

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Appellate Case No.: 2016-001612
Civil Case No.: 2014-CP-40-4234

RECEIVED

OCT 16 2017

SC Court of Appeals

Luis Endara,.....Appellant,
v.
AVSX Technologies, LLC;
Bobby Johnson; and
Mary Kay Johnson,.....Respondents.

RECORD ON APPEAL – VOLUME I

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STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

CASE NO. 14 CP- 40-4234

Luis Endara

AVSX Tech, LLC

Bobby + Mary Kay Johnson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)



JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.



DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other



ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other



DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Verdict in favor of the defendants.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

D. Craig
Circuit Court Judge

2160
Judge Code

1-28-16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Feb, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Michael Sauter

Todd Ellis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

CLERK OF COURT
Janette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4004234

Luis Endara

AVSX Technologies LLC

PLAINTIFF(S)

Bobby Johnson

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Michael Holland Ellis Jr.

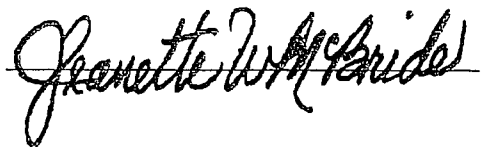
Todd Raymond Ellis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LUIS ENDARA

Plaintiff,

vs.

AVSX TECHNOLOGIES, LLC,
BOBBY JOHNSON, and MARY KAY
JOHNSON,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) CIVIL CASE NO.: 2014-CP-40-4234

) **ORDER DENYING PLAINTIFF'S**
) **MOTION FOR A NEW TRIAL**

RICHLAND COUNTY
FILED
2016 MAY -9 PM 2:10
JEANETTE W. MORRIS
Clerk of Court

This matter comes before me on the Plaintiff's post-trial Motion for a New Trial filed on February 8, 2016. The parties tried this case over four days with the jury returning a defense verdict on January 28, 2016. The grounds for a new trial Plaintiff offered in his Motion and those set forth in his Memorandum in Support for a New Trial filed on February 23, 2016, are not synonymous. However, for the purposes of ruling on Plaintiff's post-trial motion, the Court considers all the grounds raised by the Plaintiff in his Motion and the subsequently filed memorandum.

STANDARD OF REVIEW

The grant or denial of a new trial motion rests within the trial court's discretion, and its decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by an error of law. *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996). A new trial may be

1 Pck
p. 175

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granted to all or any of the parties and on all or part of the issues "in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State." SCRCP 59.

ANALYSIS

For the reasons set forth herein, the Court denies Plaintiff's Motion for a New Trial. The Plaintiff asserts that the Court erred in failing to charge the jury that under the South Carolina Uniform Partnership Act, Mr. Endara and Mr. Johnson were partners in the AVSX business and that a recovery for disassociating a partner could be the basis for an award for Mr. Endara. Further, the Plaintiff argues that in addition to charging the jury on the legal basis for recovery for Mr. Endara, wherein the jury could find he was a "Member" of AVSX Technologies, LLC, the Court failed to also charge an equitable basis for the Plaintiff to recover under the theory of unjust enrichment.

The Court denies the Plaintiff's Motion for a New Trial on the theory that Plaintiff should have been allowed to proceed under theories set forth in the South Carolina Uniform Partnership Act. First, the Plaintiff's Motion fails because Plaintiff ignores all pretrial conferences with the Court and opposing counsel wherein the Plaintiff chose only to proceed on his theory that he was a "Member" of AVSX Technologies, LLC and was entitled to recover for his purported distributional interest for wrongful disassociation from AVSX.

The Court questioned Plaintiff's counsel in pre-trial discussions on why a business operating as a Limited Liability Company that made corporate filings and filed tax returns as an LLC would be deciding its ownership rights under the South Carolina Partnership Act. Thereafter, Plaintiff's counsel informed the Court, without the Court

ruling, that Plaintiff was going forward only on his wrongful dissociation claim as an LLC member, and was abandoning all the Partnership Act assertions and other causes of action. Because the Plaintiff chose to proceed at the start of the case only with his theories of recovery under limited liability law, and failed to ask the Court to charge Partnership Act at the close of the case, the Plaintiff failed to preserve this issue. See *Vause v. Mikell*, 290 S.C. 65, 348 S.E.2d 187 (Ct. App. 1986). *Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 41, 358 S.E.2d 397, 401 (Ct. App. 1987). The Plaintiff's Motion for a New Trial is therefore denied.

As to the Plaintiff's argument that the Court erred in failing to charge the jury that Plaintiff could recover under the equitable theory of unjust enrichment, the Court also denies Plaintiff's Motion for a New Trial. The Plaintiff argues in his memorandum that a constructive trust was created under the facts of the case for the Plaintiff's corporate ownership rights and that this theory creates a basis for an unjust enrichment charge. At the beginning of the trial, Plaintiff narrowed his case and chose to proceed with his claim that he was a member of AVSX and was entitled to the damages for wrongful disassociation. The Plaintiff pled a constructive trust theory that was never pursued, or proven. Therefore, the Plaintiff's Motion for a New Trial should be denied.

Further, as to the Plaintiff's claim that a path for recovery for the Plaintiff of unjust enrichment should have been charged to the jury, the Motion is denied. Plaintiff's theory for recovery was based on the jury finding that he was a member of AVSX and the jury affirmatively stated on the verdict form at trial that the Plaintiff was not a member of AVSX. The only evidence offered by the Plaintiff claimed he was a member and that he was entitled to his distributional interest for the wrongful disassociation from AVSX.

There was no separate or alternative claim for restitution made by the Plaintiff during trial asserting that the Defendant was unjustly enriched. Unjust enrichment is usually a prerequisite for enforcement of doctrine of restitution; if there is no basis for unjust enrichment, there is no basis for restitution. *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C. 633, 720 S.E.2d 485 (Ct. App. 2011). 12 S.C. Jur. Equity § 23. "To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value." *Sauner v. Pub. Serv. Auth. of S. Carolina*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003); *see also Earthscapes Unlimited, Inc.*, 390 S.C. 616-17, 703 S.E.2d 225 (providing the same requirements to recover under the doctrine of quantum meruit).

Plaintiff offered no theory of recovery at trial that Defendants had been unjustly enriched and he did not provide a basis for which the jury could calculate or award him some form of restitution. Plaintiff's sole theory of recovery was set in how much AVSX was worth and what his distributional interest should be if the jury found he was a member. All of Plaintiff's claims arose from his purported membership interest of the LLC. Plaintiff presented no theory for recovery as to a benefit provided to Defendants that was not recovered by Mr. Endara. He was a highly paid W-2 employee during his tenure with AVSX. The evidence presented by Plaintiff for his damages was based on an evaluation of an ownership interest in the LLC for which the jury determined he had no such interest.

In cases of restitution and unjust enrichment, the appropriate measure of damages is the amount by which the defendant was unjustly enriched. 12 S.C. Jur. Equity § 23. No damages were presented for any unjust enrichment to the Defendants, and therefore there can be no claim for restitution and the Court properly denied charging the cause of action. No new trial is warranted and the Court denies the Plaintiff's Motion.

For the reasons set forth herein, the Court denies Plaintiff's Motion for a New Trial.

AND IT IS SO ORDERED!


D. Craig Brown, Presiding Judge
Court of Common Pleas
Fifth Judicial Circuit

This 27 day of April, 2016

Florence, South Carolina

PCB
P-575

14-0846
Rec. 5/17/16

Todd Raymond Ellis
7911 Broad River Rd., Ste. 100
Irmo, SC 29063

RECEIVED
5/20/2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LUIS ENDARA

Plaintiff,

vs.

AVSX TECHNOLOGIES, LLC,
BOBBY JOHNSON, and MARY KAY
JOHNSON,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL CASE NO.: 2014-CP-40-4234

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
THE DENIAL OF PLAINTIFF'S
MOTION FOR A NEW TRIAL**

RICHLAND COUNTY
FILED

JUN 24 AM 10:32
TE W. McBRIDE
P. & G.S.

This matter came before me on the Plaintiff's post-trial Motion to Alter or Amend the Denial of Plaintiff's motion for a New Trial filed on May 19, 2016. The parties tried this case over four days with the jury returning a defense verdict on January 28, 2016. Subsequently, Plaintiff filed a post-trial Motion for a New trial on February 8, 2016. On April 27th, 2016, this court denied Plaintiff's Motion for a New Trial.

Pursuant to this court's order, issued on April 27th, 2016, the Defendant filed a Motion to Alter or Amend on May 19th, 2016. After careful review, the Defendant's motion to alter or amend is denied.

IT IS SO ORDERED.

5-27, 2016


The Honorable D. Craig Brown
Circuit Court Judge

CERTIFICATE OF SERVICE

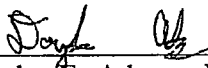
I, the undersigned employee of the Law Office of Todd Ellis, P.A., attorneys for AVSX Technologies, LLC, Bobby Johnson, and Mary Kay Johnson do hereby certify that I have served the opposing parties in this action with a copy of the document(s) hereinbelow specified by First Class U.S. Mail and E-mail to the following address(es):

Document:

Filed Copy of Order Denying Plaintiff's Motion to Alter or Amend the Denial of Plaintiff's Motion for a New Trial

Parties Served:

Michael Ellis
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
mellis@qlawsc.com



Douglas E. Adams, Legal Assistant

June 30, 2016

TODD ELLIS

LAW OFFICE OF TODD ELLIS, P.A.

7911 BROAD RIVER ROAD, SUITE 100
IRMO, SOUTH CAROLINA 29063

June 29, 2016

VIA FIRST CLASS U.S. MAIL

Michael Ellis, Esquire
Query Sautter Forsythe, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412

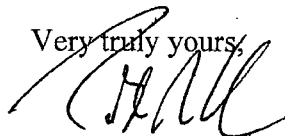
Re: Luis Endara v. AVSX Technologies, LLC, Bobby Johnson, & Mary Kay Johnson
Civil Action No. 2014-CP-40-4234
Todd Ellis Law File No. 14-0046

Dear Mr. Ellis:

Please find enclosed a filed copy of the Order Denying Plaintiff's Motion to Alter or Amend the Denial of Plaintiff's Motion for a New Trial in the above-referenced matter. If you have any questions or need anything further, please do not hesitate to contact our office.

With kind regards, I am,

Very truly yours,



Todd R. Ellis

Cc: Bobby Johnson (via e-mail only)
Mary Kay Johnson (via e-mail only)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
LUIS ENDARA,)
)
Plaintiff,)
)
vs.)
)
AVSX TECHNOLOGIES, LLC,)
BOBBY JOHNSON, and)
MARY KAY JOHNSON,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-_____

COMPLAINT

Injunctive Relief, Appointment of Receiver,
Accounting, Estoppel, Judicial Determination of
Distributional Interest

Alternatively

Piercing the Corporate Veil, Wrongful
Dissolution of the Partnership, Breach of Fiduciary
Duty, Resulting Trust, Constructive Trust

FILED
2014 JUL -3 AM 11:14
JANETTE W. HARRIS
CLERK OF COURT
RICHLAND COUNTY

NOW COMES the Plaintiff, Luis Endara, through his undersigned counsel complaining
of above named Defendants and would show upon this Honorable Court as follows:

1. Plaintiff is a resident of Richland County, South Carolina.
2. Defendant AVSX Technologies, LLC (AVSX) is a domestic at will limited liability company incorporated in the State of South Carolina and has its primary place of business at 1140 Briargate Circle Columbia, South Carolina 29169.
3. Defendant Bobby Johnson (Bobby) is a resident of Richland County, South Carolina.
4. Defendant Mary Kay Johnson is a resident of Richland County, South Carolina.
5. This court has jurisdiction over the subject matter of this Complaint and the parties named herein, and venue is proper in Richland County, South Carolina.

FACTS

6. In March of 2007 Plaintiff and Defendant Bobby formed a business for profit, Protection 24, in which Plaintiff alone contributed in excess of \$125,000 of personal money as initial capitalization.

7. In September of 2007 Plaintiff personally guaranteed a \$35,000 business loan to further contribute to Protection 24.

8. On January 31, 2008 Plaintiff and Defendant Bobby opened a second business for profit, Guardian Eagle Security LLC, and began the winding up of Protection 24.

9. During contract negotiations with prospective clients of their business Plaintiff and Defendant Bobby decided the best course of business would be to not name themselves as members in the Articles of Organization.

10. At the incorporation of Guardian Eagle Security LLC there was no written operating agreement and the parties' course of performance was that Plaintiff and Defendant Bobby would equally share in both the losses and profits of the business while equally sharing in managerial authority.

11. Defendant Bobby admits that he and Plaintiff built and developed the business together, and that they are the only members of the business.

12. Plaintiff and Defendant have previously appeared in regulatory actions, wherein both referred to Plaintiff as an LLC member.

13. From the beginning of their joint business venture Plaintiff and Defendant Bobby agreed to forgo immediate personal financial reward in order to reinvest in the growth of their business, instead of taking money out of the business.

14. At the time of the formation of Guardian Eagle Security, LLC Plaintiff and Defendant Bobby mutually agreed that the best business strategy was to have Julio Reis as the only listed officer of the LLC while they in fact were the true owners and managers of the LLC and Mr. Reis was to act as a mere figurehead with no authority to act whatsoever.

15. Upon information and belief based upon personal concerns, Defendant Bobby negotiated with Plaintiff to make his wife, Defendant Mary Kay Johnson, the figurehead LLC officer in place of Julio Reis in order to help financially to provide for her.

16. Upon the belief that he and Defendant Bobby would continue to act as the true co-owners of AVSX Plaintiff agreed to replace Julio Reis with Defendant Mary Kay Johnson.

17. On February 7, 2011, Plaintiff and Bobby Johnson together made a business decision to dissociate Julio Reis as the only officer of their LLC, and to replace him with Defendant Mary Kay Johnson, wife of Defendant Bobby Johnson; Plaintiff and Defendant Bobby continued to manage and operate the business as the only co-owners or members and Defendant Mary Kay Johnson was relegated to the same figurehead status as Julio Reis with no authority whatsoever.

18. On September 1, 2011, Plaintiff and Defendant Bobby together changed the name from Guardian Eagle Security, LLC to AVSX Technologies, LLC.

19. On or about March 21, 2014 Plaintiff received a letter from counsel for Defendants claiming that Plaintiff was a mere employee rather than a member and co-owner of AVSX and thereby terminating him from employment.

20. Since Defendants have claimed that Plaintiff is a "terminated employee" they have also denied him his rights as co-owner and LLC member of AVSX including but not limited to:

- a. The right to manage the business;
- b. The right to distributions;
- c. The right to business records; and
- d. The right to access to business property.

FOR A FIRST CAUSE OF ACTION
(Preliminary Injunctive Relief)

21. Plaintiff re-alleges paragraphs 1-20 of this Complaint as if specifically set forth herein.

22. Upon information and belief, Defendants are contemplating either a sale or merger of AVSX.

23. Injunctive relief is necessary to ensure that Defendants do not wrongfully and irreparably sell or dissipate Plaintiff's interest in AVSX absent an agreement or Court Order.

24. If Defendants are allowed to proceed with either a sale or merger of AVSX absent Plaintiff's statutory right to participate in all business decisions, Plaintiff will suffer immediate and irreparable harm by having his interest in AVSX wrongfully sold or dissipated.

25. An injunction is proper to preserve the status quo as Plaintiff is likely to succeed upon the merits of this action as either a member of AVSX Technologies, LLC or in the alternative as a partner with the Defendants.

26. If Defendants are allowed to proceed with either a sale or merger of AVSX Plaintiff will have no adequate remedy at law.

FOR A SECOND CAUSE OF ACTION
(Appointment of a Special Receiver)

27. Plaintiff re-alleges paragraphs 1-26 of this Complaint as if specifically set forth herein.

28. AVSX is being run to the exclusion to Plaintiff's statutory right to participate in business decisions.

29. AVSX has refused to provide Plaintiff information as to the company's financial status, income, payments for hold backs, liabilities, debts, and expenses all to the detriment of Plaintiff who has now had to ask the Court to determine his distributional interest.

30. AVSX is a business that was created and modeled by Plaintiff's intensive oversight from its inception, and is therefore likely to experience great detriment in the absence of Plaintiff's management.

31. Appointment of a judicially determined Special Receiver is necessary to insure that AVSX is continued to be operated as if Plaintiff had not been wrongfully excluded by Defendants, and to ensure that Plaintiff and the Court can properly calculate Plaintiff's distributional interest in the business.

FOR A THIRD CAUSE OF ACTION
(Accounting)

32. Plaintiff re-alleges paragraphs 1-31 of this Complaint as if specifically set forth herein.

33. An accounting of AVSX is proper to prevent the unjust enrichment of Defendants by determining Plaintiff's interest in the dissolution of the LLC.

34. Plaintiff has been denied his right to inspect the books and is therefore dependent on an Accounting to discover what the value of the company was at the time of his wrongful exclusion and any change since that time in order to discover his distributional interest.

FOR A FOURTH CAUSE OF ACTION
(Estoppel)

35. Plaintiff re-alleges paragraphs 1-34 of this Complaint as if specifically set forth herein.

36. Plaintiff and Defendant Bobby agreed to carry on as co-owners a business for profit.

37. Plaintiff and Defendant Bobby decided that the best course of action would be to form an LLC to be known as AVSX Technologies, LLC whereby they would be the only two members but they would name Julio Reis as a figure head for filling out the Articles of Organization.

38. In 2011 Defendants Bobby and Mary Kay Johnson knowingly represented to Plaintiff that by replacing Julio Reis with Defendant Mary Kay Johnson there would be no change in authority or ownership as it had proceeded and that Plaintiff and Defendant Bobby would continue to be the only two true members of AVSX.

39. In prejudicial reliance upon this representation Plaintiff acquiesced to allow Defendant Mary Kay Johnson to be the figurehead member on the Articles of Organization for AVSX thereby detrimentally changing his position by replacing a neutral third party as the figurehead LLC member with the biased wife of his business partner.

40. Due to Defendants' representation that Plaintiff prejudicially relied upon, Defendants are estopped from denying Plaintiffs membership in AVSX.

FOR A FIFTH CAUSE OF ACTION

(Judicial Determination of Plaintiff's LLC Distributional Interest)

41. Plaintiff re-alleges paragraphs 1-40 of this Complaint as if specifically set forth herein.

42. Defendants have engaged in oppressive conduct resulting in Plaintiff's wrongful dissociation from the LLC and making judicial dissolution necessary by:

- a. Excluding him from all business decisions, to the detriment of the business;
- b. Denying his right to distributions; and
- c. Denying his right to access business records.

43. Despite the dissociation of Plaintiff, Defendants have not begun winding up the business, resulting in Plaintiff being entitled to the fair value of his distributional interest as of the date of his dissociation.

44. Defendants have failed and refused to offer Plaintiff his distributional interest in the business, and have failed to provide any business information as required by our statutes.

45. Defendants' actions to deny Plaintiff his distributional interest, including failure to provide the required financial information were arbitrary, vexatious, and in bad faith.

46. Plaintiff requests that Defendants be responsible for all attorney fees that arise from this action.

47. Plaintiff requests that his distributional interest as one of only two members of AVSX be judicially determined and distributed.

FOR A SIXTH CAUSE OF ACTION
(Piercing the Corporate Veil)

48. Plaintiff re-alleges paragraphs 1-47 of this Complaint as if specifically set forth herein.

49. In the alternative of finding Plaintiff as one of only two members of AVSX, Plaintiff alleges he is a co-owner of an association of persons (a general partnership) with Bobby Johnson.

50. In 2007 Plaintiff and Defendant Bobby agreed to carry on as co-owners a business for profit, Protection 24.

51. On January 31, 2008 is when the two together decided to open their second business for profit, Guardian Eagle Security, LLC.

52. Guardian Eagle Security, LLC was identical to Protection 24 in every respect other than name and the parties' attempt to don the corporate cloak of an LLC.

53. Plaintiff and Defendant Bobby obtained the charter of the LLC for the purpose of using a corporate name in the transaction of their personal business, and in an attempt to avoid any liability that might accrue to them individually.

54. Although a charter was issued by the State of South Carolina no bona fide effort was ever made by any of the named parties to this action or the former so called "member" of AVSX Julio Reis to organize and formally bring any LLC into being.

55. The assets and affairs of both Plaintiff and Defendant Bobby have at all times been so inextricably intermingled and jumbled with AVSX that separation of the one from the other is impossible.

56. Neither Julio Reis nor Defendant Mary Kay Johnson has ever served as anything other than a puppet figure head always under the equal control of Plaintiff and Defendant Bobby.

57. Throughout the life of AVSX both Plaintiff and Defendant Bobby have equally shared in profits, losses, contributions, and ownership authority.

58. AVSX has failed to adhere to either a member managed or manager managed LLC as neither Julio Reis nor Defendant Mary Kay Johnson ever exercised any managerial authority.

59. To allow for the fiction of AVSX Technologies, LLC to persist as an LLC would result in injustice and a fundamental unfairness to Plaintiff by allowing Defendants to effectively deny Plaintiff his partnership interest without due process.

60. As a result of both the disregard of the LLC entity by all parties and the fundamental unfairness to Plaintiff that it would empower, AVSX Technologies, LLC is void ab initio and Plaintiff and Defendant Bobby are equal co-owners in a general partnership.

FOR A SEVENTH CAUSE OF ACTION
(Wrongful Dissolution of the Partnership)

61. Plaintiff re-alleges paragraphs 1-60 of this Complaint as if specifically set forth herein.

62. Plaintiff and Defendant Bobby agreed to carry on as co-owners a business for profit.

63. Plaintiff and Defendant Bobby attempted but failed to create an LLC known as AVSX Technologies, LLC resulting in a general partnership with the two of them as the only partners.

64. Defendants' exclusion of Plaintiff violates the Partnership Agreement as evidenced by their course of performance resulting in a wrongful dissolution.

65. As a result of the wrongful dissolution Plaintiff is entitled to both the value of his partnership interest and damages incurred as a result of Defendants' wrongful dissolution of the partnership including attorney's fees and court costs.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

66. Plaintiff re-alleges paragraphs 1-65 of this Complaint as if specifically set forth herein.

67. Whether as fellow members of an LLC or as general partners Plaintiff and Defendant Bobby were in a fiduciary relationship whereby each owes the other a mutual trust and confidence and the duties of loyalty and good faith and fair dealing.

68. By maintaining that she is in fact a member of AVSX, Defendant Mary Kay Johnson also owes to Plaintiff a fiduciary duty as either a fellow member of the LLC or as general partner.

69. Defendants Bobby and Mary Kay Johnson breached the fiduciary obligation of utmost good faith and integrity owed to Plaintiff by misrepresenting to Plaintiff that replacing Julio Reis with Defendant Mary Kay would in no way change Plaintiff's status as co-owner of the company and then taking advantage of the change in status to effectively cut Plaintiff out of the business.

70. Defendants consciously failed to exercise due care in their fiduciary duty to Plaintiff.

71. Defendants' breach of their fiduciary duty was a reckless, willful, wanton, and malicious attempt to deprive Plaintiff of his private right to his property and right to manage his business.

72. As a result of Defendants' breach of their fiduciary duty owed to Plaintiff, Plaintiff is entitled to both actual and punitive damages.

FOR A NINTH CAUSE OF ACTION

(Resulting Trust)

73. Plaintiff re-alleges paragraphs 1-72 of this Complaint as if specifically set forth herein.

74. In the alternative of finding that Plaintiff is a member of AVSX or that there is in fact no LLC but a general partnership between Plaintiff and Defendant Bobby, then a resulting trust arises where AVSX holds legal title to all LLC property for the equally shared benefit of Plaintiff.

75. Plaintiff provided all of the initial consideration for the initial funding of AVSX and continued to do so throughout his ownership of the company in the form of contributions.

76. Plaintiff and Defendant Bobby Johnson titled all the company assets under the name AVSX, while intending to retain the benefit of these assets for themselves.

77. At no time did Plaintiff intend for any of his financial assets used as either start up or as contributions to AVSX to be gifted to any of the Defendants.

78. Plaintiff is not a family member of any of the Defendants, nor does he have any legal obligation to provide for any of the Defendants.

79. If Plaintiff is found to not be either a member of AVSX or a general partner with Defendant Bobby alone, then AVSX holds legal title of all company assets in a resulting trust for the benefit of Plaintiff.

FOR A TENTH CAUSE OF ACTION
(Constructive Trust)

80. Plaintiff re-alleges paragraphs 1-79 of this Complaint as if specifically set forth herein.

81. In the alternative of finding that Plaintiff is a member of AVSX or that there is in fact no LLC but a general partnership between Plaintiff and Defendant Bobby, then a Constructive Trust arises where Defendant Mary Kay Johnson holds legal title to all LLC property for the benefit of Plaintiff.

82. Plaintiff and Defendant Bobby entered into a joint venture known as AVSX Technologies, LLC.

83. At the time of entering their joint venture, Plaintiff and Defendant Bobby believed the best business judgment was for them to form an LLC and have Julio Reis be the only member in the Articles of Organization as a puppet figurehead.

84. Due to Defendants Bobby and Mary Kay Johnsons' representation that by making Defendant Mary Kay the new figurehead in place of Julio Reis nothing would change in Plaintiff's ownership and managerial authority over AVSX, Defendant Mary Kay Johnson obtained the benefit of being the only apparent member and owner of AVSX and its holdings.

85. Defendant Mary Kay Johnson obtained this benefit by accident on part of Plaintiff due to Defendant Bobby's misrepresentation and breach of his fiduciary duty owed as a fellow LLC member/partner in AVSX.

86. Defendant Mary Kay Johnson cannot in equity and good conscience retain or withhold this benefit from Plaintiff arising in a Constructive Trust being imposed where Defendant Mary Kay Johnson holds legal title to AVSX, LLC for the benefit of Plaintiff.

WHEREFORE, the Plaintiff prays judgment of this Court as follows:

1. For the entry of an injunction restraining Defendants from entering into any negotiations to sell or merge AVSX Technologies, LLC absent Plaintiff's statutory rights to participate in business decisions, an agreement between the parties, or a Court Order;

2. For the appointment of a Special Receiver to run the business for the remainder of this litigation;

3. For an accounting of Plaintiff's distributional interest in AVSX Technologies, LLC;

4. For an order Estopping Defendants from denying Plaintiff to be a member of AVSX Technologies, LLC;

5. For the dissolution of AVSX Technologies, LLC and the payment of Plaintiff's distributional interest;

6. In the alternative of finding that Plaintiff is a member of AVSX Technologies, LLC and therefore entitled to the above prayed for relief, for a Piercing of the Corporate Veil of AVSX Technologies, LLC holding it void ab initio and holding that Plaintiff and Defendant Bobby are general partners;

7. In the alternative of finding that Plaintiff is a member of the LLC and therefore entitled to the above prayed for relief, for a finding of a wrongful dissolution of the partnership by Defendants and awarding of Plaintiff's partnership interest plus damages associated with wrongful dissolution;

8. For a finding of a breach of their Fiduciary Duty by Defendants, entitling Plaintiff to both actual and punitive damages in an amount to be determined by the trier of fact;

9. In the alternative of finding that Plaintiff is either a member of AVSX Technologies, LLC or a general partner of Defendant Bobby, then the arising of a Resulting Trust in which Defendant Mary Kay is the legal owner of all AVSX Technologies, LLC for the benefit of Plaintiff;

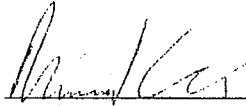
10. In the alternative of finding that Plaintiff is either a member of AVSX Technologies, LLC or a general partner of Defendant Bobby, then the arising of a Constructive Trust in which Defendant Mary Kay is the legal owner of all AVSX Technologies, LLC for the benefit of Plaintiff;

11. For judgment against the Defendants in an amount to be determined by the trier of fact for damages;

12. For costs of this action; and

13. For such other and further relief as the Court may deem just and proper.

QUERY SAUTTER FORSYTHE, LLC



Michael W. Sautter, Esquire
Michael H. Ellis, Jr., Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-762-6640
Facsimile: 843-762-1500
Attorneys for Plaintiff

Dated: 07/02/2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-

LUIS ENDARA,)

Plaintiff,)

vs.)

AVSX TECHNOLOGIES, LLC,)

BOBBY JOHNSON and)

MARY KAY JOHNSON,)

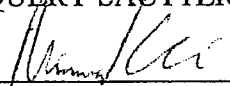
Defendants.)

SUMMONS

RICHLAND COUNTY
FILED
2014 JUL -3 AM 10:14
JENNIFER W. MORRIS
CLERK, S.C.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy upon the subscriber at Query Sautter Forsythe, LLC, The Wappoo Centre, 147 Wappoo Creek Drive, Suite 202, Charleston, South Carolina, within thirty (30) days after service hereof, exclusive of such date of service. If you fail to answer the Complaint within that time, the Plaintiff will apply to the Court, and demand judgment by default rendered against you for the relief demanded in the Complaint.

QUERY SAUTTER FORSYTHE, LLC



Michael H. Ellis, Jr., Esquire
Michael W. Sautter, Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
Dated: 07/02/2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LUIS ENDARA

Plaintiff(s)

vs.

AVSX TECHNOLOGIES, LLC, BOBBY JOHNSON and
MARY KAY JOHNSON

Defendant(s)

Submitted By: Michael W. Sautter & Michael H. Ellis,
Jr.

Address: 147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40-4234

SC Bar #: 4610 & 101524
Telephone #: 843-795-9500
Fax #: 843-762-1500
Other:
E-mail: mikewsautter147@aol.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☒ Breach of Contract (140)	20-CP-	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		☐ Other (999)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
	☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: 07/02/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LUIS ENDARA,

Plaintiff,

vs.

AVSX TECHNOLOGIES, LLC, BOBBY
JOHNSON, and MARY KAY JOHNSON

Defendant.

)
) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) FILE NO. 2014-CP-40-4234
)
)
)

) ANSWER
) (Jury Trial Demanded)
)
)
)
)

Defendant's AVSX Technologies, LLC, Bobby Johnson, and Mary Kay Johnson ("Defendants") answer the Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Complaint unless specifically admitted herein and this Answer is made subject to Defendants' Motion to Dismiss filed simultaneously herewith.

FOR A SECOND DEFENSE

2. The Complaint fails to state a cause of action against Defendants upon which can be granted and, therefore, should be dismissed.

FOR A THIRD DEFENSE

3. Defendants admit the allegations of Paragraph 1 of the Complaint.
4. Defendants admit the allegations of Paragraph 2 of the Complaint.
5. Defendants admit the allegations of Paragraph 3 of the Complaint.
6. Defendants admit the allegations of Paragraph 4 of the Complaint.

7. The allegations in Paragraph 5 are legal conclusions which do not require a response. However, the Defendants deny the same and demand strict proof thereof.

8. Defendants deny the allegations of Paragraphs 6, 7, 8 and 9 of the Complaint.

9. As to the allegations of Paragraph 10 of the Plaintiff's Complaint, Defendants admit only that Endara was not a member of Guardian Eagle Security, LLC and that there was no operating agreement for Guardian. Defendants deny the remaining allegations in Paragraph 10 of the Complaint.

10. As to the allegations of Paragraph 11 of the Plaintiff's Complaint, Defendants admit only that Endara was a W-2 employee of Guardian and Defendant AVSX that, at times, was integral to the businesses, but Defendants specifically deny that Endara was ever a member of the entities.

11. Defendants deny the allegations of Paragraphs 12, 13, 14, 15 and 16 of the Complaint.

12. As to the allegations of Paragraph 17 of the Plaintiff's Complaint, Defendants admit that Mary Kay Johnson was the only member of AVSX after February 2007 but denies that Bobby Johnson and Luis Endara were ever "co-owners" or "members" of AVSX.

13. Defendants admit only the portion of Paragraph 18 of the Complaint that states that Guardian was changed to AVSX on September 1, 2011.

14. Defendants admit the allegations of Paragraph 19 of Complaint.

15. As to the allegations of Paragraph 20 of the Plaintiff's Complaint, Defendants admit only that Mary Kay Johnson and AVSX fired Luis Endara but denies the remaining allegations in the Complaint.

16. Defendants deny the allegations of Paragraphs 21, 22, 23, 24, 25 and 26 of the Complaint.

17. Defendants deny the allegations of Paragraphs 27, 28, 29, 30 and 31 of the Complaint.

18. Defendants deny the allegations of Paragraphs 32, 33, and 34 of the Complaint.

19. Defendants deny the allegations of Paragraphs 35, 36, 37, 38, 39 and 40 of the Complaint.

20. Defendants deny the allegations of Paragraphs 41, 42, 43, 44, 45, 46 and 47 of the Complaint.

21. Defendants deny the allegations of Paragraphs 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, and 60 of the Complaint.

22. Defendants deny the allegations of Paragraphs 61, 62, 63, 64, and 65 of the Complaint.

23. Defendants deny the allegations of Paragraphs 66, 67, 68, 69, 70, 71, and 72 of the Complaint.

24. Defendants deny the allegations of Paragraphs 73, 74, 75, 76, 77, 78 and 79 of the Complaint.

25. Defendants deny the allegations of Paragraphs 80, 81, 82, 83, 84, 85, and 86 of the Complaint.

26. Defendants request that the items in Plaintiff's Pray be denied.

FOR A FOURTH DEFENSE

27. The Plaintiff fails to state a claim for which relief can be granted against Defendants.

FOR A FIFTH DEFENSE

28. Plaintiff lacks standing to assert the claims in his Summons and Complaint.

FOR A SIXTH DEFENSE

29. The Defendants assert that all equitable principles, including laches, estoppel, and acquiescence, are applicable to all causes of action but particularly for Injunctive Relief, Appointment of Receiver, Accounting, Estoppel, Resulting Trust and Constructive trust as Plaintiff has failed to take action which would otherwise warrant the timely need to stop or account for such drastic corporate action and has therefor waived his right to seek such immediate judicial intervention or to assert that he is going to suffer irreputable harm.

FOR A SEVENTH DEFENSE

30. Plaintiff, through his own action and/or inaction, have failed to mitigate any damages, or failed to fully mitigate any damages.

FOR AN EIGHTH DEFENSE

31. Plaintiff's claim is barred by the doctrine of unclean hands.

FOR A NINTH DEFENSE

32. Plaintiff's claim is barred because the unauthorized use of AVSX assets, resources and monies utilized by Plaintiff are greater than and any recovery or judicial determination of interest he could obtain in the matter.

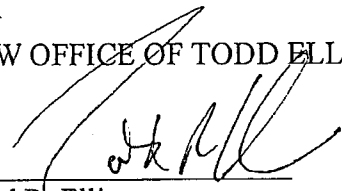
FOR A TENTH DEFENSE

33. Plaintiff is not entitled to an award of punitive damages on the grounds that such an award would be in violation of the equal protection and due process clauses of the United

States and South Carolina Constitutions and attorney fees are not recoverable under the action plead.

WHEREFORE, having fully answered, Defendants prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

LAW OFFICE OF TODD ELLIS, P.A.

By: 

Todd R. Ellis
7911 Broad River Road
Suite 100
Irmo, South Carolina 29063
(803) 732-0123

ATTORNEY FOR DEFENDANTS

August 6, 2014

CERTIFICATE OF SERVICE

I, the undersigned employee of the Law Office of Todd Ellis, P.A., attorneys for AVSX Technologies, Bobby Johnson, and Mary Kay Johnson, do hereby certify that I have served the opposing counsel in this action with a copy of the document(s) hereinbelow specified by U.S. Mail to the following address(es):

Documents:

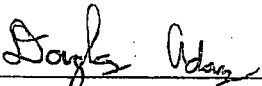
Defendant's Answer;

Defendant's Motion to Dismiss

Defendant's First Set of Requests for Admission

Counsel Served:

Michael W. Sautter, Esq.
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412



Douglas E. Adams, Legal Assistant to Todd R. Ellis

August 6, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
LUIS ENDARA,)
)
)
Plaintiff,)
)
)
vs.)
)
AVSX TECHNOLOGIES, LLC,)
BOBBY JOHNSON, and)
MARY KAY JOHNSON,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-4234

PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR A NEW TRIAL

RICHLAND COUNTY
FILED
2016 FEB 10 AM 10:15
JEANETTE M. MOSBIDE
C.C.P. & G.S.

TO: TODD ELLIS, ESQUIRE, Attorney for above named Defendants:

You will please take notice that Plaintiff, by and through his undersigned counsel, will move before the Honorable Craig D. Brown in the Court of Common Pleas, Richland County, for an Order granting a new trial in accordance with SCRCP R. 59. This motion for a new trial is made to cure the erroneous and prejudicial instructions to the Jury that resulted from the Court's failure to charge the equitable doctrine of unjust enrichment and the law of the South Carolina Uniform Partnership Act. It is Plaintiff's contention that it was properly pled and ample evidence was presented at trial to allow for a finding of damages to Plaintiff under both the equitable doctrine of unjust enrichment and the law of the South Carolina Uniform Partnership Act.

This motion is based upon the Statutory and Common Law of South Carolina. Plaintiff requests to be allowed to both submit a memorandum in support of and to be heard upon his Motion for a New Trial.

Rule 11 Certification

The below signed counsel for Plaintiff has consulted with opposing counsel with regard to the issues contained in this motion pursuant to Rule 11 of the South Carolina Rules of Civil Procedure in an effort to resolve the same.

QUERY SAUTTER FORSYTHE, LLC



Michael W. Sautter, Esquire
Michael H. Ellis, Jr., Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500
Attorneys for Plaintiff

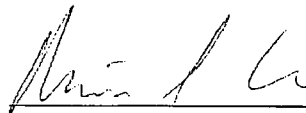
Dated: 2/08/2016
Charleston, South Carolina

Certificate of Service

I, the undersigned, hereby certify that I served a copy Plaintiff's Notice of Motion and Motion for Emergency Relief Requesting Appointment of a Special Receiver upon Todd R. Ellis, attorney for the Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Todd R. Ellis, Esquire
Law Office of Todd Ellis, P.A.
7911 Broad River Road, Suite 100
Irmo, SC 29063
todd@toddellislaw.com

Dated: 2/08/2016



FILED
2016 FEB 10 AM 10:10
JENNIFER W. HOSKINS
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
LUIS ENDARA,)
)
Plaintiff,)
)
vs.)
)
AVSX TECHNOLOGIES, LLC,)
BOBBY JOHNSON, and)
MARY KAY JOHNSON,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-4234

PLAINTIFF'S MEMORANDUM OF
LAW IN SUPPORT OF MOTION FOR
A NEW TRIAL

2016 MAR 14 AM 11:18
JEANETTE W. HIGHT
C.C.P. & C.S.
RICHLAND COUNTY
FILED

STATEMENT OF THE FACTS

A four day trial was held before the Honorable Craig D. Brown January 25-29, 2016 in the Richland County Court of Common Pleas. At issue was the ownership of AVSX Technologies, LLC (hereinafter "AVSX"). Plaintiff's complaint filed on July 3, 2014 alleged among other things his status as a member of AVSX and in the alternative his status as a Partner with a 50% ownership interest in AVSX. In his Complaint Plaintiff further sought relief under the equitable doctrines of there having arisen either a Resulting Trust or Constructive Trust whereby he was the 50% beneficiary.

Throughout the multi-day trial there was clear evidence of Plaintiff's legal claim as a 50% partner in AVSX, and his equitable claims of there either being a Resulting or Constructive Trust whereby legal title of AVSX was placed in Mary Kay Johnson's name but was retained for the benefit of Luis Endara and Bobby Johnson. At the charge conference, Plaintiff presented to The Honorable Craig D. Brown his request that the jury be charged upon the law of the South Carolina Uniform Partnership Act as well as the equitable doctrine of unjust enrichment so that

the jury could provide for relief upon his equitable claims should he fail to prevail on his legal claims (**Exhibit A**). Plaintiff's request to charge upon Partnership Law was denied and Plaintiff was given leave to draft requested charges upon the law of the South Carolina Uniform Limited Liability Company Act. At the second charge conference, Plaintiff again requested that the jury be charged upon the equitable doctrine of unjust enrichment so that he may be awarded relief upon his equitable claims should he fail to prevail upon his legal claims, but was denied (**Exhibit B**). As a result, the only possible relief for Plaintiff that was presented to the jury was if he was found to be a member of AVSX. There was ample evidence presenting Luis Endara and Bobby Johnson as partners and doing all those things that at law gives rise to a partnership ("...an association of two or more persons to carry on as co-owners a business for profit..." SC Code § 33-41-210) with no dissolution of that partnership prior to March 21, 2014, and that it was the intention of all involved that there be a legal owner presented to the world for the sole purpose of forming an LLC while the true owners and beneficiaries of the assets and profits of AVSX were Luis Endara and Bobby Johnson. As counsel for Defendants summarized in his closing arguments there were three phrases that the jury would be hearing in their sleep for days to come and that was "K-1's", "Partners", and "legal owner on paper".

STANDARD OF REVIEW

"The grant or denial of a new trial rests within the trial court's discretion..." Winters v. Fiddie, 394 S.C. 629, 638 (Ct.App. 2011). "A trial court's authority to grant a new trial is rooted in Rule 59, SCRPC. Rule 59(a) permits a trial court to grant a new trial "to all or any of the parties and on all or part of the issues [] in an action which there has been a trial by jury, for any of the reasons for which new trial have heretofore been granted in actions at law in the courts of the State..." *id.* Rule 59 does not expressly address whether a trial court's ability to grant a new

trial “for any reason” is limited to only grounds that were raised at trial. Moreover, while rule 51 specifies that a jury instruction must be objected to, and case law affirms that a failure to timely object will preclude appellate review, neither Rule 51 nor Rule 59 explicitly addresses whether a flawed jury instruction must be objected to for the trial court, either sua sponte or by a party’s motion, to grant a new trial on that ground” *id.* at 639. “In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict and then to grant a new trial based solely upon the facts” Rivera v. Newton, 401 S.C. 402, 413 (Ct.App 2012) citing Lane v. Gilbert Constr. Co., 383 S.C. 590, 597 (2009).

Failure to Charge Unjust Enrichment

The Court’s failure to charge the jury upon a right of recovery for Plaintiff under the equitable doctrine of unjust enrichment was both erroneous and prejudicial. “In order to warrant reversal for failure to give a requested charge, the refusal must be both erroneous and prejudicial” Dalon v. Golden Lanes, Inc., 320 S.C. 534, 540 (Ct.App. 1996).

Plaintiff has sought from his initial pleadings to recover under the equitable theories of either resulting trust or constructive trust should he fail on his legal theory of recovery. Throughout the trial, the jury was presented evidence of the theory of Plaintiff’s claim to ownership of the company presently known as AVSX whereby he and Defendant Bobby Johnson were incapable of being seen to directly deal with the alarm companies so they presented a straw man as the legal owner. All the while, Plaintiff retained control of the company and continuously received distributions in an amount that reflected his 50% ownership interest. Plaintiff’s testimony was corroborated by the former chief financial officer Dan Spohn that all of the assets of Protection 24, LLC, of which Luis Endara was the 100% owner, were

placed in the name of AVSX. Plaintiff's testimony was corroborated by the first straw man, Julio Reis, that Mr. Reis was represented to the world as being the legal owner of these assets but it was Plaintiff and Bobby Johnson that retained control over these assets and derived any and all benefit from these assets. Plaintiff's testimony was corroborated by Julio Reis and Defendant Mary Kay Johnson that the representation of legal ownership was then transferred to Defendant Mary Kay Johnson with no capital contribution nor any purchase of the legal ownership of AVSX assets by Mary Kay Johnson. Only one inference can be drawn from these facts, legal ownership was shown to be in the hands of a straw man while Plaintiff and Defendant Bobby Johnson retained 50/50 control over those assets and the benefit derived from those assets.

Plaintiff pled both equitable and legal claims enabling the jury to travel two distinct paths to the same resolution, providing Plaintiff relief for being wrongfully ousted of his company by Defendants. These two paths join at the same destination but they are mutually exclusive of each other. If the jury had been charged with unjust enrichment they could have allowed for equitable relief to Plaintiff even after finding he completely failed upon his legal claim. "A constructive trust arises whenever **a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty**" (emphasis added) SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 500 (S.C. 1990). The jury did find that Plaintiff failed to prove his membership as a member of the LLC. Due to them not being charged with equitable relief, as was pled for, it will never be known whether the jury believed that Plaintiff placed his interest in the hands of the Defendants by accident or mistake of

fact, and whether the jury believed whether or not it would be equitable for the Defendants to retain that interest.

Resulting trusts and constructive trusts arise by operation of law and may be proved by parol evidence Whitmire v. Adams, 273 S.C. 453 (1979). “The general rule is that when [property] is conveyed to one person and the consideration is paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself and a resulting trust is raised in his behalf” Lollis v. Lollis, 291 S.C. 525,528 (S.C. 1987) citing Green v. Green, 237 S.C. 424 (1961). In the present case Plaintiff’s testimony was corroborated that he provided all startup capital to form AVSX and continued to provide sweat equity and increased his capital contribution by not taking his full distributions until his ouster on March 21, 2014. The first straw man said he never provided any capital contribution and Defendant Mary Kay Johnson testified that she did not provide any capital contribution and that she did not even know when she supposedly came into legal title of AVSX. Throughout the trial it was presented, by both sides, that Plaintiff has said that Defendant Mary Kay Johnson is “the legal owner on paper”. However, Plaintiff always retained the true ownership and the benefits of that ownership of AVSX, evidencing the rise of a resulting trust in his benefit.

“A constructive trust is distinguished from an express trust in that the former arises entirely by operation of law without any reference to any actual or supposed intention of creating a trust. It is resorted to by equity to vindicate right and justice or frustrate fraud Whitmire v. Adams, at 457 citing All v. Prillaman, 200 S.C. 279 (1942). “Actual fraud is not necessary, but such trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds legal title” Whitmire, citing Bank of Williston v. Alderman, 106 S.C. 279 (1942).

At trial it was presented to the jury that Plaintiff and Defendant Bobby Johnson created a business together but appeared to have placed legal title in the hands of another while retaining the control and benefit for themselves. Plaintiff testified and Julio Reis corroborated that together Plaintiff and Bobby Johnson agreed to place that legal title in Mary Kay Johnson's name. Bobby Johnson then used the apparent authority of his wife to oust Plaintiff. It is inequitable for Mary Kay Johnson to retain legal title to Plaintiff's interest in AVSX.

From the time of filing his complaint until the requests to charge the jury, Plaintiff has sought his claims as a legal owner of AVSX and for his equitable right to relief should he fail upon his legal claims. "A trial court must charge the current and correct law" Wells at 237, citing McCourt v. Abernathy, 318 S.C. 301 (1995). Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 123 (2009). "An alleged error is harmless if the appellate court determines... that the alleged error did not contribute to the verdict" Wells, at 237 citing State v. Kerr, 330 S.C. 132 (Ct. App. 1998). The failure to charge unjust enrichment was not harmless and did contribute to the verdict as it deprived Plaintiff of presenting to the jury his claim for equitable relief.

"Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff" Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473 (Ct.App. 1988) citing Barrett v. Miller, 283 S.C. 262, 264 (Ct.App. 1984). "It is not necessary, in order to create an obligation to make restitution, that the party unjustly enriched should have been guilty of any tortuous or fraudulent act; the question is: Did he, to the detriment of someone else, obtain something of value to which he was not entitled? In such cases the simple, but comprehensive, question is

whether the circumstances are such that equitably defendant should restore to plaintiff what he has received" Harper v. McCoy, 276 S.C. 170,173 (S.C. 1981) citing 77 C.J.S Restitution at 322-323. Plaintiff presented ample evidence at trial to show that a legal trust did arise whereby Defendant Mary Kay Johnson was bestowed with legal title, but he never intended to lose the benefit of ownership of AVSX. It was inequitable for Defendant Mary Kay Johnson to retain his ownership interest as she neither purchased it nor contributed any capital or sweat equity and she did not even know when, why, or how she came to that legal title that the jury found her to have. Unjust enrichment was the necessary and proper charge to prevent this inequity that arises by allowing Defendant Mary Kay Johnson to retain the legal title that was purchased by and bestowed upon her by Luis Endara. The refusal to charge the jury upon unjust enrichment was both erroneous and prejudicial as it prevented the jury from even considering Plaintiff's equitable claim for relief, entitling Plaintiff to a new trial.

Failure to Charge Partnership Law

The Court's failure to charge the jury upon a right of recovery for Plaintiff under the South Carolina Uniform Partnership Act was both erroneous and prejudicial. Throughout the trial there was ample evidence including party testimony and prior admissions as well as third party eye witness testimony that Plaintiff and Defendant Bobby Johnson did all those things to give rise to a legal partnership ("...an association of two or more persons to carry on as co-owners a business for profit..." SC Code § 33-41-210). It was presented at trial that all governance of AVSX was conducted by the partnership of Plaintiff and Bobby Johnson, including the appointment of the straw man LLC member.

SC Code § 33-41-930 stipulates the causes of dissolution of a partnership and does not include the creation of a limited liability company as a reason for dissolution. Further, § 33-41-

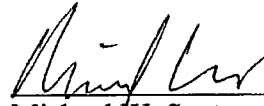
920 states that “[o]n dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed”. There was ample evidence presented to the jury to allow them to consider the creation of a partnership of Plaintiff and Defendant Bobby Johnson and the continuation of that partnership until Defendant Bobby Johnson’s wrongful dissolution of that partnership on May 21, 2014.

Plaintiff pled and presented to the jury his claim as a member of the LLC based upon the unwritten operating agreement just as he pled and presented his claim as a partner. It was Plaintiff’s belief, and therefore trial strategy, that for a trial decided by a jury of laymen, the burden of proof was more surmountable to proceed on his legal claim for a partnership interest. In appreciation of this strategy, Partner was used in place of Member, and the evidence admitted and third party testimony was geared towards evidencing Plaintiff and Defendant carrying on as co-owners a business for profit rather than establishing a course of performance operating agreement. Therefore, refusing Plaintiff’s request to charge upon partnership law was erroneous and prejudicial, entitling Plaintiff to a new trial.

CONCLUSION

Rule 59, SCRCP gives a trial judge wide discretion to grant a new trial. The Thirteenth Juror doctrine gives a trial judge even wider discretion to grant a new trial where he finds that the evidence does not justify the verdict. The failure to charge the jurors with Plaintiff’s legal claim as a partner and his equitable claim of unjust enrichment to the Defendants results in extreme prejudice and can only be remedied through the court’s grant of a new trial.

QUERY SAUTTER FORSYTHE, LLC



Michael W. Sautter, Esquire
Michael H. Ellis, Jr., Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500
Attorneys for Plaintiff

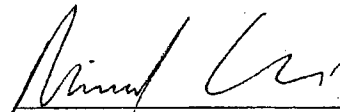
Dated: 3/8/2016
Charleston, South Carolina

Certificate of Service

I, the undersigned, hereby certify that I served a copy Plaintiff's Notice of Motion and Motion for Emergency Relief Requesting Appointment of a Special Receiver upon Todd R. Ellis, attorney for the Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Todd R. Ellis, Esquire
Law Office of Todd Ellis, P.A.
7911 Broad River Road, Suite 100
Irmo, SC 29063
todd@toddellislaw.com

Dated: 3/8/2016



RECEIVED
2016 MAR 14 AM 11:18
JEANETTE WILSON
Clerk, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

LUIS ENDARA

Plaintiff,

vs.

AVSX TECHNOLOGIES, LLC,
BOBBY JOHNSON, and MARY KAY
JOHNSON

Defendant.

CIVIL CASE NO.: 2014-CP-40-4234

**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A NEW
TRIAL**

RICHLAND COUNTY
FILED
2016 MAR 25 AM 10:38
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

OVERVIEW OF THE CASE

Defendants file this Supplemental Memorandum in Opposition to Plaintiff's Motion for a New Trial. The Plaintiff filed its Motion for a New Trial on February 8, 2016 without a memorandum in support. On February 23, 2016, Defendants filed their Memorandum in Opposition to Plaintiff's Motion for a New Trial. The Court then notified the parties that it would not hold a hearing on the Plaintiff's motion and allowed the Plaintiff ten (10) days to file a memorandum in support and an additional ten (10) days for the Defendants to file any supplemental memorandum in opposition. The memorandum provided by Plaintiff to Defendants did not include the attachments to the memorandum referred to therein as Exhibit A and Exhibit B.

The Defendants direct the Court to and do rely on their Memorandum in Opposition to Plaintiff's Motion for a New Trial. After being served with Plaintiff's

Memorandum in Support of its Motion for a New Trial, the Defendants emphasize to the Court the following arguments asserted its memorandum and make additional comment in asking the Court to deny Plaintiff's Motion for a New Trial.

ANALYSIS

I. Plaintiff Ignores all Pretrial Agreements and His Abandonment of Claims.

Nowhere in its Memorandum does Plaintiff deny that he abandoned all causes of action pled and that he chose to go forward to trial only on his claim that he was entitled to his purported distributional interest for wrongful disassociation from AVSX Technologies, LLC ("AVSX"). Without denying Defendants' argument that in pretrial Plaintiff abandoned all other claims in chambers and on the record with the Court before the four day trial began, Plaintiff chooses to gloss over this strategic decision and references only its pleadings trial as the purported issues before the Court.

The Court recalls the Plaintiff abandoned all the Partnership Act assertions and equitable claims (which did not even include unjust enrichment) before trial and therefore they have no bearing on the post-trial Motion or the evidence presented at trial.

Despite there being no evidence presented at trial about an unjust enrichment theory of recovery and what damages may be associated therewith, the Plaintiff refuses to admit that he abandoned those claims before trial and only when the theory he chose to pursue fails does he try to change his strategy. Plaintiff sought only a recovery under the legal claim that he was a member of AVSX and therefore entitled to monies owed for the wrongful disassociation. That claimed failed and Plaintiff is not entitled to a New Trial because the Court failed to charge the jury a claim for unjust enrichment when all of Plaintiff's claims arose him purportedly being a member of the LLC, he was a highly

paid W-2 employee and there was no evidence of any other damages theory presented other than the value of his asserted membership interest presented.

II. In His Memorandum in Support, Plaintiff Wrongfully Intermingles Partnership and Limited Liability Law for its Convenience and adds theories for reconsideration that were neither objected to at trial nor stated in its Motion.

Plaintiff's Memorandum in Support of its Motion for a New Trial adds new arguments that were not asserted in its motion and mixes theories of law in a fragmented attempt to find any relief from the Court. This piecemeal attempt is contrary to the pretrial decisions made by the Plaintiff and the evidence presented at trial. Further, the Plaintiff is seeking a new trial on matters it did not object to at the trial of this case. Therefore, the Plaintiff's motion should be denied.

Plaintiff's Motion states that the Court erred in failing to charge the jury on law related to the South Carolina Partnership Act. The record is clear that Plaintiff abandoned all partnership theories before trial and did not object at the close of trial to the Court not charging the law based on the South Carolina Partnership Act. Therefore, the Plaintiff did not preserve this issue. *See Vause v. Mikell*, 290 S.C. 65, 348 S.E.2d 187 (Ct.App.1986). *Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 41, 358 S.E.2d 397, 401 (Ct. App. 1987).

Further, neither at trial nor in Plaintiff's Motion filed on February 8, 2016 is there any preservation of the issue or even a reference that the Court failed to charge the jury on Plaintiff's claim in his pleading for a constructive trust, yet the Plaintiff argues in his memorandum that the constructive trust theory somehow creates a basis for an unjust enrichment charge. Plaintiff's Constructive Trust theory, to Defendants knowledge, was never even mentioned in pretrial or at the four day trial of the case. The Plaintiff merely

narrowed his case and chose to proceed with his claim that he was a member of AVSX and was entitled to the damages for wrongful disassociation. Now the Plaintiff seeks to revive theories he merely plead and never pursued, proven or objected to its exclusion from the case. Therefore, the Plaintiff's Motion for a New Trial should be denied.

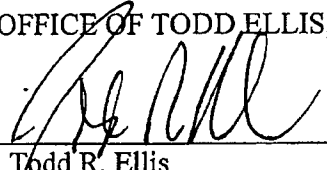
CONCLUSION

For the reasons set forth herein and in its Memorandum in Opposition to Plaintiff's Motion for a New Trial and this Supplemental Memorandum, the Court should deny Plaintiff's Motion for a New Trial.

RESPECTFULLY SUBMITTED,

LAW OFFICE OF TODD ELLIS, P.A.

By: _____


Todd R. Ellis
7911 Broad River Road
Suite 100
Irmo, South Carolina 29063
(803) 732-0123

Attorney for Defendants

Irmo, South Carolina
March 18, 2016

CERTIFICATE OF SERVICE

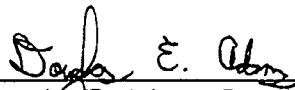
I, the undersigned employee of the Law Office of Todd Ellis, P.A., attorneys for AVSX Technologies, LLC, Bobby Johnson, and Mary Kay Johnson do hereby certify that I have served the opposing parties in this action with a copy of the document(s) hereinbelow specified by First Class U.S. Mail and E-mail to the following address(es):

Document:

Defendants' Supplemental Memorandum in Opposition to Plaintiff's Motion for a New Trial

Parties Served:

Michael Ellis
147 Wappoo Creek Drive, Suite 202
Charleston, SC 29412
mellis@qlawsc.com



Douglas E. Adams, Legal Assistant

March 18, 2016

CLERK OF COURT
FILED
2016 MAR 25 AM 10:39
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TODD ELLIS

LAW OFFICE OF TODD ELLIS, P.A.

7911 BROAD RIVER ROAD, SUITE 100
IRMO, SOUTH CAROLINA 29063

March 18, 2016

VIA FIRST CLASS U.S. MAIL

Richland County Clerk of Court
PO Box 2766
Columbia, South Carolina 29202-2766

Re: Luis Endara v. AVSX et al
Civil Action No. 2014-CP-40-4234
Todd Ellis Law File No. 14-0046

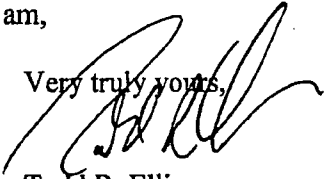
Dear Madame Clerk:

Please find enclosed for filing one original and two copies of the Defendants' Supplemental Memorandum in Opposition to Plaintiff's Motion for a New Trial in the above-referenced matter. I would appreciate your office filing the original and returning the clocked copies in the postage prepaid self-addressed envelope. By copy of this letter, I am hereby serving opposing counsel with the same.

If you have any questions or need anything further, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,


Todd R. Ellis

TRE:da

Enclosures (as referenced)

Cc: The Honorable D. Craig Brown (via First Class U.S. Mail and E-mail)
Michael Ellis, Esq. (via First Class U.S. Mail and e-mail only)
Bobby Johnson (via e-mail only)
Mary Kay Johnson (via e-mail only)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
LUIS ENDARA,)
)
Plaintiff,)
)
vs.)
)
AVSX TECHNOLOGIES, LLC,)
BOBBY JOHNSON, and)
MARY KAY JOHNSON,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-4234

PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND THE DENIAL
OF PLAINTIFF'S MOTION FOR A NEW TRIAL

vs.

AVSX TECHNOLOGIES, LLC,
BOBBY JOHNSON, and
MARY KAY JOHNSON,
Defendants.

TO: TODD ELLIS, ESQUIRE, Attorney for above named Defendants:

You will please take notice that Plaintiff, by and through his undersigned counsel, will move before the Honorable Craig D. Brown in the Court of Common Pleas, Richland County, to Alter or Amend the Court's Denial of Plaintiff's Motion for a New Trial in accordance with R. 59(e) SCRCP.

This motion is made to cure the erroneous and prejudicial reliance upon happenings off the record and outside of the Courtroom to determine whether "...the Court's findings are wholly unsupported by the evidence or its conclusions are controlled by an error of law" *Order Denying Plaintiff's Motion for a New Trial*, 1. It is Plaintiff's contention that the Court has placed upon him an undue burden to establish what was discussed outside of the Courtroom rather than what is on the trial record.

It is Plaintiff's belief that as his claim as a Partner or in the alternative his remedy for unjust enrichment was properly pled in his initial complaint and substantial evidence was presented to the jury, it was required that those issues be submitted to them and included on the

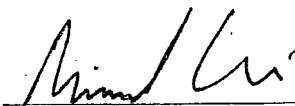
verdict form. The analysis of the Court's Order Denying the New Trial relies entirely upon Plaintiff's failure to prove what was and was not said in a pre-trial conference. Plaintiff respectfully Moves this Court to consider rather what was presented into evidence and is preserved upon the record in making its decision upon Plaintiff's Motion for a New Trial.

This motion is based upon the Statutory and Common Law of South Carolina. Plaintiff requests to be allowed to both submit a memorandum in support of and to be heard upon his motion to alter the denial of his motion for a new trial.

Rule 11 Certification

The below signed counsel for Plaintiff believes consulting with opposing counsel would be futile.

QUERY SAUTTER FORSYTHE, LLC



Michael W. Sautter, Esquire
Michael H. Ellis, Jr., Esquire
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500
Attorneys for Plaintiff

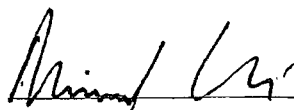
Dated: 5/13/2016
Charleston, South Carolina

Certificate of Service

I, the undersigned, hereby certify that I served a copy of the forgoing document upon Todd R. Ellis, attorney for the Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Todd R. Ellis, Esquire
Law Office of Todd Ellis, P.A.
7911 Broad River Road, Suite 100
Irmo, SC 29063
todd@toddellislaw.com

Dated: 5/13/2016



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)

LUIS ENDARA) CIVIL CASE NO.: 2014-CP-40-4234
)
 Plaintiff,)

vs.)

AVSX TECHNOLOGIES, LLC,)
 BOBBY JOHNSON, and MARY KAY)
 JOHNSON)

Defendant.)

**DEFENDANTS' MEMORANDUM IN
 OPPOSITION TO PLAINTIFF'S RULE
 59(e) MOTION TO ALTER OR
 AMEND THE ORDER DENYING
 PLAINTIFF'S MOTION FOR A NEW
 TRIAL**

Defendants file this Memorandum in Opposition to Plaintiff's Motion to Alter or Amend the Court's Order deny of Plaintiff's Motion for a New Trial filed on May 19, 2016. The Court's Order denying the Motion for a New Trial was signed on April 27, 2016 and filed on May 9, 2016 is attached hereto as Exhibit A.

