Paul, and Alex flew down there to meet them in person. They loved us. So I'm updating Tyler here that the visit was great and the negotiations pursuant to that, you know, getting into the contract, is going really well, which is why I referenced that signature. And he jokingly says, "I want to renegotiate your commissions" because that was potentially a $5 million account.

Q Okay. And this was all of about ten days after you signed the operating agreement on this

company?
A Correct. That's why he's joking about renegotiating my commissions.
Q Because this was going to be a large account?
A Very large account.
Q Can you tell us, do you know what happened to this account?
A We ultimately didn't land this account.
Q Okay. So it seems like there was a lot of work that went into it that didn't work out?
A Yes.
Q And so you didn't get compensated for that, I'm assuming?
A No, I did not.
Q Did you have expenses, perhaps, that were gonna -- that were going into developing that relationship?
A Well, we had all the flights I put on my personal Amex, I put all the hotels on my Amex, all the expenses related to this visit I fronted.
Q So you advanced a lot of costs, but didn't end up closing the account?
A Correct.
Q All right. And as a result of it, you

didn't get paid on the revenue because no revenue existed; correct?
A Correct.
Q All right. Let's move over to Exhibit 10A. And this, again, is text correspondence between you and Mr. Davis. This is more of a time stamp.
Mr. Davis's correspondence is on the left-hand side; is that correct?
A Yes.
Q And your correspondence is on the right-hand side; correct?
A Yes.
Q And I've highlighted -- or it's been highlighted the date, the time stamp here. This is, it looks like, January 21st of 2020.
Does that look right to you?
A Yes, it does.
Q All right. So let's move on to the next exhibit, which is a continuation of this conversation, Exhibit 11A. All right. And so, again, this is continued text correspondence.
This is Tyler Davis on the left-hand side; correct?
A Yes.
Q And you're on the right-hand side; correct?

A Yes.
Q Now, he says to you, on the left-hand side, "Think of this, you grab Josh and Jim, you can step back and relax a little; correct?
A Yes.
Q You then respond and say, "I can't give up my commissions yet"; correct?
A Yes.
Q You say, "It's a big source of my cash flow"; correct?
A Yes.
Q He then responds and says, "I know. And you have a big play with SpendHub"; correct?
A Yes.
Q All right. Do you -- can you explain what the context, in your mind, of this conversation was, what it was about?
A So Jim Hyde was the chief operating officer of Surge. And in the process of us starting TopDevz, you know, this was in 2020 now, they let Jim Hyde go. And I found out about it, and I told Tyler about it, which is why I said, "They fired Jim Hyde."
And Josh, who was the very big strategic hiring aide here at TopDevz, was also at Surge. And so he's commenting that if we get Josh and we get

Jim, that I could relax because I had been complaining to him that I'm basically working seven days a week, sometimes 5:00 in the morning to 11 o'clock at night, and I have a family. And so he's trying to see ways to kind of help me out, and -- well, that's what I perceived it as.

But then he asked me to step back a little, and I said, "Well, I can't," because my commissions at that time, I think we did 7.8 million in revenue, so that would have been a big part of my income for that year. So that's what I'm referring to here about not giving up my commissions, and he's talking about a bigger play with SpendHub and all that. And that's where the conversation continues.

Q   Okay. All right. Let's move on to the next exhibit, Exhibit 12A. This is also a time stamp for the next exhibit.

Again, just for context, this is again more correspondence between you and Mr. Davis; correct?

A   Yes.

Q   And this is a situation where the correspondence from Mr. Davis is coming in on the left-hand side; correct?

A   Yes.

Q   And the correspondence from you is on the

right-hand side; correct?
A Yes.
Q All right. So at the bottom of the page there's a time stamp for October 8th of 2019.
Does that look right to you?
A Yes.
Q All right. So moving on to the next exhibit, which is a continuation of this conversation, this is Exhibit 13A.
Now, again -- well, let's look here. Again, this is correspondence from you. I'm not sure that this is actually a continuation. There may have been a little mixup there, but we can move on to this exhibit, which is dated November 6th of 2019.
This is correspondence between and you Mr. Davis; correct?
A Yes.
Q Okay. And it's only text correspondence between and you Mr. Davis; correct?
A Yes.
Q All right. And on the left-hand side is correspondence from Mr. Davis; right?
A Yes.
Q And on the right-hand side is correspondence from you; correct?

A Yes.

Q All right. So here, on the left-hand side he says to you, "When you get a chance, I need the ability to download the P&L. My bank is requesting it for my increase. Google Sheets won't allow it"; right?

A Yes.

Q And you responded to him and said, "That P&L is internal. You need a Zoho copy which matches the tax filings. The Google sheet is so you can see where the monies are going"; correct?

A Yes.

Q What is Zoho? What is that referring to?