The Court should deny Plaintiff's Motion to Alter or Amend its Order of May 9, 2016 because it merely repeats or expands on grounds raised in Plaintiff's Motion for a New Trial. Plaintiff's sole reasoning for filing a Rule 59(e) Motion is to "cure erroneous and prejudicial reliance upon happenings off the record of the Courtroom...in pretrial conferences." Plaintiff's Rule 59(e) Motion, pages 1 and 2.

The Plaintiff's argument is flawed in part because the denial of the Plaintiff's Motion for a New Trial was not based solely on Plaintiff's waiver of its partnership and

equitable claims in pretrial conference. The Court's Order appropriately finds that the Plaintiff abandoned in pre-trial any claims related to the Partnership Act and claims based on a theory of a constructive trust and further did not request that the Court charge the jury any partnership law or a claim based of constructive trust theory at the charging conference. Order, May 9, 2016, Page 2, para.1.

Plaintiff also wrongfully asserts that the Court did not consider a charge of unjust enrichment at the charging conference. The Court specifically found that Plaintiff offered at trial only a theory that he was a Member of AVSX Technologies, LLC and that no alternative theory of unjust enrichment or recovery of an amount of restitution was offered at trial. Order, May 9, 2016, Page 4, para.2. Despite the Plaintiff having abandoned its equitable theories at the outset of the case, the Court considered the unjust enrichment charge at the close of trial and found that the evidence offered did not support such a charge.

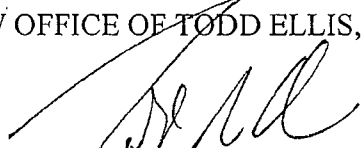
Finally, the Plaintiff's Rule 59(e) Motion should be denied because it raises issues considered by the Plaintiff and the Court in Plaintiff's Motion for a New Trial. In his Memorandum in Support of his Motion for a New Trial, Plaintiff specifically references the two (2) charging conferences held by the Court before the matter was given to the jury. Plaintiff's Memorandum in Support of its Motion for New Trial, Page 1 and 2. The Plaintiff's request for charge and Defendant's arguments that any charges were claims abandoned or unsupported by the evidence were thoroughly argued and considered by the Court on the record and were asserted by Plaintiff in his post-trial motions. Defendant vehemently argued at trial and in its Memorandum in Opposition to the Plaintiff's Motion for a New Trial, which was filed before Plaintiff's Memorandum, that Plaintiff had

abandoned the now argued claims in pre-trial. Plaintiff has yet to deny to the Court that it did in fact abandon the Partnership Act and equitable claims before the trial began. The sole argument in the charging conference was whether the Plaintiff was entitled to a charge of unjust enrichment and the Court specifically found it was unsupported by the evidence.

In South Carolina, a motion to alter or amend a post-trial order for a new trial or JNOV, cannot merely recite arguments in a previous Rule 59 motion. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 777 (2004). The arguments made by Plaintiff in its Rule 59(e) Motion are merely recast from its Motion for a New Trial and have already been considered by the Court. Therefore, the Motion is improper and should be denied by the Court. Defendant provides the Court with a proposed Order denying the Motion to Alter or Amend its Order of May 9, 2016 for the Court's consideration.

RESPECTFULLY SUBMITTED,

LAW OFFICE OF TODD ELLIS, P.A.

By: 

Todd R. Ellis
7911 Broad River Road
Suite 100
Irmo, South Carolina 29063
(803) 732-0123

Attorney for Defendants

Irmo, South Carolina
May 26, 2016

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2014CP4004234

Luis Endara

AVSX Technologies LLC

PLAINTIFF(S)

Bobby Johnson

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. suit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Michael Holland Ellis Jr.

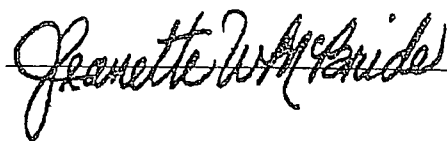
Todd Raymond Ellis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

LUIS ENDARA

Plaintiff,

vs.

AVSX TECHNOLOGIES, LLC,
BOBBY JOHNSON, and MARY KAY
JOHNSON,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL CASE NO.: 2014-CP-40-4234

**ORDER DENYING PLAINTIFF'S
MOTION FOR A NEW TRIAL**

RICHLAND COUNTY
FILED
2016 MAY -9 PM 2:10
JENNIFER W. MORRIS
C.C.F. & G.S.

This matter comes before me on the Plaintiff's post-trial Motion for a New Trial filed on February 8, 2016. The parties tried this case over four days with the jury returning a defense verdict on January 28, 2016. The grounds for a new trial Plaintiff offered in his Motion and those set forth in his Memorandum in Support for a New Trial filed on February 23, 2016, are not synonymous. However, for the purposes of ruling on Plaintiff's post-trial motion, the Court considers all the grounds raised by the Plaintiff in his Motion and the subsequently filed memorandum.

STANDARD OF REVIEW

The grant or denial of a new trial motion rests within the trial court's discretion, and its decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by an error of law. *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996). A new trial may be

1 *P. 175*

SCANNED 61

granted to all or any of the parties and on all or part of the issues "in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State." SCRCP 59.

ANALYSIS

For the reasons set forth herein, the Court denies Plaintiff's Motion for a New Trial. The Plaintiff asserts that the Court erred in failing to charge the jury that under the South Carolina Uniform Partnership Act, Mr. Endara and Mr. Johnson were partners in the AVSX business and that a recovery for disassociating a partner could be the basis for an award for Mr. Endara. Further, the Plaintiff argues that in addition to charging the jury on the legal basis for recovery for Mr. Endara, wherein the jury could find he was a "Member" of AVSX Technologies, LLC, the Court failed to also charge an equitable basis for the Plaintiff to recover under the theory of unjust enrichment.

The Court denies the Plaintiff's Motion for a New Trial on the theory that Plaintiff should have been allowed to proceed under theories set forth in the South Carolina Uniform Partnership Act. First, the Plaintiff's Motion fails because Plaintiff ignores all pretrial conferences with the Court and opposing counsel wherein the Plaintiff chose only to proceed on his theory that he was a "Member" of AVSX Technologies, LLC and was entitled to recover for his purported distributional interest for wrongful disassociation from AVSX.

The Court questioned Plaintiff's counsel in pre-trial discussions on why a business operating as a Limited Liability Company that made corporate filings and filed tax returns as an LLC would be deciding its ownership rights under the South Carolina Partnership Act. Thereafter, Plaintiff's counsel informed the Court, without the Court

ruling, that Plaintiff was going forward only on his wrongful dissociation claim as an LLC member, and was abandoning all the Partnership Act assertions and other causes of action. Because the Plaintiff chose to proceed at the start of the case only with his theories of recovery under limited liability law, and failed to ask the Court to charge Partnership Act at the close of the case, the Plaintiff failed to preserve this issue. See *Vause v. Mikell*, 290 S.C. 65, 348 S.E.2d 187 (Ct. App. 1986), *Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 41, 358 S.E.2d 397, 401 (Ct. App. 1987). The Plaintiff's Motion for a New Trial is therefore denied.

As to the Plaintiff's argument that the Court erred in failing to charge the jury that Plaintiff could recover under the equitable theory of unjust enrichment, the Court also denies Plaintiff's Motion for a New Trial. The Plaintiff argues in his memorandum that a constructive trust was created under the facts of the case for the Plaintiff's corporate ownership rights and that this theory creates a basis for an unjust enrichment charge. At the beginning of the trial, Plaintiff narrowed his case and chose to proceed with his claim that he was a member of AVSX and was entitled to the damages for wrongful disassociation. The Plaintiff pled a constructive trust theory that was never pursued, or proven. Therefore, the Plaintiff's Motion for a New Trial should be denied.

Further, as to the Plaintiff's claim that a path for recovery for the Plaintiff of unjust enrichment should have been charged to the jury, the Motion is denied. Plaintiff's theory for recovery was based on the jury finding that he was a member of AVSX and the jury affirmatively stated on the verdict form at trial that the Plaintiff was not a member of AVSX. The only evidence offered by the Plaintiff claimed he was a member and that he was entitled to his distributional interest for the wrongful disassociation from AVSX.

There was no separate or alternative claim for restitution made by the Plaintiff during trial asserting that the Defendant was unjustly enriched. Unjust enrichment is usually a prerequisite for enforcement of doctrine of restitution; if there is no basis for unjust enrichment, there is no basis for restitution. *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C. 633, 720 S.E.2d 485 (Ct. App. 2011). 12 S.C. Jur. Equity § 23. "To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value." *Sauner v. Pub. Serv. Auth. of S. Carolina*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003); see also *Earthscapes Unlimited, Inc.*, 390 S.C. 616-17, 703 S.E.2d 225 (providing the same requirements to recover under the doctrine of quantum meruit).

Plaintiff offered no theory of recovery at trial that Defendants had been unjustly enriched and he did not provide a basis for which the jury could calculate or award him some form of restitution. Plaintiff's sole theory of recovery was set in how much AVSX was worth and what his distributional interest should be if the jury found he was a member. All of Plaintiff's claims arose from his purported membership interest of the LLC. Plaintiff presented no theory for recovery as to a benefit provided to Defendants that was not recovered by Mr. Endara. He was a highly paid W-2 employee during his tenure with AVSX. The evidence presented by Plaintiff for his damages was based on an evaluation of an ownership interest in the LLC for which the jury determined he had no such interest.

In cases of restitution and unjust enrichment, the appropriate measure of damages is the amount by which the defendant was unjustly enriched. 12 S.C. Jur. Equity § 23. No damages were presented for any unjust enrichment to the Defendants, and therefore there can be no claim for restitution and the Court properly denied charging the cause of action. No new trial is warranted and the Court denies the Plaintiff's Motion.

For the reasons set forth herein, the Court denies Plaintiff's Motion for a New Trial.

AND IT IS SO ORDERED!


D. Craig Brown, Presiding Judge
Court of Common Pleas
Fifth Judicial Circuit

This 27 day of April, 2016

Florence, South Carolina

PCB
P-575

CERTIFICATE OF SERVICE

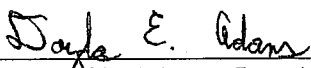
I, the undersigned employee of the Law Office of Todd Ellis, P.A., attorneys for AVSX Technologies, LLC, Bobby Johnson, and Mary Kay Johnson do hereby certify that I have served the opposing parties in this action with a copy of the document(s) hereinbelow specified by First Class U.S. Mail and E-mail to the following address(es):

Document:

Defendants' Memorandum in Opposition to Plaintiff's Rule 59(e) Motion to Alter or Amend the Order Denying Plaintiff's Motion for a New Trial

Parties Served:

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mellis@qlawsc.com



Douglas E. Adams, Legal Assistant

May 26, 2016

State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2014-CP-40-4234

Luis Endara,)
Plaintiff,)

vs.)

AVSX Technologies, LLC,)
Bobby Johnson, and Mary Kay)
Johnson,)
Defendants.)

Transcript of Record

January 25-28, 2016
Columbia, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge; and a jury

A P P E A R A N C E S:

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Michael H. Ellis, Jr., Esquire
Attorneys for Plaintiff

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Circuit Court Reporter

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TRIAL DAY 1 - 01/25/16

(Whereupon, a jury was first duly selected by the parties and empaneled.)

(Whereupon, the proceeding resumed at 2:18 p.m.)

THE COURT: All right. It's my understanding, in talking with -- Maryann, are you ready?

THE COURT REPORTER: Yes, sir.

THE COURT: All right. It's my understanding, in talking with the attorneys back in chambers this morning, as well as correspondence received from plaintiff's counsel over last Friday, that plaintiff's motion for bifurcation, as well as plaintiff's motion to pierce the corporate veil, has been withdrawn. Is that correct, Mr. Sautter?

MR. SAUTTER: Yes, sir, Your Honor.

THE COURT: All right. Now, the only matters outstanding, from my review of what you all have submitted to me, is plaintiff's -- or a motion to -- to -- to exclude tax liability of the parties. Is that right, Mr. Sautter?

MR. SAUTTER: Yes, sir.

THE COURT: All right. Let me hear from you at this time concerning that issue.

MR. SAUTTER: Well, Your Honor, we have

1 streamlined the case of -- from the plaintiff's
2 perspective. We intend to seek a finding from the
3 jury as to Mr. Endara's status. And then, simply,
4 damages just go to the value of the -- his --
5 whatever interest the jury determines that he has in
6 AVSX.

7 Any kind of collateral liability, such as any kind
8 of tax exposure that -- that either of the parties
9 would face as a result of what the jury decides, is
10 -- is really unknown at this point. It would be
11 speculative. We would argue that it would be
12 prejudicial and might tend to confuse the jury, when
13 all we're seeking is the value of the company. The
14 -- we're -- we're valuing it on the income stream for
15 the 2014 tax return and the -- the residuals and the
16 holdbacks. And the 2014 tax return does consider the
17 tax liability of the company for that year, but it
18 does not consider the tax liability of the
19 individuals. We would just ask that -- that the --
20 Mr. Ellis be instructed not to go there and we -- we
21 will not go there.

22 THE COURT: Hold on just a minute.

23 (Off the record briefly.)

24 THE COURT: All right, Mr. Ellis. Let me hear
25 from you.

1 MR. TODD ELLIS: Thank you, Your Honor. May it
2 please the Court: Your Honor, the -- the -- I -- I
3 -- I -- I frankly don't understand the motion.
4 They're going to have their client apparently attempt
5 to say what the value of the company is, while
6 excluding what the tax liability of the company is.
7 Neither, to my knowledge, the company -- the company
8 has not filed a tax return since 2010.

9 Those valuations that he's going to utilize,
10 apparently, are the ones that the Court ordered at
11 the last hearing, which were projections by the
12 company's accountant on what the tax liabilities may
13 be between the parties and the valuation of what
14 those tax returns might look at.

15 In -- in an effort to try to get this resolved and
16 in an effort -- well, the Court ordered it, frankly,
17 you -- the -- what the actual business was, what our
18 revenues were what at that time. You can't make a
19 business evaluation, even if it's through a
20 layperson, and not consider -- let me bring up the
21 fact that he hasn't paid taxes or those taxes have
22 been paid. Does that consider whether taxes have
23 been paid by the company or whether they've been
24 filed during that time.

25 And he -- as he stated in his request to admit --

1 excuse me -- in our discovery, he stated he has not
2 filed personal tax returns. And I have to bring up
3 those issues because this is all about ownership. He
4 -- part of our story here is, Your Honor, is that Mr.
5 Endara wants it both ways. He would like to have the
6 ownership and the income stream, but I don't want the
7 liability of having to be on the tax returns. So I
8 think that ---

9 THE COURT: Is that ---

10 MR. TODD ELLIS: --- plays ---

11 THE COURT: --- the jury's determination to decide
12 how much this tax issue is?

13 MR. TODD ELLIS: No, Your Honor. But the fact
14 that we can't bring that at all, that it hasn't been
15 brought up at all, does he owe taxes? Has he paid
16 those taxes? I think that'd be detrimental.

17 How can I not cross him on his own evaluation that
18 he's going to give as a layperson of whether the
19 taxes for the company have been paid? He's going to
20 assert he was an owner.

21 THE COURT: Right.

22 MR. TODD ELLIS: Now he's going to say I'm not --
23 I -- I'm a -- still an owner. And then, now he wants
24 you to rule that I can't talk to him about, when he
25 was an owner, he didn't file taxes and he doesn't

1 know how to -- whether the taxes have been paid. He
2 knows the taxes haven't been paid.

3 So I -- I can't allow -- I mean, I would argue
4 that -- I'm not sure I understand the motion. I
5 mean, whether I talk about his personal taxation
6 issues or whether I'm talking about the company
7 taxation issues ---

8 THE COURT: Is there any difference?

9 MR. TODD ELLIS: --- all that's fair game. No.
10 Except that I would be made -- willing to make some
11 consideration that this an argument thing. I don't
12 -- I don't -- I can argue that to the jury. I can
13 argue that if I simply ask Mr. Endara whether he's
14 filed his taxes since 2010 and he says he's not, and
15 then he goes and argues he's an owner of that
16 company, I can argue that he would owe the tax from
17 that ownership interest. They have to consider that.

18 THE COURT: Has your client paid his taxes since
19 2010 ---

20 MR. TODD ELLIS: I don't ---

21 THE COURT: --- the company's ---

22 MR. TODD ELLIS: --- know that ---

23 THE COURT: --- taxes?

24 MR. TODD ELLIS: I don't know -- they have --
25 they've haven't filed, Your Honor, which is all open

1 too. We can

2 -- we're not arguing that he can't talk about ours
3 that way. Yeah. But I'm saying that the -- the --
4 how can a company be valued if you've neither paid or
5 -- which might be a good question for Mr. Endara, or
6 filed those taxes.

7 The -- the jury's got to determine that. They got
8 to determine whether that's a liability. He says we
9 want to make an evaluation on the income stream only.
10 Well, that'd be great. I'd like to take my income
11 and then not my mortgage and not my rent and not the
12 light bill and -- and ---

13 THE COURT: You want to just have all your gross
14 ---

15 MR. TODD ELLIS: Wouldn't that ---

16 THE COURT: --- right?

17 MR. TODD ELLIS: --- be great? So that's why we'd
18 argue ---

19 THE COURT: Well ---

20 MR. TODD ELLIS: --- that's ---

21 THE COURT: --- well ---

22 MR. TODD ELLIS: --- improper.

23 THE COURT: Mr. Sautter, let me ask you this
24 question: Say, for instance, I rule in your favor,
25 all right, and the jury comes back with a verdict for

1 X number of dollars. What is the ultimate figure
2 that has to be paid pursuant to a judgment if this
3 tax liability is out there? I mean, am I going to
4 reduce the judgment by that amount?

5 MR. SAUTTER: No, sir. No, sir.

6 THE COURT: Then, whose responsibility is it?

7 MR. SAUTTER: The individuals where the -- where
8 the income falls. We're not saying exclude
9 necessarily the -- the company's tax liability. It's
10 just any tax liability that might -- would flow to
11 the -- to the individuals involved.

12 MR. TODD ELLIS: Well, you ---

13 MR. SAUTTER: I mean, I'm fine with the company
14 hasn't filed taxes.

15 MR. TODD ELLIS: I mean, no. I mean, Your -- Your
16 Honor, I -- I can't do the math on it. But what I
17 can do

18 -- I have no idea what Mr. Endara is going to say.
19 How much he owes to this company, what he does ---

20 THE COURT: You hadn't taken his deposition?

21 MR. TODD ELLIS: No, sir.

22 MR. SAUTTER: I mean, his testimony is going to be
23 he's a 50 percent owner and he's entitled to have the
24 value.

25 MR. TODD ELLIS: Okay. Well, then, I can easily

1 tell the jury: Great. He owes half those tax
2 values. But it's to your point alone, Your Honor --
3 you got the exact same thing. If they have -- if a
4 jury verdict comes out and says he's entitled to X
5 number of dollars and he says he's a 50 percent
6 owner, well, he -- during that time he owes the 50
7 percent of that tax liability. The jury's got to
8 know that. If not, we've got some ---

9 THE COURT: Why does the jury have to know that if
10 he's responsible for it separate and apart from what
11 ---

12 MR. TODD ELLIS: Because the ---

13 THE COURT: --- they've ---

14 MR. TODD ELLIS: --- corporation would owe that,
15 not only just -- not only just the S corporation
16 passed-down taxes, but the corporation that he says
17 he's an owner in -- an owner of.

18 THE COURT: All right. All right, Mr. ---

19 MR. SAUTTER: That -- that's it ---

20 THE COURT: --- Sautter.

21 MR. SAUTTER: --- on that issue, Your Honor.

22 THE COURT: All right. I'll let you know in a few
23 minutes. Go ahead. Next issue ---

24 MR. SAUTTER: On the plaintiff's criminal record,
25 I believe he has a criminal record in the past. But

1 I don't believe there's anything within the last ten
2 years that would rise to the level of one year's -- I
3 know ---

4 (Whereupon, Mr. Sautter and the plaintiff
5 conferred.)

6 MR. SAUTTER: There's nothing in the last ten
7 years, Judge.

8 THE COURT: What is his record?

9 MR. TODD ELLIS: Your Honor, may it please the
10 Court: The plaintiff pled guilty to 18-9-22 of the
11 U.S. Code in federal court in 1998. He pled guilty
12 to receiving stolen firearms and served 20 months in
13 jail. That crime, Your Honor, is one that we would
14 assert involves trustworthiness, a crime of moral
15 turpitude. The statute and the case law under that
16 law requires that the person knowingly have receives
17 stolen goods and therefore is admissible for
18 impeachment purposes against the plaintiff in this
19 case.

20 MR. SAUTTER: I -- I would ---

21 MR. TODD ELLIS: I -- I've -- I've got the
22 records, Your Honor, which is, needless to say,
23 somewhat from federal court is -- is a little
24 difficult to get and -- and a case that cites the --
25 the culpability of that as well.

1 MR. SAUTTER: I -- I don't know that that's one of
2 the -- the crimes that have been determined in our
3 state system as to be crimes against moral turpitude.

4 But -- but I'd simply point out that was almost 20
5 years ago, Judge, 19 years ago, if it's '98. And we
6 would ask that it be excluded.

7 MR. TODD ELLIS: The -- the ---

8 THE COURT: All right. I'm going to grant -- I --
9 I'm going to deny defendant's motion to go into his
10 criminal record. Anything further on that issue?

11 MR. TODD ELLIS: Just -- yeah, just briefly, Your
12 Honor. I -- I -- I failed to mention this before you
13 rule and maybe you reconsider. A big part of this
14 case would be: "Mr. Endara, why were you not on the
15 legal documents if you claim you're an owner?" And
16 my client will assert that his inability or belief
17 that his inability to receive his license to work in
18 the alarm industry because of his record prohibit him
19 from doing that or is the reason why he did not want
20 to be a part of that. Therefore, his record would be
21 relevant to that issue alone. It's simply not one
22 reason to impeach him on it. So it's twofold.

23 MR. SAUTTER: There are -- there's a -- there's a
24 companion issue to that, Your Honor. And I'd like to
25 bring it up at this point. Mr. Johnson, I believe,

1 has a number of civil judgments entered against him.
2 I don't want to do something -- I pulled it
3 downstairs. I'm not even sure if they are all him.
4 It is lengthy. There's a lot of stuff in
5 magistrate's court. The last -- the last one that I
6 have is -- there was a judgment in 2012 on a -- from
7 the Waverly magistrate. I'm not even sure they're --
8 they are Mr. Johnson. And I can just tell that -- to
9 Mr. Ellis: I won't go into Bobby's judgment and
10 credit history if -- and -- if it -- if perhaps that
11 would help his concern with my client's criminal
12 record.

13 MR. TODD ELLIS: Yeah. Your Honor, that --
14 there's none of that. And there's no way there's a
15 comparison of it. Our laws, the -- the rules of
16 evidence, 403, and these courts have allowed for the
17 impeachment based on a prior conviction. Now, it is
18 in your discretion, Your Honor. This is 20 years
19 old. But this is a receipt-of-stolen-firearms
20 charge.

21 THE COURT: Do you ---

22 MR. TODD ELLIS: It got him ---

23 THE COURT: --- have any ---

24 MR. TODD ELLIS: --- 20 months.

25 THE COURT: --- case law, Mr. Ellis, that would

1 ---

2 MR. TODD ELLIS: Yes, Your Honor.

3 THE COURT: --- indicate that this is a crime of
4 -- of dishonesty or false statement?

5 MR. TODD ELLIS: I -- I do, Your Honor.

6 THE COURT: And our Supreme Court, within the last
7 year, said that ---

8 MR. TODD ELLIS: Sure did.

9 THE COURT: --- stealing -- stealing is not a
10 crime of dishonesty or false statement.

11 (Whereupon, Mr. Ellis and Mr. Webb conferred.)

12 MR. TODD ELLIS: Your Honor, this is the -- the
13 first markings up. That's the actual act. It's a
14 very long act. But he ---

15 MR. SAUTTER: What's -- what's that cite?

16 MR. TODD ELLIS: 18 ---

17 MR. WEBB: 18 ---

18 MR. TODD ELLIS: --- USC, Section 922 ---

19 MR. WEBB: --- 922(j).

20 MR. TODD ELLIS: --- (j).

21 (Whereupon, Mr. Ellis and Mr. Webb conferred.)

22 THE COURT: All right. Anything further on this
23 issue, Mr. Ellis?

24 MR. TODD ELLIS: No, Your Honor. Again, there's
25 the cite. Defendant knew -- it's cited within the

1 case of *United States v. Ortega* and Section 922(f).
2 One of the reasons this is important, Your Honor, is
3 because -- or -- excuse me -- (j) -- is because the
4 other provisions do not require a finding of
5 knowingly. And in this case, it states that he has
6 to knowingly have received stolen firearms.

7 I would say that that's the difference in this as
8 well. A conviction under that -- conviction under
9 (j) requires proof that defendant knew the firearm
10 was stolen, while a conviction under 922(k) does not.
11 And that would be why I would think, Your Honor, that
12 this is clearly one that would fall within the
13 showing of lack of truthfulness, crime of moral
14 turpitude, even under the limitations given by the
15 Supreme Court in the last year.

16 I also have another case, Your Honor: *Green v.*
17 *Hewett*. It -- it is a 1991 case, but it does visit a
18 little bit further about the -- really the standard
19 prior to this time frame.

20 (Off the record briefly.)

21 THE COURT: All right. First of all, the Court
22 finds that such conviction is not admissible.
23 Pursuant to Rule 609, the Court does not believe that
24 such conviction is out -- is a crime involving
25 dishonesty or false statement as asserted by defense

1 counsel. Furthermore, the time period for which the
2 conviction occurred was beyond ten years. But your
3 objection is so noted for the record.

4 MR. TODD ELLIS: Thank you, Your Honor.

5 THE COURT: All right. Next matter -- therefore,
6 that would preclude plaintiff's counsel from going
7 into judgments ---

8 MR. SAUTTER: Yes, sir.

9 THE COURT: --- against the defendant.

10 MR. SAUTTER: Yes, sir.

11 THE COURT: All right. The next matter on here is
12 the motion to -- concerning plaintiff -- excuse me --
13 defendant -- defendant's medical records.

14 (Whereupon, Mr. Sautter and Mr. Michael Ellis
15 conferred.)

16 THE COURT: Plaintiff's counsel?

17 MR. MICHAEL ELLIS: Thank you, Your Honor. And,
18 Your Honor, plaintiff's whole position is based upon
19 there was no writing to protect himself in this
20 business venture because of the absolute trust
21 between plaintiff and his partner, Defendant Bobby
22 Johnson. It is plaintiff's position that this entire
23 case is based upon -- he still thinks that if not for
24 the defendant's mental condition, we would not be
25 here today. So the -- the defendant's mental health

1 is very relevant to why there is no writing. It is
2 also relevant as to ---

3 THE COURT: Well, hold on a minute, now. You've
4 said there was no writing because of the trust
5 between the two. What's that got to do with down the
6 road? And -- I mean, I understand where you're
7 getting -- where you're getting at. But I want to
8 make it clear for the record: They never entered
9 into any writing because of the trust that they had.
10 It's your position or plaintiff's position that such
11 a relationship deteriorated because of defendant's
12 mental issues; is that correct?

13 MR. MICHAEL ELLIS: That's correct, Your Honor.

14 THE COURT: All right.

15 MR. MICHAEL ELLIS: And then, also, Your Honor,
16 there -- there are some party admissions in those
17 medical records that we also believe are relevant to
18 this case.

19 THE COURT: Well, what -- I've heard y'all
20 reference medical records. I hadn't even seen them.
21 What -- what you intend or what you're taking about
22 -- I mean, what ---

23 MR. TODD ELLIS: Well, there's a threshold issue,
24 Your Honor, of whether the medical records would be
25 admitted or not in a case that involves business

1 partners purportedly splitting up. But also, there's
2 the hearsay issues anyhow. So even if ---

3 THE COURT: I don't disagree with you ---

4 MR. TODD ELLIS: Yeah.

5 THE COURT: --- on that.

6 MR. TODD ELLIS: Even if they allowed the records,
7 I know that Your Honor would not allow any statements
8 therein that supposedly are party admissions that
9 were written down by some medical professional in a
10 hospital.

11 THE COURT: Well, I mean, what -- what I have an
12 issue or concern about is you're, in essence,
13 plaintiff's counsel, arguing causation here.

14 MR. MICHAEL ELLIS: That's correct, Your Honor.

15 THE COURT: All right. How can you argue
16 causation when your client is not a medical doctor to
17 testifying concerning that causation?

18 MR. MICHAEL ELLIS: That's ---

19 THE COURT: I mean ---

20 MR. MICHAEL ELLIS: --- why we ---

21 THE COURT: Go ahead.

22 MR. MICHAEL ELLIS: That is why we think the
23 medical records are extremely relevant. The business
24 ---

25 THE COURT: Well, I mean ---

1 MR. MICHAEL ELLIS: --- records ---

2 THE COURT: --- what about -- how -- how do they
3 get around the hearsay issue?

4 MR. MICHAEL ELLIS: It's party admission within
5 business records, hearsay within a hearsay.

6 THE COURT: Well, again, I hadn't even seen the
7 records to review.

8 MR. MICHAEL ELLIS: I'm -- they're -- they're
9 thick, but we can produce them right now.

10 THE COURT: Well ---

11 (Whereupon, Mr. Sautter and Mr. Michael Ellis
12 conferred.)

13 MR. SAUTTER: Your Honor, I ---

14 THE COURT: Well, you ---

15 MR. SAUTTER: --- I propose ---

16 THE COURT: --- need to look at them and see what
17 you ---

18 MR. SAUTTER: Yes, sir.

19 THE COURT: --- intend -- I mean, they're thick.
20 I mean ---

21 MR. SAUTTER: Yes, sir.

22 THE COURT: --- this is -- y'all have known for
23 three weeks that I had this day-certain for today.
24 And you -- you should've sent it to me so I could
25 look at it before ---

1 MR. SAUTTER: Yes, sir.

2 THE COURT: --- we got in here today. I don't
3 know thick it is and how much. I mean ---

4 MR. MICHAEL ELLIS: About 175 pages.

5 THE COURT: Sir?

6 MR. SAUTTER: It's about ---

7 MR. MICHAEL ELLIS: It's about 175 pages.

8 MR. SAUTTER: --- 175 in total, but only a couple
9 pages. Your Honor, I -- I will not argue that in the
10 opening and we'll just see ---

11 THE COURT: Okay.

12 MR. SAUTTER: --- how it goes through the --
13 through the ---

14 THE COURT: All right. Well, at this time I'm
15 going to deny it until ---

16 MR. SAUTTER: Yes, sir.

17 THE COURT: --- I certainly have an opportunity to
18 look at it. Mr. Ellis may be exactly right on his
19 objection here. But they -- but then, again, you may
20 be right to some extent, depending on what I see
21 within the records.

22 MR. SAUTTER: Yes, sir.

23 THE COURT: Okay?

24 MR. MICHAEL ELLIS: So -- so that's a piecemeal
25 through the trial ---

1 THE COURT: It's denied right now until I see it.
2 And it's hard for me to rule on it until I've
3 thoroughly reviewed what exactly you intend to try to
4 put in. But -- but just to -- in fairness to you, it
5 -- it's not fair at this point to say I'm not going
6 to let them in, period. But in fairness to Mr.
7 Ellis, I'm not going to say they're coming in until
8 I've at least had an opportunity to look at them and
9 -- and see exactly what they say. I'm agreeing with
10 Mr. Ellis at this point -- Todd Ellis, that is, for
11 the record. Okay?

12 MR. TODD ELLIS: Well, you might have to call me
13 Todd, which would be fine, Judge, throughout the
14 whole trial because of that.

15 THE COURT: So -- but anyway, that's my ruling, on
16 that as we stand, until I have an opportunity to look
17 at it and -- and there may be something that you all
18 can agree on in there. I'm not saying it is, but it
19 may be. Okay?

20 MR. SAUTTER: Yes, sir.

21 THE COURT: All right. Anything else?

22 MR. SAUTTER: No, Your Honor, not from the
23 plaintiff.

24 THE COURT: Defense counsel? I notice that there
25 was a motion to compel that was filed on the --

1 what's today, 25th? -- on the 22nd. It's my
2 understanding that we had this discussion in chambers
3 before the jury came up before we selected a jury,
4 and I -- please correct me if I misstate. But I
5 think you all got that worked out. Is that right,
6 Mr. Todd Ellis?

7 MR. TODD ELLIS: You're correct, Your Honor.

8 THE COURT: All right. Any further matters
9 outstanding before -- jury's supposed to be back here
10 at 3. That's in about 20 minutes. Any further
11 matters outstanding at this point before we get the
12 jury here? Mr. Sautter?

13 MR. SAUTTER: Not --- none from the plaintiff,
14 Your Honor.

15 THE COURT: Mr. Todd Ellis?

16 MR. TODD ELLIS: Nothing, Your Honor.

17 THE COURT: All right. We'll stand down for just
18 a minute. I want to think about this tax liability.
19 I assume that -- depending on what my ruling is,
20 y'all may want to go into that in opening.

21 MR. SAUTTER: Yes, sir.

22 THE COURT: I'll let you know before I bring the
23 jury out.

24 MR. TODD ELLIS: Thank you, Your Honor.

25 THE COURT: Okay.

1 (Off the record from 2:41 p.m. until 2:59 p.m.)

2 (Whereupon, Plaintiff's Exhibits 1 through 18 were
3 marked for identification while off the record.)

4 THE COURT: All right. We have all the jurors
5 here. With regards to the -- the tax issue, I am
6 going to allow the issue pertaining to the failure of
7 the company to pay taxes. I'm not going to allow,
8 based upon argument that I've heard here, personal
9 tax liability as it relates to either plaintiff or
10 defendant. All right. Anything further?

11 MR. TODD ELLIS: Just a clarification, Your Honor:
12 I -- you're not prohibiting us from arguing -- maybe
13 this is not the right time for it -- that the
14 corporate tax liability, depending on who you found
15 ownership for in this case, would fall to that person
16 who owns it? That -- that's simply all I want to
17 argue, is that they need to understand ---

18 THE COURT: I -- I don't think -- what I have a
19 concern about is personal tax -- it's almost like the
20 way the Court perceives here is by allowing
21 plaintiff's counsel or yourself to get into personal
22 tax liability, it'd be, in essence, arguing to this
23 jury to discount it based on the
24 -- the personal tax liability. And then it's going
25 to get discounted again based upon whatever personal

1 tax liability each of them have -- assuming that
2 plaintiff prevails, if that makes sense.

3 So from what you said, I don't think that's
4 improper at all ---

5 MR. TODD ELLIS: Uh-huh.

6 THE COURT: --- because you got tax liability --
7 the corporate tax liability. Well, that's going to
8 be determined not by the Court, not by me. That's
9 going to be determined by the state and federal
10 people. And that's not something that this jury
11 should, you know ---

12 MR. TODD ELLIS:

13 THE COURT: --- if that makes sense.

14 MR. TODD ELLIS: I think so, Your Honor.

15 THE COURT: Okay.

16 MR. SAUTTER: Your -- Your Honor, for the Court's
17 information, we have -- the plaintiff has premarked
18 all of their exhibits.

19 THE COURT: Okay.

20 MR. SAUTTER: They are numbers -- and -- and I
21 don't think there's an objection to Nos. 1 through
22 16.

23 THE COURT: Okay.

24 MR. SAUTTER: The items that are still subject to
25 objection, I think, are e-mails from Mr. Johnson's

1 daughter to the accountant. They are Nos. 17 and 18.

2 We can ---

3 THE COURT: Okay.

4 MR. SAUTTER: --- deal with those then. And we
5 have looked at Mr. Ellis's exhibits. And -- and
6 there may be some things we have to deal with, but we
7 should be able to stipulate to everything.

8 THE COURT: Okay. All right. Bring me the jury,
9 please, sir.

10 (Whereupon, Plaintiff's Exhibits 1 through 16 were
11 entered into evidence.)

12 THE BAILIFF: Yes, Your Honor.

13 THE COURT: As he's going to get the jury,
14 anything else before I bring the jury in?

15 MR. TODD ELLIS: Just my -- I don't know if you --
16 if it's -- Your Honor, if on -- to get defendant's
17 marked, I just need a little bit more time. But we
18 can do that as we go because we don't have an -- we
19 don't -- we have an agreement on the exhibits.
20 Whatever you'd like to do.

21 THE COURT: Well, do you intend to mark with
22 plaintiff's witnesses those exhibits, or they going
23 to be more in line with your case to use ---

24 MR. TODD ELLIS: On my cross, Your Honor.

25 THE COURT: Sir?

1 MR. TODD ELLIS: On my cross. And I'm going to

2 ---

3 THE COURT: Okay.

4 MR. TODD ELLIS: --- use them in opening one.

5 Now, we may not get there. If you want to -- I don't
6 know if you'd intend to go right into in the after
7 opening or ---

8 THE COURT: Oh, yeah.

9 MR. TODD ELLIS: --- not.

10 THE COURT: We're going to start.

11 MR. TODD ELLIS: Well, I ---

12 THE COURT: If you need ---

13 MR. TODD ELLIS: --- I'll do ---

14 THE COURT: If you need some time -- I mean,
15 you've indicated Mr. Sautter doesn't have an
16 objection.

17 MR. TODD ELLIS: He does not.

18 THE COURT: Okay.

19 MR. TODD ELLIS: It's just ---

20 THE COURT: And that's ---

21 MR. TODD ELLIS: --- a matter ---

22 THE COURT: --- fine.

23 MR. TODD ELLIS: It's a matter of stamping them,
24 then.

25 THE COURT: We can -- that'd be fine.

1 MR. TODD ELLIS: Okay. We'll do that. Yes, Your
2 Honor.

3 THE COURT: Okay. Bring ---

4 MR. TODD ELLIS: I'd prefer ---

5 THE COURT: --- me the ---

6 MR. TODD ELLIS: --- that.

7 THE COURT: --- jury, please.

8 (Off the record briefly.)

9 (Whereupon, the jury entered the courtroom at 3:04
10 p.m.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Thank you, Mr. Dye.

13 (Off the record briefly.)

14 THE COURT: All right. Ladies and gentlemen, I
15 hope you all had a nice lunch and are ready to begin
16 the trial of this case. At this time I am going to
17 ask the clerk to please swear the jury.

18 (Whereupon, the jury was duly sworn at 3:05 p.m.)

19 THE COURT: All right. Ladies and gentlemen, I
20 don't know about you all, but it's kind of warm in
21 here to me. I've asked that they adjust the
22 thermostat. I didn't tell you this before lunch.
23 But as you -- as you serve this week, please -- I --
24 I want you to be comfortable while you're up here
25 serving. If I have anything to do with the

1 thermostat in here, it's going to be cold. Okay?

2 I'm hot-natured, and I'm sitting up here in this
3 robe, a shirt, a tie, and an undershirt. And so I
4 get quite warm up here. I thought it was just me
5 when we came back in. But the attorneys have agreed
6 with me that it's kind of warm in here. So please, I
7 want you to dress -- dress in a way that -- that
8 you're comfortable while you serve up here.

9 Now, ladies and gentlemen, the case we're about to
10 try is the case of *Luis Endara v. AVSX Technologies,*
11 *LLC, Bobby Johnson, and Mary Kay Johnson.* Now,
12 before we begin the trial of this case, I want you to
13 understand that this trial will probably be different
14 from what you might expect. Many people do not have
15 the chance to attend actual court sessions, as you're
16 doing now, and may think, from watching television or
17 movies or reading books, that trials are always full
18 of high drama, intense action, and riveting
19 circumstances.

20 Now, while all of these things may be true at
21 times, this trial, ladies and gentlemen, is not for
22 entertainment. It is a fundamental part of our
23 democracy, a search for the truth in an effort to
24 make sure that justice is done between the parties
25 before the Court. Searching for the truth and making

1 sure that justice is done is often slow, deliberate,
2 and repetitive, the opposite of what you may have
3 seen on television or movies or read in books. This
4 courtroom is a place of honor, dedicated to the
5 protection and preservation of citizens' rights
6 through what many have called the greatest justice
7 system ever created.

8 The attorneys appearing before you are advocates
9 for the parties that they represent. But first and
10 foremost, they are officers of the Court, sworn to
11 uphold the integrity and fairness of our judicial
12 system and to help you in the search for the truth.
13 You should expect them to be professional, competent,
14 and ethical in the representation of their clients'
15 interests.

16 Now, what I will now say to you, ladies and
17 gentlemen, is intended to serve as an introduction to
18 the trial of this case. These remarks are not a
19 charge on the law in this case. I will instruct you
20 on the law applicable to the case at the end of the
21 trial before you retire to consider your verdict.
22 This is merely an explanation of the procedure that
23 we will follow in the trial of this case so that you
24 may better understand what may be happening.

25 You have been selected as fair and impartial

1 jurors whose purpose is to find and determine the
2 facts. You are the sole judge of the facts. If, at
3 any time, I make any comment regarding the facts, you
4 must disregard it. You are to determine the facts
5 from the testimony you hear and any other evidence
6 that is presented here in this courtroom.

7 You should not be influenced by any opinions or
8 statements you may have heard outside of this
9 courtroom. It is especially important that you
10 perform your duty of determining the facts diligently
11 and conscientiously. Because ordinarily, there is no
12 way to correct an erroneous determination of the
13 facts by a jury. When you comply with your oath to
14 impartially determine the facts of this case, you
15 will have fulfilled your duty as jurors and no one
16 will have the right to criticize your verdict.

17 On the other hand and with equal emphasis, the
18 same law that makes you the judge of the facts makes
19 me the judge of the law. The law, as given by the
20 Court, is the only law that you may consider. You
21 must accept and follow it even though you may
22 disagree with it. I cannot tell you all, ladies and
23 gentlemen, what the facts are and you cannot disagree
24 with me about what the law is or should be.

25 Your job is to take the law, as I give it to you,

1 and apply it to the facts as you find them, from the
2 testimony of the witnesses and any other evidence
3 that is presented. After doing that, you will render
4 your verdict, a true and just verdict under the
5 solemn oath that you just took as jurors.

6 Now, until I advise you to begin your
7 deliberations, you must not -- you must not discuss
8 this case with anyone, including your fellow jurors,
9 friends, family members, and anyone involved in this
10 case. The attorneys and parties in this case have
11 been advised that they are not to talk to you at all.
12 So if you see anyone involved in this case and they
13 do not speak to you, they are not being unfriendly.
14 They are simply following this Court's instructions.

15 Now, during your deliberations you may only
16 discuss the case in the jury room with your fellow
17 jurors, because they have seen and heard the same
18 evidence that you have. However, you must not
19 discuss the case with anyone other than your fellow
20 jurors until you have returned a verdict and the case
21 is at an end. I remind you that you must decide this
22 case based solely on the evidence presented here in
23 this courtroom.

24 This means that during the trial, you must not
25 conduct any independent research about this case, the

1 facts of the case, the evidence presented in the
2 case, or the people or organizations involved in any
3 way in the case. Please do not try to find out
4 information from any source outside of this
5 courtroom. In other words, you must not look at
6 dictionaries or other reference materials; search the
7 Internet, Web sites, or blogs; or use any other
8 electronic tools to get information about this case
9 to help you decide the case. You may not use
10 computers, telephones, cell phones, smartphones,
11 tablets, the Internet, or other tools of technology
12 with communication capabilities at any time while you
13 are in the courtroom or during your deliberations.

14 Now, during your breaks for meals or overnight, if
15 necessary, you may use these devices. However, you
16 must not use those devices to communicate with anyone
17 about the case until the case is over. This means
18 that you must not use phone calls, e-mails, text
19 messages, instant messages, Twitter, or any blog,
20 chat room, or Web site, including Facebook, Google
21 Plus, Myspace, Linked, YouTube, or any social-media
22 Web sites to send or receive information about this
23 case -- this includes information about a party, a
24 witness, an attorney, or a court officer, news
25 accounts about the case, research on topics raised,

1 any topics you may think would be helpful in deciding
2 the case, or any testimony presented by any witness.

3 During the trial do not read, listen to, or watch
4 any news reports about the case, if there are any.
5 This includes anything that may be in the newspaper
6 or -- or on the Internet, radio, or television. You
7 must not consider anything you may have heard about
8 this case outside the courtroom, whether before or
9 during the trial. Information on television, radio,
10 the Internet, or from other sources might be wrong or
11 incomplete.

12 In our judicial system, it is important that you
13 are not influenced by anything or anyone outside of
14 this courtroom. If you become aware of another
15 juror's violation of these instructions, please
16 inform the Court immediately. It is important,
17 ladies and gentlemen, that you keep an open mind and
18 not decide any issue in the case until all of the
19 evidence has been presented, the parties have made
20 their closing argument, and I have instructed you on
21 the law applicable to this case.

22 Now, in just a moment, the attorney for the
23 plaintiff will make what is called an opening
24 statement. The attorney will explain to you the
25 issues in this case, or at least what the attorney

1 thinks the issues are in this case. The attorney for
2 the defendant will also make an opening statement.

3 What the attorneys tell you, ladies and gentlemen,
4 during their opening statements is not evidence in
5 this case. It is only their contention as to what
6 the issues are. The evidence in this case will be
7 presented to you by the testimony of sworn witnesses
8 from this witness stand, together with any exhibits
9 that may be introduced into evidence.

10 Now, from time to time during the course of this
11 trial, you may hear one of the attorneys say
12 something like, "Your Honor, I believe that we have a
13 question of law or a matter of law to discuss with
14 you, or, "Your Honor, may we approach the bench?" Or
15 sometimes I myself might find it necessary to excuse
16 you from the courtroom for a short while so the
17 attorneys and I can discuss a matter of law. The
18 reason for this is because you are the judge of the
19 facts in this case and sometimes, when I am
20 discussing matters of law with the attorneys, it may
21 be necessary for me to make some comment as to the
22 facts in connection with ruling whether or not a
23 particular law applies.

24 I am not supposed to tell you what I think the
25 facts are, so I will excuse you from the courtroom

1 while these discussions take place so that in no way
2 will you be influenced by anything that I might say
3 or do in connection with the facts.

4 Now, in determining what the true facts are in
5 this case, you must decide whether or not the
6 testimony of the witnesses is believable. It will be
7 my responsibility to rule as a matter of law as to
8 whether certain testimony is admissible or not.

9 Once testimony is admitted, whether or not you
10 believe it is solely for you to determine. And in
11 deciding whether to believe a witness, you have the
12 right to consider the interest of any witness, the
13 bias of any witness, the prejudice of any witness,
14 the opportunity for the witness to have seen the
15 matters and things about which the witness may
16 testify, and the way the witness acts on the witness
17 stand. You have the right to consider anything that
18 is in the record that will help you evaluate the
19 testimony of the witnesses.

20 That means that it is your duty to pay close
21 attention to these witnesses, to observe the
22 witnesses, to listen to the witnesses, and to pay
23 close attention to the attorneys and to the Court.
24 Please don't let your thoughts wander but give strict
25 attention to the testimony in this case so that at

1 the end of all the testimony, after the arguments of
2 counsel, and the charge on the law by the Court, you
3 will then be in a position to determine what the true
4 facts are and to apply the law to those facts and
5 thus render a true and just verdict.

6 Now, later in this case, ladies and gentlemen, a
7 foreperson will be selected to preside over
8 deliberations in the jury room. It will be the
9 foreperson's added duty to be the jury's spokesperson
10 here in court. It will also be the foreperson's duty
11 to write the verdict. But I will give the foreperson
12 further instructions about that at the conclusion of
13 the case.

14 Now, in order to preserve everyone's rights, I
15 will give the parties an opportunity to object to
16 anything that I have said.

17 Any exception or objection to anything that I have
18 said to the jury by plaintiff's counsel?

19 MR. SAUTTER: No, Your Honor.

20 THE COURT: Defense counsel?

21 MR. TODD ELLIS: Nothing, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, we
23 will now begin the trial of this case. Plaintiff
24 counsel is so recognized for opening statement.

25 MR. SAUTTER: Thank you, Your Honor. May it

1 please the Court?

2 THE COURT: Yes, sir.

3 OPENING STATEMENT BY MR. SAUTTER

4 MR. SAUTTER: Let me first off say that we don't
5 get to this every day. I've been practicing law for
6 32 years. I've been in these courtrooms a bunch.
7 But as far as addressing a jury, our peers, the
8 people that have the common sense to decide these
9 facts because the parties obviously can't, is a rare
10 occurrence. I'm going to be a little nervous. If I
11 really mess up, please don't hold that against my
12 client.

13 It's not about a popularity contest between Todd
14 Ellis and I. I mean, you know, we're -- we're going
15 to advocate our clients' positions. And we're going
16 to do the best we can. And we're going to get along,
17 and we're going to try to do it in a professional
18 manner, just -- just like the judge told you.

19 I'll try to provide some dramatics to you to keep
20 everybody's attention. But it is a little bit
21 different than TV. Even the old Perry Mason shows,
22 it -- between 30 minutes they would have one person
23 on trial and then somebody else would be convicted.
24 That's not the way it really works.

25 What we have here is a business dispute between

1 Luis Endara, my client, and Bobby Johnson and Mary
2 Kay Johnson, the defendants. That's all it is. It's
3 -- well, it's a lot more than that. It's a business
4 dispute involving their families.

5 The facts will be laid out as we go along. We've
6 got a pile of exhibits over there that Mr. Ellis and
7 I have already agreed to. There are some in dispute.
8 And we really don't have much problem with his --
9 with his exhibits, if any. So at the end of the day,
10 we're going to try to get to the same place where
11 it's going to be up to you to decide the facts as
12 presented.

13 You've heard a little bit about the jury trials.
14 And I know it started with the jury qualifications.
15 You saw us flipping through the papers. It wasn't
16 that we were -- we were -- we were engaged in very
17 important business. We have to try to get to know
18 y'all in the ten minutes when there's 300 people out
19 there to try to make sure that -- that -- that
20 justice is done in this case. This is Mr. Endara's
21 only chance for justice, as it is with the Johnsons
22 as well.

23 So it is going to come from that -- the witness
24 stand over there, the seat next to the court
25 reporter. She's taking down everything we say.

1 Everything else is -- doesn't really count.

2 Do you abandon your common sense? Do you abandon
3 your judgment? Do you abandon the things that have
4 -- have kept you moving forward in your lives to --
5 to go to a -- a trial to figure out something that
6 maybe we don't present the best way possible? No.
7 You just decide it like -- like -- like you see it.
8 You decide what the true facts are, as Judge Brown
9 said.

10 Now, in this case it was a business dispute. But
11 there's not a lot of business records. They -- they
12 formed a partnership and they called it AVSX. They
13 filed the basic business records to start the
14 business with the state. But as far as filing an
15 organizational -- or an operational agreement as to
16 how it's actually going to go as to who owns what, as
17 to what each of the partners duties and obligations
18 were to each other and to everybody they work for and
19 their families, there's no operational agreement.

20 And that's just going to be something that -- that
21 -- that you're going to have to sort out. We will
22 try to offer evidence -- compelling evidence --
23 that's for you to decide as well -- as to how this
24 business operated.

25 And it's going to be based on the testimony of Mr.

1 Endara. But it's also going to be based on the
2 admissions of the Johnsons. There are -- there
3 aren't business documents for y'all to consider. But
4 there are e-mails. There are charts.

5 I'd start it right now. The first -- the first
6 thing I'd ask you to -- this whole thing -- the first
7 part of what y'all are going to have to decide is:
8 Did Mr. Endara have any status or standing as to this
9 business and what was his role?

10 And I would submit for your review: Here's a
11 chart drawn up by AVSX. It's got Bobby Johnson at
12 the helm and Luis Endara at the helm. It's got some
13 other officers who may or may not testify. I didn't
14 make this up. This was provided by AVSX. They --
15 they disseminated it to anyone who would listen. And
16 that's the way it is.

17 Now, what AVSX -- our position is -- is that Luis
18 Endara is a 50 percent partner of this business.
19 What the defense is going to try to show is this
20 business is not run by these two captains of the
21 ship, but it's actually run -- owned and operated --
22 I don't know if they'll go as far as operated -- by
23 Mary Kay Johnson. And it's going to -- it's going to
24 be up for you to consider: Why isn't she on this
25 chart? That -- that's one of the things you'll have

1 to decide.

2 Now, we've got some e-mails. There's one that's
3 really telling. I've marked it as Plaintiff's
4 Exhibit No. 3. It's without objection. It's called
5 "Our History." And it's from Bobby Johnson. He is
6 telling how they got to this point, and the date of
7 it is December 29th, 2013.

8 This is how we got here. This is why AVSX is
9 successful. This is who we are, and we're all about
10 taking care of business. And we're also about taking
11 care of our people. It's about Luis and Bobby
12 working together to bring this business up.

13 You'll have it back there. You'll have a chance
14 to look at it. I wish I had it blown up.

15 Some other e-mails -- one of the things the judge
16 said was that you will have to determine the
17 credibility of the witnesses. And I submit, the best
18 way to determine the credibility is what was written
19 between them? What was written between Bobby and
20 Luis when the heat wasn't on, when the spotlight
21 wasn't on, when there was no dispute as to who was
22 running the business? And I've got those. They go
23 back to 2013 and 2014. And you'll have a chance to
24 look at those.

25 It's all about the credibility, the our-history

1 e-mail that I just talked about. There's -- now,
2 Bobby -- this is a very successful business. Bobby
3 Johnson is a -- a brilliant leader when he's focused.
4 He -- his philosophy is "bring it." We are going to
5 bring it. We are going to make -- have this company
6 do what it's supposed to do. We're going to honor
7 ourselves, and we are going to move forward. And
8 you'll see that in -- in the -- in the next exhibit.

9 And -- and at one time -- you know, Bobby doesn't
10 sit still with stuff. If there was an issue, he
11 tries to deal with it. And one time there's an e-
12 mail -- you'll see -- where Bobby and Luis agreed to
13 give 10 percent of their company -- our company -- to
14 -- to employees as a part of a share. Luis was fine
15 with that. Bobby was fine with it. It was Bobby's
16 e-mail, dated February 8th, 2013.

17 Okay. Then, there are a series of e-mails,
18 commencing on January 16th of 2014. There's a
19 wrinkle -- there's a wrinkle in the road. Costs are
20 -- are -- are up. And -- and Bobby, the leader that
21 he is, is -- is really wondering whether he should
22 continue with the business. Bobby has some -- you
23 will hear that some things are going on in Bobby's
24 life, not necessarily bad things for -- for -- that
25 I'm going to try to point the blame at, but just

1 things are going on.

2 Bobby is trying to consider whether he's going to
3 stay in business with Luis and continue operating
4 AVSX or Force Protection or not. There's a series of
5 e-mails. It starts at 11 p.m. on night by Bobby
6 Johnson. And it ends at 11 a.m. the next day by Luis
7 Endara. I didn't make those up.

8 There's an important letter from Mr. Ellis. I'm
9 not calling him as -- as a witness. But on March
10 21st of 2014, Mr. Ellis sends a letter to Luis Endara
11 and to my office, saying that Luis is terminated. He
12 will no longer have anything to do with AVSX and that
13 he is not to contact the Johnsons. They swap out
14 some cars and things of that nature. He's not
15 supposed to communicate with the Johnsons or Mary Kay
16 Johnson.

17 Those are some of the highlights to -- to really
18 decide the status. And then -- and then, if -- if
19 this jury decides that he was a 50 percent partner,
20 as -- as we believe Mr. Johnson has admitted, then
21 it's a question of damages. What is half of that
22 company worth?

23 It started out they weren't making a lot of money.
24 But by -- by the 2014 tax returns, they made a lot of
25 money -- a lot of money, almost \$10 million in gross

1 profit.

2 Now, they have to take out different charges.
3 They have to pay for their expenses. They have to
4 figure in -- and there's the tax -- we'll have a 2014
5 tax return for you. And -- but after everything was
6 taken out, there was still \$620,000 in profit.
7 That's a lot of money. I've got a small business.
8 Maybe some of y'all do. I -- I -- I think -- I think
9 some of y'all might.

10 But \$620,000 profit -- in addition there are
11 hundreds and thousands of dollars -- hundreds and
12 thousands of dollars of payments that just come in
13 because of the contracts that -- that AVSX has
14 serviced over the time. They're called residuals and
15 share revenue and -- and holdbacks. For a three-year
16 period -- not three years -- from January 13th
17 through -- 2015, a 22-month period, it's over \$2
18 million of that money that comes in every month.

19 And so when we get to that stage, Mr. Endara will
20 testify as to what he believes the value of the
21 company is. And it'll be up to you to determine what
22 the value of it is.

23 There's no experts. There's no economists. We're
24 not going to take a lot of time with that. It's
25 going to be up for y'all to decide how much of -- of

1 half of a business that -- that rakes in \$620,000 a
2 year as pure profit is really worth. And that's
3 going to be something that we'll ask you at the end.

4 It's a -- it's a big case. I -- I think I've laid
5 it out. A lot is involved. A lot of people's lives
6 are involved.

7 When they got together and formed this thing,
8 AVSX, and even a predecessor company before that,
9 they -- they did it for their families. He had his
10 mother working there, two daughters, and I think his
11 sister working at AVSX.

12 Bobby Johnson -- we got Mary -- Mary Kay Johnson
13 sitting right there. She's -- she's still involved
14 in it. All of his relatives are still working there.
15 Nacolle is -- is their financial person. When Luis
16 got fired, all of them shortly were gone thereafter.

17 So it was a family business. In some -- some ways
18 this case is like a divorce. And I do a lot of
19 divorce work. But we don't get to talk to a jury in
20 a divorce. And -- but you do in a civil case.

21 It's a civil case. It's all about determining his
22 status and if he's entitled to any damages. And I
23 hope to get there. But nobody is to be found guilty.
24 It's not like a criminal case. It's nothing like
25 that. And it's all about a business dispute. And

1 we're hopeful that where the parties couldn't agree,
2 that the jury -- that the jury, you, can give us some
3 assistance as to how to resolve this dispute between
4 those two. Thank you very much.

5 THE COURT: Todd Ellis?

6 MR. TODD ELLIS: May it please the Court.

7 OPENING STATEMENT BY MR. TODD ELLIS

8 MR. TODD ELLIS: Good afternoon, ladies and
9 gentlemen. It's the -- late in the afternoon. I'll
10 try to be brief, but this is incredibly important.

11 Have y'all ever heard the phrase "have your cake
12 and eat it too" -- "have your cake and eat it too"?
13 In some ways it doesn't make sense. But if you look
14 back at the origin of that, it actually comes from
15 English literature. And it was written originally:
16 You can't eat your cake and have it too.

17 And, of course, what are they saying that about is
18 -- and that you can't have it both ways. That's what
19 you and I might say on a daily basis. And we all
20 know people -- times in our lives where maybe it's
21 over small things or otherwise. But we wanted to
22 have it both ways. That's what this case is all
23 about.

24 Luis Endara, the plaintiff in this case, spent
25 years distancing himself from AVSX as a, quote,

1 owner, as a member, as anyone what -- was there at
2 all to avoid liability, to avoid anything that had to
3 do with the responsibilities of being an owner of a
4 business, including personal taxes or any other
5 matter that -- regarding that. He distanced himself
6 for years, and how he's come here today to say: You
7 know what? I know I said that all along. But I want
8 to have my cake and eat it too. I want you to find
9 me an owner now. I want you to find me an owner.

10 That's what this case is all about. I'm Todd
11 Ellis. Andy Webb is with me. I think y'all met him
12 or at least saw both of us when we were getting
13 through that panel situation today. I appreciate
14 your patience. Very pleased to represent Mary Kay
15 Johnson and Bobby Johnson, along with the corporate
16 defendant in this case, AVSX Technologies, LLC.

17 What this case is all about is in 2008, there was
18 an entity -- entity formed called Guardian Eagle
19 Security, LLC. Okay? That's a formal business
20 document. I remember some of y'all's backgrounds.
21 And I know you know what that is.

22 And for those of you who don't know specifically
23 -- know what that mean is that means under the law,
24 some people decided to form an entity to give them
25 protection and otherwise do business; that they can

1 run and be known; and which someone would own
2 ownership in, which they would take responsibility
3 in. They could share in profits and losses. They
4 could pay employees through that entity. If they got
5 sued for the work that they were doing, that entity
6 might protect them.

7 This is not some minor thought-out deal. This is
8 the creation of an entity to run an alarm-services
9 business, home-alarm services. AVSX Technologies and
10 Guardian Eagle Services -- it started in 2008 -- was
11 Guardian. They essentially solicit your services in
12 your home to allow them to put in their alarm systems
13 in your house. They then, through contracts and
14 including a company called Vector you'll hear about,
15 then monitor that over a period of time. Vector
16 takes all the profits on that. AVSX Technologies and
17 Guardian, they make money by installing your system
18 into your home. Okay? That's what this business is
19 all about.

20 But there is no partnership. What cracked me up
21 about what Mr. Sautter said -- and it's not -- I'm
22 not cracking up at him -- that this has been years in
23 the making, 2 1/2 years litigating it between all
24 these -- these parties. And he still calls it a
25 partnership to you all, when they formed an LLC, a

1 formal organizational document to create an entity in
2 which someone was the owner.

3 And you know what? Since 2008 no one will testify
4 -- no one will testify -- no one will show you a
5 document that anyone owned that entity other than
6 Mary Kay Johnson. Don't find any document. If you
7 see it, it'll be the first time I saw it. All right.
8 Those are the facts of the case.

9 In March of 2014, for various reasons that Mr.
10 Johnson will tell you about, as a manager of the
11 company, he got with his wife, Mary Kay, and they
12 said this is what's going on with Mr. Endara; we need
13 to terminate him.

14 Mr. Endara's been nothing but a W-2 employee --
15 W-2 employee since 2008. Never been an owner. Never
16 taken a K-1, which I'll explain to you a little bit
17 further about what that is. Never taken
18 distributions. Never taken personal tax liability
19 for that. Never.

20 But he's come here today to say, "I'm an owner of
21 the company now." Never back then. I wanted my
22 cake. You know, we got all these big businesses. We
23 got this liability out there. We're getting sued
24 some. I might have to pay some taxes. Cake over
25 here. Now over here: eat it too.

1 Now he wants it after he's been fired. He wants
2 that. You won't find a document on it.

3 Now, what's your -- what's the -- your role and
4 what's the Court's role? The Court's role is to tell
5 you the facts and -- excuse me -- to tell you the
6 law, to read that to you at the end of this case, and
7 to administer this trial. The lawyers are advocates,
8 as he's already told you.

9 We're here; what comes out of my mouth is not
10 evidence. You have to hear it from that stand and
11 the documents that are provided to you. And then we
12 hear arguments; we're advocates for our parties. The
13 judge reads you the law and administers to this
14 process. It's very important.

15 What is your role? What are you doing? Because I
16 tell you what: I've been with you all morning. And
17 it's a two-hour process to get qualified, wasn't it?
18 Another hour to get set up in here, and you're
19 finally getting to the opening statements and we're
20 getting ready to hear some evidence.

21 What is your role? Your role is to do what you do
22 every day, which is to read between the lines.
23 You're to judge people. Look at the information
24 that's provided to you that -- as evidence and what
25 the judge tells you to do, and then make a decision

1 on what you find to be truthful and reasonable.

2 That's what your role is.

3 Now, the other thing that the Court talked to you
4 a little bit about it -- because I can't tell you
5 this. I'm not going to tell -- you're not going to
6 hear me one time say -- thank you for your service.
7 Because you know what? You got that green slip to be
8 here today, didn't you? You're required to do it.

9 But I take this really seriously right here, right
10 now, what I'm getting ready to tell you. You're part
11 of the greatest system in the world for solving
12 disputes amongst parties. This country was built on
13 three types of boxes: an ammunition box in the war;
14 a ballot box for what you can do in voting to express
15 your opinion; and this box you're sitting in right
16 now, the jury box. Almost no groups around the world
17 are able to have a set of peers sit in judgment for
18 them and decide this.

19 Now, how about this case? How about this case?
20 There are cases in this courtroom, in this
21 courthouse, that are decided that decide people's
22 lives, whether they go to jail or not. Judge Brown
23 has to sentence people on serious criminal charges.

24 There are -- there are also cases in which people
25 are maimed, injured, or killed. This is not one of

1 those. But I can tell you what. This is so
2 important to the parties that are here. They both
3 waited years to have a third-party group, like you
4 all, sit in judgment and hear this case.

5 So the only thing I ask you to do is to listen
6 closely, try to pay attention to the evidence -- it
7 is a business case; it's not simple. This is not "I
8 ran into the back of so-and-so and something's hurt."
9 Those are okay too. Those are important cases.

10 This is something that's got some technicality to
11 it. But don't let these words wash over you. I
12 heard a couple of them in the opening statements.

13 Company wasn't run by Mary Kay; Mr. Sautter said
14 that. Well, is running and owning a corporation the
15 same thing? I bet y'all know a couple of companies
16 in this world that have silent owners that don't go
17 in on a daily basis. You ever heard of that?

18 Here's another one I heard: There's no business
19 documents. Boy, wouldn't they love you to believe
20 that. Last thing I heard of -- I don't know about
21 y'all. Last time I heard, filing a tax return with
22 the federal government, where you have sworn to tell
23 the truth and under perjury of law, that's a pretty
24 serious business document. How about giving a sworn
25 statement? That's pretty serious business document.

1 The serious documents are there. And you all need
2 to follow what's simply here is what -- I think
3 you're going to be able to use those instincts, which
4 you're going to read between the lines and read that
5 Luis Endara wasn't an owner of AVS Technology [sic].

6 What he was, which we're going to acknowledge, was
7 an absolutely key employee -- was an absolute person
8 that was essential for many, many years to the
9 success of AVSX. He's very close friends with Bobby
10 Johnson. It hurts them both that they're no longer
11 there anymore. That's not the first time that's
12 happened in business, though, is it?

13 So what happens when that breaks up? There's a
14 reason for that when it does. Who owns it? Who gets
15 what?

16 Mr. Endara was a key employee for a very long time
17 before he lost focus on what was important. And when
18 that occurred, he's come back now -- all those years
19 I don't want that responsibility; just give me the
20 big salary; give me the big money; I don't want any
21 ownership in it. Now he wants the ownership.

22 And it -- don't let him fool you. This company
23 didn't make \$10 million a year. They make gross \$10
24 million a year? Yeah. So it runs around 11 percent
25 in total, total value.

1 But having said that, it's successful. It is.
2 It's very important. But Mr. Endara's is not an
3 owner of this business. And we think you'll find at
4 the end of this for the defendants against the
5 plaintiff for a defense verdict because he can't have
6 it both ways. Can't have it both ways. Thank you.

7 THE COURT: Call you first witness, please.

8 MR. SAUTTER: Thank you, Your Honor. The
9 plaintiff would call Mr. Bobby Johnson and designate
10 him as a hostile, adverse witness with the ability to
11 lead him at will.

12 THE COURT: All right.

13 MR. TODD ELLIS: I would only object to the word
14 at will, Your Honor, but I -- I'm -- with counsel.

15 THE COURT: All right. Mr. Johnson, if you'll
16 come around to be sworn, please.

17 THE WITNESS: Yes, sir.

18 (Whereupon, the witness came forward.)

19 BOBBY JOHNSON, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SAUTTER:

23 Q Thank you. Mr. Johnson, you ever testified in
24 court before?

25 A I have not.

1 Q And if AVSX or -- or Guardian Eagle had a legal
2 issue, would that be something that Luis would
3 typically handle?

4 A Correct.

5 Q All right. Now, these -- let me ask you if you
6 have seen what we've already marked as Plaintiff's
7 Exhibit No. No. 1.

8 A Okay.

9 Q Have you seen that, sir?

10 A Yes, sir. I've seen the exhibit.

11 Q Okay.

12 MR. SAUTTER: Your Honor, I would move Exhibit 1
13 into evidence. I believe it's without objection.

14 MR. TODD ELLIS: Without objection.

15 MR. SAUTTER: All right.

16 THE COURT: So admitted.

17 Q Mr. Johnson, looking at Exhibit 1, who is at --
18 designated as CEO?

19 A That'd be myself, Bobby Johnson.

20 Q And what was your job?

21 A A multitude of items: sales strategy, marketing
22 and technology, recruitment, business growth, to name
23 just a few.

24 Q And who's designated as president?

25 A Mr. Endara.

1 Q And what was he -- what was -- what were his
2 duties?

3 A Operational strategy, sales support, recruitment,
4 business-model sustainment.

5 Q Okay. And do you see your wife, Mary Kay Johnson,
6 on this chart ---

7 A I do ---

8 Q --- anywhere?

9 A --- not.

10 Q What -- what is her role in this business?

11 A Well, she would be the owner, sir. I don't know
12 that a organizational chart would always show the
13 boards or the owners of ---

14 Q Okay.

15 A --- organizations.

16 Q How much did your wife pay to obtain an ownership
17 interest in AVSX?

18 A She did not at the time.

19 Q There was no money exchanged?

20 A Not to my knowledge.

21 Q And isn't it -- isn't it true that Luis agreed
22 that she could be the listed member of the business?

23 A That would be incorrect.

24 Q Oh. Well, and why do you say that?

25 A You asked me if Mr. -- if Luis had agreed. There

1 was no request. He understood that that was the
2 intent.

3 Q And where did that understanding come from?

4 A Himself, I would assume.

5 Q How -- how did it come up to make -- make Mary Kay
6 Johnson the member -- the sole member?

7 A The sole member? It was because it was approved
8 by Vector Security. The -- the previous thought
9 process was that her credit score would not get her
10 authorized.

11 Q Okay. And there were -- are you listed as a
12 member on any of the AVSX documents?

13 A Not to my knowledge, sir.

14 Q And do you still control AVSX?

15 A I'm still a participant as the CEO.

16 Q Okay. And what voice does your wife have in how
17 the company is run, operated, or anything else?

18 A Well, we do share a home. And then, as a husband
19 and wife, we do discuss business matters on a regular
20 basis.

21 Q You're calling the shots at AVSX right now, aren't
22 you?

23 A As the CEO I would be.

24 Q Okay. Let me just see this for a second, sir.

25 A (Complied.)

1 Q And -- and while they're looking at that, I'm --
2 just so -- I'm going to ask you to next talk about
3 what has been marked Plaintiff's Exhibit No. 3.

4 A Sure.

5 Q Just look at that while they're . . .

6 A I'm aware of that communication, sir.

7 Q Okay. That -- that chart that they're looking at,
8 the jury is, what role did you have in creating that
9 chart?

10 A I created it myself.

11 Q You did?

12 A Yes, sir.

13 Q I was trying to ---

14 THE COURT: And that's Exhibit 1, correct?

15 MR. SAUTTER: Yes, sir, Your Honor.

16 THE COURT: Thank you.

17 MR. SAUTTER: I'm sorry.

18 Q You created that chart yourself?

19 A Yes, sir.

20 Q And that's how you portrayed the company to the
21 world, right?

22 A That would be incorrect.

23 Q Okay. Who -- who has looked at that chart? Is
24 that -- is that something that you send to your
25 vendors or ---

1 A No, sir. It would be, to my knowledge, the four
2 parties listed. One question is that whether or not
3 I believe all four parties were listed on that e-mail
4 forwarded.

5 Q Okay.

6 A We're only seeing the exhibit of said e-mail.

7 Q All right. Was that on the company's Web page or
8 something of that nature?

9 A No, sir.

10 Q But you created that chart?

11 A Correct, sir.

12 Q All right.

13 A Per the request of the H.R. recruit manager that
14 was hired in November of 2013, Matthew Edwards.

15 Q Okay. Mr. Edwards.

16 Did you -- are you asking -- are you asking this
17 jury to -- or to consider that -- are there any
18 amendments that you'd like to make to that chart at
19 this time?

20 A No, sir.

21 Q And when was that chart put out?

22 A I mean, we've had additional employees that have
23 joined ---

24 Q Sure.

25 A --- us or have transitioned. But unfortunately, I

1 wouldn't make any changes.

2 Q Okay.

3 A Titles at AVSX don't matter, sir.

4 Q Okay. The -- the titles at AVSX don't matter?

5 A Correct.

6 Q So -- so how does AVSX operate?

7 A As a family.

8 Q Okay. And would you agree with me that AVSX was
9 operated both as Endara's family and as your family
10 up until the date of Mr. Ellis's termination letter?

11 A As well as it would be for the Jackson family, who
12 also had a party of five associated members of their
13 family working for us as a primary example.

14 Q Okay. And while we're still looking at that
15 chart, do any of the Endara family still work or --
16 or are being compensated by AVSX?

17 A Incorrect.

18 Q None of them?

19 A No. Not to my knowledge.

20 Q And why is that?

21 A They were excused. One month, I believe, April
22 2nd of 2014, to be correct.

23 Q So let me just see if I can get this straight for
24 the jury. Your family still works there at AVSX,
25 correct?

1 A Yes, sir.

2 Q And Mr. Endara's family has been terminated from
3 AVSX, correct?

4 A Rightfully so.

5 Q Okay. We'll get into that, maybe. I'm -- I'm
6 sure Mr. Ellis will be asking you about it.

7 A They also received unemployment benefits that
8 appear to be questionable throughout the year 2014.

9 Q Okay. All right. All right. All right. And so
10 did -- did AVSX pay the personal expenses of -- of
11 your family?

12 A Correct.

13 Q And they're paying the -- the lease on -- on the
14 car that your wife is driving now?

15 A Correct, sir.

16 Q How much is that a month?

17 A That would be a question for my wife.

18 Q Is it over \$1300 a month?

19 A I'm sure that it is.

20 Q What kind of car is it?

21 A It's a Mercedes S63, 2015.

22 Q And when Mr. Endara was with the company, AVSX
23 provided him with a car as well, correct?

24 A In my wife's name.

25 Q Yes, sir. And it also -- and they also provided a

1 car for his daughter, correct, Laura?

2 A That would be incorrect. I believe Mrs. Endara
3 was driving her own car.

4 Q All right. All right. And let me just ask you
5 again. I -- I'm -- why isn't Mary Kay on that chart?

6 A She's the owner, sir, just like, as I stated, an
7 owner or a board would not be dictated or directed to
8 be on a organizational chart for a company, to my
9 knowledge.

10 Q Okay.

11 A I'm not carrying an MBA, so I apologize.

12 Q Yeah. Thank you ---

13 MR. TODD ELLIS: Bob ---

14 Q --- for sharing.

15 MR. TODD ELLIS: --- you don't need to lean in.

16 We hear you fine.

17 THE WITNESS: Oh, okay.

18 Q All right. Now, we're looking at what's been
19 marked -- what's been marked as Exhibit 3. What is
20 that, Mr. Johnson?

21 A It is an e-mail that stipulates in the fourth
22 paragraph, line No. 1, which is the sentence that is
23 a slight adulterated story of the history of AVSX
24 Technologies, LLC.

25 Q And do you admit in Exhibit 3 that AVSX was

1 created by you -- you and Mr. Endara?

2 A In a reflection of the adulterated story, correct.

3 Q So you admit that?

4 A It is right there in black and white, sir.

5 Q And where is that? Where does it say that?

6 A The fourth paragraph. It stipulates that (As
7 read): "So sit back, relax, enjoy the fun and
8 slightly adulterated story as to how AVSX became the
9 number-one destination for my family and always will
10 be."

11 Q Okay. So who -- who had the most experience with
12 the security -- in the home-security industry when
13 either AVSX was formed or Force Protection24 or
14 Guardian Eagle? Who had the most experience?

15 A I would believe that would've been Darryl Scott,
16 our technician at the time.

17 Q All right. Well, were you involved in home
18 security prior to working with Luis Endara?

19 A And that would be in what regard? I also worked
20 with him as a -- he was the wife of the owner of
21 Palmetto Alarm, Mona Endara.

22 Q Okay. But how about you?

23 A I mean ---

24 Q Let me ---

25 A --- he was the husband. I apologize.

1 Q Okay. But isn't -- isn't it fair to say that you
2 were in the home -- that you were in the fitness
3 business and Mr. Endara was in the -- in the home-
4 security business?

5 A Yes. If we're going to go back to our original
6 meeting with Mr. Endara, it would've been during the
7 time period that he had joined Gold's Gym
8 International and I was the manager of Lexington,
9 South Carolina.

10 Q And what -- what -- what is that?

11 A The local Gold's Gym, sir.

12 Q It's what?

13 A The local Gold's Gym here ---

14 Q Gold's Gym.

15 A --- in Columbia.

16 Q Okay. And then you actually went to -- to work
17 with Luis in -- in a security industry, correct?

18 A Correct. Two years later in June of 2006.

19 Q All right.

20 MR. TODD ELLIS: Pull the mike towards you.

21 Q And you ---

22 THE WITNESS: I'm sorry.

23 MR. SAUTTER: Go ahead.

24 Q And you -- do you -- do you admit that you say, on
25 the bottom of -- of Exhibit 3: "Within days of the

1 announcement of Protection24 becoming a new entity,
2 Mr. Endara returned to -- to Protection24 at
3 significant personal loss and, from this day forward,
4 has been an active business partner, cherished
5 friend, and brother-in-arms of Mr. Johnson." You --
6 you wrote that, didn't you?

7 A Yes, sir.

8 Q Okay. And that's on the bottom of Exhibit 3?

9 A (No audible response.)

10 Q Correct?

11 A Yes. It states that (As read): "Upon the opening
12 of Protection24 of May 2007, that Mr. Endara, in
13 fact, was actually being employed by another
14 competitor and, upon doing so, had returned in an
15 effort to join the Protection24 team."

16 Q Okay. And you talk about a commitment between you
17 and Mr. Endara to push this whole new business
18 venture forward, correct?

19 A No, sir. To reiterate the statement, it states
20 that Mr. Endara left that day as a senior leadership,
21 I would believe, for Palmetto Alarm and then
22 returned.

23 Q Okay.

24 A I ---

25 Q And so ---

1 A --- do, of course, give Mr. Endara, as I do
2 additional employees and affiliates as well as
3 contractors at AVSX Technologies, full leadership-
4 related goals or accolades.

5 Q Did -- did you have any financial interest or Mary
6 Kay Johnson have any financial interest in
7 Protection24?

8 A Incorrect. I was a senior manager with them, VP
9 of sales.

10 Q Did your wife have any kind of ownership interest
11 in Protection24?

12 A No, sir. I believe the entity was owned by --
13 Protection24 was owned by James Ellerbee at the time.

14 Q Okay. And who's James Ellerbee? Is he a -- a
15 relative of Mr. Endara?

16 A I would believe so.

17 Q Okay. And when -- and Protection24 closed, and
18 where did all the assets of Protection24 go?

19 A They were purchased as a -- by AVSX Technologies,
20 LLC. And I believe January 31st, 2011, was when the
21 -- or 2010 ---

22 Q And ---

23 A I'm sorry. February 11th, 2010. I apologize.

24 Q And -- and were you claiming any ownership
25 interest in the -- the -- into -- into the assets of

1 Protection24?

2 A I am still not, sir.

3 Q Okay. And so -- and -- and that -- those were
4 owned by Mr. Endara?

5 A Yes. Mr. Endara signed the document, as well as
6 my wife, Mary Kay Cason Johnson, in their transition
7 from Protection24 to AVSX Technologies.

8 Q Okay. And so all of that equipment that he had --
9 it was, like, telephones and phone -- phone -- things
10 of that nature -- from Protection24 went into
11 Guardian Eagle or AVSX, correct?

12 A No, sir. They were replaced. We've replaced the
13 system in January of 2013, as well as we replaced it
14 the previous year. So therefore, those -- that would
15 not be correct. I can't tell you the specific ---

16 Q Well ---

17 A --- date of the phone system.

18 Q When did -- when did Protection24 stop doing
19 business?

20 A It was intended to cease, I believe -- that would
21 be Mr. Endara and Mr. Ellerbee who would have to
22 share that actual, official ---

23 Q Okay.

24 A --- document. But I believe it would've been
25 September of 2009.

1 Q Okay. All right. So -- and did Mr. Endara have a
2 debt on Protection24? He assumed all that?

3 A Not to my knowledge.

4 Q Okay. And that's Exhibit No. 3?

5 A (No audible response.)

6 Q You call it "Our History," correct?

7 A I would, as well as of today.

8 Q Okay. So it's ---

9 A For any employee in AVSX Technologies, LLC, that
10 is an affiliate, contractor, or an actual employee,
11 whether they're family members or not, it's still
12 considered a family.

13 Q And it's our history, meaning you and Mr. Endara,
14 correct?

15 A As well as Ms. Johnson and the families that
16 supported AVSX Technologies throughout ---

17 Q Okay.

18 A --- since February of 2008.

19 Q All right. That's Exhibit No. 3. I won't hand
20 that to you now. Bobby, you a business philosophy
21 called "bring it." What does that mean?

22 A Do everything you can. I also have that in the
23 personal ---

24 Q Do everything you can for what?

25 A Life.

1 Q For who?

2 A Everyone.

3 Q Do you favor your family?

4 A I would favor any family, as I've stated. We have
5 several family members who have additional family
6 members that currently work at AVSX Technologies.

7 Q Okay. They're all family, then?

8 A They're all family to us. Correct.

9 Q All right. I'm -- I'm sorry to bend over you like
10 that. I'm ---

11 A That's okay.

12 Q Let me just put this back here before I lose it
13 and get in trouble.

14 I'm going to ask you about Plaintiff's Exhibit No.

15 2 -- 2 ---

16 A Okay.

17 Q --- 2 next. Now, what is that, Mr. Johnson?

18 A This appears to have been an e-mail also that was
19 sent in February of 2013, moving forward.

20 Q All right. Now, you were concerned about the
21 direction that the company was going in at that time,
22 correct?

23 A I'd also be concerned about the document, seeing
24 as though it stipulates Jason Wolfe's personal e-
25 mail. We would not send an e-mail such as this to

1 any employee outside of their company e-mail.

2 Q Okay. But you did that? It says from Bobby
3 Johnson and it says to ---

4 A I cannot confirm that at this time, sir, due to
5 ---

6 Q Okay.

7 A --- the fact I question whether or not that e-mail
8 was ---

9 Q All right.

10 A --- sent by me.

11 Q Okay. Did you send it to -- to -- to Luis Endara?

12 A Again, I would question the validity of the e-mail
13 due to the fact Jason Wolfe's e-mail dictates that it
14 was a independent e-mail, not that of AVSX
15 Technologies.

16 Q All right. Okay. But, I mean, you -- do you have
17 any -- and this e-mail, you admit that you wanted to
18 give a 5 percent net share to -- for both Jason and
19 David, correct?

20 MR. TODD ELLIS: Objection, Your Honor. I -- I
21 don't think Mr. Sautter set the foundation in asking
22 whether he wrote the e-mail or not. It may be yes.
23 I just -- it sounded like there was some dispute as
24 to whether he believed he wrote the e-mail.

25 MR. SAUTTER: Okay.

1 THE COURT: Go ahead.

2 MR. SAUTTER: I -- I -- I think I can correct
3 that, Your Honor.

4 THE COURT: All right.

5 Q All right. You -- you -- you dispute -- is your
6 problem with this e-mail, as -- as -- as to Mr.
7 Wolfe's having a private e-mail address and -- but
8 what I want to ask you: As far as the -- the -- the
9 subject, the alterations to structure ---

10 A I would question the validity of the e-mail due to
11 the fact that it immediately reflects that one of the
12 employees who is not a company e-mail. So I would
13 actually request that this exhibit be reviewed --
14 also, considering it was printed on March 24th, 2014,
15 three specific days after Mr. Endara's exit.

16 Q Right.

17 THE COURT: And what exhibit number is that?

18 MR. SAUTTER: That -- Exhibit No. 2, Your Honor.

19 THE COURT: All right.

20 MR. SAUTTER: Your Honor, I would move Exhibit No.
21 2 -- 2 into evidence. It's already been unobjected
22 to.

23 MR. TODD ELLIS: I'm objecting, Your Honor. I --
24 I ---

25 THE COURT: State the grounds for your objection.

1 MR. TODD ELLIS: The objection is that he has not
2 asked my client whether he wrote the e-mail or not.

3 If he ---

4 MR. SAUTTER: All right.

5 MR. TODD ELLIS: --- would do that, it might solve
6 this ---

7 THE COURT: Can I see the exhibit, please.

8 MR. SAUTTER: Can I have that?

9 THE WITNESS: Sure, sir.

10 MR. SAUTTER: The judge wants to see it.

11 THE COURT: Now, restate your question, Mr.
12 Sautter.

13 MR. SAUTTER: Thank you, Your Honor.

14 Q Did you write that e-mail that's been marked as
15 Plaintiff's Exhibit No. 2?

16 A I do not feel comfortable accepting that I wrote
17 that e-mail at this time. I would prefer to see the
18 actual e-mail itself from our ---

19 THE COURT: Can ---

20 A --- file ---

21 THE COURT: Can you ---

22 A --- vault.

23 THE COURT: --- hand that -- him Exhibit 2, madam
24 court ---

25 THE WITNESS: Yes, sir.

1 THE COURT: --- reporter.

2 THE COURT REPORTER: (Complied.)

3 Q Let's go with the contents of that e-mail.

4 A Okay.

5 Q All right? You talk about our company.

6 A As I would in -- in many e-mails, in addition to
7 this as well.

8 Q Okay. And you talk about -- maybe you don't talk
9 about it. You talk about granting a 5 percent net
10 share for both Jason and Dave, shared equally.

11 A Correct.

12 Q And you talk ---

13 A As it ---

14 Q --- about ---

15 A --- appears on this document, which I question the
16 validity of.

17 Q Okay. And you talked about a 5 percent employee
18 net share for office staff only?

19 A Correct. As it appears on an e-mail that I
20 question the validity of.

21 Q Okay. And -- and it states that (As read): "Luis
22 and I are willing to give 10 percent of our company
23 to those who want to bring it like never before."

24 Does it say that there?

25 A Correct. On an e-mail that I question the

1 validity of.

2 Q Did you write that or not?

3 A Sir, I cannot confirm nor deny that, unless I have
4 the ability to review to ensure that it's accurate.

5 Q Okay. Well, let's talk about the other stuff.

6 Who is Nikki Caltrider?

7 A Her name is Nacolle. She is my sister.

8 Q And she works at AVSX, correct?

9 A Correct.

10 Q And that's at No. 2. And ---

11 A Her schedule at the time also brings into question
12 due to the fact she was not working 10 to 7, nor does
13 she currently. In February of 2013, Nacolle
14 Caltrider had actually taken over an accounting role
15 with AVSX and worked throughout the day. Her hours
16 at work were 9 to 6. So that alone also brings into
17 question ---

18 Q Okay.

19 A --- the validity of said e-mail.

20 Q That's fine. Who -- and -- and Item No. 6 talks
21 about "Nikki and Courtney will be moved into Dan's
22 office connected to Dave's." Did that happen?

23 A To my knowledge, Nacolle Caltrider and Courtney
24 Hudson have never shared an office.

25 Q Okay.

1 A But I don't want to swear to that because, again,
2 that's ---

3 Q All right.

4 A --- February of 2013. I believe Nacolle was in
5 her own office.

6 Q Okay. So ---

7 A In addition, sir -- can I answer No. 8 as well?
8 Jason Wolfe ---

9 Q All right.

10 A --- to my knowledge, never had any responsibility
11 reflective in inventory control. That would've been
12 J.C. Tate at the time.

13 Q Okay. That's fine. So are you saying you wrote
14 this or didn't write it or you can't say whether you
15 wrote it or ---

16 A Sir, I can vehemently deny that I wrote this e-
17 mail.

18 Q What?

19 A I can vehemently deny but not confirm that I have
20 not written this e-mail.

21 Q You can ---

22 A --- vehemently deny that I have not written this
23 e-mail.

24 Q So you're saying you didn't write the e-mail?

25 A That would be correct, sir.

1 Q All right. And that is because why?

2 A Another example would be No. 3: Lotosha
3 reflective that she would receive full insurance and
4 a 40-hour week, which we do, do 100 percent health
5 insurance for our family. And she will be the
6 personal assistant for Sharon. That is also not
7 reflective, as because Mrs. -- Lakeisha would've been
8 the name of the employee, not Lotosha. I do not know
9 of or have an idea as to who Lotosha was at that
10 time.

11 Q Okay. That's fine.

12 MR. SAUTTER: Your Honor, I'm not going to move
13 Exhibit 2 into evidence at this time. But I am ---

14 A There was a ---

15 THE COURT: Hold on a minute ---

16 THE WITNESS: I'm sorry.

17 MR. SAUTTER: But I ---

18 THE COURT: --- sir.

19 MR. SAUTTER: But I am ---

20 THE WITNESS: I'm sorry.

21 THE COURT: Hold on.

22 MR. SAUTTER: --- going to -- I am going to move
23 Exhibit No. 3 into evidence. I believe that's
24 without objection. That's the "Our History."

25 MR. TODD ELLIS: Forgive me. Is that the one you

1 were just reading off of, or did you switch back?

2 MR. SAUTTER: I'm switching back, Todd. I'm
3 sorry.

4 MR. TODD ELLIS: Okay. Yeah. No -- without
5 objection.

6 MR. SAUTTER: Okay.

7 THE COURT: Number 1 has already been admitted
8 into evidence without objection. Number 3 --
9 Plaintiff's Exhibit No. 3 is admitted without
10 objection.

11 MR. SAUTTER: Thank you, Your Honor. That's
12 Exhibit No. 2.

13 Q Now, I'm going to hand you what's been marked as
14 Plaintiff's Exhibit No. 4.

15 A Yes, sir.

16 Q It's a series ---

17 A Which your ---

18 Q --- of e-mails -- back on Plaintiff's Exhibit No.
19 4, a series of e-mails, purportedly between you and
20 Luis Endara. Is that -- is that your e-mail address,
21 bjohnson@avsx.com?

22 A Correct, sir?

23 Q And do you know Luis Endara at -- the date of the
24 e-mail was written on January 17th, 2014, as
25 luis@avsx.com.

1 A That would be his e-mail, sir.

2 Q All right. Did you -- and it starts -- it starts
3 on January 16th, 2014, at 11:11 p.m. Bobby Johnson
4 -- did you write that? It's on the last -- it's on
5 page 5 of 6.

6 A I do know that there's an e-mail written to Mr.
7 Endara in that time frame from memory. However, I
8 would question the validity of the document, seeing
9 as though it's print relation shows 3/24/14.

10 Q Well, this is on January 16th of 2014, right?
11 This is before the letter of termination by Mr.
12 Ellis, correct?

13 A I would question how someone had access to an e-
14 mail from either party without the other party's
15 knowledge three days after.

16 Q Are you saying you wrote these -- these e-mails in
17 exchange or not?

18 A Correct. There will be encrypted copy of these
19 said e-mails on our software system that actually
20 retains such.

21 Q So you wrote them?

22 A Yes. As we would for our customer services and so
23 forth.

24 Q Okay.

25 MR. SAUTTER: Your Honor, I move Exhibit No. 4, I

1 believe, into evidence for plaintiff..

2 MR. TODD ELLIS: Without objection.

3 THE COURT: So admitted without objection.

4 Q Well, you brought it up, Mr. Johnson. Have you
5 monkeyed or messed around with Mr. Endara's private
6 e-mail or any e-mail or -- or any computers from
7 AVSX?

8 A Absolutely not. We can actually verify that
9 without issue.

10 Q All right. Did you know that that's a question in
11 this case?

12 A No, sir.

13 Q You ---

14 A I know that Mr. Endara sent that communication
15 upon his exit on 3/18/2014. And since that time
16 period, we in -- operated another solution that
17 allowed for all encrypted backups to be loaded into
18 our server.

19 Q Okay.

20 A We have three different independent servers. In
21 addition to that, we have a Zetta server that also
22 does a backup, as well as Ubuntu.

23 Q Well, isn't it true that once Mr. Endara was
24 terminated on 3/21 -- let me make sure I have my date
25 right -- on 3/21 -- 3/21/14, that he had no further

1 access to the computers of AVSX or anything of that
2 nature?

3 A Of course, which would bring into question my
4 stipulation that 3/24/14 is of concern.

5 Q But you had access to his stuff, correct?

6 A As I would -- yes, sir. It's reflective in all of
7 our communications that Mr. Endara participated in
8 creating on behalf of AVSX employees as well.

9 Q So he had no access to the AVSX records, but you
10 had access to the records and you had access to his
11 personal e-mails and things of that nature from AVSX,
12 correct?

13 A We'd be glad to provide all communications from
14 Mr. Endara that are encrypted.

15 Q Why do you have to encrypt stuff?

16 A For instances such as this. We're being sued, and
17 the questioning is the validity of the
18 communications, evidently. So having access to
19 someone's e-mail, it's much easier to have a software
20 system that allows for us to do a review in the
21 event, as Mr. Endara would be aware of, since you
22 referenced he was in charge of the law, which is not
23 correct. Unfortunately, we were sued five separate
24 times prior to this event.

25 Q Well, let's cut to the chase. And I think you've

1 already admitted it. You had access to his stuff,
2 but he had no access to your stuff after 3/21/14,
3 correct?

4 A As would be expected of an employee who exited.

5 Q All right. Now, we're looking at what's been
6 marked as Exhibit No. 4. Bobby, what -- what was
7 going on with you? Did you have -- let me just ask
8 you: Did you have health concerns in January of
9 2014?

10 A No, sir. That wouldn't be accurate in that
11 communication. In January of each year -- my
12 grandfather passed in 1993 and each January, I do
13 have stressors in that event.

14 Q Well, that's -- that's fine. And -- and that's --
15 but I'm talking about personal health. Did you have
16 personal health concerns that would lead you to
17 believe that you weren't going to be able to continue
18 working for or -- or at AVSX for -- for -- for the
19 period that you wanted to?

20 A The stressors of the daily activity, I'm sure,
21 played a significant role in influencing anybody.

22 Q Did you have a medical diagnosis at that time?

23 A For, sir?

24 Q What?

25 A What would that be for?

1 Q I'm asking you. Did you have a medical diagnosis
2 at that time that you wrote the e-mail on January
3 16th, 2014, which -- which led you to -- did you have
4 a medical diagnosis at that time?

5 MR. TODD ELLIS: Your Honor, I'm ---

6 A I don't ---

7 MR. TODD ELLIS: --- going to ---

8 A --- understand the question.

9 THE COURT: Can the lawyers approach ---

10 MR. TODD ELLIS: Absolutely.

11 THE COURT: --- a minute?

12 MR. TODD ELLIS: Excuse me.

13 (Whereupon, a bench conference was held off the
14 record in the presence of the jury, but out of the
15 hearing of the jury.)

16 THE COURT: Mr. Sautter, you may continue.

17 MR. SAUTTER: Thank you, Your Honor.

18 Q Mr. Johnson ---

19 A Yes, sir.

20 Q --- on January 16th of 2014 -- and I'm going to
21 ask you point-blank -- did you have a diagnosis of a
22 brain tumor?

23 A No, sir.

24 Q Did you have a diagnosis of any kind of difficulty
25 or -- or did -- were you having any problems with

1 your mental faculties of anything of that nature on
2 -- prior to January 16th, 2014?

3 A No, sir.

4 Q Did you have any kind of medical condition that
5 was influencing your thoughts about whether you would
6 be able to continue with AVSX?

7 A Of course.

8 Q What were they?

9 A That was in January of 2010 when I actually had
10 brain surgery ---

11 Q Okay.

12 A --- for said brain tumor.

13 Q Okay. So ---

14 A Nine months after my wife took control of AVSX as
15 well.

16 Q All right. Didn't you just tell me you didn't
17 have any concerns with a brain tumor in 2014? And
18 you just told me that you had a brain-tumor operation
19 in 2010?

20 A Yes, sir.

21 Q All right. At this -- what has been marked as --
22 as Exhibit No. 4, were you concerned with your
23 ability to carry on with the business?

24 A In what regard, sir?

25 Q In regards what you state in Exhibit No. 4.

1 A Where at?

2 Q All right. We can start at the back.

3 A I'm just trying to understand.

4 Q I'm -- I'm trying to get -- and -- and I'll just
5 ask you this as -- as plain as I can be. Do you --
6 were you worried you would be able to carry on at
7 AVSX for the benefit of your family and the Endara
8 family and every -- all the other families at AVSX at
9 the time that you wrote this string of e-mails, which
10 has been marked as Exhibit No. 4 and admitted into
11 evidence?

12 A As I would be today. Yes, sir.

13 Q Okay. And in this e-mail, Exhibit 4, did you
14 express any kind of problems with Luis -- his
15 performance? anything of that nature?

16 A In this specific e-mail?

17 Q Yes, sir.

18 A I haven't had a chance to review the forward
19 pages. But I'm not aware.

20 Q Okay. And -- and this e-mail, you -- you agree
21 that -- I mean, Luis -- Luis told you (As read): "We
22 are 50/50. So if you asked a side to give only 10
23 percent to the alarm side, there is no stepping down
24 or consign or your wife getting a job." Is that what
25 Luis said? On the first page.

1 A It's what's written.

2 Q First page, number -- number -- it's right in the
3 middle: "We are 50/50." That's what Luis told you.
4 And did you object to that and say, "We're not 50/50;
5 you're merely an employee"?

6 A It stipulates in the second sentence that ---

7 Q I'm asking ---

8 A --- the ---

9 Q --- you about ---

10 A --- goal is for the families of AVSX to succeed,
11 not ---

12 Q That ---

13 A --- strictly for one or two people.

14 Q That's right. But did you dispute that when Luis
15 said "We are 50/50," did you say, "Look, buddy, we're
16 not 50/50; you're only an employee"? Did you tell
17 him that in this e-mail?

18 A I wouldn't do that with additional employees as
19 well.

20 Q You wouldn't clarify if somebody was overstepping
21 their bounds?

22 A No, sir.

23 Q Bobby, you're a pretty straight-up guy. I mean,
24 you call it like you see it.

25 A Correct.

1 Q So if you had a problem with him claiming 50
2 percent, why didn't you say so then?

3 A Sir, I would question the validity of it strictly
4 from a standpoint that the previous exhibit reflected
5 that 10 percent of that was going to be promised to
6 the leaderships that are listed.

7 Q I'm not talking about 10 percent. I'm not talking
8 about 5 percent. I'm talking about 50 ---

9 A I wouldn't ---

10 Q --- 50 ---

11 A --- be able to give 50/50. It would only be a 90
12 percent total at that point, so 45/45, evidently.

13 Q Okay. So it was 45/45 at that time, then,
14 correct?

15 A No, sir. Because ---

16 Q Okay.

17 A --- the previous e-mail exhibit did not reflect a
18 10 percent ownership for Mr. Cason and Mr. Wolfe or
19 ---

20 Q Right.

21 A --- any other parties.

22 Q Okay. Well, take out -- take out whatever was
23 promised or agreed to or whatever was proposed to --
24 to split the 100 percent to the -- to the employees,
25 to the sales staff, to the -- take out all that.

1 A And?

2 Q When -- when -- when you get down to what's left,
3 Luis is saying we are 50/50. And you would agree
4 with that, correct?

5 A I would not.

6 Q Why not?

7 A Because the company is in my wife's name since
8 Mary -- Mary Kay Cason Johnson, as well as all
9 financial documents reflective.

10 Q You're -- in this e-mail -- string of e-mails,
11 Exhibit No. 4, your wife was talking about going back
12 to work.

13 A My wife is talking about going back to work as in
14 maybe she was intent on returning to the company in a
15 active role to oversee due to the fact she understood
16 her husband's stresses.

17 Q Sure. Sure it wasn't going back to work at Publix
18 or something like that?

19 A Is that meant to be derogatory?

20 Q No. I'm just asking you a question. I'm sorry.

21 A I'm sorry, sir. Because she's had numerous
22 positions. In fact, her previous one was absolutely
23 -- she was a owner of a licensed massage-therapist
24 business.

25 Q Okay. Well, was -- when -- when you're -- when

1 you're referring in your -- and -- and you wrote it:

2 "My wife is talking to me about going back to work."

3 What was she referring ---

4 A Yes, sir.

5 Q --- to?

6 A You would have to ask her the question, sir.

7 Q You don't know?

8 A I don't speak for my wife.

9 Q Y'all didn't discuss it?

10 A Sir, the e-mail is from 2014.

11 Q That's correct. Y'all ---

12 A That's ---

13 Q --- didn't ---

14 A --- two years ago. I don't have knowledge as to
15 what I ---

16 Q Okay.

17 A --- may or may not have communicated with my wife
18 at ---

19 Q All right.

20 A --- that time.

21 Q All right. So this e-mail string that we're
22 talking about is January 16th and January 17th, 2014,
23 correct, Exhibit ---

24 A It appears.

25 Q --- Number 4.

1 A Yes, sir.

2 Q And how long after this was -- did Mr. Ellis issue
3 his letter firing Mr. Endara?

4 A That was March 18th, 2014.

5 Q March 21st?

6 A March 20 -- or March 18th, I believe, is when ---

7 Q Okay.

8 A --- it was sent.

9 Q Okay. So two ---

10 A Could be ---

11 Q --- months later ----

12 A --- March 20 -- 21st. I -- I apologize.

13 Q Okay. That's fine. That's fine. I'm not trying
14 to trip you up. I'm just trying to understand.

15 A That's okay.

16 Q So less than two months after Luis tells you that
17 we are 50/50 and you don't mention anything about it,
18 then Mr. Endara really -- Mr. Endara gets a letter
19 from Todd Ellis saying he's just an employee and has
20 no interest in AVSX? Is that what happened?

21 A No, sir.

22 Q It's not?

23 A No.

24 Q What happened, then?

25 A I would believe there was two additional months --

1 maybe a month and a half -- 2 1/2 months worth of
2 additional communications to Mr. Endara via both text
3 message and e-mail.

4 Q Okay. Well, Exhibit No. 4 is in evidence. Let's
5 -- let's talk about the next one.

6 (Whereupon, Mr. Sautter and Mr. Michael Ellis
7 conferred.)

8 Q Let's see if you have it.

9 A Yes, sir.

10 Q Thank you. I'm -- I'm handing you what's been
11 marked as Plaintiff's Exhibit No. 5.

12 A Okay.

13 Q Have you ever seen that before?

14 A It appears as if it's the specific document you
15 referenced that was sent to Mr. Endara.

16 Q By Mr. Ellis?

17 A It appears so.

18 Q Okay.

19 MR. SAUTTER: Your Honor, I ---

20 A Yes, sir.

21 MR. SAUTTER: --- move Exhibit No. 5 into
22 evidence.

23 THE COURT: Any objection?

24 MR. TODD ELLIS: None, Your Honor.

25 THE COURT: All right.

1 MR. TODD ELLIS: Only that Mr. Sautter -- I don't
2 think purposely -- is kind of insinuating like I'm
3 part of the company and I wrote this letter on my
4 own.

5 MR. SAUTTER: That -- that ---

6 MR. TODD ELLIS: It really ---

7 MR. SAUTTER: That's right, Your Honor. Just for
8 ---

9 MR. TODD ELLIS: Yeah.

10 MR. SAUTTER: --- clarification and I'm not trying
11 to make Mr. Ellis a witness. We took -- Mr. Endara
12 took it as it was, a letter from counsel for -- for
13 Mr. Johnson.

14 THE COURT: So admitted ---

15 MR. SAUTTER: Thank you, Your Honor.

16 THE COURT: --- without objection.

17 Q Now, if you look at that Exhibit No. 5, it talks
18 about vehicles. You see that?

19 A Yes, sir.

20 Q And Mr. Endara turned over a 2012 Mercedes 550,
21 correct?

22 A Yes.

23 Q He did that?

24 A (No audible response.)

25 Q And -- and whose name was that car titled in?

1 A Sir, that's not listed, actually.

2 Q Okay. It's -- it's at the bottom of Exhibit No.

3 5. I'm sorry.

4 A I'm sorry, sir. Oh, I'm sorry.

5 Q It ---

6 A Yes.

7 Q So -- so what -- who -- who's driving that 550

8 Mercedes -- 2012 550?

9 A Nacolle Caltrider.

10 Q Who?

11 A Nacolle Caltrider.

12 Q Okay. Does she pay for it?

13 A It is a company vehicle as well, sir.

14 Q All right. And who pays for the insurance on that
15 car?

16 A AVSX Technologies, LLC.

17 Q Who pays for the expenses -- tires? things of that
18 nature?

19 A The company as well.

20 Q All right. And that's personal -- that's her --
21 that's the -- that's the vehicle that's provided to
22 her personally by the company, correct?

23 A It's a company vehicle, sir.

24 Q Yeah. And is she still driving it?

25 A Correct.

1 Q What kind of car is your wife driving?

2 A As I stated, I believe it's a 2015 Mercedes.

3 Q What kind of Mercedes?

4 A S63.

5 Q And do you have any idea what her car is worth?

6 A I do not. To be ---

7 Q Is it ---

8 A --- honest, I'm not car guy, to be honest with
9 you, sir.

10 Q Okay. It -- it's a lease, right?

11 A No. It's a purchase.

12 Q Is it paid for?

13 A No, sir.

14 Q And who's making the payments on it?

15 A Ms. Johnson.

16 Q Personally or through the company?

17 A She makes the payments personally through the
18 company.

19 Q What -- what -- is there a check written to
20 Mercedes every -- every week by Ms. Johnson or every
21 month?

22 A If you could clarify with her, sir, I'd -- I
23 honestly ---

24 Q Okay.

25 A --- don't handle that.

1 Q All right. And so there was some -- this 2013
2 Jeep Wrangler driven by Mr. Endara's, Laura Endara,
3 correct? And -- and Mr. Endara got to keep that car,
4 right, and be responsible for all the payments?

5 A He was the owner, sir.

6 Q Okay. And then, there was a 2013 FJ Cruiser. Mr.
7 Endara got that car, correct?

8 A That would be Mrs. -- Laura Endara, upon her exit,
9 decided not to sell the vehicle to AVSX Technologies
10 and, therefore, it was turned over to Laura Endara.

11 Q Okay. It talks about in her a wrapped company
12 vehicle. Can you tell the jury what wrapped means?

13 A It would be the marketing wrappeting that -- the
14 mark -- marketing ---

15 Q Like decals ---

16 A --- that you ---

17 Q --- on it?

18 A --- would see upon the vehicle.

19 Q Yeah. Yeah. And it would say AVSX on it?

20 A No, sir. This one specifically said "Bring it."

21 Q Okay. And that's your business motto?

22 A It's always been that.

23 Q And your life motto?

24 A It's always been that.

25 Q Okay. Mr. Endara also got a 2008 FJ Cruiser,

1 correct?

2 A Yes, sir. I think it was a 2008, but it may have
3 been a ---

4 Q It -- it's on there. It's on there.

5 A Okay. Yes, sir.

6 Q Okay. And ---

7 A I'm ---

8 Q --- I'm -- I'm ---

9 A --- pretty confident it was a 2007, though.

10 Q Okay. That's fine. But he didn't have to pay any
11 additional money to AVSX or you or to your wife,
12 correct?

13 A Not to my knowledge.

14 Q And so he -- he's an employee, but he still gets
15 three cars out of -- when -- after Mr. -- after he
16 received this letter, which has been marked Exhibit
17 No. 5, I think?

18 A Yes, sir. He was given that due to the fact
19 senior leaderships were also receiving stipends for
20 their vehicles throughout the duration of their
21 employment as well.

22 Q Okay.

23 A Which were personal vehicles.

24 Q Okay. And he was not to communicate with AVX,
25 [sic], Bobby Johnson, and Mary Kay Johnson at the end

1 of that ---

2 A Which ---

3 Q --- at the end ---

4 A --- he did violate.

5 Q Well, was it a court order?

6 A No. But it -- it was -- he was sent a cease-and-
7 desist. But just to clarify, he did violate that.

8 Q Okay. Well, is it fair to say that Mr. Endara was
9 upset that he was terminated from AVSX?

10 A You would have to ask Mr. Endara.

11 Q You don't know?

12 A Sir, I'm not going to use his wording. But I'm
13 ---

14 Q I mean, so your testimony is you have no knowledge
15 that he was upset about being terminated with -- from
16 AVSX? Is that your testimony?

17 A No. There's a significant amount of
18 communications, as Mr. Endara has now become a
19 competitor with Ms. Ellie Moise that his accusations
20 and slanderous activity towards myself personally ---

21 Q Okay. Whoa ---

22 A --- have been ---

23 Q --- whoa, whoa.

24 A --- very paramount.

25 Q Whoa, whoa, whoa. His accusations and slanderous

1 activity?

2 A Yes.

3 Q Have you brought any kind of counterclaim in this
4 lawsuit against Mr. Endara for those allegations that
5 you're making here in front of the jury?

6 A Not yet.

7 Q And -- and I know you're not a lawyer. But do you
8 understand that if you don't bring it -- you don't
9 bring it after we filed the complaint, that those
10 allegations might be forever waived? Do you not --
11 do you understand that? If you don't, that's fine.

12 MR. TODD ELLIS: Objection, Your Honor. He's
13 asking my client a legal conclusion.

14 THE COURT: Objection sustained.

15 Q All right. Now ---

16 MR. SAUTTER: Your Honor, I'm not sure whether
17 I've admitted -- whether the Court has admitted
18 Exhibit No. 5 in to evidence or not.

19 THE COURT REPORTER: (Nodded head up and down.)

20 MR. SAUTTER: It has been admitted. Thank you ---

21 THE COURT: Admitted ---

22 MR. SAUTTER: --- Your Honor.

23 THE COURT: --- without objection.

24 MR. SAUTTER: Thank you. Thank you, madam court
25 reporter.

1 Q Okay. Let's look at this next exhibit. This is
2 -- can I just get this for a second?

3 A Sure.

4 Q What I'm -- what I'm going to be asking you about
5 is Plaintiff's Exhibit No. 6. Hand you -- what is
6 that?

7 A It's a U.S. income tax return for an S
8 corporation, dated 2014.

9 Q Okay. And who prepared that?

10 A Mark Zion. At the bottom, Zion & Company,
11 Incorporated.

12 Q All right. And he's your -- he's the company's
13 CPA?

14 A He's the oversight CPA that is handling our tax
15 related issues.

16 Q Okay. And now, these -- and you believe that --
17 so that tax return was prepared by Mr. Zion. You
18 believe it to be accurate?

19 A To my knowledge, sir.

20 Q All right. But it ---

21 MR. TODD ELLIS: Objection, Your Honor. Can we
22 approach?

23 THE COURT: Yeah. Come here.

24 (Off the record briefly.)

25 (Whereupon, a bench conference was held off the

1 record in the presence of the jury, but out of the
2 hearing of the jury.)

3 Q Mr. Johnson, and -- and to be fair, it does say
4 "preliminary draft" right on the front of that?

5 A Yes, sir.

6 Q All right. And to your knowledge, has this tax
7 return been filed with the IRS or anybody else?

8 A No, sir.

9 Q Okay. All right. But as far as the numbers, you
10 believe them to be accurate?

11 A I don't have a chance to review these numbers,
12 sir. That's not my responsibility.

13 Q Okay. Do you quarrel when it shows gross receipt
14 or sales of \$9,957,282 on line 1a of that tax return
15 for the company AVSX Technologies, LLC?

16 A Could you repeat the question, sir?

17 Q Do you dispute that -- that AVSX Technologies,
18 LLC, on information that the company provided to Mark
19 Zion, who you've already testified is your CPA, do
20 you dispute that

21 -- that they -- they -- they received gross sales in
22 2014 of \$9,957,282?

23 A No, sir, I do not dispute.

24 Q Okay. But it's an expensive business. You agree?

25 A It's what, sir?

1 Q It's an expensive business to run, correct?

2 A Extremely.

3 Q All right. And if you look down at costs of goods
4 sold, Item No. 2, \$5,012,137, right?

5 A Yes, sir.

6 Q Okay. And then, the total income and loss, after
7 adjustments, would be \$4,785 and \$811 -- \$4,785,811,
8 correct? Is that what it says?

9 A It does.

10 Q Okay. And then, if you look at all down there, 7,
11 8, 9, 10, and 11 through 21, those are all the
12 deductions that can be taken out and all that can be
13 taken out to get what the actual profit of the
14 company was, correct?

15 A Yes, sir.

16 Q All right. I mean, is there any way to dispute --
17 do you dispute that the compensation of the officers
18 was \$100,000 in 2014?

19 A I do not dispute that that's the reflection of --
20 on the document.

21 Q All right. Salaries and wages, 1 million, 769 and
22 -- 769,610 dollars, correct?

23 A Yes, sir. That's what it stipulates.

24 Q And they note \$367,466 in taxes?

25 A Yes, sir.

1 Q And if you go all the way down to Item No. 19,
2 other deductions, \$1,488,242, correct?

3 A Yes, sir.

4 Q And the total deductions were \$4,165,057, correct?

5 A Yes, sir.

6 Q And then, finally, for -- for the year 2014, the
7 preliminary draft, which has been introduced into
8 evidence as Exhibit No. 6, shows ordinary business
9 income and loss of \$620,754. Is that true, Mr.
10 Johnson?

11 A Yes, sir.

12 Q Okay. So the company was doing pretty well,
13 correct?

14 A It ---

15 Q For that ---

16 A --- appears ---

17 Q --- tax year?

18 A It appears as if \$620,754 was generated in income
19 ---

20 Q Okay.

21 A --- earned income for the company.

22 Q Well, that's -- that's the ordinary business
23 income, correct?

24 A Yes, sir.

25 Q All right. So AVSX Technologies, LLC, is a

1 successful company, right?

2 A Is this a reflection of 2014 or as of today?

3 Q Okay. And are you happy with those numbers?

4 MR. TODD ELLIS: Okay, or did ---

5 A No, sir. I was asking is that -- to answer your
6 question, was that a ---

7 Q Yeah. As -- as what's reflected in Exhibit No. 6.

8 A But can we discuss 2016?

9 Q Well, I'm asking you about '14 right now. You --
10 you would agree with me that Mr. Endara was
11 terminated on March 21st, 2014?

12 A March 21st, 2014.

13 Q All right.

14 A Correct.

15 Q Yeah. That's right. Mr. Ellis may ask you about
16 '16 and '15 and '13 and '12 and '10 and '11 and all
17 that. But I'm trying to get -- get to the business
18 -- the shape -- the current shape of the business as
19 of 2014, okay?

20 A As of March 21st, sir?

21 Q Well, as of -- as reflected on the -- I -- this
22 doesn't break it down. The tax return is not broken
23 down by months or dates or anything. But I -- I'm
24 just interested in 2014. And -- and you believe that
25 to be accurate, right, the numbers on this paper?

1 A The numbers appear accurate, sir.

2 Q Okay. Is this business for sale, Mr. Johnson?

3 A Not to my knowledge, nor has it ever been.

4 Q Well, what would you take for this business?

5 A That would be my wife, sir, Mary Kay Cason
6 Johnson, the owner of AVSX Technologies, LLC.

7 Q Now, you say that would be your wife. And she ---

8 A Her decision, sir.

9 Q Okay.

10 A I apologize.

11 Q Would you take \$2,400,000 for your interest in
12 this business?

13 A I would not.

14 Q Why not?

15 A It would not be my decision, sir.

16 Q I'm asking you what -- what you would take. If
17 you don't know, you don't know.

18 A No, sir.

19 Q If somebody today would offer you \$2.4 million to
20 end this business for your family, would you ---

21 A Okay.

22 Q --- take it?

23 A Would I take the money of \$2.4 million ---

24 Q Yes, sir.

25 A --- for the status of AVSX Technologies today or

1 in 2014?

2 Q Right now. Value ---

3 A No.

4 Q -- as of -- no?

5 A It would not be worth that.

6 Q Okay. How about in 2014?

7 A Would I have taken \$2.4 million? No.

8 Q Why not?

9 A Because the company is still functional and it was
10 never built to be sold.

11 Q Would that be enough money to buy the business in
12 2014?

13 A Absolutely wouldn't play a role with me. You're
14 asking me personally, not my wife, who is the owner.

15 Q I'm asking you as whatever you were on that chart,
16 the -- I'm -- and -- and I'm sorry. I don't ---

17 A As the ---

18 Q --- mean to ---

19 A --- CEO, I would not ---

20 Q Yes, sir.

21 A --- authorize, nor would I recommend to the owner,
22 to purchase a company for 2 -- or to sell the assets
23 of the company for \$2.4 million ---

24 Q Okay.

25 A --- at any time.

1 Q Why not?

2 A Because I ---

3 Q Is ---

4 A --- like to bring it. I'm ---

5 Q Okay.

6 A --- sorry.

7 Q That's okay.

8 A It's the truth.

9 Q That's okay. But that's not enough money to buy -
10 - buy you out of ---

11 MR. TODD ELLIS: Objection, Your Honor. This -- I
12 don't mind him crossing, but don't testify for him,
13 Mr. Sautter.

14 Q So I -- I ---

15 THE COURT: Restate your question.

16 MR. SAUTTER: Thank you, Your Honor.

17 Q So in 2014 you don't feel \$2.4 million is enough
18 money to buy out your interest and your wife's
19 interest -- and that's the whole Johnson family
20 interest in AVSX, correct?

21 A We have 84 employees currently associated with
22 AVSX Technologies. So to sell a company for \$2.4
23 million and reference them as one family's would be
24 inaccurate.

25 Q Oh, I'm not trying to reference it. I'm just

1 talking about what it would take to buy you out in
2 2014.

3 MR. TODD ELLIS: Objection.

4 A Sir, I don't -- I make ---

5 MR. TODD ELLIS: Stop ---

6 A --- a salary.

7 MR. TODD ELLIS: --- please ---

8 THE COURT: Hold on ---

9 MR. TODD ELLIS: --- Bobby.

10 THE COURT: --- a minute.

11 MR. TODD ELLIS: Stop.

12 THE WITNESS: I'm sorry.

13 THE COURT: Hold on ---

14 MR. TODD ELLIS: I ---

15 THE COURT: You hold on a minute as well ---

16 MR. TODD ELLIS: Yes, Your Honor.

17 THE COURT: --- Mr. Ellis, okay?

18 MR. TODD ELLIS: Yeah. Excuse me.

19 THE COURT: Can y'all approach a minute, please.

20 (Whereupon, a bench conference was held off the
21 record in the presence of the jury, but out of the
22 hearing of the jury.)

23 THE COURT: Mr. Sautter, you may continue.

24 MR. SAUTTER: Thank you.

25 Q If you had the authority to consider the sale

1 price of AVSX in 2014, what would you sell your
2 interest in the business for?

3 A I would not.

4 MR. TODD ELLIS: Object --

5 THE WITNESS: I apologize.

6 MR. TODD ELLIS: Object.

7 THE COURT: Overruled. He's answered the
8 question. Move on, Mr. Sautter.

9 MR. SAUTTER: Thank you, Your Honor.

10 Q Is it -- is it fair to say that the -- your
11 family's personal expenses come out of what AVSX
12 earned?

13 A It would not.

14 Q They don't?

15 A No, sir.

16 Q So, I mean, does it -- does the -- is AVSX meant
17 to compensate your wife for things such as Starbucks?

18 A They're deducted at the end of the year by the CFO
19 if they were to utilize their ---

20 Q Sure.

21 A --- my -- and that would be a question for my wife
22 as well.

23 Q Sure. Sure. But did -- did you have a credit
24 card or a debit card or -- or any kind of a card --
25 credit card that you could use to -- to charge things

1 that -- that would be paid by AVSX?

2 A They would then be -- are -- are you asking for
3 the end-of-the-year tax ---

4 Q I'm just ---

5 A --- validations ---

6 Q --- asking you ---

7 A --- or just simply ---

8 THE COURT: Hold on ---

9 A --- the purchase ---

10 THE COURT: --- a minute.

11 A --- of the ---

12 THE COURT: Hold on ---

13 A --- item ---

14 THE COURT: --- a minute..

15 A I'm ---

16 THE COURT: Hold on ---

17 A --- confused ---

18 THE COURT: --- a minute.

19 A --- sir.

20 THE COURT: Hold on a minute. Please don't talk
21 when he's talking.

22 THE WITNESS: Okay.

23 THE COURT: It my -- makes it difficult for my
24 court reporter. Likewise, for attorneys please don't
25 talk when the witnesses are talking, okay?

1 MR. SAUTTER: Yes, sir, Your Honor.

2 THE COURT: Let him finish his question, okay,
3 sir?

4 Q Did ---

5 THE COURT: Wait a minute.

6 MR. SAUTTER: Thank you, Your Honor.

7 THE COURT: You may continue.

8 Q Did -- did you have a credit card that you could
9 use to make charges on during the year 2014?

10 A Correct.

11 Q And did your wife also have a credit card?

12 A Correct.

13 Q And when Luis Endara was terminated on March 21st,
14 2014, one of the things that happened was his credit
15 card was turned off, correct?

16 A That's customary in an employee exit.

17 Q Okay. Whose -- where -- where does AVSX do
18 business -- or did -- did business? What -- what's
19 the street address?

20 A 1140 Briargate Circle ---

21 Q All right.

22 A --- Columbia, South Carolina.

23 Q And whose name was the lease originally in for
24 that address?

25 A I do not -- I don't understand what ---

1 Q Well, somebody had to lease that property, right?

2 A Correct.

3 Q Okay. Let me see if I can just hand you a
4 document. This is Plaintiff's Exhibit No. 10. You
5 ever seen that before?

6 A I have not.

7 Q All right. And what is that?

8 A It appears to be the -- other than the lease for
9 the building for 2007.

10 Q Okay. And who signed it?

11 A It reflects both the signature of myself, a
12 Meredith Cox, Luis Endara, as well as Mark Zion.

13 Q Did you sign it?

14 A It appears to the left that I signed as a witness.
15 But as for seeing this exhibit, I haven't seen it
16 this time.

17 Q Okay.

18 MR. SAUTTER: Your Honor, I'd move this into
19 evidence as the next exhibit.

20 THE COURT: Any objection?

21 MR. TODD ELLIS: No objection, Your Honor.

22 THE COURT: Without ---

23 MR. SAUTTER: Exhibit Number ---

24 THE COURT: --- objection, No. 10 ---

25 MR. SAUTTER: Thank you.

1 THE COURT: --- admitted.

2 Q Mr. Bobby, you -- you signed that as a witness to
3 Mr. Endara's signature, correct?

4 A Correct.

5 Q And that's for when he was operating a -- a --
6 Protection24?

7 A It appears to be.

8 Q So it doesn't list you as a -- a member or owner,
9 correct?

10 A This is not our current lease, sir.

11 Q Okay. But that's how y'all started in that
12 building, correct?

13 A Correct. I worked at Protection24 as the VP of
14 sales.

15 Q All right.

16 THE COURT: All right. Mr. ---

17 Q And all -- and all the assets of Protection24 went
18 into the next entity of Guardian Eagle or AVSX,
19 correct?

20 A They were sold by Mr. Endara to Mary Kay Cason
21 Johnson.

22 Q All right. And I'm going to ask you about
23 Plaintiff's Exhibit No. 11, a SCE&G bill.

24 A Yes, sir.

25 Q And what's the address, please?

1 A 1140 Briargate Circle.

2 Q Is that the same address where the AVSX office is?

3 A Correct.

4 Q Whose name was that power bill in?

5 A Mr. Endara's.

6 Q All right. And after the -- after Mr. Endara was
7 -- received a letter from Mr. Ellis, who paid that
8 power bill?

9 A AVSX.

10 Q Did there come a time when AVS didn't pay that
11 power bill and -- and -- and the power company went
12 after him for collection?

13 A Not to my knowledge.

14 Q All right.

15 MR. SAUTTER: I would move that power bill into
16 evidence, Your Honor, as the next exhibit.

17 THE COURT: Any objection?

18 MR. TODD ELLIS: I don't think it's a -- is ---

19 THE COURT: Can I see it? You want to see it, Mr.
20 Ellis?

21 MR. TODD ELLIS: I better look at it. Yeah. I
22 didn't think ---

23 THE WITNESS: Sir ---

24 MR. TODD ELLIS: --- it was a power bill.

25 THE WITNESS: It says 402 Nautique Circle.

1 THE COURT: Hold on a minute.

2 (Whereupon, Mr. Sautter and Mr. Todd Ellis
3 conferred.)