A Zoho Books is the accounting pack- -- cloud accounting package that we started implementing that Jennifer Glaser was using to file tax returns.

Q Okay. So it's a system that the accounting firm is using to file tax returns?

A They're using it, and we're using it now for P&Ls for TopDevz.

Q Okay. So if you have access to the Zoho account, what are some of the things that you would see?

A Well, it depends on your permissions, of what you have access, to. And that is derived from your Goggle accounts that we have at TopDevz. We use Google Enterprise. So once that Google Enterprise account is activated, it will give you access to different things depending on your access level. But it would also be used to log in to any of the Zoho products, which is different tools -- Zoho's like a big, different tool base for companies. One of them is accounting, like a QuickBooks. It would be exactly like a QuickBooks.

So when I say Zoho copy, I'm referring to you can go into Zoho or, you know, a competitor of Zoho, QuickBooks, and download the company because that matches the tax filings. Because prior to this, we were using spreadsheets, which is what he was trying to access, and I was trying to make sure he was getting accurate information.

Q Okay. So you're saying that there was a spreadsheet that you used before Zoho Books?

A When we first started the company, yes, we did everything by spreadsheet.

Q Okay. And who -- what did that spreadsheet include?

A It included all the customers, their payment terms, their billing cycle, revenue, the expenses against each consultant per customer. It included all of the lead generation bonus broken down monthly, my salary, W-2s, any commissions paid to W-2s. We had one employee, Donovan Stevens, who got some commissions, and Arash.

All of the Mobile Monster expenses were categorized in there. So airfare, hotel, meals, SaaS charges, any advertising that was done. Pretty much any money that was spent on behalf of TopDevz was captured on that spreadsheet broken down by line item.

Q Okay. So that was the initial -- that was an initial document that you used to handle the accounting for the company; correct?

A Correct.

Q All right. And was Mr. Davis given access to that document?

A From day one.

Q And how was he given access to that document?

A Through his Google account.

Q And this was a Google account through TopDevz?

A Correct.

Q All right. And so with Zoho Books, one question is, when Mobile Monster was being paid commissions, or if there was expense reimbursement, were there invoices that were issued from Mobile Monster?

A Yes, there was.

Q And there were invoices that were generated for every bill that was being paid to Mobile Monster; correct?

A There should be, yes.

Q Okay. Who suggested that you do that or was -- did someone suggest doing that?

A Nobody really suggested it. The only modification they started asking to do was to separate out the commissions and the reimbursements so that they can have a better accountings for the details without having to go back to several different months and try to figure it out.

Q When you say they, who are you referring to?

A The accounting firm.

Q Okay. The invoices, are those accessible through Zoho Books?

A They are.

Q So if someone can sign into Zoho Books for TopDevz, they would access to seeing those invoices?

A If their account is granted that level of access, yes, they would.

Q Okay. What about Mr. Davis?

A Mr. Davis was given access to Zoho Books to review reports, download reports, look at P&Ls, balance sheets. He was given access to our Zoho Pulse, which is what he was referencing about the product that generates the forecast of the hours and the clients. He was given access to Zoho CRM, which is the customer relation management tool that we use. And he's been access- -- he's given -- been given access to other tools that I don't think he's ever used or doesn't really need to access, but if he wants to access them, he can.

Q Okay. All right. Now, walking through this exhibit -- and quite frankly, it's something we've discussed before, but I haven't heard from you about this.

He -- so you say at the very end, "the Google sheet is so you can see where the monies are going."

A Yes.

Q So what are you referring to there?

A So that's what I was referring to, you know, Zoho Books, because we were just transitioning from the spreadsheet to the books. The accountants were lumping a bunch of categories like consultant reimbursement in one line time, and I wanted to make sure he saw the breakdown of what that reimbursement was. So if he went on to that Google sheet, he would see the breakdown of the individual categories that I just mentioned.

Q   All right. So he responded, he says, "A PDF would be fine. They are requesting the P&L and the balance sheet"; is that correct?

A   Yes.

Q   And then you mention, "You have access to Zoho Books. You can print it if you want. I can do it later."

So you're saying that the balance sheet and all that information is in Zoho Books; correct?

A   Correct.

Q   All right. And I think we've previously established this exhibit.

I'm going to move on to Exhibit 14A. And, again, this is a continuation of the conversation between you and Mr. Davis when he was requesting P&Ls and some other financial information.

It looks like here on the right-hand side -- this is, again, text correspondence, just to be clear.

On the left-hand side is Mr. Davis; correct?

A Yes.
Q And on the right-hand side is you; correct?
A Yes.
Q All right. And here you -- it looks like you've sent a PDF of the balance sheet to him; correct?
A Yes.
Q And also a PDF of the profit and loss statement; correct?
A Yes.
Q And he responded and says, "I got into Zoho"; right?
A Yes.
Q So it looks like you have a little bit of back and forth. And you're referencing that -- it says, "Below here," immaterial looking at the end of the conversation. "You say there is different portals for each."
What are you referring to here?
A So he's saying that -- you know, it seems like he was confused where to log in to Zoho Books, and I'm assuring him that you do have access. You're probably not going to the right portal. And then he says, "I don't know what to tell you. I'll give you a screenshot." And I said, you know, "Yes, there's

different portals, as I just explained." And he said, "I will explain later" -- "I will try again later. No big deal. Thanks for sending the report."

And just to be sure, I actually resent him the invitation to make sure that we had a fresh e-mail in his inbox to make sure he would be clicking on the right link to access to Zoho Books. And then he's inviting me to some Andrea Bocelli concert after that.

Q Okay. All right. So TopDevz, I think we've established this before, but it's effectively a -- it's in the software space in terms of the company, it focuses in the software industry; correct?

A Software development, yes.

Q So, is it fair to say, that in terms of how you work or how the company works, it looks for software solutions to run its organization?

A Yes.

Q So the way that it operates is it will use different electronic platforms in order to handle something. Instead of sending out a hard copy of a P&L, you can access it online in some sort of application or software tool; is that fair?

A This was the death march at Surge, where they were using spreadsheets to do all this stuff, and, you know, there's a modern way to do this stuff, which is use cloud platforms like Zoho and different systems that we use to work remotely and to give people instantaneous access.

The spreadsheet also can create room for human error, and if you catch it, it would just be another, you know, line item there. But, you know, the cloud-based platform, like Zoho accounting, has all the built-in functionalities for an accounting software that any more mature company would be using.

Q Okay. And so at the very end he's saying -- he says, "Thanks for sending the reports."

You sent him the reports he was requesting, to your knowledge; correct?

A Yes. And I sent him the new invite, just in case he couldn't find the e-mail to get onto Zoho.

Q Did he respond back to you and say that he couldn't get in at that time?

A I never heard about this particular instance back, as you can see, he asked me for who Andrea Bocelli is.

Q Okay. So the answer is that after you granted him access again to make sure he had it, he didn't come back to you and say I don't have access, to your knowledge?

A   Not to my knowledge, no.
Q   Okay. At least -- I want to be very clear about that.
He didn't come back to you immediately and ask -- and say that he couldn't get access?
A   No.
Q   Okay. All right. Let's move on to the next exhibit, which is 15A. And again, this is more text correspondence between you and Mr. Davis.
The correspondence is -- on the left is Tyler Davis, to your understanding; is that correct?
A   Yes.
Q   And on the right-hand side is you; correct?
A   Yes.
Q   Now, I'll just read this for the record.
On the left-hand side what it says, it says, "I'm just sending you what I am getting. I will be honest it doesn't give me a warm and fuzzy. I also don't get a bill from Google for AdWords. Mobile Monster does. And then I get a bill for Mobile Monster, which just makes everything more complex and messy. I honestly don't have time or energy to dwell on this or do I care, but moving forward all bills for TopDevz need to go to TopDevz and be paid by TopDevz. There is no reason to do it any other way.

Employees who work for TopDevz should be paid by TopDevz. Does that make sense? I need to be able to look at a report like this and say that's wrong, not be sitting here going" -- it says "going shit is wrong," excuse my language. "Doing that makes" -- "Does that make sense? I think we need to simply unless you can give me a reason why we shouldn't."

Does that -- is that correct?

A Yes.

Q All right. You respond and say, "It is simple, dude. Everything is broken down in detail on the P&L. I can add you to the Google account. You can see the live spend, every dollar is accounted for"; correct?

A Yes.

Q He says, "That would be awesome. Like I said, I don't care and I don't want to question it ever. You are my partner. I don't want to ever question or have reason to question"; correct?

A Yes.

Q You said, "It's totally fine Tyler. I can see your point"; correct?

A Yes.

Q All right. Let's move on to the next exhibit, which is a continuation of this

conversation, Exhibit 16A.
And, again, this is a continued conversation via text between and you Mr. Davis; correct?
A Yes.
Q And on the left-hand side is Mr. Davis; correct?
A Yes.
Q And on the right-hand side is you; correct?
A Yes.
Q Now, it looks like at the top, it says you said, "One sec"; right?
A Yes.
Q He says, "I love you Ashkan, everything about you. I have to trust you a hundred percent. It doesn't work any other way"; right?
A Yes.
Q And you immediately responded and said, "I just gave you admin rights to the Google account," and there's a screenshot, it looks like, of the Google account; is that right?
A Yes.
Q He responds immediately and says, "Awesome. Thank you"; correct?
A Yes.
Q And then you sent him a screenshot, and

just -- and it says -- and there's a -- it looks like the Google account, you say, "I will reset your password for TopDevz. I just changed your TopDevz ones" -- "one," and then you listed "to 12345678. You will need to change it when you login again"; correct?