4 MR. TODD ELLIS: Oh. No objection, Your Honor.

5 THE COURT: Without objection, so admitted.

6 Plaintiff's No. 11.

7 MR. SAUTTER: Thank you, Your Honor.

8 Q So -- so it was mailed to Mr. Endara at his -- do
9 you know that Nautique Circle to be his home address?

10 A Yes.

11 Q And so there's no -- no confusion about it, that
12 is the power bill for the building where AVSX is
13 headquartered and does business?

14 A Yes.

15 Q Why -- why was it just in his name?

16 A This past-due bill is for \$7.16. The payment was
17 made on \$600 on May 28th. It reflects it in the
18 document.

19 Q Okay. But my question was: Why -- why is the
20 power bill for AVSX in Mr. Endara's name? And if you
21 don't know, you don't know.

22 A I would assume due to the fact he initiated the
23 original lease.

24 Q All right. The original lease where AVSX
25 continues to do business, correct?

1 A Correct, sir.

2 Q All right. Were you involved with a Guardian
3 Eagle Security, LLC?

4 A It's the predecessor of AVSX Technologies, LLC.

5 Q All right. And I'll hand you Exhibit No. 13. Who
6 does it list as the shareholder?

7 A Mary Kay Johnson.

8 Q Okay.

9 MR. SAUTTER: Your Honor, I move 13 into evidence.

10 MR. TODD ELLIS: No objection, Your Honor.

11 THE COURT: Without objection, 13 admitted.

12 Q So is it fair to say that you and Luis were very
13 close?

14 A Yes.

15 Q And were you aware that Mr. Endara had a will?

16 A No.

17 Q And were you aware that on February 11th of 2014,
18 that Mr. Endara designated you as his executor? Were
19 you aware ---

20 A I would ---

21 Q --- of that?

22 A --- have denied that, sir.

23 Q Well, I'm just asking if you were aware of it.

24 A This is the same time period he questioned my
25 health at that time.

1 Q So to answer my question, you were not aware that
2 you were named executor?

3 A I was not aware.

4 Q Okay. I'll just take that one.

5 A (Complied.)

6 Q So to do business as an LLC, you -- you don't have
7 to have an operating agreement, correct?

8 A Not to my knowledge.

9 Q All right. But you do have to file annual
10 reports, and you do have to file reports with the
11 Department of Revenue. And I'm specifically
12 referring to Plaintiff's Exhibit No. 16.

13 A Okay. Yes, sir.

14 Q And do you believe that to be the filing of -- I
15 think that's Guardian Eagle in -- at that time,
16 correct?

17 A Yes, sir.

18 Q And -- and who does that filing list as the
19 members?

20 A It stipulates that the names and business
21 addresses of the directors and principal officers in
22 the corporation are Mary Kay Johnson, president;
23 Bobby Johnson, CEO; Luis Endara, vice-president.

24 Q All right.

25 MR. SAUTTER: I'll move that into evidence, Your

1 Honor, as the -- as Plaintiff's Exhibit No. 16.

2 MR. TODD ELLIS: May I approach, Your Honor? I'm
3 -- I'm not sure I saw up close. I think I've seen it
4 before. No objection, Your Honor.

5 THE COURT: Without objection, so admitted.

6 (Whereupon, Mr. Todd Ellis and Mr. Webb conferred.

7 Q Now, periodically, has AVX [sic] ever been the
8 subject of any kind of regulatory action, to your
9 knowledge, in South Carolina or -- or North Carolina?

10 A Several.

11 Q Okay. And what I've marked as Exhibit No. 14 is
12 the final investigative report, dated July 15th,
13 2013, from North Carolina authorities. Did -- have
14 you seen that before?

15 A Yes, sir.

16 Q Okay. And would you agree with me that in this
17 report, on page 2 of 27, it lists Luis Endara as
18 owner, AVSX; is that -- you agree with -- you see it
19 right there?

20 A Yes. It lists it, sir. I've -- I'm familiar with
21 the document.

22 Q All right. He's -- and it lists him as the owner?

23 A It also lists his name incorrectly.

24 Q Okay. Well, they did spell his name right, right?

25 A Yeah.

1 Q All right. But this is an official investigation
2 against -- against AVSX?

3 A It was a complaint filed by a competitor.

4 Q Right. And it was represented in this -- do -- do
5 you dispute that this is the investigation report of
6 the North Carolina regulatory authority?

7 A No, sir.

8 Q Okay. And it lists Mr. Endara as owner?

9 A That's what the document stipulates.

10 Q Okay. Did you file any objection that he wasn't
11 the owner?

12 A Multitude of lawsuits in North Carolina would
13 reflect that Mr. Endara was not -- was not, in fact,
14 an owner of AVSX Technologies ---

15 Q How about ---

16 A --- to include ---

17 Q --- the ---

18 A --- his deposition.

19 Q Okay. But how about this on Plaintiff's Exhibit
20 14? It does designate him as owner, correct?

21 A As written by the investigator.

22 Q Okay. Is there any kind of follow-up protest or
23 anything like that, that you have or that you can
24 show where you disputed that he was the owner to --
25 for the new -- North Carolina regulatory authorities?

1 A We wouldn't be required to do so.

2 Q Okay. But how about just to straighten out the
3 record?

4 A There would be no need in doing so.

5 Q Okay. So you were satisfied with that response?

6 A I'm satisfied that the document led to AVSX
7 Technologies being found not to be held accountable
8 for that complaint. It ---

9 Q Okay.

10 A --- is a complaint.

11 Q Okay. Now, this home-security business, would you
12 agree with me that it is highly competitive?

13 A Extremely.

14 Q And in some respects it is a high-risk business?

15 A Yes, sir.

16 Q And is it -- is it common that for the people who
17 actually own a business aren't listed as the owner?

18 A No, sir.

19 Q Is that what happened in this case?

20 A No, sir.

21 Q And tell -- tell me again: How much money did
22 your wife contribute to be designated the owner of
23 AVSX Technologies, Inc. -- LLC?

24 A There wasn't -- I relayed earlier there wasn't.

25 Q All right. So now, prior to your wife being

1 designated a member or owner, are you familiar with a
2 gentleman named Julio Reis?

3 A Yes, sir.

4 Q And was he designated the owner of either AVSX or
5 Guardian Eagle Security at one time?

6 A Per court-filed documents, I believe so.

7 Q Yes, sir. Yes, sir. And what role did he have
8 with the business during that time period if he's
9 designated as the sole -- he was designated the sole
10 owner as well, correct?

11 A Yes, sir.

12 Q And what role did he have with the business, other
13 than being designated on court filings and things of
14 that nature?

15 A He was the owner.

16 Q What amount of money did he pay to purchase an
17 ownership interest?

18 A I wasn't know that Mr. Reis made an investment.

19 Q Okay. And what role did Mr. Reis -- Julio Reis
20 have in the day-to-day operations of the company when
21 he was the sole member?

22 A He was the owner.

23 Q And what role does your wife, Mary Kay Johnson,
24 have in the day-to-day operations of AVSX since she
25 is now the sole member of record?

- 1 A She is the owner.
- 2 Q Can she fire people?
- 3 A Of course.
- 4 Q Who fired Luis?
- 5 A That would be the attorney that send the document.
- 6 Q Under whose instruction?
- 7 A Mary Kay Cason Johnson.
- 8 Q Did you participate in that?
- 9 A Of course.
- 10 Q Why was he fired?
- 11 A I apologize. What is the question?
- 12 Q Why was Mr. Endara fired from AVSX Technologies,
- 13 LLC, as evidenced by the letter of Mr. Ellis of
- 14 3/21/14? Why was he fired?
- 15 A He was no longer performing the duties in which he
- 16 was asked to perform.
- 17 Q What was that?
- 18 A A multitude of tasks similar to what you saw in
- 19 the organizational chart.
- 20 Q Can you produce one document that complains about
- 21 that?
- 22 A Yes, absolutely.
- 23 Q Have you done that yet?
- 24 A I've shared my documents with my attorney.
- 25 Q Okay.

1 A I'm not the owner, so therefore, that's exactly
2 the difference.

3 Q Bobby -- Bobby, you keep saying you're not the
4 owner. But you call the shots over there, don't you?

5 A As any CEO would.

6 Q What experience does your wife have in the home-
7 security business, other than since she became the
8 member in ---

9 A She ---

10 Q --- this case?

11 A --- does not.

12 Q How would she know what to do?

13 A She's the owner.

14 Q Okay. And let's -- let -- let's be fair about
15 this. There is nothing that has your name on it,
16 other than you're CEO, but there's nothing that says
17 that you own any kind of percentage in this company,
18 correct?

19 A Correct.

20 Q And y'all operated it that way?

21 A Yes, sir.

22 Q And that lasted a long time, from 2007 or '8 with
23 the other companies, up until Mr. Endara was
24 terminated on 3/21/14, correct?

25 A Yes, sir.

1 Q With no operating agreement?

2 A No, sir.

3 MR. SAUTTER: Beg the Court's -- Court's
4 indulgence.

5 (Whereupon, Mr. Sautter and Mr. Michael Ellis
6 conferred.)

7 MR. SAUTTER: That's all I have from this witness
8 at this time, Your Honor.

9 THE COURT: Can the lawyers approach a minute,
10 please.

11 MR. TODD ELLIS: Yes, Your Honor.

12 (Whereupon, a bench conference was held off the
13 record in the presence of the jury but out of the
14 hearing of the jury.)

15 THE COURT: Hold -- before we go any further, is
16 everybody in the jury okay? I know I told you we'd
17 go about an hour and half to two hours. We're
18 pushing on that two hours. I'm going to try to
19 finish with this witness, okay? If anybody needs a
20 break, just raise your right hand. Not just now, but
21 at any time, okay, any -- during the course of the
22 trial, if you need a break, just raise your right
23 hand and we'll -- we'll make arrangements.

24 All right, Mr. Ellis.

25 MR. TODD ELLIS: Thank you, Your Honor. With the

1 right to call Bobby back in our defense of the case,
2 I will be brief ---

3 MR. SAUTTER: No objection, Your Honor.

4 THE COURT: All right.

5 MR. TODD ELLIS: Thank you.

6 CROSS-EXAMINATION

7 BY MR. TODD ELLIS:

8 Q Bobby, you were shown several documents, including
9 a lease and some other corporate documents that had
10 the -- the entity Protection24, LLC. Do you recall
11 that?

12 A Yes, sir.

13 Q Did you ever own any interest in Protection24,
14 LLC?

15 A No, sir.

16 Q Did Mary Kay Johnson, to your knowledge, ever own
17 any interest in Protection24, LLC?

18 A No, sir.

19 Q What do you know of Protection24, LLC?

20 A That it was owned by James Ellerbee.

21 Q All right. And -- and who else worked in that
22 business?

23 A Myself and Mr. Endara.

24 Q All right. And did Mr. Endara run Protection24
25 out of the building which now currently has AVSX? Is

1 that correct?

2 A Yes, sir.

3 Q So if -- if Protection24 has signed a lease with a
4 third party, it would be by and through Protection24
5 and not Guardian or AVSX?

6 MR. SAUTTER: Objection to the leading form of the
7 question, Your Honor.

8 Q Who would've ---

9 THE COURT: Mr. Ellis ---

10 Q --- signed it, if -- if Protection24, LLC, had
11 done that -- signed a lease? Who would've signed for
12 that company -- company?

13 A The owner, I believe.

14 Q Okay. There was a lot of language in Plaintiff's
15 Exhibit No. 4, an e-mail in which Mr. Endara said,
16 "Hey, man, we're 50/50." And counsel made a big deal
17 regarding whether you had objected to or responded
18 back over a four-page document. Were you and Luis
19 Endara 50/50 in responsibilities at AVSX?

20 A No, sir.

21 Q How did you do operational material and how did
22 you do sales? Weren't you responsible in splitting
23 the business?

24 A Correct. We had the equal responsibilities across
25 the team. But several of our team members possessed

1 multiple responsibilities equal to.

2 Q Most of them called to -- either responded to you
3 or responded to Mr. Endara?

4 A Correct.

5 Q But that didn't mean ownership, did it?

6 A No, sir.

7 Q Who was the owner of AVSX Technologies, LLC?
8 Who's always been the owner of that company?

9 A Mary Kay Cason Johnson.

10 Q All right. Guardian Eagle Security, LLC, was the
11 predecessor company, correct?

12 A Yes.

13 Q Who at times and who has been the owner of that
14 company?

15 A Previous was Julio Reis and Mary Kay Cason
16 Johnson.

17 Q Right. Has Mr. Endara ever owned Guardian
18 Security, LLC, or AVSX Technologies, LLC?

19 A No, sir.

20 Q If you would, pick up Plaintiff's 13, although I'm
21 not sure you can find that one.

22 MR. TODD ELLIS: And I'll be done in just a
23 second, Your Honor.

24 Q Let me get you to look at that again.

25 A Okay.

1 Q Would you identify again for the jury what
2 Plaintiff's Exhibit No. 13 is?

3 A It's the K-1 report for shareholders in 2010.

4 Q Bobby, really important here ---¹

5 A Uh-huh.

6 Q --- lot of people don't know. I'm not sure I know
7 exactly. What is a K-1? What is that document?

8 A The shareholder's income and deductions gross for
9 the company, I believe.

10 Q Right. And that document is filed with whom?

11 A The IRS.

12 Q All right. So does a K-1 reflect who the owners
13 of a company are?

14 A Yes, sir.

15 Q And does a K-1 purportedly have to show what the
16 -- that owner's interest is and tax liability in that
17 company?)

18 A Yes, sir.

19 Q That is a 2010 K-1, correct?

20 A Correct.

21 Q Who does it say on the official AVSX 2010 K-1 that
22 lists the owner of that company -- who does it say
23 owns the company?

24 A Mary Kay Johnson.

25 Q Mary Kay Johnson.

1 A (No audible response.)

2 Q What's the percentage that she owns?

3 A 100 percent.

4 Q Anybody else, does it say?

5 A No, sir.

6 MR. TODD ELLIS: That's all I have, Your Honor.

7 THE COURT: Anything further, Mr. Sautter?

8 MR. SAUTTER: Not at this time, Your Honor. Not
9 from this witness.

10 THE COURT: All right, sir. You may step down.

11 THE WITNESS: Thank you, sir.

12 (Whereupon, the witness exited the witness stand.)

13 THE COURT: All right. Ladies and gentlemen, what
14 we are going to do at this time is we are going to
15 stop for the day. I'm going to ask that you be back
16 in your jury room tomorrow morning at 9:30. Be back
17 here, please, at 9:30. We will resume the trial of
18 this case as promptly at that time as possible.

19 Again, do not discuss the case at all. I'll see
20 you all tomorrow morning. Thank you.

21 (Whereupon, the jury exited the courtroom at 4:54
22 p.m.)

23 (Off the record briefly.)

24 THE COURT: All right. Anything from plaintiff's
25 counsel before we break for this ---

1 MR. SAUTTER: No, Your Honor.

2 THE COURT: --- this evening? Defense counsel?

3 MR. TODD ELLIS: Nothing, Your Honor. Want us at
4 -- at 9 -- 9 -- 9:30? What time do you want us, or
5 is it -- it's okay?

6 THE COURT: I mean ---

7 MR. TODD ELLIS: I just want to ---

8 THE COURT: --- be back ---

9 MR. TODD ELLIS: --- be clear ---

10 THE COURT: --- here at 9:15 ---

11 MR. TODD ELLIS: Okay.

12 THE COURT: --- just a few minutes early, just in
13 case there's any matters that we need to deal with
14 before the jury comes back in. If you have -- I
15 mean, I think I told you all a few weeks ago when you
16 were with me: I don't like to make a jury wait,
17 certainly understanding that there are things that
18 happen that necessitate such.

19 But if you don't have to, I don't like to make
20 them sit back there and wait. And they -- like I
21 said before, I want to make good use of their time
22 while they're here ---

23 MR. TODD ELLIS: Yes, sir.

24 THE COURT: --- and not have them sitting back
25 there for -- for a period of time. Okay?

1 MR. SAUTTER: Thank you, Your Honor.

2 MR. TODD ELLIS: Thank you, Your Honor.

3 THE COURT: I want you all to be back at 9:15.

4 Thank you.

5 MR. TODD ELLIS: Thank you.

6 MR. SAUTTER: Thank you, Your Honor.

7 MR. MICHAEL ELLIS: Thank you, Your Honor.

8 MR. WEBB: Thank you.

9 (Whereupon, the proceeding was adjourned at 4:56

10 p.m.)

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TRANSCRIPT OF RECORD

TRIAL DAY 2 - 01/26/16

(Whereupon, Defendant's Exhibits 1 through 9 were marked for identification off the record prior to the proceeding reconvening.)

(Whereupon, the proceeding was reconvened at 9:21 a.m.)

THE COURT: All right. I want to -- hope you all had a good evening last night. But I want to clear up a couple -- clear up something on the record before we bring the jury back in this morning.

Yesterday before we started this trial, I asked the attorneys to look at exhibits and advise me -- advise the Court on what they had agreed upon before we started trial. It was conveyed to the Court on the record that the -- there was agreement as to Exhibits 1 through 16 -- Exhibits 1 through 16, I believe. Is that right?

MR. SAUTTER: Yes, sir.

THE COURT: Mr. Ellis ---

MR. SAUTTER: From the plaintiff.

THE COURT: --- Todd Ellis?

MR. TODD ELLIS: Yes, Your Honor.

THE COURT: I mean, that's what it was -- that's what I was told. And -- and I specifically asked --

1 and this was brought to my attention this morning by
2 my court reporter. But I was -- I specifically
3 asked, "Is this an agreement pursuant to foundation
4 being laid or is it agreement that the items of
5 evidence come in?" And it was conveyed to me, from
6 my recollection, that they're agreed to come in.
7 They're in. Am I misstating that, Mr. Sautter?

8 MR. SAUTTER: I don't think so, Your Honor.

9 THE COURT: Mr. Ellis -- Todd Ellis?

10 MR. TODD ELLIS: I don't remember those specifics,
11 Your Honor. But I had always anticipated that we
12 would have no objection to those -- assuming the
13 foundation was set by those documents. I mean, I --
14 I -- that's the way I've done it before. I don't
15 disagree.

16 THE COURT: Well, I mean, I specifically asked
17 that. I mean, we ---

18 MR. TODD ELLIS: No.

19 THE COURT: --- if I ---

20 MR. TODD ELLIS: I don't ---

21 THE COURT: --- need to get ---

22 MR. TODD ELLIS: --- need you to ---

23 THE COURT: --- her to go back ---

24 MR. TODD ELLIS: --- Judge ---

25 THE COURT: --- and play it and ---

1 MR. TODD ELLIS: --- I don't ---

2 THE COURT: --- find out ---

3 MR. TODD ELLIS: -- need you to read it back at
4 all. I don't remember even -- which one did we end
5 up keeping out?

6 MR. SAUTTER: Number 2 has been -- when Mr.
7 Johnson couldn't identify it -- No. 2 is still out.
8 That's the -- it's one of the -- the -- the main e-
9 mails. And Number -- I mean, I don't think there's
10 any problem with No. 14, which is the North Carolina
11 investigative report.

12 THE COURT: No objection to that.

13 MR. TODD ELLIS: I didn't ---

14 THE COURT: I mean ---

15 MR. TODD ELLIS: --- object ---

16 THE COURT: --- I went ---

17 MR. TODD ELLIS: --- I didn't -- I remember the e-
18 mail now. And I -- frankly, Your Honor, I would
19 assume that they would ---

20 MR. SAUTTER: We -- we have other witnesses that
21 are going to be able to authenticate them ---

22 THE COURT: Okay. Well ---

23 MR. SAUTTER: --- Judge.

24 THE COURT: --- 14 was without objection.

25 MR. SAUTTER: Okay. And the ---

1 THE COURT: Sixteen, I have beside mine, without
2 objection as well.

3 MR. SAUTTER: For the annual report.

4 MR. TODD ELLIS: I don't recall having any
5 objection to -- something not being except
6 foundation-wise except No. 2.

7 THE COURT: Number 2.

8 MR. TODD ELLIS: And I assume, if I can visit with
9 my client, I -- I think he would understand that that
10 was our understanding to begin with and we'll let it
11 in, Your Honor, since you ---

12 THE COURT: Well, I mean ---

13 (Whereupon, Mr. Todd Ellis and Mr. Johnson
14 conferred.)

15 THE COURT: Yeah. And going back, my -- my law
16 clerk in his notes, 1 through 16 without objection.

17 MR. TODD ELLIS: Okay. Your Honor, we're fine
18 with that. We have no problem. And I certainly --
19 if the Court believed that, I'd -- that was my
20 representation, that is now and we'll be -- I'll be
21 more clear ---

22 MR. SAUTTER: Yes, sir.

23 MR. TODD ELLIS: --- relating to ---

24 MR. SAUTTER: And I ---

25 MR. TODD ELLIS: --- that.

1 MR. SAUTTER: --- and I promise, too, Your Honor.
2 And -- and -- and just to clear it up for the jury,
3 we will be talking about Number -- Exhibit No. 2 with
4 the jury today with someone that actually received
5 that e-mail.

6 MR. TODD ELLIS: Yeah.

7 MR. SAUTTER: And I think everything else should
8 -- is in.

9 THE COURT: Okay.

10 MR. TODD ELLIS: I -- I understood everything else
11 was in, with the exception of that one, and my client
12 is fine with that, Your Honor.

13 THE COURT: All right.

14 MR. TODD ELLIS: And I'm sorry for the
15 misunderstanding. Yeah.

16 THE COURT: Well, that's ---

17 MR. TODD ELLIS: But ---

18 THE COURT: --- okay.

19 MR. TODD ELLIS: That is our -- from now on, we've
20 agreed to -- Michael has at least seen 1 through 9,
21 this -- defense counsel today. Is that correct,
22 ma'am?

23 THE COURT REPORTER: Your Honor, we marked
24 Defendant's 1 through 9, before you took the bench,
25 for identification.

1 THE COURT: Okay. One through 9? I hadn't ---

2 MR. SAUTTER: They ---

3 THE COURT: Mr. Sautter?

4 MR. SAUTTER: --- 1 through 9 without objection.

5 THE COURT: Defendant's 1 through 9 without
6 objection.

7 MR. SAUTTER: Yes, sir.

8 THE COURT: Okay.

9 MR. SAUTTER: And, Judge, just for -- we have a
10 few additional exhibits. But we will get with Mr.
11 Mr. Todd Ellis before -- before we seek to introduce
12 them.

13 THE COURT: I'm sorry. I can't hear you for this
14 vacuum cleaner back here.

15 (Off the record briefly.)

16 THE COURT: I'm sorry. What was that, Mr.
17 Sautter?

18 MR. SAUTTER: Right -- right now we have 1 through
19 16 Plaintiff's are into evidence with ---

20 THE COURT: Without objection.

21 MR. SAUTTER: --- 17 and 18 are still subject to
22 objection and admissibility. Mr. Ellis is -- is
23 getting together his medical records that he would
24 like for the Court to consider. And -- and do we
25 have any other exhibits? And -- and there might be

1 some financial stuff. But all that will be vetted
2 with opposing counsel prior to -- to -- to getting
3 them in -- couple ---

4 THE COURT: Okay.

5 MR. SAUTTER: --- more exhibits, Judge.

6 THE COURT: All right. And Defendant's 1 through
7 9 are without objection?

8 MR. SAUTTER: Yes, sir.

9 THE COURT: Admitted without objection.

10 MR. SAUTTER: Yes, sir.

11 THE COURT: All right.

12 (Whereupon, Defendant's Exhibits 1 through 9 were
13 entered into evidence.)

14 THE COURT: Very well. Anything further before we
15 resume the trial of the case?

16 MR. SAUTTER: No, Your Honor, not from the
17 plaintiff.

18 (Whereupon, Mr. Michael Ellis and Mr. Todd Ellis
19 conferred.)

20 THE COURT: All right. Let me ask this question:
21 Pertaining to the issue of medical records yesterday
22 that we discussed, you all are still looking at that?
23 Is that the -- is that what I understood you to say a
24 minute ago, Mr. Sautter?

25 MR. SAUTTER: He -- he has pulled the medical

1 records he seeks ---

2 MR. MICHAEL ELLIS: I have -- I have two pages I
3 would like to admit ---

4 THE COURT: Okay.

5 MR. MICHAEL ELLIS: --- into evidence.

6 MR. TODD ELLIS: I haven't looked at them, but I
7 can do ---

8 THE COURT: Well, just ---

9 MR. TODD ELLIS: --- so quickly whenever ---

10 THE COURT: --- just look at them and -- you don't
11 have to do it right now.

12 MR. TODD ELLIS: I can do it on any direct they
13 have, Your Honor.

14 THE COURT: Okay.

15 MR. TODD ELLIS: I'll be prepared to speak --
16 assuming you're not -- are you doing it with the next
17 witness or ---

18 MR. SAUTTER: No.

19 MR. MICHAEL ELLIS: No.

20 MR. TODD ELLIS: --- already attempted to? If you
21 can ---

22 THE COURT: When ---

23 MR. TODD ELLIS: --- let me look at it, I'll have
24 a comment on those.

25 THE COURT: Okay. And, I mean, there's certainly

1 already been testimony concerning his health
2 condition and what was ---

3 MR. TODD ELLIS: Yes, sir.

4 THE COURT: --- what -- what was going on during
5 that period of time.

6 All right. Anything further?

7 MR. SAUTTER: No, Your Honor. We are -- the
8 plaintiff's prepared to proceed. And we will be
9 calling Julio Reis.

10 THE COURT: Okay.

11 (Whereupon, Mr. Sautter, Mr. Michael Ellis, and
12 Mr. Todd Ellis conferred.)

13 (Off the record from 9:27 a.m. until 9:30 a.m.)

14 THE COURT: We got them all?

15 THE BAILIFF: Yes, sir.

16 THE COURT: All right. Let's go. If you'll bring
17 them to me, thank you.

18 THE BAILIFF: Yes, sir.

19 (Off the record briefly.)

20 (Whereupon, the jury entered the courtroom at 9:31
21 a.m.)

22 THE BAILIFF: Jury panel is seated, Judge.

23 THE COURT: Thank you very much. Good morning,
24 ladies and gentlemen. I hope you all had a nice
25 evening last night and are ready to proceed this

1 morning. At this time I'm going to recognize
2 plaintiff's counsel. Call your next witness, please.

3 MR. SAUTTER: Thank you, Your Honor. The
4 plaintiff would call Julio Reis to the witness stand.

5 (Whereupon, the witness came forward.)

6 JULIO REIS, having been first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SAUTTER:

10 Q Mr. Reis, do you -- do you know Bobby and Mary
11 Johnson?

12 A Yes.

13 Q And do you also know Luis Endara?

14 A Yes, I do.

15 Q And how do you know them?

16 A Met Luis through New Life Fitness. He used to be
17 the manager there. And then I met Bobby through
18 Gold's Gym when the first opened up here in Irmo.

19 Q Okay. And at one time were all of y'all friends?

20 A Yes.

21 Q And did you become involved in any business
22 ventures of Luis Endara and -- and Bobby Johnson?

23 A Yes, I did.

24 Q And what was that?

25 A It was Guardian Eagle. I -- I, you know, opened

1 up the business for them. You know, they needed my
2 help because of credit reasons. And I helped them
3 out with that.

4 Q Now, Guardian Eagle Security?

5 A Yes.

6 Q And -- and what was your role with that company?

7 A Just my name being on that paperwork. That was
8 it.

9 Q Were you the sole member of Guardian Eagle
10 Security?

11 A Yes, sir.

12 Q And -- and did you receive a salary for that
13 business?

14 A No, I didn't.

15 Q Did you -- did you, to your knowledge, ever
16 receive a K-1 or anything of that nature?

17 A For the tax reason?

18 Q Yes, sir.

19 A I -- I know my accountant did taxes for -- for
20 Guardian Eagle. Yeah.

21 Q Okay. And you being -- you were appointed a
22 member by -- by both Luis and Bobby?

23 MR. TODD ELLIS: Object ---

24 A Yes, I ---

25 MR. TODD ELLIS: --- to the form, Your Honor.

1 MR. SAUTTER: Okay.

2 MR. TODD ELLIS: Leading.

3 MR. SAUTTER: Okay. All right.

4 THE COURT: Rephrase your question.

5 Q Was it your understanding that -- well, how were
6 you appointed a member?

7 A They -- they approached me. You know, they needed
8 someone to -- to help them out with -- with their
9 business. And I went ahead -- we met with the guy
10 from -- I forgot -- Vector, Mr. Madden. And we met
11 at Ruth Chris, and that's when we -- this all got
12 started. That's ---

13 Q All right.

14 A --- when I got appointed there. Yes.

15 Q Okay. Was that sometime -- what -- what year was
16 that? Do you recall? 2010?

17 A Some -- somewhere like that. Yeah. It's been a
18 while. Yeah.

19 Q All right. And -- and so you -- at -- at that
20 time, 2010, were you the sole member or sole owner of
21 Guardian Eagle on paper?

22 A Yes, I was.

23 Q And that was the filing with the Secretary of
24 State?

25 A Yes.

1 Q All right. Let me hand you this document that's
2 already been admitted into evidence. It's from the
3 Secretary of State. And it is from AVSX
4 Technologies, Inc. Do you see that?

5 A Yes ---

6 MR. TODD ELLIS: Excuse me ---

7 A --- I do.

8 MR. TODD ELLIS: --- Mr. Sautter. What's the
9 exhibit number?

10 MR. SAUTTER: That is Exhibit No. -- Plaintiff's
11 No. 9.

12 THE COURT: Thank you.

13 MR. SAUTTER: Okay.

14 (Whereupon, Mr. Sautter and Mr. Michael Ellis
15 conferred.)

16 Q So -- so does that look like the corporate records
17 with the Secretary of State for AVSX?

18 A Yes, it does.

19 Q All right. And so did actually you start with all
20 this in 2008?

21 A What was that?

22 Q Did actually you start becoming a member in 2008?

23 A Yes, sir.

24 Q All right. And at some point Guardian Eagle
25 became AVSX?

1 A Yes, they did.

2 Q All right. And is your name on that -- on that
3 paper on the bottom?

4 A Yes, it is.

5 Q And what does it say?

6 A It says (As read): "Signed by Julio Reis,
7 designated office."

8 Q Okay. Let me see.

9 A (Complied.)

10 Q See the bottom of it? It says -- there's an
11 amendment on 2/7/2011. What does that say?

12 A (As read): "Disassociated member, Julio Reis."

13 Q All right. So in 2011 was when you were
14 dissociated from, at that point, AVSX; is that
15 correct?

16 A Yes, sir.

17 Q All right. Now, so for your knowledge, you -- for
18 your understanding, you were the designated member
19 from 2008 to 2011?

20 A Yes, sir.

21 Q What role did you have with the company, other
22 than your name being on that piece of paper?

23 A I didn't. That was it. It's all I did.

24 Q Did you -- did you go to the office and do
25 business with them?

1 A No.

2 Q Did you work with Luis and Bobby to make decisions
3 for the company?

4 A No, I didn't.

5 Q The entire time that you were there, what was your
6 understanding of -- of who owned that company?

7 A Luis and Bobby owned it 50/50.

8 Q Was that any -- was there any question in your
9 mind about that?

10 A No.

11 Q All right. And 2011 you became dissociated?

12 A Yes, sir.

13 Q And who took your place?

14 A Mary Kay.

15 Q All right. And do you have any knowledge of what
16 her role is with now AVSX?

17 A No, I don't.

18 Q Do you believe that her role is the same as your
19 role was with AVSX?

20 A Yes, sir.

21 Q Is there any information that you can tell the
22 jury that it's otherwise?

23 A No.

24 Q And do you have any information or knowledge as to
25 whether the partnership has changed between Bobby and

1 -- Bobby and Luis after you became dissociated?

2 A No, I haven't.

3 Q To your knowledge, it's still the same.

4 A It's still the same.

5 MR. SAUTTER: That's all I have from this witness,
6 Your Honor.

7 THE COURT: Cross-examination?

8 MR. TODD ELLIS: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. TODD ELLIS: Thank you. (To the jury) Good
12 morning.

13 JURORS: Good morning.

14 CROSS-EXAMINATION

15 BY MR. TODD ELLIS:

16 Q Good morning. It's -- is -- pronounce your last
17 name for me again.

18 A Reis.

19 Q Reis. Mr. Reis, in 2011 you voluntarily
20 disassociated; is that correct?

21 A Yes.

22 Q You weren't kicked out?

23 A No.

24 Q You weren't fired?

25 A No.

1 Q It was a business decision?

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q And what's the reason why you disassociated in
6 2011?

7 A My accountant -- you know, it was getting in the
8 way of my business, you know, having two businesses
9 and -- and filing the tax and all. So my accountant,
10 you know, asked me, you know, if they'd -- if -- if
11 they're able to -- to, you know, have this put onto
12 their names, you should do it. So that's when I
13 approached them and I asked them.

14 Q Right. And by the way, you didn't put any money
15 into this company when you became the member in 2008,
16 correct?

17 A No, I didn't.

18 Q All right. So you were a member of an LLC; is
19 that correct?

20 A Yes, sir.

21 Q And that was Guardian Eagle Services, LLC?

22 A Yes, sir.

23 Q And then there became a time in 2011 in which Mary
24 Kay Johnson became the member of the LLC; is that
25 correct?

1 A Yes, sir.

2 Q All right. What other business do you own, sir?

3 A I own Digital Office Solutions.

4 Q Digital Office Solutions?

5 A Yes, sir.

6 Q If you could, briefly -- you don't need to get
7 into your business with the jury, but describe what
8 that is and maybe the size and scope of your
9 business.

10 A We sell and service office equipment, like
11 document management, copiers, fax machines,
12 computers, networks. We do a little bit of
13 everything for the total office.

14 Q Total office?

15 A Yes, sir.

16 Q How long you been doing that, sir?

17 A Since 19 -- 1989.

18 Q And who owns that company?

19 A My wife does.

20 Q Your wife owns that company?

21 A Yeah. Now she does. Yes, sir.

22 Q Right. So you listed your wife as the owner of
23 that company; is that right?

24 A Yes.

25 Q All right. But you run the day-to-day operations

1 of that; is ---
2 A I ---
3 Q --- that correct?
4 A As vice-president, yes.
5 Q All right. Do you have any idea what the company
6 grossed in income last year?
7 A Yeah.
8 Q What is ---
9 A 2015 ---
10 Q --- that, sir?
11 A --- 5.2 million.
12 Q 5.2 million dollars?
13 A Yes, sir.
14 Q Now, do you have a company vehicle?
15 A Yes, sir.
16 Q And what's that vehicle?
17 A It's a truck.
18 Q It's a truck?
19 A Yes, sir.
20 Q It's a nice truck?
21 A Well, I mean, 2013 truck. Well, yeah. It's ---
22 Q Okay.
23 A --- a nice truck.
24 Q You also have a personal vehicle as well?
25 A Yes.

1 Q How many cars do you have, sir?

2 A Three..

3 Q Three cars?

4 A Yeah.

5 Q One of them a hundred-plus-thousand-dollar car?

6 A No.

7 Q Okay. I -- I'm sorry to get into your business

8 about that.

9 A That's ---

10 Q But ---

11 A --- all right.

12 Q --- as an owner or -- so you're not even an owner

13 of your own business now, are you?

14 A No, I'm not. Because I -- I -- we -- we -- I was

15 when I was with AVSX. Yes, that was. I was the

16 president. But we'd switched to my -- my wife, you

17 know, owns -- my -- we're minority-owned. And we

18 wanted to be woman-owned.

19 Q Sure.

20 A So we -- we changed it to that for -- for our

21 benefit. Yes, sir.

22 Q And the reason you did that, sir, is because the

23 actual ownership, the person who owns the membership

24 unit, is actually the legal owner; isn't that

25 correct?

- 1 A What do you mean by legal owner?
- 2 Q Your wife ---
- 3 A Right.
- 4 Q --- is it an LLC or an Inc., sir?
- 5 A It's an ---
- 6 Q What kind ---
- 7 A --- it's an Inc.
- 8 Q It's an Inc.?
- 9 A Yeah.
- 10 Q So it's an S corporation? Does that ---
- 11 A Yes, sir.
- 12 Q --- sound about right ---
- 13 A Yeah.
- 14 Q --- if you know that?
- 15 So she is the sole shareholder of your company,
- 16 right?
- 17 A Yes.
- 18 Q She's the sole owner of your company?
- 19 A Okay.
- 20 Q Isn't that right?
- 21 A Yes.
- 22 Q Right. And you have no legal rights as an owner
- 23 of that company, correct?
- 24 A I guess so. Yeah. Legal ---
- 25 Q Right.

1 A Yeah.

2 Q And the reason she's the legal owner is because
3 the stock -- the shareholder's agreement and the
4 stock says she's the owner; isn't that right?

5 A Yes, sir.

6 Q And when you file taxes, it's important that you
7 list her solely as the owner, right?

8 A I believe so. Yes.

9 Q Right. Because if you filed that you were the
10 owner of that company with the IRS, that would be a
11 fraudulent statement, wouldn't it?

12 MR. SAUTTER: Objection, Your Honor. He -- he
13 can't

14 -- he can't characterize what the ---

15 THE COURT: What's -- restate your question.

16 MR. TODD ELLIS: Certainly.

17 Q Is it fraudulent to file a tax return with the IRS
18 that has false information on it?

19 THE COURT: Objection sustained.

20 MR. TODD ELLIS: Okay.

21 Q You wouldn't put yourself down to the IRS that
22 you're the owner, would you?

23 A No.

24 Q Because your wife's the owner?

25 A Well -- well, we're both the owners. But she --

1 yeah. She's -- she owns most of it. Yes.

2 Q Sir, how are you are owner? You just told us ---

3 A. Well, I ---

4 Q --- you ---

5 A --- I own part of the company. I -- 49 percent is
6 my company, and 51's hers. So, I mean, I am an
7 owner.

8 Q Oh. Okay. You told me earlier -- I'm ---

9 A Well, I mean, I'm -- she owns it. But, I mean, we
10 both own it. But she owns most of it. She owns 51
11 percent; I own 49 percent. So I apologize for that.

12 Q Oh. Okay. I think we've made our point already
13 with this regards. But if -- you just told the jury
14 that your wife owns it 100 percent.

15 A No. She -- I told her she owns part -- half of --
16 she owns most of it, which is 51 percent on -- on --
17 on stock. In the beginning I owned it all, okay?

18 Q Yes, sir.

19 A I believe it was two years ago we swapped it. We
20 -- she became, you know, 51 percent and I was 49
21 percent. So I'm still owner of the company. But she
22 owns most of it. Yeah. She -- she ---

23 Q I see.

24 A --- has that ---

25 Q So you are a shareholder?

1 A Yes, sir. Yes, sir. I'm sorry.

2 Q The point I was making was -- is that is an
3 important distinction, isn't it, who owns the actual
4 stock, who holds that stock.

5 A We both own it. We both ---

6 Q I know.

7 A --- hold it.

8 Q But it's an important distinction, because the
9 reason you made the change, isn't it true -- made her
10 51 percent

11 -- so that you would be eligible for minority
12 contracts?

13 A Yes, sir.

14 Q And that's an important distinction between owning
15 100 percent, 51 percent, or none at all. The person
16 that actually holds the stock, the membership units

17 ---

18 A But the ---

19 Q --- correct?

20 A Yeah. But the reason we do it is because it -- so
21 we can apply for minority-owned. But we still both
22 own it.

23 Q Right. You ---

24 A Okay.

25 Q --- you are because you explained now to the jury

1 that you own 49 ---

2 A Right.

3 Q --- percent.

4 A Okay.

5 Q But if you didn't own any percentage of that, you
6 held no stock, you're not an owner?

7 MR. SAUTTER: Objection ---

8 A Well, I ---

9 MR. SAUTTER: --- Your Honor. That's speculation.
10 He's already testified as to what he owns.

11 MR. TODD ELLIS: I'll move ---

12 THE COURT: Overruled.

13 MR. TODD ELLIS: --- on, Your Honor.

14 THE COURT: Go ahead.

15 MR. TODD ELLIS: I'll move on, Your Honor.

16 Q Have you ever heard of a term "silent partner"?

17 A Yes.

18 Q Okay. What does that mean to you?

19 A That somebody runs it; the other person just owns
20 the -- well, part of it but, you know, doesn't make
21 any decisions.

22 Q The -- you're a sophisticated businessperson..
23 That's a fairly common structure; is that right?

24 A Yeah.

25 Q When you were the owner of Guardian Eagle

1 Services, LLC, who was responsible for paying the
2 taxes of that entity at the end of the year --
3 profits?

4 A I'm not sure, I mean, on that question there. I
5 mean, they paid it. I mean, maybe I was -- I was
6 paying it. But they would give me the money to pay
7 for it. Does that make sense?

8 Q It does.

9 A Okay.

10 Q But you had to pay it, right? You were
11 responsible?

12 A Right.

13 Q Because as an owner of the company, the profits,
14 the liabilities, the benefits passed down to you; is
15 that correct?

16 A Right.

17 Q And that's a huge responsibility.

18 A Right.

19 Q Isn't that why your accountant said you need to
20 get out of this?

21 A Well, yeah. Because it was just -- yeah. It was
22 -- it was interfering with my -- my other business.
23 Yes.

24 Q Because it was huge responsibility that could
25 potentially harm your other business?

1 A Right.

2 Q Because all that responsibility and liability fell
3 to you?

4 A Yes, sir.

5 Q And if they were doing it improperly, you were the
6 one that was going to have to pay for it, weren't
7 you?

8 A Right.

9 MR. TODD ELLIS: That's all I have, Your Honor.

10 THE WITNESS: Okay.

11 THE COURT: All right. Any redirect?

12 MR. SAUTTER: Very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SAUTTER:

15 Q Mr. Reis, you earlier testified that you were --
16 you weren't disassociated with AVSX until 2011,
17 correct?

18 A Yes, sir.

19 (Off the record briefly.)

20 THE COURT: Ladies and gentlemen, I apologize for
21 that. I'm sure Mr. Dye will apologize as well.

22 MR. SAUTTER: Okay.

23 THE COURT: I'll tell you all a story about a
24 phone in the courtroom a little later in the -- in
25 the proceedings. All right.

1 Q All right, Mr. Reis. I'm -- I'm going to hand you
2 what -- what has already been introduced into
3 evidence as Plaintiff's Exhibit 13, which is the
4 Schedule K-1 for the tax year 2010 for what company?

5 A Guardian Eagle.

6 Q 2010 K-1 for Guardian Eagle. And who does it list
7 on there as the shareholder's name?

8 A Mary Kay Johnson.

9 Q And at that time you were actually the sole member
10 or sole shareholder of that company, because you
11 weren't dissociated till 2011; isn't that true?

12 A Yes, sir.

13 Q Who prepared that?

14 A (No audible response.)

15 Q Do you know?

16 A I don't know.

17 Q Okay. Did you have any input into the preparation
18 of that document?

19 A No, sir.

20 Q All right.

21 MR. SAUTTER: Your Honor, that's all I have from
22 this witness.

23 THE COURT: All right. Any recross?

24 MR. TODD ELLIS: Just briefly, Your Honor.
25

RECROSS EXAMINATION

BY MR. TODD ELLIS:

Q Mr. Reis ---

A Yes, sir.

Q --- I don't -- I know that the Secretary of State simply lists that you were disassociated in 2011 -- in February of 2011. But do you have any recollection of when that actually took place in -- within the company whatsoever?

A No, I don't.

Q Do you know who Dan Spohn is?

A If I was -- you want me to guess or just -- no.

Q Whatever you'd like to do, you can ---

A Their ---

Q --- you can ---

A --- their accountant, I believe.

Q Right. In ---

A Okay.

Q --- fact, he was your CFO in 2010 ---

A Right.

Q --- when you weren't working on a daily basis.

That's okay. I know you don't know that.

A Right.

Q Mr. Spohn was responsible for filing those tax returns correctly, right?

1 A I guess so. Yes.

2 Q Right. As the CFO of a company which you owned,
3 it would be criminal for him to do that ---

4 MR. SAUTTER: Objection ---

5 Q --- would ---

6 MR. SAUTTER: --- Your Honor.

7 Q --- it not?

8 THE COURT: Objection sustained.

9 Q Did you count on the accountant to file the tax
10 returns correctly, showing ownership and all
11 liabilities, profits, and losses?

12 A Of course I'd count on him.

13 MR. TODD ELLIS: No -- that's all, Your Honor.

14 THE COURT: All right, sir. You may step down.

15 Thank you.

16 THE WITNESS: Okay.

17 MR. SAUTTER: Your Honor, I -- I would ask that
18 this witness be allowed to be excused.

19 THE COURT: Any objection?

20 MR. TODD ELLIS: No objection, Your Honor.

21 (Whereupon, the witness exited the witness stand.)

22 THE COURT: Without objection, sir, you're
23 excused. You're free to go. Have a ---

24 THE WITNESS: Okay.

25 THE COURT: --- nice day. Call your next witness,

1 please.

2 (Whereupon, Mr. Sautter and Mr. Michael Ellis
3 conferred.)

4 (Off the record briefly.)

5 MR. MICHAEL ELLIS: Your Honor, at this time
6 plaintiff would like to call Mary Kay Johnson to the
7 stand.

8 (Whereupon, the witness came forward.)

9 MARY KAY JOHNSON, having been first duly
10 sworn, testified as follows:

11 MR. MICHAEL ELLIS: Your Honor ---

12 THE COURT: Go ahead.

13 MR. MICHAEL ELLIS: Your Honor, plaintiff request
14 to treat Ms. Johnson as an adverse witness.

15 THE COURT: Any objection, Mr. Ellis?

16 MR. TODD ELLIS: None, Your Honor.

17 THE COURT: Go ahead.

18 DIRECT EXAMINATION

19 BY MR. MICHAEL ELLIS:

20 Q Good morning, Ms. Johnson. How ---

21 A Morning.

22 Q --- are you?

23 A Good. How are you?

24 Q Doing all right. Thank you. Ms. Johnson, are you
25 presently employed right now?

1 A I am.

2 Q Where are you employed?

3 A AVSX Technology [sic].

4 Q And in what scope are you employed at AVSX?

5 A Owner.

6 Q Owner?

7 A (Nodded head up and down.)

8 Q How long have you been the owner?

9 A Since 2011.

10 Q Ms. Johnson, how do you know Luis Endara?

11 A Originally, I met him at Gold's Gym.

12 Q And when was that?

13 A Oh, my gosh. I really couldn't tell you a year.

14 Q Okay.

15 A A long time ago.

16 Q 2000 -- before 2000?

17 A No.

18 Q After 2000?

19 A Yeah.

20 Q Okay.

21 A Probably -- I don't know. I really couldn't tell
22 you the year.

23 Q And until this court litigation, do you -- do you
24 think you ever formed a close, friendly relationship
25 with Mr. Endara?

1 A No.

2 Q No?

3 A Not close, no.

4 Q Did y'all ever go on vacations together?

5 A No. Not family vacations. No.

6 Q Did y'all ever go on business trips together?

7 A Yes.

8 Q Okay. And what is Mr. Endara's relationship to
9 AVSX?

10 A He was the -- he over -- was over the techs
11 service, that end of the business.

12 Q Okay. And for how long did he do that?

13 A For the time that he was there.

14 Q And you said you have been with AVSX since 2011?

15 A Yes.

16 Q Was he already there before you became involved
17 with AVSX?

18 A Well, yeah, because they had Protection24 and
19 Guardian.

20 Q Okay. Do you know anything about Protection24?

21 A No.

22 Q No?

23 A (No audible response.)

24 Q Did you have a company debit card ---

25 A For ---

1 Q --- like, did you ---

2 A --- Protection24 ---

3 Q --- have a debit card that pulled off of
4 Protection24 bank account?

5 A I really cannot recall that far back if I did or
6 not. I may have.

7 Q You may have?

8 A I -- I really ---

9 Q Does it seems unfeasible for you to have a
10 Protection24 debit card?

11 A Again, I may have. I -- I -- I honest do not
12 recall.

13 Q Why would you have -- if -- if you'd ever had a
14 Protection24 debit card that pulled off the
15 Protection24 bank account, why would you have that?
16 Why -- why do you think you could have even ever had
17 that?

18 MR. TODD ELLIS: Objection, Your Honor. I --
19 that's so convoluted and speculative. I ---

20 THE COURT: Objection overruled. Answer the
21 question, please.

22 A I -- if I did, it was because it was given to me.

23 Q By Luis -- so Luis Endara would've given you a
24 Protection24 debit ---

25 A I imagine ---

1 Q --- card?

2 A --- Bobby Johnson would've given it to me, since
3 he is my spouse.

4 Q Okay. Did Bobby Johnson own Protection24?

5 A No.

6 Q No?

7 A (No audible response.)

8 Q But he had the authority to give -- or -- or at
9 least you think at that time he probably had
10 authority to give his spouse a debit card?

11 A If he did -- if I had one, it would have probably
12 been given to me by my husband.

13 Q Okay. Did you have a Guardian Eagle Security
14 debit card before you became a member in that
15 company?

16 A Again, I -- if I did, it would have been given to
17 me by Bobby. I -- I don't know.

18 Q Okay. And you are the owner of AVSX currently,
19 right?

20 A Yes.

21 Q Do you allow spouse -- or -- excuse me. And what
22 is Mr. Johnson's relationship with AVSX?

23 A My spouse.

24 Q He's your spouse?

25 A Uh-huh.

1 Q Is any -- any other relationship with AVSX?

2 A CEO.

3 Q Did he have that status prior to you becoming
4 owner?

5 A Prior to?

6 Q You becoming owner in 2011.

7 A He's always been CEO.

8 Q Okay.

9 A Uh-huh.

10 Q And so you maybe had a debit card drawing off the
11 Guardian Eagle Security bank account prior to
12 becoming owner?

13 A Yes.

14 Q And ---

15 A Guardian Eagle, I'm -- I'm pretty sure I did.

16 Q Okay.

17 A Uh-huh.

18 Q And you got that debit card because you were the
19 spouse of Mr. Johnson?

20 A Yes.

21 Q Is it still regular practice today to give the
22 spouses of employees debit cards to draw off the
23 corporate bank account?

24 A No.

25 Q No?

1 A (No audible response.)

2 Q You changed that when you became owner?

3 A No. I mean, there -- we know there were financial
4 issues and things were run incorrectly. We're aware
5 of that.

6 Q So -- so when Julio Reis was owner, you had a
7 debit card on the corporate bank account because your
8 husband was an employee of that company?

9 A Correct.

10 Q Now, you claim that Mr. Endara was never an owner
11 of Guardian Eagle Security that is now known as AVSX?

12 A Again, I was not part of Guardian Eagle, so no.

13 Q What's the difference between Guardian Eagle
14 Security, LLC, and AVSX Technologies, LLC?

15 A They perform the same thing. It's just ---

16 Q Same company, different name?

17 A They perform the same thing. Yes.

18 Q Are they not ---

19 THE COURT: Hold on ---

20 Q --- the same ---

21 THE COURT: --- a minute. Hold on a minute. Hold
22 on a minute. Can you all hear on the back row over
23 there?

24 JUROR: (Gestured.)

25 THE COURT: Okay. Ma'am, you need ---

1 THE WITNESS: Am I ---

2 THE COURT: --- to please ---

3 THE WITNESS: Okay.

4 THE COURT: --- slide up to that microphone. I
5 mean, I was having difficulty hearing you here. And
6 ---

7 THE WITNESS: Okay.

8 THE COURT: --- maybe I need to have my hearing
9 checked. But I ---

10 THE WITNESS: Sorry.

11 THE COURT: --- want to make sure these jurors,
12 especially farthest one in that back corner over
13 there, could hear. I need you to speak up, please.

14 THE WITNESS: All right. Is that better?

15 THE COURT: I'm soft-spoken too, and I have to
16 intentionally raise my voice when I'm talking in the
17 courtroom.

18 THE WITNESS: Okay.

19 THE COURT: So please be intentional about it.
20 You're very soft-spoken. Please raise your voice.
21 Make sure that -- ma'am, and if you -- you all cannot
22 hear -- same thing if you need a break -- just raise
23 your right hand so -- so I know what's going on so I
24 can instruct the witness to raise her voice. Okay?
25 And I'm sorry. Go ahead, Mr. Ellis.

1 MR. MICHAEL ELLIS: Thank you, Your Honor.

2 Q Ms. Johnson, what was the name of the company that
3 you took over from Julio Reis?

4 A I believe it was Guardian Eagle Security.

5 Q So you did conduct -- you did -- you do know about
6 Guardian Eagle Security?

7 A I know the name.

8 Q Okay.

9 A Yes. I was not part of it.

10 Q What company do you own now?

11 A AVSX Technologies.

12 Q Is that a different company than Guardian Eagle
13 Security?

14 A It is a different company. Yes. They perform the
15 same thing.

16 Q So what kind of company is AVSX Technologies?

17 A Home security and technology.

18 Q What kind of entity is AVSX Technologies?

19 A An LLC.

20 Q Did you form AVSX Technologies, LLC?

21 A Did I form it? No.

22 Q When was it formed?

23 A In 2011.

24 Q In 2011?

25 A (No audible response.)

1 (Whereupon, Mr. Michael Ellis and Mr. Sautter
2 conferred.)

3 MR. MICHAEL ELLIS: May I approach the witness,
4 Your Honor?

5 THE COURT: Yes.

6 Q Ms. Johnson, I'd like to show you, Ms. Johnson,
7 what is numbered Plaintiff's Exhibit 9.

8 A Uh-huh.

9 Q Do you recognize that document?

10 A The Secretary of State.

11 Q I mean, do you -- you want to take a second to
12 look it over?

13 A Okay.

14 Q After looking at that, would -- wouldn't you say
15 Guardian Eagle Security is the same exact company as
16 AVSX, just a different name?

17 MR. TODD ELLIS: Objection, Your Honor: Calls for
18 a legal conclusion.

19 THE COURT: Let me see the document, please.

20 MR. MICHAEL ELLIS: Here's a copy.

21 (Whereupon, Mr. Sautter and Mr. Michael Ellis
22 conferred.)

23 THE COURT: Restate your question, Mr. Ellis.

24 Q Ms. Johnson, do you see the bottom of this
25 document where it says "corporation history records"?

1 A Uh-huh. Yes.

2 THE COURT: Is that a -- thank you.

3 Q Can you read what the first amendment says?

4 A (As read): "9/1/2011, changed name from Guardian
5 Eagle Security, LLC."

6 Q So is Guardian Eagle Security, LLC, the same
7 company as AVSX Technologies, LLC?

8 A It was a name change.

9 Q So it's the same company.

10 A Okay.

11 THE COURT: What exhibit number is that, Ms.
12 Johnson? See on the bottom?

13 THE WITNESS: Nine.

14 THE COURT: Thank you.

15 Q Now, Guardian Eagle is the actual company that you
16 bought, right?

17 A I did not buy.

18 Q You didn't buy Guardian Eagle?

19 A No.

20 Q How did you come to own Guardian Eagle that is now
21 known as AVSX?

22 A (No audible response.)

23 Q You just woke up one morning the owner?

24 A No.

25 Q How did you become the owner?

1 A I was not the owner of Guardian Eagle.

2 Q How did you become the owner of AVSX Technologies,
3 LLC?

4 A The past history of Luis Endara would prohibit him
5 or his credit -- my husband's credit, so John Madden,
6 which is the business partner of Vector, thought it
7 best to use my credit and be approved to become the
8 owner.

9 Q Can you please explain who Vector is?

10 A Our business partner.

11 Q Okay. And so you sell contracts for Vector,
12 right? Like, it's the Vector monitoring systems that
13 AVSX installs into homes, correct?

14 A Correct.

15 Q So just to clarify, did you say that Luis and your
16 husband tried to deal with Vector; Vector wouldn't
17 let them deal with him -- Vector would not let Luis
18 and Bobby deal with them because of their bad credit?

19 A They just thought it was best to use my credit.

20 Q Okay.

21 A To be approved.

22 Q So you heard Mr. Reis say he owned this company
23 prior to you, correct?

24 A Yes.

25 Q What did you exchange for ownership of this

1 company?

2 A Nothing.

3 Q He gave you -- he gifted you this company?

4 A There was no exchange.

5 Q There was no exchange.

6 A (No audible response.)

7 Q So you're not the owner; Julio Reis is still the
8 owner, then?

9 MR. TODD ELLIS: Objection.

10 THE COURT: Overruled.

11 A No. I mean, I am the owner.

12 Whereupon, Mr. Sautter and Mr. Michael Ellis
13 conferred.)

14 MR. TODD ELLIS: Michael, are you going to testify
15 too?

16 THE COURT: Hold on a minute. Hold on a minute.
17 Can y'all approach a minute.

18 (Whereupon, a bench conference was held off the
19 record in the presence of the jury but out of the
20 hearing of the jury.)

21 THE COURT: All right. Mr. Michael Ellis, you may
22 continue.

23 MR. MICHAEL ELLIS: Thank you, Your Honor.

24 Q Do you know the date that you became owner of AVSX
25 Technologies?

- 1 A I cannot give you a specific date. No.
- 2 Q Can you give me a month of a year?
- 3 A No.
- 4 Q So you don't know when you started to own ---
- 5 A I ---
- 6 Q --- this company?
- 7 A I cannot give you a -- I am not good with dates.
- 8 So no! I cannot give you a specific date or month.
- 9 Q Do you still have Plaintiff's 9 in front of you?
- 10 A I do.
- 11 Q Do you see, in the corporate history, where Julio
- 12 Reis was dissociated as a member?
- 13 A I do.
- 14 Q What date is that?
- 15 A 2/7/11 -- 2011.
- 16 Q Around that time, February of 2011, do you
- 17 remember exchanging maybe money for Mr. Reis's
- 18 ownership interest in this company?
- 19 A No.
- 20 Q Are you familiar with contract law at all, Ms.
- 21 Johnson?
- 22 A No.
- 23 Q Have you ever heard the term "consideration"?
- 24 A No.
- 25 Q Okay. So you don't know when you became owner of

1 AVSX Technologies?

2 A I am -- do not recall the date or -- year.

3 Q But you know that Mr. Endara has never been owner

4 ---

5 A Correct.

6 Q --- of this company?

7 A I have 100 percent tax liability.

8 Q 100 percent tax liability?

9 A Yes.

10 Q And is it your position that IRS documents control
11 who is owner of a company?

12 A If I'm paying 100 percent tax liability, yes.

13 Q So can you please tell me again what date that was
14 that Julio Reis left the company?

15 A 2/7/2011.

16 Q And so that's probably the date that you took over
17 the company?

18 MR. TODD ELLIS: Objection, Your Honor: Asked and

19 ---

20 THE COURT: Objection ---

21 MR. TODD ELLIS: --- answered.

22 THE COURT: --- sustained.

23 Q Did you testify earlier that that's the date that
24 you took over the company?

25 MR. TODD ELLIS: Objection, Your Honor: Asked and

1 ----

2 THE COURT: Objection ---

3 MR. TODD ELLIS: --- answered.

4 THE COURT: --- sustained.

5 (Whereupon, Mr. Sautter and Mr. Michael Ellis
6 conferred.)

7 MR. MICHAEL ELLIS: Your Honor, may I approach ---

8 THE COURT: Yes, sir.

9 MR. MICHAEL ELLIS: --- the witness?

10 Q Ms. Johnson, I'd like to show you what is marked
11 as Plaintiff's Exhibit 13 -- actually, it's right
12 here. Do you recognize that document?

13 A A K-1.

14 Q For what year?

15 A 2010.

16 Q And who does it show has 100 percent tax liability
17 for that?

18 A Me.

19 Q So you had 100 percent of the tax liability in
20 2010?

21 A According to this, yes.

22 Q But Julio still owned the company at this time?

23 A It shows him being disassociated through the
24 Secretary -- Secretary of State. But that is not who
25 the taxes go through.

1 Q And it's ---

2 A The K ---

3 Q --- the tax documents that establish who owns a
4 company?

5 A (No audible response.)

6 Q Correct?

7 A And the Secretary of State can also run behind as
8 to when you're disassociated through the company,
9 which is where your filing comes through when you
10 file through your company on your taxes.

11 Q Ms. Johnson, you -- you said earlier that AVSX
12 Technologies is a limited liability company?

13 A Uh-huh.

14 THE COURT: Is that a "yes"?

15 THE WITNESS: Yes. I'm sorry.

16 THE COURT: Thank you.

17 THE WITNESS: I'm sorry.

18 Q What state is it organized in?

19 A South Carolina.

20 Q And you've owned a limited liability company since
21 2011?

22 A Correct.

23 Q Are you fairly familiar with limited-liability-
24 company law, then?

25 A I'm not going to ---

1 MR. TODD ELLIS: Mary Kay ---

2 A --- tell you 100 percent. Some. Not -- not read
3 on it. No.

4 Q Well, would it be fair to say that the governance
5 of a South Carolina limited liability company would
6 be controlled by the South Carolina Uniform Liability
7 Act of 1996?

8 MR. TODD ELLIS: Your Honor, I'm going to object
9 to the entire line. He's -- she's already stated ---

10 THE COURT: Hold on. State your grounds for the
11 objection.

12 MR. TODD ELLIS: I am, Your Honor.

13 THE COURT: Go ahead.

14 MR. TODD ELLIS: That she's already stated she has
15 no idea about the legal liability or the contract law
16 of legal LLCs. And he's asking her about controlling
17 law.

18 THE COURT: She's -- he's asking what?

19 MR. TODD ELLIS: About controlling law, about the
20 ---

21 THE COURT: Objection sustained as to her
22 testifying as to what the law is. You can ask if
23 she's familiar with the law. Go ahead, Mr. Ellis.