A Yes.

Q He says, "Awesome"; right?

A Yes.

Q You said, "Also, if you look on the P&L, everything is broken down by category. So you can see the AdWords spend matching the amount in Google account"; correct?

A Yes.

Q He responds, "So now I have a warm and fuzzy"; right?

A Yes. Can I elaborate on that?

Q Yes.

A This is very important, because this was a time where I felt that Tyler was not trusting that the Mobile Monster charges for AdWords were not actually going to AdWords, which is why he was asking for access to the AdWords account. So you pay -- so the reason why there wasn't a debit card for TopDevz or a credit card, because it didn't have any, is because our spending on AdWords some months would be $200,000 on my personal American Express.

So what would happen is TopDevz would get an invoice for Mobile Monster, for like 250 grand, and I'm like, that's a lot, yeah, it is a lot, but then when I went into it, I'm like, well, it was $180,000 of Google charges on my card. So when Tyler saw this, because he saw the amounts going to Mobile Monster, this was his way of not confronting me, that he doesn't trust me, but basically asking me, look, I know you're charging for whatever you're paying on your Amex for your Google. Even though it's broken down, as I say, on that spreadsheet line by line item, what he wanted to see is was the money actually going into the Google account to run the ads.

So in order for him to have zero doubt that that is where the money's going, I gave him admin access to the actual Google ads account, which he can log in and see the payment history and the charges from Google. That's why he's saying, "Now I have a warm and fuzzy," because he can follow the money from, you know, where everything is going.

The reason why we could not do it out of TopDevz, as he was suggesting earlier, because the bank account and the cash flows didn't have the money. So I had to support the cash flow, and I have e-mail correspondence with him, where I'm like, dude, there's a quarter million dollars on my Amex, like we need to deal with the situation. But anyhow, this is where it landed, so I think this was --

Q Well, you can talk about that a little bit, which is why would there be a cash flow issue? What was the cash flow issue? Explain that.

A Well, one, we were a startup, we were generating revenue. And when we started to generate revenue, we were growing, and the accounts we were starting to land were getting larger and larger. So our payment terms were going from net 15 -- like Becton, Dickinson, for example, a Fortune 50 company, is not going to change their payment terms because of TopDevz.

And I get asked this question every day. Josh will come to me and say, hey, I need you to accept this or talk to them, and I try, but they're like, listen, our terms are our terms. You want to do business with us or you don't. So I'm not going to turn down a Fortune 50 company. So we say yes, but it creates a lot of cash flow issues because the payment terms are getting extended.

Compounding that problem is we weren't

getting paid on time with the payment terms. So they would say net 60, and it really became net 90, some of them were net 120. So it just became, you know, that compounding issue. And I can't blame the customers for that, but this is -- this is why it was structured that way.
Q Okay. So I do want to talk about something related to this very quickly, which is -- so is Becton, Dickinson -- is that the correct way to say it?
A BD, yeah.
Q Okay. Are they a client of TopDevz?
A Yes, they are.
Q Okay. And what is -- do you know what the revenue is for them, generally, per year?
A We signed a statement of work with them for a PO for $750,000.
Q For what year?
A It started, I want to say, in 2020, and it's actually coming to its end now, but they're talking about renewing.
Q Okay. So $750,000 for that work?
A Correct.
Q Okay.
A The purchase order is that much.

Q All right. Let's move on.
THE ARBITRATOR: Is this a good time for a break?
MR. MATTHEWS: Sure, we can do that.
THE ARBITRATOR: And then we'll go for maybe -- let's take a ten-minute break, and then maybe plan on going another 30 minutes or so.
MR. MATTHEWS: Sure.
THE ARBITRATOR: What is your time estimate for Mr. Rajaee?
MR. MATTHEWS: I think what I have left would be about an hour and a half to two hours.
THE ARBITRATOR: Oh, all right. We won't be finishing tonight, then.
MR. MATTHEWS: I think we'll have to continue a little bit into the next day.
THE ARBITRATOR: All right. All right. Then, let's take a ten-minute break. Come back like at 4:10.
MR. MATTHEWS: All right. Perfect. Thanks so much.
(Recess taken from 3:58 p.m. to 4:10 p.m.)
THE ARBITRATOR: Okay. I was just looking at my notes. Did we agree -- since it looks like -- since

it looks like we are going to need additional hearing time, did we agree on December 13th as our additional day?

MR. CARPENTER: Yes.

THE ARBITRATOR: Okay. So -- and can we start at 9:00? Will that work for everyone?

MR. CARPENTER: Yes.

THE ARBITRATOR: Okay. Mr. Matthews, does that work for you?

MR. MATTHEWS: Does that work for you, 9:00?

MR. RAJAEE: Yeah, I can do it.