24 Q Do you participate in running your company?

25 A No.

1 Q You don't participate at all?

2 A (No audible response.)

3 Q What exactly do you do with the company?

4 A I -- well, let me retract that. I participate
5 some. I -- I'm not there every day. No.

6 Q Do you file the tax returns?

7 A No.

8 Q Do you prepare the tax returns?

9 A No.

10 Q Do you sign the tax returns?

11 A Yes.

12 Q And is signing that tax returns the only way you
13 show ownership over this company?

14 A No.

15 Q What other ways do you show ownership?

16 A If there's contracts between partners, such as
17 Vector, I sign those.

18 Q When did you start doing that?

19 A I have always done it.

20 Q Since 2011?

21 A Correct.

22 Q Okay. But you did claim 100 percent liability
23 before you were actually owner, right?

24 MR. TODD ELLIS: Objection, Your Honor: Asked and
25 answered. Three or four times.

1 THE COURT: Hold on. Can the lawyers approach,
2 please. I'll tell you -- ladies and gentlemen of the
3 jury, I'm going to ask that you all step to the jury
4 room for just a minute. Do not discuss the case.
5 I'll get you back out here in just a minute, okay?

6 (Whereupon, the jury exited the courtroom at 10:08
7 a.m.)

8 THE COURT: Y'all can step back.

9 THE COURT: All right. Mr. Michael Ellis, you are
10 -- and I'm -- I want to let you try your case and ask
11 what questions you want to. But you are replowing
12 the field ---

13 MR. MICHAEL ELLIS: Yes, sir.

14 THE COURT: --- so to speak, over and over ---

15 MR. MICHAEL ELLIS: Yes, sir.

16 THE COURT: --- which would sustain Mr. Todd
17 Ellis's objection. The reason I sent the jury out,
18 Mr. Todd Ellis, is because I had to call you down,
19 essentially, at sidebar over here for exchanging
20 words with Mr. Sautter, opposing counsel, during the
21 questioning of this witness.

22 Continuing with Mr. Michael Sautter's -- excuse me
23 -- Mr. Michael Ellis's questioning of this question,
24 you blurted out the witness's name. I don't know if
25 you were trying to talk to her or what was going on,

1 whether you meant to say "objection" or ---

2 MR. TODD ELLIS: No.

3 THE COURT: --- what.

4 MR. TODD ELLIS: No, Your Honor. I simply was
5 trying to redirect to her to speak up again, because

6 ---

7 THE COURT: Okay.

8 MR. TODD ELLIS: --- you were ---

9 THE COURT: Well ---

10 MR. TODD ELLIS: --- I -- I ---

11 THE COURT: --- it's ---

12 MR. TODD ELLIS: --- I involuntarily. I didn't
13 mean to do that.

14 THE COURT: Okay.

15 MR. TODD ELLIS: Yeah. It won't -- it's not going
16 to happen. I'm not going to call the witnesses'
17 names out. But I was trying to tell her to raise her
18 voice up.

19 THE COURT: Okay.

20 MR. TODD ELLIS: Yeah.

21 THE COURT: I've got control of that.

22 MR. TODD ELLIS: Well ---

23 THE COURT: Okay?

24 MR. TODD ELLIS: --- what ---

25 THE COURT: And if ---

1 MR. TODD ELLIS: --- would you ---

2 THE COURT: --- you ---

3 MR. TODD ELLIS: --- like me to ---

4 THE COURT: --- if -- if ---

5 MR. TODD ELLIS: --- do, Your Honor ---

6 THE COURT: --- you ---

7 MR. TODD ELLIS: --- then? Stop ---

8 THE COURT: --- can ---

9 MR. TODD ELLIS: --- and then ---

10 THE COURT: Wait ---

11 MR. TODD ELLIS: --- ask you to ---

12 THE COURT: --- if -- absolutely.

13 MR. TODD ELLIS: Yeah. Okay.

14 THE COURT: I mean, it is not your job as ---

15 MR. TODD ELLIS: I know ---

16 THE COURT: --- her ---

17 MR. TODD ELLIS: --- it's not, Your Honor.

18 THE COURT: --- counsel to address the witness
19 while she's on the stand. I specifically told the
20 jury that if they have a problem hearing her, to
21 simply raise their hand. I didn't -- and -- and it
22 goes to you too -- or either you can ask me to
23 instruct the witness ---

24 MR. TODD ELLIS: Yes, Your Honor.

25 THE COURT: --- if you can't hear her. But it is

1 not your job or any other lawyer's job in this
2 courtroom to do that.

3 MR. TODD ELLIS: I understand, Your Honor.

4 THE COURT: Okay? And -- and if it happens again,
5 I'm going to deal with it appropriately.

6 MR. TODD ELLIS: Yes, Your Honor.

7 THE COURT: Okay?

8 MR. TODD ELLIS: Absolutely.

9 THE COURT: So -- all right.

10 (Whereupon, Mr. Sautter and Mr. Michael Ellis
11 conferred.)

12 MR. MICHAEL ELLIS: I'm -- I'll move on.

13 THE COURT: Well, please do. And -- and, I mean,
14 you continue to -- you -- you asked her this
15 question, and Mr. Todd Ellis appropriately objected
16 on the issue of ownership. She testified, if not
17 once, three or four times that she has no idea or
18 does not recall when she took over ownership of this
19 company. You've made that point. I want you to move
20 on, okay?

21 MR. MICHAEL ELLIS: (No audible response.)

22 THE COURT: Okay?

23 MR. MICHAEL ELLIS: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. MICHAEL ELLIS: Is -- is it fine if I go one

1 more thing on these documents that ---

2 THE COURT: Yes.

3 MR. MICHAEL ELLIS: Okay.

4 THE COURT: I mean, listen, I don't want -- I -- I
5 want you to try your ---

6 MR. MICHAEL ELLIS: Okay.

7 THE COURT: --- case. And I don't want to get
8 involved in it unless I have to.

9 (Whereupon, Mr. Sautter and Mr. Michael Ellis
10 conferred.)

11 THE COURT: Okay? All right. Since I've sent the
12 jury out, I'm sure if most of them are going to the
13 restroom, if you all need to go to the restroom,
14 please go. Ms. Johnson, you may step down if you
15 need to. But you are not allowed to discuss your
16 testimony, okay? You cannot discuss your testimony
17 at all.

18 Okay. We'll stand down for just a minute.

19 MR. TODD ELLIS: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 (Off the record from 10:11 a.m. until 10:18 a.m.)

22 THE COURT: All right. Anything from plaintiff's
23 counsel before I bring the jury back out?

24 MR. TODD ELLIS: Mike?

25 MR. MICHAEL ELLIS: Nothing, Your Honor.

1 THE COURT: Defense counsel?

2 MR. TODD ELLIS: Nothing, Your Honor.

3 THE COURT: All right. Ms. Shirley, we're ready
4 for the jury, when they're -- if they're ready.
5 Okay?

6 (Whereupon, Mr. Michael Ellis and Mr. Todd Ellis
7 conferred.)

8 MR. TODD ELLIS: Your Honor, may want to hold the
9 jury. He wants to -- we -- we have this issue on the
10 medical records. Apparently, he wanted to introduce
11 them now. He didn't tell me that.

12 THE COURT: Okay.

13 MR. MICHAEL ELLIS: I'm sorry, Your Honor.

14 THE COURT: So -- all right. What -- what is it?
15 Have you had a chance to look at them, Mr. ---

16 MR. TODD ELLIS: I have ---

17 THE COURT: --- Todd Ellis?

18 MR. TODD ELLIS: --- Your Honor.

19 MR. WEBB: Yeah.

20 MR. TODD ELLIS: My objection ---

21 THE COURT: Can I -- I still ---

22 MR. TODD ELLIS: I'm sorry.

23 THE COURT: Can I see the record?

24 MR. TODD ELLIS: You have not seen it. Well ---

25 THE COURT: I still hadn't seen it. Thank you.

1 (Off the record from 10:19 a.m. until 10:23 a.m.)

2 THE COURT: Have these two -- let me ask this
3 question for purposes of the record. Have these two
4 pages been marked for identification purposes, Mr.
5 Michael Ellis?

6 MR. MICHAEL ELLIS: No, Your Honor.

7 THE COURT: All right. Are these the copies that,
8 if you -- if I were to allow it, are these the copies
9 that were going to be introduced ---

10 MR. MICHAEL ELLIS: Yes, Your Honor.

11 THE COURT: --- in a -- well, let's do this:
12 Let's -- court reporter to mark them for
13 identification purposes, for identification only.

14 THE COURT REPORTER: Your Honor, mark them
15 separately or together?

16 THE COURT: You can mark them together.

17 (Whereupon, Plaintiff's Exhibit 19 was marked for
18 identification.)

19 THE COURT: All right. Now, let me hear from you,
20 Mr. Michael Ellis, as to why you believe the
21 documents should be admitted.

22 MR. MICHAEL ELLIS: They are a party admission,
23 Your Honor, stating that they're -- that her husband
24 did have a business partner at approximately the same
25 time that Mr. Endara was fired from the company.

1 THE COURT: All right. Anything further, Mr.
2 Michael Ellis?

3 MR. MICHAEL ELLIS: They're kept as regular
4 business records of the hospital, statement against
5 interests, and party admission.

6 THE COURT: Anything else?

7 MR. MICHAEL ELLIS: Nothing, Your Honor.

8 THE COURT: All right, Mr. Todd Ellis. Let me
9 hear from you regarding your objection.

10 MR. TODD ELLIS: Thank you, Your Honor. I would
11 state, first of all, that these are medical records
12 with hearsay statements therein from someone -- a
13 medical professional supposedly stating what Mrs.
14 Johnson said about her husband. This is pure
15 hearsay, which is not covered and protected by any
16 means whatsoever.

17 The second thing I would say is -- is that I don't
18 think this even comes close to constituting a party
19 admission, if you were to consider it under 403 as to
20 whether the probative value of it outweighs the
21 sensitive nature of the document.

22 Your Honor, this is more than a year after Luis
23 Endara was terminated, number one. It is a sensitive
24 -- very sensitive medical document that all I can
25 see, with even -- there's only two references to the

1 word "business" or "partner" in here, in the entire
2 document. The remainder of it has very sensitive
3 personal information of Bobby Johnson. And the
4 hearsay statements, the probative value under 403, I
5 think the balancing test states that you should not
6 allow this to occur at all.

7 I -- I don't think saying the word "after his
8 business partner left" is a party admission that that
9 is an owner of the company, by any means, and
10 certainly under the balancing test.

11 THE COURT: All right. I'm going to sustain
12 defendant's objection. I think it's -- does not fall
13 within purview of any of the rules of evidence which
14 would allow it in. However, I did mark this as an
15 exhibit for identification purposes. I'll give it to
16 my court reporter. If I'm wrong, you need to appeal
17 it; it's in the record.

18 MR. MICHAEL ELLIS: Thank you, Your Honor.

19 THE COURT: All right. But I do not believe that
20 it's appropriate to come into evidence. She's not
21 the proper person to lay the foundation for that.

22 MR. MICHAEL ELLIS: Thank you, Your Honor.

23 THE COURT: Okay. All right. Anything else?

24 MR. MICHAEL ELLIS: That's it, Your Honor -- or
25 before the jury comes back.

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1 MR. TODD ELLIS: Mike, we're missing -- are going
2 forward or ---

3 MR. MICHAEL ELLIS: Let me see if they want to
4 come back in real quick, if you don't mind.

5 (Off the record briefly.)

6 MR. MICHAEL ELLIS: We'll -- we'll finish up
7 without them in here.

8 THE COURT: Okay. Anything else before I bring
9 the jury, Mr. Michael Ellis?

10 MR. MICHAEL ELLIS: No, Your Honor.

11 THE COURT: Mr. Todd Ellis?

12 MR. TODD ELLIS: Nothing, Your Honor.

13 THE COURT: Thank you. Ms. Shirley, if you'd
14 please bring me the jury.

15 THE BAILIFF: Yes, sir.

16 (Whereupon, the jury entered the courtroom at
17 10:27 a.m.)

18 THE BAILIFF: Jury panel present, Judge.

19 THE COURT: Thank you, ma'am. Mr. Michael Ellis,
20 you may continue, sir.

21 MR. MICHAEL ELLIS: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. MICHAEL ELLIS CONTINUES.

23 Q Ms. Johnson, I would like to show you another
24 document. It's been marked -- it's been marked
25 Plaintiff's 14. Do you recognize this document?

1 A No.

2 Q You not -- you do not recognize this document?

3 A No.

4 Q Do you see a date at the top of it?

5 A (No audible response.)

6 Q July 15th, 2013 ---

7 A Uh-huh.

8 Q --- you see ---

9 A Yes.

10 Q --- that date?

11 A Uh-huh.

12 Q And that's after you've stated you became owner of
13 AVSX?

14 A Correct.

15 Q If I were to tell you this was the final
16 investigative report of the North Carolina Alarm
17 Licensing Board, would you recognize it as that
18 document?

19 A No.

20 Q So you were not aware of this final investigative
21 report in July of 2013 after you became owner of AVSX
22 whereby Luis Endara was held out as the owner of AVSX
23 to the North Carolina Alarm Licensing Board?

24 A I know there was issues with the alarm board in
25 North Carolina. I'm not aware of this specific

1 document.

2 Q Okay.

3 A But ---

4 Q So you're aware of the investigation?

5 A I'm aware there were issues with the board. Yes.

6 Q Okay. And were you aware that Luis Endara was
7 held out ---

8 MR. TODD ELLIS: Objection, Your Honor. I don't
9 -- I don't understand what counsel means by "held
10 out."

11 THE COURT: Let him finish his question, please.
12 And if you have an objection, then state it for the
13 record. Go ahead and finish your question, please,
14 Mr. ---

15 MR. MICHAEL ELLIS: Thank you, Your Honor.

16 THE COURT: --- Ellis.

17 Q Were you aware that Luis Endara represented AVSX
18 Technologies, LLC, as the owner of the company in the
19 North Carolina Alarm Licensing Board investigation?

20 A No.

21 Q Okay. Ms. Johnson, I don't have any -- any more
22 questions for you right now. Please answer any
23 questions ---

24 THE COURT: Mr. Ellis?

25 Q --- your attorney may have.

1 MR. TODD ELLIS: Just ---

2 THE COURT: Todd Ellis?

3 MR. TODD ELLIS: Just briefly, Your Honor, with
4 the right to recall if I need to in our case.

5 THE COURT: Yes, sir.

6 MR. TODD ELLIS: Thank you.

7 CROSS-EXAMINATION

8 BY MR. TODD ELLIS:

9 Q Mary Kay, counsel asked you a lot about what you
10 exchanged when you became the owner of AVSX in 2011.
11 What did you know or realize that you were giving up
12 or putting at risk by becoming the owner?

13 A I put up my personal credit. My credit is what is
14 at risk.

15 Q Right. And -- and did Mr. Endara, who's not here
16 right now, but did Mr. Endara put that up?

17 A No.

18 Q Did Mr. Johnson have his personal credit up in any
19 way whatsoever?

20 A No.

21 Q All right. And the 2010 return, which has you as
22 the 100 percent owner of AVSX, what did that mean to
23 you personally as to your responsibilities as the
24 owner?

25 A That means I'm responsible 100 percent for the

1 taxes.

2 Q And are you, in fact, having to deal with issues
3 related to corporate tax now?

4 A Correct. From 2011 through current taxes. And
5 we've actually had to hire a tax attorney to correct
6 those years of issues and resolve them ---

7 Q Is anyone else ---

8 A --- at a ---

9 Q Sorry.

10 A I'm -- I'm sorry. At a great expense.

11 Q Is anyone else on the hook for that whatsoever?

12 A No.

13 Q Is Mr. Endara on the hook for that?

14 A No.

15 Q Has he come to meet with you with those folks?

16 A No.

17 Q Has he volunteered and says, "I was an owner at
18 that time"?

19 A No.

20 Q The North Carolina Exhibit 14 report, did -- did
21 anyone -- well, let me ask it this way: Did you
22 personally represent to the North Carolina Board of
23 Licensing that Luis Endara was an owner?

24 A No.

25 Q Does it have anybody signing on behalf of the

1 corporation that he was, in fact, an owner?

2 A No.

3 Q Mr. Endara signs a document at that time; is that
4 correct?

5 A I -- I believe ---

6 Q Correct?

7 A --- so. I mean, I don't see where it does that.

8 But ---

9 Q But your -- your office or you did not certainly
10 represent that in any way?

11 A No. He would've done that on his own.

12 Q Could it have been the investigator mistaken about
13 Mr. Endara's role?

14 A Could've been.

15 Q Right. It's certainly not a document to the IRS,
16 is it?

17 A No.

18 Q Certainly not a document to the State of South
19 Carolina, is it?

20 A No.

21 Q Certainly not creating any liability for Mr.
22 Endara, is it?

23 A No.

24 Q Mary Kay, has anyone -- I mean, anyone -- ever
25 questioned that you're the 100 percent owner of AVSX,

1 other than Luis Endara?

2 A No.

3 MR. TODD ELLIS: That's all I have, Your Honor.

4 THE COURT: Mr. Michael Ellis, anything further?

5 MR. MICHAEL ELLIS: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. MICHAEL ELLIS:

8 Q Ms. Johnson, you assumed 100 percent tax liability
9 in 2010, correct?

10 A Yes.

11 Q So you already did that before you actually became
12 the owner, correct?

13 A Correct.

14 MR. TODD ELLIS: Objection, Your Honor.

15 THE COURT: I'll allow -- overruled. I'll allow
16 it. Go ahead.

17 Q I believe you answered that question?

18 A I believe I did.

19 Q Excuse me?

20 A I believe I did.

21 Q So you then cannot give something away that you
22 did not possess in exchange for the company, correct,
23 since you had already given tax liability?

24 A Cannot give something away -- well, if -- on the
25 K-1 saying that I owned it, I guess I owned it.

1 Q But then, the South Carolina Secretary of State
2 says that Julio Reis owned it till 2011, correct?

3 A But again, they can be behind on their posting.

4 Q Who's responsible for making sure the South
5 Carolina Secretary of State keeps up with their
6 business?

7 A They are, I would assume.

8 Q Now, you stated during direct examination you do
9 not know anything about the final investigation in
10 North Carolina, did you -- didn't you?

11 A I was not there. No.

12 Q So you don't know who really held Luis Endara out
13 as owner, then, do you?

14 A He would have done that on his own.

15 Q Do you know that?

16 A I would not have listed him as owner.

17 Q Have you taken any remedial measures to correct
18 the North Carolina licensing board since then?

19 A I have not personally. No.

20 Q Okay.

21 MR. MICHAEL ELLIS: Nothing further, Your Honor.

22 MR. TODD ELLIS: Nothing, Your Honor.

23 THE COURT: Ma'am, you may step down. Thank you.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness exited the witness stand.)

1 MR. MICHAEL ELLIS: If I may step out?

2 THE COURT: Okay.

3 (Off the record briefly.)

4 MR. SAUTTER: Thank you, Your Honor.

5 THE COURT: Call your next witness, please.

6 MR. SAUTTER: Thank you. I'd like to call Mr.

7 Luis Endara.

8 THE COURT: Sir, if you'd come around to be sworn,
9 please.

10 (Whereupon, the witness came forward.)

11 LUIS ENDARA, having been first duly sworn,
12 testified as follows:

13 THE COURT: Mr. Sautter, hold on just a minute.

14 (Off the record briefly.)

15 THE COURT: All right, Mr. Sautter. I'm sorry.
16 Go ahead.

17 MR. SAUTTER: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. SAUTTER:

20 Q I know you already. But state your full name for
21 the record.

22 A Luis Endara.

23 Q Tell -- tell the jury a little bit about yourself
24 and your -- and your experiences in the home-security
25 business.

1 A I been doing home security on a full-time basis
2 since 2003. And the -- that's basically what -- I'm
3 going to be 50 years old this year. And that's
4 basically how I generate my livelihood. You know,
5 that's it for -- for the rest of my life.

6 Q So in South Carolina, what home-security
7 businesses were you active with?

8 A Currently or?

9 Q Take it from the top. Start ---

10 A The -- I'm a -- I work with MX Security. I'm an
11 owner of MX Security and owner of AVSX Technology as
12 well. Before that it was Protection24; and then,
13 Palmetto Alarm.

14 Q Okay. This -- Protection24, when -- when did you
15 become associated with Bobby Johnson in the security
16 industry?

17 A I -- Bobby and I used to work at Gold's Gym. I
18 worked there for a couple of months in 2004. And we
19 became close friends. And I kept telling him that
20 based on how awesome of a guy he was in the sales
21 aspect, that he would do very, very well in the
22 security business. It was a very high-risk place,
23 but the money is really, really good.

24 And I left Gold's Gym a couple months later. I
25 went back into security side and hired him as our

1 sales manager at Palmetto Alarm.

2 Q Okay. And -- and -- and how did -- how did it go
3 at Palmetto?

4 A Unfortunately, it did not go well for Bobby. Two
5 months later him and my ex-partner, Jamie Wilson, had
6 a falling-out. Bobby can come across as very strong-
7 minded, which is good. And unfortunately, Jamie felt
8 intimidated with it and terminated his relationship
9 with us.

10 I remember getting called back from Bobby on July
11 4th of 2006 and telling me that Jamie had terminated
12 him. And I felt real bad. And Bobby said, you know,
13 "You need to help me. We need to open another
14 company."

15 And -- and that's when the partnership got
16 created, when we agree that we would eventually open
17 another company, which later was named Protection24
18 in 2007.

19 Q Who -- who was the -- who was the -- was Vector
20 Security involved with Protection24?

21 A No, sir.

22 Q What -- what -- who was the -- who was the
23 monitoring company?

24 A It was -- it was two companies initially. It was
25 called SAI. And back in 2007 they went belly-up;

1 almost got us out of business. And we later became a
2 Security Networks dealership.

3 Q Okay. And who did you -- who were you the
4 dealership for?

5 A For Security Networks for ---

6 Q Oh.

7 A --- through the Protection24.

8 Q All right. And did Mr. Johnson contribute
9 anything to Protection24, as far as money or capital
10 or things of that nature?

11 A His knowledge.

12 Q His knowledge?

13 A (Nodded head up and down.)

14 Q And his ability with people?

15 A Yes. He was very good at it. You know, I will
16 take my hat off to that guy. That guy does very, very
17 well when it comes to sales.

18 Q Thank you. So was -- was -- were there -- was
19 there equipment at -- at Protection24?

20 A Yes, sir.

21 Q And what was that that -- at the end? I mean,
22 what ---

23 A You know, when it comes to that, I -- the -- the
24 accountant will be the one that can give us that.

25 But it was a significant amount.

1 Q And the -- like, what kind of equipment?

2 A There was -- of course, there was vehicles. There
3 were equipment that we install security in homes,
4 computers, telephones, and so forth.

5 Q And did you go into debt on Protection24?

6 A Yes, I did.

7 Q And -- and so what happened with all those -- the
8 -- the debts of Protection24 and the -- the assets or
9 the equipment of Protection24?

10 A Well, when -- when we finally decided that we were
11 going to stick with Vector Security/Guardian Eagle,
12 we chose to transfer everything to Guardian Eagle at
13 that moment.

14 Q All right. All the stuff from Protection24?

15 A Yes, sir.

16 Q Including the debts?

17 A Including the sales people, the debt, everything
18 got shifted to Protection -- to Guardian Eagle.

19 Q Guardian Eagle?

20 A (No audible response.)

21 Q And at that time that -- and -- and that was --
22 was that when Guardian Eagle was formed?

23 A No. Guardian Eagle was form in February of 2008.
24 And we worked Protection24 and Guardian Eagle
25 simultaneously, side by side, out of the same

1 building. Bobby and I were the owners of both
2 companies. And we sold for Vector through Guardian
3 Eagle. We sold for Security Networks through
4 Protection24.

5 Q Okay. So is -- is this a very -- how would you
6 describe the competition in the security business?

7 A It's -- it's very dog-eat-dog. And -- and, you
8 know, I'm sure some of you all may have people knock
9 on your doors. You have ADT and we'll knock on your
10 door and want to switch you to Vector and incentivize
11 you. I'll pay off your balance.

12 So it's a very dog-eat-dog -- but the profits are
13 very, very high. The risks are very high, but also
14 the return on the investment in the long run can be
15 very, very profitable.

16 Q All right. So at some point Protection24 shut
17 down?

18 A Correct.

19 Q And you testified that all the business assets and
20 the debt went to Guardian Eagle?

21 A That's correct, sir.

22 Q And when Guardian Eagle was up and running, what
23 financial contribution did Bobby Johnson make to
24 that?

25 A None. His knowledge.

1 Q Okay. And did Guardian Eagle later become AVSX?

2 A That's correct. That's -- Bobby and I chose to
3 change the name to AVSX Technologies.

4 Q Was that a -- a marketing decision?

5 A Yeah. Strategy. We -- we -- we understood that
6 the alarm business is -- although very, very
7 profitable, very dog-eat-dog. So we wanted to
8 venture into other types of businesses, like -- like
9 CCTV, Internet, and so forth. So we chose to call it
10 "technology," rather than just making it strictly an
11 alarm.

12 Q Okay. So who were the owners of -- who was the
13 owners of Protection24?

14 A It was Bobby and myself.

15 Q Who -- who was the owner of Guardian Eagle?

16 A Bobby and myself.

17 Q All right. And do you -- did -- did Guardian
18 Eagle or Protection24 or AVSX ever have any
19 operational, written-down agreement?

20 A We never did. It was two brothers decided to open
21 business and trusted each other.

22 Q Okay. You saw Mr. Reis testify today?

23 A Yes, sir.

24 Q And what -- what role did he play with -- with any
25 of these companies?

1 A The -- he was the owner on paper for us. In the
2 industry you have to qualify to become a dealer. And
3 one of the criterias is to have a 600-or-higher
4 credit score. The -- in addition to that, you can --
5 you have to be exclusive to that dealer. You can't
6 be for somebody else as well.

7 Bobby and I at that moment didn't have good
8 credit. And that's when John Madden approached us
9 and suggested that we have another person open for us
10 another company. Because we liked Vector. Vector,
11 to this date, I enjoy Vector. Jector -- Vector was a
12 -- was a great company for us.

13 And that's how we decided to reach out to -- to
14 Julio and asked him, as a friend, would he consider
15 being the paper person for us as the owner.

16 Q Okay. And -- and help -- please help the jury
17 understand what the role of Vector is with
18 AVSX/Guardian Eagle, who John Madden is, and things
19 of that nature.

20 A John Madden is the vice-president of the
21 dealership program for Vector, he who dictates who
22 they get as a dealer. And in a quick example of --
23 of what Guardian Eagle does with Vector is kind of
24 like John Doe State Farm. They represent State Farm,
25 and State Farm pays John Doe for their -- for the

1 contracts that they sell, for the insurance policies
2 that you get through them.

3 Same thing with us: We sell a security system.
4 We sell you a security system. We take that contract
5 and we give it to Vector, and Vector pays us a
6 significant amount of money for it.

7 Q And does Vector just pay the money one time, or --
8 or is that money paid out over years?

9 A The core of the money is paid to you at one time.

10 Q How much?

11 A The core of the money. A significant amount is
12 paid to you at one time. Ten percent is held as
13 guarantee; make sure you're selling them good paper.
14 And then, you have something that's very, very sweet.
15 I call it the honey. It is your residual.

16 With Vector it's indefinitely. I sell them your
17 account. And they give me X amount of dollars, \$3
18 per month, as long as you continue being a client to
19 Vector and as long as I'm a dealer with Vector.

20 So if you're a client with Vector for 20 years,
21 I'm going to make 20 years' worth of residual for
22 that. And as you grow, it becomes significant, just
23 like putting pennies in a piggy bank: you know, 10
24 cents, 25 cents. What's it going to be in 20 years?
25 How much money are you going to have there? It's

1 huge.

2 Q And that comes every year?

3 A That comes monthly.

4 Q Monthly?

5 A Yeah.

6 Q All right. And so tell -- tell the jury a little
7 bit about what -- what the income -- where the income
8 came from -- from -- first, for Guardian Eagle and
9 then, AVSX.

10 A Meaning you ---

11 Q Where -- where'd the money come from that -- that
12 -- did -- were there other things that -- that AVSX
13 and Guardian Eagle made money on, other than kind of
14 sales?

15 A Yes, we did. We have an Amazon account. Bobby
16 and I thought it would be a great idea to sell
17 product on Amazon. So we had a significant income
18 coming from Amazon. And we later decided to create a
19 DISH Network dealership as well in 2013.

20 Q All right. And -- and did -- did Guardian Eagle
21 and -- and -- and AVSX also derive income from
22 selling equipment?

23 A That's correct. Through the Amazon.

24 Q Through Amazon?

25 A Yes, sir.

1 Q All right. And how many accounts initially did
2 Guardian Eagle have, if you know?

3 A Initially, we didn't have that many. We -- we had
4 Protection24 initially. That was our core. And when
5 we decided that Vector would be a better fit when
6 John Madden suggested, "Hey, get somebody to open the
7 business for you all," we -- we started shifting
8 eventually all our salespeople.

9 Because that's how you generate the sales: door-
10 knockers go knock on your doors and sell you a
11 security system. We shifted all our salespeople
12 eventually to Guardian. And Guardian Eagle's numbers
13 begin to increase.

14 Q What were they when it started?

15 A Very minimal. The -- the first year we did hardly
16 anything, in my mind, compared to what we were doing
17 in 2013 and '12 -- '14.

18 Q Okay. When -- when you left AVSX, did you quit?

19 A No, I did not.

20 Q All right. When you -- when you -- when -- were
21 you terminated?

22 A That's what they are trying to allege. But I was
23 -- in my mind, it was hostile takeover. That's the
24 way I call it.

25 Q Okay. How many contracts did -- did -- were in

1 existence at that time, to your knowledge?

2 A Significantly. By that time we probably had
3 generated in excess of 12,000 accounts.

4 Q And -- and how many people were working for AVSX?

5 A At that time probably close to 200.

6 Q And what was your role with the salespeople?

7 A Bobby and I, we -- the people used to call us
8 "Salt and Pepper." And Bobby and I were the guys
9 that ran our company. Sometimes he would handle some
10 salespeople. Sometimes I would handle them,
11 depending on the circumstances.

12 As I'd indicated earlier, Bobby can be a
13 straightforward person, which is good, but sometimes
14 can be hard dealing with a salesperson that can -- is
15 a diva. So that's -- that's when I will take over.

16 Q So how many contracts do you think? 12,000, is
17 that what you said?

18 A Yes. In the duration of -- of Vector -- of -- of
19 the Guardian Eagle/AVSX ---

20 Q When you were terminated?

21 A Correct.

22 Q Now, of those 12,000 contracts, were there -- were
23 there expected residuals for, say -- say, 2015 and
24 '16 and '17, and holdbacks and things of that nature?

25 A Correct, sir.

1 Q And -- and that's based upon the contracts that
2 were in existence at the time?

3 A Yes, sir.

4 Q And that -- and that -- and that they continue as
5 contracts, right?

6 A That's correct. That's where the residual will
7 come in.

8 Q So as long as the contracts continue, what
9 happens, as far as residual and holdbacks?

10 A Bobby and I would make money. On the holdback the
11 holdback will be 10 percent of the value of the
12 account, which will be surrendered back to us on the
13 13th month after that original contract was signed.

14 Q And -- and how about the other residuals?

15 A The other residuals, the -- the -- the \$3 a month
16 per deal would go forever. As long as we were a
17 Vector dealer, Bobby and I were going to make that
18 money. And that was our retirement.

19 Q All right. And Julio Reis was the sole member
20 designated, correct?

21 A On paper. Yes.

22 Q And what -- what responsibilities did he have to
23 the company?

24 A Basically, when we -- when John Madden, Bobby, and
25 I decided to agree to get somebody to become the

1 person on paper for us, he was just going to be the
2 front person. His responsibility was solely to just
3 do it on paper for us, because that was the only way
4 we could get the Vector dealership.

5 Q Did he participate in the day-to-day -- day-to-day
6 operations of the company?

7 A No.

8 Q The long-term strategies of the company?

9 A Nothing.

10 Q Did he have any say over the firing or hirings of
11 the company?

12 A No, he did not.

13 Q All right. And at some point -- well, let me ask
14 you this: Did you agree that -- did Julio Reis come
15 to you and say that he could no longer continue as
16 the member?

17 A Yeah. Yes. The -- he was -- he -- he had -- he
18 had mentioned to us that he was trying to restructure
19 his company. And we were growing so fast, making so
20 much money, that his accountant suggested that it
21 would best that if we could do it on our own, that we
22 would.

23 And that's when Bobby and I agreed to say, "You
24 know what? We don't have the credit. Let's use Mary
25 Kay."

1 Q That was an agreement?

2 A Yeah. That was an agreement. Exactly.

3 Q And is it in writing anywhere?

4 A No. It was just two brothers making decisions.

5 Q And how long had you been in business with Mr.
6 Johnson at that point?

7 A We been in business since 2007, Protection24.

8 Q Trusted him?

9 A With my life.

10 Q Yeah. Let me ask you that. Did -- do you have a
11 will?

12 A Uh-huh. I do, sir.

13 Q And who's your executor?

14 A Bobby Johnson.

15 Q And I'm -- I believe we've marked it.

16 MR. SAUTTER: I'll get it. I think I'll get it.
17 What number is that?

18 THE COURT REPORTER: That would be Plaintiff's 15.

19 MR. SAUTTER: Okay. Here we are.

20 Q Handing you what's been introduced into evidence
21 as Plaintiff's 15. And who did -- you designated
22 Bobby Johnson as your executor?

23 A Yes, sir.

24 Q What's the date of that will?

25 A It was dated February 11, 2014.

1 Q All right. Who are the witnesses on that will?

2 A It was his mother, Sharon Fitzhugh; my sister,
3 Gloria Reyna Rivera.

4 Q All right. Did it surprise you when Bobby said he
5 didn't know he was designated as executor?

6 A Yeah. Quite a bit, because that was -- I was
7 taking a trip to Panama. I'm from -- originally from
8 Panama. And him and I joked about the fact that,
9 "Man, it's a third-world country. You better watch
10 out. You never know what could happen."

11 And he gave me -- I was like, "You know what?
12 You're right. It's been a while since I've been in
13 Panama. Let me just do a will." Something happens
14 -- somebody -- I was -- I have just gone through a
15 divorce recently. And I wanted to make sure that my
16 ex-wife would not have control of my kids and so
17 forth. I have full custody of them.

18 And that's when I made the will. And he knew.
19 And he actually suggested I do -- and although it was
20 a joking, I took it serious because you never know
21 what could happen. And his mother and my sister were
22 the witness of it. And his sister was a notary
23 public, and she notarized it.

24 Q All right. And did your family members also work
25 -- work at AVSX and Guardian Eagle?

1 A Yes. Our goal was to build a company for our
2 families to also have jobs. It's, you know --
3 unfortunately, we live in a country that sometimes
4 people don't -- don't get paid very well. And they
5 should. And as a business owner, you want to share
6 that with your family as well. And that's when we,
7 little by little, started -- as we continued to grow,
8 started building, bringing our family into the
9 business: his mother, my mother, his sister, my
10 sister, my kids.

11 Q What happened after March 21st, 2014, to your
12 family with the company?

13 A They all got fired.

14 Q Was your daughter -- what -- did your family have
15 a -- personal financial obligations for the company?

16 A Yes, they did.

17 Q And what happened to those when you were
18 terminated?

19 A They were left with it.

20 Q Like what?

21 A My daughter bought a \$39,000 FJ, which earlier Mr.
22 Johnson was driving -- was called the "Bring-It
23 truck." It was wrapped. He would drive it. And we
24 put it in her name.

25 The -- she initially had a Jeep that I purchased

1 the Jeep for Bobby. He wanted a Jeep initially;
2 didn't have the credit as well. I purchased it. He
3 later said, you know, "I want an FJ." We got him the
4 FJ. And -- and when the -- when they kicked me out
5 of my company, we got left with it.

6 Q And that was in Mr. Ellis's letter?

7 A That's correct. Yes, sir.

8 Q And y'all exchanged those cars, right?

9 A That's correct.

10 Q How did that go?

11 A You know, the -- of course, not very good
12 initially because I'm, like, "What are you doing?
13 Why are you taking me away from my company?"

14 And he kept alleging that I was only an employee.
15 And through the -- through the communications of
16 their attorney suggesting that I was -- they were
17 going to call the cops and report the vehicle stolen,
18 we did the exchange.

19 Q All right. So you got the cars that you agreed
20 to, and they kept the cars that you agreed to as
21 well?

22 A That's correct.

23 Q So the cars have already been exchanged?

24 A That's correct.

25 Q Did you have a credit card with -- with AVSX?

1 A Yes.

2 Q What happened after you were terminated with the
3 credit card?

4 A It was canceled.

5 Q And was it canceled before Mr. Ellis's letter?

6 A Yes. My -- my understanding and knowledge,
7 already was canceled before that.

8 Q All right. So how'd the breakup go?

9 A Not very well.

10 Q And did -- what about your computer equipment and
11 things of that nature?

12 A Bobby ---

13 Q Was it ---

14 A --- I -- I was on vacation when he decided to --
15 to illegally take me out of my company. And I was
16 not allowed back into my office. He took everything.
17 I have nothing.

18 Q So did you have personal items in your office?

19 A Yes, I did, which were never returned to me.

20 Q Pictures of your family and things of that nature?

21 A Exactly.

22 Q You never got them back?

23 A Never got them back.

24 Q What happened to that stuff?

25 A I don't know. To this date, I have not gotten

1 back . . .

2 Q Did -- did you tamper with any of the AVSX
3 computer equipment or data or anything of that
4 nature?

5 A No. Didn't have it. I ---

6 Q Would ---

7 A --- I never ---

8 Q --- you ---

9 A --- thought that I was going to get kicked out of
10 my company.

11 Q I mean, even after? After ---

12 A No.

13 Q --- you were ---

14 A Didn't have access to it.

15 Q And do you have any information of whether -- do
16 you believe that Bobby tampered with your
17 information?

18 A Yes, he did.

19 Q How'd he do it?

20 A Several occasions, I had a -- had a Gmail account
21 I initially set up and used my AVSX e-mail as my
22 backup. And he sent my fiancée and e-mail through it
23 with a picture saying "bring it" and texted a friend
24 of mine's number that he knew that I was holding at
25 that moment because he canceled my phone; he canceled

1 my kids' phones. Everything was just -- I was
2 completely shut out of my company overnight.

3 Q And you didn't have access to those computer ---

4 A To nothing.

5 Q And so what did you do when you were terminated?

6 A I was trying to figure out how was I going to
7 survive, how was I going to continue my business that
8 I worked too hard for.

9 Q And when you were at -- at AVSX or Guardian Eagle,
10 did you have an anti-competition agreement in
11 writing?

12 A No.

13 Q And -- and -- and were you in competition with
14 AVSX prior to the time of your termination?

15 A No. Why ---

16 Q Why not?

17 A Because I owned my own. Why would I be in
18 competition with my business?

19 Q And how about after you were terminated?

20 A I had no choice. I reach out to Vector, and
21 Vector's response was a letter says: "Thank you for
22 your service with AVSX." And John would not return
23 my calls.

24 Q Okay. And did you -- did you subsequently open up
25 another security company?

1 A Yes. Because that's only thing I know how to do.

2 Q And -- and -- and who -- are you the listed owner
3 on that company?

4 A Not on paper.

5 Q Okay. But ---

6 MR. TODD ELLIS: What?

7 Q --- who ---

8 MR. TODD ELLIS: I'm sorry, Your Honor.

9 THE COURT: Not on paper.

10 MR. TODD ELLIS: Thank you.

11 THE COURT: That was his ---

12 Q All right.

13 THE COURT: --- response.

14 Q Who is the owner of that company?

15 A My fiancée, Elizabeth Moise.

16 Q She's -- she -- is she in the courtroom today?

17 A Yes, sir.

18 Q Is that her in the pretty dress?

19 THE COURT: Hold on a minute, Mr. Sautter. Can
20 you hear okay ---

21 MR. TODD ELLIS: I can ---

22 THE COURT: --- can ---

23 MR. TODD ELLIS: --- Your Honor.

24 THE COURT: Okay.

25 MR. SAUTTER: I'm sorry, Todd.

1 Q All right.

2 THE COURT: Hold on. Mr. Endara, you speak, speak
3 as though you are speaking to that gentleman in the
4 far -- farthest corner of the jury box.

5 THE WITNESS: Okay, sir. Thank you.

6 THE COURT: Okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

9 MR. SAUTTER: All right.

10 THE COURT: Go ahead, Mr. Sautter.

11 MR. SAUTTER: Thank you, Your Honor.

12 Q So you subsequently opened up another security
13 company, correct?

14 A Yes, sir.

15 Q And what's the name of that?

16 A It's called MX Security.

17 Q And when was that opened?

18 A In -- a few weeks after Bobby kicked them out of
19 my company.

20 Q And how long does it take to get a security -- you
21 -- you been in this business a long time, right?

22 A Yes, sir.

23 Q How long does it take to get a security company up
24 and running?

25 A To be profitable?

1 Q Yes, sir.

2 A It's -- you know, at the beginning you can make
3 money but not significantly. It takes you four or
4 five years to -- to become solid to where you can lay
5 back and say, "Hey, you know what? I'm -- I'm doing
6 it. It's getting -- becoming profitable."

7 Q And that's all in the numbers of contracts?

8 A That's correct, sir.

9 Q All right. And when the -- when -- when MX
10 Security was opened, were -- did you actively try to
11 -- try to take the business of AVSX?

12 A Not at all.

13 Q And why not?

14 A Why? Because, number one, it's still my business.
15 And I was still hoping that John could get to Bobby
16 to convince him that what was going on was wrong.
17 And -- and then, of course, recruited -- started
18 recruiting salespeople. And you can't control what
19 salespeople out there -- they knock on every door.
20 As long as it wasn't Monitronics, they can knock on
21 every day door.

22 Q Did it come -- did -- did it come a -- did there
23 come a time when you directly competed with AVSX for
24 their salespeople or their contracts?

25 A For the salespeople, yes, of course, because

1 that's how we make our money. We recruit
2 salespeople. And I started advertising, saying,
3 "Hey, you know, we're here," and so forth.

4 You can imagine, in our company, here's an owner.
5 Overnight he's gone. Nobody knows what's going on.
6 And nobody takes his phone number; gets all deleted.
7 You can't reach the guy.

8 And when we opened MX Security and we started
9 building it, we started advertising. And -- and, of
10 course, people started reaching out.

11 Q And -- and the people that was reaching out, did
12 that include AVSX salespeople?

13 A Yes.

14 Q And they later went to work for your company?

15 A Yes, sir.

16 Q When did that happen?

17 A The first one started in -- I believe was October.

18 Q Of what year?

19 A 2014. Send me a Facebook. Wanted to talk --
20 Facebook inbox -- wanted to talk to me.

21 Q And so you were terminated March 21st of 2014?

22 A Yes, sir.

23 Q And that's about six months later?

24 A Yes, sir.

25 Q A little bit more?

1 A Yes, sir.

2 Q Okay. All right. And Mr. Ellis, in his letter,
3 asked that you not disparage the company and things
4 of that nature.

5 A Correct, sir.

6 Q And did you do that?

7 A No, sir.

8 Q Did Bobby do that to you?

9 A Definitely.

10 Q How so?

11 A The -- I am knowledge -- I have knowledge of
12 sending numerous communications to our staff at AVSX,
13 talking about my -- the kind of person I was, that I
14 was -- I was looking at a very nice house in Myrtle
15 Beach; I was an owner making a lot of money; I
16 deserve to buy whatever I want -- and saying that,
17 "This is where your money was going to," you know,
18 portraying me as a -- as a character that I -- that
19 was not good for the company.

20 Q Did he portray you as dishonest?

21 A Yes.

22 Q How so?

23 A Put out -- suggested that I was making purchases
24 that were not approved by the company that he had no
25 knowledge of and so forth. And in our business he

1 was the one that daily looked at our bank account.
2 He knew all of my expenses. And -- and -- and people
3 have communicated with me and advised me that he
4 portrayed me as somebody ---

5 MR. TODD ELLIS: Objection ---

6 A --- that was ---

7 MR. TODD ELLIS: --- Your Honor.

8 A --- stealing.

9 THE COURT: Objection sustained.

10 MR. TODD ELLIS: Hearsay.

11 Q Mr. Sautter, you can't say what people advised
12 you. You just have to testify as to your own
13 knowledge. But ---

14 A Okay.

15 Q And so MX is opened. Is -- does MX utilize
16 Vector?

17 A No, sir.

18 Q Who -- who do they use -- utilize?

19 A Monitronics.

20 Q Monitronics? Are they the two giants in the
21 industry?

22 A Monitronics is pretty -- it's national company.
23 Vector is more regional.

24 Q All right. And these -- and these companies --
25 now -- now -- so they're exclusive, right?

1 A Yes.

2 Q Okay. All right. So to your knowledge, what role
3 did Mary Kay have with either Guardian Eagle or with
4 AVSX?

5 A She was the owner on paper.

6 Q Was she involved in the day-to-day decisions?

7 A Never.

8 Q Does she, to your knowledge, even know anything
9 about the security business?

10 A Nothing. She was my partner's wife.

11 Q You agreed that she would be appointed?

12 A Yes. To be on paper.

13 Q Okay.

14 A Right.

15 Q And you trusted Bobby?

16 A He was my brother. Trusted him with my life.

17 Q And did that change?

18 A Unfortunately, yes, he did.

19 Q And are you aware of any conditions -- or did you
20 notice any change in Bobby's health?

21 A The -- Bobby unfortunately has some medical
22 conditions that, to my understanding from what he had
23 told me, was that he had a brain tumor. He had
24 cancer. And he had some side effects as well.

25 And at times you could see that sometimes he

1 wasn't himself. But as family you deal with it. And
2 it's a fact of life.

3 Q And is that what -- there's an e-mail exchange
4 that we talked about earlier -- start out at eleven
5 o'clock at night -- between you and Bobby. And I
6 think it starts in January of 2014. Oh, Lord. I'll
7 get it. Here we go.

8 MR. SAUTTER: This is Plaintiff's Exhibit 4, Your
9 Honor and -- and madam -- gentlemen and ladies of the
10 jury.

11 Q Are you familiar with that e-mail exchange in
12 Exhibit 4?

13 A Yes, sir.

14 Q You have to start -- you have to start on the back
15 page. And -- and is that Bobby's e-mail address?

16 A Bjohnson@AVSX. Yes, sir.

17 Q All right. What time was that first e-mail sent?

18 A At 11:11.

19 Q At night?

20 A Yes, sir.

21 Q Okay. And what did you -- what did you understand
22 from Bobby's first e-mail to you?

23 A His medical conditions unfortunately, from what he
24 advised me and educated me, was that he has a short
25 time to live. And as a father, I can understand the

1 stresses that sometimes life can bring you. And
2 money's not everything.

3 And forgive me for getting emotional. But I
4 trusted him as a brother. And when he came to me and
5 -- and would talk of him wanting to get away from or
6 hide -- maintenance, divas, and -- and business and
7 so forth -- he wanted to do something that he could
8 -- that he would enjoy more.

9 And in security it got to the point where he
10 didn't enjoy it anymore. It wasn't -- it -- it is.
11 It's -- you have divas, wanting more money, more
12 money, more money, chargebacks this, people not
13 paying their bills. So it can be very stressful.
14 But the money is good.

15 And that's where the communication started. And I
16 just felt that he was at that moment, that particular
17 e-mail.

18 Q And both of y'all's families were relying on you
19 to continue the business?

20 A Correct.

21 Q How long did you want this business to go on to?

22 A Forever.

23 Q All right. And what did you respond to Bobby?

24 A Yeah. My response was basically: "Hey, man,
25 we're 50/50. You know, don't worry about it. I'll

1 take care of it."

2 Q Did you try to take care of it?

3 A I did.

4 Q When -- what's the date of that e-mail again?

5 A It was January 16, 2014.

6 Q You told him to hang on?

7 A Right.

8 Q And you believed him?

9 A Yes. No reason not to.

10 Q You had your families relying on it?

11 A And his family too.

12 Q Okay. And you were terminated from that company
13 about two months later?

14 A Yes. Out of the blue.

15 Q Was there any other kind of dispute that you're
16 aware of with Bobby?

17 A No. Not at all.

18 Q Was there some movie you were supposed to go to
19 with him and -- and all that that ---

20 A Yeah. We had a -- we had a trainer and -- really
21 nice guy. And -- and -- and Bobby's about
22 brotherhood, bring it, you know -- the movie 300, and
23 so forth. And -- and he knew, from the -- for some
24 time, that I been wanting to move to Myrtle Beach.
25 And -- and we retain a realtor there to purchase a

1 house there. And he'd known this because I signed
2 the contract with the realtor a year prior.

3 And -- and sometimes he would get -- you know, we
4 -- they -- people used to call us husband and wife.
5 And sometimes I would think he would get a little
6 jealous that I kept wanting to go see my -- my
7 fiancée and spend more time.

8 He's, like, "Dude, we -- we got to go see this
9 movie. We got to go see this movie."

10 So unfortunately, not to hurt his feelings, I told
11 him no, I was -- I wasn't feeling too good. But it
12 -- my intention was to go look at houses with my
13 fiancée and my kids, spend time with my kids.

14 Q All right.

15 A And -- and that unfortunately ---

16 Q Was that the beginning of the end?

17 A Yes.

18 Q All right. And how much -- how much -- before --
19 how much -- how long after that were -- did you get
20 the letter from Mr. Ellis?

21 A Probably within a month.

22 Q And were you in competition with AVSX at all at
23 that time?

24 A No.

25 Q You're under oath, Mr. Endara. Did ---

1 A Yes.

2 Q --- you have any contract or anything like that?

3 Did you do anything contrary to your ---

4 A No. Not at all. It was my company. Why should I
5 compete against my own self?

6 Q And so did Bobby change?

7 A He did.

8 Q And when did that start?

9 A Because of his health conditions, he has moved.
10 Like I said, you deal with it as a family. But I
11 never thought or felt in my wildest dreams that he
12 would betray me. Never.

13 I mean, you don't -- you don't think your
14 brother's going to betray you. You don't think your
15 mother's going to betray you. So one day he just
16 decided to -- to just cut my throat, throw me in the
17 ditch.

18 Q Now, do you -- do you understand that we made
19 demands for the financial records and documents of --
20 of AVSX?

21 A Yes, sir.

22 Q We're trying to figure out what your share would
23 be?

24 A Yes, sir.

25 Q And do you know if we ever received those

1 documents?

2 A The -- the information that we have of is -- is
3 the information that they say they only have on file.

4 Q Yeah. And this -- this 2014 tax return, that's
5 pretty recent, right, that we got -- we got our hands
6 on that?

7 A Yes. That's the most recent they provided us.

8 Q And you didn't have any access to get any of that
9 information?

10 A No.

11 Q And so those demands were made prior to this
12 lawsuit being started?

13 A Yes.

14 Q And -- and nothing was forthcoming for a long
15 time?

16 A Until just a few weeks ago.

17 Q And so how was -- how was Bobby treating you and
18 how was the company treating you after those demands
19 were made to -- for your partnership interest?

20 A We didn't communicate. There's no -- stayed away
21 from each other.

22 Q Did you ask at one time that a special receiver be
23 appointed to take over the -- the company of AVSX?

24 MR. TODD ELLIS: Objection. Your Honor, may we

25 ---

1 THE COURT: Hold on ---

2 MR. TODD ELLIS: --- approach?

3 THE COURT: --- a minute.

4 MR. TODD ELLIS: We ---

5 THE COURT: Can you finish the question first,
6 please.

7 Q Did you ---

8 THE COURT: And then ---

9 Q --- ask ---

10 THE COURT: --- you can ---

11 Q --- that a receiver be appointed to take over the
12 affairs of AVSX?

13 THE COURT: Hold on a minute. Now ---

14 MR. TODD ELLIS: Objection, Your Honor. May we
15 approach?

16 THE COURT: Yes.

17 (Whereupon, a bench conference was held off the
18 record in the presence of the jury but out of the
19 hearing of the jury.)

20 THE COURT: Objection sustained.

21 MR. SAUTTER: All right. Your Honor, may -- may I
22 just have one moment?

23 THE COURT: Yes, sir.

24 (Whereupon, Mr. Sautter and Mr. Michael Ellis
25 conferred.)

1 Q So your partnership with Bobby Johnson was created
2 prior to the time that any of these LLCs were formed;
3 isn't that true?

4 A That's correct. In my mind, it began the moment
5 that Jimmy Wilson fired him as our general manager of
6 Palmetto Alarm.

7 Q And what are the assets of the partnership between
8 you and Bobby?

9 A 50/50, whatever they are.

10 Q 50/50 of what?

11 A Of whatever we built together: our income, our
12 residuals, our vehicles, everything.

13 Q And what's the name of that current entity?

14 A It's called AVSX Technologies.

15 Q Okay. Okay.

16 (Whereupon, Mr. Sautter and Mr. Michael Ellis
17 conferred.)

18 Q All right. We -- we -- we talked about -- and I'm
19 just -- just going to go back into the history a
20 little bit. This e-mail that's two e-mails from
21 Bobby Johnson, Plaintiff's Exhibit No. 3, what are
22 those?

23 A That was a -- an e-mail where we were updating our
24 site, communicating to our staff, and -- and -- and
25 Bobby was working with Matt Edwards, our H.R. manager

1 at the moment. And Edward had just started. And he
2 needed to know what was our history, how was AVSX
3 created. And Bobby sent that e-mail. And then --
4 and he felt so good about it that he sent it to John
5 Madden, the VP of sales for Vector, the dealership
6 program -- Pam Petrow, the CEO of Vector as well, to
7 have knowledge that we were the owners.

8 Q Is that -- is that different from being
9 terminated?

10 A Meaning?

11 Q What -- what is -- what is your understanding of
12 the "Our History"? The -- what was your -- what was
13 your business relationship with -- with Bobby
14 Johnson?

15 A That two guys started from the start. We worked
16 very hard for our families and our future. And we're
17 the guys that started this company. We -- we built
18 it from the start, from Protection and so forth.

19 (Whereupon, Mr. Sautter and Mr. Michael Ellis
20 conferred.)

21 Q Who -- whose -- who was responsible for the South
22 Carolina Electric & Gas bill, even after you were
23 terminated from AVSX?

24 A The -- AVSX was supposed to be continued paying
25 it. It was in my name.

1 Q Did you get a -- a -- did you get that notice
2 about not paying the bill?

3 A Yes. One day I received a notice at my house,
4 saying AVSX stopped paying the bill. It was like
5 400-and-some dollars that -- that they didn't pay it.
6 They switched the -- the responsible person from
7 myself to somebody -- I don't know how. And they --
8 and the SCE&G, when I called them and told them,
9 "Hey, my company is supposed to pay it," he -- they
10 told me that if I didn't pay it, they would cut my
11 light bill. So I was ---

12 Q Okay.

13 A --- forced to pay it.

14 Q Who signed the lease on the building where AVS
15 operates?

16 A Initially, it was me.

17 Q Okay. Did that ever change?

18 A Yes, it did change.

19 Q Who did it change to?

20 A From my understanding, it was Bobby then.

21 Q Bobby?

22 A Uh-huh.

23 Q All right. And that's yes?

24 A Yes, sir.

25 Q Okay. Okay, Mr. Endara. This -- this Plaintiff's

1 Exhibit 7 that's already into evidence, can you look
2 at that.

3 A Yes, sir.

4 Q And what is that?

5 A That is a preliminary draft of the 2014 income tax
6 return.

7 Q Okay. Of which company?

8 A AVSX Technology/Guardian Eagle.

9 (Whereupon, Mr. Sautter and Mr. Todd Ellis
10 conferred.)

11 Q All right. And that -- what year is that for?

12 A 2014.

13 Q Okay. Now, I've done a -- done a blowup of that.
14 And I'd like ---

15 MR. SAUTTER: Todd, it's the same.

16 MR. TODD ELLIS: Yeah. No objection.

17 Q I've done a blowup of this. And I'd like ---

18 MR. SAUTTER: Judge, where's the best place I can
19 ---

20 THE COURT: You've done a blowup of exhibit what?

21 MR. SAUTTER: Exhibit ---

22 THE WITNESS: --- 7.

23 MR. SAUTTER: --- 7, Your Honor.

24 THE COURT: Thank you. I just wanted it clear for
25 the record.

1 MR. SAUTTER: And I'm trying to -- I -- I -- I'm
2 trying to figure out the best place to have the jury
3 look at and so the Court can see it as well in this
4 courtroom.

5 (Off the record briefly.)

6 THE COURT: Mr. Todd Ellis, if you want to ---

7 MR. TODD ELLIS: Yes, sir.

8 THE COURT: --- get up so you can see what he is

9 ---

10 MR. TODD ELLIS: Yes, sir.

11 MR. SAUTTER: Okay.

12 THE COURT: Mr. Sautter ---

13 MR. SAUTTER: Yes, sir.

14 THE COURT: --- why don't you put it out front
15 here. It's not so much important that I see it, more
16 so than the jury. Jury ---

17 MR. SAUTTER: Okay.

18 THE COURT: --- needs to see it more than me. I
19 can look at a ---

20 MR. SAUTTER: Thank you, Your Honor.

21 THE COURT: --- smaller copy. And if Mr. Endara
22 -- if you need for him to step down, he has
23 permission to do so.

24 MR. SAUTTER: All right, Mr. Sautter.

25 THE COURT: Aren't you going to need -- okay.

1 Yeah. Please move that podium ---

2 MR. SAUTTER: Yes, sir. Let me get this out of
3 the way. All right. Okay. Let's ---

4 THE COURT: Hold on a minute. Can everybody in
5 the jury box see this Exhibit 7, which is has been
6 blown up? All right. Can everyone see? Well, you
7 can't till he puts it up there, can you? I'm sorry.
8 I thought he already had it up.

9 MR. SAUTTER: Okay.

10 THE COURT: Now, is there anyone in the jury box
11 that cannot see this?

12 JURORS: (No audible response.)

13 THE COURT: Okay. Go ahead, Mr. Sautter.

14 MR. SAUTTER: May -- Your Honor, we will hand you
15 the original exhibit.

16 Q Come on down here, Mr. Endara, please.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: Now, Mr. Endara, as you come down, if
19 you would stand on the side closest to your
20 attorney's table so your ---

21 THE WITNESS: Okay.

22 THE COURT: --- voice will come back towards my
23 court reporter over here. And please make sure that
24 those individuals over your left shoulder in the jury
25 box can see as you're answering questions if you're

1 using or pointing to specific areas on that ---

2 Q All right ---

3 THE COURT: --- exhibit.

4 MR. SAUTTER: Thank you, Your Honor. I think
5 we're all straight here.

6 Q This is the copy -- a blowup of the exhibit, the
7 preliminary draft. Which company is it, Mr. Endara?

8 A It ---

9 Q Go ahead and highlight that, please.

10 A AVSX Technology/Guardian Eagle Security.

11 Q All right. What year is it?

12 A 2014.

13 Q Okay. What's the address?

14 A 1140 Briargate Circle, Columbia, South Carolina
15 29229 -- 29210.

16 Q All right. Now, you might have to speak up so the
17 court reporter -- and I'll try to get out of -- get
18 out of your way. All right. So this is an S
19 corporation?

20 A Yes, sir.

21 Q And that S election date right up here in the top
22 corner, what date?

23 A January 1st -- January 31st, 2008.

24 Q All right. Okay. Now, we'll just cut right to
25 it. What -- what do they show as the gross receipts

1 and profits?

2 A \$9,957,282.

3 Q Okay. Stand back a little bit. Stand back so
4 they can see.

5 A (Complied.)

6 Q And that's right here on here?

7 A Yes, sir.

8 Q All right. And there's some things that are taken
9 out of it. And the -- the -- the balance is what
10 amount?

11 A \$9,795,316.

12 Q Okay. So -- and there's -- it -- it takes money
13 to -- to -- to make money, right?

14 A It's a very high-risk business. Yes.

15 Q Okay. And so the -- the cost of goods sold, \$5
16 million, right?

17 A \$5,012,137.

18 Q So what's the gross profit?

19 A Was \$4,783,179.

20 Q Okay. And you were with the company for several
21 months during this time period?

22 A Yes.

23 Q All right. All these -- these numbers, 7 through
24 21, what are they?

25 A They're deductions.

1 Q Like business expenses and things of that nature?

2 A Payroll, business expensons [sic], and so forth.

3 Q Any kind of credit cards or things that were
4 business expenses would -- should be reflected there?

5 A That's correct, sir.

6 Q Does it also show -- have an item for rents and --
7 I think it has taxes and stuff as well?

8 A Yes, sir.

9 Q Okay. So what was the -- the -- the total
10 deductions?

11 A Was \$4,165,057.

12 Q All right. So after everything is taken out, what
13 was the gross profit for -- not gross profit -- net
14 profit for AVSX for the tax year 2014?

15 A Was \$620,754.

16 Q Is that your understanding of that's profit and
17 everything's already been taken out?

18 A Correct.

19 Q Okay. Stay right there. We'll put this right
20 here. All right.

21 (Whereupon, Mr. Sautter and Mr. Michael Ellis
22 conferred.)

23 Q That gross profit, who -- who -- who do you
24 believe that that belongs to?

25 A To Bobby and I.

1 Q And what percentage?

2 A 50/50.

3 Q All right. So I'm going to ask you to write in
4 this blue pen so hopefully the -- we can make our
5 point. So you've been in the security business for
6 how long?

7 A Since 2003.

8 Q Are you familiar with the value of the security
9 businesses?

10 A Yes, sir.

11 Q You have experiences and knowledge of the sale of
12 security businesses?

13 A Yes, sir.

14 Q Are you -- are you -- what are you asking this
15 jury to determine, as far as your damages?

16 A Just want 50 percent of my company.

17 Q Okay. So let's -- let's start at -- let's start
18 at the net profit. Write down that ---

19 MR. TODD ELLIS: Your Honor, I think we have a
20 matter for the Court I'd like to visit with you and
21 counsel about.