THE ARBITRATOR: Okay. So we'll start at 9 o'clock on December 13th.

And Mr. Matthews, I know you have a bit more time with Mr. Rajaee. And then do you have other witnesses after Mr. Rajaee?

Oh, Mr. Matthews, you're muted.

MR. MATTHEWS: I may call Mr. Davis, otherwise, that would be it.

THE ARBITRATOR: Okay. All right. Well, then, let's see what we can do today. Since we're not going to finish and it has been a long day, can we go till about 4:45? Just I have a few things that have piled up that I could sure use even 15 minutes to take care of.

MR. MATTHEWS: Completely understood. That's fine with me.

THE ARBITRATOR: Okay.

MR. CARPENTER: I'm sure Susan will appreciate it.

THE ARBITRATOR: Okay. All right. Well, then, let's continue working for another half-hour or so.

And Mr. Matthews, the floor is yours.

MR. MATTHEWS: Okay. Thanks so much.

Q So we're back on the record, and we were looking, just to be clear, at Exhibit 16A; right?

You know, I just want to touch real quickly, before we move on to the next exhibit, can you quickly, Mr. Rajaee, explain the purpose of your purchase of the Bentley and Rolls-Royce that have been mentioned.

A So the cars were a tool to fit into one of the puzzles pieces I was trying to explain but wasn't given the opportunity to finish. But, essentially, they were used to create a certain image for the company and also be used in our content generation for the social media channel for TopDevz, LinkedIn, basically all the stuff that we do. So that was just -- it was a part of that campaign.

Q Can you explain, or give a specific example, of how maybe, perhaps, the Rolls-Royce helped to close any business?

A Specifically, I remember the CIO of Procore, who contacted us, and his name's Mike Hanson, and I purposely took the call inside the Rolls-Royce because I wanted to, you know, show a particular image. And the first comment he made was, you know, "Dude, are you in a Rolls-Royce?" And I'm like -- you know, I kind of played it off, but I was doing that intentionally.

And then after that call, he introduced me to the head of somebody else at Procore. I can't -- I think it was Samantha. I can't remember her name. And ultimately they asked for, within a week of that conversation, four or five more developers. And then we couldn't fulfill it because of the whole Tyler thing, we lost Siarra, so we lost some of that revenue.

But that would be a specific instance where I could definitely tie the credibility of the comment that he made. It just kind of put me on a different level with him. And, ultimately, Procore went public a few months ago, and we were a part of that, so --

Q Okay. So can you explain, do you recall what Procore, what their revenue is per year, or

roughly?
A I don't. I don't know. I know that they're construction management. Tyler knows. His company uses Procore. But it's basically a construction management software, and like I said, they went public a few months ago.
Q Okay. All right. Let's move on to Exhibit 17A. Now, I'm not sure, we'll see if you -- how you can speak to this.
But this is -- this is a screenshot of a -- it looks like an e-mail from Tyler Davis at his Porter Consulting, LLC, to Jennifer Glaser where it states, "Jennifer, can you send me the 2020 taxes and my K-1 for TopDevz?"
How do you have access to this e-mail?
A So TopDevz uses Google Enterprise edition, and one of the functionalities of the administration for the domain of TopDevz is the administrator can view all activity on a user's account, which is how you found out he's accessing files, you know, making requests to Jennifer, and copying his TopDevz e-mail.
If he would have sent that e-mail from Porter Consulting, it says there to Jennifer Glaser, we wouldn't have seen it, but because he copied TopDevz.com, and I'm a super admin user, we can view

all activity relating to what files are accessed, when they're downloaded, e-mail corres- -- basically e-mail correspondence.

And this was in place way before the litigation, just so you know, because sometimes our developers, they use -- they'll swear at a client or something, or there's some key words that Google, for like corporate compliance, tries to detect. So I get alerted when those kinds of things happen. But in this specific case I used the administrator portal to go in and view activity on his e-mail account.

Q Okay. So this is -- so basically through your ownership of TopDevz IP or its assets, you can access this communication?

A Correct.

Q Okay. Now, it looks like this e-mail was drafted or sent on October 12th of 2021. So this year, relatively recently.

Do you have any reason to believe it wasn't?

A This is directly from the Google admin portal. So if it's in there, he copied TopDevz.com at 1:58 p.m. on October the 12th, 2021.

Q Okay. All right. And, again, so this is a request for the 2020 taxes and K-1 for TopDevz; correct?