22 THE COURT: Okay.

23 (Whereupon, a bench conference was held off the
24 record in the presence of the jury, but out of the
25 hearing of the jury.)

1 THE COURT: All right. Objection overruled at
2 this point. Mr. Sautter, you may continue.

3 MR. SAUTTER: Thank you, Your Honor.

4 (Whereupon, Mr. Sautter and Mr. Michael Ellis
5 conferred.)

6 Q All right, Mr. Endara. You got my blue pen?

7 A Yes, sir.

8 Q Okay. Write down the net-profit number, please,
9 on that board for the jury.

10 A You want me to round it off or just ---

11 Q Yeah. Let's round it off. And what -- and what -
12 - it's that 620,754.

13 A (Complied.)

14 Q And that's for the year '14? Might as well write
15 a '14 on it.

16 A (Complied.)

17 Q Okay. What I'm going to ask you is how you would
18 value your interest in that business.

19 A The alarm industry is a very high-risk industry.
20 You can make a lot of money, as I indicated before.
21 So for me to simplify it and -- and provide you an
22 understanding on how -- what's the value of my
23 company, right, you base -- look at the gross amount
24 of profits that you sold. And you look at what you
25 made at the end, right, and determine, based on the

1 risk factors, if I was to sell my company's -- give
2 it to somebody and say, "Hey, I want to sell it to
3 you," justify how much is my company worth.

4 Q Okay. But today we're talking about how much you
5 would buy your 50 percent ---

6 A Correct. Exactly. If it was to sell it, how much
7 I would buy it for.

8 Q Okay. And what's your -- what's your knowledge --
9 how do you do that? So you -- how long did you
10 intend to stay in business?

11 A Until I die.

12 Q How many -- how old are you now?

13 A I'm going to be 50 years old this year.

14 Q And so another 30 years or so?

15 A Yeah. My dad died when he was 93.

16 Q Okay.

17 A So I would hope to be.

18 Q But are you asking this jury to multiply that 620
19 times 30?

20 A I -- in -- in all reality I can't. No.

21 Q All right. What -- what multiplier would like the
22 jury to consider to bring it to present value?

23 A Yeah. With the risk factors, with -- with -- with
24 how, you know, commission base, our pay, we sell for
25 -- and so forth, I -- I looked at a capitalization of

1 -- of 4 times.

2 Q All right. So put times 4 on there, please.

3 A (Complied.)

4 Q You need a calculator or you might ---

5 A Yeah. No. No. I do need one.

6 Q Okay. What's that number?

7 A It's \$2,480,000.

8 Q All right. That's -- that's what you would buy
9 the total company for?

10 A That's correct.

11 Q How about your 50 percent?

12 A There's a lot more to attribute to that than that.

13 Q Okay. But your 50 percent -- so are you asking
14 the jury to consider the whole number, 248, or are
15 you asking them to consider only 50 percent of that
16 number?

17 A My 50 percent of the company.

18 Q Okay. Well, divide that number by 2, please.

19 A Equals to \$1,240,000.

20 Q All right. Now, you've testified as to holdback
21 and revenue sharing?

22 A That's correct, sir.

23 (Whereupon, Mr. Sautter and Mr. Todd Ellis
24 conferred.)

25 Q And were -- were we provided with a copy of the

1 AVSX Technologies revenue-sharing and holdback income
2 for the years 2015 -- 2013 through '15?

3 A Yes, sir.

4 MR. SAUTTER: Your Honor, I would move this into
5 evidence as the next plaintiff's exhibit.

6 THE COURT: Any objection?

7 MR. TODD ELLIS: Without objection, Your Honor.

8 THE COURT: Without objection. What number is it?
9 It hadn't been marked yet?

10 THE COURT REPORTER: It'd be Plaintiff's 20.

11 THE COURT: Okay. Plaintiff's 20, without
12 objection.

13 (Whereupon, Plaintiff's Exhibit 20 was marked and
14 entered into evidence.)

15 Q Okay. It's broken down into revenue-sharing and
16 holdback income, correct?

17 A Yes, sir.

18 Q And it's over a period of 2013/2015. So I hate to
19 put you on the spot. But would you like the -- the
20 jury to -- to consider the -- what the revenue-
21 sharing and holdback figure was for the year 2014,
22 since we're talking about 2014?

23 A Yes. In addition to that.

24 Q In addition to this number?

25 A Yes, sir.

1 Q And can you -- all right. Well, we'll -- we'll --
2 looking at revenue sharing right here, let's put this
3 over here. Well, the second column, what does that
4 start with?

5 A The month of April.

6 Q All right. Well, right -- and it's totaled down
7 there at the bottom?

8 A The revenue sharing was \$285,470.

9 Q Okay. Just write that right there.

10 A (Complied.)

11 Q Okay. And for what time period is that on the
12 second column?

13 A For the month -- for the year of 2014.

14 Q What month did it start?

15 A April.

16 Q And what month did it end?

17 A December.

18 Q All right. And so -- and so how -- so how much
19 was earned in -- from January 14 -- January of 2014
20 to March 14? You see those numbers? We'll round
21 them up.

22 A 19,920, plus 5,000, plus 20,000.

23 THE COURT: Hold -- Mr. Endara, I need you to
24 speak up, please.

25 A Plus 5,000, plus 21,000, plus 4,000: \$75,000.

1 Q Okay. And that would be right there?

2 A (No audible response.)

3 Q 75,000. Okay. And now, what is this holdback
4 income?

5 A Holdback is, as I indicated to you earlier, Vector
6 gives us the significant amount of our money and they
7 keep 10 percent as reserve guarantee that we're going
8 to continue selling them good paper. If the paper's
9 not good, then they take that money that they gave us
10 back. And that money gets surrendered to us on the
11 13th month after that contract was sold to them.

12 Q So for 2014 -- I think it's just that second
13 column -- let's write "holdback" right here, please.

14 A (Complied.)

15 Q And does that second column reflect the total of
16 the holdback income received for 2014?

17 A \$942,489 ---

18 Q Write ---

19 A --- and 62 cents.

20 Q Write that there, please.

21 A (Complied.)

22 Q Okay. So if you total all the revenue sharing,
23 that figure in January through March, and all the
24 holdback for the year 2014, what number does that
25 come up with?

1 A Comes up to 1,302 -- 302,959 dollars.

2 Q All right. Would you be willing to buy the entire
3 company for -- for -- for the 2.48 and the 1.302?

4 A The revenue sharing, as I indicated, goes for the
5 rest of the life. So as we continue to grow and we
6 continue to sell more accounts, that revenue sharing
7 will get from 285,000 to 300,000/400,000/500,000 --
8 could be \$800,000 twenty years from now. That's a
9 year. So if I was buying the business, I would look
10 at that as a significant amount of my decision is to
11 how much money I'm going to make in this business.
12 You know, I'm buying a business from you. What is
13 the money that's coming in?

14 Q All right. And do you use a multiple on that as
15 well?

16 A Yes. I -- I used the simplicity of the -- of --
17 of -- of the capitalization -- of 4 multiples.

18 Q Okay. Well, multiply that number times 4, please.

19 A It's \$5,211,836.

20 Q And what's -- what's the value of your 50 percent
21 interest in that?

22 A It would be \$2,605,918.

23 Q Okay. So how do you value this business? Do you
24 -- how do you do it?

25 A My ---

1 Q Your -- your 50 percent.

2 A My 50 percent of my company as of 2014 would've
3 been \$1,240,000. In addition to that, I would also
4 look at the residual that's going to continue to come
5 and continue to increase. So if I use that
6 capitalization of 4 times the value of the -- of --
7 of the revenue that's coming and so forth, that's
8 what I attributed it to -- to \$2.6 million as my 50
9 percent.

10 Q Can you circle it.

11 A (Complied.)

12 Q That's how you value your 50 percent interest?

13 A Yes, sir.

14 Q Based on your experience?

15 A Based on knowledge of -- you know, the residual, I
16 keep pounding on it because I believe it's very, very
17 critical in understanding that the risk factors of
18 the company at the initial are high.

19 But you're banking on the residuals. You're
20 banking on selling accounts. And -- and -- and
21 eventually 20 years from now, you're with the same
22 company, making hundreds of thousands of dollars a
23 year. And as long as you're with them, that money's
24 coming in.

25 Q So you -- you've already been cut off of -- of the

1 net profits for 2014 and forward, correct?

2 A Cut completely.

3 Q And you've already been cut off of the residuals
4 and the holdback from 2014 and onward?

5 A Completely.

6 Q Are -- are you asking the jury to consider these
7 numbers if they determine to award you damages?

8 A Yes. Because that's -- at that moment that's my
9 50 percent. That's what I worked for my family that
10 was mine, put into my company.

11 Q Did -- all right.

12 (Whereupon, Mr. Sautter and Mr. Michael Ellis
13 conferred.)

14 Q So are you an economist?

15 A No, I'm not, sir.

16 Q Okay. Have you looked at how much your business
17 is worth and how much other similar businesses are
18 worth ---

19 MR. TODD ELLIS: Your Honor ---

20 Q --- in your experience as a -- as a business
21 owner?

22 THE COURT: Hold on a minute. Hold on.

23 MR. TODD ELLIS: I'm going to object. This
24 appears to be a solicitation of some expert testimony
25 from Mr. Endara, who says he's not qualified -- and

1 clearly, he's not -- to evaluate from an economist
2 standpoint.

3 MR. SAUTTER: Your Honor, I'm -- I am not
4 attempting to qualify Mr. Endara as a -- as an expert
5 in ---

6 THE COURT: Restate your question again.

7 Q Are you asking the jury to consider these amounts?

8 A Yes, sir.

9 Q That's based upon your experience?

10 A And the -- since 2003.

11 Q Your experience -- this is what you believe your
12 share of this company is worth?

13 A Yes.

14 Q This number and that number?

15 A That's correct.

16 (Whereupon, Mr. Sautter and Mr. Michael Ellis
17 conferred.)

18 Q Did you -- did you -- were you considering selling
19 your interest in the business in 2014?

20 A Never.

21 Q And this is if you were forced to sell it?

22 A Unfortunately, yes.

23 MR. SAUTTER: That's all I have from this witness
24 at this time, Your Honor.

25 Q Mr. Endara, please ---

1 THE COURT: Can the lawyers approach a minute,
2 please.

3 Q --- answer any questions of Mr. Ellis.

4 (Whereupon, a bench conference was held off the
5 record in the presence of the jury but out of the
6 hearing of the jury.)

7 THE COURT: All right. Ladies and gentlemen, what
8 -- what I'm going to do right now: We've been going
9 about an hour and a half. We are going to stop at
10 this point before we go into cross-examination. I'm
11 going to let you go to lunch -- I'm going to let you
12 go to lunch at this point. I couldn't see you over
13 there.

14 JUROR: Oh, that's all right.

15 THE COURT: I'm going to let you go to lunch at
16 this point. I'm going to ask that you be back in
17 your jury room at 1:15 -- at 1:15 -- and we'll resume
18 the trial of this case at that time with cross-
19 examination by Mr. Todd Ellis.

20 Again, do not discuss the case. Do not discuss
21 the case at all. Do not to any independent
22 investigation on your own. You're to decide this
23 case based solely upon the testimony and evidence
24 that's presented in this courtroom and nowhere else.

25 Now, when you return at 1:15, I need you all to do

1 something for me. I need you all to select a
2 foreperson. When you come back at 1:15, I need you
3 to select a foreperson.

4 The foreperson will sit in the chair where this
5 gentleman is seated, closest to the door. I will say
6 this: that Mr. Crawley -- Mr. Brian Crawley --
7 cannot be your foreperson, okay? Cannot be your
8 foreperson.

9 Anything from plaintiff's counsel before I release
10 the jury?

11 MR. SAUTTER: No, Your Honor.

12 THE COURT: Mr. ---

13 MR. TODD ELLIS: Nothing, Your Honor.

14 THE COURT: When you all agree on a foreperson, if
15 you would, Mr. Dye, make sure they have pen and paper
16 in there that they can write that down ---

17 THE BAILIFF: Yes, Your Honor.

18 THE COURT: --- and provide it to me when they
19 come back in. And whoever you all select as your
20 foreperson will be seated where this gentleman is,
21 closest to Mr. Dye here on the front row.

22 All right. Thank you all. I will see you back at
23 1:15. Okay.

24 (Whereupon, the jury exited the courtroom at 11:43
25 p.m.)

(Off the record briefly.)

THE COURT: All right. Mr. Endara, sir, you may step down. But during the lunch break, you are not allowed to discuss your testimony with anyone. You understand?

THE WITNESS: Yes, sir.

THE COURT: Okay. Sir, you may step down.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. While Mr. Endara was testifying, Mr. Todd Ellis made an objection to some of his testimony. We spoke at sidebar. I overruled Mr. Todd Ellis's objection but told him I would give him an opportunity, when the jury -- when I excused the jury from the courtroom, to place on the record whatever he so desired concerning that objection.

Mr. Todd Ellis -- Ellis, you're so recognized.

MR. TODD ELLIS: Thank you, Your Honor. May it please the Court: The ---

THE COURT: Yes, sir.

MR. TODD ELLIS: --- the objection, I think, was resolved for the most part. I still would object to any testimony regarding the valuation of this business by Luis Endara. Although it -- he's experienced in the industry and running a company, he never testified that he had bought or sold a business

1 entity; that he had any training in that regard
2 whatsoever; only that he knew the industry.

3 His testimony regarding "this is what I would sell
4 it for/this is what I would buy it for," I don't
5 object to that. But the calculations utilized to
6 come up with that formula, I think, can only be done
7 by an expert, an economist, or an otherwise business
8 valuator. And I would object to the testimony based
9 on that.

10 THE COURT: All right. Mr. Sautter, anything in
11 response?

12 MR. SAUTTER: No, Your Honor. He clearly
13 testified that that's what he would buy the business
14 for or to sell the business for.

15 THE COURT: Well, I think, certainly, under our
16 rules, he's entitled to testify as to what he
17 believes the value of the company is and how he comes
18 to that valuation and what he would sell the company
19 for, based upon financial records, etc., that have
20 been provided to him through the discovery process in
21 this case. And I certainly believe, Mr. Ellis --
22 Todd Ellis, you can, on cross-examination, certainly
23 attack him as to the fact that no expert, no
24 accountant, etc., has done this valuation. But he --
25 he certainly can come in here and testify as to what

1 he believes the company is worth and what he would
2 sell it for if he were, in fact, going to sell the
3 company.

4 But your objection is so noted for the record.

5 MR. TODD ELLIS: Thank you, Your Honor.

6 MR. SAUTTER: Thank you, Your Honor.

7 THE COURT: All right. Anything further before we
8 break for lunch?

9 MR. SAUTTER: No, Your Honor.

10 THE COURT: All right. I'd ask that you all be
11 back here at one o'clock -- at one o'clock. All
12 right. Thank you.

13 (Off the record from 11:46 a.m. until 1:23 p.m.)

14 (Whereupon, Defendant's Exhibit 10 was marked for
15 identification while off the record.)

16 THE COURT: Juror No. 234 -- let me see here --
17 Ms. Juliet Shiver, sent out a note to the clerk that
18 her father was taken to the emergency room this
19 morning and she'd like to check on his well-being.
20 She left her phone in her automobile. I guess, you
21 know, I -- I guess most people, me included, have to
22 have your phone to be -- to call somebody. I don't
23 remember people's phone numbers anymore.

24 MR. TODD ELLIS: Exactly.

25 THE COURT: I mean, I just don't. So I'm going to

1 let her go get her phone and make that phone call to
2 check on her dad. I mean, she said she's willing to
3 stay. But I -- I'd really rather allow her to do
4 that.

5 THE BAILIFF: Yes, sir.

6 THE COURT: Ms. Shirley, if you'll tell her just
7 to go get her phone and come back up here and she --
8 and make ---

9 THE BAILIFF: Make a ---

10 THE COURT: --- a phone call.

11 THE BAILIFF: --- phone call. What number was
12 she, Judge?

13 THE COURT: Number 234.

14 THE BAILIFF: Thank you.

15 THE COURT: My -- I did allow my clerk to go in
16 there and ask if she wanted to make a phone call.
17 And my clerk said -- didn't seem to -- or my clerk
18 said that she didn't seem -- and I said "she,"
19 talking about the juror -- didn't seem overly
20 concerned. But I would hate it if something happened
21 and she hadn't had an opportunity to check on that.
22 Okay?

23 MR. TODD ELLIS: Yes, Your Honor.

24 THE COURT: So I'm going to allow her to do that.
25 So we'll stand down a few minutes to give her enough

1 time to do that. I'm kind of curious as to why, over
2 the last hour and a half, it wasn't checked on when
3 we've been broke for lunch. I'm going to make that a
4 Court's exhibit.

5 THE BAILIFF: She said she's all right, Judge.
6 She'll just go on with it and handle it later.

7 THE COURT: Okay.

8 THE BAILIFF: All right.

9 THE COURT: And -- for the record, I mean, that's
10 the second time we've offered to allow her to go do
11 that.

12 THE BAILIFF: Yeah.

13 MR. SAUTTER: Okay. Your Honor, no objection to
14 any of that.

15 THE COURT: That's not what I asked, Mr. Sautter.
16 I -- I -- I ---

17 MR. SAUTTER: I'm sorry.

18 THE COURT: --- will give you time to talk to him.
19 But when I'm talking, please ---

20 MR. SAUTTER: I apologize.

21 MR. MICHAEL ELLIS: I'm sorry.

22 THE COURT: --- listen to me.

23 MR. SAUTTER: I apologize.

24 THE COURT: Okay? That -- that's the second time
25 that she has told -- she told the clerk initially --

1 and now she's told Ms. Shirley that she did not wish
2 to go check. So there you have it.

3 I will also note that Juror No. 258, Mr. Scott
4 Tanner, has been selected as the foreperson, Juror
5 No. 258.

6 THE BAILIFF: Yes, sir.

7 THE COURT: And I will make that another Court's
8 exhibit as well.

9 (Whereupon, Court's Exhibits 1 and 2 were marked
10 for identification.)

11 THE COURT: Now, anything from the attorneys,
12 plaintiff's counsel/defense counsel, before I bring
13 the jury out? Mr. Sautter?

14 MR. TODD ELLIS: Your Honor, we added one --
15 excuse me -- one exhibit to defendant's exhibits. So
16 it would be No. 10. I have ---

17 THE COURT: Okay.

18 MR. TODD ELLIS: --- showed it to Mr. Sautter
19 without objection.

20 THE COURT: Okay. Is that correct, Mr. Sautter?

21 MR. SAUTTER: It -- yes, sir. It is a financial
22 declaration from Mr. Endara ---

23 THE COURT: Okay.

24 MR. SAUTTER: --- from the Family Court.

25 (Whereupon, Defendant's Exhibit 10 was entered

1 into evidence.)

2 MR. SAUTTER: Judge, for purposes of scheduling,
3 I'm just trying to figure out how far we need to go
4 tonight. I'm -- I -- I envision Mr. Ellis's cross-
5 examination will be lengthy. We have two other
6 witnesses who are on their way, I think -- is that
7 correct -- that are on their way.

8 THE COURT: From ---

9 MR. SAUTTER: And we ---

10 THE COURT: --- where?

11 MR. SAUTTER: --- have ---

12 THE COURT: From Charleston? From ---

13 MR. SAUTTER: No. From ---

14 THE COURT: --- here?

15 MR. SAUTTER: --- Columbia.

16 THE COURT: Okay.

17 MR. SAUTTER: From Columbia, Judge.

18 THE COURT: All right.

19 MR. SAUTTER: And there's two other witnesses,
20 brief witnesses, that we could call if we had to. I
21 just -- I don't know what time you want to quit or
22 what -- and then, I envision ---

23 THE COURT: Mr. Sautter, I've been accused of a
24 lot of things, but being lazy isn't one of them.

25 MR. SAUTTER: Yes, sir.

1 THE COURT: I'll work as late as y'all want to go.
2 I mean, I ---

3 MR. SAUTTER: Well, the -- one of our chief ---

4 THE COURT: But I'll work with you. I mean ---

5 MR. SAUTTER: Yes, sir. We -- what I'm -- what
6 I'm trying to get to, Judge, is I -- I don't want to
7 run out of witnesses and -- with the -- with the --
8 with the notice to the Court that a Dan Spohn, who is
9 the CFO of this company, is not available till
10 tomorrow morning.

11 THE COURT: Okay.

12 MR. SAUTTER: And he's expected to be the first
13 one.

14 THE COURT: All right.

15 MR. SAUTTER: And that would probably ---

16 THE COURT: Well, let's ---

17 MR. SAUTTER: --- close the plaintiff's case.

18 THE COURT: Well, let's see where we are when we
19 finish. I mean, I wouldn't expect Mr. Ellis -- Todd
20 Ellis's cross-examination to last till 5. But, you
21 know, we'll see kind of where we are when we finish
22 that. But if you've got those witnesses on the way,
23 I mean, are they -- you anticipate them being
24 lengthy?

25 MR. SAUTTER: No, sir.

1 THE COURT: All right. Well, let's get them here.
2 And maybe after Mr. Todd Ellis finishes cross-
3 examination, you redirect, and any recross, that may
4 be a point we can take a break and see where those
5 witnesses are. If they're not here, then we'll --
6 we'll go from there.

7 MR. SAUTTER: Thank you, Your Honor.

8 THE COURT: Okay. All right. Anything else?

9 MR. TODD ELLIS: Nothing, Your Honor.

10 THE COURT: Please bring me the jury.

11 THE BAILIFF: Yes, sir.

12 (Off the record briefly.)

13 (Whereupon, the jury entered the courtroom at 1:29
14 p.m.)

15 THE BAILIFF: The jury panel is present, Judge.

16 THE COURT: Thank you, ma'am. All right. Mr.
17 Tanner, you have been selected as the foreperson of
18 this jury. That'll be your seat throughout the
19 remainder of this trial. I -- I hate to tell you
20 this, but that's usually how it works out. The
21 person sitting in that seat, when I tell them to
22 select a foreperson when they come back, the person
23 that was seated in that seat when I give you a break
24 is the one that ends up usually being in the very
25 seat that you're in right now.

1 Mr. Endara, if you'd come back and take the stand,
2 please, sir.

3 THE WITNESS: (Complied.)

4 THE COURT: All right. Mr. Todd Ellis, cross-
5 examination.

6 MR. TODD ELLIS: Thank you, Your Honor. May it
7 please the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. TODD ELLIS:

11 Q All right, Mr. Endara. We've used a lot of words
12 to describe those people that work and own companies.
13 So I want us to be real careful in the terms that we
14 use going forward here today. I will try to be
15 careful with the terms to be as exact as possible and
16 ask that you do that as well so that we don't confuse
17 the jury, madam court reporter, and anybody else.
18 Will you agree to do that with me?

19 A Yes, sir.

20 Q All right. In March of 2014, when you were
21 terminated, who are you telling this jury owned AVSX
22 Technologies?

23 A Mary Kay on paper.

24 Q Okay. Mary Kay on paper. That's one. Did you
25 own AVS [sic] Technologies, LLC, when you were fired

1 in March of 2014?

2 A Yes, I did.

3 Q You did?

4 A (No audible response.)

5 Q Not on paper?

6 A Correct.

7 Q Did Bobby Johnson own AVS Technologies, LLC, when
8 you were fired in March of 2014?

9 A He did.

10 Q He did?

11 A (No audible response.)

12 Q Not on paper?

13 A Correct.

14 Q All right. How much of AVS Technology [sic] did
15 Mary Kay own when you were fired in March of 2014?

16 A On paper she was the owner.

17 Q She was the what?

18 A On paper she was the owner.

19 Q So that's 100 percent?

20 A Correct.

21 Q Okay. All right. When you were fired in March of
22 2014, how much did you own?

23 A 50 percent, not on paper.

24 Q 50 percent, not on paper?

25 A (No audible response.)

1 Q And how much did Mr. Johnson own?

2 A 50 percent.

3 Q Not on paper?

4 A Correct.

5 Q Sir, have you ever received a legal opinion, got
6 advice of counsel in any way whatsoever, talked to a
7 business associate in some way, and told you that
8 there was a legal distinction or no legal distinction
9 between "I'm an owner on paper" and "I'm an owner"?

10 MR. SAUTTER: Your -- Your Honor, I would object
11 if he's asking for a legal advice -- as -- as far as
12 what I gave him or -- or our team gave him concerning
13 this case.

14 MR. TODD ELLIS: Well, let ---

15 THE COURT: Hold on a minute.

16 MR. TODD ELLIS: Yes, sir.

17 THE COURT: Can the lawyers approach a minute.

18 (Whereupon, a bench conference was held off the
19 record in the presence of the jury but out of the
20 hearing of the jury.)

21 Q You've already testified you had no operating
22 agreement at AVSX Technologies, LLC, correct?

23 A Nor at Protection24. Correct.

24 Q Nor at Protection24?

25 A Correct.

1 Q Nor at Guardian Eagle Security, LLC, correct?

2 A Correct. Uh-huh.

3 Q And if you were an owner like you assert, you
4 could've had control over whether there was an
5 operating agreement laying out these issues of
6 ownership and how much percentage each had, didn't
7 they?

8 A When you treat each other as brother and you trust
9 each other ---

10 MR. TODD ELLIS: Your Honor ---

11 A --- there's times ---

12 MR. TODD ELLIS: --- I'm going to ---

13 A --- that people ---

14 MR. TODD ELLIS: --- interrupt the witness ---

15 THE COURT: Hold on.

16 MR. TODD ELLIS: I would just ---

17 THE COURT: Answer the question and then you may
18 explain, okay, Mr. Endara?

19 THE WITNESS: Uh-huh. Yes, sir.

20 MR. TODD ELLIS: Thank you.

21 A Can you ---

22 Q I'm going to ask it again and let ---

23 A Uh-huh.

24 Q --- you explain ---

25 A Okay.

1 Q --- after you answer. As a purported owner of
2 theses businesses all during those years, from 2007
3 going forward, if you purport yourself to be an
4 owner, you had control to draft a document, no matter
5 what, that says who owns it and what percentage? You
6 could control that?

7 A Yes, sir.

8 Q And there's no LLC document that has your name on
9 it anywhere related to Guardian Security or AVS
10 Technology, listing you as an owner?

11 A That's correct. Because Bobby and I, both of
12 them, agreed that it was not necessary.

13 Q Okay. Is that right? That's what -- that's what
14 your testimony is right now?

15 A That's the truth.

16 Q Okay. Mr. Endara, I'd like to show you what's
17 been marked as Defendant's Exhibit No. 1; ask you
18 take a look at that. I believe, in part, it's been
19 introduced by counsel already. Do you see that, sir?

20 A Yes, sir.

21 Q That, to my knowledge, is the only tax return ever
22 filed for Guardian Eagle, LLC, correct?

23 A As far as I understand, yes, sir.

24 Q Right. Because you never filed any tax return
25 related to Guardian Eagle, LLC?

1 A We filed this tax.

2 Q You did not personally file any tax returns for
3 Guardian Eagle, LLC?

4 A No. But my company did.

5 Q Your company did?

6 A Right.

7 Q Okay. This is the only one that's been filed
8 since the inception of the company; is that correct?

9 A No. Guardian Eagle was filed in 2008 and 2009 as
10 well.

11 Q Okay. Since 2010?

12 A Correct.

13 Q There's no 2011 tax return, correct?

14 A There's preliminaries that you all have submitted.

15 Q Right. No filed 2011, correct?

16 A Correct.

17 Q No filed 2012, correct?

18 A Correct.

19 Q No filed 2013?

20 A Correct.

21 Q No filed 2014?

22 A Correct.

23 Q Correct?

24 A Yes.

25 Q All the time in which you say you were an owner of

1 that company?

2 A Correct.

3 Q If you would, look down at the bottom-left. It
4 says "paid preparer only." Who is the person who
5 prepared this document?

6 A Daniel Spohn.

7 Q Mr. Spohn was whom to AVSX Technologies?

8 A He eventually became our CFO, but he was also our
9 accountant at one time.

10 Q He was also your accountant? But he ---

11 A Our ---

12 Q --- certainly ---

13 A --- accountant. Uh-huh.

14 Q He certainly had everyone's authority, though, to
15 prepare the documents; isn't that right?

16 A That's correct.

17 Q And if you would, if you would turn to the second-
18 to-last -- excuse me -- the fourth-to-last page.

19 It's called a K-1.

20 A (Complied.)

21 Q Do you see that section?

22 A Yes, sir.

23 Q And who does it list as being the shareholder
24 identifying information for Guardian d/b/a AVS
25 Technology in 2010?

1 A Mary Kay Johnson, by our choice.

2 Q By our choice?

3 A (No audible response.)

4 Q Well, I would hope so, if you're an owner.

5 A Yes, sir.

6 Q All right. But nowhere on there says that it's
7 Luis Endara as an owner of that company; is that
8 right?

9 A Nor Bobby Johnson's either.

10 Q Right. Mr. Johnson doesn't claim to be an owner.
11 You've sued my client, claiming that you are, Mr.
12 Endara.

13 A Yes, I am.

14 Q Nowhere on here does it have your name, does it?

15 A Correct.

16 Q Did you direct, as a, quote, owner of this
17 company, Daniel Spohn to file a false tax return?

18 A Bobby and I both agreed that, for the reasons why
19 we had to submit our application to ---

20 MR. TODD ELLIS: Your Honor ---

21 A --- Vector ---

22 MR. TODD ELLIS: --- if you'd ask him to ---

23 THE COURT: I'm going to let ---

24 MR. TODD ELLIS: --- answer ---

25 THE COURT: --- him explain his answer. You

1 answer the question first, Mr. Endara, like I said
2 before, and then you have a right to explain it if
3 you so need to. Okay?

4 A No. We did not. We instructed him that the only
5 way we could get approved by Vector was to have an
6 individual that had an approved credit. So for us,
7 on paper, just like earlier Julio Reis had to be the
8 owner, Mary Kay became the owner. So we had to
9 follow this structure.

10 But outside of that, Bobby and I were the true
11 owners, not on paper.

12 Q Mr. Endara, you -- if -- you have the right to
13 explain any of your answers, okay? But we'll get
14 through this a lot faster if you just answer the
15 question and then explained, at least first.

16 That's not what I asked you. I'm clear on your
17 theory. I know your theory. I heard it.

18 I asked you: Did you direct your accountant to
19 file a false tax return, wrongfully stating who owned
20 the company?

21 A No.

22 Q You did not.

23 A Right.

24 Q Because that is true and correct, the 2010 tax
25 return?

1 A On paper.

2 Q Okay. How many of these businesses you say you've
3 owned?

4 A MX Security, Guardian Eagle, AVSX, Protection24,
5 and Palmetto.

6 Q How many K-1s have you gotten in your life?

7 A None.

8 Q You wouldn't lie to the IRS, would you?

9 A No.

10 Q All right. I'm going to ask you if you'll look at
11 Defendant's Exhibit No. 2, and I'm going to ask you
12 about 3 right afterwards, so if you'd take those.

13 A Okay.

14 Q Mr. Endara, you know what a -- a W-2 is for a
15 company and an employee, do you not?

16 A Yes, sir.

17 Q What is a W-2?

18 A W-2 is what is reported that an employee has
19 earned through the year.

20 Q All right. And that's the -- reports their wages;
21 is that right?

22 A Yes, sir.

23 Q As an employee of any company, almost anyone here
24 in this room today, has likely received a W-2
25 sometime in their life, correct?

1 A Yes, sir.

2 Q It certainly does not assert that you own the
3 company in any way?

4 A Correct.

5 Q Right. And I'm showing you there Exhibits 2 and
6 3. And those are W-2s from AVSX Technologies in 2012
7 and 2013, correct?

8 A Correct.

9 Q And those W-2s are for you, wages you've earned,
10 correct?

11 A All of us earned W-2.

12 Q Sir, could -- you can explain.

13 A Yes, sir.

14 Q It is your W-2?

15 A Yes. Just like Bobby and I and Mary Kay as well
16 earn W-2s.

17 Q Great. Your W-2 for 2012 shows you receiving
18 \$169,000 in wages, does it not?

19 A Yes, sir.

20 Q Your W-2 in 2013 shows you earning wages of
21 \$172,249.99, correct?

22 A Yes, sir.

23 Q You never received a K-1, correct?

24 A Correct.

25 Q You only received a W-2?

1 A Correct.

2 Q You wouldn't lie to the government with your W-2,
3 would you, Mr. Endara?

4 A No, sir.

5 Q You wouldn't tell the IRS that you were just an
6 employee, when, in fact, you were an owner?

7 A Correct. That's why I have not been able to do my
8 taxes.

9 Q Oh, that's it?

10 A Yes.

11 Q Yeah. Did you file a written protest with the IRS
12 when -- with Mr. Spohn or Mary Kay Johnson when he
13 filed the tax return, giving the K-1 to her only?

14 A No. Because on paper we had to show her that.

15 Q Okay.

16 A Just like with Julio Reis before that.

17 Q Mr. Endara, I'm going to show you now what's been
18 marked as Defendant's Exhibit No. 4; ask you to take
19 a look at that. In 2013 do you recall that while you
20 were at AVSX, a company called Monitronics sued AVSX?

21 A Yes. And sued me too.

22 Q Sued you individually?

23 A And Bobby Johnson as well ---

24 Q Okay.

25 A --- as owners.

1 Q Do you recall giving a deposition in that case on
2 October 25th, 2013, in *Monitronics International v.*
3 *AVSX Technologies, LLC, and James Wilson* matter?

4 A Yes, sir.

5 Q All right. Like your testimony here today this
6 morning, you recall in that deposition, like madam
7 court reporter did, that you stood and said, "I tell
8 the truth; I swear to tell the whole truth and
9 nothing but the truth, so help me God"?

10 A Yes, sir.

11 Q You recall saying that?

12 A Yes, sir.

13 Q So you gave sworn testimony in that case in a
14 deposition at that time; is that correct?

15 A Yes, sir.

16 Q You swore to tell the truth, the whole truth?

17 A Yes, sir.

18 Q You knew that you could be subject to perjury
19 should you not tell the truth in that case, correct?

20 A Yes, sir.

21 Q They explained to you, the lawyer on the other
22 side did, that said, "This is just like a courtroom;
23 just like you're speaking to this jury or this judge,
24 this is sworn testimony." Do you recall that?

25 A Yes, sir.

1 THE COURT: Mr. Ellis, before you ---

2 MR. TODD ELLIS: Yes, sir.

3 THE COURT: --- go any further, ladies and
4 gentlemen, you've heard reference to a -- what's
5 called a deposition. A deposition is sworn -- is
6 testimony taken under oath before -- before a trial
7 and it's preserved in writing or by mechanical means,
8 such as video or audio tape-recording. Deposition
9 testimony may be used by any party for the purpose of
10 contradicting, or impeaching, the testimony of
11 another. You are to determine the weight to be given
12 to such deposition testimony and decide the force,
13 effect, and truth of such testimony.

14 Mr. Todd Ellis, you may continue.

15 MR. TODD ELLIS: Thank you, Your Honor.

16 Q If you would -- well, first of all, let me just
17 ask you this way: In the deposition in October of
18 2013, did you tell counsel on the other side that you
19 were not an owner of AVSX?

20 A Can I read what it says?

21 Q Answer the question. And then you ---

22 THE COURT: Hold on ---

23 Q --- can read ---

24 THE COURT: --- a minute.

25 Q --- exactly what you want.

1 THE COURT: Let him look at what's you've handed
2 him, Mr. Todd Ellis ---

3 MR. TODD ELLIS: It's ---

4 THE COURT: --- and ---

5 MR. TODD ELLIS: Yes, sir.

6 THE COURT: --- and -- or if you have a specific
7 place that you'd like for him to look to when such
8 question was asked, please direct him to that.

9 MR. TODD ELLIS: Your Honor, I was allowing him to
10 state it before I crossed him with his deposition,
11 not knowing how -- what he would say. But I -- I
12 will read it.

13 Q Would you like to read it, Mr. Endara?

14 A Sure. Which ---

15 Q How about I read what the counselor asked and you
16 respond to what you said, okay?

17 A Okay, sir.

18 Q Is that fair enough?

19 A (No audible response.)

20 Q I'm starting at line 23 on the bottom of page 3.
21 It's small print. Can you see it up there?

22 A Yes, sir.

23 Q (As read): Are you currently employed? That's
24 you -- for you to read. That "A" means answer. The
25 next line is you, Mr. Endara.

1 A (As read): In which way, question mark. Can you
2 rephrase the question, question mark.

3 Q Yes. The question then is (As read): You're the
4 owner of?

5 A My answer was (As read): I am the vice-president
6 of -- of AVSX. The actual legal owner on paper is
7 Mary Kay Johnson.

8 Q He goes on to say: Your title is vice-president,
9 correct?

10 A (As read): Per se. We don't -- Bobby and I don't
11 have titles, per se. We assume whatever else is
12 required. If I need to be whatever I need to be at
13 that moment to represent our staff, that's what I
14 will be. But typically, I handle the operations of
15 our company.

16 Q Mr. Endara, did you tell counsel under oath that
17 you were not an owner of the company?

18 A Not on paper. Correct.

19 Q All right.

20 MR. SAUTTER: Your Honor, we would request that
21 the deposition be continued to be read and responded
22 to.

23 MR. TODD ELLIS: He -- he ---

24 THE COURT: Certainly, the rules require such.

25 MR. TODD ELLIS: How much of it?

1 MR. SAUTTER: Just right there to ---

2 THE COURT: Do not have to wait, under the rules,
3 for redirect to clear that up.

4 MR. TODD ELLIS: I -- I'll read anything you want,
5 Your Honor. It only has -- that is the only page I
6 have in this ---

7 MR. SAUTTER: Just ---

8 MR. TODD ELLIS: --- exhibit.

9 MR. SAUTTER: --- the -- just remainder of page 4.

10 THE COURT: Okay.

11 MR. TODD ELLIS: All right. So do I -- do I need
12 to read the questions, then?

13 MR. SAUTTER: I -- I'll do it if ---

14 MR. TODD ELLIS: No.

15 MR. SAUTTER: --- I ---

16 MR. TODD ELLIS: No. I'll ---

17 THE COURT: Go ahead, Mr. Todd Ellis. Read the
18 question ---

19 MR. TODD ELLIS: Thank you ---

20 THE COURT: --- and answer.

21 MR. TODD ELLIS: --- Your Honor.

22 Q (As read): All right. What's Bobby's title?

23 A What section is that, please?

24 Q Well -- Mr. Endara, I'm sorry. We're ---

25 MR. SAUTTER: Page ---

1 Q --- we're confusing you. And we -- I don't mean
2 to do that. We're going to read just where you
3 finished up. I asked the next question down ---

4 A Okay. I see it. Number ---

5 Q Yeah.

6 A --- 9?

7 Q There. Yes, sir.

8 A (As read): Same -- same as me. Same thing as me.
9 We could be the CEO today or the -- or vice -- or
10 president, whichever. We really don't have titles,
11 per se, in reality. We're -- we share equal -- equal
12 responsibilities.

13 Q (As read): How do you divide responsibilities for
14 operating AVX between you and Bobby?

15 A (As read): Typically, I handle the operations of
16 the company. And he handles a lot -- the finances
17 and the sales and marketing. But if I'm -- if I'm
18 not present at the time, he can handle the operations
19 and vice-versa. We kind of share roles to some
20 extent.

21 Q It doesn't finish the last -- I'll read it. You
22 just finish -- read what you can. (As read): Give
23 me an idea of what's involved in your job and when
24 you're in charge of operations.

25 A (As read): The making sure that the installations

1 and the installers are doing their jobs; making sure
2 that when the salespeople sell -- sell jobs, that the
3 office does their role of ensuring that the ---

4 Q It -- it stops at that point; is ---

5 A Right.

6 Q --- that right?

7 A Yes, sir.

8 Q Mr. Endara, again, I ask you: Did you tell
9 counsel in October of 2013 that you did not own the
10 company?

11 A Yes, I did, on paper.

12 Q Actually, you say "the actual, legal owner" ---

13 A It says (As read): The actual, legal owner on
14 paper is Mary Kay Johnson.

15 Q Okay. Did you intend to convey to counsel, who
16 was suing you and the company, that the person
17 responsible for AVSX legally is Mary Kay Johnson?

18 A Sir, when that question was asked to me, I was
19 answering it as truthful as possible. And if he
20 would've asked me, "What do you mean by 'on paper'?"
21 I would've continued by explaining to him that Bobby
22 and I are the true equal owners out of paper. That's
23 why, when we have been sued by other companies, the
24 only ones that have ever been sued is Bobby Johnson
25 and Luis Endara, as owners, and AVSX. To my

1 knowledge, Mary Kay has never been sued.

2 Q Except in this case.

3 A Correct. Which I'm suing her.

4 Q Except in this case.

5 My point to you is: In two days of trial, I've
6 heard you say a lot of things. I've never heard you
7 say: Mary Kay Johnson's the legal owner, like you
8 did in this deposition.

9 A You've never asked me.

10 Q I just am getting up here to ask you.

11 A And I read what I said.

12 Q You describe ---

13 THE COURT: Hold on ---

14 Q --- your ---

15 THE COURT: Ask the question, Mr. Todd Ellis.

16 Q You've described her as ---

17 THE COURT: Hold on ---

18 Q --- the owner ---

19 THE COURT: --- a minute, please, sir. I mean,
20 both of us can't talk at the ---

21 MR. TODD ELLIS: Yes, sir.

22 THE COURT: --- same time.

23 MR. TODD ELLIS: Thought ---

24 THE COURT: Ask the ---

25 MR. TODD ELLIS: --- you'd finished.

1 THE COURT: --- questions; answer the questions.

2 Please continue, Mr. Todd Ellis.

3 THE WITNESS: Yes, sir.

4 Q All I've heard from you is that you described her
5 as the owner on paper ---

6 A Correct, sir.

7 Q --- up till today. But ---

8 A Correct.

9 Q --- in this deposition you said she's the legal
10 owner; isn't that correct?

11 A On papers. Yes, sir.

12 Q What did -- what did you intend to do and to
13 convey to that lawyer by using the term "legal
14 owner"?

15 A I was expressing the truth.

16 Q Okay. If you would, look at Exhibit No. 5.
17 Defendant's Exhibit No. 5, I'm going to show you an
18 e-mail -- this is it -- sent to Bobby Johnson and
19 Brent Helms, a third party. You admit in your e-mail
20 that there is no operating agreement for AVSX and the
21 articles of incorporation show Plaintiff Mary Kay
22 Johnson as the sole owner, do you not?

23 A Yes, I do.

24 Q Read it to the jury what your response is, please?

25 A This was an e-mail sent October 24th. -- October

1 14th, 2013, to our attorney that was representing us
2 in a lawsuit where Bobby Johnson, myself, and AVSX
3 were sued as owners. And the question was asked by
4 Mr. Brent: How come Mary Kay is not showing in the
5 lawsuit? And ---

6 Q Mr. Endara, I only asked you to read the document.
7 You can explain it ---

8 A Okay.

9 Q --- after you read it, whatever you'd like.

10 A The e-mail states -- it's coming from me to Mr.
11 Brent, cc Bobby (As read): We don't have an
12 operating agreement. We don't have an article
13 incorporation -- we do have an article incorporation
14 where it shows Mary Kay the sole owner. Please let
15 me know if you need anything else further -- to
16 elaborate or whatever he wanted me to do to further
17 explain it.

18 Q Remember at the beginning when I said, "Let's be
19 careful with our words," and you agreed that you
20 would?

21 A Yes, sir.

22 Q All right. We've been on -- at this for ten
23 minutes. And you've used the term some way or
24 another regarding ownership three different ones.
25 You've called her a legal owner, correct? Sir,

1 answer the jury.

2 A Yes, sir.

3 Q You've called her an owner on paper?

4 A Yes, sir.

5 Q And now you call her the sole owner?

6 A Yes, sir.

7 Q Is there any distinction, Mr. Endara?

8 A To those three? No.

9 Q Okay. By the way, in any writing, anywhere, have
10 you ever qualified your statement when you said, "I'm
11 not the owner; I'm not the sole owner; I'm not the
12 legal owner; Mary Kay is on paper; I'm the real
13 owner"? Have you ever said that anywhere in any
14 writing we've had in two days' trial?

15 A No.

16 Q I'm going to ask you to look at Defendant's
17 Exhibit No. 6. Defendant's Exhibit No. 6 are what
18 they call requests for admissions that I can send to
19 you by and through your attorneys. They then respond

20 ---

21 MR. TODD ELLIS: Actually, Your Honor, if -- I
22 don't know if you want to charge the jury on that.
23 Can I explain that, or did you like to charge the
24 jury on requests to admit?

25 THE COURT: Go ahead with your question.

1 MR. TODD ELLIS: Thank you.

2 Q Requests for admissions, that's means you have to
3 respond to these, either denying or admitting them,
4 as part of this litigation. If you would, flip to
5 these. And by the way, we try to write these as
6 clear as possible. If you have a problem with any of
7 these, just let me know.

8 Number 1 that I asked you, I said (As read):
9 Admit or deny that plaintiff -- that's you, Luis
10 Endara -- is not now and has never been a member of
11 AVS Technologies, LLC. What did you say?

12 A Denied.

13 Q So you were saying that you were a member of AVSX
14 Technologies, correct?

15 A Correct.

16 Q In that request to admit?

17 A Correct.

18 Q Did you make any qualification and say, "Well, not
19 on paper, but really, I own the company"?

20 A It wasn't ---

21 Q Did ---

22 A --- asked to elaborate.

23 Q Right. But you didn't -- you certainly didn't
24 elaborate, did you?

25 A In none of my answers.

1 Q Okay. The next one down (As read): Admit or deny
2 that plaintiff is not now and has never been a member
3 of Guardian Eagle Security, LLC. What did you say
4 there?

5 A Denied.

6 Q So you admit that -- you state that you were a
7 member of Guardian ---

8 A Correct.

9 Q --- Eagle?

10 Is that correct?

11 A Correct.

12 Q But you've shown no documents to show -- do you
13 know what a member is, Mr. Endara?

14 A Yes, sir.

15 Q What is it?

16 A Member is somebody that is -- owns -- and owns --
17 has responsibilities of the company.

18 Q Just has responsibilities?

19 A No. And owns it as well. But the State of South
20 Carolina doesn't require you to have on paper.

21 Q Who's -- the State of South Carolina doesn't
22 require you to have an operating agreement, Mr. ---

23 A Correct.

24 Q --- Endara ---

25 A That's what ---

1 Q --- isn't that ---

2 A --- I meant.

3 Q --- right?

4 A Yes, sir.

5 Q But you have to have ownership. You have to have
6 ownership -- you have to show you're a member by
7 having legal responsibility for that company; isn't
8 that correct?

9 A Correct.

10 Q Right. Like being the person who's on a tax
11 return when they filed it, correct?

12 A Correct. And my partner and I agree that the only
13 way we could operate Vector Security, because of
14 their criterias, was to put Julio Reis on paper and,
15 then later, to put Mary Kay on paper. So the only
16 way both of our families could have this business was
17 to do that. So we both agreed to do that.

18 Q Okay. Bobby Johnson's not come to this courtroom
19 and asked for lots of money because he claims he's an
20 owner. You have.

21 A Correct.

22 Q Admit or deny -- this is No. 4, if you look down
23 -- admit or deny that plaintiff is not now or ever
24 been a member of MX Security, LLC. What did you
25 state there?

1 A At that moment not a member -- not an owner.

2 THE COURT: Answer the question, Mr. Endara.

3 A No, sir.

4 THE COURT: And then you can explain.

5 A No. Not at that moment. No, sir.

6 Q Right. But you wrote what?

7 A Not an owner.

8 Q Not an owner. Okay.

9 A At that moment.

10 Q At that moment, when you signed these -- let's
11 look at the date of that. When your counselor signed
12 this was September 5th of 20 -- that should be '15;
13 that can't be '14.

14 A '14.

15 Q Yeah. September 5th, 2014.

16 A Correct.

17 Q So just a couple months after you filed, right?

18 A After they got into court. Right.

19 Q Right. Do you remember what you testified when
20 Mr. Sautter asked you earlier whether you were an
21 owner or not?

22 A Yes. We were acting as if today he's asking me if
23 I'm an owner. I'm an owner. Yes. He didn't
24 elaborate as to what date did I become an owner.

25 Q Okay. So what changed?

1 A What changed? The fact that Ms. Moise and I
2 decided that, you know what, due to everything that's
3 going on, we need to go ahead and clarify that I am
4 an owner, outside of -- outside of not being on
5 paper.

6 Q And how did you do that, other than saying it in
7 open court, to make it real?

8 A To make it real, we both -- just like Bobby and I
9 -- agreed to be equal partners. I said, "Hey, I have
10 to show that I'm an owner."

11 Q Let me show you Exhibit No. 7. You can put that
12 to the side. I'm going to ask you about it. Isn't
13 it true, to be a license-holder in the alarm and
14 sprinkler business in South Carolina, you have to
15 file with a -- for a license with the LLR; is that
16 correct?

17 A Yes, sir.

18 Q All right. And if you would, if you would look at
19 this license request and listing on the LLR Web site;
20 isn't that right?

21 A Yes, sir.

22 Q All right. It says: "MX Security, LLC, License
23 No. 1362, burglar-alarm company; issued 5/7/2014."
24 President and owner, who does it list there?

25 A Elizabeth Moise.

1 Q Elizabeth Moise; is that right? This young lady
2 in the front row?

3 A Yes.

4 Q It doesn't have that you're an owner of that
5 company?

6 A That's correct. But it doesn't never will. It
7 only lists one person. It's just asking you for
8 who's the president, not asking you who else owns the
9 company.

10 Q Okay. So you -- you felt it wasn't necessary to
11 tell the LLR that you were an owner of the company?

12 A No. The LLR just puts that one person. They
13 don't list -- you have ADT that is owned by 20
14 people, the LLR is going to list all 20 people. It
15 just -- just doesn't happen that way.

16 Q Have you ever served on the LLR board?

17 A No. But I'm quite familiar with their process.

18 Q Right. And don't you have to swear, when you file
19 your licensing, that the information you put on the
20 sheet is true and correct and totally ---

21 A That's correct.

22 Q All right. So that we're all clear, because I --
23 I'm not sure I'm going to get this three weeks from
24 now, much less now: You were not an owner of MX
25 Security, LLC, at one point?

1 A At one point, correct.

2 Q Elizabeth Moise was, correct?

3 A Correct.

4 Q And Ms. Moise has never worked in the alarm
5 business before as well; isn't that correct?

6 A Correct.

7 Q Had no experience whatsoever?

8 A Correct.

9 Q Never worked on a daily basis on the job?

10 A Correct. Just like Mary Kay wasn't. And that's
11 why: With Monitronics the same criterias as Vector
12 requires you have to have good credit. And I did not
13 have it for the circumstances that happened to us
14 back in 2007 when that company went belly-up that we
15 almost lost our business: My credit plunged.

16 And that is why Mary Kay and the same thing,
17 Elizabeth at that moment, became the owner. But
18 later on we realized, with all the fiasco that was
19 going on, it is important to identify me as an owner.

20 Q And what have you done to identify yourself as an
21 owner?

22 A We have not filed our 2015 taxes yet.

23 Q And that would be the only thing that showed the
24 ownership?

25 A Well, outside of that, yes.

1 Q I asked you, in these requests to admit, early in
2 the litigation (As read): Admit or deny that
3 plaintiffs have given sworn testimony that he is not
4 now and has not been a member of AVS Technology, LLC.

5 A Which -- are we back on ---

6 Q Yes.

7 A --- Exhibit 7?

8 Q I -- I'm very sorry. Look back -- yes.

9 A In Exhibit ---

10 Q Yes. In Exhibit Number ---

11 A --- 6?

12 Q --- 6.

13 A What number?

14 Q And I am on No. 6. If you'd like to read it or I
15 can read it out loud.

16 A No. Go ahead.

17 Q (As read): Admit or deny that plaintiff has given
18 sworn testimony that he is not now and has never been
19 a member of AVSX Technologies, LLC.

20 A Denied.

21 Q And you denied that?

22 A Correct.

23 Q Despite the deposition that I just showed you,
24 you've denied to the Court; you've denied to the
25 parties that you stated at one point you've never

1 been a member of AVSX?

2 A: Correct. And the reason why, because when the
3 question was asked, I specifically told the truth:
4 not on paper. If the -- if the attorney would've
5 continued asking what do you mean, I would be more
6 than happy to elaborate, just like I'm elaborating
7 with you.

8 Q You want to read it again? That's not all you
9 said. Would you like to read it?

10 A Sure.

11 Q It's page 3 on Exhibit No. 4.

12 A What section?

13 Q It is the bottom of page 3. You can read the
14 question and the answer.

15 A Which one?

16 Q It's line 23.

17 A Line 23, Give me a -- give me an idea what
18 involves -- well, you want to ask the question? I'll
19 answer? Is that ---

20 Q I'll -- let's do this. Yeah. Let's -- let's do
21 it the way we did it before. (As read): Are you a
22 -- currently employed?

23 A You're -- you're back at ---

24 Q On page ---

25 A --- what line?

1 Q --- 3.

2 A Yeah. But what line? Because you told ---

3 Q All right ---

4 A --- me ---

5 Q --- sir.

6 A --- 23.

7 Q I -- I'm reading that as 23. I don't want ---

8 A Oh. You're on the top right. I'm sorry.

9 Q Yeah. That's ---

10 A I'm sorry.

11 Q --- page ---

12 A I'm sorry.

13 Q --- 3.

14 A (As read): Are you currently employed? I -- go

15 ahead. I'm sorry.

16 Q No. That -- that was the question. You read your

17 response, please.

18 A (As read): In which way? Can you rephrase the

19 question?

20 Q (As read): You're the owner? And in fact, you

21 cut him off.

22 A I'm ---

23 Q Go ahead.

24 A Forgive me, but I don't know if that means cut

25 off.

1 Q What did you say?

2 A (As read): I am vice-president of AVSX. The
3 actual, legal owner on paper is Mary Kay Johnson.

4 Q Okay.

5 A He didn't elaborate and continue asking being more
6 specific, like in your case, you are.

7 Q And ---

8 A If he ---

9 Q --- you certainly ---

10 A --- would've ---

11 Q --- been ---

12 A --- asked me -- if you ---

13 Q I'm sorry.

14 A --- if you ---

15 Q Thought you ---

16 A --- would've asked ---

17 Q --- were done.

18 A --- me, "Can you please elaborate; what do you
19 mean by 'on paper,'" just like you're asking me, I
20 would've simply explained to him that business
21 relationship that my partner and I have, which is
22 we're the -- we're the 50/50 owners, not on paper,
23 and this is why we're not on paper. I would've been
24 more thorough with that, had -- had he asked.

25 Q Mr. Endara, isn't it true -- and isn't it

1 interesting and aren't you embarrassed in front of
2 the jury -- the fact that you're willing to elaborate
3 now as you're asking them to give you money and claim
4 you're an owner ---

5 MR. SAUTTER: Objection ---

6 Q --- but when ---

7 MR. SAUTTER: --- Your Honor.

8 Q --- you were being sued, you did not elaborate
9 regarding legal ownership of this company?

10 MR. SAUTTER: Objection, Your Honor. I'm not sure
11 that's even a question. But I believe it's
12 harassment. He's badgering the witness.

13 THE COURT: Can the lawyers approach at sidebar
14 for a minute, please.

15 (Whereupon, a bench conference was held off the
16 record in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: Objection overruled. Restate your
19 question, Mr. Ellis, and ---

20 Q I -- Mr. Endara, do you remember what I asked you?

21 A No. Can you repeat the question?

22 Q Sure. Without an argumentative manner, aren't you
23 embarrassed that you did not claim Mary Kay Johnson
24 as an owner of the company when you're here, asking
25 them to give you money, but back when the company's

1 being sued and she was exposed for liability in the
2 case, you threw it right at her? You said she's the
3 legal owner?

4 A I was being sued as well, Mr. Ellis. So I ---

5 Q I know ---

6 A --- was liable as well. So it -- it -- at the
7 end, the question was asked and I asked -- and I
8 answered it truthfully. If they would've continued
9 to ask additional questions and asked for
10 elaboration, I would've been -- continued to tell the
11 truth. In this lawsuit Mr. Johnson and myself were
12 sued as owners, as well as AVSX. Mary Kay was never,
13 ever sued.

14 So -- so liability-wise, I'm trying to understand
15 where am I trying to hide a liability outside of the
16 fact that Vector Security requires us to have good
17 credit. We did not have it. We had Julio to do it;
18 then we change it to Mary Kay.

19 So I'm telling the truth. I don't know which way
20 you want me to -- to dance it to get to where you
21 want the answer that you're trying to get out of me.

22 I'm ---

23 Q I'm not. ---

24 A --- just telling ---

25 Q --- trying to ---

1 A --- the truth.

2 Q --- get anything out of it. I think you've been
3 incredibly frank.

4 A Right. And -- and telling ---

5 Q I don't ---

6 THE COURT: No.

7 A --- the truth.

8 THE COURT: Ask questions, Mr. Todd Ellis. And
9 answer the questions, Mr. Endara.

10 THE WITNESS: Yes, sir.

11 Q Are you done with your talk?

12 A Yes, sir.

13 Q I want to show you what's been marked as Exhibit
14 No. 8.

15 A Are we through with exhibit ---

16 Q I -- I don't know. I might. You can leave it
17 right

18 ---

19 A Okay.

20 Q --- there. Yeah.

21 Do you recognize that document?

22 A Yes, sir.

23 Q That is the Vector Security, Inc., authorized-
24 dealer agreement. That's kind of the agreement that
25 you've been talking about. That's the agreement

1 between AVSX and your major supplier, the business
2 partner of Vector; isn't that -- of -- of AVSX; isn't
3 that correct?

4 A Yes, sir.

5 Q If you were an owner -- if you were an owner of
6 AVSX Technology, wouldn't you be bound by this
7 document that is between Vector and AVSX?

8 A Yes, sir.

9 MR. SAUTTER: Your Honor, I'm going to object to
10 whether -- the legal effect of being bound by a
11 document or not. I don't think that's something that
12 this ---

13 THE COURT: Objection ---

14 MR. SAUTTER: --- witness ---

15 THE COURT: --- sustained.

16 Q In your general business sense, if one party signs
17 an agreement with another one, are you supposed to
18 have rights and duties within that agreement? You
19 have to follow that?

20 A AS long as the other one doesn't violate it. Yes,
21 sir.

22 Q There you go. And as a purported owner of AVSX,
23 you should follow this; is that correct?

24 A Yes, sir. And as we indicated earlier, Mrs. --
25 Mrs. Johnson indicated Julio -- I mean, John Madden,

1 the vice-president of Vector, the one that handles
2 the dealer program, was the one that came to us,
3 Bobby and Luis; suggested that the only way we could
4 open a Vector dealership was to have somebody else in
5 the name. That's why Julio Reis was the one that
6 initially sign a contract similar to this.

7 MR. TODD ELLIS: Your Honor ---

8 A Later ---

9 MR. TODD ELLIS: --- I'm going to the witness be
10 responsive to my questions. He ---

11 THE COURT: I'm letting him -- I'm going to let
12 him explain his answer.

13 MR. TODD ELLIS: Okay.

14 THE COURT: Finish answering ---

15 A And ---

16 THE COURT: --- Mr. Endara.

17 A --- that's why we had Mary Kay sign this as well.
18 That's why Bobby, myself, are not showing in this
19 documents: because otherwise, we couldn't own a
20 business. Otherwise, we couldn't provide for our
21 families. We wouldn't -- we wouldn't be able to open
22 this business.

23 Q Mr. Endara, I didn't ask you anything about who
24 signed it. This jury knows who signed this.

25 A Well, you're ---

1 Q Mary -- Mary Kay signed everything. What I want
2 to do is direct you to page 9 of the agreement.

3 A Well, you asked me ---

4 Q No, I didn't.

5 A You asked me if I signed -- if a signature ---

6 Q I did ---

7 A --- was made.

8 Q --- not.

9 A Oh.

10 Q You can tell your story three times. And matter
11 of fact, in closing arguments, I'll tell that same
12 story again for you.

13 A Okay, sir.

14 THE COURT: Mr. -- can you -- the lawyers approach
15 a minute, please.

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury but out of the
18 hearing of the jury.)

19 Q Mr. Endara, look at Paragraph 8.3 on page 9 of
20 this agreement between Vector and AVSX, the company
21 that you say that you used to own, correct?

22 A Yes, sir.

23 Q All right. Postagreement restrictions -- you can
24 read it if you like. But to your knowledge, what are
25 you not allowed to do if you're an owner of a

1 company, a dealer for Vector, after your
2 postagreement -- after it ends?

3 A Do you want me to go ahead and read it? That way
4 we can ---

5 Q Totally up to you. I was allowing ---

6 A Okay.

7 Q --- you to do it.

8 A Said (As read): Postagreement restriction:
9 Dealer agrees that for a period of two years
10 following the expiration of termination of this
11 agreement, dealer shall not directly or indirectly do
12 any of the following: induce, solicit, or accept
13 unsolicit any contract, arrangement, or
14 understanding, with any Vector subscriber regarding
15 the services, the equipment, or any other equipment
16 of any kind or nature whatsoever used in connection
17 with the equipment of our services, induce,
18 influence, or suggest that any of Vector's
19 subscribers purchase or use the services, purchases
20 of the equipment, or purchase of use of any other
21 equipment used in connection with the services from
22 or contract with switch to any competitor, solicit,
23 entice, hire, contract with, employ, or attempt to
24 employ any Vector affiliate who or with is a Vector
25 affiliate at any time during the term, enter into any

1 agreement, understanding, or arrangement, or accept
2 any employment, agency, or other relationship with
3 any competitor within the area, offer of sales
4 service, any service, or product that are similar to
5 the services for or on behalf of any competitor ---

6 Q Mr. Endara -- I'm sorry. You can read the rest of
7 it. I was not going to ask you about that. If you'd
8 like to refer back to that again, you can do it.