A Yes.
Q All right. So let's move on to the next exhibit, Exhibit 18A. And this is dated October 14th, 2021. So it looks like two days later, and it's an e-mail from Jennifer Glaser to Tyler Davis at his Porter Consulting, LLC, account, and also at his TopDevz.com account.
How do you have access just to this, just to clarify for the record?
A Same way I have access. Except if you look at system labels, Google tracks if the user opens the e-mail or not. The reason why I think this is important is because it's saying that it hit his inbox on his TopDevz domain, and he opened this e-mail on his TopDevz domain. So as of October 14th, he still had access to everything.
Q Okay. Now, Jennifer Glaser, she's the accountant for TopDevz; right?
A Correct.
Q And when she gets requests for corporate documentation, does she generally contact you or does she advise you?
A Generally not, but since the litigation started, you know, I was asked to go through counsel on any communication regarding TopDevz. And she

reached out and told me that Tyler's requesting returns, and I told her, "Give him whatever he wants" --

Q Okay.

A -- "relating to TopDevz, LLC.

Q All right. Thanks for clarifying.

Let's move on to Exhibit 19A. So this is an invoice for Mobile Monster. It's dated June 5th of 2017. It looks like a little bit after the company was formed, a little less than a month after the company was formed --

A Yes.

Q -- correct?

A Yes.

Q And so this invoice, it states it's for lead generation fee and expense reimbursement for -- the amount is $50,000 -- $50,718; correct?

A Yes.

Q And you stated before that you work with Zoho Books for your accounting; correct?

A As of 20- -- or towards the end of 2019, 2020, yes.

Q And Mr. Davis has access to the account for TopDevz through Zoho Books; correct?

A Yes.

Q All right. And are these -- does he have access to these invoices?
A They should all be in there, yeah.
Q Okay. Now, before I move on, I actually want to touch on one other issue. The -- because we had talked before about the Bentley and the Rolls-Royce. I want to talk real quickly about the private jet.
You said that there's a management company, a company that manages the jet; correct?
A Yes.
Q And so can you talk a little bit about the documentation that's in place with regards to the use of the jet or how that works?
A I can't remember the lady's name, but she is a private aviation attorney, specializes in private aviation matters. She set everything up. And she -- there's all this dry lease, web lease, FAA stuff, a bunch of documentation on that.
And then on the use of the aircraft, when the aircraft is being used or maintenanced [sic], every dollar that is spent on the plane is actually done through Lone Mountain. They're the ones who front the expenses. And then -- actually, they don't front, sorry. They ask for a $50,000 retainer, and

then they would deduct from that. And as the aircraft's being used, we would be replenishing that, which is why the invoices and amounts you see going to Lone Mountain. And they send me very detailed, with all kinds of receipts attached. They're like a hundred pages long for like two trips. It's everything from a $3 Subway sandwich up to $20,000 maintenance on the aircraft.

Q Okay. And when you're using it, can you give us some examples of when you've been -- or when you've used this aircraft and what for?

A So I use it in various ways. One is when we first got it, there was an account in Denver that was very timely. And I went to go see her, she's the vice president of a company called Alchemer. I don't know how to spell it, Alchemer. And she -- their office is very -- like kind of remote. And that would be one opportunity that I took to go see a client right away, face to face, because I saw the opportunity.

And she has on her -- they're currently a client of ours right now, with four or five active developers, so that's about a hundred thousand in revenue, but they're activity planning with us right now for anywhere from 15 to 20 more developers. And that would be an instance of using the plane to go see a client on demand, right away, and do that.

While I was there, there was a joke made, because she found out what airport I landed at. And it wasn't Denver International, it was some weird, you know, in the middle of kind of nowhere airport. She goes, "Oh, that's a private airport." And then I was like -- I joked back with her, I'm like, "Oh, yeah, you know, we got a plane to get around." She's like, "Oh, you guys must be doing really well." I said, "Yeah, you know, we're trying." I just kind of played it off. 20 minutes later, she walked out of the room and brought the CEO of the company into the room and introduced me directly. So this would be another example of how I strategically played it off, like it was coincidental, but it was staged, like to get to them. That would be one.

And then while I was there, I was able to see this CFO of Bankers Bank of the West, a bank that I was developing a relationship with. And he could only meet at a certain time, where the jet became flexibility for me to just wait for him. So I did, I met with him too. And then I used the jet to go to Florida to meet with some folks, and at that event, I was introduced to the chief operating officer of

Fraser Yachts. So their clientele literally is billionaires. These are 200-, 300-foot mega yachts.

And the joke was, again, you know, the flexibility of the airplane, and, you know, I bring it up for marketing purposes so that it established some sort of almost like a category of people you're talking to. And so they introduced me to a bunch of people there, and I'm building relationships with them and trying to get, you know, TopDevz into there.

I was introduced to someone there. I forget his name right now. And they're doing a very large project, of which they -- as soon as they found out we do software development, they're like, "We need to talk." And he's currently traveling right now, but they're on the calendar at the top.

So there's some specific examples of -- from just as a tool to get around when I need to, that the plane is being used. Everything else is for the marketing side, you know, the image of, you know, what we put out on social media contact and stuff to leverage the image of a successful software consulting company.

Q Okay. All right. I want to move on to Exhibit 20A. And this is -- again, this is another invoice for Mobile Monster. This is dated

November 1st of 2017. This is, it says, consultant reimbursement expenses for $14,062.74.
Does that look correct to you?
A It looks correct, yeah.
Q Okay. Is this an invoice that is available in Zoho Books?
A It should be.
Q And it would be available to Tyler Davis; correct?
A It should be. And if it isn't, he can ask for it. Siarra Wood was actually handling all of this invoicing stuff by the way.
Q All right. Did -- from your understanding, were you aware of correspondence between Tyler Davis and Siarra Wood regarding accounting or any other issues?
A There was several communications between Siarra and Tyler. One was for a PPP loan he was trying to get for Porter. Another was for some sort of net worth statement. Another was our -- our taxes that we pay on payroll, the W-2 quarterly reports. I don't know. I just -- I tell her talk to Jennifer, she'll tell us where to go get it.
And then there was times where he would ask for the P&L. And right before this litigation he

asked for all the transfers that have been made to Mobile Monster, and the amounts Mobile Monster actually received. And I -- and Siarra asked me about, you know, "Tyler's asking for Mobile Monster stuff," and I said, "Give it to him."

And so I pulled my American Express cards personally and I sent it to him. And Siarra sent him a whole bunch of information on Mobile Monster.

Q All right. So let's move on to Exhibit 21A. This is back to some correspondence with you and Mr. Davis. This is text correspondence between and you Mr. Davis. It's dated November 25th, 2019. I'm looking here at the time stamp above where it's been highlighted.

Does that look correct to you?

A Yes.

Q And on the left-hand side is Mr. Davis; correct?

A Yes.

Q And on the right-hand side is yourself, Mr. Rajaee; correct?

A Yes.

Q All right. And it states for Mr. Davis, he says on November 25th, 2019, at 10:14 a.m., he states, "When you get a chance send me the meeting invites for the executive meetings. I would like to start attending. I will also be arriving at about 8:30 to the office next Thursday, leaving Friday night."

Do you recall what this is in reference to?

A A hundred percent.

Q Can you tell us what that's in reference to?

A So that was the year, towards the end as you can see, I think we did almost 8 million in revenue. And I had approached Tyler to say, you know, I know you're running Porter Consulting, but, you know, he had told me he'd never had more than 5, 6 million in revenue at Porter Consulting even though it's been around for 10, 15 years or however long it's been around. And I said to him, I said, "Look, this company's really growing. I could use your help. And it's going to need a chief operating officer, and, you know, if you want to build it like we did at Surge, come, you know."

And, you know he said that he's not ready because he doesn't understand the software language yet. He was supposed to start in January as the chief operating officer, which he eventually did. But this text is in reference to he wanted to start getting onboarded in December, getting himself acquainted with the people at the company, the process of the company, kind of the stuff that we did inside the company on a more kind of intimate level.

And then we were having an employee get together in San Diego. And he was -- he came for that trip and met all the people in person.

Q Okay. And after this conversation, was it custom and practice for -- actually, strike that.

Was -- were you involved in management meetings with Mr. Davis regarding TopDevz?

A Prior to this, no. I would consult him pretty much about everything. And -- yeah, I consulted him pretty much on everything. But he wasn't attending meetings until kind of this time period.

Q Okay. But did he start to get involved in negotiating contracts with clients?

A Absolutely, he negotiated. Well, he would review the terms of the contract, and if he was comfortable with some of them, he would do client facing calls. But the majority of it would be he would help Sarah with the terms of the contract, and ultimately, I would be brought in to negotiate the terms. But I would rely on him to review the contracts, to make sure that we were comfortable as a company with the terms that were on that particular account.

Q Okay. And if he wasn't comfortable with the terms, did you ever discuss it with him?

A Yeah. We went back and forth on e-mail threads all the time.

Q All right. Did -- you said you were -- let's say before you purchased the jet, you were using a jet, were you leasing it, or how did that work?

A Are you talking about JetSmarter?

Q Yes.

A So we used JetSmarter to get acquainted with private aviation and jet guards and, you know, what a jet can do, and the benefits and the costs, and, you know, just kind of getting into that. So prior to that jet, we were on JetSmarter for three years.

Q And were you using it as a tool at that time to visit clients?

A Same reasons why I'm using the jet now. Clients, marketing, content for the social media, and stuff that we do. And I actually met Hugh Jackman on one of the flights, which was pretty interesting.