9 A I ---

10 Q I -- I would ---

11 A --- I was ---

12 Q --- simply ---

13 A --- just ---

14 Q --- ask you that -- you can read the rest of it if
15 you want. Do you know what -- did -- did -- what
16 does that paragraph -- that paragraph means to you
17 this, does it not: that when you leave the agreement
18 with Vector, that you cannot solicit Vector accounts
19 that were in place and you can't solicit affiliates
20 and employees that work with Vector? Isn't that
21 right?

22 MR. SAUTTER: Your Honor, I'm going -- I'm going
23 to object on the grounds of relevancy. This has
24 nothing -- any -- any dispute ---

25 THE COURT: Objection overruled. I'll allow you

1 to answer the question.

2 Q Mr. Endara?

3 A Yes, sir. Go ahead.

4 Q Did you understand that that's what that
5 restriction meant: that when you left two years
6 after the agreement, if you're an owner of that
7 company that signed an agreement with Vector, that
8 you could not solicit accounts that Vector holds, all
9 those numbers you threw up on the board to the jury
10 and claimed you're entitled to, and solicit
11 affiliates that work for Vector? Isn't that your
12 understanding?

13 A Correct. And that is -- but why am I supposed to
14 do? When Bobby cut me off, I reach out to Vector and
15 asked for help. And what -- John Madden's only
16 response was: "Thank you for your services."

17 This is the only thing that I know how to do.
18 What am I supposed to do? Go ahead and sit in a
19 corner and cry? Go ahead and wait for the two years
20 of litigation? I have a family I have to support.
21 What am I supposed to do, go get a job at McDonald's?

22 I ---

23 Q Are you ---

24 A --- I --- I -- I have ---

25 Q Sir ---

1 A --- to be able to do something. So the only thing
2 I could do, since Vector was not ---

3 Q All right.

4 A --- willing to come to help, when Pam Petrow, the
5 CEO of Vector, knows I'm the owner, when John Madden
6 knows I was also the owner, what am I supposed to do?

7 So I have to do what any normal person would do:
8 go work. And the only way I could work is go sell
9 accounts.

10 Q Mr. ---

11 A And ---

12 Q --- Mr. Endara ---

13 A --- Vector ---

14 Q --- that's not ---

15 A --- was ---

16 Q --- what -- that's -- that's a -- doesn't prohibit
17 you from doing this. How many times have you stopped
18 and started an alarm business in your career?

19 A Twice.

20 Q Twice?

21 A Right.

22 Q Palmetto Fire Alarms, right?

23 A Palmetto Alarms.

24 Q Palmetto Alarms. You were an employee or were you

25 -- you weren't ---

- 1 A Yeah.
- 2 Q --- an owner of that, were you?
- 3 A Right. Exactly.
- 4 Q Yeah. Your wife was, right?
- 5 A Yeah. Exactly.
- 6 Q You had her on the paper at that time?
- 7 A Correct, sir.
- 8 Q All right. So you stopped that and started
- 9 Protection ---
- 10 A Didn't have good credit. That's why.
- 11 Q Sir?
- 12 A Didn't have credit then.
- 13 Q That's not what I asked you. But you -- if you
- 14 want to explain, that's fine.
- 15 A Okay.
- 16 Q Then you started Protection, correct?
- 17 A Correct. Bobby and I.
- 18 Q Right. Then you started Guardian; converted that
- 19 into AVSX, under your testimony?
- 20 A Guardian and AVSX is the same.
- 21 Q Okay. So ---
- 22 A Just a ---
- 23 Q --- that's ---
- 24 A --- change in name.
- 25 Q It's three times.

1 A I'm sorry. So three times.

2 Q All right. I didn't ask you about what you had to
3 do to feed your family. You've done that three
4 times: started and stopped three alarm businesses.
5 What this says you can't do is go steal the accounts
6 of your prior vendor. Isn't that what that says?

7 A I'm not stealing the accounts, sir.

8 Q Okay. That's what I want to ask you. I'm not --
9 I -- I'm asking you what it says. I'm not asking you
10 whether you've done it or not.

11 A Correct, sir. Okay.

12 Q Okay. So you'd -- you state on the record right
13 now that you have not stolen -- your affiliates have
14 not taken more than 400 accounts that were in the
15 name of Vector and AVSX had signed up since you've
16 opened up MX Security?

17 A Not that they have stolen.

18 Q Sir?

19 A Not that they have stolen.

20 Q Not that they have stolen?

21 A That's ---

22 Q Is that ---

23 A --- the -- that's the asked -- question that you
24 were asking me, right?

25 Q I'm -- I don't understand what that means. It

1 should be a "yes" or "no." But ---

2 A Can -- can ---

3 Q --- I'll explain ---

4 A --- you rephrase the question so I can answer ---

5 Q Sure.

6 A --- it properly?

7 Q Since you opened up MX Security, have you
8 stolen/taken/flipped -- whatever term you want to use
9 -- moved accounts that were people had accounts with
10 AVSX and Vector and moved them to MX Security, LLC?

11 A Stolen is a harsh word, but no, I ---

12 Q I -- I used ---

13 A --- have not.

14 Q --- four different words. Choose one.

15 A No, I have not.

16 Q You've not -- not -- not moved any of those
17 people?

18 A I have not moved them.

19 Q You've not taken them and now they're under
20 contract with your business?

21 A I have not moved them.

22 Q Okay. Have your affiliates done that?

23 A Yes. And we have paperwork that stipulates that
24 these individuals, when they switched to us, just
25 like I elaborated before, where people were your --

1 with ADT, you go with somebody else, they'll entice
2 -- so you tell you, "Hey, we can give you new
3 services." There's forms that customers have to sign
4 to clarify, make sure that you were not manipulated
5 into doing this. This was at your -- at your free
6 will. And customers did. So ---

7 Q If ---

8 A --- what am I supposed to do to?

9 Q Isn't that a CYA letter, cover ---

10 A Well ---

11 Q --- your tail, or CYT?

12 A I don't know. I don't do those terms ---

13 Q Right. I ---

14 A --- sir.

15 Q --- know you don't do those letters.

16 A Yes, sir.

17 Q All I know is this agreement says you can't flip
18 them; isn't that right?

19 A What am I supposed to do? Vector is not willing
20 to help me.

21 Q So you ---

22 A Bobby ---

23 Q --- admit ---

24 A --- cut my ---

25 Q --- that you ---

1 A --- throat ---

2 Q --- did it?

3 A --- what am I supposed to -- you tell me what am I
4 supposed to do, Mr. Ellis? Sit there and collect,
5 you know, food stamps?

6 Q After all this -- all this panic, all me being a
7 -- what I am, an advocate for my client ---

8 A Uh-huh.

9 Q --- all this, would you have done anything
10 different with regard to how you formed this
11 organization, if you were supposedly a part of it?
12 Would you have done anything differently?

13 A Oh, my God.

14 Q With the forming of the materials?

15 A Oh, my God.

16 Q Mr. ---

17 A Yes.

18 Q --- Endara, you would, yes, have?

19 How about this? Would you have just written a
20 simple thing that says: Mary Kay, we, in our LLC,
21 we're actually the members ourselves; you be the
22 member on paper. But Bobby and I are going to divide
23 up X, Y, and Z?

24 A We were brothers. And I trusted the guy with my
25 life.

1 Q Yeah. Who is this young woman back here again in
2 the back? Who is this young woman?

3 A Elizabeth Moise, my fiancée.

4 Q Your fiancée?

5 A Yes.

6 Q Right. And you were seeing her when you were at
7 AVSX, correct?

8 A We were friends. Yes.

9 Q You were friends?

10 A Initially.

11 Q You deny flying 18 times to Detroit, Michigan, to
12 see her on the company time?

13 A No, not -- no. It's not a company time.

14 Q Did the company pay for you to fly to see this
15 young woman?

16 A As an owner, I have expenses that were related
17 taken out, just like Bobby and Mary Kay had.

18 Q Mr. Endara, the judge has directed you to answer
19 my questions several times and then you can respond.

20 Did you fly more than 18 times over a month-or-two
21 period to Detroit on the company dime to see Ms.

22 Moise?

23 A A month or two, no, sir.

24 Q Excuse me?

25 A Eighteen times in one or two months, no, sir.

1 Q Okay. How many times you think you flew to her on
2 the company dime?

3 A Only in -- in a two-month period?

4 Q No. I didn't ask you that. I ---

5 A You said ---

6 Q --- asked you ---

7 A --- one or two months.

8 Q I did at the beginning. I'm asking you
9 differently now.

10 A If you're saying I flew 18 times in the period,
11 then that is correct, if the evidence shows that. I
12 don't know exactly how many times, sir.

13 Q Okay. And didn't you just tell this Court earlier
14 and tell this jury earlier that you would do all
15 these things differently, when, in fact, Mr. Endara,
16 you set up MX Security the exact same way? You ---

17 A I ---

18 Q --- did not make yourself an owner. You then put
19 it in a third party's name who had no experience
20 whatsoever, no knowledge of the business, claimed
21 that she's an owner? Isn't that correct?

22 A Yes, sir.

23 Q And now you come back again and say you would do
24 this all differently. But after this event took
25 place, you did it exactly the same way?

1 A I would do it with Bobby. I didn't say I would do
2 it with her.

3 Q Oh, because ---

4 A Not everybody ---

5 Q --- you trust her?

6 A Not -- not everybody is the same, sir. I'm sorry.

7 Q Right. And you trust her, right?

8 A Yes, sir. Can I trust -- just because one person
9 does you wrong, the rest of the world is not going to
10 do you wrong, sir.

11 Q No. And she hadn't done anything wrong in her --
12 in her relationship with you, has she?

13 A She hasn't shown anything wrong. Yeah.

14 Q Mr. Endara, she was married to someone else when
15 you were seeing her ---

16 MR. SAUTTER: Objection, Your Honor.

17 THE COURT: Hold ---

18 MR. SAUTTER: This is ---

19 THE COURT: Objection sustained.

20 MR. SAUTTER: --- not relevant.

21 MS. ELIZABETH MOISE: I was legally separated ---

22 THE COURT: Hold ---

23 MR. SAUTTER: Shh.

24 MS. ELIZABETH MOISE: I'm sorry.

25 THE COURT: Ma'am, you need to leave the

1 courtroom, please.

2 (Whereupon, Ms. Elizabeth Moise exited the
3 courtroom.)

4 THE COURT: Ladies and ---

5 Q Now, are you ---

6 THE COURT: --- gentlemen -- hold on, Mr. Ellis.

7 MR. TODD ELLIS: Yes, sir.

8 THE COURT: I'm going to ask you all to step to
9 the jury room for just a minute. Do not discuss the
10 case. I'll get you back in here in just a minute.

11 (Whereupon, the jury exited the courtroom at 2:18
12 p.m.)

13 THE COURT: Mr. -- Mr. Ellis, you are well beyond
14 the relevancy -- unless you want to explain to me ---

15 MR. TODD ELLIS: Yes, sir.

16 THE COURT: --- the relevance of him seeing this
17 lady. You -- you've laid the foundation and you've
18 gotten the issue that he flew to wherever X number of
19 times. What relevance is it that -- whether or not
20 she was -- her marital status? What -- what
21 relevance ---

22 MR. TODD ELLIS: Your Honor ---

23 THE COURT: --- is that?

24 MR. TODD ELLIS: --- I mean, I guess I haven't
25 done a good enough job to make it obvious and

1 certainly to the jury. I do not want to do it.

2 THE COURT: No. I mean ---

3 MR. TODD ELLIS: He ---

4 THE COURT: --- it appears ---

5 MR. TODD ELLIS: --- has stated ---

6 THE COURT: --- to the ---

7 MR. TODD ELLIS: --- I ---

8 THE COURT: --- Court that you're trying to
9 inflame the jury over his -- what's going on outside
10 that has nothing to do with his ---

11 MR. TODD ELLIS: Your Honor ---

12 THE COURT: --- with this ---

13 MR. TODD ELLIS: --- I would ---

14 THE COURT: --- case.

15 MR. TODD ELLIS: --- have never brought this up.
16 But he has painted my client as someone he cannot
17 trust. He just said that no one would ever -- he
18 does something wrong -- not everybody does something
19 wrong. He's opened the door to that. I would not
20 have brought that up otherwise.

21 It was on the edge, I admit. I don't want to get
22 the jury upset at me either. He just painted her as
23 a person that he could trust and everybody's good.
24 And he's done the same thing to her. It -- it was
25 fair ---

1 THE COURT: What ---

2 MR. TODD ELLIS: --- game.

3 THE COURT: It -- it is totally different, in --
4 in the Court's view. And I'm making this comment
5 outside the presence ---

6 MR. TODD ELLIS: Of course.

7 THE COURT: --- of the jury, Everything that's
8 come out during the course of this trial is that --
9 whether the jury believes it or not, is this: and
10 that is that he and Bobby Johnson were partners.
11 They weren't on paper.

12 He has since opened, pursuant to your cross-
13 examination, he's made it clear. He has opened or
14 started a new security business. She's on paper.
15 But he doesn't have anybody else in that business
16 that were, per se, partners, such as he and Bobby
17 Johnson were allegedly in this business. Does that
18 make sense?

19 MR. TODD ELLIS: Your Honor ---

20 THE COURT: And -- and ---

21 MR. TODD ELLIS: --- it does. But I just asked
22 him what he would do differently.

23 THE COURT: Okay.

24 MR. TODD ELLIS: And he ---

25 THE COURT: And I'll ---

1 MR. TODD ELLIS: --- stated ---

2 THE COURT: --- allow you to do that. But you've
3 gone beyond that.

4 MR. TODD ELLIS: Well, I can -- obviously, I'm not
5 intending to go anything further on that regard. But
6 it's not -- also not fair that for -- for two days,
7 he paints my client as someone who's no longer
8 trustworthy; he was my brother; I set it up that way.

9 He just said some people you can trust; some you
10 cannot.

11 THE COURT: Okay.

12 MR. SAUTTER: Judge ---

13 MR. TODD ELLIS: But I'm -- I'm moving on ---

14 THE COURT: Let me ---

15 MR. TODD ELLIS: --- I can ---

16 THE COURT: --- hear you ---

17 MR. TODD ELLIS: --- promise.

18 THE COURT: --- Mr. Sautter.

19 MR. SAUTTER: Judge, we -- we -- we have
20 deliberately not -- we have deliberately tried to try
21 our case and try to -- they're -- well, you know, he
22 -- he -- he signed a will to Mr. Johnson. And he's
23 ---

24 MR. TODD ELLIS: Oh ---

25 MR. SAUTTER: --- still were brothers. And we've

1 -- trying to bring in the medical component as to why
2 this happened between them. As far as what --
3 comments to -- towards Ms. Moise, I would ask for a
4 -- a -- a curative instruction from the Court to the
5 jury. And I would also apologize for Ms. Moise's
6 behavior of -- of, you know, reacting out and making
7 that outburst, Judge.

8 THE COURT: Well ---

9 MR. TODD ELLIS: Your Honor, the -- the -- the --
10 well, I mean, I -- I don't know if he's -- I thought
11 you were done. You done?

12 MR. SAUTTER: I'm done.

13 MR. TODD ELLIS: Your ---

14 THE COURT: Yes, sir.

15 MR. TODD ELLIS: Your Honor, well -- well, first
16 of all, if she thinks she cured it, she screamed out,
17 "I was legally separated at the time," which is
18 ridiculous.

19 THE COURT: Okay.

20 MR. TODD ELLIS: So I -- I don't know what you
21 could say to this jury that could cure it. There's
22 nothing to cure.

23 THE COURT: Well, I mean, here -- here's what's
24 happened through the last day and a half: I've had
25 to call Mr. Todd Ellis down for -- so to speak, for

1 talking to Counsel Sautter while a witness is on this
2 stand. Mr. Todd Ellis has blurted out the -- the --
3 the name of Ms. Mary Kay Johnson while Ms. Mary Kay
4 Johnson was being examined by plaintiff's counsel.
5 And now I have an outburst from Mr. Endara's fiancée
6 during the course of this trial, all of which are
7 improper. All of these outbursts are improper.

8 MR. TODD ELLIS: I -- I think what -- I thought
9 what you were asking me was: Was there fair ground
10 to do that? And it -- and your impression it was
11 improper. My belief was, Your Honor, that he opened
12 himself up to that cross because he's painted my
13 client as someone who's distrustworthy [sic], who did
14 him wrong, stabbed him the back, and does nothing
15 wrong.

16 He then painted her as a partner I could trust
17 who's not done anything wrong. Some people in this
18 world you can believe; some you can't. I think he
19 opened the door.

20 I intend to move on. The cross-examination is almost
21 over.

22 And, Your Honor, I just would assert to -- to you
23 that -- that -- that -- not the outburst before -- it
24 should not have stated to Mr. Sautter and not to Mary
25 Kay Johnson. I think this has just been vigorous

1 cross-examination. And ---

2 THE COURT: I don't ---

3 MR. TODD ELLIS: --- think it's ---

4 THE COURT: Listen, you're entitled to that. The
5 rules allow that. And I've -- at sidebar over here,
6 I asked you to quit making just comments about the
7 testimony but simply ask your questions and move on.

8 MR. TODD ELLIS: I -- I thought ---

9 THE COURT: And let ---

10 MR. TODD ELLIS: --- I had done that.

11 THE COURT: Whether you -- well, I mean, it's been
12 occasions that you haven't. And I've let it go. Mr.
13 Sautter hadn't objected to it.

14 But it got to the point where I called y'all to
15 sidebar and I specifically said ask questions and
16 move on. Whether you believe Mr. Endara or not or
17 whether or not Mr. Sautter believes any of your
18 witnesses, it's not either one of you is within your
19 purview to make independent comments about your
20 opinion of their testimony. That's for that jury to
21 make a decision on.

22 And you can argue it till the cows come home, so
23 to speak, in your closing arguments. But as these
24 witnesses are on this stand and as they're
25 testifying, it is highly improper for either one of

1 you to make comments without -- period. I mean, ask
2 your question and move on. Ask your question; answer
3 the question, Mr. Endara; and move on.

4 I'll give you as much leeway on your cross-
5 examination as you need to. The rules permit that.
6 But to allow continuous comments as to your opinion,
7 so to speak, on testimony, that's not proper. It's
8 not proper.

9 So ---

10 MR. TODD ELLIS: I'm prepared ---

11 THE COURT: --- I understand ---

12 MR. TODD ELLIS: --- to move ---

13 THE COURT: --- you don't ---

14 MR. TODD ELLIS: --- forward ---

15 THE COURT: --- agree with what he's saying. I
16 understand ---

17 MR. TODD ELLIS: No. I ---

18 THE COURT: --- that. That's ---

19 MR. TODD ELLIS: --- know ---

20 THE COURT: --- your job.

21 MR. TODD ELLIS: Yeah. No. I -- I --- Your
22 Honor, I -- I am not doing my job if I just get
23 frustrated from what I think he's going to answer.
24 That's not the case.

25 I am prepared to move on. I hear your

1 instruction. I have taken it. I am heeded on it. I
2 am sorry that Mr. Moise was brought up in that
3 regard.

4 I think they opened the door. That's all I'm
5 saying in that regard and the way his testimony was.
6 And ---

7 THE COURT: Well, I -- I -- I'm sorry. Go ahead.

8 MR. TODD ELLIS: No. I'm -- I'm -- I'm prepared
9 to move forward. I certainly hear you, Your Honor.
10 I hear you.

11 THE COURT: Well, I'm going to allow her to come
12 back in here. Ms. -- is it Moise?

13 MR. SAUTTER: Yes, sir.

14 THE COURT: And I'm going to have an instruction
15 to her. Mr. Michael ---

16 MR. MICHAEL ELLIS: Oh, I was just going to go
17 grab ---

18 THE COURT: --- Ellis -- yeah. I was going to say
19 please do.

20 MR. TODD ELLIS: Now, Your -- Your Honor, this is
21 a little sensitive too. If we bring this back --
22 Michael, just come up if she's coming inside.

23 (Whereupon, a bench conference was held off the
24 record outside the presence of the jury.)

25 MR. MICHAEL ELLIS: Ms. Moise offers her

1 apologies. She would like to wait out there for a
2 while and compose herself before coming back in.

3 THE COURT: Well ---

4 MR. MICHAEL ELLIS: Would you like ---

5 THE COURT: --- I want ---

6 MR. MICHAEL ELLIS: --- for her ---

7 THE COURT: --- her to ---

8 MR. MICHAEL ELLIS: --- to come in?

9 THE COURT: --- come in ---

10 MR. SAUTTER: Bring her in.

11 MR. MICHAEL ELLIS: Okay.

12 THE COURT: --- here right now because I'm ---

13 MR. MICHAEL ELLIS: Okay.

14 THE COURT: --- going to ---

15 MR. MICHAEL ELLIS: Sorry.

16 THE COURT: --- talk to her on the record.

17 (Whereupon, Ms. Elizabeth Moise entered the
18 courtroom.)

19 THE COURT: Ms. -- tell me your name for the
20 record, please.

21 MS. ELIZABETH MOISE: Elizabeth Moise.

22 THE COURT: Okay. You can be -- come -- come
23 around here, Ms. Moise.

24 MS. ELIZABETH MOISE: (Complied.)

25 THE COURT: You stand right there. You're fine.

1 You're fine.

2 MS. ELIZABETH MOISE: (Complied.)

3 THE COURT: I think you realize how improper at
4 this point it is for anybody other than witnesses to
5 be talking in the courtroom. By you blurting
6 something out or anybody in this courtroom blurting
7 something out could result in a mistrial of this
8 case. Okay?

9 I have ruled that the questioning by Mr. Ellis
10 here on that issue is improper. I -- and I've
11 sustained Mr. Sautter's objection on that. Okay?

12 I will not -- you may be in the courtroom. But if
13 it happens again ---

14 MS. ELIZABETH MOISE: I understand. I'm sorry.

15 THE COURT: --- you run the risk ---

16 MS. ELIZABETH MOISE: I ---

17 THE COURT: --- of being -- let me finish, okay,
18 and then I'll let you talk if you want to. But you
19 run the risk of being held in contempt of court,
20 which could result in a fine or a period of
21 incarceration. Okay?

22 Mr. Sautter objected to the question. I sustained
23 the objection. It is not proper for you or any other
24 person in this courtroom to -- to make an outburst.
25 Okay?

1 If it happens again, I've told you what the
2 consequences very well could be. All right?

3 MS. ELIZABETH MOISE: I'm sorry.

4 THE COURT: Okay.

5 MR. SAUTTER: Thank you.

6 (Whereupon, Mr. Sautter and Mr. Michael Ellis
7 conferred.)

8 THE COURT: Now, let me say this before the jury
9 comes back in. I am considering -- Mr. Sautter's
10 asked this question and -- and that being for a --
11 some type of curative instruction here. I am
12 considering instructing this jury, first of all, that
13 it's improper for, you know, not only Ms. Moise, but
14 any -- any person in this courtroom to say anything
15 because it could result in a -- in a mistrial and
16 that they are not to consider anything that she said
17 when they go back there to deliberate this case once
18 it's submitted.

19 Any exception or objection to that by defense
20 counsel?

21 MR. TODD ELLIS: Your Honor, I don't think that's
22 certainly hurting my client in any way. I think
23 that's what you're asking me. You know, I'm -- I'm
24 thinking as we're standing.

25 I just don't think it's necessary. I think it

1 actually does more harm. I do feel a little bit
2 about how it all came down. It's not good. I think

3 ---

4 THE COURT: Well, here -- here is the thing: What
5 she said out there is not evidence in this case.

6 MR. TODD ELLIS: I ---

7 THE COURT: And that's a concern that I have.

8 MR. TODD ELLIS: What do you think?

9 MR. SAUTTER: I think it's ---

10 THE COURT: Okay?

11 MR. SAUTTER: --- fine.

12 MR. TODD ELLIS: Yes ---

13 MR. SAUTTER: I ---

14 MR. TODD ELLIS: --- Your Honor.

15 MR. SAUTTER: --- I think we're ---

16 THE COURT: You see what I'm saying?

17 MR. TODD ELLIS: We -- we consent. You -- you're
18 -- you're -- you're correct. I -- I -- I had no
19 strong opinion about it either way. But you ---

20 MR. SAUTTER: Yeah.

21 MR. TODD ELLIS: --- are correct.

22 MR. SAUTTER: I -- and -- and I believe that that
23 would be a -- a -- a fair way to -- to make clear to
24 the jury that that was not evidence and they cannot
25 -- cannot consider ---

1 THE COURT: Can't -- can't ---

2 MR. SAUTTER: --- it.

3 THE COURT: --- consider it.

4 MR. SAUTTER: Yes, sir.

5 THE COURT: Okay. All right. Mr. Endara, I was
6 hoping we'd finish with you before I took another
7 break. I'm going to stand down for just a minute.
8 And you may do so as well. But again, my instruction
9 remains the same, just like when we broke for lunch
10 today: You're not to discuss your ---

11 THE WITNESS: Yes, sir.

12 THE COURT: --- testimony with anyone. Okay?

13 THE WITNESS: Yes, sir.

14 THE COURT: We're going to stand down for just a
15 minute.

16 MR. TODD ELLIS: Thank you, Your Honor.

17 (Off the record from 2:26 p.m. until 2:37 p.m.)

18 THE COURT: All right. Anything from plaintiff's
19 counsel before I bring the jury back in?

20 MR. SAUTTER: No, Your Honor.

21 THE COURT: Defense counsel?

22 MR. TODD ELLIS: Nothing, Your Honor.

23 THE COURT: All right, Ms. Shirley.

24 THE BAILIFF: Yes, sir.

25 (Off the record briefly.)

1 (Whereupon, the jury entered the courtroom at 2:37
2 p.m.)

3 THE BAILIFF: Jury panel is present, Judge.

4 THE COURT: Thank you, ma'am.

5 THE BAILIFF: Yes, sir.

6 THE COURT: All right. Mr. Foreman and ladies and
7 gentlemen of the jury, before we continue, let me say
8 something to you real quick. Prior to me asking you
9 all to step to the jury room, you heard something
10 that was -- a comment that was made from the audience
11 pursuant to a question by Mr. Todd Ellis.

12 Let me instruct you: That comment -- I don't know
13 if all of you heard it or not -- is not evidence in
14 this case and is not to be considered by you at all
15 in any way, shape, or form during your deliberations
16 once this case is submitted to you all. All right?

17 Mr. Todd Ellis, you may continue your ---

18 MR. TODD ELLIS: Thank you, Your Honor.

19 THE COURT: Well, let -- before I do that. Any
20 exception or objection to my instruction to the jury
21 by plaintiff's counsel?

22 MR. SAUTTER: No, Your Honor.

23 THE COURT: Defense counsel?

24 MR. TODD ELLIS: None, Your Honor.

25 THE COURT: All right. Mr. Todd Ellis, you may

1 continue with your cross-examination.

2 MR. TODD ELLIS: Thank you, Your Honor.

3 CROSS-EXAMINATION BY MR. TODD ELLIS CONTINUES.

4 Q Mr. Endara, can I get you to grab, if you would,
5 Defendant's Exhibit No. 10. Mr. Endara, as part of
6 your divorce proceeding to a Ramona Endara, do you
7 recall having to give, under oath again, a financial
8 disclosure to the Court in the Family Court in order
9 to resolve your divorce?

10 A Yes, sir.

11 Q And do you recall that you had to give financial
12 disclosures that stated the amount of money that you
13 had, the business interests that you had, stock and
14 ownership, any money, any assets whatsoever, so that
15 the Court could make a determination on whether the
16 divorce was appropriate and then divide those assets.
17 Do you recall doing that?

18 A Yes, sir. And these -- simplicity of what my ex-
19 wife wanted -- this was a very hardship divorce after
20 23 years -- she decided to go elsewhere and committed
21 adultery and decided to just simply -- wanted the
22 divorce to go away quick. So Bobby and I created a
23 company and we grew too fast. As indicated, our
24 taxes are just being done for 2011, '12, and so
25 forth.

1 So I advised my ex-wife -- said, "Hey, you have
2 one of two options. We can break it all down. Or if
3 you want to go away and get married right away and --
4 I can simply just put in there that I don't own
5 anything and you just go away."

6 And that's exactly what she chose to do. And
7 that's exactly how I moved forward after talking with
8 Bobby.

9 Q Mr. Endara, I -- I -- I never even asked a
10 question. I asked you whether you were familiar with
11 that document and did you file it with the Court.

12 A Yes, I did, sir.

13 Q Okay. And on that did you list that you had any
14 interest whatsoever in any company?

15 A No, I did not. And the reason why, as I ---

16 Q Yeah.

17 A --- stipulated earlier, as to my ex-wife wanted to
18 move on, go get married, and -- and this was when --
19 as we were growing, we hadn't finished our finances.
20 It was going to be a big fiasco. It was going to
21 take too long.

22 And she just wanted to go away. She goes, "I
23 don't care. Just -- I just want to get divorced
24 quick."

25 In fact, full custody of my kids was given to me.

1 There -- there was no separation of -- of -- of
2 anything. The -- we didn't separate any assets or
3 anything. The home -- home that we owned that --
4 that we -- that she owned, it was -- it was just --
5 she actually, in fact, gave me the home. Said, "You
6 can have it." She just wanted to go away.

7 Q Mr. Endara, did -- did -- did your wife direct you
8 to commit perjury to the Family Court?

9 MR. SAUTTER: Objection, Your Honor. That hasn't
10 -- that's not been determined and that's not going to
11 be determined in ---

12 THE COURT: Objection ---

13 MR. SAUTTER: --- this Court.

14 THE COURT: --- sustained.

15 Q I don't know what else -- Mr. Endara, did your
16 wife direct you not to put known interests down on a
17 paper that could cause you to be charged with perjury
18 in the Family Court?

19 MR. SAUTTER: Objection, Your Honor. That's the
20 same thing.

21 THE COURT: Objection ---

22 MR. TODD ELLIS: I don't ---

23 THE COURT: --- sustained.

24 Q Did you -- did your wife ask you to lie to the
25 Family Court?

1 MR. SAUTTER: Objection, Your Honor. That's the
2 same way.

3 THE COURT: Can the lawyers approach for a minute,
4 please.

5 (Whereupon, a bench conference was held off the
6 record in the presence of the jury but out of the
7 hearing of the jury.)

8 Q Mr. Endara, with regard to Exhibit No. 10 of
9 defendants, your financial disclosure with the Family
10 Court in your divorce proceedings, did you fill that
11 document out?

12 A Yes, I did, sir.

13 Q Did you know that you had to be completely
14 honestly truthful when you filled that out?

15 A I was asked for this information to be provided.
16 And after talking to my ex-wife and talking to my
17 business partner, we all mutually agreed that the
18 best thing to do
19 -- because my ex-wife wanted this to go way; she
20 wanted to run away to Texas and go get married --
21 that this was the best way, sir.

22 THE COURT: Mr. Endara, answer the question,
23 please.

24 MR. TODD ELLIS: Thank you, Your Honor.

25 Q Did you know that you were required, under the

1 family court rules and the laws of this state, that
2 it had to be truthful, fully, and honest disclosure
3 of your financials?

4 A After the reading the statement fully, then yes.

5 Q Mr. Endara, I'm going to use your ---

6 MR. TODD ELLIS: I assume your exhibit's okay to
7 use?

8 MR. SAUTTER: Go ahead.

9 Q Mr. Endara, I'm going to ask you about -- a couple
10 things about the damages that you asserted. You are
11 welcome at any time to look at this closer, for that
12 matter, any notes that you made, and/or the larger
13 version of this preliminary draft report. It's
14 exhibit, ma'am, No. 7 -- Plaintiff's Exhibit No. 7.
15 You can look at any of that if you wish as I ask you
16 some questions.

17 First of all, Mr. Endara, you've never sold an
18 alarm business your life, correct?

19 A Correct.

20 Q You've never purchased an alarm business in your
21 life, correct?

22 A I have purchased. Yes.

23 Q What have you purchased?

24 A The -- when we opened Protection24, we had to
25 start it. So it cost me money to generate it. Yes,

1 sir.

2 Q But that's a start-up. That's not a purchase.

3 A Okay. Sorry. From an individual, no, I have not,
4 if that's what you ---

5 Q Okay.

6 A Okay.

7 Q You've never bought an existing ongoing entity ---

8 A That's correct, sir.

9 Q --- that does any alarm business?

10 A That's correct, sir.

11 Q Is that right?

12 A (No audible response.)

13 Q And do you know of any -- any purchases that were
14 done of an existing alarm business four or five years
15 into the entity?

16 A Yes, sir.

17 Q What is that?

18 A Security Networks got purchased by Monitronics in
19 excess of 500-something million dollars.

20 Q That was an absorption of those; is that correct?
21 That was not just a purchase all around. That was a
22 merger between those parties?

23 A No, sir. Monitronics purchased ---

24 Q Yeah. That ---

25 A --- Security Networks.

1 Q Okay. That -- that's not an alarm company like
2 AVSX or Guardian or MX Security. That is the people
3 that supply you product?

4 A It's still an alarm company, sir. Just because
5 they operate a little different than us, it's still
6 monitor systems. It's still by contract, just like
7 we buy contracts from salespeople.

8 Q All right. Let me put it this way so that you can
9 be clear with the jury. You're not trying to
10 represent to them that you have any idea how to value
11 a -- a billion-dollar Monitronics company who's your
12 partner? You're not telling them that, are you?

13 A Meaning -- can you rephrase the question?

14 Q Sure. You have no idea how to value the sale of
15 that, no experience, no knowledge, no education, on
16 how to value that?

17 A I been doing this since 2003. And --

18 Q All right. Answer the question ---

19 MR. SAUTTER: Your Honor, he's ---

20 Q --- first.

21 MR. SAUTTER: --- trying to answer ---

22 THE COURT: Hold on. Answer the question ---

23 A Yes ---

24 THE COURT: --- Mr. ---

25 A --- yes, I ---

1 THE COURT: --- hold on ---

2 A --- do.

3 THE COURT: --- a minute. Hold on a minute.

4 THE WITNESS: I'm sorry.

5 THE COURT: Let me finish and then you can talk.

6 Answer the question, as I've said before, and then
7 you can explain it, okay?

8 A Yes, I do, sir. Because I been doing this since
9 2003. See how companies generate their income. The
10 value of an alarm system is based on the system of
11 that contract with the -- with that monitoring
12 company. In our industry, not to confuse the jury,
13 it's multiples equals the time of months a person
14 stays in the -- with the monitoring company.

15 So when somebody signs a 60-month agreement, the
16 person is supposed to remain with that company for at
17 least 60 months. Historically, according to the SDN
18 magazine that -- that actually provides us this
19 information ---

20 Q Mr. ---

21 A --- states ---

22 Q --- Endara -- excuse me.

23 MR. TODD ELLIS: Your Honor ---

24 MR. SAUTTER: Your Honor, I'd ask that he be
25 allowed to continue ---

1 MR. TODD ELLIS: Can I finish my objection first,
2 please, Mr. Sautter? Your Honor, I -- I've given him
3 leeway. When I asked him a question on whether he's
4 educated to monitor -- to -- to -- to give an opinion
5 on the value of a billion-dollar company, the next
6 thing you know, he's telling me about ---

7 THE COURT: Hold on. Hold on. Continue and
8 finish your answer.

9 A Based on my experience, based on how I've learned
10 about the industry, right, the way you educate
11 yourself and learning what's the value of an account
12 is by the time of months a customer signs with them,
13 by the time of month historically a customer stays
14 with a company -- 7 to 10 years is the norm; it can
15 go as far as 15 years. So when a company is buying
16 accounts from another company, they look at it and
17 said, Okay. How long is that particular account been
18 in business? What's the longevity? What's the --
19 what -- what -- what's their history of payment? and
20 so forth.

21 And in our scale it's smaller than their scale.
22 But it's still -- they're still apples. Their apple
23 is bigger than ours. But it's still an apple.

24 Q Are you finished?

25 A Yes, sir.

1 Q You asked the jury to take this net profit of
2 \$620,000 in 2014 and multiply it times 4; is that
3 right?

4 A Yes, sir.

5 Q You have no education or training to know that the
6 valuation of a company to otherwise give an appraisal
7 or to otherwise in any way talk about how much it's
8 worth that there's a multiple of 4 that is included
9 in that. You have no training whatsoever on that.

10 A I do, sir. My knowledge in the business.

11 Q Have you ever given an opinion in open court or
12 anywhere else about the value of any company?

13 A Today, my company.

14 Q Today. That's it. That's the only other time
15 that you've done it.

16 A Just like ---

17 Q You have -- sir? I'm ---

18 A Just like ---

19 Q --- asking ---

20 A --- any other business, you're -- at the end I was
21 being asked how would I value my company if I was to
22 buy it. We're given the example of the alarm
23 industry. But I'll give you an example of a house.
24 If I'm buying a \$200,000 house to remodel it as an
25 investor, what's my return? I'm going to have to

1 look at it.

2 My experience in the industry -- I been doing this
3 since 2003. And I feel very comfortable and educated
4 to tell you what the -- what the value of a company
5 is, based on the number of accounts, based on the
6 income they're generating, based on all the factors
7 that play a role today.

8 Q All right. I -- I asked you about the multiplier.
9 You just made up this 4.

10 A I did not, sir.

11 Q You could've picked this out of anywhere.

12 A No, sir. I can actually break it down for you in
13 -- in the -- in -- in ---

14 Q No. I want ---

15 A --- addition ---

16 Q --- to know where you got that, that it's proper
17 to multiply it times 4.

18 A I'd be more than happy to explain that to you.

19 Q I'm asking that.

20 A Okay. The -- you -- do you want to bring the
21 other chart so I can break it down for you, sir?

22 Q It's right there in front of you.

23 A No. The chart -- this chart right here.

24 Q No.

25 THE COURT: What do ---

1 Q That is the chart. I want you to utilize ---

2 A But for ---

3 Q --- that.

4 A --- the jury -- okay.

5 Q You're my witness. Utilize what you need ---

6 A Okay.

7 Q --- to use ---

8 THE COURT: What exhibit number is that again for
9 the record?

10 MR. TODD ELLIS: Seven.

11 THE COURT: Is -- is ---

12 A They're ---

13 THE COURT: --- that what -- No. 7?

14 MR. TODD ELLIS: I'll look at ---

15 THE WITNESS: Yes, sir.

16 MR. TODD ELLIS: --- it again.

17 THE COURT: Thank you. Go ahead, Mr. ---

18 A When establishing a business, right, the return
19 investment of a business of when somebody wants to
20 buy a business, there's -- there -- there's different
21 ways you can look at it. I looked at it as
22 simplicity was capitalization. Okay.

23 Okay. If I'm going to invest -- if you're asking
24 me to buy your company, I want to look at your
25 company and said, Okay. What are the risk factors?

1 How am I going to get that return on investment? How
2 do you come up with that amount?

3 So at the end it was real simple to me. The risk
4 factors of our industry are very high. We have
5 commission-only reps the majority of our industry.
6 But they get paid a significant amount of our money.

7 We, as the dealer, have to guarantee that account
8 for a minimum of 12 months. Okay? So at the end the
9 risk factors are very high: people not paying their
10 bills; if you get charged back -- let's say I pay Mr.
11 Ellis \$600 on an account that I'm -- that -- that was
12 gross income of it was \$1,000, plus the minus of the
13 equipment and so forth. My profit on that account
14 was maybe 10 percent at that moment. Okay?

15 But as the number of accounts that generate how
16 you make money, a little bit on a lot of deals. So
17 at the end what I ended up doing was, determining the
18 risk factors, I would apply a 25 percent risk factor
19 on that account on -- on the value of our -- of our
20 company.

21 So I used the gross receipts, which was
22 \$9,000,957, and I divided \$620 -- \$620,000 -- so I
23 divided 620,000 by 9,700,000, and I came out with a
24 12.9 percent. So I doubled that. That's, in my
25 mind, twice the risk factor of what a normal person

1 would go into a -- in -- in -- in -- into a business
2 venture and say, Okay. How can I get my money back?
3 Is this thing worth it? So ---

4 Q Are you done?

5 A No, sir.

6 Q Yeah. I -- the -- I only asked -- and they ---

7 MR. SAUTTER: Judge ---

8 Q --- can read -- they can read ---

9 MR. SAUTTER: Judge, I ---

10 Q --- it back ---

11 MR. SAUTTER: --- I would ---

12 Q --- to you ---

13 THE COURT: Hold on a minute. Hold on a minute.
14 Go ahead, Mr. Ellis.

15 Q I only asked you how you got the multiplier 4 --
16 4. If you want to restate your damages, do it in
17 another way.

18 THE COURT: All right.

19 A I ---

20 THE COURT: Mr. Ellis, I'm going to let him finish
21 his answer. I think -- go ahead and finish, Mr.
22 Endara.

23 A And the way I came up with the multiplication of
24 4, right, was real simple: To get 100 percent of the
25 value of what you're saying that company is worth,

1 right, I divided 100 percent divided by 25, which is
2 what I, in my mind, was the capitalization ratio.

3 That's where I came up with the 4: 100 ---

4 Q Thank you.

5 A --- times -- 20 -- 100 divided by -- by -- by 25
6 equals 4 times. And that's how I came up with it,
7 sir.

8 Q Right. And like you said, in your mind. You have
9 no training to valuate businesses; is that correct?

10 A No training. But my experience in the business
11 has given me the opportunity to learn how I should
12 judge my business.

13 Q Okay. And you've gone to no classes to give an
14 evaluation or an opinion regarding the valuation of
15 businesses?

16 A No. But I've run my business since -- I been in
17 business since 2003.

18 Q Okay. And -- and you -- as a matter of fact, what
19 you didn't conclude here -- or maybe did you factor
20 in there -- did you factor in that you keep calling
21 this "your business" -- that the taxes has not been
22 paid in this business since 2010 or '11 or ---

23 A Yeah.

24 Q --- have been filed?

25 A That is correct. We're waiting on that, which you

1 need to provide us.

2 Q Did you factor that in?

3 A Not yet, sir.

4 Q Okay. Not yet. When were you going to tell the
5 jury that?

6 A When you provide us the -- what it -- what we owe.

7 Q You -- you've -- you've had everything you got.

8 You just ---

9 A Yeah.

10 Q --- made a calculation?

11 A You have not -- everything that you've provided
12 us, sir, is preliminary draft and we do not know -- I
13 do not know how much we owe. So ---

14 Q Right.

15 A --- we've asked for many months, time and time,
16 what do we owe? What do we owe? What do we owe? and
17 were not given it until just recently, we were given
18 this. So I'm only going by -- based on what you
19 provided me.

20 So if you were to provide me additional
21 information, I'd be more than happy to deduct
22 whatever tax liabilities we are anticipating it to
23 be.

24 Q So you would? You're telling the jury that?

25 A Of course.

1 Q Okay. All right. Now, down here you pointed out
2 -- but I'll point it to the jury again -- as -- I
3 think that's revenue sharing holdback. Isn't that --
4 is that correct?

5 A Revenue sharing. Yes, sir.

6 Q It -- isn't that also called -- what's the other
7 term you use for that?

8 A Residual?

9 Q Residual.

10 A Correct, sir.

11 Q That's what you mean by revenue sharing ---

12 A Yes, sir.

13 Q --- right?

14 All right. Now, this chart, I would assert to
15 you, makes it look like that the income from
16 residuals and holdbacks is not included in the annual
17 net income. That's not what you intended the jury to
18 believe, is it?

19 A What I intended the jury to understand was that in
20 2014, that is the -- that was the net profit that we
21 received after everything was reported. But moving
22 forward, the residuals of our accounts that we
23 generated, as I indicated earlier, it's indefinite.

24 So it's very critical for the jury to understand
25 that when my 50 percent has to be rated, it has to be

1 rated in the number of accounts that I helped
2 creating our company. Those residuals are going to
3 come after I'm exit out of my company.

4 Q Mr. Endara, I simply asked you: You don't want
5 the jury to think that they should add 1.2 million up
6 to the \$620,000 for income for 2014?

7 A No. That's correct. That's correct.

8 Q All right. Mr. Endara, you've been in the
9 business since on or about 2007, right?

10 A '13.

11 Q '13?

12 A I mean, '3 -- '3. I'm sorry.

13 Q Three. How many contracts have the companies in
14 which you've worked for or owned or whatever you want
15 to call them -- on paper or legal -- how many of
16 those contracts have you had with different major
17 vendors like Vector and Monitronics?

18 A Combined?

19 Q Yeah. Like the total number, if you know? Or --
20 and, of course, if you had them more than one time --
21 Monitronics more than once -- I'd like to know the
22 total number of contracts for companies you've worked
23 with.

24 A Probably in excess of 20,000.

25 Q Now, I'm not going a good job of answering this

1 here. Remember the -- showing -- asking you this,
2 the Vector contract that's marked as an exhibit, I --
3 can I have that, sir? I think it's all of that
4 stack. There you go. Thank you.

5 It's Defendant's Exhibit No. 8. This is a
6 contract between AVSX, the company you say you owned,
7 and Vector Security.

8 A Right.

9 Q Correct?

10 A Correct.

11 Q Vector is the company that provides you hardware
12 and also provides AVSX residuals and holdbacks?

13 A Correct.

14 Q Okay. I want to know how many of these contracts
15 have you had with vendors, Vector and alike, over the
16 time since 2003.

17 A One.

18 Q One?

19 A Yes, sir.

20 Q You have one with Monitronics right now.

21 A No. The -- you're asking me with my name? I'm
22 sorry. Rephrase the question so I can understand ---

23 Q Well, maybe ---

24 A --- better.

25 Q --- answer that. Your name's been on one contract

1 since 2003?

2 A That is correct.

3 Q One -- one time, despite all this, you've been on
4 a contract with the actual vendor?

5 A And the reason why was because of their criterias
6 that not allowed an individual to be in a contract.

7 If we wanted this business to -- if you wanted to
8 start the business, you have to follow their
9 structure. It's not uncommon, as Mary Kay and myself
10 have -- have told you, John Madden, the VP of Vector,
11 the -- the guy that approves the dealer program,
12 suggested to us that we get somebody to be on the
13 paper.

14 So it's not uncommon in our industry for this to
15 happen because not everybody have good credit. We
16 have her go through our -- our roller coasters of bad
17 times, just -- you know, we're human. So yes. Just
18 one.

19 Q All right. My question was -- and you didn't
20 understand it. But my question was: How many of
21 these have you serviced under, whatever role it was?
22 Not that you signed, whatever. MX Security has one
23 with Monitronics right ---

24 A Yes, sir.

25 Q --- now ---

1 A Uh-huh.

2 Q --- correct?

3 A Right.

4 Q I want to know how many contracts like Vector and
5 Monitronics that you've worked under.

6 A Four.

7 Q Four. Four?

8 A (No audible response.)

9 Q And all four of those contracts -- Monitronics,
10 Vector -- name the other two.

11 A Let me correct myself. It was actually five. As
12 I indicated earlier, SAI, which we initially -- Bobby
13 and I started with in 2007, when -- went out of
14 business. So it'd be five contracts.

15 Q Five contracts. Name the other one. SSI, Vector

16 ---

17 A Okay.

18 Q --- Monitronics ---

19 A It was initially Monitronics. Then it became SAI.
20 Then it became Security Networks. Then it became
21 Vector. Then it became Monitronics now.

22 Q And -- and, Mr. Endara, Monitronics, from the
23 original contract, in any way doesn't pay residuals
24 to AVSX now, do they?

25 A Correct.

1 Q Right. Because these figures that you've told the
2 jury are going to run for 20 years stop at the time
3 that the manufacturer ends its contract with the
4 dealer, correct?

5 A That's correct. Yes, sir.

6 Q In all of those contracts?

7 A That's correct. But why would you -- why -- why
8 would you end a good relationship?

9 Q You've had five, Mr. Endara.

10 A Right.

11 Q It happens. It's business.

12 A Right.

13 Q Don't let this jury believe -- you're not trying
14 to say that Bobby Johnson and AVSX will go 25 years
15 with -- with Vector and it'll never change. You're
16 not trying to direct that, are you?

17 MR. SAUTTER: Your Honor, I -- Mr. Ellis is
18 arguing to the jury and not examining the witness.

19 THE COURT: Overruled. You may answer the
20 question.

21 A I'm not suggesting that, sir. I'm -- based on my
22 experience, what I'm telling you is that Vector, as
23 an entity, right, has an amazing residual program.
24 And Monitronics doesn't -- doesn't have the same
25 agreement as Vector. Monitronics actually, in fact,

1 stops giving you residuals after the 97 month.

2 The great thing that Bobby and I looked at it --
3 we called it "honey" -- was that it was indefinite.
4 So why would we want to get out of the Vector
5 contract? We won't.

6 Q All right. Which way do you want to answer that?
7 Do you want to answer that it's indefinite and honey,
8 or do you want to tell them what you just told me:
9 that the contract says as soon as Monitronics or
10 Vector splits the contract with 30 days' notice -- 30
11 days' notice, the residuals and all of that ends?
12 Isn't that true?

13 A That is true. But why would Vector do that? You
14 -- I mean, it makes no sense. You were trying to
15 elaborate -- assume something that neither party
16 wants it to end.

17 Q Well, could they maybe cancel it if maybe one of
18 their former key employees left and created a
19 competing company and stole accounts? Could they
20 cancel for that?

21 A If they choose to, that's their choice.

22 Q Right. And guess what? Isn't Vector suing your
23 three affiliates that you took from AVSX for flipping
24 accounts right now?

25 A They're suing them. But they didn't -- I didn't

1 took them from them. They came knocking on my door.

2 Q They worked for MX. You're getting the benefit of
3 their sales right now, aren't they?

4 A That is correct. Yes, sir.

5 Q Is one of them sitting out here?

6 A No, sir.

7 Q Okay. Who are the three that -- three that have
8 been sued by Vector?

9 MR. SAUTTER: Objection, Your Honor. This isn't
10 relevant.

11 MR. TODD ELLIS: It's absolutely ---

12 THE COURT: Can the ---

13 MR. TODD ELLIS: --- relevant.

14 THE COURT: --- lawyers approach, please.

15 (Whereupon, a bench conference was held off the
16 record in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: Objection sustained.

19 MR. TODD ELLIS: Thank you. Your Honor, if I
20 could just have ---

21 THE COURT: Yes, sir.

22 MR. TODD ELLIS: --- without taking the jury out,
23 I think we'd be done or close to it.

24 THE COURT: All right.

25 MR. TODD ELLIS: Thank you.

1 (Whereupon, Mr. Todd Ellis and Mr. Webb and Mr.
2 Johnson conferred.)

3 MR. TODD ELLIS: That's all I have right now, Your
4 Honor. Thank you.

5 THE COURT: Redirect?

6 MR. SAUTTER: Thank you, Your Honor. Thank you,
7 Mr. Ellis.

8 (Whereupon, Mr. Sautter and Mr. Todd Ellis
9 conferred.)

10 REDIRECT EXAMINATION

11 BY MR. SAUTTER:

12 Q Mr. Endara, can you look at Exhibit No. 8, the
13 Vector Security authorized-dealer agreement at this
14 time?

15 (Whereupon, Mr. Sautter and Mr. Todd Ellis
16 conferred.)

17 Q Turn -- turn to that last page, Exhibit A. Does
18 it talk about multipliers there under Section 11?

19 A Yes, he does, sir.

20 Q And are the use of multipliers common in the
21 security business?

22 A Very much. That's how we get paid, sir.

23 Q And what is that -- if it says "Class A" and it's
24 got a 36X with a Beacon credit score of 676-plus,
25 what does that 35X mean?

1 A That's -- you get paid 30 times -- 35 times the
2 monthly monitoring that the customer pays. And
3 that's how you can gauge the value of a contract.

4 Q All right. And to gauge the value of a contract
5 can help you determine the value of a company?

6 A That's correct.

7 Q Is that what you were trying to explain?

8 A Yes. And rather than -- than -- than getting to
9 the multiples and so forth and -- and -- and losing
10 somebody, I used the -- the capitalization process:
11 how much is the company worth based on that.

12 Q All right.

13 A Because if you sign somebody for a 60-month
14 agreement, that doesn't mean that after the 60
15 months, they're going to quit. A lot of -- a lot of
16 individual just stay with the company unless somebody
17 knocks on the door and gives them a better service or
18 gives them -- gives them more equipment and so forth.
19 So the longevity of an account can be significant.
20 And that's where the residuals were coming about.

21 Q All right. And if you're looking at that same
22 page -- well, not that same page. Let's look at the
23 last -- the -- page number 18. You see that?

24 A Yes, sir.

25 Q Who's the witness underneath where it says

1 "attest"?

2 A Bobby Johnson.

3 Q And -- Bobby L. Johnson?

4 A Bobby L. Johnson. Yes.

5 Q And what's his title listed there as?

6 A President and CEO.

7 Q And if you look at Exhibit No. 1, which was that
8 chart that we started this case with, who is listed
9 as the -- the president?

10 A Luis Endara, myself.

11 Q Who's listed as the CEO?

12 A Bobby Johnson.

13 Q So is it fair to say that a -- that you and Bobby
14 wore many hats with this company?

15 A All the time.

16 Q Where'd this financial declaration come from,
17 Defendant's Exhibit No. 10?

18 A It ---

19 Q Did you give that to me?

20 A No, I did not, sir.

21 Q Did Mr. Johnson have access to it?

22 A When I -- I have -- we -- we had a -- we had a
23 joint office together. And I had personal stuff,
24 just like he did too. So when I was ousted, anything
25 that was there of mine was there. So he didn't ---

1 MR. TODD ELLIS: Your Honor ---

2 A --- give me access to it.

3 MR. TODD ELLIS: Excuse me, Mr. ---

4 THE COURT: Hold on ---

5 MR. TODD ELLIS: --- Endara.

6 THE COURT: --- a minute. Yes.

7 MR. TODD ELLIS: Excuse me.

8 THE COURT: State your grounds for your objection.

9 MR. TODD ELLIS: Yeah. It's not an objection. I
10 need a sidebar quickly, please.

11 (Whereupon, a bench conference was held off the
12 record in the presence of the jury but out of the
13 hearing of the jury.)

14 THE COURT: Objection sustained.

15 MR. SAUTTER: Thank you, Your Honor.

16 Q Mr. -- let me just ask you this: Did Bobby
17 Johnson ever ask you to draft an operating agreement?

18 A No, he never did. The -- we trusted each other as
19 brothers. And at the end we built, in my mind, a
20 trust relationship. And outside of the fact of his
21 health conditions, I hope that the only reason why he
22 did what he did to me was because of his health
23 conditions. Other than that, I don't know why he
24 would've done what he did. We were brothers. We
25 were close.

1 Q Could ---

2 A I ---

3 Q Could you have drafted an operating agreement and
4 put it in force without Mr. Johnson's
5 authority/consent/signature?

6 A No. Because we both have to -- we were equal
7 partners. We would have to both agree to it.

8 (Whereupon, Mr. Sautter and Mr. Michael Ellis
9 conferred.)

10 MR. SAUTTER: Your Honor, that's all I have for
11 this witness at this time.

12 THE COURT: Any recross?

13 MR. TODD ELLIS: One -- one question, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. TODD ELLIS:

16 Q Mr. Endara, if you would, it is Exhibit --
17 Defendant's Exhibit No. 8. It's that Vector Security
18 agreement. Do you have that in front of you?

19 A Yes, sir.

20 Q If you would, flip to page 8, please.

21 A (Complied.)

22 Q Paragraph 8 and 8.1, it's termination of
23 expiration of agreement, termination by Vector. If
24 you would read the -- the first sentence of that.

25 MR. SAUTTER: Your Honor, I -- I'm going to

1 object. I mean, I didn't go into any of that on -- I
2 did look at the signature page and multipliers, but I
3 didn't go into any of that on redirect.

4 THE COURT: Overruled. Go ahead.

5 Q Please read it.

6 A To what section do you want?

7 Q It's the 8.1, the first sentence.

8 A It says (As read): Vector shall have the right to
9 terminate this agreement upon 30-day written notice
10 to dealer for any reason or no reason and without any
11 liability whatsoever.

12 Q Thank you.

13 MR. TODD ELLIS: That's all, Your Honor.

14 THE COURT: Sir, you may step down. Thank you.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: All right. Ladies and gentlemen, I'm
17 going to ask that you step to the jury room for just
18 a minute. I'm going to give you a break. We'll get
19 you back out here as quickly as possible and we'll
20 resume the trial of this case. Do not -- do not
21 discuss the case at all. I'll get you back out here
22 as quickly as possible.

23 (Whereupon, the jury exited the courtroom at 3:14
24 p.m.)

25 THE COURT: All right. Who does plaintiff intend

1 to call next as a witness ---

2 MR. MICHAEL ELLIS: You ---

3 THE COURT: --- Mr. Sautter? I'm sorry. Mr.
4 Michael Ellis?

5 MR. MICHAEL ELLIS: Your Honor, plaintiff intends
6 to call Jason Wolfe next.

7 THE COURT: And ---

8 MR. MICHAEL ELLIS: And following that ---

9 THE COURT: Who is Mr. Wolfe?

10 MR. MICHAEL ELLIS: He is a former employee of
11 AVSX.

12 (Whereupon, Mr. Sautter and Mr. Michael Ellis
13 conferred.)

14 THE COURT: All right. And whom after that?

15 MR. MICHAEL ELLIS: Matt Edwards.

16 THE COURT: All right. And who is Mr. Edwards?

17 MR. MICHAEL ELLIS: He's also a former employee of
18 the -- of AVSX. He also knew Mr. Endara and Mr.
19 Johnson before becoming an employee.

20 THE COURT: All right. Are each of those
21 individuals here?

22 MR. MICHAEL ELLIS: Yes, Your Honor.

23 THE COURT: All right. All right. We'll try to
24 finish with those two witnesses today and we'll go
25 from there. Okay? We'll stand down for just a

1 minute.

2 MR. TODD ELLIS: Thank you.

3 (Off the record from 3:15 p.m. until 3:24 p.m.)

4 THE COURT: All right. Anything from plaintiff's
5 counsel before I bring the jury in?

6 MR. SAUTTER: No, Your Honor.

7 THE COURT: Defense counsel?

8 MR. TODD ELLIS: I may -- waiting on Mr. Johnson.
9 He went to the restroom, Your Honor. But other than
10 that, no -- no, sir.

11 THE COURT: All right. Ms. Shirley, if you'd
12 bring me the jury, please, ma'am.

13 THE BAILIFF: Yes, sir.

14 MR. TODD ELLIS: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 (Off the record briefly.)

17 (Whereupon, the jury entered the courtroom at 3:25
18 p.m.)

19 THE BAILIFF: Jury panel is present, Judge.

20 THE COURT: Thank you, ma'am. Call your next
21 witness, please.

22 MR. MICHAEL ELLIS: Thank you, Your Honor.
23 Plaintiff at this time would call Mr. Jason Wolfe to
24 the stand.

25 (Whereupon, the witness came forward.)

1 JASON WOLFE, having been first duly sworn,
2 testified as follows:

3 THE COURT: Mr. Wolfe, when you're answering
4 questions, I want you to suppose you're speaking to
5 that lady in the back corner of that jury box over
6 there to make sure everybody in the -- in that jury
7 box hears you, okay?

8 THE WITNESS: Yes, sir.

9 THE COURT: Go ahead, Mr. Michael Ellis.

10 MR. MICHAEL ELLIS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. MICHAEL ELLIS:

13 Q Good afternoon, Mr. Wolfe. How are you doing
14 today?

15 A I'm good.

16 Q Mr. Wolfe, do you know the parties to this case,
17 Mr. Luis Endara and Mr. Bobby Johnson and Mrs. Bobby
18 Johnson?

19 A I do.

20 Q And how do you know them?

21 A I worked for them for about two years.

22 Q During -- at -- at AVSX?

23 A At AVSX.

24 Q During what time frame?

25 A I think it was 2012 to 2014.

1 Q Okay. Mr. Wolfe, I'd like to show you an exhibit
2 that's been marked as Plaintiff's No. 1. This is a
3 corporate-responsibilities sheet. Are you on that?

4 A I am.

5 Q What is your position?

6 A CIO.

7 Q Okay. Thank you very much.

8 A All right.

9 Q I'm sorry. What date did you say you were hired?

10 A It was -- I think it was December 2012. It's been
11 a little while, but it's ---

12 Q Okay. And at the time you were hired, who did you
13 believe owned the company known as AVSX Technologies?

14 A When I was brought in for my interview, it was
15 actually -- Bobby was there. And I -- he apologized
16 that Luis wasn't there. So it was my understanding
17 at the time that it was joint venture between the two
18 of them.

19 Q Okay. So you believed the two of them were the
20 owners?

21 A Yes.

22 Q Mr. Wolfe, I'd like to show you another exhibit
23 that's been marked Plaintiff's 2. Do you recognize
24 this document?

25 A I do.

1 Q Can you tell us what that document is?

2 A This is a document that was sent out after the CFO
3 left, kind of redistributing what was going on in the
4 company and how the company profit share was going to
5 work.

6 Q Is -- is it an e-mail?

7 A It is an e-mail.

8 Q What's the date on that e-mail?

9 A February 8th, 2013.

10 Q Who is the author of that e-mail?

11 A Bobby Johnson.

12 Q Who is it to?

13 A It's to myself, Luis Endara, David Cason, at --
14 all of us. We were the senior leaders at the time.

15 (Whereupon, Mr. Sautter and Mr. Michael Ellis
16 conferred.)

17 Q And, Mr. Wolfe, can you just give us a summary of
18 what that e-mail is saying, unless somebody wants it
19 read fully.

20 MR. TODD ELLIS: Objection, Your Honor. I would
21 ask for a more specific questions related --
22 soliciting information.

23 Q Mr. Wolfe, would you mind ---

24 THE COURT: Objection ---

25 Q --- reading that ---.

1 THE COURT: Let me rule ---

2 MR. MICHAEL ELLIS: I'm sorry.

3 THE COURT: --- on it. Objection sustained. Go
4 ahead, Mr. Ellis -- Michael ---

5 Q Mr. Wolfe ---

6 THE COURT: --- Ellis.

7 Q --- would you mind reading that entire e-mail,
8 please.

9 A Sure. (As read): I'd like to have a meeting with
10 everyone on leadership at 9 a.m. sharp Monday. And
11 then, it's saying that Dave, Bobby, Luis, and Jason
12 are the senior leaders to start our new leadership
13 meeting. And I do not want to cancel these meetings
14 in the least, even if we are out of town.

15 I have made some big changes today to the
16 alteration to the structure and look forward to
17 sharing them further with each of you. I couldn't
18 wait a full weekend to address these things that have
19 been eating at me. And I in no way meant to exclude
20 you guys.

21 It is time for us to bring it, and I promised you
22 I would. Some changes will be implemented. Five
23 percent net share for both Jason and Dave, shared
24 equally, reflective on performance and implementation
25 of control measures to increase culture and success

1 therein. We may add Eric to this as well to replace
2 Dan.

3 Five percent employee net share for the office
4 staff. This will not include sales or install.
5 There will be a share department for each individual
6 staff member sharing the focus of -- I'm sorry --
7 sharing the focus and benefits of doing the job
8 position in which they are required to adhere to.

9 Yes, Luis and I are willing to give 10 percent of
10 our company to those who want to bring it like never
11 before. Ten quick items I have addressed and need
12 everyone to be aware of: Melissa Rivers, \$12.50 per
13 hour and will work Monday through Friday, 11:30 to
14 8:30. Nikki Caltrider will work Monday through
15 Friday, 10 to 7. Lotosha will be moved to a full-
16 time, insurance and 40 hours a week, and she will be
17 the personal assistant for Sharon, assisting her with
18 overflow.

19 James, Tosha's son, will be hired at \$10 per hour,
20 starting next week, and will be the labor for the
21 office and inventory departments. Laura Endara will
22 be moved to 12.50 per an hour, and she will be the
23 data-entry coordinator. Nacolle and Courtney will be
24 moved into Dan's office, connected to Dave's office,
25 and will be in charge of payroll processing and

1 planning. They are going to be -- they're going to
2 use the existing desks and will need to ensure they
3 have ample storage for all sensitive items, payroll
4 receipts, compliance, licensing for CAT.

5 All things service will funnel through Gloria to
6 be processed initially. All invoicing will flow
7 through Michelle and Nikki and will receive reports
8 for payroll.

9 Jason will be in charge for all things software
10 and inventory once J.C. arrives and during the
11 interim moving forward. And all purchases for
12 inventory eventually will funnel through him.

13 I will assist entirely as we also begin the change
14 from -- of CAT for recruitment and compliance. Dave
15 will be in charge of all things service and support,
16 to include technicians, with intimate assistance for
17 Luis and whomever we decide will assist with the
18 service department.

19 Why do I say this? I was very disappointed this
20 morning with the situation involving Ryan Rouse. And
21 I'm at a position mentally where I would move in a
22 different direction if it were up to me.

23 I will leave this decision to Luis and to Dave to
24 override. But I am concerned his dependability is
25 very much a challenge we should not be required to

1 deal with moving forward.

2 We will institute employee reviews on a monthly
3 basis to begin March 1st for the month of February.
4 These will be reflective on their job positions,
5 which I will ensure each of you will have in the
6 coming weeks as I write them very soon.

7 I hope everyone had an awesome weekend and they
8 are not too troublesome to anyone. I am tired,
9 exhausted, and wore out. But I am also freaking
10 gassed up and excited to see everyone bring it.

11 I'm tired of hiding my needs to see everyone
12 simply answer the question as to whether they can or
13 not be part of something very special and rewarding.
14 It isn't just about money and revenue as much as it
15 is ensuring the safety of our family and those who
16 depend on each of us on a daily basis.

17 Q All right. Thank you, Mr. Wolfe. You need a
18 glass of water after that?

19 A (No audible response.)

20 Q Mr. Wolfe, what -- what was your belief that Mary
21 Kay Johnson's relation was to AVSX?

22 A I -- at the time I just assumed it was another
23 member of the family. That didn't change until
24 later.

25 Q Okay.

1 MR. MICHAEL ELLIS: Nothing further, Your Honor.

2 THE WITNESS: Okay.

3 MR. MICHAEL ELLIS: Oh -- oh -- sorry.

4 (Whereupon, Mr. Sautter and Mr. Michael Ellis
5 conferred.)

6 Q When did it change?

7 A After -- well, leading up to the point where Luis
8 left.

9 Q Immediately prior to Luis leaving?

10 A Yes.

11 Q In what way did it change?

12 A It started being made clear that Mary Kay was the
13 owner of the company and that Bobby was just the CEO
14 or the assistant of the company. And at that point
15 it started being spread throughout the office that
16 Luis was not part of the family, not -- not that he
17 wasn't part of the family, but he wasn't part owner.

18 Q And that was the first you'd ever heard of any of
19 that?

20 A Yes.

21 (Whereupon, Mr. Sautter and Mr. Michael Ellis
22 conferred.)

23 MR. MICHAEL ELLIS: Nothing further, Your Honor.

24 THE WITNESS: Okay.

25 THE COURT: Cross-examination?

1 MR. TODD ELLIS: Please the Court? Thank you,
2 Your Honor.

3 CROSS-EXAMINATION

4 BY MR. TODD ELLIS:

5 Q Hey, Jason.

6 A Hello.

7 Q I'm Todd Ellis. Good to see you again. Jason, I
8 haven't seen you in a while. Who are you working
9 with now?

10 A Palmetto Health.

11 Q Palmetto Health?

12 A Uh-huh.

13 Q What's your position over there?

14 A Senior systems engineer.

15 Q Sounds fancy. What do you do with them?

16 A Networking and server work.

17 Q So you work on all the servers and ---

18 A Yeah.

19 Q --- the networking ---

20 A The infrastructure.

21 Q --- throughout?

22 A Uh-huh.

23 Q Do you supervise any people over there?

24 A No.

25 Q You're the lone island of I.T. work; is that .

1 right?

2 A There's -- I'm a member of a multidepartment of
3 engineers.

4 Q Right. Do you know who owns Palmetto Health?

5 A Don't have a clue.

6 Q How long you been there?

7 A Six months.

8 Q Right. And you don't know who the owners are, do
9 you?

10 A Nope.

11 Q Do you know who the leaders are that -- like you
12 pointed out in that e-mail ---

13 A I do ---

14 Q --- that you ---

15 A --- not.

16 Q You don't know -- you know the leaders you report
17 to, though ---

18 A I know my ---

19 Q --- don't you?

20 A --- direct leaders. I know the CEO. But as far
21 as who may own it, I do not know any of that.

22 Q Right. But that's not unusual for you not to know
23 the corporate structure of the entity that you work
24 for, is it?

25 A Not when you're not a senior member.

1 Q Not a senior member?

2 A (No audible response.)

3 Q Okay. Were you in -- ever in any of the corporate
4 meetings when they were setting up or otherwise
5 setting the structure for AVSX Technologies?

6 A That predated me.

7 Q That predated you?

8 A Uh-huh.

9 Q That's right. So in 2012 or so when you were
10 employed to '14, all that had been set out, correct?

11 A Correct.

12 Q So earlier -- I -- I think you used the -- the
13 term "I believed that Luis and Bobby were the owners
14 of the company"; is that right?

15 A That's correct.

16 Q All right. And then, I -- later on you said, "I
17 assumed that Mary Kay didn't have anything to do with
18 it." Didn't you say that?

19 A That's correct.

20 Q But it -- you didn't really know the corporate
21 structure?

22 A I never saw anything on paper. No. It was the
23 way it was presented.

24 Q I understand. Both of Luis and Bobby Johnson had
25 significant presence on daily operations; isn't that

1 right?

2 A Correct.

3 Q Okay. Thank you.

4 MR. TODD ELLIS: That's all, Your Honor.

5 THE COURT: Any redirect?

6 MR. MICHAEL ELLIS: Nothing, Your Honor.

7 THE COURT: Sir, you may step down. Thank you.

8 THE WITNESS: Okay.

9 (Whereupon, the witness exited the witness stand.)

10 THE COURT: Call your next witness.

11 MR. MICHAEL ELLIS: Thank you, Your Honor. At
12 this time the plaintiff would call Mr. Matt Edwards
13 -- Matthew Edwards to the stand.

14 (Whereupon, the witness came forward.)

15 MATTHEW EDWARDS, having been first duly
16 sworn, testified as follows:

17 THE COURT: Go ahead.

18 MR. MICHAEL ELLIS: ELLIS: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MICHAEL ELLIS:

21 Q Good afternoon, Mr. Edwards.

22 A Hi.

23 Q Do you know the parties in this case, Mr. Luis
24 Endara, Mr. Bobby Johnson, and Mrs. Mary Kay Johnson?

25 A I do.

1 Q And how do you know them?

2 A I was employed by them for a period of about a
3 year.

4 Q And what -- what year -- what time period was
5 that?

6 A I was employed for them starting December of 2013
7 until December of 2014. I also knew them for
8 approximately a ten-year period before that as
9 customers of a former employer.

10 Q And by "them," who do you mean exactly?

11 A Luis and Bobby.

12 Q And how -- how did you know them before you were
13 employed?

14 A They were customers of mine. I was a manager at
15 Best Buy. And they would come in, shopping for Best
16 Buy related stuff.

17 Q Okay.

18 A And -- together all the time.

19 Q Regularly?

20 A Yeah.

21 Q And did you get to know them more than just your
22 customers? Did you -- did you get to know them
23 personally at all?

24 A No. I mean, we didn't, like, call each other
25 afterwards or hang out. But that's where I was

1 recruited from.

2 Q Okay. Did -- when they shopped at Best Buy, were
3 they shopping for personal reasons or business
4 related reasons? Do you know?

5 A I would -- I would assume both. I mean, they
6 bought computer related stuff, washing machines. I
7 assume those were for the home ---

8 Q Okay.

9 A --- things like that

10 Q Did you know the nature -- or did you have a
11 belief as to the nature of Mr. Endara and Mr.
12 Johnson's relationships to AVSX Technologies before
13 you were hired?

14 A Yes. I thought that they were partners in the
15 business.

16 Q Partners in the business?

17 A (No audible response.)

18 Q Did -- did you ---

19 A Well, I mean ---

20 Q --- think that AVS Technologies was their
21 business?

22 A Yes. Yes.

23 Q Was it -- did they represent that to you?

24 A I don't know if they ever walked in and said, "Hi,
25 we're the owners of AVSX." But in the relationships

1 that I had with them when I was hired and prior to
2 that, yes. I would say that that was my belief.

3 Q And -- and who hired you?

4 A Actually, Bobby and Jason hired me.

5 Q Okay.

6 A Luis was out of town. But they both spoke to me
7 in the Best Buy store regarding some consulting work
8 I was doing and wanted to meet with me and then
9 offered me a job while I was there with what I was
10 told would be Luis's full support in the decision
11 also.

12 Q Okay. And at that time did you believe that Bobby
13 and Luis were the owners of the company?

14 A Yes.

15 Q Okay. You were -- you were hired to do some
16 marketing?

17 A No. I was human resources ---

18 Q Human ---

19 A --- director.

20 Q Excuse me.

21 A Yep.

22 Q Okay. Mr. Edwards, I'd like to show you an
23 exhibit that's been marked as Plaintiff's No. 2 but
24 -- I'm sorry -- Plaintiff's No. 3. Do you recognize
25 that document?

1 A Yes.

2 Q What is this document?

3 A This is the history of AVSX, as it was sent to me
4 and the other senior members of the management team
5 when I was working on developing the hiring Web site.

6 Q Who authored this?

7 A It was from Bobby Johnson.

8 Q Okay. And was -- was it to others outside AVSX as
9 well?

10 A Yes. It went to Team AVSX, which I assume was a
11 group mailbox; John Madden at Vector Security; Mary
12 Hutchinson at Vector Security; Steve Hammer at Vector
13 Security; Pam Petrow at Vector Security. It also
14 went to Chris Bull at AVSX and Jason Wolfe at AVSX
15 and Luis Endara at AVSX.

16 Q Okay. And -- I'm not going to make you read this
17 whole e-mail.

18 A Okay.

19 Q Would you say this e-mail, to your belief, is an
20 accurate reflection of the partnership between Bobby
21 and Luis?

22 MR. TODD ELLIS: Objection, Your ---

23 A Yeah.

24 MR. TODD ELLIS: --- Honor. Calls ---

25 THE COURT: Hold on ---

1 MR. TODD ELLIS: --- for speculation. He worked

2 ---

3 THE COURT: Can -- can ---

4 MR. TODD ELLIS: --- less than ---

5 THE COURT: --- I see ---

6 MR. TODD ELLIS: --- a year.

7 THE COURT: --- the exhibit, please.

8 MR. MICHAEL ELLIS: I have a copy.

9 (Whereupon, Mr. Sautter and Mr. Michael Ellis
10 conferred.)

11 THE COURT: Can the lawyers approach ---

12 MR. TODD ELLIS: Yes.

13 THE COURT: --- a minute, please.

14 (Whereupon, a bench conference was held off the
15 record in the presence of the jury but out of the
16 hearing of the jury.)

17 THE COURT: Was that the -- did I take your copy,
18 sir?

19 THE WITNESS: No, sir.

20 MR. MICHAEL ELLIS: That ---

21 THE COURT: Okay.

22 MR. MICHAEL ELLIS: --- that was ---

23 MR. TODD ELLIS: Was that yours?

24 MR. MICHAEL ELLIS: --- my -- one of my copies.

25 Q Mr. Edwards, based upon your observations and

1 having read this e-mail, would you say this e-mail is
2 accurate as to the relationship between Bobby Johnson
3 and Luis Endara?

4 A I have no reason to believe it wasn't accurate.

5 Q Okay. And based upon your reading of this e-mail,
6 does it appear that Bobby Johnson and Luis Endara
7 started a company together as 50/50 partners?

8 A Yes.

9 MR. MICHAEL ELLIS: Nothing further, Your Honor.

10 THE COURT: Cross-examination?

11 MR. TODD ELLIS: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. TODD ELLIS:

14 Q Hey, Mr. Edwards. How are you?

15 A Hey, Todd -- I mean, Mr. Ellis. Sorry.

16 Q Well, it's -- no. That's fine. We know each
17 other a little bit. Matt, where are you working now?

18 A The Benefit Company.

19 Q The Benefit Company?

20 What kind of work do they do?

21 A Health insurance benefits, administration
22 software.

23 Q Is that in the Columbia area? I'm not getting
24 into all ---

25 A It is.

1 Q --- your personal business. I just wasn't aware
2 of it.

3 A It is.

4 Q And -- and what kind of -- what kind of work do
5 you do for them?

6 A An account manager for our software side.

7 Q Working with the software?

8 A (No audible response.)

9 Q How many people are over there in that building or
10 work with you in that regards?

11 A Approximately 80.

12 Q Eighty?

13 A Uh-huh.

14 Q Do you know the legal owners of Benefits?

15 A Yes.

16 Q And who are those?

17 A Steve and Carrie Lunceford.

18 Q And how do you know that?

19 A Because they're the owners of the company.

20 Q But they've represented that to you; is that
21 correct?

22 A Yes.

23 Q Have you ever seen the corporate documents?

24 A No, I have not.

25 Q Have you ever looked at the LLC or Inc. or

1 whatever formed that?

2 A The LLC?

3 Q Whatever ---

4 A That was ---

5 Q --- their ---

6 A --- the owner?

7 Q --- entity is that they supposedly own this
8 business.

9 A I've never researched their LLC. No, sir.

10 Q Right. So you know any of that.

11 A Okay. Yeah. I guess not.

12 Q Right. And you didn't know that when you joined
13 AVSX. You'd never reviewed the corporate documents
14 or seen any of the underlying communications related
15 to ownership of the business?

16 A No.

17 Q And -- and were you in the court earlier today? I
18 didn't see you.

19 A No, I was not.

20 Q Okay. So you didn't hear any of the testimony
21 that's gone on today with Mr. Endara or anyone else
22 for ---

23 A No, sir.

24 Q --- that matter?

25 MR. TODD ELLIS: That's all I have, Your Honor.

1 Thank you.

2 THE COURT: Any redirect?

3 MR. MICHAEL ELLIS: Nothing, Your Honor.

4 THE COURT: Sir, you may step down.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness exited the witness stand.)

7 THE COURT: Can y'all approach a minute.

8 MR. MICHAEL ELLIS: And, Your Honor, may these
9 witnesses be released?

10 THE COURT: Any -- any objection?

11 MR. TODD ELLIS: None, Your Honor.

12 THE COURT: Without objection. So you two
13 individuals are free to go. Thank you for being
14 here.

15 (Whereupon, a bench conference was held off the
16 record in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: All right. Ladies and gentlemen, what
19 we're going to do at this time is I am going to
20 release you for the balance of the day. I'm going to
21 release you for the balance of the day. We are going
22 to resume at 9:30 in the morning -- 9:30 in the
23 morning. So please be back here by 9:30 so we can
24 start as promptly at that time as possible.

25 Do not -- do not discuss the case at all. Do not

1 do any independent investigation on your own. As
2 I've told you from the outset, you're to decide this
3 case based solely upon the testimony and evidence
4 that's presented in this courtroom and nowhere else.

5 Now, before I release you, I know Mr. Dye's phone
6 went off earlier today. It seems like it was
7 yesterday that that phone went off. But it went off
8 earlier today. And I don't get real bent out of
9 shape about phones going off.

10 If you're in the courtroom on a regular basis,
11 such as the bailiffs and lawyers and court personnel,
12 it is bound to go off at some point. But as I told
13 you all, you can imagine if everybody's phone started
14 going off.

15 When I was practicing law, I was standing in front
16 of a judge. And I never cut my ringer -- or -- on.
17 It was always on silent. And I don't know if one of
18 my kids did it. That's my story and I'll stick --
19 I'll blame it on one of my kids because they're not
20 here to defend themselves.

21 But my phone went off. And I was standing right
22 in front of the judge with my client. And all I
23 could say was, "Your Honor, if you're going to put me
24 in jail, please let me make one phone call."

25 And at the time it was -- it was one of our local

1 judges from Florence. And he started laughing. And
2 he said, "You know, I don't get too bent out of shape
3 about phones," he said, "but" -- he said, "When I
4 was" -- he -- he was down in, I think, Edgefield
5 County, trying a murder case. And the state's
6 primary witness in this murder case was on the stand.

7 And the judge proceeded to say that when I stay
8 away from home, I'll always use my phone as my alarm
9 clock. And he said, "On that particular morning, my
10 wife called me before my alarm went off, and I just
11 forgot to cut it off and switch it back over to
12 vibrate. And when the state's main witness in this
13 murder case was on the witness stand, my phone went
14 off -- well, the -- the -- the question was 'Mr. So
15 and So' -- whatever the witness's name was -- 'did --
16 did you see who it was that committed this offense on
17 that night?' And the witness responded, 'Yes, sir, I
18 did.'"

19 And he said, "Well, can you point him out in the
20 courtroom?" And as soon as they asked that question,
21 the judge's phone went off. And his ringtone was --
22 don't hold this against me. But his ringtone was
23 "Dun-dun-dun-dunnn." And he said everybody in the
24 courtroom started laughing, including the defendant.

25 So I try not to get too bent out of shape over --

1 when phones go off. But -- but I say that to say
2 this: The use of phones in the courtroom is
3 prohibited, unless you're court personnel, especially
4 on the criminal -- when -- when we're dealing with
5 criminal court. Lawyers will be up here, texting
6 office staff, etc., trying to get files, get people
7 in and out of the courtroom, etc.

8 But -- but individuals that are not associated
9 with the court really shouldn't have them in here.
10 With today's technology and whatnot, things can end
11 up on social media real quick and create some
12 problems. Okay?

13 As you could only imagine -- and especially in the
14 criminal side of things, when you have, for instance,
15 a confidential informant, if somebody were out in the
16 audience using a cell phone and videotaping what's
17 going on in there, that could endanger somebody's
18 life. And so the -- the bottom line is you just
19 eliminate that as much as you can, especially with
20 individuals that aren't in and out of the courtroom
21 on a regular basis.

22 So I hope you all understand where we're coming
23 from on that. It -- it's to protect people involved.
24 But again, it's to -- to try to cut down on
25 distractions in the courtroom. Because we want your

1 full attention on what's going on in here and what
2 these witnesses are testifying to. Okay?

3 So I'm going to let you go for the day. I hope
4 you have a nice evening. Please be back at 9:30
5 tomorrow morning. Okay?

6 (Whereupon, the jury exited the courtroom at 3:55
7 p.m.)

8 (Off the record briefly.)

9 THE COURT: All right. Anything from plaintiff's
10 counsel before we break ---

11 MR. SAUTTER: No ---

12 THE COURT: -- for the ---

13 MR. SAUTTER: --- Your Honor.

14 THE COURT: Defense counsel?

15 MR. TODD ELLIS: Nothing, Your Honor. Thank you.

16 THE COURT: Hold on just a second.

17 (Off the record briefly.)

18 THE COURT: Have you all gotten together any
19 requests to charge, either side?

20 MR. TODD ELLIS: Your -- Your Honor, I have a ---

21 THE COURT: Okay.

22 MR. TODD ELLIS: --- preliminary draft of those,
23 which has most -- I can't imagine it would be -- so I
24 could either have it tonight or in the morning. But
25 I ---

1 THE COURT: Well ---

2 MR. TODD ELLIS: --- have it ---

3 THE COURT: --- what I'd ---

4 MR. TODD ELLIS: --- with me.

5 THE COURT: --- like you all to do is talk about
6 -- you may agree on it. You know, it may be -- but
7 what I don't want is for -- for you all to finish
8 trying this case and then hand up to me, you know,
9 requests to charge without us having an opportunity
10 to look at them.

11 I mean, I -- I like to have them in advance. I
12 like for my clerk to put together the charge. And I
13 like to have a charging conference beforehand so
14 everybody's kind of on the same page once we get to
15 that point.

16 MR. MICHAEL ELLIS: Your ---

17 THE COURT: All righty?

18 MR. MICHAEL ELLIS: Would you like the plaintiff's
19 right now if they are ready?

20 THE COURT: If you've got them, hand them up.

21 MR. TODD ELLIS: Yeah. Can I -- I'm going to give
22 both mine with the qualification that I would add as
23 soon as possible, which would be no later than
24 tomorrow morning ---

25 THE COURT: Okay.

1 MR. TODD ELLIS: --- if we had additional ones.

2 Is that all right, Your Honor?

3 THE COURT: That's fine.

4 MR. SAUTTER: No problem, Your Honor, from the
5 plaintiff.

6 MR. TODD ELLIS: Yeah.

7 (Whereupon, Mr. Michael Ellis and Mr. Todd Ellis
8 conferred.)

9 THE COURT: But if you all will be back here at 9
10 in the morning, I'd like you all to talk, you know,
11 about requests to charge. How many -- and -- and I'm
12 not going to hold you to this, Mr. Todd Ellis. But --
13 -- and you said over here at sidebar, but I just again
14 want to kind of get an idea how many witnesses you
15 intend to put up.

16 MR. TODD ELLIS: Your Honor ---

17 THE COURT: Two or three?

18 MR. TODD ELLIS: --- I am -- I'm concerned about
19 the scheduling with our accountant. But it would be
20 two or three, at most.

21 THE COURT: Okay.

22 MR. TODD ELLIS: And ---

23 THE COURT: What ---

24 MR. TODD ELLIS: --- most of those ---

25 THE COURT: --- issue or what --

1 MR. TODD ELLIS: --- would be ---

2 THE COURT: --- kind of schedule is your
3 accountant ---

4 MR. TODD ELLIS: The only day he was -- had
5 problematic -- when I thought it was an out of town
6 was tomorrow. And so I -- I have ---

7 THE COURT: Okay.

8 MR. TODD ELLIS: --- a feeling that even with Mr.
9 Spohn going in the morning, that they may close their
10 case and I will begin.

11 THE COURT: Yeah.

12 MR. TODD ELLIS: I don't know that I can fill up
13 the day. We might could finish ---

14 THE COURT: Well, we'll ---

15 MR. TODD ELLIS: --- so ---

16 THE COURT: --- make -- what we can do tomorrow is
17 see where we are after you put up -- certainly,
18 depending on what -- what my rulings are, see where
19 we go from there. And assuming everything continues
20 forward, we can have a charging conference tomorrow
21 afternoon ---

22 MR. SAUTTER: Yes, sir.

23 THE COURT: --- maybe and hammer that out. And
24 then Friday -- I mean, excuse me -- Thursday morning,
25 put up your last witness and then we'll go right into

1 ---

2 MR. TODD ELLIS: Your Honor, that would be -- I'm
3 not even going to say it's going to come to that.
4 That would be incredible. And I think it would be
5 short, even on that morning, so that you could get to
6 the charge and argue pretty quick.

7 THE COURT: Well, I mean, I'll -- I'll ---

8 MR. TODD ELLIS: But ---

9 THE COURT: I'll accommodate you -- accommodate
10 you all ---

11 MR. TODD ELLIS: And I've got communications into
12 him right now, telling him ---

13 THE COURT: Okay.

14 MR. TODD ELLIS: --- basically where I think we
15 would be and see if he could get back tomorrow.

16 THE COURT: Okay. Well, just let me know. Just
17 keep me posted on that ---

18 MR. TODD ELLIS: Yes, sir.

19 THE COURT: --- where we are. All right.

20 MR. TODD ELLIS: Yes.

21 MR. WEBB: Thank you, Your Honor.

22 THE COURT: You all have a good night.

23 MR. SAUTTER: Thank you, sir.

24 (Whereupon, the proceeding was adjourned at 3:59

25 p.m.)

TRANSCRIPT OF RECORD

TRIAL DAY 3 - 01/27/16

(Whereupon, the proceeding was reconvened at 9:24 a.m.)

THE COURT: All right. Anything from plaintiff's counsel before I bring out the jury?

MR. SAUTTER: No, Your Honor.

THE COURT: Defense counsel?

MR. TODD ELLIS: No, Your Honor.

THE COURT: All right. Bring me the jury, please.

(Off the record briefly.)

(Whereupon, the jury entered the courtroom at 9:26 a.m.)

THE BAILIFF: Jury's here, Your Honor.

THE COURT: Thank you very much. Good morning, ladies and gentlemen. I hope you all had a nice evening yesterday and are ready to proceed here today. I appreciate you all being here when I asked you to be here this morning. At this time we are now going to continue the trial of this case.

Plaintiff's counsel, you're so recognized. Call your next witness, please.

MR. SAUTTER: Thank you, Your Honor. Plaintiff would call Mr. Daniel Spohn.

(Whereupon, the witness came forward.)

1 THE BAILIFF: Right here, sir.

2 DANIEL SPOHN, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SAUTTER:

6 Q Mr. Spohn, do you know the individuals Luis Endara
7 and Bobby Johnson and Mary -- Mary Kay Johnson?

8 A I do..

9 Q How do you know them?

10 A Business and friends.

11 Q Okay. And so you're friends with -- with all the
12 parties?

13 A Yes. Some degree at this point. Yes.

14 Q Okay. And did you actually -- did you actually
15 work first as a consultant for AVSX or Guardian
16 Eagle?

17 A Yes. Correct.

18 Q And what years was that?

19 A '07 to -- to 2012.

20 Q All right. And when '07 was around, was there
21 also an entity known as Force Protection24?

22 A Correct. Yes.

23 Q Okay. Mr. Spohn, this -- this chart is -- which
24 is Plaintiff's Exhibit No. 1, the AVSX corporate
25 responsibilities, are you on that chart?

1 A Yes.

2 Q Where are you?

3 A The CFO.

4 Q Can you show the jury where you are on that chart,
5 which figurine you are?

6 A Right here.

7 Q Okay.

8 THE COURT: What exhibit is that again?

9 MR. SAUTTER: Exhibit No. 1, Your Honor.

10 THE COURT: Thank you.

11 Q And as CFO on the chart, what were your designated
12 responsibilities?

13 A Payroll, just accounting.

14 Q The financial accounting?

15 A Yes.

16 Q All right. And so you were a consultant first to
17 AVSX, correct?

18 A Correct.

19 Q And then you actually became in-house with AVSX,
20 correct?

21 A Correct.

22 Q Like on that chart, right?

23 A Correct.

24 Q All right. And so what were -- what were your
25 duties with AVSX when you were in-house?

1 A I was the CFO.

2 Q Okay. But what does that mean? What -- what does
3 all that entail?

4 A Well, as the chief financial officer, I dealt with
5 all the accounting, payroll, dealing with purchasing
6 of vehicles, taxes, that ---

7 Q Okay. And in that role did it require you to be
8 familiar with the -- the operations and -- of -- of
9 AVSX?

10 A Yes.

11 Q How was that business operated between Bobby
12 Johnson and Luis Endara?

13 A What do you -- how does it -- how was it operated?
14 How do you mean?

15 Q Well, how would you describe the -- the way they
16 operated at AVSX?

17 A Well, I mean, the -- they -- in operations they
18 ran it like they were partners.

19 Q Partners and -- and the -- they -- to your
20 knowledge, together they formed the LLC known as
21 AVSX?

22 MR. TODD ELLIS: Objection, Your Honor. Calls ---

23 THE COURT: Objection sustained.

24 Q Do you know how the AVSX was formed and who formed
25 it?

1 A Well, AVSX was originally set up as Guardian Eagle
2 Security.

3 Q Yes, sir.

4 A At a later time, it -- it just changed its name to
5 AVSX.

6 Q All right. Well, how was Guardian -- if you know,
7 how was Guardian Eagle formed?

8 A It was formed -- Julio was the shareholder, I
9 think, in '07/'08.

10 Q Mr. Reis?

11 A Yes.

12 Q Julio Reis? Yes, sir.

13 And then what happened?

14 A That -- it operated with Julio a few years. And
15 then basically, AVSX took over Guardian Eagle.

16 Q All right. And who -- who owned -- if -- if you
17 know, who owned Guardian Eagle?

18 A Originally?

19 Q Yes, sir.

20 A Julio Reis.

21 Q And who owned -- who owned -- okay. So -- so
22 Guardian Eagle became AVSX?

23 A Yes.

24 Q All right. And what happened to Force -- Force
25 Protection24?

1 A It was basically merged into AVSX.

2 Q All right. And at one time was -- was Mr. Endara
3 listed as the owner of Force Protection, to your
4 knowledge?

5 A Yes.

6 Q All right.

7 MR. TODD ELLIS: Objection, Your Honor. That -- I
8 think Mr. Sautter just misspoke.

9 THE COURT: Restate your question, Mr. Sautter.
10 (Whereupon, Mr. Sautter and Mr. Michael Ellis
11 conferred.)

12 Q So at one time -- who -- was Mr. Endara the owner
13 of Protection24?

14 A Yes.

15 Q All right. And that was merged into Guardian
16 Eagle, correct?

17 A Guardian Eagle/AVSX. Yes.

18 Q All right. And what did -- how did that merger
19 go? Can you describe it? Were there any loans back
20 and forth, things of that nature, that -- to your
21 knowledge?

22 A Well, basically, AVSX took over basically all the
23 assets and liabilities of Protection24: inventory,
24 the liabilities for that inventory, any -- the
25 shareholder loan -- or not the shareholder loan --

1 the -- the loan to Bobby, and any credit card loans
2 that -- or credit card charges that were outstanding.

3 Q So there was a loan by Protection24 to Bobby
4 Johnson?

5 A Yes.

6 Q And what was that for?

7 A For him to live -- live on while they grew
8 Protection24.

9 Q Was Mr. Johnson drawing a salary at that time?

10 A Very small.

11 Q And so there was a loan. Was there a loan
12 document?

13 A No.

14 Q So that was part of the merge -- merger of
15 Protection24 and Guardian Eagle, was a -- a -- a loan
16 to Mr. -- to Mr. Johnson?

17 A Correct.

18 Q All right. I'm handing you a -- what's been
19 marked as -- for identification as Plaintiff's
20 Exhibit No. 18.

21 A Okay.

22 Q And look at the last page. It's a string of e-
23 mails.

24 A Okay.

25 Q Okay. And -- and at the last page of Exhibit 18,

1 who -- who is that from?

2 A Nacolle Caltrider.

3 Q No. If you look up there, it's -- it's from --
4 who -- what -- who does it say on top, page 4 of 4?

5 It says from ---

6 A Oh. It -- it's from me to Nacolle, responding to
7 an e-mail from her.

8 Q All right. And what did you say?

9 A You ---

10 Q Can you ---

11 A --- want me ---

12 Q --- go ahead ---

13 A --- to read ---

14 Q --- and read it?

15 A Read the whole -- okay. (As read): Nacolle, Line
16 13A is goodwill from the purchase of Protection24.

17 When Guardian/AVSX purchased Protection24, it took
18 over its inventory and the loan of Protection24 -- or
19 the loan -- and the loan on Protection24's books to
20 Bobby, which is what Line 20 is. The difference of
21 the purchase of assets and liabilities is goodwill.

22 Line 20 is what was remaining at the end of the
23 year that was due to Luis. This is from the loans
24 made to Bobby when he was with Protection24 in lieu
25 of taking a salary in the beginning years. When Luis

1 would take money out beyond his paycheck in AVSX --
2 i.e., paying for his daughter's college, etc. --
3 these amounts should be offset against this account,
4 which is, in essence, showing Bobby paying back the
5 loans to Luis -- i.e., the owner of Protection24.

6 Q And you -- you -- it's recognized from you as --
7 how -- how did you end that -- you -- as Dan Spohn,
8 president of what?

9 A Patriot Consulting.

10 Q That was when you were a consultant?

11 A No. That's what I do now. This ---

12 Q Yeah.

13 A --- is -- this was recently.

14 Q This is recent. I'm sorry.

15 A Yeah.

16 Q And -- and your -- and these are -- these are
17 questions that Nacolle Caltrider -- who is she?

18 A It's -- she -- she's Bobby's sister and also works
19 for AVSX.

20 Q All right. And this is -- this is for issues
21 concerning the 2010 tax return?

22 A Yes.

23 Q And to your knowledge, that was filed with the
24 IRS?

25 A Correct.

1 Q All right. And the other e-mails that are
2 attached to this string, do they deal with potential
3 tax liability of Luis Endara?

4 A (No audible response.)

5 Q If you'll look at page 2 of 4 ---

6 A Yeah. It talks about his tax during Protection --
7 when he was with Protection24. Yes.

8 Q Okay.

9 A It was Bobby responding.

10 Q Okay. And so what happened to the tax liability
11 of -- for Protection24? Are you aware of anything
12 that Mr. Endara did to address that issue?

13 A Yes. We had to go with the IRS and he was
14 audited. And basically, once we got through the
15 audit, he did a offer in compromise and he's repaying
16 the taxes from Protection24.

17 Q Okay. All right.

18 MR. SAUTTER: Your Honor, I would move -- I think
19 that is Plaintiff's 18 -- into evidence.

20 THE COURT: Any objection?

21 MR. TODD ELLIS: No objection, Your Honor.

22 THE COURT: Without objection, 18 admitted into
23 evidence.

24 (Whereupon, Plaintiff's Exhibit 18 was entered
25 into evidence.)

1 Q Now, I believe 18 talks about -- to your
2 understanding, have these parties ever had a
3 operating agreement?

4 A No.

5 Q Is that something that you fussed at them ---

6 A At ---

7 Q --- about?

8 A At -- a hundred times, probably ---

9 Q And ---

10 A --- over ---

11 Q --- why is ---

12 A --- the years.

13 Q --- that?

14 A Because you -- you just can't -- we wouldn't be
15 here today if they had an operating agreement. So if
16 you -- an operating agreement is set up to say how
17 you run your business; how, if there's any issues,
18 you need to dissolve the business or go your separate
19 ways, how to handle that.

20 And, you know, I've done this long enough to know
21 that this kind of thing can happen. And, of course,
22 it's happened so ---

23 Q And if -- and if there's no operating agreement
24 and you have a split-up, does it make it more
25 difficult to resolve all the issues?

1 A Well, typically, if there's a lack of an operating
2 agreement, you have to go by the South Carolina
3 Uniform Partnership Act, which explains how to --
4 which may or may not be way they -- they -- they wish
5 to split up assets and liabilities. So it's always
6 better to -- to have your own operating agreement
7 that states how you would like to wind things down,
8 if that ever happens.

9 Q And an operating agreement is for the -- the --
10 the partners, how they're going to run their business
11 and operate their business?

12 A Correct.

13 Q And if you don't have an operating agreement, is
14 -- is an operating agreement mandatory in South
15 Carolina?

16 A No. Because again, if you don't have one, the --
17 there's laws pertaining to how to handle
18 partnerships.

19 Q And that protects the individual partners?

20 A I wouldn't say it protects. I don't know if
21 anything the state does protects.

22 Q Well, it gives processes ---

23 A It gives a -- it does give some kind of process.
24 Yes.

25 Q To -- to claim your share and things of that

1 nature?

2 A Correct. Which may or may not be what two
3 individuals want. It's just this is the way you do
4 it in -- in -- in the lack of an operating agreement.

5 Q And so is it fair to say that neither one of Bobby
6 or Luis ever got together to do an operating
7 agreement?

8 A No. Not to my -- not that I'm aware of.

9 Q And you told -- requested that both of them do ---

10 A For ---

11 Q --- an operating ---

12 A For -- from '07 till when I -- '13. Yeah. Yes.

13 Q Well, who were the partners?

14 MR. TODD ELLIS: Objection, Your Honor: asked and
15 answered.

16 THE COURT: Overruled. Restate your question.

17 Q In -- in this AVSX and -- and Guardian Eagle, who
18 were the -- who were the -- the partners by the way
19 the company was operated?

20 A By the way of operation, it was Bobby and Luis.

21 Q And who was the owner on paper?

22 A For what -- which -- which entity?

23 Q For Guardian Eagle and for AVSX.

24 A On -- on -- the last owner was Mary Kay Johnson.

25 Q All right. And do you know if Mary Kay Johnson

1 contributed any money or services or anything of that
2 nature to obtain her ownership interest on paper of
3 AVSX or Guardian Eagle?

4 A No.

5 Q All right.

6 MR. TODD ELLIS: Wait. Your Honor ---

7 THE COURT: You have an objection?

8 MR. TODD ELLIS: Maybe we just approach quickly?
9 I don't want to say something in front of the jury
10 during . . .

11 (Whereupon, a bench conference was held off the
12 record in the presence of the jury but out of the
13 hearing of the jury.)

14 THE COURT: All right. Mr. Sautter, you may
15 continue.

16 MR. SAUTTER: Thank you, Your Honor.

17 Q Mr. Spohn, I hand you what's been marked for
18 identification as Exhibit No. 17. Have you seen that
19 before?

20 A (No audible response.)

21 Q And is that -- is that -- is this an e-mail that
22 you sent on October 15th, 2013?

23 A Appears so. Yes.

24 Q And go ahead and read the -- read the first line.
25 Well, what -- what's the subject?

1 A It says (As read): Agreement?

2 Q And then, what does it say?

3 A It says (As read): Who is this person you're
4 referring to as far as being a manager of AVSX, a
5 Mary Kay?

6 Q And then -- and then, what does it say? Go ahead
7 and read that, sir, please.

8 A (As read): Guardian Eagle was set up by some
9 attorney that Luis used way back in the day. It was
10 set up as an LLC and not incorporated. However, it
11 was taxed as an S corporation. I have no idea who it
12 is or -- I have no idea who it was or where the
13 original articles of organization are.

14 However, I do know that there was never an
15 operating agreement because I tried for years to get
16 them to set one up to no avail. The operating
17 agreement dictate -- dictates how the company is to
18 be run, how to handle dissolutions, etc. There were
19 no other amendments that I am aware of after the name
20 change, but I don't know what anyone has done since I
21 left.

22 Q Okay. And what was the date of that e-mail?

23 A October 15th, 2013.

24 Q And what was your role with AVSX at that time?

25 A I was the CFO.

1 Q Okay. So basically, in -- in -- it ---

2 A Well, I take that back. No. I -- I left in
3 January of '13. So the -- the -- at this point I
4 wasn't employed with them anymore. Sorry.

5 Q Okay. Okay. But they -- but -- and Nacolle
6 Caltrider still sought your advice on ---

7 A Yes.

8 Q --- on ---

9 A Yeah.

10 Q --- on the ---

11 A Yes. I helped whenever she had questions.

12 Q Okay. And she had a question of what -- was it
13 legal to run a business in South Carolina without an
14 operating agreement, correct?

15 A Let me read -- let me read what she ---

16 Q Yes, sir.

17 A --- her -- her question was. Yes. That -- her --
18 that was her original ---

19 Q What was her -- what was her question? What did
20 she -- what did she write?

21 A She's saying (As read): This is what is being
22 requested from me. I have been advised that without
23 the operating agreement, we have not been able to do
24 the incorporation.

25 Q Okay. Let me ask you that -- let me ask you this,

1 based upon your knowledge and experience and
2 training: Is an operating agreement required to do
3 the incorporation?

4 A Well, they're not incorporated.

5 Q Right.

6 A But the answer is no. There -- an operating -- an
7 operating agreement is not required.

8 Q Okay.

9 A It's -- you should have one, but it's not
10 required.

11 Q All right. Okay.

12 MR. SAUTTER: And I would move that into evidence
13 as Plaintiff's Exhibit No. 17, Your Honor.

14 THE COURT: Any objection?

15 MR. TODD ELLIS: Without objection, Your Honor.

16 THE COURT: Admitted without objection ---

17 MR. SAUTTER: Thank you.

18 THE COURT: --- Exhibit No. 17.

19 Q Please hand that to madam court reporter.

20 A (Complied.)

21 THE COURT REPORTER: Thank you, sir.

22 (Whereupon, Plaintiff's Exhibit 17 was entered
23 into evidence.)

24 Q All right. So Guardian Eagle and AVSX, you would
25 agree with me that they made a lot of money?

1 A Yes.

2 Q And who had credit cards, as far as you know, for
3 -- or debit cards for Guardian Eagle and AVSX? Did
4 Bobby Johnson have a -- have a credit card?

5 A Yes.

6 Q Did Mary Kay have a credit card?

7 A Yes.

8 Q Did Luis Endara have a credit card?

9 A Yes.

10 Q And were they allowed to freely use those credit
11 cards?

12 A Yes.

13 Q Did you place any restrictions on them for using
14 them?

15 A I tried.

16 Q And how -- how so?

17 A Basically, the whole time I tried to make sure
18 that no personal -- you know, they didn't run
19 personal stuff through the company.

20 Q Okay. And was personal stuff run through, to a
21 certain extent?

22 A Yes.

23 Q Like what?

24 A Everything.

25 Q Day-to-day stuff ---

1 A Day-to-day stuff. You know, groceries, just
2 whatever ---

3 Q Okay.

4 A --- shopping.

5 Q All right. And what -- and did -- did each of
6 these individuals have vehicles and multiple
7 vehicles?

8 A Yes.

9 Q And were all those part of the business expense of
10 the company as Guardian Eagle or ---

11 A Yes.

12 Q All right. And that's -- you know, you can have a
13 car in a business, right?

14 A Absolutely.

15 Q And do you know what kind of car that Mary Kay
16 last had?

17 A A Mercedes, I believe.

18 Q Was it an expensive one?

19 A Well, I haven't seen any cheap -- yeah. So yes.

20 Q Okay. Okay. And that was all run through the
21 company expenses?

22 A I can't remember if her Mercedes was run through
23 business or not.

24 Q Okay.

25 A But there was other vehicles.

1 Q All right. They're all run through the business?

2 A Yes.

3 Q And that's part of the -- if you -- if you look at
4 any tax return -- and we've -- we've -- we've got
5 some tax returns into evidence. And I also hand you
6 what's been marked as Plaintiff's Exhibit No. --
7 let's look at the chart.

8 (Whereupon, Mr. Sautter and Mr. Michael Ellis
9 conferred.)

10 Q This is -- we are about to -- here -- here we are
11 back to -- let's see how we can do this. Mr. Spohn,
12 this -- this has -- this has been introduced into
13 evidence as Plaintiff's Exhibit No. 7, the miniature
14 of it.

15 A Uh-huh.

16 Q These -- those -- Items 7 through 21 would be the
17 deductions from business?

18 A Correct.

19 Q And some of it would be any kind of car expense or
20 personal expense or -- or expenses that were used on
21 those cars should be included within ---

22 A Yes.

23 Q --- these numbers deducted?

24 A Correct.

25 Q All right. And did you -- did you file the tax

1 returns for the Guardian Eagle and AVSX when you were
2 in-house?

3 A In-house, no.

4 Q Okay. When you were a consultant?

5 A Yes.

6 Q All right. And, you know, what -- do you know --
7 do you know when the last years of tax returns were
8 filed for AVSX or Guardian Eagle?

9 A 2010 was -- that I know of. I don't know anything
10 after that.

11 Q Okay. And -- well, if the -- so you didn't
12 prepare any of the corporate tax returns or
13 contribute information after 2010 for those tax
14 years?

15 A Correct.

16 Q And would -- would -- so how would that affect the
17 individuals being able to file their taxes, such as
18 Luis Endara and Bobby Johnson and all that?

19 A Well, you can't ---

20 Q For those tax years when the -- when the company
21 hasn't filed their tax returns.

22 A Well, you can't accurately do it.

23 Q Right. What -- why can't you?

24 A Because any income and expense flows from the
25 corporate return to the personal return. The -- the

1 -- the corporation isn't taxed. It's just a flow-
2 through entity.

3 Q I got you. So -- so the individuals could not
4 determine what their tax liability -- is it fair to
5 say the individuals could not determine what their
6 tax liability was until the corporate return was
7 prepared and filed?

8 A Correct.

9 Q All right.

10 (Whereupon, Mr. Sautter and Mr. Michael Ellis
11 conferred.)

12 Q Do you know what Bobby Johnson's salary was when
13 -- when he was initially with Protection24?

14 A Oh, like \$6,000, something like that.

15 Q That's pretty small?

16 A Yeah. I would say so.

17 Q Well -- and why -- and you -- and why -- why was
18 that \$6,000-a-year figure?

19 A Well, in the beginning they were struggling. You
20 know, they were a new business, so it was a cash-flow
21 issue.

22 Q All right. But were -- were -- were those loans
23 designed to be -- to make up for that?

24 A Yes.

25 Q And that would allow Mr. Johnson to live?

1 A Yes..

2 Q And Luis is taking on all the tax liability for
3 Protection24, correct?

4 A Correct.

5 Q All right. So whatever happens on the tax side or
6 whatever happens in this case, I mean, how does that
7 affect what -- what's ultimately going to happen with
8 the taxes of -- of these individuals? I mean,
9 everybody's going to be responsible for what -- what
10 -- what they -- what they receive, right?

11 A Correct.

12 Q What kind of tax position was Luis put in when he
13 was terminated from AVSX in February ---

14 MR. TODD ELLIS: Your Honor ---

15 Q --- of 2014?

16 MR. TODD ELLIS: Excuse me, Mr. Sautter. I think
17 we're teetering on the edge of expert testimony
18 beyond lay ---

19 THE COURT: You have an ---

20 MR. TODD ELLIS: --- witnesses.

21 THE COURT: --- objection? State ---

22 MR. TODD ELLIS: I do.

23 THE COURT: --- your grounds for it.

24 MR. TODD ELLIS: Outside the scope of the witness
25 for a layperson.

1 THE COURT: Objection sustained.

2 Q All right. Do -- do you prepare taxes for
3 individuals?

4 A Yes.

5 Q And you did them for the company?

6 A Yes.

7 Q And are you -- are you prepared today to testify
8 where the ultimate tax liability flows for those tax
9 years 2012, 2013, 2014?

10 A Yeah. I mean, as far as I know. Yeah.

11 Q Okay. And -- and so I'll ask the question again:
12 Where does the tax liability ultimately flow for
13 those tax years for these two individuals, Luis
14 Endara and Bobby Johnson?

15 A Where does it flow?

16 Q Yeah.

17 A Well, if they were still in operation, it would
18 flow to Mary Kay.

19 Q All right. What if they're not in operation?

20 A That's a problem.

21 Q And how -- who is going to have to address each --
22 each of those problems?

23 A I think that's -- at this point, I think it's the
24 Court that's going to have decide.

25 Q All right. All right. But ultimately, are these

1 individuals going to be responsible for -- for ---

2 A Oh, yeah.

3 Q --- that?

4 A Someone is going to be paying the tax liability,
5 whether it's the -- jointly or Mary Kay or -- yeah.

6 Someone will.

7 Q All right. Who -- who -- who ran Guardian Eagle?

8 A (No audible response.)

9 Q Who was in charge? Who was the boss?

10 A When it was Guardian Eagle?

11 Q Yes, sir.

12 A Because Guardian Eagle and AVSX are kind of one
13 and the same.

14 Q All right.

15 A There was -- it was under -- it was Guardian Eagle
16 for a few years, and it was run by Bobby and Luis.
17 And -- well, I guess it doesn't matter. AVSX was
18 also run by Bobby and Luis ---

19 Q All right.

20 A --- as far as day-to-day.

21 Q Were they 50/50 ---

22 MR. TODD ELLIS: Objection ---

23 Q --- to your knowledge?

24 MR. TODD ELLIS: Objection, Your Honor: calls for

25 ---

1 THE COURT: Restate your ---

2 Q Now, you ---

3 THE COURT: --- rephrase your question.

4 Q You -- you testified that Bobby and Luis ran
5 Guardian Eagle and -- and AVSX. And my question to
6 you: To your knowledge, were they 50/50 partners?

7 THE COURT: I'll allow that ---

8 MR. TODD ELLIS: Yes, sir.

9 THE COURT: --- question.

10 A That's the way they operated. And that was the
11 understanding. Yes.

12 MR. SAUTTER: Beg the Court's -- Court's
13 indulgence.

14 (Whereupon, Mr. Sautter and Mr. Michael Ellis
15 conferred.)

16 MR. SAUTTER: No further questions, Your Honor, of
17 this witness at this time.

18 THE COURT: All right. Cross-examination?

19 MR. TODD ELLIS: May it please the Court ---

20 THE COURT: Yes, sir.

21 MR. TODD ELLIS: --- Your Honor. Thank you. Good
22 morning -- morning, all.

23 CROSS-EXAMINATION

24 BY MR. TODD ELLIS:

25 Q Mr. Spohn, we, for really, about 2 1/2 days, have

1 been throwing around terms fairly loosely regarding
2 ownership of an entity. And I'm going to ask you
3 what I asked of the plaintiff in this case.

4 A Okay.

5 Q That we be real particular when we're talking
6 about ownership, boss ---

7 A Uh-huh.

8 Q --- day-to-day operations, members, things that
9 give people rights and duties. Will you ---

10 A Sure.

11 Q --- try to do that with me?

12 A Absolutely.

13 Q And will you correct me if I say something
14 incorrectly?

15 A Absolutely.

16 Q All right. Mr. Spohn, what is your educational
17 background?

18 A I have two college degrees in accounting.

19 Q In accounting?

20 A Yes.

21 Q And were you a senior member or partner in a firm?

22 A No.

23 Q You were, though, at one point?

24 A No. I was a CFO of a law firm.

25 Q CFO of a law firm?

1 A Yes.

2 Q Okay. Could you tell me the name of that firm and
3 assume your role there in that.

4 A It was Harvey, Casterline, Vallini, and then later
5 Harvey and -- Harvey and Vallini when Casterline
6 left.

7 Q All right. You performed the same kind of
8 services you talked about to the jury for that law
9 firm; is that correct?

10 A I was the firm's law firm and we -- when I was
11 there, we opened up a tax and bookkeeping and payroll
12 business. Yeah.

13 Q All right. One of the things I'm real concerned
14 about is that several times during your direct
15 examination, whether it was Mr. Sautter ---

16 A Uh-huh.

17 Q --- or you, you used the word -- the word
18 "partnership" when describing AVSX Technologies ---

19 A Uh-huh.

20 Q --- correct?

21 A Correct.

22 Q It's not a partnership, is it?

23 A It's not taxed as a partnership. No.

24 Q That's correct. It is an LLC, a limited liability
25 company ---

1 A Correct.

2 Q --- that files taxes as an S corp ---

3 A Correct.

4 Q --- isn't that correct?

5 A Absolutely.

6 Q So it's not a partnership.

7 A Correct.

8 Q All right. And as you described earlier, could
9 you describe again: When you have an LLC document

10 ---

11 A Uh-huh.

12 Q --- and you have an S-corp filing for that LLC ---

13 A Uh-huh.

14 Q --- where does the tax liability go?

15 A It goes to the shareholder.

16 Q The shareholder or -- it's actually a member in
17 that instance. It's not a shareholder, right?

18 A Well, once it becomes an S corp, it -- once an LLC
19 becomes an S corp, the -- from a legal standpoint,
20 you're a member. But from a tax standpoint, you're
21 considered a shareholder.

22 Q Right. But it has to go to the shareholder,
23 right?

24 A Correct.

25 Q I'm going to show you a document here and ask if

1 you recognize this.

2 A Yes.

3 (Whereupon, Mr. Sautter and Mr. Todd Ellis
4 conferred.)

5 MR. TODD ELLIS: Sorry. Thought you had it.

6 Q Mr. Spohn, could you tell the jury what you're
7 looking at?

8 A This is an application to get a state-withholding
9 number for payroll purposes.

10 Q And this is for what entity?

11 A Guardian Eagle Security doing business as AVSX
12 Technologies.

13 Q And this is a document that you signed as the
14 preparer, correct, a corporate officer, CFO?

15 A Correct.

16 Q And that's dated 8/2/2010.

17 A Yes.

18 Q What is this document asking the South Carolina
19 Department of Revenue -- or what are you telling the
20 South Carolina Department of Revenue in this
21 document?

22 A This document -- just the name of the business;
23 address; who is the owner; is it a type of ownership;
24 what kind of business the company is in; federal ID
25 number.

1 Q All right. And do you have to list the owners of
2 the ---

3 A Yes.

4 Q --- any entity; is that correct?

5 A Yes.

6 Q And did you, in fact, fill this document out?

7 A Yes.

8 Q And who did you list as the owner of Guardian
9 Eagle Security, LLC?

10 A Mary Kay Johnson.

11 Q Mary Kay Johnson.

12 Is there anyone else on that list?

13 A No.

14 Q Would that have been wrong, false, or incomplete
15 not to include all owners of the company on that
16 document?

17 A No. This not wrong from -- because she is -- from
18 a tax standpoint, she's the owner.

19 Q From a tax standpoint, she's the owner?

20 A Yeah.

21 Q Is there anything else that -- that shows
22 ownership in an LLC ---

23 A Well, not ---

24 Q --- S corp?

25 A Well, particularly not with an operating

1 agreement. No.

2 Q Exactly right. If you don't have an LLC operating
3 agreement for anybody doing business, the only way to
4 show who's an owner ---

5 A Uh-huh.

6 Q --- is by what?

7 A A tax return.

8 Q Right. And those are done by filing or showing
9 what?

10 A (No audible response.)

11 Q K-1s.

12 A Yeah. K-1s. Yes.

13 Q So unless you get a K-1 in an LLC without an
14 operating agreement, you are not an owner of a
15 company, are you?

16 A From a tax standpoint, no.

17 Q No. That's the only thing that shows it, isn't
18 it, Mr. Spohn?

19 A Yeah. As far as on paper. Correct. And -- and
20 the reason why I say that is because there's -- there
21 -- I know there is common law where people act ---

22 Q Hold on.

23 MR. SAUTTER: Your Honor, I'd -- I'd like -- ask
24 that the witness be allowed to continue his answer.

25 THE COURT: Hold on a minute. Can ---

1 MR. TODD ELLIS: Thank you.

2 THE COURT: --- y'all approach a minute.

3 (Whereupon, a bench conference was held off the
4 record in the presence of the jury but out of the
5 hearing of the jury.)

6 MR. TODD ELLIS: Thank you, Your Honor.

7 THE COURT: All right, Mr. Spohn. You may
8 continue.

9 Q Mr. Spohn, I'll allow you to finish your answer.

10 A Well, there's -- where I was going was there's how
11 you run a business is just as important. And the way
12 they ran their business day to day was as a partner
13 -- as partners. Right or wrongly, it's -- that's the
14 way they -- they ran their business.

15 Q Yeah. But there's lots of entities that have
16 people that manage the operations on a daily basis
17 that they have no ownership in, do they?

18 A Correct.

19 Q Right. Didn't you testify earlier that Luis
20 Endara, the only time in his entire career, he
21 testified to yesterday -- actually, I don't even
22 think he mentioned this. He received a K-1 for
23 Protection24; isn't that right?

24 A No.

25 Q He did not get one?

1 A No.

2 Q Why has he got all the tax liability?

3 A Because at the time when it was -- when
4 Protection24 was created as an LLC, the -- whoever
5 the -- the initial accountant never sent in the S-
6 corp paperwork. So basically, the IRS disallowed it
7 as an S corp and it was just a -- on his Schedule C
8 in his personal return.

9 Q All right. But you're clear on the fact that only
10 a person who receives a K-1 of an LLC set up as an S
11 corp, which is Guardian and AVSX ---

12 A Yes.

13 Q --- that's correct?

14 A Correct.

15 Q Only the person that receives a K-1 is the person
16 responsible for the tax liability?

17 A Correct.

18 Q Because it just flows through. So if you make
19 \$660,000 in a single year ---

20 A Yes.

21 Q --- that tax -- that money flows through to the
22 individual K-1 owner?

23 A Yes.

24 Q And they're responsible for that; isn't that
25 correct?

1 A Correct.

2 Q So it would be advantageous for someone not to
3 receive a K-1 but claim that they were an owner of a
4 business?

5 A From a tax standpoint, yeah, it'd be advantageous.
6 Yes.

7 Q You're darn right it would.

8 A Yeah.

9 Q You owe a duty, don't you, as an accountant to
10 Guardian/AVSX to prepare the tax returns correctly
11 and with complete information, correct?

12 A Correct.

13 Q You prepared the 2009 and 2010 tax returns for
14 this entity; is that correct?

15 A Correct.

16 Q You were the tax preparer?

17 A Correct.

18 Q There's specific regulations for the word "tax
19 preparer," isn't there?

20 A Yeah.

21 Q And the tax preparer has duties beyond just any
22 individual that signs on the end of that document;
23 isn't that right?

24 A Yes.

25 Q Are you familiar with 26 CFR 1.1? And if you know

1 this, I'll be shocked.

2 A No.

3 Q Or -- excuse me -- if you know that cite right off
4 the top of your head. I hope you know this.

5 A Is a -- no. Circular 230, is that where ---

6 Q Circular ---

7 A Yes.

8 Q --- 230, which is what? Tell the jury what
9 Circular rules.

10 A Circular 230 is basically how a -- someone who's
11 preparing a tax return should handle preparing the
12 tax return.

13 Q All right.

14 A There's certain ---

15 Q I'm going ---

16 A --- duties ---

17 Q --- to hand you Circular 26 CFRF 1.1 and ask you
18 to look at it. I've highlighted something. You can
19 read or look at whatever you want. But I'm going to
20 ask you to read that to the jury.

21 You know what? I got a couple copies there, I
22 think. I better give them -- you're on 1? Let me
23 look -- let me have them look at it first.

24 (Whereupon, Mr. Ellis and Mr. Sautter conferred.)

25 A You want me to read the highlighted part? Is that

1 what ---

2 Q No. I ---

3 A --- you said?

4 Q --- want you to read the title of it again and
5 then read the highlight of it, please.

6 A It's (As read): Shareholder's share of items of
7 an S corporation.

8 Q All right. If you would, read the -- any of the
9 section you want, but certainly the highlighted area.

10 A It says (As read): A -- well, it's A.
11 Determination of a shareholder's tax liability. (1)
12 In general. An S corporation must report, and a
13 shareholder is required to take into account in the
14 shareholder's return, the shareholder's pro rata
15 share, whether or not distributed, of the S
16 corporation's items of income, loss, deduction, or
17 credit described in paragraphs (a)(2), (3), and (4)
18 of this section.

19 Q Okay. And that's it. Thank you.

20 Mr. Spohn, besides that being something maybe a
21 trained accountant would know, did you glean from
22 that what I gleaned from that: An S corporation must
23 report and a shareholder is required to take into
24 account the shareholder's return. Must report --
25 isn't that right?

1 A Correct.

2 Q So if you have an S corporation and you're a tax
3 preparer and you claim that someone is an owner any
4 way, you must report them and their K-1, correct?

5 A Correct.

6 Q And you didn't do that for two years, correct?

7 A No, I didn't.

8 Q You did not?

9 A (No audible response.)

10 Q Mary Kay Johnson was a minority owner in the first
11 year; Luis Reis [sic] was the other majority owner.
12 And then in 2010 Mary Kay Johnson was listed by you

13 ---

14 A Uh-huh.

15 Q --- as the only member of that LLC; isn't that
16 correct?

17 A As the shareholder. Yes.

18 Q And you can't be an owner under this and can't
19 receive S-corp benefits unless a K-1 is offered to
20 you; isn't that correct?

21 A Correct. And she was for 2010.

22 Q Correct.

23 A Yeah.

24 Q But no other owner got a K-1 in 2010, did they?

25 A Correct.

1 MR. TODD ELLIS: One moment, Your Honor?

2 THE COURT: Yes, sir.

3 (Whereupon, Mr. Todd Ellis and Mr. Ward
4 conferred.)

5 MR. TODD ELLIS: Your Honor, I am unsure, with Mr.
6 Sautter's help here, whether this has been entered as
7 an exhibit. I'd like -- you can just ---

8 (Whereupon, Mr. Todd Ellis and Mr. Sautter
9 conferred.)

10 MR. TODD ELLIS: Your Honor, I'd like to offer --
11 and this would be Defendant's Exhibit Number ---

12 THE COURT: --- 11 or 12, maybe?

13 MR. TODD ELLIS: It's 12? 11?

14 THE COURT REPORTER: It would be Defendant's 11,
15 Your Honor.

16 THE COURT: Eleven?

17 MR. TODD ELLIS: Defendant's 11.

18 MR. SAUTTER: Without objection, Your Honor.

19 MR. TODD ELLIS: Thank you, Your Honor.

20 THE COURT: Without objection.

21 (Whereupon, Defendant's Exhibit 11 was marked and
22 entered into evidence.)

23 MR. TODD ELLIS: Thank you, ma'am.

24 (Whereupon, Mr. Todd Ellis and Mr. Sautter
25 conferred.)