Q Well, in connection with these flights, I'm going to talk about those relationships in a second,

but did Tyler come with you on some of these flights to meet clients?
A On some of them, he would, yeah.
Q And can you give us an example that you recall of a client meeting with Tyler?
A We went to Texas once and we met with Steves & Sons, which is based out of Austin, San Antonio. And then I think we did a Chicago trip. I've done several with him. I'm not remembering all of them off the top of my head.
Q Well, let me ask you a question. Generally, how much do you travel?
A When we had the JetSmarter membership, I think I took about 160 flights.
Q In a year?
A It was over the period of three years.
Q Over the period of three years?
A Right.
Q Okay. So you're traveling, is it like a couple times a month?
A In the beginning, it was, I think, a lot more than a couple times a month.
Q Okay. So I'm going to move on to -- actually, let's talk about the -- you just referenced something about Hugh Jackman. I'm wondering if

there's any significance there. Can you explain if there's any significance to that interplay or introduction?

A So I have a selfie on a private jet with Hugh Jackman and myself only, and I've used that I don't know how many times to gain credibility, taking wow factors with clients, that'll be like, "Oh, wow, you know Hugh Jackman?" And they just want -- they just want -- you know, it's kind of the product hook. Right? It's like I have a connection to him and his wife Deborra, and so that is interesting to people.

So I've used it on LinkedIn in. I've used it on YouTube. I've used it on text messages with folks. Tyler has used it and shared it with people in his network. So, I mean, it would be those types of things where we would retool and repurpose for marketing.

Q So what's the significance of using some of these tools to develop a relationship with a client? Why is that significant for TopDevz?

A Because it's kind of like a real estate agent, right, if I'm to really simplify it. You generally work with the real estate agent that is either top of mind to you or has incredible credibility to make you go with them over somebody else. Right? Our business is kind of a when-you-need-us kind of business, and we can't just keep pushing the same content. So building those relationships keeps us top of mind, so when there is a need, they come to us.

The second part of relationship building is when there are problems on accounts, which we experience at TopDevz, they leave us -- for them to leave us becomes a little bit harder. They give us more opportunities, they give us more at-bats to fix the problem because there's that's personal connection.

Q So you're saying that you are making a calculated investment into a relationship with people at a company to build longevity of a relationship; is that what you're saying?

A That entire model I was trying to explain that I wasn't able to finish hinges on the ability to keep track of all of these relationships and foster them and grow them.

Q Okay. And then from a sort of connectivity point of view, what is the general role of the people that you're dealing with at a company? Are they generally key level executives, or who are you generally dealing with?

A   So we had the -- when we started the company, it was more managers and some CIOs. Since kind of this push in the marketing content side, it has turned into a lot of board level members, some of them, you know, incredibly ultra high net worth individuals that own companies. CEOs of larger companies, CFOs of larger companies.

So, you know, it's also interesting to note that when I used to text these people four years ago, I wouldn't get a reply, where now I will send a message, and I get a reply. And that tells me right there that the relationship is at a different level. Right? And I pride myself on that, because that's what I've been busting my ass to do, is build this infrastructure.

Q   Understood.

And so from your perspective, do you also believe or have you -- strike that.

From your perspective, have you experienced situations where you -- where these individuals have an expectation of a lifestyle when they're interacting with you?

A   I have received numerous messages, text messages, phone calls, leads for TopDevz, where they reference the jet or will reference the show or will reference the Rolls-Royce or the Bentley, and say, "Hey, I really like your show on this content," blah, blah, blah, "I need this."

And I even have people reaching out to me for business advice, how can I get a jet, how can I get a Rolls-Royce, how can I get this, how can I get that. And my answer's honest, you know, I work hard, I do it, whatever. But the one thing I'm careful of is not to fake it. Right? And that's, I think, important in what I'm doing, is I'm not being disingenuous by doing it. I'm strategically using it for the benefit of the company.

Q All right. Let's move on to Exhibit 22A.

THE ARBITRATOR: Is this maybe a good stopping point?

MR. MATTHEWS: I think so, actually, yeah.

THE ARBITRATOR: Okay. Because I think it takes about 15, 20 minutes per exhibit. So it might be a good stopping point.

MR. MATTHEWS: Okay.

THE ARBITRATOR: So till December 13th at 9:00 a.m.

MR. CARPENTER: And will we get a new link from Elizabeth?

THE ARBITRATOR: I assume so, now that she knows that we definitely need it.

MS. ROBERTSON: Yes, I'll circulate one for the 13th.

MR. CARPENTER: Thank you very much.

THE ARBITRATOR: All right. Well, everyone, thank you so much for your hard work, and, you know, you've stayed alert through all this and worked really hard. Thank you very much.

And you too, Susan, the court reporter, appreciate all your good efforts.

So I'll see you all on December 13th, and any problems or questions, just touch base with the case manager Elizabeth, and we will address them.

MR. MATTHEWS: Sounds good.

Thank you, Susan.

Thank you, Elizabeth.

And thank you, Ms. Callahan.

(Proceedings concluded at 4:39 p.m.)

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 Cleveland

Susan L. Cleveland, CSR No. 10502